







THE  
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THE MIRUSVILLE TOLL.

While His Excellency the Governor is being engaged in the useful work of reform on a larger scale, it may not be amiss to bring out before the public eye a comparatively slight grievance that lies more or less hidden away in the Eastern corner of our peninsula. Connecting that important though small bit of territory with the mainland, the bridge of Elephant Pass, inasmuch as it safely bears up any weight less than that of an elephant and enables passengers to and from the metropolis to get across dry-shod, ought to command a certain amount of deference from all who have any sense of their duty as responsible taxpayers.

Now we have no fault to find with the strength of the bridge—we can even admit that it will support more than the weight of an elephant—nor have we anything to say against its length which nature, not men necessitated; but we have something to say about another length—the length of the distance which men not nature placed between the bridge and the toll-bar where the money is collected that goes to pay, people believe, for its cost and upkeep. This is the hidden grievance which one might search for in vain in the neighbourhood of Elephant Pass; for it is safely stowed away to a distance of some sixteen miles, and is pretty well known to the owners of bullock-carts or other conveyances as the toll-bar of Mirusville. What expenses other than those connected with the bridge of Elephant Pass the toll at Mirusville was established to meet, we cannot quite discern. It does not seem likely that the two tolls of Mirusville and Uparu, the latter about four miles from town, are required to defray a fair proportion of the expenses connected with the thirty-three miles of road between Jaffna and Elephant Pass, leaving out the bridge at that place. In any case, the two tolls on the same bit of road cause a certain amount of hardship to well-intentioned travellers who do not see the logic of handing over to a third party, every other hour, the sum of 50 cts. or thereabouts, without getting anything more tangible in return than the right to continue their journey along a portion of the public road. The affair becomes ludicrous in the case of those who pay for passing over a bridge which their journey does not even reach.

But the farmers in and around Mirusville are by far the worst off. It would seem that in this particular instance, those who have least money are, by the irony of fate, obliged to pay most. A farmer, let us suppose, whose land is situated on the other side of the toll-bar has to get his tobacco or other produce brought to Jaffna. For every loaded cart, he has to pay 50 cts. to get through Mirusville, and another 50 cts. at Uparu toll. With the cart hire added to this, he will even before he arrives in Jaffna, have paid a pretty smart sum. Why, he could have the whole sent by train—if it were running as it will soon—and travel first class himself into the bargain for much less. And if we suppose the sum paid for getting through the Mirusville toll was taken from him for having passed over a bridge that he had been no nearer to during his journey than sixteen miles.....

The toll-bar at Mirusville is not a fixture; it can move and does move periodically, not however by any of the blind forces of nature, but by the wide-awake force of the catch-penny system permitted to exert itself, it is to be presumed, by the powers that be. On one of those fine dewy mornings that usher in the harvest time, the inhabitants of Mirusville are not at all surprised to see, but, through custom, stoically observe the site of the toll-bar and toll-house changed from the west of the village to the east. Stoically do they put their hands in their pockets and forthwith pay a tax in the shape of toll-money for being allowed to bring home their garden produce, for the bar

and the booth are planted there on the road right between their houses and their plots of tilled ground. They can now, if they want to drive to Jaffna, pass through their village exempt from toll but just at this time, they do not want to drive to Jaffna; their business brings them in the other direction and they pay the toll accordingly on the Eastern side. It is only when harvest time is over that they will be journeying to Jaffna, as the toll-gatherer is well aware, for, before they can enjoy a single coveted drive out of the village in that direction, Hey! Praesto! the toll-bar and toll-booth are planted back again right in front of them at the western side. This is a peculiar kind of east-and-west Paddy Tax which has not been abolished yet.

The toll-bar at Mirusville is not a fixture, it moves—but it keeps people from moving. Poor people do not easily venture out on costly journeys with their garden produce to compete in the market with those who have had to pay no tolls. As a consequence, trade suffers and, what is worse, the people who live by it suffer.

The toll-bar at Mirusville moves—periodically; let it then perform a movement like one of those comets that are said to make a last move round the sun and then fly off into space never to come back; let it in a word be done away with. One toll ought to be amply sufficient for the thirty-three miles of road. It may be questioned whether even one toll is necessary, considering the large amount of money both have contributed to swell the Revenue for such a number of years.

THE THESAWALAME.

The Thesawalamé is a code of the customs of Jaffna which had the force of law in the Jaffna District during the Dutch period. The treatise on Thesawalamé which is now in use is only a transcript of the code collected during the Dutch rule, supplemented by the decisions of the Judicial tribunals pronounced subsequently to the British conquest. Most of the provisions of the Tamil law have become obsolete by disuse owing to their repugnance to modern ideas and notions. It may, in truth, be said that the only subjects which the Thesawalamé now regulates are certain incidents attaching to *Otty* or usufructuary mortgage, the right of pre-emption, and devolution of property *ab intestato*. By the system of *Otty* a debtor mortgages his land to the creditor and delivers over to him the possession of the land and mortgaged. The creditor enters into the possession of the land and enjoys its produce in lieu of interest. If he wishes to recover his money, he cannot do so at once, but will have to give twelve months notice and quit possession of the land from the date of notice. It has not been proved to us that the system of *Otty* causes any hardship to the people. A similar contract called *pactum antichresis* is known to the Roman and Roman-Dutch laws. The other provision of the Thesawalamé relating to rights in land is what is known as the law of pre-emption, according to which, when some immovable property is to be sold, a relative or mortgagee of the seller or some adjacent land owner can, by paying to him the very same price which a stranger offers, compel the seller to convey the land to him. The right of pre-emption is very seldom availed of in Jaffna at the present day. Whenever the right is exercised it is invariably the neighbouring land-owner that comes in. In recent years we have not heard of a relative or mortgagee of the seller taking advantage of the law of pre-emption. The law has almost come into disuse, and another decade may see the last of it. We have only to observe that it is not in force in any other part of the Island and that it restricts the right of a proprietor to deal with his land as he likes.

But the most important subject which the Thesawalamé regulates is the succession to the property of persons dying *intestate*. In this respect the provisions of the Thesawalamé are antiquated, unjust, and inequitable. Except so far as the Thesawalamé gives the property of parents to children which is a universal rule of law permeating the Jurisprudences of all

the civilized nations of the world, the rules of inheritance given in the Thesawalamé are crude and unscientific. Children failing, the property of a person dying *intestate* goes to collaterals and not to ascendants. In the collateral line itself the crudeness of the Thesawalamé is inexplicable. Males succeed to males, females to females, and dowried sisters to dowried sisters. Again, in regulating succession in the case of ascendants, the Thesawalamé regards the source from which any property is derived. When a person dies leaving no descendants or collaterals, his property derived from the father's side and one-half of the property acquired during marriage go to the heirs on the father's side, and his property derived from the mother's side and one-half of the property acquired during marriage go to the heirs on the mother's side. Apart from the fact that this distinction founded on the origin of one's property is not maintained by the Roman-Dutch law and the enlightened systems of Jurisprudence obtaining among European nations, it opens a wide door to litigation. In many cases it is impossible to decide what property is derived from the father's side, and what from the mother's side, not to speak of the fact that a woman's "dowry property" sometimes becomes "acquired property" when husbands fail to recite its distinctive character in bonds and deeds.

We cannot within the brief space at our command comment on the other obnoxious provisions of the Thesawalamé. It is sufficient to say that intelligent opinion in Jaffna is in favour of the repeal of the Thesawalamé if not *in toto*, at least, as far as the rules of inheritance are concerned. The provisions of the Matrimonial Rights and Inheritance Ordinance which governs all communities in the Island except the Kandjans, Mahomedans, and Jaffna Tamils are more in keeping with the enlightened notions of the age than those of the Thesawalamé. That Ordinance which is founded on the Roman law governs the Tamils inhabiting the other parts of the Island. Up to the year 1876 the Makkua law obtained in the district of Batticaloa. The Matrimonial Rights and Inheritance Ordinance was introduced into that district in the year 1876, and the people have not complained at all. On grounds of uniformity and public policy it is desirable that the Matrimonial Rights and Inheritance Ordinance should be introduced into the district of Jaffna. Moreover the intrinsic merits of that Ordinance far outweigh those of the Thesawalamé or any law framed on its lines. We therefore, hope that the Thesawalamé Committee now sitting will see their way to recommend the introduction of the Matrimonial Rights and Inheritance Ordinance into this District.

The following Draft of a Matrimonial Rights Ordinance, intended to apply to the Tamils of the Jaffna district has been approved of by the Thesawalamé Committee, and was sent to us for publication by the Hon. Secretary.—

The Draft of a proposed code relating to the matrimonial rights of the Tamils in the District of Jaffna with regard to property and the Law of Inheritance.

I. PRELIMINARY.

1. This Ordinance may be cited as "The Jaffna Matrimonial Rights and Inheritance Ordinance."

2. On and from the date on which this Ordinance comes into operation the provisions of the "Thesawalamé" relating to the succession to property shall be repealed as well as the sixth section of Ordinance No. 21 of 1844, intitled, "an Ordinance to make better provision for the disposal of landed property" so far as the latter is inconsistent with the provisions of this Ordinance.

3. This Ordinance shall apply only to the Tamils of the District of Jaffna domiciled or resident within the jurisdiction of the District Court of Jaffna.

4. Whenever a woman marries, after the proclamation of this Ordinance, a man of different race or nationality from her own, she shall be taken to be of the same race or nationality as her husband for all the purposes of this Ordinance, so long as the marriage subsists and until she marries again.

5. In this Ordinance, unless there shall be something repugnant in the subject or context:—

The expression immovable "property" includes land, incorporeal tenements and things attached to the earth or permanently fastened to anything which is attached to the earth and any interest in land except that of a mortgage.

The expression "movable property" means property of every description except immovable property.

The expression "matrimonial rights" means the respective rights and powers of married parties in and about the management, control, disposition and alienation of property belonging to either party, or to which either party may be entitled during marriage.

The word "unmarried" means not having a husband or wife living.

All words expressive of relationship shall apply to a child in the womb at the time in question who is afterwards born alive.

(II. MATRIMONIAL RIGHTS OF HUSBAND AND WIFE IN RESPECT OF PROPERTY.)

6. The respective matrimonial rights of any husband and wife with regard to property or status arising under or by virtue of any marriage solemnized before the proclamation of this Ordinance and all rights which any other person may have acquired or become entitled to under or by virtue of any such marriage, shall (except where hereinafter otherwise expressly provided) be governed by such law as would have been applicable thereto if this Ordinance had not been passed.

7. The respective matrimonial rights of every husband and wife domiciled or resident in the District of Jaffna, and married after the proclamation of this Ordinance, in, to, or in respect of moveable property shall, during the subsistence of such marriage and of such domicile or residence, be governed by the provisions of this Ordinance.

8. The respective matrimonial rights of every husband and wife, married after the proclamation of this Ordinance, in, to, or in respect of any immovable property situate in this Island shall during such marriage be governed by the provisions of this Ordinance.

9. There shall be no community of goods between husband and wife, married after the proclamation of this Ordinance, as a consequence of marriage, either in respect of moveable or immovable property, except as regards property acquired during the subsistence of the marriage.

10. Any immovable property to which any woman, married after the proclamation of this Ordinance, may be entitled at the time of her marriage or may become entitled during her marriage shall, subject and without prejudice to the trusts of any will or settlement affecting the same, belong to the woman for her separate estate and shall not be liable for the debts or engagements of her husband, unless incurred for or in respect of the cultivation, upkeep, repairs, management or improvement of such property or for or in regard to any charges rates, or taxes imposed by law in respect thereof. Such woman shall, subject and without prejudice to any such trusts as aforesaid, have as full power of disposing of and dealing with such property, by any lawful act *inter vivos* with the written consent of her husband, but not otherwise, or by last will without such consent, as if she were unmarried.

11. All jewels and all personal or household ornaments and wearing apparel belonging to a woman, married after the proclamation of this Ordinance, at the time of her marriage and also all jewels, personal ornaments and apparel suitable in respect of value to her rank and condition of life, which she may acquire during her marriage whether by gift from her husband or otherwise and all tools, implements, and appliances belonging to her during marriage, which may be requisite for the carrying on of any employment or trade in which she may be engaged separately from her husband and all implements of husbandry, machinery, live and dead stock belonging to her during marriage and *bona fide* kept upon, and employed for the cultivation or proper uses of any immovable property belonging to her for her separate estate shall, subject and without prejudice to the trusts and provisions of any will or valid settlement affecting the same, belong to the woman for her separate estate independent of the debts, control and engagements of her husband and she shall have as full power of disposing of and dealing with the same by any lawful act *inter vivos* with the consent of her husband or by last will without such consent, as if she were unmarried.

12. If in any case, in which the consent of a husband is required by this Ordinance for the valid disposition of or

(Continued on Supplement)