Law Intelligence.

SUPREME COURT IN APPEAL.

123 D. C. Kandy, 11125.

E. Kalingu and others—*Plaintiffs-Respondents.*

vs.

E. H. Saleloo and another—*Defendants-Appellants.*

Kandyan Law.—Forfeiture of inheritance—Diga and Binna marriages.

Present.—LAWRIE AND BROWNE, JJ.

24th June 1898.

LAWRIE, J. The Kandyan Law is clear, that a woman married in Diga who has a brother or sister married in Binna forfeits her right to succeed to a share of her mother's "paternal" lands, *i. e.* lands to which her mother succeeded by inheritance from her father.

A Diga married daughter had right to succeed to her mother's "maternal" lands, *i. e.* lands to which her mother succeeded from her mother.

A daughter by her Diga marriage did not forfeit her right to inherit lands which had been acquired by her mother or to which her mother succeeded, from collaterals or otherwise than by inheritance from her father.

Though I think this is good Kandyan law, I do not say that it is supported by express authority.

I remain of the opinion expressed in the judgment of this Court reported in 2 N.L.R., p. 92 which I follow.

Where the written law does not expressly declare a forfeiture, a daughter should not be cut off from the inheritance.

I affirm with costs.

BROWNE, J.—The lands in claim in this action were inherited by Girangi from her father Tambiya, and her husband Dingiya had a separate estate. Girangi dying, left her surviving her daughter 1st plaintiff who married in Binna; her grandchildren, 2nd and 3rd plaintiffs, the son and daughter respectively of two of her daughters, who married in Diga and predeceased her; and her son, the vendor to defendant, by a deed executed four years after her death. The [illegible] of 1st plaintiff and her brother by inhe[illegible] was admitted, but defendant questioned that the children of the Diga married daughter acquired by inheritance any rights to these lands, which their grandmother, having an estate separate from that of her husband, had paternally inherited.

The learned District Judge following the decision in 3 N. L. R. 42 upheld the rights of the grandchildren, considering the existence of the separate estate was the exception indicated therein to the decision in 27911 D. C. Kandy, Austin 199. I think it possible that exception had relation to the case mentioned in Armour 30, 81 of a daughter being married in Binna in the house of her mother's separate estate, which would be considered a Diga marriage in respect of her father's house and estate. But I agree, the forfeiture not being anywhere clearly laid down, it should not be held to exist to the detriment of the Diga married daughters or their children.

I would affirm with costs.

ARMOUR'S

GRAMMAR OF THE KANDYAN LAW,

METHODICALLY ARRANGED AND DIGESTED,

WITH

A COPIOUS INDEX, GLOSSARY, AND APPENDIX;

BY

JOSEPH MARTINUS PERERA,

Proctor of the District Court of Kandy.

"——— Saving to all classes of the people the safety of their persons and property, with their civil rights and immunities, according to the Laws, Institutions and Customs established and in force amongst them."—

Proclamation of the Kandyan Convention.

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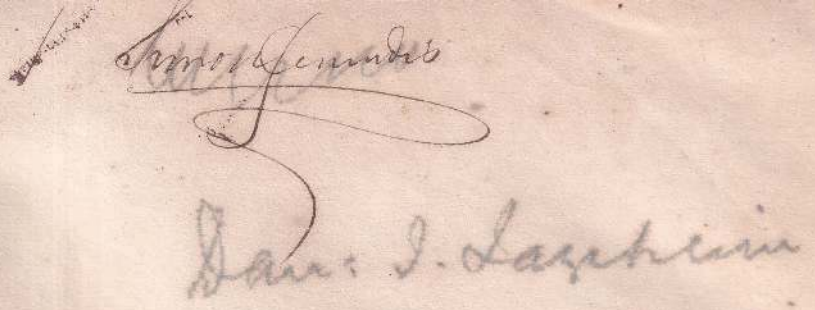

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JOHN DRIEBERG, Esquire,
Proctor of the Supreme Court
of the Island of Ceylon.
&c. &c. &c.

IR,

Allow me to dedicate to you these humble results of my patient labour, a mark of sincere respect and gratitude, and in token of the instruc-on and kindness received from you, by

Your most obedient and faithful pupil,
THE COMPILER.

PREFACE.

It would not perhaps be out of place here to state the reason of an undertaking so apparently presumptuous on the part of a *Student*, as that of publishing a treatise on *Law*.

In the first place it should be remembered that the writer claims no originality in the work. The only credit he can claim is in respect of the diligence and labour he has employed in arranging materials collected from existing sources, in a new and more useful form. In the next place, he may mention that the following sheets were not at first designed for the press, but for his own private use and study; and that he resolved upon publishing them only at the suggestion of friends at the Bar whose opinions were entitled to weight.

He therefore hopes that the public will look with indulgence on the treatise, and excuse its many faults in view of the facilities which he hopes it will supply to those who have found ARMOUR and SAWERS (however valuable in other respects) almost useless as books of reference.

J. M. P.

Kaigalle, 1st July, 1860.

INTRODUCTION.

MUCH cannot, and perhaps need not be said, in introducing this little work to the Public. The very name of the author prefixed to these pages, and upon whose text the present treatise is founded, will, it is presumed, be a sufficient recommendation. It will only therefore be necessary to point out the improvements which have been attempted in this publication. These consist chiefly, of a new *arrangement* of the text, an *Index*, a *Glossary* of terms, and an *Appendix*.

First, then, with respect to the *arrangement*. The principal defect in Armour's otherwise truly valuable notes on the Kandyan Law is the want of system. This may perhaps have arisen from his having published the Notes first merely for general information, with the view of embodying them into a regular code of law after they had undergone the test of public criticism. But the learned author was unhappily not spared to accomplish it. And although the present writer does not presume to have altogether remedied the evil, yet he has not spared any labour (so far as it was consistent with the plan of his work) to bring all the information scattered in different parts of the work under their respective heads.

It may be necessary also to explain the reason why there has been a departure from the original plan in respect of the proposed "references to the page in the original text." This, although it formed part of the writer's original design, from a wish to show that he had been faithful in transposing the passages without alteration, was nevertheless given up on the suggestion of friends who thought it not only cumbersome, but useless. Another improvement was however adopted instead; namely, that of making reference to Sawers, D'Oyly, Marshall, Morgan, and the Ordinances, in the form of foot-notes, as far as the limited reading of the writer extended. And while the writer

cannot be too confident that the authorities he has cited are all unexceptionable, and bear exactly upon the points to which they refer, such a task would not, in the absence of any thing like a proper index to the works above alluded to, be found altogether unprofitable.

The title "Armour's *Grammar* of the Kandyan Law" ought not to lead the reader into supposing that it contains so much of the substance only as is included in the few pages under that designation. It includes not only pages 1—32 and 113—139 of the original treatise, but also pages 285—287, 329—331, 19—24, 176—182, and 266—270, known as Armour's *Notes* on the Kandyan Law.

The writer has taken care not to depart from the words of the original text, even where a desirable alteration might safely have been made without affecting the sense of the author. He has been careful even to retain the peculiar mode of spelling the native terms adopted by the author. The only liberty the writer has taken is, he believes, the slight alteration of one or two sentences to suit the convenience of the heading. These he would have enclosed within brackets, as he has done in other instances, but that it was thought improper to give an appearance of originality to that which was substantially Armour's.

With regard to the *Glossary*, the writer has thought it expedient to give the meaning of words through their derivations. Not with any ostentatious desire of exhibiting a knowledge of the Singhalese classics (to which he has no pretensions,) but because the best means of ascertaining the signification of a word is through its derivation. He has confined himself only to the most important words and phrases found in the text, not only because it was sufficient for the purposes of the present work, but because it was considered unusual to embody into a Glossary terms which occur in other writings though upon the same subject.

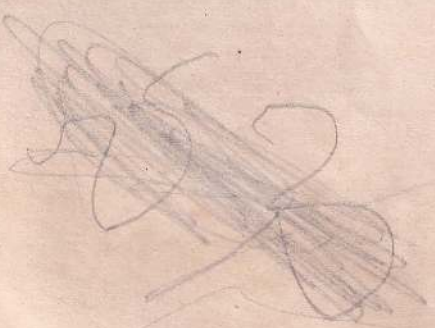
The object of the writer in introducing into the *Appendix* two subjects, "On the Origin of Caste" and "Slavery," is more with a view of preserving Armour whole and entire, than because they 'throw much light upon any portion of the text which requires explanation.' Some explanation may be desired why another portion (p.p. 329—331) which is law, has been introduced into the Appendix rather than as a portion of the text. Every person acquainted with Armour's Notes will know that there is an unaccountable repetition of the same subject throughout the work, with the only difference, that the one is brief and the other copious. The writer has therefore selected the latter, which contains more matter, as the text, and has thrown the former into the Appendix for reference. He would also

have embodied a few more decisions of the Supreme Court on subjects treated of in the text, were it not that a collection of them is already in the press for publication, edited by Mr. AUSTIN of Kaigalle.

Care has been taken to make the *Index* as copious as possible, the same subject being frequently repeated under different alphabetical heads, for convenience of reference.

Having thus briefly noticed what the work purports to contain, the writer cannot conclude without acknowledging his consciousness of the many imperfections it also contains, both as to its design and its execution. As regards the former he will offer no apology, for he hopes his readers will readily overlook the failings of a writer comparatively young and inexperienced. But as regards the latter the only extenuation he can plead is that he has been away from Colombo, labouring under all the disadvantages of carrying a work, purely native, through the press, without any opportunities of personal superintendence. This will account also for the delay in its publication since after its first announcement in the Papers.

The writer cannot in justice close his observations without recording his best thanks to the gentlemen of the Bar for their kind and courteous support at its first announcement. His thanks are specially due to Mr. Advocate LORENZ for his unvaried assistance and encouragement, but for which the writer would never have succeeded in its publication. He is also under obligations to Mr. RANASINGHA (Law Student,) for his assistance in the preparation of the Glossary.



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Hon: J. Lauderdale

A TREATISE

ON

KANDYAN LAW.

CHAPTER I.

PRELIMINARY CONSIDERATIONS.

SECTION 1.

General division of *Persons*.

In judicial investigations, touching Property and Succession to Estates, *Aya* (Persons), and *Deya* (Things), must be defined and discriminated primarily.

SECTION 2.

AYA *(Persons)*.

Aya, Persons, are principally discriminated in reference to—

1. Birth and Caste.*
2. *Nidahasoon* free people, and *Dahasoon*, Slaves.†
3. *Prawarjita*, of the (Buddhist) order of Priesthood, and *Grahasta*, Laic.

Distinction is also made amongst Persons, with reference to age:—

Division of *Persons* with reference to *Age*.

1. *Danna Aya* (literally nocents), adults; those who have attained the age of full sixteen years,—the age of majority.

2. *Nodanna Aya* (literally innocents), infants; those who are under that age.

---

* *Caste*, see Appendix A.

† *Slaves*, see Appendix B. *Slavery* is totally abolished by Ordinance No. 20 of 1844, § 1.

Section 3.

Majors and Minors.

Age of majority.

"The age of puberty" says Sawer* "is the age "of manhood and discretion; and as a young man is "capable of marriage at the age of sixteen years, so "he is competent to contract debts, and is answerable "at law for all his deeds executed, and contracts entered "into, after the end of his sixteenth year.†

Any act *before* that age may be rescinded.

"Should a youth sell his lands, his cattle, or his "goods, before the end of his sixteenth year, he can break "the bargain and resume the possession of his lands, "cattle, or goods, on refunding the value which he may "have received for the same.

Relations &c. may interfere and prevent the acts of a Minor.

"The relations and heirs of a minor may interfere "and prevent his selling his property, but if they do not "so interfere at the moment, or so soon as it comes to "their knowledge, they have no remedy afterwards; but "if it was done without their knowledge, they might "then have their remedy, if their relative died in non-"age.

"The same rules apply to Females, as to Males, being "minors.

Age at which a Minor may will or bequeath his or her property.

"A Minor at the age of ten years, may will or be-"queath his or her property; but to validate such a "deed, it must be proved that the minor was fully aware "of the import of the same, and of the consequence of "the transaction, and further that there were sufficient "grounds for cutting off the inheritance of the heir or "heirs at law."

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* Saw. Dig. p. 27. See also Mar. Judg. p. 365 § 157—162.

† Mar. Judg. p. 418 § 1. Morg. Dig. p. 106 § 423. This is also the age at which prescriptive disability ceases. Mar. Judg. p. 366 § 160.

A Minor is not competent to become security for the payment of a debt contracted by another Therefore any property, which might, subsequent to the contract, devolve to the said minor from any person but the debtor, will not be available to satisfy the creditor's claims.

A Minor not competent security for another's debt.

SECTION 4.

DEYA *(Things.)*

By the word *Deya* is meant all that is owned, enjoyed, and maintained by persons, as their *Wastoo* or property, which consists of things—

A general division of *Things*.

1. *Addrawyawat*, incorporeal.
2. *Drawyawat*, corporeal, substantial, or tangible.

SECTION 5.

ADDRAWYAWAT WASTOO.

Incorporeal Property.

Addrawyawat Wastoo, or incorporeal property, comprises rights of inheritance, titles, privileges, rank, reputation, caste, &c.

The *rights* which *incorporeal* property comprises.

SECTION 6.

DRAWYAWAT WASTOO.

Corporeal Property.

Drawyawat Wastoo or corporeal property consists of—

Corporeal property.

1. *Sawinyaanaka*, beings sentient or animate.
2. *Awinyaanaka*, things inert and inanimate.

SECTION 7.

SAWINYAANAKA WASTOO.

Animate Property.

By *Sawinyaanaka Wastoo* is meant slaves, cattle, poultry, and other domesticated animals.

Animate property.

SECTION 8.

AWINYAANAKA WASTOO.

Inanimate Property.

By *Awinyaanaka Wastoo* is meant all things inert and not endured with *Winyanne* intellect or sense, which consist of—

Inanimate property.

1. *Nischala Dey*, Immoveable things; such as houses, lands, gardens, corn-fields, ponds, &c.

2. *Chanchala Dey*, or Moveable things; such as jewels, apparel, money, grain, &c.

Section 9.

Right of Property in general.

The *Tooth Relic* of *Buddha.*

The *Daladaa Dhaatu* or the Tooth Relic of Buddha belongs to all the inhabitants of this country.

Forests, mines, pearl-banks, &c.

Forests and wildernesses, unreclaimed and untenanted by men, mines of precious stones and metals, and pearl banks, belong to the king.

Banners and other insignia granted by the king.

Banners and other insignia conferred by the king on any province or district, belong to all the inhabitants of that particular division of the country.

Ponds, temples, amblams, &c.

A pond or tank, an aqueduct or water-course, a temple, an amblam or a choultry, constructed at the expense of all the inhabitants of a village, belong to the said inhabitants in common.

Patents, guns, &c. granted by the king.

Sannasses (Firmans or patents), guns, swords, &c. bestowed by the king on individuals as honorary rewards, belong in common as heir-looms to all the descendants of the grantee.*

Wild cattle, &c. captured.

Wild cattle and other animals of the forest having been captured and tamed become the property of the person who had taken them; but domesticated animals, which had run astray, and were seized by any other person than the owner, will not become the property of the captor, but must be restored to the owner.

The finding of exposed goods.

Goods found in an exposed place, or in any other situation, must be delivered up to the owner, and the finder has no right to appropriate such goods to himself, but is entitled to a suitable recompense, called *Ess kooli.*

---

* Saw. Dig. p. 13 § 5.

CHAPTER II.

ON MARRIAGE.

Section 1.

DIFFERENT KINDS OF MARRIAGE.

As the rights of inheritance and succession chiefly depend on the bond of Matrimony, we shall treat first of Marriage.

Marriage among the Kandyans consists of two kinds, as regards civil immunities sanctioned by the conventional or common law of the country ;* namely—

1. Marriage in *Deega*.
2. Marriage in *Beena*.

Section 2.

Their respective differences.

Marriage in *Deega*.

A marriage in *Deega* is when a woman is given away, and is according to the terms of the contract, removed from her parents' abode, and is settled in the house of the husband. This is the most common of the two.

Marriage in *Beena*.

A marriage in *Beena* is when the bridegroom is received into the house of the bride, and according to certain stipulations abides therein permanently. This occurs only in cases where the bride is an heiress, or the daughter of a wealthy family in which there are few sons.†

Section 3.

What constitutes a regular marriage.

The five marriage ceremonies.

A lawful and regular Marriage is solemnized by the *Magool Paha* or the five feasts.‡

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* Saw. Dig. p. 32.
† Saw. Dig. ib.
‡ For a detailed account of the *Five feasts*, see Appendix C. See also Saw. Dig. p. 32 § 2.

The *first* is given, when the bride has been solicited, and the suit is approved of by her parents or guardians.

The *second* is given, on the day in which the horoscopes of the bride and the bridegroom are examined and compared, with the view of ascertaining whether their stars prognosticate a happy union.

The *third* is given, on the day in which the bridegroom presents the bride with a suit of apparel.

The *fourth* is the wedding feast, when the marriage contract is ratified by the ceremony of the ligature (i. e. tying with a thread the little finger of the bride's right hand to the little finger of the bridegroom's left hand), and by the bride and bridegroom interchanging victuals.

The *fifth* is given, on the seventh day of the nuptials, when the ceremony of pouring water on the heads of the bride and the bridegroom is performed by some near relative.

Section 4.

What is sufficient to constitute a legal marriage.

Observances sufficient to constitute lawful wedlock.

As the above formalities and ceremonies can only be properly observed by the higher and influential classes of the natives, they are not always considered as necessary to constitute lawful wedlock. It is therefore sufficient—

1. If the man and woman be of the same caste.

2. If they be equal in respect of family rank and station in society.

3. If the alliance be countenanced and sanctioned by their parents. Their cohabitation will then be deemed a lawful union, and their issue will be acknowledged as legitimate and therefore entitled to all the rights of legitimate children, although the usual wedding ceremonies had not preceded the espousal.

If the Man's parents be dead.

And if the man's parents were dead when he espoused the woman, then it is sufficient if the parties were of the same caste and the man did publicly acknowledge that woman to be his wedded wife, their union will not only be deemed lawful wedlock, but their issue will also be recognized as legitimate, although there had not been any wedding ceremony previous to the cohabitation, and even although that man's brothers and other relations discountenanced the alliance because the woman was not of a family of equal rank.

SECTION 5.

Casual cohabitation no wedlock.

Husband's casual intercourse with another's wife.

If a married man had at times absented himself from his wife and had in such intervals cohabited with the wife of another man, with the wife of his own brother for instance, such casual cohabitation will not be accounted lawful wedlock; and therefore in the event of the demise of the first mentioned man, his wedded wife alone will be acknowledged as his widow, but the other woman will not.

Wife's intercourse with another's husband.

A married woman whose husband had permitted her to have casual intercourse with another man, will not in the event of that other man's demise, be recognized as his widow, even if the other man was her *Ewesseya* (i. e. marital cousin, her paternal aunt's son or her maternal uncle's son), and although the said *Ewesseya* had not a wedded wife.

SECTION 6.

Concubinage.

Concubinage, when sufficient wedlock.

"There was no penalty" says Sawer* "against "concubinage, if the woman was of equal caste with "the man, but, in fact such connections if not stigma- "tized by some decisive act on the part of the man's "family, or by the man himself, were considered as "marriages, and the issue of such connections have

* Saw. Dig. p. 36 § 5.

"all the privilleges of legitimate children. In short "nothing but a direct declaration of disinheriting such "issue would cut them off from the privileges of ligiti- "mate children."

Section 7.

Unlawful Marriage.

What makes a marriage unlawful—issue of such a connection—and the nature of their right to their parents' estate.

If a man did in direct opposition against his parents and in defiance of their displeasure, espouse a woman, who on account of the inferiority of her birth or on account of her bad repute, was unworthy of the alliance, their connection will not be recognized as a lawful wedlock, and their issue will be deemed illegitimate. Therefore in case that man died before his parents, his children by that woman will have no right to any share of his parent's estate, the said children will be entitled to inherit only such property as their father had himself acquired by purchase or other means of acquest.*

Section 8.

Prohibited Marriages.

Between different caste.

"The marriage of a man with a woman of a supe- "rior caste to himself.†

Between certain degrees of relationship.

"Marriages contracted between parties in any "nearer degree of relationship than that of the first "cousins, the children of a brother and a sister,‡ which "however is the most becoming matrimonial union that "can be made.§

Between two brothers' or sisters' children.

"Marriages between the children of two brothers "or those of two sisters; their offspring being considered "respectively brothers and sisters to each other.¶

---

* Saw. Dig. p. 7 § 2.

† Saw. Dig. p. 36 § 1.

‡ Called *Ewesse Massina* and *Ewesse Bædawee*, respectively male cousin and female cousin. See also *Glossory*.

§ Saw. Dig. p. 35 § 5.

¶ Saw. Dig. ib.

Section 9.

Incest.

Incestuous marriages, &c.

"Incestuous marriages and such intercourse between "the sexes are penal."*

Section 10.

Polygamy and Polyandry.

The extent to which Polygamy and Polyandry is allowed.

"Polygamy as well as Polyandry," says Sawers,† "is allowed without limitation as to the number of wives "or husbands.

Wife's inability, and husband's power to admit a second associated partner.

"The wife cannot, however, take a second asso- "ciated husband without the consent of the first husband, "though the husband can take a second wife into the "same house with his first wife, without her consent;" it being however premised, that the house belonged to the husband, and that the said first wife was married in *Deega*.

Wife's power in refusing to admit a second associated husband.

"The wife, however," continues Sawers, "has the "power of refusing to admit a second associated hus- "band, at the request of her first husband, even should "he be the brother of the first, and should the proposed "second associated husband not be a brother of the first, "the consent of the wife's family to the double connec- "tion is required."

Section 11.

Marital powers of the husband and wife.

Husband's power over wife's person; and wife's liberty.

Community of goods.

The husband may at any time, with or without any just cause discard his wife, and so may the wife divorce herself from the husband, whether the marriage was contracted in *Deega* or in *Beena*;‡ and consequently there is no permanent community of goods between the husband and wife, and their respective estates remain distinct from each other.§

* Saw. Dig. p. 35 § 5.
† Saw. Dig. ib. § 1.
‡ But see, Saw. Dig. p. 34 § 4.—"The wife cannot separate herself from her husband *without cause*."
§ Saw. Dig. p. 32 § 4.

Section 12.

Marital power of the husband limited.

Beena married husband has no power over his wife's *property &c.*

"The husband married in *Beena*," says Sawers,* "has "no privileges in his wife's house, he has no power over "her property, he may be expelled or divorced by the "wife or by her parents at any moment.

When, a *Beena* husband cannot be expelled by wife's brothers.

"But, if the *Beena* husband were called to the wife, "by her parents, in that case, after the parent's death, "the *Beena* husband cannot be expelled from the house "by the brothers of the wife, without her consent."

Husbands cannot dispose of their wives' property without their special sanction.

Whether the marriage was contracted in *Deega* or in *Beena*, the husband is not thereby invested with any power over his wife's estate, and has no authority to dispose of any part of that estate, by gift or bequest, or sale or mortgage, without the wife's special consent and sanction.†

Husband's *acquired* property during coverture forms no part of wife's estate.

But land or property of any other description, which the husband has acquired during the coverture, were it even by means afforded him by his wife's family, will not be reckoned a part of the wife's estate, and such property will therefore be entirely at the disposal of the husband.

Wife's goods not subject to husband's debts.

The wife's goods are not subject to seizure on account of the husband's debts,‡ whether such debts were contracted previous to the marriage or during coverture.

Wife, when liable to discharge her husband's debts.

But if the wife had authorized her husband to contract a debt, or if the wife became surety to her hus-

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* Saw. Dig. p. 35 § 3.

† Saw. Dig. p. 33.

‡ Mar. Judg. p. 224.—Specially on account of those debts contracted by a *Beena* husband without the knowledge of the wife. See Saw. Dig p. 17 § 5. Mar. Judg. p. 351 § 117.

band,* in any such case the wife will be equally bound with her husband to discharge the debt and the wife's estate shall accordingly be subject to seizure on account thereof.

Wife's property, not subject to confiscation.

The wife's property is not subject to confiscation on account of her husband's treason against the State, whether that property was derived to her by inheritance, or by gift or dowry, or was acquired by purchase previous to her marriage or during coverture.†

Husband, not bound to discharge wife's debts of her own account.

The husband is not bound to discharge debts which had been contracted by his wife, previous to their marriage, nor is he bound to pay any debt which the wife contracted during the coverture, on her own account.

Husband, when liable for wife's debts.

But any debts which the wife had contracted under circumstances of necessity, for the purpose of procuring the necessaries of life for herself and family, must be discharged by the husband ‡

Husband, not bound to answer claims preferred against his wife, &c.

The husband is not bound to answer any claims which may be preferred against the wife, the husband may decline to act as defendant on her behalf, and he may likewise decline prosecuting any claim which his wife may have to prefer against any party; because the wife's estate is distinct from that of the husband's, and because he has no controul over his wife's estate.

Husband cannot prevent his wife from instituting actions in her own name.

Coverture, no countervailing plea against prescription.

But the husband cannot forbid and prevent his wife from instituting proceedings in her own name, nor from prosecuting her suit by proxy; and therefore coverture was not recognized by the Kandyan Law as a countervailing plea against a plea of prescription.

Section 13.

Marital power of the wife limited.

Wife cannot dispose of her husband's landed property unless authorized.

The wife has no right to dispose of any part of her husband's landed property by sale, gift or bequest, unless

* Saw. Dig. p. 34 § 1.—Or if she had been the widow of a *Deega* husband. See, Saw. Dig. p. 17 § 5. Mar. Judg. p. 351 § 117.

† Mar. Judg. p. 225.

‡ Saw. Dig. p. 17 § 5. ib. p. 34 § 1.

she were specially authorized by her husband to make any such disposal thereof. "However," says Sawers,* "in the absence of the husband (from home,) the wife is "considered to be, the manager of her husband's affair, "and therefore under such circumstances she may make "use of his property for the maintenance and benefit "of the family. She may sell the produce (of his lands) "for this purpose and even mortgage the lands, if neces- "sary, to procure subsistence, though she cannot sell "them."

SECTION 14.

Dissolution of Marriage.

Marriage is dissolved in two ways:—

1. By Divorce.
2. By Death.

SECTION 15.

Dissolution of Marriage by Divorce.

Who may affect a divorce.

[A divorce may be affected with or without a just cause, on the part of the husband or wife, whether the marriage was contracted in *Beena* or in *Deega*. A marriage may also be dissolved by parents, brothers, or other near relations; and sometimes, for special reasons, by children of a former bed.]

SECTION 16.

Different kinds of Divorce.

How affected by the husband.

If the husband having sent back his *Deega* wife to her parents or relations, did afterwards espouse another woman: or if when he sent away his wife, he delivered up to her or to her parents all the goods that she had brought in dowry.

How, by a *Deega* wife.

Or if the *Deega* wife left her husband's house of her own accord, and then took another husband.

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* Saw. Dig. p 33.

How, by the wife's parents.

Or if the woman's parents disapproving the marriage contracted of her own accord, or induced by force or fraud to contract, protest and bring their daughter back home: or if the mother had sent away the husband of her daughter married in *Beena* from her own house.

In any of the foregoing cases, the marriage contract will be considered dissolved.

Section 17.

Effects of a formal Divorce.

Divorced wife's claim upon her husband's estate after his decease.

A woman who was formally and finally divorced from her husband, will not after the death of the divorced husband be recognized as his widow, and shall therefore have no claim on his estate in that character. Yet her right of *Daroo Urume* will not be prejudiced by that divorce, and therefore in the event of the death of her child, born to her husband from whom she had been divorced, the property which that child had inherited from the father, as well as any other property which belonged to that child, may in some cases devolve to that mother, it being premised that the child died intestate.

What only can a divorced wife carry away from her husband.

"In the event of a separation or divorce," says Sawers,* "the wife can carry away nothing from the "house of her husband; but she is entitled to carry away "with her all the property she had brought with her at her "marriage, as well as the property she may have individually acquired during coverture. Any landed pro- "perty she may have originally had, or which she may "have acquired during the coverture, remains under "her own management and at her own disposal."

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* Saw. Dig. p. 33 § 1.

SECTION 18.

Wife divorcing herself.

When, a divorced wife can carry away nothing.

"If the wife," continues Sawers,* "separates her-"self from her husband contrary to his wish, she is not "in that case entitled to anything from her husband, "however indigent may be her circumstances, she must "even leave her wearing apparel, which she had re-"ceived from her husband, if that were but her only "cloth."

SECTION 19.

Husband divorcing his wife without cause.

When, a divorced wife is entitled to her wearing apparel.

"But, if her husband repudiated his wife without "a sufficient cause," says Sawers,† "she will be entitled "to retain possession of the wearing apparel which her "husband had given her."

SECTION 20.

Wife divorced whilst with child.

Divorced wife, when entitled to maintenance.

If the wife was with child at the time of the divorce, and if she was divorced by the husband, without good cause; then the wife will be entitled to maintenance, until the child should be old enough to be delivered over to the father.

Husband, when not bound to maintain his divorced wife.

But if the divorce took place in opposition to the husband's will, if the wife did of her own accord, and without just cause, desert her husband; or if the wife's parents took her from her husband and dissolved the marriage, without having any good reason for so doing, in such case the discarded husband will not be bound to provide for her maintenance.

Maintenance, when ceases.

The divorced wife will have no claim for maintenance from her children's father, after the birth of that child, if she had, subsequent to the divorce taken another husband.

* Saw. Dig. p. 33 § 2.

† Saw. Dig. p. ib. § 2.—And if she and her own family were in indigent circumstances, &c."

SECTION 21.

Dissolution of a Deega marriage.

If a *Deega* wife was repudiated by her husband without good cause, it will then be optional with that woman, either to take charge of one of their children if there were two or three of them, or to take charge of two of the children if there were four or five of them, or to decline having charge of any of the children and to leave them all to the father's care. But if the separation took place against the husband's will, the husband may then either retain all the children under his own care or he may allow the mother to have the care and charge of one or more of their children.

Children of a *Deega* wife divorced, how disposed of.

SECTION 22.

Dissolution of a Beena marriage.

In the event of a *Beena* marriage being dissolved by divorce, the child or children will remain with the mother, and shall have no claim for maintenance from the father.

Children of a *Beena* wife divorced, how disposed of.

If the marriage had been at first contracted in *Deega*, and if the husband and wife had subsequently settled in *Beena*, and in the wife's house, then in the event of divorce, the husband may remove the children born during the period of *Deega* coverture, or he may allow one or more of the said children to remain under the mother's care, in either case he must provide for the maintenance of the said children.

Children of a *Deega* marriage which had afterwards assumed a *Beena* coverture, how disposed of, on the event of divorce.

SECTION 23.

Temporary separation no divorce.

Temporary dereliction on the part of a *Deega* wife will not have the effect of a formal divorce. Thus, if owing to domestic discord, the wife left her husband's house, with the intention of returning after some time, and expecting to be then reconciled to her husband,

Husband dying in the interval of wife's temporary separation.

and if the husband died in the interval of the wife's absence, or if the wife took leave of her husband when he was with small pox, or any other contageous disorder or any other foul desease, merely to avoid the contagion, and not with intent to be divorced from her husband, and if the husband died before the wife could return to him, in any such case the wife will not be regarded as having been finally divorced, but will be yet acknowledged as the deceased's widow, and as such, will have a claim on his estate*

Wife, abandoning the husband, removing her children, and refusing to consign them to her husband's parents.

If the wife abandoned her husband, and removed their child, and the husband then departed this life, leaving no property that belonged to him independently of his parents, who have survived him, and if the deceased's widow refuse to consign the child to the care of the deceased's parents, in such case the said widow shall have no claim for maintenance from her deceased husband's parents nor will she be authorized to claim any portion of the said parents' estate on behalf of her child, so long as they, the parents of her deceased husband, continue in life.

Wife separating, but resigning her children and not contracting a second marriage.

But if subsequent to her dereliction, the wife had not contracted another marriage, and if she resigned the child to the care of her deceased husband's parents, in such case she will be entitled to claim support and maintenance from them.

SECTION 24.

Dissolution of marriage by death.

A man dying intestate, leaving a widow and children.

"When a man dies intestate," says Sawers,† his widow "and children are his immediate heirs (to the moveable "property,) the widow having the custody and administration of the property so long as she lives in her husband's house, conducting herself with prudence and cir-

* Saw. Dig. p. 11 § 4. Mar. Judg. p. 343. § 93.

† Saw. Dig. p. 14.—See also ib. p. 1; Mar. Judg. p. 324 § 48, p. 325, p. 326 § 51, and p. 345 § 102; and Morg. Dig. p. 2 § 9.

" cumspection and doing nothing to cause shame or dis-
" grace to the family, nor squandering the property. The
" widow conducting herself thus, *her* children cannot call
" for a division of the (moveable) property until her
" death, or until she quits her deceased husband's house;
" but the children of a former marriage of the husband
" may claim their share, the widow being entitled to no
" more than a like share as one of the children.

" The widow is besides entitled to what was consi-
" dered her own wearing apparel and jewels and ornaments,
" commonly worn by herself and given to her by her hus-
" band; also all the property she may have brought with
" her at her marriage, and what she may have acquired
" herself in the shape of presents, gifts, or bequests, or
" what she may have purchased with the produce of her
" own hands, or gain by trade.

Widow, her wearing apparel obtained from the husband—her gifts and bequests from others—and her own purchased property.

" Slaves and cattle are considered to belong to tha
" description of moveable property to which she is entitled
" to an equal share with her children, out of her hus-
" band's estate."*

Slaves and cattle are considered as moveable property.

The widow will be entitled to support from the produce of her deceased husband's lands during the remainder of her life—provided that the widow (who was not also an *Ewessee*) remained single after the husband's death; but she will be liable to forfeit her claim to maintenance, if she should contract a subsequent marriage †

Widow, when entitled to support from the produce of her husband's *landed estate.*

The widow (who was not the deceased's *Ewessee* and did not succeed to the absolute possession of any part of his landed property) may either receive from the deceased's heir at Law, a portion of the produce of his, the deceased's lands, or she may have the temporary possession and usufruct of a suitable portion of the said lands; in the latter case the heir at law shall perform the *Rajekaria* or personal service due on account of that portion—it being premised that the said portion of land

Widow, entitled to maintenance from the heir at Law of her husband's estate.

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* Mar. Judg. p. 346.

† Mar. Judg. p. 339 § 81.

temporarily assigned to the widow for her support, formed part of the deceased's *parveny* or ancestral estate and not a recent acquisition by purchase. In neither case, shall the heir at Law have any authority to exact menial service from the widow, on account of the maintenance and support which she derived from the estate.

Widow, to have possession of her husband's *acquired lands* for life, if remained single.

If the deceased husband left other landed property, besides his *parveny* or ancestral lands, that is to say, lands acquired by purchase, or lands which he, the deceased, had received from his adopted father, in such case the widow may have possession of the whole of such acquired land, for the remainder of her life, provided she remain single, in the event of her death, or of her contracting a subsequent marriage, the said land will revert to her aforesaid deceased husband's heir at Law.

Widow, when to have no claim for support from her husband's *parveny* lands.

In case the widow preferred having possession of the deceased's acquired lands, she shall pay the taxes and perform the *Rajekaria* services incumbent thereon, and shall have no claim for support from the deceased's *parveny* lands, but howsoever long she may possess the lands, she will not acquire an absolute title thereto, and will not have it in her power to dispose thereof to the prejudice of her deceased husband's lawful heirs.

Section 25.

Widow's right as to the disposal of her husband's Landed Property.

Widow's sale of her husband's landed property how far effectual.

The widow has no right of her own accord, to dispose of any part of her deceased husband's landed property, to the prejudice of their child or grand-child. She has no authority to transfer such property, by sale, gift or bequest:*—If during the minority of her child, the widow had sold any portion of the land which that child was entitled to in right of his or her father, such sale

* Saw. Dig. p. 22. Mar. Judg. p. 324 § 48.

shall not be valid to the full extent, but will be deemed a mortgage only.

The widow, when may mortgage her husband's landed property, and when not, without the children's consent.

"A widow," says Sawers,* "having the administration "of her deceased husband's estate, may in the mino- "rity of her children, from necessity, mortgage the landed "property; but it must be clearly to satisfy the most "necessary and urgent wants of the family, otherwise the "children might not be held liable to pay the debt:—But "in all cases, when the children are grown up to four- "teen or fifteen years of age, their consent is necessary "to such a mortgage being valid."

Widow's incapacity to dispose of even a gift from her husband without the children's consent.

Even if the deceased proprietor had bequeathed to his wife a portion of his landed property, yet the widow will not have it in her power to dispose of that portion by gift or by sale, without the consent of the deceased's children. If the deed of bequest purported merely that the proprietor assigned or allotted a specific portion of his lands to his wife, but if that deed did not also contain a clause expressly debarring his children from that portion, and investing the donee with an absolute and permanent title to the portion, totally independent of the donor's children and other descendants—in such case the widow will by virtue of that donation be entitled only to the usufruct of that portion of land during the remainder of her life, under *any* circumstances, but she will not be authorized to dispose thereof to the prejudice of her deceased husband's children; at her death, the said portion of her deceased husband's estate will revert to his descendants according to the rule of succession.†

Widow's gift of her husband's landed property to his own children to the prejudice of another.

The widow having no right of her own accord to dispose of any portion of her deceased husband's landed property, contrary to the Law of inheritance, any gift or bequest which she may have made thereof, even in favor of one of her husband's children to the prejudice of ano-

* Saw. Dig. p. 31 § 5. Mar. Judg. p. 359 § 146.

† *Rule of Succession*.—See Appendix D.

ther child or of a grand-child of the deceased, will be invalid.*

Widow's gift to a *Deega* daughter returned, to the prejudice of a son in *Beena*.

Thus, if a man died intestate, leaving a widow, a son, and a daughter, if the daughter, was disposed of in *Deega* either by the father, or after her father's death, by her brother, or by their mother, in that case the daughter will be debarred from inheriting any portion of her father's lands, the whole of which will remain to the son, the widow-mother having but a life interest or a claim for maintenance thereon. Therefore, although the daughter should return from her *Deega* domicile, and dwell again in her deceased father's house, and although her husband also should be permitted to live with her in her father's house, yet, the daughter will not thereby acquire the privilege appropriate to a *Beena* settlement, and the mother will not have any authority to give or bequeath any portion of the deceased father's landed property, to the said daughter, such gift or bequest will be of no avail against the son's lawful claim as sole heir to the whole of his father's lands, even if he the son, had quitted his father's house and lived away in *Beena* in his wife's village.

Widow without children, how long entitled to retain possession of her husband's landed property, to the exclusion of her heir at law.

If the deceased's landed property were of small extent and barely sufficient for the support of the widow, then, although she had not a child to the deceased, the widow will be entitled to retain possession of that property, to the temporary exclusion of the deceased's heir at Law (his brother for instance) whose title to the succession shall remain in abeyance until the widow's demise, or until she contracted another marriage.

Widow acquires no permanent or prescriptive right to her husband's *parveny* lands by long possession.

The widow will not acquire a permanent or prescriptive title to the deceased husband's *parveny* lands, from having had possession thereof for many years, therefore she shall not have any right to dispose of the same

* But see, Mar. Judg. p. 324—326 § 49.

by sale or otherwise to the prejudice of her husband's heir at Law, his grand-son, or his brother, or his nephew for instance.

Widow's grants when deemed valid in Law.

If the husband appointed the wife sole administratrix of his estate and empowered her to distribute the same according to her own will; and if after the husband's death, the widow assigned portions of that estate to the deceased's lawful heirs, and granted other smaller portions to other persons, in recompense for the assistance she had received from them, such distribution will be recognized as lawful and valid and will accordingly be sanctioned by Law.

Widow has no power to exclude the issue of a legitimate son from inheriting their father's estate.

Although the mother was appointed guardian to the children, and trustee and administratrix to their father's estate, she will not have it in her power, in the event of one of her children, a son for instance, departing this life, to exclude that son's legitimate issue from the succession to a proper share of that estate.

Mother being administratrix, children cannot dispose of property without her consent.

In the life time of the mother, whom the father had appointed sole administratrix of his estate, none of the children can dispose of, by sale or transfer, any portion of that estate, without the consent and sanction of the mother.

Widow, when may dispose of her husband's lands as she pleases.

If the husband bequeathed his lands to his wife, and gave her absolute power over that property, in that case she may dispose thereof as she pleased, and may give the same to one of her children by the deceased, to the exclusion of another, if the latter had provided undutiful, and she may give a portion of that property to a daughter who was married in *Deega*, and who should not have had a right to any portion thereof, had the father died intestate.

Sannasses &c. granted by ths king, are considered as *parveny* property.

Heir looms, such as *Sannasses*, weapons, gold chains, *Patta Tahadoo* or frontlets, &c. which were honorary gift or rewards granted by the king, are not reckoned as part of the chattels which might devolve to the widow. Such articles are appropriate to the inheritors of the deceased's *parveny* or ancestral lands.

Widow-mother cannot disclaim the right of her children.

The widow-mother, though she be the guardian of her children, has it not in her power to abandon or

relinquish her children's claims to any property, which they may be entitled to in right of their father.

Section 26.

Widow remaining at husband's single, without issue.

Widow, when entitled to husband's household goods &c. acquired subsequent to marriage.

"In the event of their being no children," says Sawers,* "the widow inherits the whole of the household goods, "grain in store, also the cattle which have been acquired, "together with the increase in the husband's stock of "cattle, subsequent to the marriage. The property how-"ever, which the husband had inherited from his parents "is generally claimed by his nearest kindred, and the "widow has no share of it."

Widow, when entitled to husband's *parveny* lands.

If the deceased proprietor left not a nearer relation than his father's cousin (father's maternal uncle's son), and if the said proprietor had received all assistance from his wife and her family until his death, and had neglected and disregarded by his kinsman aforesaid, in that case the widow will be entitled to the deceased's entire estate, including his *parveny* or ancestral lands, to the exclusion of the cousin aforesaid as well as of more distant relations.

Widow, when entitled to husband's *parveny* lands by *Lat himi* right.

In the event of a married man dying intestate, and without issue, if he left not an adopted child, nor a parent, nor any near relation, then the widow will by *Lat himi* right succeed to the possession of the deceased's entire estate including his *parveny* or ancestral lands.

Widow, not entitled to husband's lands acquired through his adoptive parents.

If the deceased left any landed property which he had received from his adopted father or adopted mother, such property must revert to adoptive parents, or to their heirs at Law, if any exist, and the widow will be entitled to retain possession of the deceased's own *parveny* and purchased lands and his goods and chattels.

Widow, when entitled to maintenance from her husband's lands acquired from his adoptive parents.

If the deceased left no other landed property besides that which he had received from his adoptive parent, then the widow will be entitled to a mainte-

* Saw. Dig. p. 15 § 1.—See also, ib. p. 1 § 4, ib. p. 22 § 2. Mar. Judg. p. 326. § 59. ib. p. 348. ib. p. 347.

nance from the produce thereof, but the land itself will revert to the deceased's adoptive parent's next of kin.

Widow, when entitled to inherit husband's lands acquired from his adoptive parents, to the exclusion of his other heirs.

If the widow herself were as nearly related to the deceased's adoptive parent, or any of the other persons who were next of kin, in such case, the widow will have the preference over the other relations and will be entitled to inherit the landed property in question, even to the exclusion of her own brother.

Widow, when entitled to husband's *acquired* lands by *Lat himi* right.

If the deceased proprietor left no issue, and had survived his parents and his full brothers and sisters and their children, then his widow will have an absolute *Lat himi* right to such lands as belonged to the deceased by right of acquest, (that is to say,) lands which were not derived to him by inheritance, but which he had acquired by purchase, or which he had obtained from a stanger by rendering assistance) to the exclusion of the deceased's more distant relations, (paternal aunt's children for instance.)

Section 27.

Widow remaining at husband's single, having issue.

Heirs right of succession, when remains in abeyance.

In some cases, an heir's right of succession to property remains in abeyance, until the demise of the deceased proprietor's widow for instance.

If the deceased left a widow and children, and an orphan grand-child (whose father, a son of the deceased, had died before his father), if the land left by the deceased is of small extent, and the widow and the surviving children depended thereon alone for subsistence, and the said grand-child is well provided for by his or her mother's family, in such case the grand-child will not be authorized to call for a division of the grand-father's landed property, and to demand possession of a share thereof, the grand child's title shall remain in abeyance and the grand-father's widow will retain possession of the land during the remainder of her life, if she remain single.

Widow, when entitled to retain possession of her husband's lands for life to the exclusion of her grand-son.

If the deceased proprietor left a widow, and a son by her, and the son died afterwards leaving issue, one son for instance, if the said grand-son is sufficiently provided for by his maternal relations, and the grand-father's widow having nothing but her deceased husband's lands to depend upon for support, in such case the said widow will be entitled to the exclusive possession of that land, for the remainder of her life, and the grand-son's right of succession thereto shall be held in abeyance until the demise of the grand-mother.

Widow and two daughters, of whom one settled in *Beena* the other in *Deega*.

If a man died intestate, leaving a widow, a daughter settled in *Beena*, and another daughter married out in *Deega*, the whole of his landed property will devolve to the *Beena* daughter, subject however to afford a maintenance to the *Deega* daughter in the event of her returning destitute, and the widow-mother will have but a life interest in that estate, and the said widow will have no right to give or bequeath any portion of the said landed property to the *Deega* daughter, although the latter had returned destitute in the father's life time and had since continued to dwell in the father's house, until the father's demise, and after that event, it being premised that the two daughters were the issue of the same bed.

Widow and husband's children of a former marriage.

If a man died intestate, leaving a childless widow, and a son or a daughter by a former wife, the childless widow will be entitled to the usufruct of a similar portion of the deceased's lands during the remainder of her life, if she remain single, at her death, or in the event of her contracting a second marriage, that portion will revert to the deceased husband's son or daughter aforesaid or to his or her heirs.*

A *Beena* daughter of a second bed when has no claims with the son of the first, in the father's estate.

If the father, having given up his *parveny* lands to his son, quitted the house, and afterwards contracted a *Beena* marriage, and died intestate, leaving issue, a daughter for instance, by the *Beena* wife, that daughter will inherit all the landed property that the father acquired during the *Beena* coverture, to the exclusion of the son, but the son will be entitled solely to all the *parveny* and other lands, which the father had given up to him prior to the *Beena* marriage, to the exclusion of the daughter.

* Mar. Judg. p. 326 § 50.

Section 28.

Widow and adopted children.

Widow and adopted son, when joint heirs.

If the husband died intestate, leaving a widow and an adopted child (his wife's sister's son for instance), that child and the widow will succeed to the deceased's estate as joint heirs, in preference to the deceased's and their issue.*

Husband's *oral bequest* in favor of his widow and adopted child.

If the husband adopted a child, (his sister's son for instance) and if at his death he made an oral bequest, assigning a portion of his lands to his wife, and the rest of his lands to the adopted child, in that case the widow will be entitled to retain possession of the portion assigned to her, under any circumstances, during the remainder of her life, but at her death that portion must revert to the adopted child.

When may a widow disinherit an adopted child notwithstanding a Deed of Gift in his favor.

If the deceased proprietor had no issue, but adopted a child, and had by a deed of gift, or by bequest, assigned his lands to his wife, authorizing her to retain possession thereof during the remainder of her life and to leave the same to the adopted child, *if that child deserved the same* by being duteous and by rendering assistance to the said widow, in that case the widow will be entitled to possess the said lands under any circumstances during the remainder of her life, and in case that adopted child proved undutiful to her, she would have the right of disposing of the lands in any way, and thus debar the said adopted child from the succession.

Adopted son, when *forfeits* his right to his adoptive parent's estate.

If an adopted son deserted his adoptive father, and went back to his own family and settled on the estate of his own parents, if the said adoptive father died afterwards without issue and intestate, leaving a widow, the whole of the deceased's acquired property, moveable, and immoveable, will remain to the widow, to the exclusion of the formerly so called adopted son, albeit the latter was also a cousin (paternal aunt's son) and the next of kin to the deceased.

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* Saw. Dig. p. 6 § 5. Mar. Judg. p. 336 § 76, ib. p. 352 § 125.

Section 29.

Widow and husband's relations.

Widow, how long may retain possession of her husband's *landed property*.

If the deceased left any near relations, then the widow will have but temporary possession of the deceased's landed property, that is to say, until such time as her deceased husband's heir at Law shall be authorized to come into possession thereof, thereupon she must relinquish possession of the lands.*

Widow, when may claim *support* from her husband's relations.

But she will continue to have a claim thereon for support, albeit she had appropriated to herself the goods and chattels left by the deceased, it being however premised, the widow was not also the deceased's husband's *Ewessee* or uxorial cousin (i. e his paternal aunt's daughter or his maternal uncle's daughter); for, if the widow was the deceased's maternal uncle's daughter, she will inherit his estate to the exclusion of the other cousins, children of the deceased's maternal uncles and maternal aunts, that is to say, all his goods and chattels, and the lands which had been derived to the deceased from his mother.

Widow, when inherits the estate to the exclusion of her husband's relations.

But if the widow was the deceased's paternal aunt's daughter, the deceased's goods and chattels and the lands which he had inherited from his father, will devolve to the widow to the exclusion of the other children of the deceased's paternal aunt.

Section 30.

Widow remaining at the husband's and contracting another marriage.

Widow, contracting a marriage at her deceased husband's, when does not forfeit her right of maintenance.

Although the widow should contract a second marriage, provided she did not then quit her deceased husband's house, and that the second were a brother of the deceased, she will not forfeit her right of maintenance from his estate, if she has a child born to the deceased husband.

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* Saw. Dig. p. 13 § 3, 4. Mar. Judg. p. 345 § 98, 99.

Even if the second husband were not a brother of the deceased husband, the widow will not have forfeited her claim to maintenance, if the second marriage was contracted in *Beena* in the house of the deceased husband, and that with the sanction of the deceased's relations, and in order that the deceased's children may be protected and their estate properly managed.

Widow's second marriage, if *Beena*, and with the sanction of the deceased husband's relations.

"But the widow," says Sawers,* "will lose her "rights and life-interest in her husband's estate by taking "a second husband, contrary to the wishes of the first "husband's family, or by disgraceful conduct, such as "glaring profligacy, or adultery, or by squandering the "property of her deceased husband. Any of the these "being proved against her by the children would sub-"ject the widow to expulsion from the house of her "late husband, and deprive her of any benefit from his "estate."

Widow contracting a second marriage at the deceased husband's, when forfeits her right of maintenance.

Section 31.

Widow leaving husband's after his death.

"On leaving the husband's house," says Sawers,† "the widow is entitled to carry with her all such pro-"perty as she is entitled to; but if her husband's family "have been burthened with debt, or mortgaged by her "husband's ancestors, the widow must give up as much "of the moveable property, as will amount to half the "sum necessary for the disburthening or dismortgaging "the landed property of her deceased husband.

Widow leaving husband's entitled to carry what.

"But, if the deceased husband had himself burthened "with debt or mortgaged his family estate, then his "moveable property is liable to the last article, to be "disposed of for the liqudation of the same, in which "case, the widow would get nothing, if the debt of the "husband exceeded the value of his family property "from which she is entitled."

Widow, when entitled to carry away nothing.

If a widow quitted the deceased husband's house, and removed to some other place, but did not contract a

Widow's mere removal from the husband's.

* Saw. Dig. p. 2 § 4.—See also, Mar. Judg. p. 326 § 51.

† Saw. Dig. p. 21.

subsequent marriage, she will not have thereby forfeited her claim to maintenance on her deceased husband's estate: however, her claim for maintenance will then be of avail, only in case of her being "in such distressed circumstances, as to require assistance."*

In what cases, does not the widow forfeit her right to maintenance, even by contracting a second marriage

In some cases, the widow does not forfeit her right to maintenance even by contracting a subsequent marriage, as, when such second marriage is contracted pursuant to the wishes of the deceased husband, and if the second husband were the deceased's brother, or his paternal uncle's son.

SECTION 32.

Widow dying.

On the death of the widow leaving children, the *moveable property*, how disposed of.

"At the death of the widow," says Sawers,† "the "moveable property is to be divided equally among the "children excepting the daughters who had received their "shares on being given out in marriage."

On the death of the widow without children, deceased husband's *parveny* lands, how disposed of.

On the demise of the widow, who even if she were also an *Ewessee* or uxorial cousin of her deceased husband, (his paternal aunt's daughter) yet, if the deceased's lands were his paternal *parveny*, the same shall revert to the deceased's heir at Law (his paternal uncle for instance) according to the Rule of Succession, but will not devolve to the said widow's brother or others, her next of kin, although the widow had had sole possession of the said lands for many years since her husband's demise,—it being premised that the said widow's mother, the paternal aunt of the deceased proprietor, had been married out of her father's house in *Deega*.

SECTION 33.

Widowers without issue.

A woman dying intestate leaving only a husband.

A married woman having died intestate, leaving neither a child, nor a grand-child, neither parents nor full-brothers nor full sisters, nor nephews nor nieces, issue of her full-brothers and sisters, neither an uncle

* Saw. Dig. p. 11 § 4. Mar. Judg. p. 343 § 93.

† Saw. Dig. p. 14.—See also, Mar Judg. p. 347 § 103.

nor an aunt, nor an adopted child, in that case her husband will be entitled to the reversion of her estate, including her paternal *parveny* or ancestral lands. The widower will succeed thereto in preference to the children of the deceased wife's paternal half-sister.*

SECTION 34.

Widowers having issue.

A woman dying intestate leaving husband and children, her property how disposed of.

"A wife," says Sawers,† "dying (intestate) leaving "a husband and children, her peculiar property of all "description goes to her children, and not to her hus-"band."‡

Widower, and a son's son.

If the wife died intestate, leaving a grand-child, the issue of a son who had died before her, that grand-child will inherit her landed property, to the exclusion of the widower, although he were the said child's paternal grand-father.

Widower, when has no right to dispose of his wife's *parveny* lands.

The widower, although he were also an *Ewessa Massina* or marital cousin to his deceased wife (i. e. her paternal aunt's son or her maternal uncle's son) has no right to dispose of his deceased wife's *parveny* landed property, to the prejudice of her heir at Law, (her adopted son or her sister's son for instance.)

Widower's long possession of his wife's *parveny* lands, gives him no right of prescription.

Therefore, although the widower had possession of his deceased wife's *parveny* lands for many years since her demise, he will not have thereby acquired a prescriptive title to the same, and any gift or bequest which he should make thereof will not be valid.

SECTION 35.

Widower and his mother-in-law.

Widower's and his mother-in-law's respective shares in the deceased's estate.

If the deceased wife's mother survived, she the mother will be entitled to all the property that had belonged in right of inheritance and as dowry to the

* Saw. Dig. p. 8 § 3. Ib p. 16 § 1. Mar. Judg. p. 339 § 81.

† Saw. Dig. p. 15 § 4.—See also, Saw. Dig. p. 9 § 1. Mar. Judg. p. 348 § 107, 108.

‡ Mar. Judg. p. 340 § 83.

deceased daughter, whose husband, the widower, will be entitled to such property only as himself and his deceased wife has acquired by purchase or other means during the coverture, it being premised, that the deceased wife left no issue.

SECTION 36.

Widower of a Deega married wife without issue.

Deega deceased wife's property, how disposed of.

A *Deega* married woman having died without issue and intestate, leaving goods, partly acquired during the coverture, and partly consisting of goods, which she had brought with her at her marriage, the goods first mentioned will remain to the husband, and the rest will go to her parents.

If the deceased had been the widow of his brother, her property how disposed of.

If the deceased wife left also property which had devolved to her from a former husband, if that first husband had at his death consigned the wife to his brother, and the latter became her second husband, in that case, the wife dying without issue and intestate, the widower, her second husband aforesaid, will be entitled to all the property that the wife had received from her first husband, to the exclusion of the said wife's parents and other relations.

Deega deceased wife having also a brother, her property, how disposed of.

If a *Deega* wife having survived her parents, died without issue and intestate, the goods which she had received from her parents as dowry, will remain to her husband, and her brother will have a right to the said goods. But any property which the deceased has received from her brother must, after her death, be restored to him, as the widower can have no right thereto.

Deega deceased wife's acquired property how disposed of.

Goods also which the wife had acquired during her *Deega* coverture, will remain to the husband and the wife's brother shall have no right to that property; even on the ground of a bequest from his said sister; for, a *Deega* wife (who had survived her parents, and left no

issue) has no right to bequeath away from her husband any of the goods and chattels which she became possessed of during the coverture.

Section 37.

Widower of a Beena married wife dying without issue.

Property of a *Beena* wife deceased without issue, how disposed of, on the event of his death.

If the husband survived the wife to whom he was married in *Beena*, and did after the wife's death continue to dwell in the house of her parents, and afterwards died there without issue, and intestate, all the goods and chattels which he had acquired during the said *Beena* coverture will devolve to the parents of the deceased wife, in preference to his said husband's cousin and half-brothers, (and more distant relations.)

Widower of a *Beena* wife deceased, entitled to carry away what.

If a *Beena* wife survived her parents, and died without issue and intestate, the widower may, on quitting the house of his deceased wife, take away his own goods, and also such goods as his said wife had acquired during the coverture; but all the goods that the deceased had received or inherited from her parents, as well as the goods she had received from her brother, will remain to the brother.

Widower's right to property obtained from his deceased wife's father.

The widower will have an absolute right to all the property which he had received in gift from his wife's parents. If the father had, on bestowing his daughter in marriage, executed a deed of gift in favour of the son-in-law, the latter will eventually acquire a permanent title to the property conveyed to him by that deed, that is to say, if the father had died before the daughter, and the daughter departed this life without issue, and if she had not been divorced and separated from her husband until her death, in that case the widower will be absolutely entitled to the property which his father-in-law had given him, to the exclusion of his deceased wife's mother and other relations.

Property obtained from the deceased wife's mother.

And if the mother had executed a deed of gift in favour of her daughter's bridegroom, bestowing on him her lands as an inducement to the marriage contract, and if the Donee's wife remained undivorced from him, until her death, and if she died without issue, the widower will then have acquired an absolute right to the said lands, to the exclusion of his deceased wife's next of kin, (being her maternal aunt's for instance.)

Husband has no right to the property obtained from his wife's parents if she were divorced.

If the man who had received a gift of land from either the parents of his bride, as an inducement to contract the marriage, did subsequently divorce his wife, the latter may then sue for and recover that land, as being her marriage portion, but her parents will not be entitled to resume the said lands, (unless for and on behalf of the daughter.)

CHAPTER III.
PARENTS AND CHILDREN.

Section 1.
DUTY OF PARENTS.

Father, how long to support his *son* by a *Deega* wife.

The father is bound to provide for the maintenance of his son by a *Deega* wife, until the son shall have attained the age of majority full sixteen years.

Son's maintenance when ceases.

A son having attained the age of full sixteen years, has no longer any claim on his father for subsistence, provided the son is not incapable of earning a livelihood by honest labour, in consequence of being blind, lame, or insane or incurably diseased.

Father, how long to support his *daughter* by a *Deega* wife.

And the father must provide for the maintenance of his daughter, by a *Deega* wife until the daughter shall have been married and settled either in *Deega* or in *Beena*.

Daughter, when to be maintained longer than usual.

And if the daughter should lose her husband, by death or by divorce the obligation will still remain on the father, of providing for her maintenance, if she possessed no property and have not the means of maintaining herself.*

Daughter's maintenances when ceases.

But if the daughter did by disgraceful conduct, or by undutiful behaviour, incur her father's just resentment and displeasure, the father may cast her off and refuse to afford her any maintenance.†

Parents, when bound to support their son's widow.

Although the deceased husband possessed no landed property independently of his parents, yet if he had provided the means of redeeming any lands which his parents had mortgaged, in such case, his parents will be bound to afford subsistence to their son's widow, from the produce of the said dismortgaged lands, and the said parents being dead, their heirs who succeeded to the possession of such lands, shall be under the same obligation.

* Saw. Dig. p. 2. Mar. Judg. p. 330.

† But see, Saw. Dig. p. 3 § 6. Mar Judg. p. 331 § 62.

SECTION 2.

Duty of parents towards Illegitimate children.

Illegitimate children, by whom supported—and when inherits their father's *purchased lands.*

The father is bound to provide for the support of his illegitimate children. In some cases, illegitimate children are even competent to inherit their father's *purchased lands*, as well as goods and chattels.—Thus, if a man of high caste cohabited with a woman of inferior caste or inferior family rank, and maintained that woman in his own house, and was attended and assisted by her until his demise, then, in case that man died intestate, and left not a widow who had been lawfully wedded to him, and left not legitimate issue, his landed property, which he had *acquired by purchase*, will devolve to his illegitimate issue, the child or children of the said woman of low caste or inferior family rank; but his *parveny* or ancestral lands will remain to his next of kin amongst his blood relations.*

SECTION 3.

Incestuous children.

Incestuous children not entitled to their father's estate.

The issue of an incestuous connection cannot inherit any portion of the father's estate.

SECTION 4.

Adulterous children.

Adulterous children, when not deemed illegitimate.

If the wife proved faithless to her wedded husband and had criminal intercourse with another man, and bore a child at that period, although the child's paternity were therefore doubtful, yet if the wedded husband did not discard his wife and disown that child, the latter will not be deemed illegitimate; therefore in the event of the death of the wedded husband aforesaid, his property will devolve to the said child.

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* Mar. Judg. p. 338 § 79.

Section 5.

Power of Parents.

Daughters, in what respect are never independent of their parents.

If a daughter who had been married out in *Deega* by her parents, was afterwards divorced by her husband; or if she left her husband of her own accord and was then espoused by another man, in case her parents disapproved her second match, they may take their daughter from the husband of her own choice, and dissolve that connection; for, in respect of matrimonial contracts, daughters are never independent of their parents.*

Parents, when may dissolve their daughter's marriage

If the bride's parents be living, their free consent to the marriage must be obtained, or the marriage contract will not be binding; therefore, in case the bride's parents were induced by unfair means, by fraud or force, to give their daughter in marriage to a man whom they did not approve of, the parents may afterwards protest against the aliance and recall their daughter and dissolve the marriage.

Parent's power is not effected by *daughter's majority.*

A daughter is never at liberty to contract a marriage without the sanction of her parents, whether she had or had not attained the age of majority.

Section 6.

Power of Parents limited.

Parents &c. when *cannot* effect their daughter's divorce.

A daughter who was regularly married out in *Deega* by her parents, cannot be afterwards divorced from her husband by any of her relations, nor even by her parents themselves, if that daughter have no cause of complaint against her husband, and if she object being divorced from him. But if the daughter was married in *Beena* in her father's house, her father may at any time expel the daughter's husband, whether the daughter did or did not object against the divorce. And if the daughter was married in *Beena* in the mother's house, the mother may at any time eject her daughter's husband and dissolve the union.

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* Saw. Dig. p. 3 § 7. Ib. p. 34 § 5. Mar. Judg p. 331 § 63.

Mother, when *cannot dissolve* her daughter's marriage.

If a man bequeathed his dwelling house to his wife, whilst their daughter being married in *Beena* dwelt with her husband in that house, and if afterwards the mother disagreed with the daughter and the son-in-law, she may then eject them both from the said premises, but she will have no authority to dissolve her daughter's marriage. And such expulsion will not eventually operate to the prejudice of the daughter's rights, derivable from her *Beena* marriage.

Section 7.

Rights of Legitimate children.

A legitimate child's interest, is not affected by *parents' divorce.*

A legitimate child's interests in the father's estate are not affected by the divorce of the parents, whether that child was born before or after the divorce, and whether that child remained with the father or was left to the care of the mother, after that divorce.

Son, when preferred to daughter.

However in case a daughter by the divorced wife, had been removed from the father's charge, and was adopted into another family, (by her maternal grandmother for instance) and was afterwards married away in *Deega* by her adoptive parent or guardian, and if the father then died intestate leaving a son by another wife, that son will inherit the whole of the father's landed property, to the exclusion of the said daughter.

Daughter, when not entitled to her *paternal estate.*

Or, if after the divorce, the husband became a priest, and if he then died before his father, and if his daughter by that divorced wife was not received into her paternal grand-father's house and was not recognized as one of his family, in that case the said daughter will not be entitled to any share of the said grand-father's estate, in right of her father, it being premised that the grand-father left other issue, (a son or a *Beena* daughter for instance.)

Section 8.

Duty of children.

Children of the first husband, when bound to support their mother.

If the widow, after her children had attained to years of discretion, quitted her deceased husband's house, and removed to the house of her second husband, yet so long as her children to the first husband should retain possession of their father's estate, that is to say, the landed property, the said children will be bound to afford subsistence to their mother.

Children, when bound to remunerate strangers.

If the widow was obliged to a stranger for maintenance and support, in consequence of her own children neglecting to administer to her wants, and if her children inherited their father's landed property, then the children shall remunerate the stranger for the expense he incurred in rendering assistance and support to their mother.*

Section 9.

Power of children.

Children of the first bed when may expel their mother's husband and his children.

"If a widow," says Sawers,† "without being opposed by her deceased husband's family, takes a *Beena* "husband into the house of her deceased husband, to "assist and protect her, the children by her first husband, may, on coming of age, expel the second husband and the children of their mother by her second "husband, they however cannot expel the mother."

Children of the first bed may expel their mother's children of the second, notwithstanding their joint possession of the estate.

And although the first husband's children allowed their uterine half-brother and half-sister, issue of the *Beena* connection, to remain in their deceased father's house, after their mother's demise, and also allowed them even to participate with them in the possession of their father's (the first husband's) estate, that will not invest the *Beena* husband's children with a title to any share of that estate, and the lawful heirs (the first husband's children) may at any time eject their mother's children, born to her second husband.

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* Saw. Dig. p. 19.

† Saw. Dig. p. 37. § 1.

Section 10.

WHAT CONSTITUTES ADOPTION.

Prescribed forms of adoption, none.

There are no prescribed forms and ceremonies of affiliation and therefore it is not practicable to ascertain in every instance whether an orphan child, or a child who was removed from the parent's care in its infancy and who was educated by another person, was merely a foster child and protege of that person, or whether the said child was adopted and affiliated by that person.

Observances necessary to constitute adoption.

However, thus much is certain, that unless the child, and the person who had brought up and educated that child, were of the same caste, and unless that person had publicly declared that he or she adopted that child and resolved that the said child should be an heir to his or her estate, that child will not be recognized as adopted and affiliated, and will not therefore be admitted as an heir to the estate of the patron or foster-parent, on the ground of adoption.*

Section 11.

What is not sufficient to constitute a regular Adoption.

Want of public declaration.

If the patron or foster-father permitted the protegè to remain in his house after having attained the years of discretion, and even to contract a marriage and to continue to dwell, with his wife, in the house of the patron; if the protegé was also employed by the patron to manage the cultivation of his lands and to perform the *Rajakaria* services on account thereof; yet after all, if the patron did not publicly declare that he had adopted the said protegé as a child, to be an heir to his estate, he the said protegé will have no right to any portion of that estate, on the ground of adoption.†

Son-in-law continuing to dwell long in the family, after daughter's death.

If a daughter who was married and settled in *Beena* in her father's house, died before her farther, leaving issue, a daughter for instance, if the father then permitted the son-in-law to remain in his house, and there to contract a second marriage; if the son-in-law with his second family continued to dwell in that house until the

* Saw. Dig. p. 25. Mar. Jud. p. 353 § 126—130.

† Mar. Judg. p. 353 § 127.

death of the father-in-law; yet for all that, the said son-in-law and the issue of his second marriage will not be recognized as heirs by adoption to any portion of the deceased's estate, which will devolve entirely to the aforesaid grand-child.

Son's widow continuing to live long at her mother-in-law's.

If the son died before his mother, leaving a widow and children; if the son's widow continued to dwell in her mother-in-law's house and was even allowed to contract a second marriage and to leave with her second husband in that house: for all that, the said son's widow will not be recognized as an adopted heiress of her mother-in-law, and she will therefore have no right to a share of the mother-in-law's estate; the whole estate will devolve to the son's children to the exclusion of their mother and their mother's other children, born to the second husband.

Section 12.

What may in some instances be deemed Adoption.

Under what circumstances does a *Deega* married son's widow inherit by adoption.

If a son, who had a wife in *Deega* in his father's house, died before his father, without issue; if the father then detained his son's widow and had her married again and settled in his own house, and if the daughter-in-law continued to dwell there and rendered assistance to her father-in-law until his demise, these facts will warrant the conclusion that the deceased had decidedly adopted his daughter-in-law, and she will therefore be entitled to inherit her father-in-law's estate if he died intestate and left no issue.

Deega married son's widow when does not inherit by adoption.

But if the father-in-law did leave legitimate issue, a son or a grand-son, in that case the daughter-in-law will be entitled only to that portion of the estate which her father-in-law may have specially allotted or bequeathed to her.

Section 13.

Adopted children's right, to their Adoptive parent's Estate.

Adopted child preferred to the widow and other relations.

If a child was regularly adopted and affiliated, and the adoptive father died without issue and intestate, the adopted child will succeed to the deceased's estate, in pre-

ference to the deceased's widow and his brother and sister, his uncle and aunt, and their issue.*

An adopted son and an adopted daughter in *Beena*.

An adopted son, and an adopted daughter who was married and settled in *Beena* in the adoptive father's house, will have equal claims to that parent's estate and will inherent equal shares thereof in the event of the adoptive parent dying without issue and intestate, to the exclusion of their adoptive father's nephew (i. e. sister's son.)

Daughter an *only child* and an adopted daughter.

If a man died intestate leaving issue an only child, a daughter, and adopted daughter; if the deceased had been devorced from his wife, the mother of his said daughter, and if in consequence of the divorce, the daughter was removed from the father's care and protection and if she were afterwards disposed of in *Deega* marriage by her mother or other maternal relations, and if the adopted daughter remained with the adoptive father and rendered assistance to him until his demise, in such case the deceased's estate will devolve in equal shares to the daughter and to the adopted daughter.

Adopted child and the deceased's widow.

If the adopted child were the adoptive father's wife's sister's child, in that case the adopted child and his or her maternal aunt, the widow of the deceased, will inherit the estate jointly, to the exclusion of the deceased's brother and sister and their issue.

Section 14.

Adopted child's right to the Adoptive parent's Estate ceases.

Adopted child, if not a *descendant* of the adoptive parent.

"An adopted child," says Sawers, "has no right of "inheritance from the person adopting, if that adopting "parent has children of his or her own. Whatever the "adopted child gets, must be given by special grant on "a written document;" it being premised that the adopted child was not also a descendant of the adoptive parent, for if the adopted child were a grand-child of the adoptive parent, a *Deega* daughter's son for instance, in that case, the adopted child will be entitled to a share of the inheritance, although he had not received from the deceased a deed of gift or bequest.

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* Mar. Judg. p. 352 § 125.

A foster son or protegé being married in *Beena* to his patron's daughter, will not thereby be invested with the right of a co-heir by adoption, even if he, the foster son, was also a nephew (sister's son) to the patron; therefore in the event of the patron dying intestate, his estate will devolve to his daughter, as sole heiress, and not to her and her husband jointly.

Adoptive son's marriage with his patron's daughter, makes him no co-heir

SECTION 15.

Adoptive parent's right to the Adopted child's estate.

If a woman, who was adopted by her maternal aunt, died without issue and intestate, and left neither brother nor sister the lands which she had inherited from her father will devolve to the maternal aunt who had adopted her, to the exclusion of the paternal aunts and other more distant relations.

Adopted child dying without issue.

A person having died intestate leaving no issue, the landed property which he or she had by gift or by inheritance from an adopted parent, will revert to that adoptive parent's heirs or descendants, in case the deceased left not any near relations.

Gifts &c. obtained from the adoptive parent.

But if the deceased's father or mother, brother or sister, or their issue survived, in such case the said property will devolve to the deceased next of kin, and will not revert to the heirs or descendants of the deceased's adoptive parent.

Adoptive parent when not entitled to the adopted child's estate.

SECTION 16.

Duty of Brothers towards their Sisters.

The parents being dead, the duty of providing a suitable match for the unmarried sister, either in *Deega* or in *Beena* devolves on the brother, or on the married sister. If she has not a brother, nor a married sister, then that duty will be incumbent, on her paternal uncle or some other near relation on the father's side, if she were the issue of a *Deega* connection, otherwise her maternal uncle or some other near relation on the mother's side ought to see her properly disposed of in marriage, so that she should not remain in danger of bringing disgrace on the family.*

An unmarried sister whose parents are dead.

* Saw. Dig. p. 3 § 7. Ib. p. 34 § 5. Mar. Judg. p. 331 § 63.

SECTION 17.

Power of Brothers over their Sisters.

Brothers, or other near relations when may interfere and dissolve their sister's marriage.

If the parents gave their daughter in marriage to a man who was unworthy of the alliance, the uncle or brothers or other near relations of the bride will have the right of interfering and protesting against the match and may dissolve the same, but then the party who effected the dissolution of the marriage, shall be under the obligation of providing for the proper maintenance of the divorced bride.*

SECTION 18.

Brothers' power limited.

Sister, when is at liberty to contract a marriage of her own accord.

The parents being dead, and the brother being unable, or neglecting to have his sister suitably disposed of in marriage, the sister, may in such case, after having attained the age of full sixteen years, contract marriage of her own accord either in *Deega* or in *Beena*, and the brother shall have no right to protest against the match, provided the husband of his sister's choice be a person worthy of the alliance, and if it were a *Beena* marriage that the sister contracted, then the brother must give up to her a due portion of their parent's estate, which portion will thenceforth be entirely at the sister's disposal but in the event of her dying without issue, and intestate, that portion will revert to the brother or to his issue, and will not devolve to her husband.

SECTION 19.

Rights of Brothers and Sisters.†

Full brother, and a sister married in *Beena*.

If a man died without issue and estate, leaving a full brother and a full sister married in *Beena* in their mother's house, the deceased's share of the *maternal parveny* lands will devolve to the sister and surviving brother in equal shares.

Full brother, and a paternal half brother.

If a man died without issue and intestate leaving a full brother and a paternal half brother, the deceased's share of his father's estate will remain to the surviving full brother to the exclusion of the half brother.

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* Saw. Dig. p. 35 § 4.

† Saw. Dig. p. 12 § 3. Ib. p. 16 § 3.

Full brother, and a nephew.

If a man died without issue and intestate, leaving a full brother, and a nephew the son of another full brother, the deceased's *parveny* lands will devolve in equal shares to the brother and the nephew.

Full sister, and a paternal half brother.

If a man died without issue and intestate, leaving a full sister and a paternal half brother, the sister will be entitled to inherit the deceased's paternal *parveny* lands as well as his maternal *parveny* lands, to the exclusion of the half brother.

Failing brother or sister of the full blood.

Failing a brother or a sister of the full blood, the deceased's paternal *parveny* lands will devolve to his or her paternal half brother, or paternal half sister, in preference to his or her paternal aunt and her issue.

Deega sister, and a brother.

If a man died without issue and intestate, leaving a sister married out in *Deega*, and a brother, the latter will succeed to the deceased's share of the paternal *parveny* lands, to the exclusion of the *Deega* married sister, whether the said sister had been so married away previous to the demise of their father or subsequently.

Brother, and a sister married in *Deega* subsequent to the deceased's death.

If the deceased left a brother, and an unmarried sister, his share of the paternal *parveny* lands will of course devolve to the survivors jointly; but in the event of the sister being afterwards married away in *Deega* she will thereby be deprived of her title to participate in the possession of the said lands, which will then remain entirely to the surviving brother.

Deega sister, when restored to the right of inheriting her brother's estate.

Although the *Deega* married sister thus became deprived of the right to a share of her paternal *parveny* lands, she may yet in some cases be restored to that right. If the second brother died intestate, leaving a widow and an infant child, and if that child died shortly after, then that share of the paternal *parveny* lands which had belonged to the *first* brother and which had devolved as above stated, to the second brother, must be divided equally between the *Deega* sister, and the second brother's widow in right of her child, the second brother's widow being also of course entitled, in right of her said child, to the entire share of the said lands that had belonged to her husband.

Three brothers, of whom two married to one wife, and the third to another.

"Where an estate," says Sawers,* "is enjoyed undivi-
"dedly, or otherwise, by three brothers, two of whom are
"married to one wife, and the third brother has a sepa-
"rate wife, in the event of one of the friendly associated
"brothers dying without issue, the other brother with
"whom he had the joint wife shall be his heir, the bro-
"ther having a separate wife shall have no share of such
"demised brother's property of any kind."

Survived wife of an associated brother, repudiated.

But if the joint wife survived one of the associated brothers, and if the surviving associated brother did afterwards repudiate the said wife, in that case the deceased brother's share shall merge into the general estate, or it will devolve in equal portions to both the surviving brothers.

The brother who has been associating with the wives of the other brother dying without issue.

If there were five brothers, and one of them did not contract a regular marriage, but cohabited with the wives of two of his brothers in succession, in the event of his dying without issue and intestate, his portion of the paternal *parveny* lands will devolve in equal shares to the two brothers with whom he had been associate, to the exclusion of the other two brothers.

Nephew or niece of a full brother preferred to paternal half brother and sister.

If the deceased left a paternal half brother, and paternal half sister, and a nephew or niece the issue of his full brother, the latter will succeed to the possession of all the paternal and maternal *parveny* lands that belonged to the deceased, to the exclusion of the half brother and the half sister.†

Full sister tho' married in *Deega* preferred to uterine half brother.

If the deceased left a full sister, married in *Deega*, a nephew and a niece the children of another sister who had also been married in *Deega*, and a uterine half brother and half sister, the whole of the deceased's paternal *parveny* lands will devolve to the surviving full sister and to the children of the deceased full sister, to the exclusion of the uterine half brother and sister.

Deega married sister returning with the brother's consent.

[If there be two sisters,] and neither of them was married in *Beena* in the father's house, if one of the sisters had been adopted into another family and obtained a *Beena* settlement in her adoptive parent's house, and the other sister was married out in *Deega*, if the *Deega*

* Saw. Dig. p. 5 § 2.—See also, Mar. Judg. p 335 § 70.

† Saw. Dig. p. 10 § 4. Mar. Judg. p. 341 § 88. Morg. Dig. p. 101 § 408.

married sister afterwards returned with her husband and her brother allowed them a lodging in his deceased father's house, that circumstance will not invest the last mentioned with the rights of a *Beena* married daughter; therefore in the event of the brother dying without issue and intestate, his paternal *parveny* lands as well as his acquired lands will devolve in equal shares to the two sisters.*

A *Beena* sister settling herself afterwards in *Deega*, but leaving a son behind.

If a *Beena* married sister, after giving birth to a son in her father's house, departed therefrom and went and settled elsewhere in *Deega*, that son will eventually inherit the paternal *parveny* lands of his maternal uncle aforesaid, to the exclusion of the deceased's *Deega* married sister.†

A *Deeya* married full sister, preferred to paternal uncle or half brother.

A full sister, although she were married in *Deega*, will succeed to her brother's share of the paternal *parveny* (as well as other) lands, in preference to their paternal uncle and paternal half brother and half sister and their issue.‡

Two sisters, both married in *Deega*.

If the deceased left two sisters, and both of them were married out in *Deega*, the deceased's landed property, *parveny* as well as purchased, will of course devolve in equal shares to the sisters. If one of the sisters had departed this life previous to the brother's demise, her child or children will succeed to that share which the mother, were she living, should be entitled to.

SECTION 20.

Brothers who had joint wives.

A *Deega* daughter an only child by a joint wife.

If two brothers had by a joint wife, an only child, a daughter for instance, and one of the brothers died intestate, the deceased's interest in the estate which he and his brother possessed jointly will devolve to the daughter, although she were married out and settled in *Deega*, and will not remain to the surviving brother.

A son and a *Deega* daughter by a joint wife.

If the brothers had by a joint wife, a son and a daughter, and one of the brother's died intestate, the deceased share of the joint estate will devolve to the son,

* But see, Saw. Dig. p. 3 § 4. Mar. Judg. p. 331 § 60.
† Saw. Dig. p. 3 § 2.
‡ Saw. Dig. p. 11 § 3. Mar. Judg. p. 341 § 89

solely, if the daughter were married out and settled in *Deega*. And if the son died afterwards without issue and intestate, that share of the estate will not revert to his surviving father, but will devolve to his sister, albeit she remain settled in *Deega*

A man *divorced* cohabiting with his brother's wife.

If a man was devorced from his wife, and did afterwards cohabit with his brother's wife, in the event of that man dying intestate, his *parveny* lands and other lands that belonged to him prior to the divorce will devolve to his issue by the divorced wife, but the lands which he acquired during the period of his association with his brother's family, will be divided into equal shares, between his child or children, and his said brother.*

SECTION 21.

Brothers, and the children of their brother's and sisters.

Full brother's daughter in *Deega*, preferred to full sister's son.

A man having died without issue and intestate, his paternal *parveny* lands will devolve to his full brother's daughter, although she were married out in *Deega* to the exclusion of his full sister's son, if that sister had been married in *Deega* out of her father's house, and that property will in course devolve to the issue of the said niece, to the exclusion of the issue of the said nephew.

Brother's son preferred to sister's son.

A man having died without issue and intestate, the landed property which he had acquired or obtained by gift, will devolve to his brother's son, to the exclusion of his sister's son.

Sister's son *adopted*.

An uncle having died without issue and intestate, leaving a nephew, sister's son, whom he had adopted and leaving also another nephew the son of another sister, the whole of the deceased's landed property will devolve to the nephew whom he had adopted, to the exclusion of the other nephew.

Paternal uncle's son, preferred to Maternal uncle or aunt.

An unmarried man having died intestate, his paternal *parveny* lands will devolve to his paternal uncle's son to the exclusion of his maternal uncle and maternal aunt, although the maternal aunt was also the deceased's step mother. But if the said maternal aunt and step

* Saw. Dig. p. 5 § 3. Mar Judg. p. 335 § 71.

mother was also guardian to the deceased and had rendered assistance to him in his last illness, in that case she will be entitled to inherit from him such portions of lands as did not belong to the deceased father by *parveny* right, but which he had acquired by purchase or other means.

An unmarried man dying leaving paternal and maternal *aunt's* children.

If an unmarried man died intestate, his paternal *parveny* lands will devolve to his paternal aunt's son to the exclusion of his maternal aunt's son, and the deceased's maternal *parveny* lands will go to his maternal aunt's son in preference to his paternal aunt's son and paternal uncle's son.

A woman dying leaving brother's children.

A woman having died without issue and intestate her paternal *parveny* lands will remain to her full brother's son to the exclusion of her paternal half brother.

An *unmarried* woman dying without issue.

A woman having died unmarried and without issue, her maternal *parveny* lands will devolve to her uterine half sister's son in preference to her uterine half brother's son.

Paternal aunt and children, preferred to maternal aunt and children.

A daughter having survived her parents, died without issue and intestate, her paternal *parveny* lands, will devolve to her paternal aunt and paternal aunt's son, in preference to her maternal uncle and maternal uncle's son.

Paternal uncle *a guardian.*

A woman having survived her mother, died without issue and intestate, leaving paternal uncle and aunts; one of the said uncles was also guardian to the deceased and held in trust for her the lands which she had inherited from her father; those lands will remain to the uncle who was the guardian, to the exclusion of the deceased's other uncles and aunts.

Maternal aunt or grand aunt *a guardian.*

A child having survived the parents, died without issue and intestate, leaving a maternal aunt or grand aunt who was also that child's guardian, appointed such by the said child's mother, and lands which that child had inherited from the mother will remain to the aunt or grand aunt aforesaid, to the exclusion of the deceased child's maternal uncle and grand uncle.

Paternal uncle preferred to *widow* who was also a paternal aunt's daughter.

A man having died without issue and intestate, leaving a widow, (who was his paternal aunt's daughter), and a cousin, (brother of the said widow), and a paternal uncle, the deceased's paternal *parveny* land's will remain to his paternal uncle and will not devolve to his widow and his cousin.

SECTION 22.

Brothers and Sisters and their Children ceasing.

Paternal and maternal *parveny* lands how disposed of, when no *near* relations.

If a person survived his or her parents and died without issue and intestate, and left not an adopted child, nor a brother nor a sister of the full blood, nor a nephew nor a niece, issue of a full brother or a full sister, in that case the deceased's paternal *parveny* lands will pass to his or her next of kin on the father's side, and the lands which had derived to the deceased from his or her maternal ancestors, will devolve to the next of kin on the mother's side.

If the deceased were a *Priest*, his *parveny* lands how disposed of.

Although the proprietor was in priest's orders at the period of his death, his landed property will not remain to the surviving priests of his fraternity, nor to the temple whereof he was the incumbent; but the same will revert, to his next of kin, the lands that belonged to the deceased in right of his maternal ancestor will devolve to his nearest of kin on the mother's side, and his paternal *parveny* lands will revert to his nearest of kin on the father's side.

When no relations on the *father's* side, *paternal parveny* lands how disposed of.

If there be no relations on the father's side, the deceased's paternal *parveny* lands will also devolve to his or her nearest of kin on the mother's side, the deceased's maternal *parveny* lands will also of course devolve to the nearest of kin on the mother's side.*

When no relations on *either side*, the *parveny* lands escheats to the *crown*.

If there exists not any relations within three generations on either side, the deceased's *parveny* lands must escheat to the crown, the absence also of a lawfully wedded widow or widower being premised.†

* Saw. Dig. p. 13 § 3. Mar. Judg. p. 345 § 99.

† Saw. Dig. p. 16 § 2. Mar. Judg. p. 348 § 109.

CHAPTER IV.
RIGHTS OF PROPERTY.

SECTION 1.
DIFFERENT KINDS OF RIGHTS OF PROPERTY.

Things which belong to an individual as his own exclusive property, are such as he became entitled to, by—

1. *Daa himi*, Paternal or Procreate right.
2. *Wadaa himi*, Maternal or Parturiate right.
3. *Lat himi*, Right of Acquest.

SECTION 2.
Different species of Daa himi right.

1. The *Daa himi* right comprises, first, *Piyu Urume* or Paternal inheritance, the right of succession to the Father's estate, or the estate of any other relation in right of ones Father. *Piye urume.*

2. And second, *Jateke Urume*, inheritance by virtue of paternity, the right whereby in some cases the Father succeeds to the estate of his child deceased. *Jateke urume.*

SECTION 3.
PIYA URUME.
Paternal Inheritance.

The *Piya Urume* right becomes of avail to the child subsequent to the father's demise, and not previously, therefore in the father's life time the child has no right to lay claim to any portion of the father's estate nor to bequeath nor transfer, nor otherwise dispose of any portion thereof, on the presumption, that he or she had a right to anticipate the inheritance. Paternal right when becomes of avail.

A son may, however, sue his surviving father for property which he the son was entitled to inherit from his deceased father. For instance, if two brothers had a son by a joint wife, and one of the brothers having died, the survivor retained possession of the lands that Surviving father sued by his son for property he was entitled to from his deceased father.

belonged to them both, the son may demand a division of the estate and recover his deceased father's share thereof, from his surviving father, and if the said son departed this life without having sued for, and recovered his deceased father's share, his, the son's heir, may sue for and recover the same.

A son, and a minor or unmarried daughter, inherit equally.

If the father died intestate, leaving by the same wife, a son and a daughter, the latter being a minor or unmarried, the son and the daughter will jointly inherit their father's landed property.

An unmarried daughter, cannot dispose of her portion of the estate.

But then, says Sawers, "the unmarried daughter "will have no right to call for a division of the father's "estate, nor will she have the power to make a bequest "of any portion thereof either to a stranger or to a rela- "tion, on the assumption that she was permanently enti- "tled to that portion."

When may the unmarried daughter dispose of her portion.

Nevertheless, if the brother, being an infant was incapable of managing the estate, and if circumstances of necessity obliged the sister to contract a debt, and if, in satisfaction of such debt, she transferred to the creditor a portion of her father's land s (not more than a moiety thereof) such transfer will be valid and will be accordingly sanctioned by Law.

Section 4.

Disqualifications to Paternal Inheritance.

The father having died intestate, his landed property will devolve to all his children in equal shares, unless the conventional or common law of the country disqualified any of the children from succeeding to a share of the inheritance.

[The disqualifications are:*—

1. A son becoming a priest.
2. A child being adopted out of the family.
3. A daughter being married out in *Deega*.
4. A daughter contracting an unlawful marriage.]

* See, Saw. Dig. p. 14 § 1. Mar. Judg. p 345 § 101.—Two other instances of *disqualifications*.

SECTION 5.

A son becoming a Priest.

" A son becoming a Priest," says Sawers,* " there-
" by loses all right of inheritance in the property of his
" parents, because to take the robe is to resign all worldly
" wealth, nor shall he be restored to his right of inhe-
" ritance by throwing off the robe after his father's
" death.

A Priest throwing off his robes *after* his father's death.

" But if he did so at the request of any of his bro-
" thers or by the unanimous request of all his brothers,
" as the case may be, in that event he will have a right
" to that share of his parent's property, which would
" have fallen to him, had he never taken the robe.

A Priest throwing off his robes at the request of his brothers.

" But should one brother without the consent of his
" other brothers, being laymen, induce the brother being
" a Priest, to throw off the robe, then that brother shall
" provide for the *Sewooralle* out of his share of the pro-
" perty solely. The *Sewooralle* shall have no right to
" demand any portion out of his other brother's shares.

One of the brothers inducing the Priest-brother to throw off his robes.

" But should a priest be stripped of his robes for
" some violation of the rules of his order, or from caprice
" throws them off, he has in either case a right to subsis-
" tence from the estate of his parents."

A Priest disrobed by the community.

If however, the father had by a special gift or be-
quest bestowed a portion of his land on the sacerdotal
son, the latter will of course be entitled to the same, yet
he will have no right to claim any other parcel of land
besides, on the plea of its being an appurtenance of that
specific portion which his father had given him. With
the exception of that specific portion, given to the priest,
all the rest of the father's landed property will go to his
other sons or to their issue, being laymen.

A *special gift* of the father to the Priest his son.

But if the father himself was also in priest's orders
in his latter days, and received assistance and support
from his sacerdotal son during his last illness and until

A Priest assisting his *Father*, also a Priest.

* Saw. Dig. p. 7 §1.—See also, Mar. Judg. p. 337 § 77.

his death, in that case the father's landed property will devolve to his son the priest, and to his other son the layman, in equal shares.

A Priest *reverting to the lay state* with the father's consent.

If the son who was made a priest, reverted to the lay state and was received again by his father into the family house, he will be thereby reinstated in the position of an heir, and in the event of the father's demise, will share with his brothers or with their children, in the ancestor's estate.

A man becoming a priest *after* his father's death.

A man by entering the priesthood subsequent to his father's demise, will not forfeit to his brothers, nor to his paternal uncle, nor to any other co-heir, that share of land which he had inherited from his father.

Priest, if the *only surviving brother.*

And the circumstances of being in the priesthood will not be a bar against a man's inheriting a share of his deceased brother's lands, including the paternal *parveny*. Thus, if a man died without issue and intestate, leaving a brother who is a priest, and a nephew the son of a pre-deceased brother his *parveny* (as well as other) lands will devolve on the surviving brother and the nephew, in equal shares.

Section 6.

A child being adopted out of the family.

Right of a child adopted out of the family, to his father's estate.

A son who was adopted into another family and was consequently removed from his father's care by the adopting parent (his paternal uncle, or maternal uncle, or maternal aunt for instance) will not on that account lose his rights and interest in his own father's estate, he will not forfeit his share thereof to his brothers and sisters, whether of the whole or of the half blood, although he should have even succeeded to the estate of his adoptive parent. And if after the father's demise, the said son asserted and maintained his title as a co-heir, his share of his father's estate will eventually devolve to his issue.*

* Saw. Dig. p. 7. Mar Judg. p. 336 § 76.

A *son* adopted out of the family, when *forfeits* his right to his *own father's* estate.

But if the son who was adopted out of his own family (by his mother's maternal uncle for instance), having inherited his adoptive parent's estate, neglected his interest in his own father's estate, and if after his death, his children did not prefer a claim for his share thereof, in due time, the said children will be eventually declared from sharing in their paternal grandfather's estate.*

A *daughter* adopted out of the family, when *forfeits* her right to her *own father's* estate.

In some cases, a daughter by being removed from her father's house and being adopted into another family, eventually loses the right of inheriting a share of her own father's landed property.—Thus, if on the death of the mother the daugher was removed from her father's care and was adopted and brought up by her mother's parents and the father did afterwards on his death-bed bequeath all his lands to his son by another wife,—if the said daughter was given away in marriage by her adopted parents, or if she was otherwise provided for so as to possess the means of support independent of her father's estate, in that case the daughter will not be entitled to a share of her late father's landed property, although she was not formally disinherited, and although that bequest in favour of her paternal half brother was but oral and nuncupative.

Daughter, when not *regularly* adopted into another family.

But if the daughter, though removed from the father's care, was regularly adopted into another family, but was merely brought up as a foster child by some of her mother's relations, and was maintained by them in charity and was not disposed of in *Deega*, nor permanently provided for, in that case the said daughter's claim on her father's estate will not be affected, and in the event of the father's dying intestate, his landed property will devolve in shares to the said daughter and to his issue of the other bed.

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* Saw. Dig. p. 6 § 4, 5. Mar. Judg. p. 336 § 75, 76.

Deega daughter and a daughter adopted into another family.

A daughter whom the father had given away in *Deega*, and a daughter who had been adopted into another family and had there obtained a settlement by marriage, are on a par, and will he alike superseded by their full brother in the succession to the father's estate, and although one of the said daughters, the *Deega* married daughter for instance, did after the father's demise return to the father's house along with her husband, and her brother then allowed them a lodging there, that circumstance will not invest the said daughter with the rights of one married in *Beena;* therefore, in the event of the brother dying without issue and intestate, the lands which he inherited from his father will devolve in equal shares to the two sisters.

Section 7.

A daughter married out in Deega.

Deega daughter, when has no right to her father's estate.

A daughter will be incapicitated from inheriting landed property from her father, by being given away in *Deega* marriage by her father*—it being premised that she remained settled in *Deega* until her father's death, and that her father left other issue a son, or a daughter settled in the father's house in *Beena*.

Deega daugher, and her father's *mortgaged property.*

A daughter married off and settled in *Deega*, will not have authority even to redeem and appropriate to herself any land which her father had mortgaged, unless her brother relinquished his right of redeeming that land and permitted her to recover the same for herself by paying off the mortgage.

Deega daughter, an *only child* of her father.

If the daughter were her father's only child, then, although she were married out in *Deega* by her father, or after her father's death by her uncles or any other relations, she will yet be sole heiress to her father's landed property, in preference to her paternal grand-mother, paternal aunt, and also in preference to her deceased father's brother, albeit the latter were also one of her fathers.†

Daughter, given out in *Deega* by her *mother* after father's death.

If the father died intestate, leaving a son and two daughters minors, if the mother did subsequently give away one of the daughters in *Deega*, and had the other

* Saw. Dig. p. 2. Mar. Judg. p. 327 § 53. Morg. Dig. p. 13 § 63.
† Saw. Dig. p. 3 § 3. Ib. p. 4 § 2. Mar. Judg. p. 331 § 59.

daughter married and settled in *Beena* in the father's house, then the father's landed property shall remain in equal shares to the son and the *Beena* daughter, to the exclusion of the *Deega* daughter.

Daughter, given out in *Deega* by her *brother* after father's death.

If, after the father's death, the daughter was married out in *Deega* by her brother, or by their mother, the said daughter will thereby lose her right to a share of the inheritance, and consequently her brother will then become sole heir to the father's landed property. And although the said *Deega* married sister did afterwards get possession of a portion of her father's lands, she will not have a permanent title of that portion; it will at her death revert to her brother, or he being dead, to his issue,—it being premised that the said parties were *full* brother and sister, and that the latter had remained in her *Deega* settlement until her death.

Deega daughter, *forfeits* her right to her father's estate, in favor of her *unmarried* sister and brother.

If a man died, leaving by the same wife a son, a daughter married out in *Deega*, and an unmarried daughter, the son and the unmarried daughter will succeed to the possession of their father's land, to the exclusion of the *Deega* married daughter. And if the said unmarried daughter should eventually contract a *Beena* marriage in her father's house, she will thereby acquire a permanent title to a share of the father's landed property, and if during her *Beena* coverture she had issue (a son for instance), that son will eventually become entitled to inherit that share. If after the birth of that son the mother was given away in *Deega* marriage by her brother, such subsequent *Deega* marriage will not compromise the right of her said son to succeed to the possession of that share of the estate, to which his mother had acquired a title by her former *Beena* settlement.

Bal Digest
N. 109.

Section 8.

A daughter contracting an unlawful marriage.

Daughter, marrying a low caste man.

If a daughter degraded herself by becoming the wife of a man of any tribe or caste inferior to her own caste, she will thereby forfeit all right to inherit property of any kind from her parents and other relations, and if her degradation and loss of caste happened subsequent to

the demise of her parents, she will then forfeit the landed property she may have inherited from the ancestors, which property will forthwith pass from her to her legitimate children, or if she have not a legitimate child, to her brothers and sisters.*

Degraded daughter, whom may claim *support* from.

But, although the daughter had thus forfeited "her "*parveny* right of inheritance in the estate of her pa- "rents, still she would have the right to support from "the estate of her parents, and may demand the same "at Law from her brothers" or from any other heir who had superseded her in consequence of her degradation.†

Section 9.

Beena married children's right to their father's estate.

A *son* married in *Beena*, and another son unmarried.

A son who quitted his father's house, and having contracted a *Beena* marriage, settled in his wife's village, will not thereby forfeit to his brothers, his interest in their father's estate, therefore in the event of the father's death, the son who was settled away in *Beena*, and the son who remained at home, will share their father's landed property equally.

Right of a *Beena* married son's son to his grand-father's estate.

If the *Beena* married son died before his father, leaving issue a son, the latter will be entitled to that share of his grand-father's estate, which his father, were he living, should be entitled to.

Beena married son's son, when *forfeits* his right.

But if the deceased *Beena* son's son did not in due time assert his right and obtain his share of the grand-father's estate, his claim will eventually prescribe.—Thus, if the *Beena* son's son after attaining the age of majority, full sixteen years, neglected to prefer his claim and if the estate remained in possession of his paternal grand-father's other heirs, from the period of the grand-father's death, and from the time when that grand-son attained the age of majority, throughout the period of prescription, in that case, the *Beena* son's son will be effectually debared from a share of the inheritance.

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* Saw. Dig. p. 4 § 3. Mar. Judg. p. 332 § 66

† Saw. Dig. p. 3 § 6. Mar. Judg. p. 331 § 62.

A son and a daughter both settled in *Beena*.

If a father died intestate, leaving a daughter settled at home in *Beena*, and a son who had quitted his father's house and settled elsewhere in *Beena*, the father's estate will devolve in equal shares to the son and the daughter, and will in course pass from them to their children.

Beena daughter of a joint bed receiving a specific portion.

If two brothers had by a joint wife, a son and a daughter, and the daughter was married in *Beena* in her father's house and received from them a specific portion of their lands, such portion will belong to her permanently, and she will not forfeit the same to her brother by being subsequently given away in *Deega* by one of her father's after the demise of her other father.

Beena daughter's rights when in par with those of a son.

The rights of a daughter who was married and settled in *Beena* in her father's house, in the life time of her father are in some cases fully in a par with the rights of a son;—thus, if the father died intestate, leaving a son, and a *Beena* married daughter, his lands will devolve to them in equal shares, whether the said son and daughter were issue of the same bed or of different beds, therefore that daughter may, immediately after the father's demise, call for a division of the estate.

Son, a daughter married in *Beena*, and a daughter in *Deega*.

If the father died intestate, leaving a son, a daughter married in *Beena*, and a daughter married out in *Deega*, all his lands will devolve in equal shares to the son and the *Beena* daughter, to the exclusion of the daughter who remained settled in *Deega*.

A daughter married in *Beena*, and one or more daughters in *Deega*.

If the father died intestate, leaving a daughter married in *Beena*, and one or more daughters married out and settled in *Deega*, his landed property will devolve to the *Beena* daughter solely, to the exclusion of the daughter or daughters who remained settled in *Deega*.

A daughter, disposed of by her *brother* in *Deega*, contracting a *Beena* marriage.

If the brother died without having disposed of his sister in *Deega*, and if the sister afterwards contracted a marriage in *Beena* and fixed her abode in her father's house, in that case, half of the landed property of their father will remain permanently to the said daughter, and the issue of the deceased brother will be entitled only to the other moiety of that property.*

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* Saw. Dig. p. 2 § 1.

Beena daughter, when does not inherit equally with his other sons.

If the father had made a special allotment of lands to his daughter on her being married in *Beena*, and then divided his other lands amongst his sons, if one of the sons then died without issue, and the father survived, the deceased son's share will revert to the father of course, and if the father then died without having made any disposal of that share, the same will devolve to the surviving son or sons, to the exclusion of the daughter.

Beena daughter, once provided for, has no further claim.

"A daughter married in *Beena*," says Sawers, "who "is already provided for by a part of her father's estate, "will have no further claim on the remainder, in the "event of her father dying intestate, leaving other chil-"dren," a son, and another *Beena* married daughter for instance, and these other children will be entitled to all the landed property that their father was in possession of at the period of his death, therefore, neither shall the first mentioned *Beena* daughter who was especially provided for, nor the other children aforesaid, have any right to insist upon it, that that *Beena* daughter's portion should be collated with the lands which had remained in possession of their father until his demise, and that a fresh division of the whole estate should then be effected amongst the heirs.

Daughter specially provided for, when has a claim with the other children.

This rule however, applies only to such landed property as the father held possession of at the period of the first mentioned daughter's *Beena* marriage, or at any other period when the father made the special allotment in favour of that daughter. If the father acquired any landed property subsequent to the period of that allotment, and died without making any disposal of the recently acquired lands, in that case the first mentioned *Beena* daughter will be entitled to a share of the said lands of recent acquest, equally with her brother and sister, notwithstanding the permanent provision which had been previously made for her.

Father's lands recovered by son at his own expense.

Lands to which the father had a title, but which were not in his possession at the period of his death, being subsequently recovered by the son, shall then be divided equally between the son and the *Beena* married daughter, for the son will not acquire an exclusive right

to such laws on the ground of having solely borne the trouble and expense of recovering the same.

Beena daughter quitting her father's, to go and live in *Deega*.

"A daughter married in *Beena*," says Sawers,* "quitting her parents' house with her children to go and live in *Deega* with her husband, before her parents' death, forfeits thereby for herself and her children, a right to inherit any share of her parent's estate (she having at the time a brother or a *Beena* married sister) unless one of her children be left in her parents' house.

When may a daughter quitting her parent's be entitled to a share of the inheritance.

"Yet the said daughter," continues Sawers,† "may preserve for herself and her children her own and their claim on her parent's estate, by visiting *him* frequently and administering to his comfort, and especially by being present, nursing and rendering him assistance in his last illness, and this would especially be the case where there were two daughters and no sons, either in re-establishing the right of one to the entire estate against the other daughter married in *Deega*, or for a half of the estate, should the other daughter be also married in *Beena*. But should there be a son besides those two daughters, under such circumstances, and he living at home, in that case the son or his heirs would get the half of the estate, and the other moiety would be divided between the two daughters or their heirs, but should the son have been living out in *Beena*, and the parents have been depending on his daughters and their husbands for assistance and support; in that case he would only be entitled to one third, and the daughters and their children to one third each."‡

Beena daughter quitting her father's house *after* his death.

But the *Beena* daughter will not forfeit her interests in her father's estate by quitting her father's house *subsequent* to his demise, and although she then went and settled in *Deega*, she will not be debarred from participating with her brother and sister in their father's estate, and in the event of her death, if she left issue, a son for instance, born during the period of her *Beena* coverture that son will succeed to her share of the said estate. And

* Saw. Dig. p. 3 § 2.—See also, Mar. Judg. p. 329 § 57.

† Though omitted in Mr. Campbell's edition of *Sawers' Digest*.

‡ Mar Judg. p. 329 § 57.

although the said *Beena* daughter's son had quitted his maternal grand-father's house, and settled elsewhere in *Beena*, he will not thereby forfeit to his maternal uncle that share of his maternal grand-father's estate, which he was entitled to in right of his mother. But if the daughter, who had been married in *Beena*, was childless, and if after her father's death she quitted her father's house and went away and settled in *Deega*, in that case she will have no permanent right to a portion of her father's landed property, the whole whereof will then remain to her full brother, or full brothers and their issue.

Beena daughter's *specific portion* by her father.

If, however, the father had made a specific assignment of a portion of his lands to the daughter married in *Beena*, and if during her *Beena* coverture she bore a child or children in her father's house, in that case the daughter will not forfeit that share, even if she quitted her father's house and went away in *Deega* prior to her father's demise, and that share will of course remain in her said child or children after her death.

Section 10.

Deega married Children's right to their Father's Estate.

Deega daughter, and paternal half brother.

If the daughter had been disposed of in *Deega* by her father himself, and if she remained settled in *Deega* until her father's demise, in that case her paternal half brother will be sole heir to the father's landed property. But if the daughter did not so remain settled in *Deega*, but had returned to her father's house previous to his death, and continued to dwell there until her father's demise, in that case she will be entitled to a share of the father's landed property, equally with her paternal half brother.

Deega daughter's son by a subsequent *Beena* marriage.

And if, after her father's death, the said daughter continued to dwell in the father's house and married a husband in *Beena*, and afterwards died leaving issue, a son for instance, that son will succeed to that share of the lands, to which his mother was entitled.*

Daughter, formally married away in *Deega*.

Unless a daughter had been formally married away in *Deega*, or unless she obtained a settlement in the house of an acknow-

* Saw. Dig. p. 2 § 1. Mar. Judg. p. 328 § 54

ledged husband, she will not lose her right of sharing in the estate of either of her parents.—Thus, if the parents had neglected to have their daughter married and settled in *Deega*, and the daughter contracted clandestine intimacies, and at times absented herself from home, and lived elsewhere in concubinage (without however forming such a connection as caused degradation and loss of caste), yet, if she returned, and her parents received her again into the family, and if she afterwards remained in her father's house until his demise, or in her mother's house until her demise, she will not be regarded as a daughter who had been disposed of in *Deega*, and she will therefore in the event of the parent dying intestate, be entitled to a share of the said parent's landed property equally with her brother, and that share will of course, eventually devolve to her issue, albeit her child or children had not an acknowledged father.

A daughter's settlement out of home, when *not* considered a *Deega* marriage.

A daughter, whom her father had consigned to the care and protection of some relation, being afterwards married in the said relation's house to a person of another family, if the husband did not conduct her thence to his own house, that marriage will not be reckoned one in *Deega*, and that daughter will therefore continue to have a claim on her father's estate as if she were married in *Beena* in her own father's house, and if the said daughter died before her father, leaving issue, a son for instance, that son will be entitled to inherit that share of his maternal grand-father's estate, which his mother, were she living, should be entitled to, it being premised that the said grand-father died intestate.

Deega daughter returning, and acting as *guardian*, to her infant brother and sister.

The father having died intestate, leaving issue by the same wife, an infant son, an infant daughter, and a daughter married out in *Deega*, and also a grand-daughter the child of a pre-deceased daughter (by the same wife) who was married out in *Deega*, all his lands will devolve to the infant daughter and the son. Should the surviving *Deega* daughter, then return to the deceased father's house and in the capacity of guardian to her infant brother and sister, manage the affairs of their father's estate, and if she then gave away her young sister in *Deega* marriage,

the said younger sister will thereby lose her right to a share of the said lands, and the brother will then become sole proprietor thereof, but the elder sister who had returned home, although she acted as guardian to her brother and younger sister, and had managed the estate, will not have thereby acquired the rights of a *Beena* daughter, nor will she eventually have, on that account, a larger claim on that estate, than that of her surviving sister, and her niece aforesaid; therefore, in case the brother died without issue and intestate, the said estate will devolve in equal shares to the two surviving sisters and the niece.

A son's son, issue of a *Deega* wife.

A son's son, issue by a *Deega* wife, will be entitled equally with his paternal uncle, to a share of his paternal grand-father's estate, and although the deceased son's widow had removed their child from the grand-father's house, such removal will not compromise that child's claim to a share of the inheritance,—it being premised that the grand-father died intestate.

Grand-daughter of a *Deega* marriage, removed from the grand-father's care.

But if the son who died before his father, left only a daughter by his *Deega* wife, and if that daughter was removed by her mother, or by her mother's parents from her paternal grand-father's house, and was afterwards disposed of in *Deega* marriage prior to her said grand-father's demise, or if that daughter was regularly adopted by any of her maternal relations, and if she did in right of such adoption inherit landed property from her adoptive parent, in such case she will not be entitled to participate with her paternal uncles, in the estate of her said paternal grand-father, unless in deed her paternal grand-father had finally assigned a specific portion of his estate to her father, in which case that particular portion may devolve to her, if the grand-father died intestate But if the deceased son's daughter had not been regularly adopted into another family, but was only protected and fostered by her maternal relations or by other friends, if she was not disposed of in *Deega* by her mother, nor by

her mother's parents nor by her paternal grand-father himself, in that case, she will be entitled to that share of her paternal grand-father's estate, which her father, if he survived would be entitled to, and she the said grand-daughter will not have forfeited her right to that share, by having had a husband in *Beena* in the house of any of her friendly relations.

Grand-daughter, brought up by Paternal grand-father.

If the grand-daughter had been brought up in the house of her paternal grand-father, and remained their until the grand-father's demise, she will then be entitled to that share of the estate, which her father, were he living, should be entitled to. But if she had not remained in her grand-father's house, if her grand-father had given her in *Deega* marriage, in that case she would have no right to a share of her grand-father's landed property, as a co-heir with her paternal uncle.*

Daughters by different wives, minors or unmarried at their father's death.

If the father died intestate, leaving two daughters by different wives, and if both daughters were minors or unmarried at the time of the father's demise the father's landed property will devolve to the said daughters in equal shares, and although one of the daughters contracted a *Deega* marriage subsequent to the father's demise, she will not thereby forfeit her share to her sister.†

A son and a minor daughter by different wives.

If the father died intestate, leaving a son by one wife, and an infant (or unmarried) daughter by another wife, then the daughter will have the right of demanding a portion of the father's estate, and she will be entitled to a moiety of her father's lands independently of her paternal half brother, and the daughter will not forfeit that share to her half brother, by being subsequently given out in *Deega* marriage by that brother, or by any other relation.

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* Saw. Dig. p. 4 § 1. Mar. Judg. p. 332 § 64.

† Saw. Dig. p. 4 § 5. Morg. Dig. p. 2 § 8.

Section 11.

The acquisition of Beena right by a Deega daughter.

Daughter, recalled by father from a *Deega* marriage.

If the daughter who was married out in *Deega*, was recalled by her father, and did remain in the father's house until the father's demise, and if after she had been recalled she was married in *Beena*, and if the son lived away from his father's house settled in *Beena* in his wife's village—in that case the daughter and the son will inherit equal shares of the father's estate, although the father has not assigned any specific portion thereof to the daughter, and the daughter's interests in that estate will in course devolve to her issue.

Daughter, to whom a specific portioned had been allotted, returning destitute.

If the father had made a partition of his lands, and allotted specific portions thereof to his sons, and reserved another portion as provision for his *Deega* married daughter, in the event of her returning destitute, and if the daughter did return to her father's house, before his death, and then received that reserved portion from her father, or if she returned subsequent to her father's demise, in either case she will be entitled to that portion independently of her brothers, and at her death, that portion will of course devolve to her issue.*

Father assigning a portion to the *Deega* daughter returned.

If a *Deega* married daughter returned to her father's house along with her husband, and if her father did then assign to them a part of his house and did put them in possession of a specific share of his lands, such arrangement will be equivalent to a *Beena* settlement, and therefore in the event of the father's death, the said daughter will be entitled, as well as her brother to inherit a share of their father's landed property.

Deega daughter returning with her husband, and rendering assistance to her father.

If the daughter who had been married in *Deega*, returned along with her husband, and attended on her father and rendered him assistance until his death, and

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* Saw Dig. p. 3 § 7. Mar. Judg p. 327 § 53. Ib. p. 330. 331 § 63. Morg. Dig. p. 15 § 73.

if the son had been settled away in *Beena* elsewhere and died before his father, leaving issue a son, in such case, the rights of the said daughter will be equal to those of the son's son, and they will accordingly be entitled to equal shares of the inheritance.*

Deega daughter returned, dying before her father leaving issue.

If the daughter, who had returned from *Deega* along with her husband, and obtained a *Beena* settlement in her father's house, died before her father, leaving issue, a son, that son will succeed to his mother's interests in his maternal grand-father's estate.

Deega daughter returned destitute, entitled to maintenance.

A daughter who was disposed of in *Deega*, having returned to her father's house, either before or after her father's death, will be entitled to maintenance from her father's estate. After the father's death, the daughter who returned destitute from *Deega*, may have either a supply of necessaries from her full brothers and sisters who inherited their father's landed property, or she may have temporary possession of a portion of the paddy land with lodging in the family house. But, so long as the *Deega* married daughter remained in the *Deega* settlement, she will not be entitled to any support from her deceased father's estate.†

Deega daughter returned, going back to live in *Deega*, forfeits her right.

A daughter who was married out in *Deega*, although she afterwards returned to her father's house, and lived there with her husband for some years, and bore children in the father's house, if she afterwards quitted her father's house again and went back to live with her husband in *Deega*, previous to her father's demise, that daughter will not be acknowledged as having acquired the rights of a *Beena* settled daughter, and will not be entitled to enherit a share of her father's landed property, which will devolve entirely to the son.

Deega daughter when inherits by *nuncupative* will.

If the father left a son and a daughter, minors, by one wife, and a son and a *Deega* married daughter by another wife, if that *Deega* married daughter came back

* Mar. Judg. p. 329 § 57. Morg. Dig. p. 15 § 73.

† Saw. Dig. p. 3 § 4. Mar. Judg. p 331 § 60.

and attended and assisted her father during his last illness, and if the father had therefore on his death-bed expressed his will, that his *Deega* daughter should have a share of his lands, notwithstanding her being settled in *Deega*; in that case, the *Deega* daughter will be entitled, by virtue of such nuncupative will,* to participate equally with her uterine brother and their paternal half brother and half sister, in the father's estate; the father's landed property will thus be divided equally between the two families, one moiety to the *Deega* daughter and her full brother, and the other moiety to the other son and daughter.

Deega daughter receiving her father into her own house.

A daughter who had been married out in *Deega*, but had afterwards returned to her father's house with her husband, and dwelt there in *Beena*—a daughter who was settled in *Deega*, and who received her father into her house and there rendered him assistance until his demise—and a grand-daughter, the child of a son who died before his father;—have equal rights, and the ancestor's lands will therefore be divided amongst them in equal shares.

Deega daughter returning divorced, not entitled.

A daughter whom the father had disposed of in *Deega*, having been afterwards divorced from her husband, and reduced to destitution, and having therefore returned to her father's house, and remained there until her father's death, will not have thereby become invested with the right of sharing in her father's landed estate; the whole thereof will devolve to the son and to the *Beena* daughter. †

Deega daughter returned, disposed of again in *Deega* by her brother.

The daughter who had returned from *Deega* may be again disposed of in *Deega* marriage by her brother, or if she should remain in the father's house, she will be entitled to maintenance from his estate. It is here premised that the said *Deega* daughter was full sister to the other children, and not their paternal half sister.

* But see, Ordinance No. 7 of 1840 § 3.

† Saw. Dig. p. 3 § 7.

Deega daughter returning destitute *after* her father's demise.

But, if the *Deega* married daughter did not return to the house of her father until after his demise—if she came back destitute, after the death of her father—and if her brother did then not only allow her a lodging in the house and supply her with the necessaries of life, but if he even permitted her to have a second husband in the said house, and moreover allowed her son (born under the *Deega* coverture) to cultivate a portion of the deceased father's lands—all those circumstances will not invest her with the rights of *Beena* married daughter, and she will not have thereby acquired a permanent title to a portion of her father's lands—it being here premised that the said son and daughter were issue of the same bed.

Deega sister returning with her husband after father's death.

And if a *Deega* married sister returned along with her husband, and her brother gave them a lodging in the deceased fathers's house, and assigned to them a portion of the paternal estate for their maintenance temporarily, that portion will not eventually devolve to the said sister's issue, but will, at the death of the said sister, revert to the brother, or, he being dead, to his issue.

Deega sister returning after father's death and remaining a widow.

If a daughter, who had been married out in *Deega*, did after the death of her husband, and subsequent to the demise of her father also, return to her deceased father's house, and remain there in the state of widowhood, and if she, and her children who were born under the *Deega* coverture, were even allowed by her brother to possess a portion of the father's lands, yet such possession will not invest her with a permanent right to that portion, and therefore, the same will not at her death devolve to her said children.

Deega sister returned, married again in *Beena*.

But, if after the father's death, the sister who had returned destitute, was not given away in *Deega* again by her brothers, if the brothers sent for a bride-groom and had their sister married at home, and expressly stipulated that it should be a *Beena* marriage, and that their sister should therefore have a portion of the father's

lands as her own peculiar share, and if the brothers did then make a final assignment of a portion of the said lands to their sister, in such case, the sister will indeed have a permanent right to that portion of land, and at her death the same will devolve to her issue, born during the *Beena* coverture.

Section 12.

*Rights of Children of different beds to their Parents' Estate.**

Son of a divorced wife, and a *daughter* of a subsequent marrigage.

If the first wife was divorced when in a state of pregnancy, and was afterwards delivered of a son, if the husband then married a second wife, and had issue by her, a daughter; the said son and the daughter will inherit equal shares of their father's landed property. The son's right of inheritance will not have been compromised in consequence of his mother's divorce, nor in consequence of his having been adopted and brought up by his maternal relations. And the said daughter's right will not be prejudi ed by her being given away by her mother in *Deega*, after her father's death.†

Two daughters, children of different beds.

If the father died intestate, leaving a daughter by one wife, and a daughter by another wife, his landed property will devolve in equal shares to the two daughters, both the daughters being minors, or unmaried, at the period of the father's death, and the title of either daughter to a moiety of the said property, will be permanent, and will not be compromised by her marrying out in *Deega*, subsequent to the father's demise, nor will the rights of either of the said daughters be prejudiced, because after her mother's death, she was removed from her father's house and was brought up under the care of her maternal uncle or any other relation.

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* Saw. Dig. p. 4 § 5. Mar. Judg. p. 332 § 68. Morg. Dig. p. 2 § 8.

† Saw. Dig. p. 3 § 3. Mar. Judg. p. 331 § 59.

Mother removing her daughter and waiving her rights.

If after the father's death, one of the daughters was removed by her mother from her father's house, and even if the mother did then explicitly relinquish her daughter's claim to a share of the father's landed property, in favour of the other daughter, yet the first mentioned daughter's rights will not be affected thereby, for the mother has no right to waive her child's claim to a share of the father's estate.

Daughters are entitled to their father's *acquired* as well as *parveny* lands.

Lands which the father acquired by purchase or by any other means, shall together with his *parveny* or ancestral lands, be divided equally between the two daughters abovementioned, whether the purchase was made in the time of the first wife, or of the second wife, it being premised, that the wife in whose time the purchase was made, was a *Deega* wife.

A son and a daughter by one wife, and only a son by another.

The father left a son and an infant daughter by one wife, and a son by a second wife; his lands devolve to all the three children in equal shares.

Two sons by one wife, and a son and a daughter by another.

The father died leaving two sons by his first wife, and a son and an infant daughter by his second wife. Deceased's lands were divided equally, one moiety to the two sons of the first bed, and the other moiety to the son and daughter of the second bed.

A son by one wife, and two daughters (both married in *Deega*) by another.

The father left a son by one wife, and two daugters by another wife; the son had removed from the father's house and was settled elsewhere in *Beena*, both the daughters were married out in *Deega*, and one of them remained in *Deega* up to the time of the father's demise, but the other daughter having been divorced, returned to her father's house, and remained there,—the father quitted his own house and went and lodged in the house of his son's *Beena* wife, and there received assistance from his son, until his death; after the father's death, the daughter who had returned from *Deega*, received a husband in *Beena* into her deceased father's house, there she remained and bore a son to her *Beena*, husband: in the sequel, this last mentioned daughter and her paternal half brother aforesaid went to law, respecting the father's estate; and it was decided, that the said *Beena* daughter and her

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A son by one wife, and two daughters by another, both returning from *Deeya*.

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A daughter settled in *Deega*, forfeits her right.

Deceased left a son by one wife, and a son and a daughter by another wife, the daughter having been married of and settled in *Deega* prior to the father's demise, deceased's landed estate remained to the two sons in equal shares.

A *Deega* daughter when entitled to an equal share with her half brother.

If a father left by different wives, a son and a daughter, and the latter was married and settled in *Deega*, prior to the father's demise, if the father had in his latter days received assistance and support from his daughter, at the house of her husband, and was assisted by her during his last illness, in that case, the said daughter will, notwithstanding her *Deega* settlement, be

entitled to share in their father's estate, equally with her half brother.

Daughter, a minor, at her father's death.

If the daughter was a minor, at the time of her father's death, she will in that case also be entitled to divide her father's landed property equally with her paternal half brother, and her title thereto will not be compromised by the circumstance of her mother having been divorced from her father, nor will she subsequently forfeit her share to her half brother, by marrying out in *Deega*.

A son taking up robes after having had a family.

The father had a son and a daughter by his first wife, and a son and a daughter by his second wife, the first mentioned daughter was married in *Beena* in her father's house, the second daughter was married out in *Deega*, the first mentioned son survived his father, the second son died a priest previous to his father's demise, previously to entering the priesthood, the said second son had a family, his wife and child (a daughter) survived him, but they remained estranged from his father's family, and never preferred a claim on his estate; the whole of that estate consisting of *parveny* lands, and of lands recently acquired by the father, devolved in equal shares to the surviving son and to the *Beena* daughter, and eventually to their children; the daughter by the second wife was totally excluded from the inheritance by reason of her *Deega* marriage.

Beena daughter's share is not forfeited by her subsequent removal.

The father died leaving a son by one wife, and three daughters by another wife; two of the daughters were married out in *Deega*, the other daughter remained at home settled in *Beena*, the son and the *Beena* daughter inherited equal shares of their father's landed property to the exclusion of the two *Deega*, daughters, and the *Beena* daughter did not forfeit her share by subsequently quitting her deceased father's house and settling in her husband's house in *Deega*.

The share of a uterine brother dying without issue.

The father's estate, devolved in three equal shares to his three sons, of whom two were issue of one bed, and the other son was issue of another bed; one of the uterine brothers having subsequently died, without issue, his share devolved to his surviving full brother, to the exclusion of the half brother.

Two sons by the first wife, a son by the second, and a son and a daughter by the third wife.

A man died intestate leaving issue by his first wife two sons, by his second wife one son, and by his last wife a son and an infant daughter; his landed property was divided into five equal shares, one share for each of the said children.

Two grand-daughters, issue of son's two different beds.

The proprietor of an estate died intestate leaving a grand-daughter, the only child of his son by his first wife, and which son died before his father, and he left a daughter by his second wife, which daughter was married in *Beena*, the estate was divided equally between the said daughter and the grand-daughter, and the two portions eventually devolved to their children respectively.

Daughter of a man's second bed, whose mother has abandoned the family.

If the father did on his death-bed bequeath all his lands to his son, or his son and daughter of the first bed, without making any provision for his daughter who was his only child of the second bed, because his second wife had neglected and abandoned him; and if that daughter was brought up by her mother's parents and was by them provided for, in that case, the said daughter of the second bed will have no right to any share of the father's lands, although she was not expressly disinherited, when her father made the bequest in favor of his other child or children *

Daughter of a wife divorced in a state of pregnancy.

If the first wife was repudiated, or if she divorced herself from her husband, whilst she was with child to him, and if that child, being a daughter, was not after the lapse of its infancy, consigned to the father's care, but remained with the mother, and was afterwards adopted into another family (by her maternal grand-mother for instance), and was subsequently disposed of in marriage, if the father died after that daughter's marriage, leaving a son by a second wife, that son will inherit all the landed property that belonged to the father, to the exclusion of the said daughter and her issue.

Grand-daughter, when entitled to her mother's share, and when not.

If a *Peena* married daughter died before her father, leaving issue, a daughter for instance, and if that daughter remained under the care of her maternal grand-father,

* But, (see Saw. Dig. p. 14 § 4. Mar Judg. p. 343 § 93) if the wife and children were obliged to quit the house from the means of subsistence failing, it would not then prejudice their right.

she will, in the event of the grand-father dying intestate, be entitled to that share of his estate to which her mother if she were living, would be entitled.* But if the grand-father gave away in *Deega* marriage his said *Beena* daughter's daughter, in that case, that grand-daughter will be debarred from inheriting any share of the grand-father's lands, if the grand-father left other issue, a son, or another daughter married in *Beena*.

Daughter's daughter married out in *Deega*, when does not forfeit her right.

If the said daughter's daughter had remained in her maternal grand-father's house until his death, she will not afterwards forfeit her share of the inheritance by being subsequently given away in *Deega* by her maternal uncle, or by her uncle's son.

Daughter of a deceased brother or a *Beena* sister, disposed of in *Deega*.

"The only child," says Sawers,† "being a daughter, "of a deceased brother, or of a sister who had had a "*Beena* husband, is entitled to her parents' share of the "family estate, nor does she lose her right to such "share by being married in *Deega*, unless she shall "have been given away in *Deega* marriage by her "grand-father or grand-mother; in that case, she would "lose her right of inheritance. But, her being so given "away by her uncles, would not deprive her of her "right of inheritance in her grand-father's or grand-"mother's estate, provided she shall duly perform the "public service or *Rajeharia*."

Daughter, the only child of a man's first, second, or third marriage.

In some cases, "the daughter, being the only child "of a man's first, or second, or third marriage, will have "equal rights with her brothers of the half blood in "her father's estate, even if given out in *Deega*,"‡ provided that daughter has returned to her father's house previous to his demise, and remained there until his death, or if the father had on his death bed declared his will, that his daughter who remained settled in *Deega*, should, notwithstanding such settlement, share his estate

* Saw. Dig. p. 4 § 1. Mar. Judg. p. 332 § 64.
† Saw. Dig. p. 4 § 2. Mar. Judg. p 332 § 65.
‡ Saw. Dig. p. 3 § 3. Mar. Judg. p. 331 § 59.

with her paternal half brothers and half sisters. But if the *Deega* married daughter aforesaid neglected to prefer her claim in proper time, and if her paternal half brother and sister retained possession of their father's estate uninterruptedly for many years, the claim of that *Deega* daughter will eventually be prescribed.

SECTION 13.

Rights of Children of joint fathers to their Parents' Estate.

Beena daughter's right not forfeited by her subsequent *Deega* marriage.

In case two brothers had by a joint wife, a son and a daughter, and if they made a special allotment of land to the daughter on her being married in *Beena*,—if after the death of one of her fathers, the daughter was divorced from her *Beena* husband, and if her surviving father then gave her in *Deega* to another husband; that second marriage and consequent removal from her parent's house will not annul her right to the portion of land which had been especially assigned to her at the first marriage; and although she had remained out of possession of that portion for a number of years, subsequent to her second marriage, she will not have thereby forfeited her share to the brother, nor to her surviving father.

Two brothers, by a joint wife two sons, the surviving brother afterwards a daughter.

Two brothers had by a joint wife two sons: one of the brothers then died, and the surviving brother had by the same wife a daughter, which daughter was married in *Beena;* the two sons inherited the whole of the first deceased father's share of the joint estate, and two-thirds of their other father's estate, the remaining one-third whereof devolved to the daughter.

Two brothers, by a joint wife three sons, the surviving brother afterwards another son.

Two brothers had by a joint wife three sons: one of the brothers then departed this life, and the surviving brother had another son, subsequently by the same wife: the first deceased brother's share of the estate was divided equally amongst the three sons first mentioned, and the share that belonged to the other brother, was divided into four equal portions amongst all the four sons.

Two brothers possessing their lands in common, having a son by a joint wife.

If two brothers having a joint wife, possessed their lands in *common*, if they had a son by the said wife, and one of the brothers then died intestate, his interest in the estate will devolve to the son, and if the son then departed this life, leaving issue, a daughter for instance, that daughter will succeed to the deceased's share of the said estate, in preference to the deceased's surviving father.*

Son, of two brothers who possessed their lands in common, dying intestate and without issue.

But, if the son died without issue and intestate, his interests in the estate which his two fathers possessed in common, will remain to his surviving father, and will not devolve to his mother, and if the surviving father had issue by another wife, the whole estate will eventually pass to his child or children by that other wife, the above mentioned deceased son's mother will not be entitled to any portion of the lands, but she will have a claim for maintenance therefrom.

Full *Deega* sister preferred to the son of a joint marriage.

A man who was the son of two brothers, having survived one of his fathers and then died without issue and intestate, leaving a full sister, the landed property which he had inherited from his deceased father will devolve to his full sister, although she were married in *Deega*, in preference to his surviving father, and in preference to the issue of the surviving father by another wife.

Section 14.

Children of different beds by joint fathers.

Three brothers having a son by their first marriage, and three children by their second.

Three brothers jointly married one wife and had by her a son, the wife then died, and the three brothers afterwards married a second wife and had by her three sons and a daughter; after the death of the three fathers, their lands devolved in equal shares to the five children.

One of three joint brothers taking another wife and getting children by her also.

Three brothers were jointly married to one wife and had by her a daughter. One of the brothers afterwards married another wife and had a daughter by her. The last mentioned brother's share of the estate was

* Saw. Dig. p. 5 § 1. Mar. Judg. p. 334 § 69.

divided equally between the two daughters, and the shares of the other two brothers devolved to the first mentioned daughter solely.

Section 15.

Jaat-ke Urume.

*Inheritance by virtue of Paternity.**

During the life of a child, the father is not entitled to his estate.

The *Jaateke Urume* can be of no avail to the father, so long as his child continues in life, therefore the child's estate, derived from the mother or from the maternal grand-father, or from any other maternal or paternal relation, or from an adoptive parent, or by purchase, is not liable to seizure on account of any debt or penalty which the father incurred.

A man dying leaving a father, wife, and children.

"If a man died leaving a father," says Sawers,† "and also a wife and children, his own acquired lands "and goods go to the latter. Lands obtained from his "father, even by regular gift *olah* to the father, because "any gift of land, even by regular deed, is resumable by "the giver at any time before his death, and grantable "to another."

Father, not entitled to his child's property acquired through his mother.

If the deceased left landed property which he had inherited from his mother, that property will devolve to his child or children, and not to his father; and property which the deceased had received from his adoptive parents, will also devolve to his child or children, to the exclusion of the father.

Father, entitled to his infant child's property derived thro' the mother.

The father is entitled to inherit the lands and other property, which his deceased infant child had inherited from the mother, in preference to the relations of the person from whom that property had been derived to the said child's mother.—Thus, if a child died intestate, and his or her property was inherited by the mother, if the mother then contracted a *Beena* marriage in the

* Saw. Dig. p. 8 § 1. Ib. p. 15 § 2. Mar. Judg p. 338 § 79. Ib. p. 347. § 105.

† Though omitted in Mr. Campbell's edition of *Sawers' Digest.*

house of the deceased, child's father, from whom that property had been inherited by the said child, if the mother then departed this life, leaving a child born to the second husband and if this child afterwards died under his or her father's care, in that case, the father will inherit that property by virtue of *Jaateke Urume*, in preference to the sisters or other relations of the first proprietor, the father of the first mentioned child. It being premised that the second deceased child left not an uterine brother or sister, and that the parents of the child had not been divorced from each other.

Father, not entitled to the property of a *Beena* child deserted by him.

If the child was the issue of a *Beena* marriage, and if after the death of that child's mother, the father had deserted the child and left it entirely to the care of the mother's family, in that case, the father will have no right to the reversion of any property that belonged to the child, that property will therefore at the child's death devolve to his or her nearest of kin on the mother's side, in preference to the father and in preference to the said child's paternal half brother and half sister, it being premised that the father was not also an *Ewessa* cousin of the said child's mother.

Father, when entitled to the estate of his *Beena* child.

But if the child, albeit issue of a *Beena* connexion, had remained under the father's care after the mother's demise, in that case, the father will be entitled to a reversion of the child's estate in preference to any child's distant maternal relations, (mother's grand-uncle's son, for instance) and that whether the father was or was not also an *Ewessa* cousin of the said child's mother.

Father, not entitled to the joint estate of his son and his wife.

If the deceased son and his wife were joint proprietors of an estate, as if for instance they had jointly received a gift of land from their *adoptive* parent, in that case the son's widow will be entitled to the reversion of that estate entirely, to the exclusion of the deceased's father, and other relations, it being premised that the deceased left no issue.

CHAPTER V.

WADAA HIMI.

SECTION 1.

DIFFERENT SPECIES OF WADAA HIMI RIGHT.

Mau Urume.

1. The *Wadaa Himi* right comprises, first, *Mau Urume* or Maternal inheritance, the right of succession to the Mother's estate, or to the estate of any other relation in right of one's Mother.

Daroo Urume.

2. And second, *Daroo Urume*, inheritance by virtue of maternity, the right whereby the mother inherits the estate of her deceased child.

SECTION 2.

MAU URUME.

Maternal Inheritance.

Maternal right when becomes of avail.

The *Mau Urume* right takes effect subsequent to the mother's demise, and not previously. Therefore in the mother's life time none of her children can have a right to any portion of her estate, her children can neither insist on a division or partition of that estate, nor can they prohibit the mother from disposing thereof according to her own will.

Children's sale of their mother's estate without her consent.

In the mother's life time none of her children can have a right to transfer any portion of her estate, against her consent, on the assumption of a prospective right to such portion, therefore any transfer of any portion of the mother's estate, by sale or by gift, by bequest or by *Pooja* offering, executed by a son, or a daughter, without the full consent and concurrence of the mother, will be illegal and of no effect.

Mother's estate not subject to confiscation.

The mother's estate is not liable, neither in whole nor in part to confiscation, on account of her son's treason against the state.

SECTION 3.

Beena married Children's right to their Mother's Estate.

Beena daughter preferred to son.

A woman who was married in *Beena* in her *mother's* house, dying intestate, leaving daughters married and settled in *Beena* on her estate; and leaving also sons who were married and settled on their father's estate, and which sons had inherited their father's landed property to the exclusion of the daughters, the whole of the said woman's landed property will devolve to her daughters to the exclusion of the sons.

Beena daughter preferred to *Deega* daughter.

A woman who was married and settled in *Beena* in her *father's* house, dying intestate, leaving a daughter married in *Beena* in the same house and a daughter married out in *Deega*, the landed property which was derived from her (the deceased's) father will devolve wholly to her *Beena* married daughter, to the exclusion of her *Deega* married daughter.

Children's right to their maternal grandfather's estate.

If a woman who was married in *Beena* in her father's house, died before her father, her children will "have a claim on their maternal grand-father's estate, equal to what had been their mother's interest in the same."* But if the deceased daughter left a daughter, and if the deceased's father did dispose of that grand-daughter in a *Deega* marriage, then the grand-daughter so disposed of, will have no right to a portion of her maternal grandfather's landed property, but will have a claim thereon for maintenance only, in the event of her becoming destitute. It being premised that her said grand-father left other issue, either a son, or a *Beena* married daughter, or an unmarried daughter.

Grand-daughter, when forfeits her right.

But if the said grand-daughter had not been disposed of in *Deega* by her maternal grand-father, she will then have a permanent right to that share of her grand-father's estate, which her mother, were she living, should be entitled to, and the grand-daughter will not forfeit that right to her co-heirs by subsequently contracting a *Deega* marriage and quitting her deceased grand-father's house.

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* Saw. Dig. p. 3 § 1. Mar. Judg. p. 328 § 56.

The son, when forfeits his right.

If the mother left a son, born to a *Beena* husband, and a daughter born to another *Beena* husband, if that daughter was married in *Beena* in the mother's house, and inherited not a share of her father's landed property, but succeeded to the possession of her mother's lands; if the son quitted the mother's house and went and settled on the estate which he inherited from his father, and preferred not a claim to a share of his mother's lands until the expiry of the period of prescription, in that case, the daughter will have acquired a prescriptive title the whole of the mother's property, and the son's right to a share thereof will be prescribed.

Beena daughter when forfeits her right.

If a *Deega* widow died intestate, leaving a son and two daughters, born to the same father, if one of the daughters was settled in *Beena* in the father's house and had succeeded to the possession of the whole of the father's landed property in right of a bequest by the father, and if the other daughter had been married away before the mother's death and remained settled in *Deega*, in that case the son will be entitled to inherit the whole of the mother's lands, to the exclusion of both the daughters.

Section 4.

Deega married Children's right to their Mother's Estate.

A son and a *Deega* daughter.

If the mother left a daughter married out in *Deega*, and a son, the latter will inherit the lands derived from his mother's *paternal* ancestors, to the exclusion of his *Deega* married sister.

Two sons and a *Deega* daughter.

If the mother left a daughter married out in *Deega*, a son who had quitted her house and was settled elsewhere in *Beena*, and another son who remained at home, the deceased's *paternal parveny* lands will devolve in equal shares to the two sons, to the exclusion of the daughter. The son who had settled away in *Beena* will not have thereby forfeited his right of inheritance and if he died before his mother, leaving issue, a daughter for instance, that daughter will inherit that portion of her paternal grand-mother's estate, which her father, were he living, should be entitled to.

Mother allotting certain portions of her estate to her *Deega* daughter.

If however the mother had allotted a portion of her estate to the *Deega* married daughter, and if the daughter has possession thereof until her mother's death, that portion shall then remain to the said daughter absolutely and will eventually devolve to her issue and will not revert to her brother.

Deega daughter's right when prescribed.

But if after the mother's demise, her son assumed possession of all her lands and possessed the same uninterruptedly for many years, and if the daughter, settled in *Deega*, neglected to claim and take possession of her portion and thus suffered the period of prescription to lapse, her right to that portion will eventually be prescribed.

Deega daughter returning and rendering assistance to her mother.

And if the *Deega* married daughter returned from her *Deega* village, and dwelt again in her mother's house, and rendered assistance to her mother until her (the mother's) death, and if the said daughter did either before or after her mother's death contract a *Beena* marriage in her mother's house, in such case the said daughter will have permanent right to a share of the mother's estate, which share will be equal to her brother's share thereof.

Daughter's *Beena* marriage when considered *Deega*.

If the father's house and landed estate are distant or distinct from the mother's house and estate, then the marriage of a daughter in *Beena* in the *mother's* house is considered a *Deega* marriage, in respect of the *father's* house and estate, and *vice versa*, but although in some cases, by being married off in *Deega*, away from the houses of *both* the parents, a daughter may lose her right to inherit a share of her mother's landed estate, yet, if she were married and settled in *Beena* in her father's house, she will not lose that right, and accordingly, in the event of the parent's dying intestate, their lands will devolve in equal shares to their son or sons, and to the said daughter.*

After marriage of a daughter who was a minor.

If the mother left two daughters, minors, her lands will devolve to them in equal shares, and although one of the daughters be married away in *Deega*, afterwards, she will yet remain entitled to a moiety of the mother's estate, and will not forfeit the same to her sister who remained unmarried, and the unmarried sister will not

* Saw. Dig. p. 12 § 1.

have it in her power to dispose of any portion of that estate, to the prejudice of the other sister, by gift, bequest, or otherwise, it being premised that the sisters were issue of the same father.

Deega daughters, issue of a *Deega* mother.

A woman who was married and settled in *Deega*, having died intestate, leaving sons and daughters, her landed property will devolve to all her children in equal shares, although the daughters were married off in *Deega*, and whether the sons did or did not inherit landed property from the father, it being premised that all the said children were issue of the deceased's *Deega* marriage.

Grand-children, brought up by grand-mother.

If one of the said daughters had been married out in *Deega* and died before her mother, leaving a child, and if that child were brought up under the care of the grand-mother, in that case the said grand-child will be entitled to inherit that portion of the maternal grand-mother's estate, which the child's mother, were she living, should be entitled to.

Daughter married in *Deega* before mother's death.

If the mother died intestate, leaving two daughters, born to the same father; if one of the daughters married in *Beena* in the father's house, and the other daughter remained unmarried, or even if she was married out in *Deega*, before the mother's death, the mother's landed property will devolve in equal shares to the two daughters.

Mother's estate specially allotted to the daughter at her *Deega* marriage.

A daughter who was married out of her father's house in *Deega*, but whose settlement was in *Beena* on the mother's estate, will have an indefeasible right to her mother's estate if the same had been specially allotted to her at her marriage, and at her death that estate will devolve to her issue, to the exclusion of her *full* brothers and full sisters.

Two daughters in *Deega*, and son's children.

A woman was at first married in *Deega* and had issue a son and a daughter. She was afterwards married in *Beena*, in the house of her mother and bore to her *Beena* husband, two daughters, all the daughters were disposed of in *Deega* by the mother. The son died

before the mother leaving sons and a daughter, the mother having died intestate her landed property was divided in four equal portions, one portion to each of the three daughters and the remaining portion to the son's children.

Deega daughter of a second marriage excluded.

A woman was first married in *Deega* and had issue a son, she was subsequently married in *Beena* and bore to her second husband a son and a daughter, the daughter was disposed of in *Deega* and the mother died afterwards intestate, her landed property devolved in equal shares to the two sons, to the exclusion of the daughter.

A son and a granddaughter, sharing alike.

If the mother had two sons by different husbands, if one of the sons had died before the mother, leaving issue a daughter for instance, in the event of the mother dying intestate, her landed property will devolve in equal shares to the surviving son and to the deceased son's daughter.

Mother's *moveable* property how distributed.

The mother having died intestate, leaving issue a son to one husband, and a son and a daughter to another husband, the deceased's moveable property will be distributed in equal shares amongst the three children, to the exclusion of her brothers and sisters.

Section 5.

Rights of Illegitimate Children to their Mother's Estate.

A son, and a daughter married out in *Deega*.

If a woman died intestate, leaving issue a son and a daughter, born out of wedlock, and if neither of the children have an acknowledged father, the whole of the mother's estate will devolve in equal shares to the son and the daughter, and that, even if the daughter were married and settled in *Deega*.*

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* But see, Saw. Dig. p. 3 § 5. Mar. Judg. p. 331 § 61.

SECTION 6.

Children's right to their Mother's Estate limited.

Mother's lands recovered by son at his own expense after her death.

If the mother at the period of her demise happened to be out of possession of the lands which she was entitled to, and if one of her sons did afterwards recover possession thereof by suit at Law, or by any other means, that son will not thereby have acquired an exclusive title to the said lands, but he will be entitled to retain possession thereof until his co-heirs shall have paid him due proportions of his expenses, whereupon he must relinquish to them their proper shares of the said lands, provided the co-heirs prefer the claims before the expiry of the period of prescription.

SECTION 7.

Son becoming a Priest.

Priest, when forfeits his right to the mother's estate.

If the mother died intestate, leaving two sons, one of them a layman, and the other a Priest, the former will succeed to the possession of the mother's landed property, and the right of the sacerdotal son to a share thereof will remain in abeyance.

Priest, when does not forfeit his right.

If the mother died intestate, leaving an only child, a son, her entire estate, including her *parveny* or ancestral lands, will devolve to that son, although he were in Priests' orders, to the exclusion of the brother and sisters and their issue.

SECTION 8.

DAROO URUME.

Inheritance by virtue of Maternity

Mother, not entitled to her child's estate during his or her life.

During the life time of the child, the *Daroo Urume* right can be of no avail to the mother, and therefore she will have no authority to dispose of any part of the child's landed estate by sale, by gift, or otherwise. She will have no authority even to alienate, by a final sale, any portion of land which the child's father had mortgaged.

Surviving joint father preferred to mother.

If the deceased child had two fathers, and the two joint fathers were full brothers and had possessed their lands in common, in that case, the share of the said estate which the child was entitled to in right of his or her deceased father will remain to the surviving father, in preference to the mother.

Mother, heiress to her child who had survived his or her father.

The mother is sole heiress to her child who had survived his or her father, and died without issue, and left neither *full* brother nor *full* sister—accordingly property of every description, not excepting even the *parveny* lands which had derived to the deceased child from his or her father and paternal grand-father, will in the event of the child dying intestate devolve to the mother, even to the exclusion of the said child's paternal grandmother, paternal uncle, and paternal aunt, and their issue. And that, even if the said child's mother had been divorced from her husband, the father of that child, and even if she had contracted another marriage in *Deega* after that divorce, either before or after the death of the said child's father.*

Mother, when preferred to legitimate issue.

If a son died leaving legitimate issue, that son's mother will then have no right to dispose of any part of his estate to the prejudice of his child or children, unless indeed the said son had expressly disinherited his child or children, and executed a deed of bequest in favour of his mother, giving her absolute title to his estate.

Full brother or sister preferred to mother.

But if the deceased child left a full brother or a sister, that brother or sister will be entitled to the deceased share of his or her paternal *parveny* land, in preference to the mother.

Full brother and an unmarried sister preferred to mother.

If a man died before his mother without issue and intestate, leaving also a full brother and an unmarried sister, or a sister who was married and settled in *Beena* in the house of their father, then the deceased's share of landed property which he had inherited from his father

* Saw. Dig. p. 10. Mar. Judg. p. 340 § 85.

will remain to the surviving brother and the sister, and will not devolve to the mother. If the deceased left a widow, the whole of his *moveable* property will devolve to the widow by *Lat Himi* right, in preference to the mother, brother, and sister. And the widow will not forfeit her right to such property by subsequently contracting another marriage in *Deega*. Such marriage will have the effect of depriving her only of the life interest she had in her deceased husband's landed estate.

Full brother and full sister preferred to mother.

If a man died before his mother, leaving a full brother and a full sister, the deceased's share of his father's landed estate will devolve to the brother and sister, jointly, in preference to their mother, it being premised that the sister was not married out and settled in *Deega*. But if the sister had been disposed of in *Deega* before the demise of her father, or if after her father's death, she was given away in *Deega* either by her mother or by her brothers, in that case, the surviving brother will be entitled to the whole of the deceased brother's share of the paternal *parveny* lands, to the exclusion of the *Deega* married sister and the mother. And the mother will not after that have any authority to give to the said daughter any portion of the said lands, without the consent and concurrence of her surviving son.

Two *Deega* married full sisters preferred to mother.

If the man died without issue and intestate, leaving two full sisters married out in *Deega*, and their mother, the deceased's *parveny* landed property will devolve to the two sisters in shares. The mother will have only a life interest in that estate, and will have no permanent right to any specific share thereof, and therefore she will have no authority to dispose of any portion of that estate to the prejudice of either the daughters. She will have no right to assign or transfer a portion thereof even to her own child being the issue of another husband's uterine half brother or half sister to the deceased.

Estate bequeathed to wife and children jointly.

But if the original proprietor had bequeathed his lands to his wife and children jointly, then indeed the said proprietor's widow will have a permanent interest in

the said property, so that in the event of one of the children, a son for instance, dying subsequently, without issue and intestate, the mother may appropriate to herself a specific portion of the lands and may dispose of the same as she pleases without the consent and concurrence of any of the surviving children, and may transfer that portion even to a stranger.

Wife appointed sole administratrix.

Or if the original proprietor had appointed his wife, sole administratrix of his estate, and authorized her to apportion his lands, after his death, amongst their children, according to his discretion,—in that case, the portion of land which the said proprietor's widow allotted to any one of the children, will revert to the widow, absolutely, in the event of that child dying before the mother without issue and intestate, in preference to the deceased child's brothers and sisters and their issue, or their adopted children.

Mother heiress to the estate derived from her child's adoptive parent.

If a man died without issue and intestate that portion of his landed property which had belonged to him independently of his father, for instance, lands which devolved to him from his adoptive father, and lands which he had received as a gift from his maternal uncle, will devolve absolutely to his mother in preference to his brother and sister, subject nevertheless to his widow's claims thereon.*

Wife when forfeits her *Daroo Urume* right, thro' her still-born child.

If two men who were not full brothers, were jointly married to one wife, if one of the said husbands died intestate, and the wife was at the time *enceinte*, and was subsequently delivered of a still-born child, or if the child was born alive but died soon after, the deceased husband's paternal *parveny* lands will remain entirely to his mother, the wife will not be entitled thereto in right of *Daroo Urume*, it being premised that her other husband survived the birth of the said child.

Mother preferred to child's guardian.

The mother is entitled to inherit all the landed property which her deceased child had inherited from his or her father (if that child left not a full brother nor a full sister) in preference to that child's guardian, albeit the guardian was appointed such by the child's father himself.

* Saw. Dig. p. 16 § 3, 4. Mar. Judg. p. 350 § 111.

Guardian, when preferred to deceased's relations.

If the guardian was a paternal uncle of the deceased child, and held the lands in trust for that child, if the child's mother having survived the child, died intestate, in that case, the said guardian and trustee will succeed to the child's estate, to the exclusion of that child's other paternal uncles, it being premised that the said child's mother not only died intestate, but had not succeeded to the actual possession of the estate and left neither brother, nor sister, nor any other very near relations.

Mother's relations, when succeed.

But although the mother died intestate, if she left other issue (uterine half brother or uterine half sister to the deceased child,) or if she, the mother, left a brother or a sister or other very near relation, and if she had succeeded to the actual possession of her deceased child's estate and retained the same until her demise, in that case her next of kin will be entitled to the reversion of that estate, in preference to the deceased child's paternal uncle and guardian and other relations of the father's side.

Mother's children of another bed succeed after her death.

If the mother, after coming into possession of her deceased child's estate by the right of *Daroo Urume*, departed this life intestate, that will devolve of her child or children born to another husband, or if she left no issue, it will devolve to her brother or to her other next of kin, in preference to her deceased child's paternal aunt, paternal grand-uncle's son, and other paternal relations, and even in preference to her deceased child's paternal half sister.*

Section 9.

Mother's right to her Children's Acquired property.

Mother preferred to daughter's full sisters and their issue.

The mother is heiress to the *acquired* property of all kinds, left by her child who died unmarried and without issue and intestate, and such property will be entirely at her disposal. The mother is entitled to all the moveable property left by her daughter who died a widow, childless, and intestate, to the exclusion of the deceased daughter's full sisters and their issue.

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* Saw. Dig. p. 8 § 4. Mar. Judg. p 339 § 82.

Mother being dead, father succeeds.

If the mother had departed this life, previous to the demise of her child, then the father will be entitled to the reversion of the deceased child's acquired property, if circumstances did not disqualify the father from coming to the succession.

Order for succession after Mother's death.

'If the mother, *having inherited* the property, died 'intestate, that property will go to the deceased child's 'brothers and sisters of the whole blood, equally; and 'failing them (and their issue) to the brothers and sis- 'ters of the half blood uterine; failing them (and their 'issue) to brothers and sisters of the half blood by the 'father's side; failing them (and their issue) to the ma- 'ternal uncle; failing him, to the maternal aunt; fail- 'ing the maternal aunt, to the maternal grand-mother; 'and failing her, to the maternal grand-father; failing 'him, to the paternal uncle; and failing him, to the 'paternal aunt; failing her, to the paternal grand- 'father; and failing him, to the paternal grand-mother; 'failing the paternal grand-mother, to the maternal 'uncle's sons and daughters or grand-sons and grand- 'daughters; and failing them, to the maternal aunt's 'sons and daughters or grand-sons and grand-daughters; 'failing them, to the paternal uncle's sons and daugh- 'ters or grand-sons and grand-daughters; and failing 'them, to the paternal aunts sons and daughters or 'grand-sons and grand-daughters.'

CHAPTER VI.

LAT HIMI RIGHT.

SECTION 1.

DIFFERENT KINDS OF LAT HIMI RIGHT.

Right of acquest how acquired.

[This right, namely, *Lat himi,* or right of acquest, to property, is acquired by Gift or Bequest, by Purchase, by Prescription, or otherwise.]

SECTION 2.

The nature of Bequests.

Gifts may consist of what, how made &c.

[According to the Kandyan Law, Gifts or Bequests may consist of moveable or immoveable property—may be made orally or in writing (conditionally or unconditionally)—and are revocable or irrevocable.]

SECTION 3.

Revocable Deeds.

Deeds of gift, when and by whom revocable.

"All deeds or gifts," says Sawers,* "excepting those "made to priests and temples whether *conditional* or "*unconditional,* are revocable by the Donor in his life "time,† but should the acceptance of the gift involve the "Donee in any expense, he the Donee must be indem- "nified, on the gift being revoked, to the full amount of "what the acceptance of the gift may have cost him, "either directly or by consequence, but this rule ap- "plies only to gifts made by laymen. Moreover this rule "is to be understood to apply only to gifts of land, or of "the bulk of the Donor's fortune, of goods and effects; "as presents if given out of respect or from affection at "the moment, (or in thankful acknowledgment of a be- "nefit or service rendered to the Donor) are not revoc- "able. And in respect to the claims of indemnification

* But omitted in Mr. Campbell's edition of *Sawers' Digest.*

† Mar. Judg. p. 320 § 46. D'Oyl. Not. p. 6. § 3.

"by the Donee, on the gift being revoked, this is only "to be understood to apply to the gifts made to stran- "gers or other persons, not heirs by Law to the Donor; "for gifts to children, if revoked, give such a Donee no "claim to compensation; but with this exception—if a "parent having several children makes a donation of a "principal part of his lands or effects to one of his chil- "dren, those lands or effects being burthened at the "time with debts, as by mortgage or otherwise, and the "Donee paying the debts or dismortgaging the property "that had been so given; should the parents after- "wards revoke the gift and bequeath his lands and "effects equally among his children or legatees; in this "case, the former Donee, who paid the debts or dis- "mortgaged the property of the Donor, must be indem- "nified by the other heirs or legatees in proportion to "the alteration made by the parent in the former gift, "by the subsequent disposal of the property." It be- ing however premised, that the former Donee had not already derived so much profit from the property, as was adequate to indemnify him for his expences.*

"With respect to bequests, and testamentary dispo- "sals, whether documentary or verbal, the right to re- "voke or alter them remains absolutely with the devisor, "so long as he retains his life and reason."

Right to revoke on whom.

Section 4.

Modes of Revocation.

A revokable deed of gift becomes null and void un- der various circumstances.

1. If the Donor did by a subsequent Deed revoke the former Deed.

By a subsequent Deed.

2. If the Donee failed to fulfil the condition of the gift, whether such failure resulted from his the Donee's poverty, or from his wilful neglect, or in consequence of

By Donee's failing to fulfil the conditi- ons.

* Morg. Dig. p. 7 § 37.

his having been deprived of his liberty, or having been removed to a distant place by authority.

By Donee's neglect or ill usage.

3. If because of neglect or ill usage on the part of the Donee, the Donor resumed possession of the land specified in the Deed, and refused to receive assistance from the said Donee any longer.

By Donor quitting the premises.

4. Or if having cause to be dissatisfied with the treatment which he received from the Donee, he the Donor did of his own accord quit the said Donee's premises and did afterwards take up quarters elsewhere and receive assistance and support until his death from some other person or persons, albeit the said Donee held possession of the lands in question in the mean time.*

In any such case the Deed of gift will become perfectly null and void.

A subsequent Deed for *all*, revokes a former for a *portion* of lands.

A Deed of Gift or of Bequest in favour of the donor's child for *all* his lands and chattels, will have the effect of annulling a prior Deed of gift that was in favour of the Donor's adopted child for a *portion* of that property, although it be not set forth in that subsequent deed that the donor revoked the former one.

One Deed revoking another.

If the proprietor executed a Deed of Gift and thereby made over his lands to his heir at Law (a nephew for instance) stipulating that the Donee shall assist and support him, the Donor, during the remainder of his life—if then the Donee assumed possession of the lands, but proved ungrateful, and neglected to assist the Donor, and the latter therefore sought the protection of some other person and received assistance and support from that person, and did in consideration thereof, bequeath the said lands in proper form, to that person who had so befriended him—that bequest will supersede the first mentioned gift, and the heir at Law aforesaid shall not be entitled to remuneration, for any improvements he

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* Mar. Judg. p. 323 § 47.

may have effected on the lands, during the period that he was in possession thereof.

A Gift made for mere show.

In some cases, a Gift of moveable property is revocable—for instance, if on the occasion of a wedding, the bride's parents bestow jewels on the bridegroom in presence of the assembled guests, and have it believed that they thus made a bona fide present of those jewels—but if the fact was that the jewels did not belong to the parents, but that they had borrowed them from others and made such ostentatious disposal thereof, merely to give eclat to the ceremony—in such case the bridegroom will not have a right to retain the jewels but must restore them when demanded.

Donor insane.

A Deed of Gift or Bequest will not be valid if at the time of the delivery thereof, the Donor was insane, or if by reason of the approach of death he was not perfectly sensible. But if the Donor was of sound mind at the time the Deed was executed the same will be legal and valid although the Donor had been of insane mind at any time previous to that transaction.

Section 5.

Disposition of Property.

Who may dispose of property and how.

The proprietor or rightful owner may dispose of his property as he pleases, by sale, gift, bequest or otherwise, and such disposal will be deemed valid and legal, although at the date thereof the property was not actually in his custody or possession.*

Who may not, and when.

But an heir apparent cannot transfer any property in the life time of the owner or proprietor thereof presuming by anticipation, on the ground of his right to inherit such property, therefore in case a son had sold or otherwise disposed of any property belonging to his father, without the consent and against the will of

* Saw. Dig. p. 1 § 2. Mar. Judg. p. 307 § 37, 38, 46, 47. D'Oyl. Not. p. 6 § 4.

his father, and if the father made a valid bequest or transfer of that property to any other person, the latter will be justly entitled to recover the property from the person who had purchased or obtained the same from the proprietor's son.

Age at which a minor may bequeath his property.

A minor, although he were but ten years old, is competent to execute a Deed of Bequest; provided he was of sound mind at the time he executed it and perfectly understood the nature of the transaction, and such deed will be valid, were it even against his next of kin or heir at Law and in favour of a stranger, it being also premised that the Donor had good reasons for so disposing of his property.*

Proprietor's right to dispose of his property.

The proprietor has as above stated the power of giving or bequeathing his landed property or any part thereof as well as his goods to any person or persons he may give or bequeath his estate to one of his children to the exclusion of his other children, he may give his estate to some kinsman distantly related, or to his illegitimate child, or even to a stranger to the exclusion of his own father or his legitimate child or grand-child. But if the gift or bequest (of landed property) was of the nature of a dedication or endowment in favour of some temple, or in favour of the Buddhist Priesthood, the same will be invalid unless the dedication had been sanctioned by the king or by some other competent authority.

(See Proclamation of September 18, 1819, and Ordinance No. 2 of 1840.)†

Joint property of husband and wife.

Property acquired by purchase or otherwise by the husband and wife, jointly cannot be wholly disposed of by either of them without the consent of the other by sale, gift, or bequest to a third party, therefore in the event of the demise of the husband, or the wife, half of that property will remain to the survivor, notwithstand-

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* Saw. Dig. p. 28 § 1. Mar. Judg. p. 366 § 162. Morg. Dig. p. 6 § 32.

† Ordinance No. 2 of 1840 is disallowed.

ing any bequest, gift, or sale, which the deceased may have made thereof, without the concurrence of the other party.

Section 6.

Irrevocable Deeds.

The nature of irrevocable deeds.

But all conditional and unconditional gifts are not revocable—some gifts are irrevocable—for instance, it the proprietor executed a deed and thereby made over his lands to another person, stipulating that the Donee shall pay off the Donor's debts and also render assistance and support to the Donor during the remainder of his, the Donor's life—and if the said deed contain also a clause debarring the Donor from revoking that gift, and from resuming the lands and from making any other disposal thereof—if the Don e did discharge the said debts, he will have thereby acquired the right of a purchaser to the lands in question, and consequently that deed will be irrevocable—but the Donee, although he acquired the title of purchaser will yet continue under the obligation of rendering assistance and support to the former proprietor.

Gifts to Priests and Temples.

"In respect to gifts made to priests and temples," says Sawers,* "or for any religious purpose, if these "were made by deed, or by repeating three times the "words 'I give' (*demee, dinme*)† or by actual delivery "into the possession of the Donee—such gifts are abso-"lutely irrevocable."

A Deed to a public functionary.

If the proprietor did by a regularly executed deed, transfer any landed property to a public functionary in lieu of a fee that was justly due—or to any person whomsoever, in recompense for favour and assistance already received—and if that deed expressly debarred the Donor and his heirs from reclaiming the said property, in such case the gift or transfer shall be irrevoca-

* But omitted in Mr. Campbell's edition of *Sawers' Digest.*

† Literally—"I am giving," "I have given."

ble, also—if a married man having resolved to contract a second marriage, thought it proper to provide for the maintenance of his wife and child or adopted child, and did accordingly previous to the second marriage execute a deed, transferring thereby in portion of his lands to the said wife and child—such deed shall be irrevocable.

Section 7.

Validity of Deeds.

Deed valid without Donee's possession.

A deed of gift will be valid and of avail to the Donee, although he had not entered into possession of the property prior to the Donor's demise—thus, if the proprietor executed a deed which purported that he gave a portion of his landed estate to the Donee on condition of being assisted and supported during the remainder of his life, and if the Donee (whether he were a relation or a stranger) did then receive the Donor into his house and did afford him assistance and support until his death. In such case he the Donee will have acquired a perfect right to that portion of land and his claims thereto will not be frustrated although the entire estate has remained in possession of the deceased's heirs for some years after his demise.

Donee fulfilling the conditions and entering into possession.

A deed of gift, perfected by the Donee having fulfilled the conditions thereof, and by his having entered into possession of the property therein specified, cannot be revoked by any oral declaration of the Donor—thus for instance if the proprietor executed a deed and thereby made over a part of his lands in consideration of the assistance he had already received and of the assistance he should continue to receive, from the Donee—and if the Donee did render adequate assistance to the Donor, considering the value of the gift, in that case a mere verbal declaration made by the Donor on his death bed; that it was his will that that gift should be revoked and that all his lands should devolve to his child, will not have the effect of annulling that deed of gift.

A difference in the name when does not effect the Deed.

A Deed of Gift or Bequest, or transfer of any other kind, if properly and regularly executed, will be valid, although the parties thereto be therein mentioned not by their proper names, but by some other designations or appellations whereby they were either commonly known or whereby they might be identified. Thus, although the vendor or donor, and the donor or the purchaser, be not mentioned in the Deed by their *Bat kawapoo nam* or rice eaten names, by their *Gedera nam* or house names or family names, nor by their ancestral or titular appellation *Patte bendi nam*, but by some other intelligible designations whereby the donor and the donee might be identified, that deed will be perfectly available in favor of the donee. And even if the property transferred be land, the deed of transfer will yet be valid, although the ancient title deeds were not delivered therewith.

Delivery of the Deed not necessary.

A Deed of Gift or of Bequest, for landed property, will be valid, although the Deed was not delivered to the party in whose favour it was executed, but was entrusted to the care and custody of some other person, provided that the donee was in the life time of the donor put in possession of the property, or that he or she performed the conditions stipulated in that Deed.

When may a Deed be signed.

A Deed of Gift or of Bequest may be signed by the donor or testator either before or after the same be written out, but in case the donor and the witnesses had set their hands to a blank olah or other leaf and the document was written out subsequently, in the absence of the said witnesses, such document will not be admitted as a valid Deed and will be of no avail in favor of the donee.

Ceremony of licking the Donee's hand.

In former times a gift of even landed property was in some cases deemed valid, although the donor had not executed a proper Deed in favor of the donee, but had only in presence of several witnesses declared the gift and at the same time delivered to the donee either a blank olah signed or marked by him, or the old Title Deed, or

Ketta (i. e. stipulum), or if he ratified the oral gift by the ceremony of licking the donee's hand.*

Deed when valid without witnesses.

A Deed of Bequest was not deemed valid if it were not witnessed by some person beside the writer of that Deed, but if the donor was afflicted with the small-pox so that people were deterred from approaching him, in such case the evidence of one credible and competent witness alone was deemed sufficient †

But the law affecting transfers of landed property has been since amended, see Proclamation of October 28, 1820, and the Ordinances No. 7 of 1834 and No. 7 of 1840.‡

Verbal Bequest accompanied by delivery of goods.

"A verbal Bequest of moveable property accompanied by delivery of the goods" was valid, under the Proclamation of Government bearing date the 28th of October 1820—so that an oral bequest of a *part*, or even of *all*, of the donor's goods and chattels, in favour of the donor's wife, and the circumstances of the wife being at the time in actual possession of such property, were a bar against the claims of the donor's children to any portion of that property—but the said Proclamation has been repealed, (see Ordinance No. 7 of 1834) and now "any Bequest (even) of moveable property" will not be valid unless the same be in writing and executed in manner prescribed by the Ordinance No. 7 of 1840.§

SECTION 8.

Modes of disinherison.

The disinheriting clause indispensable.

If a son proved undutiful, or brought disgrace on his family, and the father thereupon resolved to disinherit

* Forms and ceremonies to be observed in the execution of Deeds, &c. See Saw. Dig. p. 25—27. Mar. Judg. p. 355—357 § 132—139. D'Oyl. Not. p. 6—8.

† Mar. Judg. p. 113 § 2.

‡ Proclamation of October 28, 1820, is repealed by the Ordinance No. 7 of 1834, and which by the Ordinance No. 7 of 1840.

§ Morg. Dig. p. 153 § 486.

him and to constitute his other son sole heir to his estate, he then in presence of witnesses uttered imprecations against the reprobate son, and declared him disinherited, ratifying such doom by striking a hatchet against a tree and a rock, and at the same time declaring his other son sole heir to his estate, such proceeding accompanied by gift of a blank olah, (marked or signed by the father) to the chosen heir had full efficacy in former times; but in late times, an act of disinherison of that nature was deemed invalid, without a regularly executed Talpot Deed (in favour of the chosen heir) containing the proper formula of disinherison and valid reasons for the procedure.*

Section 9.

Obtained from Government.

Oral grant by the King equal to a Sannas.

Under the Kandyan Government, an oral grant of land by the King was in general of equal validity with a grant ratified by a Sannas (Firmaun or Patent) bearing the regal sign manual ඞ or by a *Wadaala panatin Seetoo* attested by one of the Chief Ministers.

Royal grant how far effectual.

In case the King was pleased to grant a Sannas as an honorary reward to an individual, insuring unto *him* and *his* posterity the possession of the lands derived from his ancestors, such grant had not the effect of investing the Grantee with a title to all the lands specified in the Sannas, to the exclusion of his brothers or any other of his co-heirs but the co-heirs still remained fully entitled to their respective shares of the said lands, notwithstanding the terms of the Sannas.

Tenor of the Royal Sannas.

Albeit the usual tenor of the Royal Sannas is to the effect that the lands therein specified are insured unto the Grantee and his posterity to the latest generation, yet

* Mar. Judg. p. 308—310. Morg. Dig. p. 5 § 23. D'Oyl. Not. p. 6.

the title to such lands was not indefeasible. The proprietor had the right of transferring the lands by sale, or to make any other disposal thereof in favour of lay people, (but he was not at liberty to endow a temple with any of those lands without the King's sanction.) The heir apparent had no power to prevent the transfer or alienation, of those lands in favor of any other party, on the ground that according to the tenor of the Sannas, the said lands were entailed, and must therefore devolve in continuity to the Grantee's descendants from generation to generation. And the proprietor himself could not insist on such plea, with the view of defeating the claims of his creditors, therefore in case the proprietor had not other means of satisfying his creditors, the lands in question became available for the dis harge of his liabilities.

Mala-Paaloo lands.

A landed estate which became *Mala Paaloo*, (i. e. untenanted, in consequence of the death and extinction of the *parveny* proprietor and his family,) escheats to the sovereign ; but if that estate was not assumed for the crown nor otherwise disposed of by Royal Grant, and the local headmen permitted some individual to take possession thereof under condition of performing the usual *Rajakariya*, or duties incumbent thereon, such possession for a few years will not invest that individual with a permanent title to that estate.*

SECTION 10.

Obtained from the Father.

To the surviving son, against the claims of the predeceased son's children.

A Deed of Bequest in favour of the donor's surviving son, for all the lands of the donor, will be valid against the claims of the children of the donor's predeceased son, although that Deed contain not a clause expressly disinheriting the said grand-children—it being premised that the surviving son had attended on and assisted his father

* Mar. Judg. p. 297.

until his demise, and that the widow and children of the predeceased son had refused or neglected to render him any assistance—or that the children of the predeceased son, being daughters, were settled in *Deega* or were adopted into other families.

To the surviving son, against the claims of an adopted child.

A Bequest whether oral or written, in favor of a surviving son, will be perfectly valid against the claim of an adopted child of the donor's predeceased son.

Oral gift to son, on Father entering into Priesthood.

If the father having resolved on entering the order of Buddhist Priest-hood, made an oral gift and resigned his landed property to his son, and then quitted his domicile such resignment will not invest that son with an absolute proprietary right to that property, for although the father were in Priest's orders, he may at any time revoke the gift and resume possession of the property or otherwise dispose of the same as he pleased, therefore any transfer or other disposal of such property which the son may have made without the sanction and concurrence of his father will be invalid*

Deed in favor of an adopted child.

A Deed of Bequest, in favour of the deceased's adopted child, or of his brother, or of either of his parents, or in favour of any other relation, will not be of avail against the rights of the deceased's legitimate children, unless the deceased did in that Deed assign valid reasons for disinheriting his children. But in case the deceased had only a daughter, married and settled in *Deega*—if he received no assistance from her and did therefore by a Deed assign his property to any other person under the specific conditions, and if the assignee did fulfil the conditions, in such case the said Deed will become valid against the daughter's claim to the inheritance, although she were not in the said Deed declared disinherited †

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* Morg. Dig. p. 13 § 62.

† Mar. Judg. p. 309 §38. 310 § 2.

The bulk of Father's estate to one of the sons.

If the father bequeathed the bulk of his Estate to one of his sons, in consideration of the assistance he had received from that son, and left but a small portion of his property to his other son from whom he had received no assistance the bequest in favor of the first mentioned son will be valid, although the Deed of bequest contains not a clause of disinherison against the other son.

Deed in favour of one son disinheriting another.

If the son proved undutiful, dissolute, and dishonest, and the father therefore considered him unworthy of inheriting his *parveny* or ancestral lands, and consequently bequeathed all such lands to his other son, or to a grandson the child of a predeceased son and left only some other small portion of land of little value to the reprobate son, such disposal of the Estate will be deemed legal, and the bequest of the main Estate will be valid although there be no claim to disinherison against that son in the Deed of Bequest*

A subsequent Deed in favor of a regular child, annuls a former one to an adopted child.

A Deed of Gift or Bequest in favour of the donor's child for all his lands and chattels, will have the effect of annulling a prior Deed of Gift that was in favour of the donor's adopted child for a portion of that property, although it be not set forth in that subsequent Deed, that the donor revoked the former one.

Birth of other children annuls a Deed.

The proprietor did on the occasion of his daughter's marriage (the daughter being at that period his only child,) execute a Deed whereby he bestowed and settled on her *all* his lands—but subsequently he had other issue, two sons by a second wife and consequently that Deed became virtually annulled and the father having since died intestate, a moiety of the said lands devolved to the sons, and the other moiety only remained to the daughter.

From the Grandfather.

Two brothers A and B, had by a joint wife, a son C, who had issue a son D and a daughter E, when the latter was given in marriage, one of her grandfathers A, with the assent and concurrence of his son C, settled upon her all his landed property—the lands of the other ancestor B, devolved to the grand-son D. A and the son C having afterwards died intestate, E became sole and absolute pro-

* Mar. Judg. p. 310 § 2. Morg. Dig. p. 5 § 23. Ib. p. 6 § 32.

prietress of all the lands that had been settled on her, as above stated, to the exclusion of her brother D, although neither he (D), nor his father C, had been expressly disinherited by the said ancestor A.

Section 11.

Obtained from the Mother.

From the Mother to her *Deega* daughter.

If a man died intestate, leaving a widow, and a son and an infant daughter by her, if the daughter was subsequently disposed of in *Deega* by her mother and brother, then the whole of the deceased father's landed property will remain to the brother, and a gift or a bequest of any portion of that property, made by the mother in favour of the *Deega* married daughter, will be invalid, because as the deceased proprietor had died intestate, the widow was not invested with any authority to make a partition of the lands according to her own will.

A Bequest in favor of a Grand-child excluding children.

A Bequest of all her lands, made by a woman in favour of her daughter's son, to the exclusion of her own sons will be valid, although that daughter had been married off in *Deega*, and the Deed of Bequest contained no clause of disinherison against the sons—it being premised that the sons inherited their father's lands.

In favour of a *Beena* Grand-daughter.

The proprietress A of a landed Estate had an only child, a daughter B, who was married and settled in *Beena* in her mother's house—that daughter bore a son C, and a daughter D, the latter in coming of age was married in *Beena* in the house of her maternal grand-mother A, the proprietress aforesaid, who did then with the concurrence of her daughter B settle all her lands on the grand-daughter D, her grand-son C, succeeded to the possession of all the lands of his father, the grand-mother A and the mother B having subsequently departed this life intestate, the said lands that were settled on the grand-daughter D remained to her solely, to the exclusion of her brother C, although the proprietress A had not by a Deed expressly disinherited her said grand-son C.

From the Mother-in-law.

If with a view of securing a desirable and advantageous settlement for her daughter and only child, the mother

executed a Deed of Gift in favour of her intended son-in-law, transferring to him her landed property, under stipulation that he should marry her daughter in *Beena*—if accordingly the *Beena* marriage was contracted and the union subsisted until the demise of the daughter—that Deed of Gift will then be perfectly valid in favour of the son-in-law, and against all other relations of the donor—it being premised tha the daughter survived the mother and died without issue, and that the mother departed this life without having effected a valid revocation of that Deed.

SECTION 12.

Obtained from the Husband.

A Bequest in favor of one's wife against the claims of children of a former bed.

If the husband and wife had jointly acquired an estate, and if the husband on his death-bed bequeathed his interests in that Estate to his said wife, such bequest will be valid against the claims of the deceased's children by a former wife, although they were not expressly disinherited.

A Bequest in favor of one's wife against the claims of his brother.

A Bequest in favour of the donor's wife, or in favour of his adopted son or adopted daughter, or in favour of a child of his said adopted son or daughter, will be valid against the claims of the donor's brother and other relations although the brother and other relations were not explicitly declared to be disinherited in that Deed of Bequest.

A subsequent Deed in favor of a second wife.

The proprietor executed a Deed and thereby bestowed *all* his lands on his *Beena* married daughter—he, the said proprietor did subsequently execute a Deed of Bequest in favour of his second wife and thereby granted to her a portion of the said lands, and which portion he had acquired by purchase in the time of his first wife who was the mother of the said daughter—that Deed of Bequest was deemed perfectly valid, although it contained not a clause of disinherison against the daughter and did not set forth that any part of the former Deed in favour of the daughter was revoked—and although the second wife aforesaid was childless and had even quitted her said husband's house after his demise.

Child's Bequest, whilst mother is administratrix.

If a man died leaving a widow and children by her, as well as by a former wife, and if he had by his last will appointed the widow sole administratrix of his estate and authorized to make a partition thereof amongst the children, in

such case none of the children of either bed will have a right to assume any portion of the deceased father's lands, without the full consent of the said widow; any of the said children, without having actually come into lawful possession of the said lands, had died without issue, prior to the demise of the widow, any transfer or bequest of any portion of the said lands which the deceased child may have made, will not be valid.

Section 13.

Obtained from the Brother.

From brother to his *Deega* sister.

The father died intestate, leaving a son, and an infant daughter, who of course became joint heirs to their said parent's estate—the brother having subsequently disposed of his sister in *Deega*, remained in possession of all the lands left by the deceased, but the brother did on his death bed, bequeath to the said *Deega* married sister, a portion of the said lands, leaving the other portion to his children—that bequest was legal and valid, although the donor had not expressly debarred his children from claiming the portion so bequeathed to his *Deega* sister.

From brother to sister, nephew or niece.

A bequest solely in favour of one of the brothers or sisters, nephews or nieces, of the Donor will be perfectly valid against the claims of all other relations, although the latter were not declared to be disinherited—that bequest having been made in consideration of assistance which the Donor had received from the Donee—it being also premised that the Donor had not left legitimate issue, and that he had been neglected and disregarded by his *other* relations.

Section 14.

Obtained from a Relative.

From a relation for assistance rendered.

If the father had incurred debts, and being aged and infirm, required assistance, and if then he was disregarded and neglected by his children, and he did there-

fore avail himself of assistance and support afforded by some friendly relation (a grand-nephew for instance)—and if he did eventually bequeath his estate, including even *all* his lands, to that relation in consideration of the said relation having befriended him by discharging his debts and by rendering him assistance and support, such bequest will be perfectly valid, although the Donor had not reserved any portion of his lands for his children and did not expressly disinherit them—it being premised that the Donor's children were adults, and had wilfully neglected their duty to their said parent.

From a friend for assistance rendered.

If the proprietor's children, being infants, were therefore incapable of assisting their parent, and the latter did consequently depend on some friend or relation, for assistance, and did eventually in consideration of the assistance rendered to him, bequeath a portion of his lands to that friend or relation, having reserved the rest of his lands for his children—such bequest will be valid, although the Deed of Bequest contained not a clause expressly prohibiting the said children from claiming the portion so bequeathed.

SECTION 15.

Obtained from a Stranger.

Deed in favor of one's Bride.

The proprietor had a son by his first wife—after the demise of that wife, or after he was divorced from, he married a second wife—on the occasion of his contracting the second marriage, he executed a Deed in favour of his Bride, whereby he transferred to her *all* his lands—he did that to pursuade her to the union: but in that deed, it was not set forth that his son was disinherited. The said proprietor had no issue by his second wife, and after his demise, his son, and the widow (who was his second wife) contended for the said lands—it was decided that in as much as by that Deed the son was not disinherited, the lands must devolve to the son, and

that the said Deed should be of no further avail to the said widow, than to entitle her to the usufruct of an adequate portion of the said lands during the remaining term of her life, and whether she did or did not contract a subsequent marriage—and that at her death, that portion of the lands must revert to the said proprietor's son.

Deed consigning lands with child.

A Deed purporting that the proprietor of an estate did thereby consign his lands or any portion thereof, *with* his child, unto some certain person, will only have the effect of authorizing that person to act in the capacity of Guardian to the said child, and accordingly to hold the land in trust for him or her—but that Deed will not give the said person a proprietary title to the land, nor to any portion thereof.*

Deed on condition to act as guardian to children.

The proprietor (who had not a family at that time) executed a Deed whereby he transferred a portion of his lands to a friend, for the sake of assistance and support —he subsequently contracted a marriage and had issue a daughter—on his death bed, he enjoined his friend the donee to act as Guardian to his said daughter. The donee had, according to the stipulation, rendered assistance and support to the donor until his death, and he did also after that event, act as guardian to the said donor's daughter, until she was married and settled in *Deega.* After the demise of the *Donee* the former proprietor's said daughter preferred a claim to the said lands against the donee's heir or representative—it was adjudged that because the said donee had fulfilled the conditions and stipulations of the transfer, the same had become perfectly valid and conclusive against the said daughter's claim—which was accordingly dismissed.

If a son were absent from home and settled in some distant part of the country, and the father depended on some other person for assistance, and did in considera-

* Saw. Dig. p. 20 § 4. Mar. Judg. p. 352 § 123.

tion of such assistance, bequeath *all* his lands to that person such bequest will not be valid unless the Deed contained a clause of disinherison against the son. But if the deceased reserved for his said son some portion of his landed property, and bequeathed the remainder to the individual from whom he had received succour and assistance, the Deed of bequest will be valid although it contain not a clause disinheriting the son or prohibiting him from claiming the property bequeathed to the other party.

SECTION 16.

WHAT CONSTITUTES A REGULAR DEED OF TRANSFER.

A Deed how must be worded.

A Singhalese Document which merely purported that the land therein specified was given by the proprietor, unto the person from whom he received on account of that land a certain sum of money, had the validity of a Deed of Mortgage only—and such land was therefore redeemable, and a Deed designed to have the efficacy of an absolute sale and transfer, was required to be worded accordingly, and the terms *Parveny transfer* to be duly set forth.

SECTION 17.

Right of Transferring.

Lands held under service to the King.

The *parveny* proprietor of land held under tenure of any *Rajakaria* or personal service to the King, had the power of alienating such land to any person whomsoever, but if the purchaser was by reason of his caste, or on any other account, unqualified to render such service, he was bound to engage some competent person to perform the duty, in failure whereof the said land became, in some cases, subject to escheat to the king.*

Lands held under service to a Temple.

Likewise, the *parveny* proprietor of land held under obligation of personal service to a *Wihare* or *Dewalle* had a right of his own accord to alienate such land to

* Saw. Dig. p. 1. Mar. Judg. p. 307 § 37.

any person who was competent to render such service; but that right has been since restricted by an Ordinance of Government, No. 2 of 1840, to the effect "that such alienation" "shall not be made except with the consent of the Governor under his seal."*

SECTION 18.

Right of Re-emption.

Repurchasing lands absolutely sold.

In former times the vendor had in some cases a right to repurchase the land which he had even absolutely sold in parveny, but such right has been annulled by a Proclamation of Government dated the 14th of July 1821.†

Non-payment of purchase money gives no right of re-emption.

The purchaser paid only a part of the purchase money and assumed possession of the land sold—but afterwards failed to pay the balance—therefore the vendor claimed the right of re-emption—but it was decided that as the Deed of transfer was in parveny, the vendor was entitled only to recover the balance, but not to recover possession of the land by refunding the sum paid in part.

Non-fulfilment of the condition, gives the owner a right of re-emption.

The proprietor mortgaged a part of his field to a certain person, and he afterwards executed a Deed purporting to be a transfer of the entire field to another person—and it was stipulated that the purchaser or acceptor of the entire field shall redeem the said mortgaged portion—the purchaser took possession of the unincumbered portion, but neglected to redeem the mortgaged portion of the field, and also neglected to perform the *Rajaharia*—the proprietor aforesaid continued to perform the *Rajaharia* service for the entire field and he also redeemed the mortgaged portion thereof, and eventually sued to recover the other portion—it was decided that the Deed of transfer was invalidated because the

* Ordinance No. 2 of 1840 is disallowed.

† *Proclamation*, see Appendix E.—See also, Saw. Dig. p. 18. D'Oyl. Not. p. 6. Mar. Judg. p. 320, 321 § 46.

purchaser had failed to fulfil the conditions of the transfer, and the land in question was adjudged to the claimant.*

Non-fulfilment of a subsequent verbal promise, gives no right of re-emption.

A Deed of sale was properly executed, and the purchaser entered into possession of the tenement transferred to him, but without paying the purchase money—the vendor declined accepting the money, but requested the purcha-er to obtain for him the vendor, a certain parcel of land in discount of the said purchase money, and the purchaser promised to do so but failed to fulfil his promise—and then the vendor sued to annul that Deed of sale and recov r possession of the tenement—it was decided that the said verbal promise or agreement, made subsequent to the executing of that Deed, was of no effect, and the tenement in question was adjudged to the pu chaser.

Section 19.

Right of Redeeming.

Heir at law has the preferent right of redeeming a mortgage.

The heir at law certainly has, above all other relations, the right of redeeming the land which was mortgaged by the deceased proprietor—but if the heir was unable to discharge the debt due on that mortgage, and if some other relation of the deceased mortgager discharged the debt and entered into possession of the land—yet the said relation will not have thereby acquired a permanent title to that land but must relinquish the same to the lawful heir, whenever the latter shall have refunded the sum paid for redeeming the land from the mortgagee.

Section 20.

Validity of Deeds of Transfer.

Deed being in the hand-writing of the purchaser, does not invalidate it.

A Deed of sale, conveying a title to landed property, was deemed valid, although that Document was written by the purchaser, if the fact of its having been executed

* Mar. Judg. p. 316. Morg. Dig. p. 2 § 7.

were satisfactorily proved by competent and credible witnesses. A Deed of sale was deemed of no avail to the alleged purchaser, because the purchase money was not paid, and the landed property proposed to be transferred remained in possession of the owner until his demise And although the purchaser did pay the purchase money, yet if he neglected to take possession of the land, and if the vendor continued to hold the land for many months after the date of the sale, and did then sell the land to another person and if the latter did then enter into possession, in such case it was deemed that the first deed of sale was null and void, but that the said first purchaser was entitled to recover the sum of money he had paid for the land, together with interest, from the vendor, or if he proved insolvent, from the second purchaser—and until that money with interest was paid, the first purchaser aforesaid was deemed entitled to have the possession of the said land—but since the Ordinance No. 6 of 1836 came into operation, it has been held that the first purchaser should not have a lien on the land in question if the Deed of sale in his favour bear not a stamp and consequently be invalid.*

If the names of more than two persons are mentioned in a Deed of Sale as witnesses to the same, but if the signature of one of those persons be wanting, such omission will not invalidate the Deed.†

Absence of one of the witnesses' signature, does not invalidate the Deed.

If the vendor did immediately after the sale, and before the purchaser could enter into possession of the land sold, execute another Deed of sale transferring the same property to a third party, in such case it was deemed that the second sale was invalid and that the first purchaser was entitled to the said property.

An immediate second sale does not invalidate the first.

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* Ordinance No. 6 of 1836 is repealed by the Ordinance No. 2 of 1848, and which by the Ordinance No. 19 of 1852.

† Saw. Dig p. 26. D'Oyl. Not. p. 8. Mar. Judg. p. 355—357 § 134—139. Morg. Dig. p. 5 § 26.

Verbal promise to, and earnest money from one, does not invalidate a Deed to another.

If the proprietor made a verbal promise to sell a tenement and did thereupon receive *Attikaram* or earnest money from the person to whom he made that promise, but did subsequently transfer the tenement to a third party, on a regular Deed, and that third party did forthwith enter into possession—in such a case that Deed was deemed valid, but the vendor was ordered to refound the *Attikaram*, with interest thereon, as a compensation to the party whom he disappointed.

Delivery of property, when amounts to a sale.

If the debtor delivered up a house, which was his *personal* property, such as a house on Government ground, or on ground whereof the proprietary right is vested in others, and which ground did not belong to the deceased owner of the house, to his creditor, and did subsequently, on his death-bed declare that he transferred that house to the creditor in satisfaction and in discharge of his debt, such declaration was deemed as valid as a regular Deed of Sale or Transfer, and the deceased debtor's heir was debarred from recovering possession of that house—but it has since being enacted, (Ordinance No. 7 of 1840, cl. 2) that no assignment of land or of *other immoveable property* shall be of force or avail in Law, unless the same be in writing.

Delivery and removal of property, amount to a sale.

If the owner of any moveable property, having agreed to part with the same for a stipulated price, did deliver that property to the purchaser and the latter did thereupon remove the said property, promising to pay for the same, the bargain will be binding on both parties although *Attikaram* (i e earnest money) was not given and received at the contract.

Possession under mortgage, no sale.

The proprietor having contracted a debt, and having had no other means of discharging it, gave up his land to the creditor from whom he also thenceforth received assistance and support until his demise—the debtor did not execute a Deed of Sale or Transfer in favour of the creditor—and the debtor's heirs laid claim to the land—it was decided that the said creditor had not acquired a permanent title to the land, but that he was entitled to retain possession thereof as a mortgage, until the claimants shall have discharged the deceased proprietor's debt, and

also remunerated the said creditor on account of the assistance and support which he had afforded to the deceased.*

Mortgagee has preference over subsequent purchaser.

If a debtor had bound himself even by a mere oral stipulation, to render unto his creditor a certain portion of the produce of his field in lieu of interest, until the debt should be discharged—if the debtor did subsequently execute a Deed purporting to be a transfer of that field to a third party—such deed was deemed of no avail against the said creditor's claim to the stipulated share of the produce at every successive harvest, until the debt be discharged;† but it has been since enacted by Ordinance No. 7 of 1840, that no mortgage of land or other immoveable property, nor any promise, bargain, contract, or agreement for effecting such mortgage and for establishing any security, interest, or incumbrance affecting any immoveable property, shall be of force or avail in law unless the same be in writing, duly executed and attested.

Want of consideration, vitiates the Deed of Sale.

A Deed purporting to be a transfer of land in *parveny*, will not in every case have the validity of a Deed of sale if the consideration for which the transfer was made be not therein explicitly set forth—for instance, if the tenor of the Deed were merely to this effect, that the proprietor having incurred debts and being unable to discharge them, did therefore make a parveny transfer of his land to the acceptor thereof—such a Deed will not convey to the acceptor an absolute title to that land, the amount of the debts not being specified, nor any conditions or stipulations being distinctly expressed therein—therefore the grantor will have a right to revoke that Deed and to resume the land, having first made due compensation to the acceptor for the expenses he should have incurred on account of the transaction—and even if the Deed were properly worded, and the conditions under which the transfer was made, were distinctly expressed, yet that Deed will not become of full force and avail until the acceptor thereof shall have fully performed the conditions.

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* Morg. Dig. p. 2, § 5.

† Mar. Judg. p. 383 § 17.

Deed obtained by fraud.

A Deed of transfer will be invalid and of no avail, if it had been obtained by means of fraud or coercion, and the Donor may at any time before the expiry of the period of prescription, recover the property which he had transferred under such circumstances*

SECTION 21.

Occupancy under permission.

Owner being unable, a stranger performs service.

In case the proprietor was called on an emergency to perform some extra and hazardous duty on account of his land, and he being unable or unwilling to perform that service, gave up his land to some relation, or even to a stranger, the latter having undertaking to perform the required service ; and if after having performed that particular service, he continued to perform the ordinary *Rajakaria* services on account of that land and retained possession thereof for many consecutive years, throughout the period of prescription,† he will then have acquired a prescriptive title to that land, although he had not obtained a Deed of Transfer from the former possessor or proprietor—consequently the latter will have no right to resume possession of that land nor will he be entitled even to claim subsistance from its produce.‡

Field *asweddumized* by son at his own expense.

If in the life time of the proprietor, a parcel of waste ground belonging to the Estate was reclaimed and converted into an asweddum field, by one of his sons, at his, the said son's own expense, then if the father departed this life, having bequeathed specific portions of his Estate to his children, but without giving any directions respecting that asweddum field, in such case, he that reclaimed and brought the same under cultivation, will be entitled to retain possession thereof, to the exclusion of his brothers and other heirs of the deceased.

* See Ordinance No. 7 of 1840. Mar. Judg. p. 200—202.

† *Period of Prescription*—See Ordinance No. 8 of 1834, § 2.

‡ Morg. Dig. p. 7 § 40.

If he who reclaimed and asweddumized that field, died before his father, and if the latter then allowed his deceased son's children to keep possession of the said field, and if he did not subsequently make any disposal thereof when he made bequests of his other lands; in such case the asweddumizer's children will have an indefeisible right to the said asweddum field, to the exclusion of their paternal grand father's other heirs.

Asweddumiser's children allowed to possess after their father's decease.

If with the permission of the proprietor a cultivator asweddumized a plot of waste ground, or enclosed it and planted perennial trees therein, such as cocoanut and jack trees, he will have a permanent interest in the soil the proprietor cannot eject him, but must allow the cultivator to possess the said ground, subject however to some stipulated service or the payment of some duty or rent such as *Panduru mila,* or *Asweddum panama* &c. or it may be optional with the proprietor of the soil, either to make a full pecuniary recompense to the cultivator for his trouble and expense, and then resume possession of the improved ground, or to resume a moiety of the ground, on finally relinquishing the other moiety to the cultivator.

Cultivator *asweddumising* and planting with the proprietor's permission.

SECTION 22.

Occupancy with permission under Mortgage.

If an estate were mortgaged and possession thereof was given to the mortgagee, and if the mortgagee enclosed a parcel of the waste ground appurtenant to that estate, and planted the same with perennial and profitable trees, or if he had built a house thereon, or had effected any other material improvement, he will be entitled to the full value of such improvement whenever the proprietor redeemed the estate from mortgage, it being however premised that the proprietor had permitted the mortgagee to effect such improvement.

Mortgagee effecting improvements on the land.

Mortgagee performing service and improving the land.

In case the proprietor mortgaged his lands and delivered possession thereof to the mortgagee, and did subsequently neglect to perform the *Rajakariya* service incumbent on the said lands, or to pay the taxes thereon, and if the mortgagee did for some years perform the said service or pay the taxes and did in the mean time improve the estate and enhance the value thereof by reclaiming and asweddumizing, some of the waste lands belonging thereto ; or by enclosing the waste ground and planting profitable trees therein, all these circumstances will not invest the mortgagee with a permanent title to the said lands, but he will be entitled to full remuneration for the improvements he had effected, in the event of the mortgagee claiming to redeem the lands in question.

SECTION 23.

Occupancy with permission under Guardianship.

Holding one's lands in trust for his children.

If a man died leaving an infant daughter and had on his death-bed appointed his brother to be the guardian of that daughter and to hold the deceased's lands in trust for her, if the said uncle and guardian did afterwards deliver up a portion of those lands to the deceased daughter, on her being married, or at any other time, but retained possession of the other portion, and if he did subsequently bequeath the latter portion or any other part thereof to his own children or to his other heirs, such bequest will not be valid against the claim of the said daughter, provided she had not neglected to assert her right prior to the expiry of the period of prescription* since the date of that bequest †

SECTION 24.

Land obtained by Personal Labour.

Co-heir expending and recovering possession of land.

If one of the co-heirs to an estate, went to law and recovered possession of land which belonged to their ancestor but which had been held by a stranger, the

* *Period of Prescription*—See Ordinance No. 8 of 1838, § 2.

† Saw. Dig. p. 20. Mar. Judg. p. 523 § 7.

successful litigant will not, on the ground of having borne the trouble and expense of suing for and of recovering the property, become entitled to the sole possession thereof, to the exclusion of the other heirs; he must surrender to his co-heirs their proper shares of that land, on receiving from them proportionate remunerations.

Co-heir redeeming land by paying off debt.

Likewise if one of the heirs discharged a debt which the ancestor had incurred, and did thereby redeem an estate which the ancestor had mortgaged, the said heir will not on that ground be entitled to the whole of the said estate, but must surrender portions thereof to the other heirs on their remunerating him in proportion to their respective interests.

One of the sons rendering assistance to father and paying his debt.

In case one of the son's remained with the father and rendered him assistance until his death, and the other sons had removed from the father's house and settled elsewhere. If the father died intestate, and the son who remained at home came into possession of the deceased's lands, having discharged the debts wherewith they were burthened, these circumstances will not invest that son with a title to all those lands, to the exclusion of his brothers, albeit he retained sole possession for a series of years subsequent to the father's demise, but in the event of his brothers claiming due portions of the said lands, the same must be surrendered to them on their making proportionate remunerations. The first mentioned son will be entitled to recover from each of his brothers a due portion only of the amount he had actually expended in discharging the father's debts, but he shall not charge interest thereon—and such claims shall not be contested by his brothers on the plea that he had adequate recompense from so many years' possession of all these lands.

A stranger rendering assistance in the absence of the son.

If the son were absent from home and settled in some distant part of the country, and the father depended on some other person for assistance, and did in consideration of such assistance, bequeath *all* his lands to that person

such bequest will not be valid unless the deed contained a clause of disinherison against the son. But if the deceased reserved for his said son some portion of his landed property, and bequeathed the remainder to the individual from whom he had received succour and assistance, the Deed of Bequest will be valid although it contain not a clause disinheriting the son or prohibiting him from claiming the property bequeathed to the other party.

Section 25.

Occupancy without permission.

Building a house in another's property without his consent.

One who built a house on another person's ground, without the consent and against the will of the land owner, will not have any right to the occupancy thereof, and the land owner may compel him to pull down the house and remove the materials.

Building a house on an untenanted premises.

If any estate, consisting of a paddy field and garden, be left *Purappaadu* (i. e. untenanted by the proprietor, or temporarily abandoned by him) and if some stranger did then enter into possession thereof and hold the same for some years by performing the customary *Rajekaria*, and did build a house in that garden, in the event of the owner recovering possession of the estate, he may disallow of the stranger's continuing to cultivate the paddy land, but he must allow him in consideration of his having built the house to remain in the occupancy of that house and the garden, as a *Watookaareya* (i. e. tenant of a garden, subject to pay suit and service to the proprietor), but if the said stranger be unwilling to tenant the premises under such condition he shall be allowed to remain in that house for a year or two years, until he can remove to another abode, or he may be allowed to pull down the house and remove the materials forthwith, but if the proprietor of the estate object to the house being razed, he shall pay the value thereof, to the builder.

also renumerated the said creditor on account of the assistance and support which he had afforded to the deceased.*

Mortgagee has preference over subsequent purchaser.

If a debtor had bound himself even by a mere oral stipulation, to render unto his creditor a certain portion of the produce of his field in lieu of interest, until the debt should be discharged—if the debtor did subsequently execute a Deed purporting to be a transfer of that field to a third party—such deed was deemed of no avail against the said creditor's claim to the stipulated share of the produce at every successive harvest, until the debt be discharged;† but it has been since enacted by Ordinance No. 7 of 1840, that no mortgage of land or other immoveable property, nor any promise, bargain, contract, or agreement for effecting such mortgage and for establishing any security, interest, or incumbrance affecting any immoveable property, shall be of force or avail in law unless the same be in writing, duly executed and attested.

Want of consideration, vitiates the Deed of Sale.

A Deed purporting to be a transfer of land in *parveny*, will not in every case have the validity of a Deed of sale if the consideration for which the transfer was made be not therein explicitly set forth—for instance, if the tenor of the Deed were merely to this effect, that the proprietor having incurred debts and being unable to discharge them, did therefore make a parveny transfer of his land to the acceptor thereof—such a Deed will not convey to the acceptor an absolute title to that land, the amount of the debts not being specified, nor any conditions or stipulations being distinctly expressed therein—therefore the grantor will have a right to revoke that Deed and to resume the land, having first made due compensation to the acceptor for the expenses he should have incurred on account of the transaction—and even if the Deed were properly worded, and the conditions under which the transfer was made, were distinctly expressed, yet that Deed will not become of full force and avail until the acceptor thereof shall have fully performed the conditions.

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* Morg. Dig. p. 2, § 5.

† Mar. Judg. p. 383 § 17.

SECTION 26.

Occupancy by Usurpation.

Improving another's property by force.

One who had usurped possession of and cultivated another person's paddy field, will not be entitled even to the cultivator's share of the produce, but must surrender the land together with the entire crop to the rightful proprietor of the soil, provided that the proprietor took proper measures to recover possession of his field within a twelve month after the usurpation. One who had reclaimed a piece of waste ground being crown property and asweddumized it into a paddy field or converted it into a garden, with the permission of competent authority, will have thereby acquired a prominent title to that land, subject nevertheless to such duty as Government may impose thereon, and he may dispose of that property by sale or otherwise, to any lay person, or leave the same to his heirs, but he shall not be at liberty to dedicate that land, to any Temple or Religious Institution, without a special licence from Government.

Asweddumizing another's high ground by force.

If a person usurped a piece of high ground that belonged to another, and asweddumized the same into a paddy field in spite of the proprietor's protest against such proceeding, he will not acquire any permanent interest therein, and on surrendering the same to the rightful owner of the soil, the asweddumizer will not be entitled to any recompense on the score of having improved that property and enhanced the value thereof.

APPENDIX.

APPENDIX

A.

ON CASTE.

{From Armour's Grammar of the Kandian Law, page 1.}

The distinctions of *caste* took their rise at the period of the first social compact amongst mankind, as will be shewn in the sequel.

In the beginning of this the *Maha Bhadra Calpa*, when the terraqueous portion of this world, the *Magool Sakwala*, was in its incipient state of reorganization, a multitude of *Brahmeyo* descended from their exalted spheres, the *Brahma Loka* to view the new-born Earth. The *Amaa Rassa*, a nectareous cream, that then mantled the surface of this Earth, allured the *Brahmeyo*; they tasted the Nectar and being highly delighted therewith, thought not of returning to their heavenly abodes. For thousands of years, the *Brahmeyo* regaled on the Nectar with increasing avidity, until at last their greediness caused that delicious substance to disappear, and the surface of the earth then changed into a soft mould. Therefrom sprung in succession the *Bhumi Parpataka* and the *Badaa Lataa*, and the *Brahmeyo* feasted on those delicious productions for many thousand years, until they also disappeared successively in consequence of the same cause, the *Brahmeyo's* greediness. *Calpa Wurkshas* then sprung up and for thousands of years yielded sustenance to the *Brahmeyo*, until their selfishness and avidity caused those trees also to disappear. After that, the Earth spontaneously yielded a species of corn which was free of husk and film and was perfectly pure, and when the *Brahmeyo* had eaten thereof, their halos of glory vanished, the effulgence of their bodies was dispelled, the *Brahmeyo* lost the power of *Irdhi* and became incapable of soaring in the air and traversing the skies. Thus being unable to return to their heavenly mansions, the Brahma Loka, and being constrained to remain here below, the Brahmeyo necessarily became denizens of the Earth.

The Brahmeyo then began to appropriate unto themselves, portions of the soil, they made partitions and allotments, and individuals assumed portions of the ground exclusively, saying *that is thine, this is mine.*

In process of time, the gross aliment of corn generated impurities and eventually changed the nature of the Brahmeyo's bodies, the distinctive organizations of the sexes supervened, and the *Brahmeyo* then became transformed to *Manusyayo*, such was the origin of mankind.

Thereafter the Earth ceased to yield corn spontaneously and men began to till the ground and they cultivated corn for their subsistance. Then lust and avarice grew stronger and stronger, and people eventually began to enclose and set up land marks on their grounds, and with increased vehemence insisted on individual rights, saying, this is *my own* field, she is *my own* wife.

Impelled by lust and avarice, some men invaded the rights of others, and thereupon the injured men arose and slew the transgressors, and then resulted fueds and retalliation and endless strife.

Prudent men did then take counsel together, and they said: It is not in our power to repress these disorders, let us therefore elect a ruler to have dominion over all, and we shall all yield unto him a tenth part of the produce of our corn fields. All men approved of that resolution and having unanimously elected the man who excelled all other men in wisdom and in stature, they installed him King, saying; *Henceforth shalt thou rule over us and take cognizance of delinquences and award penalties*—and inasmuch as that Sovereign was so ordained by universal suffrage, he was named *Maha Sammata Raja* (*i. e.* King of the great convention.)

Pursuant to the aforesaid stipulation, the people rendered unto their King a tithe of their corn, and the king being thus constituted Lord Paramount over all corn land, *Kshetra*, his family was distinguished by the designation *Kshetriya Wangsa*, and since the kingly office was made hereditary, the Royal Family or Tribe was called also the *Raja Wangsa*.

A few of the people who were tenacious of the idea of their former dignity as Brahmeyo, avoided all mean and sinful pursuits, and devoted themselves to religion and to the cultivation of the sciences, and they and their posterity remained distinct from the rest of mankind and formed the superior tribe called the *Brahmena Wangsa*.

Some of the people attached themselves to commercial speculations and pursuits and formed a separate community, and they gave birth to the *Wanija* or *Welanda Wangsa*.

Others, who were agriculturists, disdained all meaner occupations and maintained a superior station amongst mankind, and they were the progenitors of the *Goi Wangsa*.

The above named are the four superior Tribes or *Wangsas*.

The rest of the people whose trades and employments were mean and servile, were the progenitors of the many *wanam* or inferior castes.

It is generally supposed that the Native population of Ceylon consists of sixty-four *kula*, tribes, castes or classes, but the Singhalese alone are reckoned to consist of the *Goi wangsa* and of eighteen *wanam* or inferior castes.

The *Goi wangsa*, *Goigama*, *Ratte*, or *Handuruwo*, compriseth the *Bandaara waliya*, families of the highest rank, who claim descent from Princes.

The *Weddo*, supposed to be the posterity of Wijaya Raja's children by Kuweni.

The *Mudeli peroowa* or titled class, and the majority of the Handuruwo or Ratte etto (commonly called Wellalles) families of pure Wellalle blood, and also descendants of Bramins and Chetties and other foreigners of high caste by Wellalle mothers.

The *Pattiwelayo* and *Nilemakkareyo.*

The *Weeramesseroo* or *Gooroowoo*, and the *Kammalhandooroowo* or *Wagayo.*

The *Gattaroo* and *Timbillo.*

THE EIGHTEEN WANAM, ARE—

1. The *Nawandanno* or Artificers' caste, consisting of
   Tarahallo or *Badaalo*, Gold-smiths and Silver-smiths.
   Wadoowo, Carpenters.
   Galwadoowo, stone Masons.
   Hittaroo, Painters.
   Kamburo or *Achaari*, Black-smiths.
   Lokoocroowo, Brass founders.
2. The *Karaawo*, subdivided into several classes such as the *Goda Karaawo* or *Dunu wedi Karaawo* or *Dada Waeddo*, Huntsmen.
   Gong kaareyo, bullock drivers.
   Karaawo, commonly so called, Fishers.
3. *Duraawo*, Chandos.
4. *Radauw*, Washers (employed by the higher classes.)
5. *Hannaali*, Tailors.
6. *Badahalayo*, Potters.
7. *Embetteyo*, Barbers.
8. *Wiyanno* or *Wiyana Haali* Weavers.
9. *Hangaramo*, Jaggreros.
10. *Hoonno*, Chunam burners.
11. *Panneyo*, Grass Cutters.
12. *Berawaayo*, Tom-tom beaters.
13. *Padoowo.*
14. *Gahalayo*, Scavengers.
15. *Oliyo*
16. *Paliyo* or *Apullanno*, Washers (employed by the very inferior classes.)
17. *Kinnereyo.*
18. *Rhodiyo.*

But there are several other *Wanam* besides, such as the *Yamano*, Smelters of iron.
Honmaroo.
Hendayo.
Raadayo, and others.

B.

ON SLAVERY.*

(From Armour's Grammar of the Kandyan Law, page 4.)

SLAVES ARE OF FOUR DESCRIPTIONS, TO WIT.

1. *Antoo jaato*, Slaves by birth.
2. *Dhanakkeeto*, Slaves by purchase, being persons sold as slaves by their parents, or by former proprietors.
3. *Karaamaraneeto*, Persons doomed to slavery by the King, women who had lost caste and thereby forfeited their lives, but were saved from death and added to the number of the king's slaves. Captives taken in war, and persons kidnapped and brought from foreign countries and sold as slaves.
4. *Samaan daasawyopagato*, Persons who became slaves of their own accord, or in consequence of their own delinquencies. Those who bartered their freedom for the means of sub-istence, and those who have incurred debts or penalties, forfeited themselves as slaves to their creditors.

"The child of a female slave is a slave by birth and belongs to the "mother's owner, whosoever that child's father may be, the father being a "freeman will not emancipate that child from slavery, nor shall the father "have any authority or controul over that child."

A free woman forfeits not her freedom, by becoming the wife of a slave, and the children of a free woman are free, although their father was a slave, and therefore the owner of the said children's father shall have no right to claim such children as slaves.

"If a free man cohabits with a slave woman, the owner of that slave woman will be entitled to the free man's services so long as he remains upon the said owner's premises. On quitting the premises, the said free man can carry away all the goods he may have brought with him, but he will not be entitled to appropriate to himself *all* the goods he may have acquired during the cohabitation."

The child of a slave woman, born to a free man, has no right to inherit the father's landed property, which property must, in case the father died intestate, devolve to his *legitimate* issue, and failing legitimate issue, to his next of kin—it being premised that the mother remained a slave until her death, or until the death of her said child's father.

A slave woman having been sold or transferred, and bearing children subsequent to the transfer, such children shall belong to the purchaser as his born-slaves, but the child or children of that woman, born previous

* See also Saw. Dig. p. 28—30.

to the transfer will not become the said purchaser's slaves, unless he, she, or they, had been transferred to the same purchaser along with the mother.

It was lawful for parents to sell their children to slavery. Yet the father had not the power to sell a child into slavery without the full consent of the mother, and *vice versa*.

If the mother be dead, and her relations are willing to take charge of and maintain the child, the father shall not have it in his power to sell that child as a slave, and the father being dead, if his relations undertake to maintain and educate the child, the mother shall not have it in her power to sell that child as a slave.

A child having attained to years of discretion, may resist the parents in case they attempted to sell that child to slavery. If the parents had incurred debts and penalties, and not having the means of discharging them, demanded that their child should either relieve them from their liabilities or submit to be consigned to slavery in order that their creditor's claims may be satisfied, although the child were possessed of wealth sufficient for the purpose of discharging the debts and liabilities incurred by the parents, yet it will be optional with the child either to relieve the parents or to refuse them the relief they sought, and the parents shall not have it in their power to sell that child as a slave nor to compel him or her to relieve them,—for property acquired by a child, or which had been derived to him or her, independently of the parents, is not answerable for the parent's debts, and a child is not bound to discharge the debts incurred by the parents.

If the father, or the mother, having incurred debts and penalties, had given up a child as a slave, to the creditor, the creditor will not acquire a valid title to that child, unless the parent had, in consigning the child to slavery, executed a *Kaerrae pota* or slave title deed in favour of the purchaser. If the sale and transfer of that child was made but orally, the child may at any time, after having attained to years of discretion, claim his or her freedom, and the Law will award it.

A foster-father, or a foster-mother, or an adoptive-parent, has no right to sell his or her foster child or adopted child into slavery. Therefore although the adoptive parent had executed a *Kaerrae pota* and thereby transferred the child, and although that child had submitted to become a slave in consequence, yet for all that, the purchaser's title shall not be valid, and therefore in the event of the said enthralled person claiming his or her freedom at *any* future period, the Law will award it.

If a man had in discharge of a debt or a penalty, transferred his adopted daughter as a slave, to his creditor, under a *Kaerrae pota*, and that daughter had submitted to the thraldom and served the purchaser as a slave and died in such servitude, if also her children did after her death continue to serve the said purchaser as his slaves for many years, the said purchaser will not, for all that, have a legal and valid title to the persons so enthralled, and the Law will therefore set them free whenever they should assert their right to freedom and claim the same.

If a woman of high caste, degraded herself by criminal intercourse with a low caste man, and consequently lost caste and was in danger of being put to death by her relations, if she was then rescued from the peril by being taken as a slave by order of the king, and employed as such either at the palace or in some Royal village, and if that woman was afterwards delivered over as a slave by order of the king, to any individual, in such case the donee will have a valid and permanent title as proprietor of the enslaved woman and of her children born subsequent to the transfer, although the said donee did not receive a written voucher or title deed from the king.

"It was the practice for a creditor, being a person of superior rank, to "seize and detain his debtor as his slave, or to seize one or more of the "debtor's children, and if the debt was not discharged, and if the person enthralled "was not released by superior authority, the person so seized became absolutely "the creditor's slave."

One who had committed a robbery and was convicted of the crime, forfeited his or her freedom to the party whose property he or she had stolen, and unless the delinquent restored the stolen goods and paid the *wandiya* or forfeit, or otherwise indemnified the prosecutor, such delinquent became subject to remain a slave for life.

"The proprietor of a slave has his or her person and services at his dis-"posal; he may sell his slave, or give away the slave in dowry, or by bequest, "to any person who is not of a caste inferior to that of the said slave."

"Slaves, of whatever caste, are bound to perform all services required by "their Master, however vile and laborious such services may be.'

"The Master cannot compel a female slave of the Ratta or Gowi caste, "to receive a husband of inferior caste."

"The Master may expel from his premises his slave woman's husband, "whether that husband were bond or free, and thus effect a divorce between "the woman slave and her husband, without their consent."

The owner may at any time emancipate a slave by granting to him or to her an *Ittang kaere* or bill of manumission, or by declaring publicly that he gave the slave his or her liberty, and then ratifying the gift of freedom by solemnity of pouring water into the hands of the freed person, and in either way, a gift of freedom once made, is absolutely irrevocable.

'If a slave girl is given out in marriage to a free man, (even although her 'emancipation be not formally declared, or understood by fair implication at the 'time,' and if she is allowed by her owner to remain with her husband for a 'length of time, say beyond the period of prescription for other civil rights, 'without the owner asserting his right of property in that woman, by exacting 'services or imposing restraints of any kind upon her, or by claiming her 'children as her property, in such case, prescription may be pleaded against the 'claim of the original proprietor, and the woman and her offspring should 'then be held to be free. But unrestrained freedom for so long a period 'will not be necessary to establish emancipation, where it can be fairly infer-'red that the time the woman was given in marriage, it was understood that 'the woman or her offspring by the free man, were to be emancipated'

But if the slave woman was married to a free man who was employed in the service of the slave's owner, and if after the marriage the slave woman and her husband had lodging in the Master's house, or if they occupied had belonging to their Master and continued to serve him as menials and domestics, in such case, unless the said woman were formally emancipated, the lapse of any number of years after her marriage, will not give her a little to freedom, and she and her children shall remain slaves.

The Master is bound to provide his slaves with lodging and victuals, and so long only as he should succour and maintain them, shall he have a right to their services. Should the Master neglect to provide his slaves with the means of subsistance, and if the slaves should then leave him and earn their livelihood independently of their Master, and thus continue to subsist for many years, the said slaves will thereby eventually acquire a title to full freedom, and their Master's title to the said slaves will be prescribed and annulled

Slaves are competent to acquire and possess landed property, as well as moveable property, independent of their Master, and to dispose thereof by will or otherwise.

"A slave has the entire right to the property he may acquire himself, "his owner cannot deprive him of it, and it descends to his, the slave's, "children as if he were a free man, but failing the slave's next of kin in "his owner's possession, the property devolves on his owner, it cannot go "to his next of kin, being the property of another owner, nor to his next "of kin being a free person. But a slave or family of slaves can gain no "right of prescription in the property of the family to which they belong, "that is to say, however long the slave-family may have been in possession "of a garden or other piece of ground, being part or parcel of the owner's "Estate, or however much they may have improved the same, the slave-"family can thereby gain no independent interest in such property."

The owner of a slave is not liable to answer for his slave's debts, unless they shall have been contracted with his owner's sanction.

"By the Laws and Customs of the country, a Master has the power of "punishing his slave in any way short of maiming and death. The punish-"ments usually inflicted are, flogging, confining in the stocks or in irons, "cutting off the hair, and when very refractory, selling them."

"Slaves are in every respect held equally competent with free people, to give evidence in a Court of Law, and are not unfrequently called upon to be witnesses to transactions where their owners are concerned."

C.

ON MARRIAGE.

(*From D' Oyly's Notes on the Kandyan Law, page* 19.)

Ceremonies observed in contracting matrimony amongst superior classes of the Singhalese.

1st.—On choice being made of a bride, the bridegroom's kinsmen give intimation thereof to some of the bride's friends, who consult her parents or guardians and other relations, and if they approve of the proposed match, the bridegroom's friends are informed thereof, whereupon some of the latter pay a visit in form to the bride's family, and having seen the bride and received assurance that the suit was sanctioned, they return, after being treated with rice or betel.

2nd.—Afterwards a relation of the bridegroom goes to the bride's with presents of cakes, &c., and returns thence with her nativity or horoscope: this is compared with the bridegroom's to ascertain whether the union of the two persons will be happy and fortunate. If the nativities are accordant and compatible, an auspicious day is appointed for the wedding and the bride's parents or guardians are apprized thereof.

3rd.—On the day appointed, presents of betel, cakes, fruits &c., are forwarded to the bride's, and then the bridegroom's father proceeds thither in state, followed by the bridegroom's mother, with proper attendance; and, lastly, comes the bridegroom. On the party approaching the bride's residence, a brother and a sister, or an uncle and an aunt of the bride, go out to meet them in similar form and state, and conduct them to the house; when they arrive at the outer gate of the house and have stepped on the cloth spread for them to walk upon into the interior of the house, a cocoanut is smashed into pieces in the name of Ganeswera, or the god of wisdom, and on the parties entering the apartments prepared for them respectively, the ceremony of invoking long life is performed, and the gods of wisdom again propitiated by breaking a cocoanut.

4th.—Previous to the auspicious moment of solemnizing the marriage, the bridegroom's mother delivered a valuable cloth as a *Killireda Hela* to the bride's mother, with another cloth and a set of jewels, and the bride's father gives a suit of apparel to the bridegroom. The happy moment being arrived, the bridegroom throws a gold chain over the bride's neck, and then presents her with a complete set of apparel and ornaments, and the bride being arrayed therewith, steps up along with the bridegroom on the *Magoolporooa*, or wedding plank, which is covered with a white cloth. The bride's maternal uncle or some other near relation then takes a gold chain and therewith tie the little finger of the bride's right hand with that of the bridegroom's left, and the couple then turn round upon the plank three times from right to left, the chain is then taken off, and the bridegroom moves to a seat prepared for him. The *Magool pata*, or wedding plate, is then brought in, from which the director of the ceremonies takes rice and cakes, and making balls of them, gives the same to the bride and bridegroom, who make reciprocal exchange thereof in token of conjugality. The guests and the rest of the company are then served with victuals, betel and sandal.

On the couple quitting the bride's to go to the bridegroom's house, they are accompanied by a kinsman of the former with proper attendance. On approaching the bridegroom's residence, they are met by a kinsman of the latter attended with talipots, torches, &c., who greets the bride's kinsman and conducts the party in. Here also a cocoanut is smashed on the ground in the name of Ganeswera, and the ceremony is repeated of wishing longevity. After suitable entertainment, the bride's kinsman and other guests depart.

5th.—On the seventh day after the last mentioned ceremony, the festival of bathing the head takes place. The young wife's uncle and aunt

brother near relations, repair to the house of the new married couple in due style, and are formally welcomed ; the open space near the apartment allotted to them is enclosed on all sides and covered with cloths, a plank being placed on the ground within, the young couple stand upon the plank side by side, with their heads covered with a cloth. New earthen pots filled with water are then brought, and some person on behalf of the husband drops a rupee or a gold pagoda into each of them and presents a gold ring to the wife's uncle, who, having awaited the auspicious moment, takes up the water pots and empties them upon the heads of the young couple. After this ceremony the visitors are feasted and permitted to depart.

After the lapse of some days or months, the wife's parents pay a formal visit to the young pair, attended by followers, &c. On this occasion they bestow according to their means, a dowry on their daughter, consisting of goods, land, &c., and after the lapse of some time again, the new married couple pay a ceremonious visit to the wife's parents.

The washer employed to decorate the bride's house with white cloth on the wedding day, receives five *ridies* from the bridegroom ; he also receives five *ridies* for spreading the cloth on the *Magool poroowa*, and the person who conducted the bride to the bridegroom's house after the marriage ceremony, pays five *ridies* to the washer who decorated the bridegroom's house for the occasion.

D.

RULE OF SUCCESSION.*

If a man die intestate (leaving no widow) his moveable property goes—

1st —To Children.
2nd— ,, Parents.
3rd— ,, Brothers and Sisters.
4th— ,, Nephews and Nieces.
5th— ,, Uncles and Aunts.
6th— ,, Children of Uncles and Aunts.

E.

PROCLAMATION.

(From the Legislative Acts of Ceylon vol. 1, page 271.)

We the Hon'ble Major General Sir Edward Barnes Knight Commander of the Most Honourable Military Order of the Bath, Lieutenant

* See Mar. Judg. p. 347—350.

Governor and Commander in Chief in and over the British Settlements and Territories in the Island of Ceylon with the Dependencies thereof, having taken into our consideration the expediency of settling the rights of purchasers of Land in the Kandyan Provinces on a footing which shall give them an immediate and permanent interest in their property, and induce them to improve the same, which the practice that has obtained in some of the said Provinces of allowing the seller to re-purchase the Land at any time in his life is evidently calculated to prevent, do therefore proclaim and enact, that from and after the publication of these presents, all sales of Land made in writing according to the provisions of our Proclamation * of the 28th October 1820 in the Kandyan Provinces shall be final and conclusive, and neither the seller nor his or her Heirs shall have any peculiar right to re-purchase the same, unless an express stipulation reserving such privilege shall be inserted in the deed of sale.

And we do further order that such reservation when made in the deed of sale, shall not be valid for any longer period than three years from the date of the said deed; and that the person who wished to exercise this right of re-purchase, shall pay to the person to whom he or she sold the land not only the original consideration but also all expenses incurred for increasing the value of the property, the amount of which will in case of any dispute, be ascertained by appraisement on application to, and under the sanction of the Court in whose jurisdiction of Land lies.

And in respect to sales of Land of a date prior to these presents, we do hereby order, that no privilege of purchase shall in any part of these Provinces be considered to attach to the seller, unless he or she shall record his or her claim to the same in the Court of the nearest Agent of Government within six months from this date, and such privilege shall then only be competent to such seller within the term of three years from this date, and upon the conditions in the preceding clause contained.

And no right of re-purchase shall be considered to vest in the Heirs of the seller, but the privilege is confined to him or herself personally.

F.

(From Armour's Grammar of the Kandyan Law, page 329.)

If one of the Co-heirs to an Estate went to Law and recovered possession of land which had belonged to their Ancestor, but which had been held by a stranger, the successful Litigant will not, on the ground of having borne the trouble and expense of suing for and recovering the property, become entitled to the sole possession thereof, to the exclusion of the other heirs, albeit the decree did not allude to and reserve their rights, but he

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* This Proclamation was repealed by Ordinance No. 7 of 1834.

must give up to his Co-heirs their proper shares of that property, on being proportionately remunerated by them.

If one of the heirs discharged a debt incurred by an Ancestor, and thereby redeemed his Landed Property from mortgage, yet he will not on that ground acquire an exclusive title to such Property, but must relinquish to the other heirs their proper shares, on their remunerating him in proportion to their respective interests in the said property.

If one of the sons remained with the father and rendered assistance to him until his demise, and the other sons had removed from the father's house and settled elsewhere, if on the father's demise, intestate the first mentioned son assumed possession of the entire Estate, having also discharged the debts incurred by the deceased, these circumstances will not invest that son with rights of a sole heir to that Estate, albeit he retained possession thereof for a series of years subsequent to the father's demise. Therefore in the event of the other brothers claiming their shares of the inheritance, the same must be surrendered to them on their making proportionate remunerations. The first mentioned son will be entitled to claim from each of his brothers a due proportion of the amount which he had actually expended in discharge of the father's debts, but he shall not charge interest thereon, and the other brothers must not contest such claim, on the plea that the first mentioned brother must have already had adequate remuneration, from so many years' possession of the entire Estate. In case the Proprietor being unable to perform, or to pay for, the *Rajakaria* (duty or service) according to the tenure of his land and did therefore agree to allow some other person to possess that land for some years, on condition of discharging the allotted duties.—Or if the Proprietor had not the means of cultivating his paddy field and therefore allowed it to remain waste for some years, and the embankments and watercourses fell to decay and disrepair in consequence, and if the Proprietor did then authorize some other person to restore that field to cultivation and to enjoy the benefit thereof for some years in consideration of his trouble and expense, in neither case will the said cultivators or tenants acquire a permanent title to such lands.

If a paddy field was devastated by an inundation, or by an earthslide, or any other calamity, and was consequently thrown out of cultivation and remained profitless to the owner, if the owner did then engage a cultivator to repair the damages and restore the ground to cultivation, at his, the cultivator's own expense, stipulating that the cultivator should have possession of the said ground subject to certain conditions, then so long as the cultitor should continue to fulfil the terms of the compact, the owner of the soil shall not have the power of ejecting him, but if the cultivator should fail to fulfil the terms of his tenancy, the proprietor of the ground may then insist on his right to eject him.

In case the Proprietor mortgaged his landed Estate and delivered possession thereof to the mortgagee, if afterwards in consequence of the Proprietor's absence, or of his inability to perform *Rajakaria* service or to pay the Government tax or to discharge any other incumbent duty, on

account of that Estate, the mortgagee was obliged to discharge such duties, and if the mortgagee did in the mean time improve the Estate, and enhance its value by reclaiming and *Asweddumizing* the waste ground belonging thereto, or by inclosing the waste ground and planting profitable trees therein—all these circumstances will not invest the said mortgagee with a permanent title to that Estate, but he must surrender the same to the owner or to his heirs, on being duly recompensed for the said improvements, and being paid all that was due on account of the mortgage.

Under the Kandyan Government, when the King made a grant of land to an individual, such grant was perfect, although it were by mere oral declaration, and it was nearly of equal validity with a grant confirmed by a *Sree Sannas* (Royal Firmaun) bearing the King's signature ඣ, or by a *Wadaala panatin Seetoo* attested by one of the chief ministers.

In case the King was pleased to grant a *Sannas* to some individual, as an honorary reward, insuring unto him the possession of the lands of his ancestors, such grant had not the effect of investing the Grantee with a title to all those lands, to the exclusion of his brothers or other Co-heirs and the latter therefore retained their hereditary rights to their respective shares of the said lands notwithstanding the terms of the *Sannas*.

Albeit the usual tenor of a Royal Sannas conferred a perpetual right to the Grantee and his kindred and descendants to the latest posterity, yet the title to the Estate so granted was not indefeisible. The grantee, or after his demise, his lawful heir and successor, could transfer that Estate by sale, by gift, or otherwise (though not to any religious institution, without special sanction of Government) and the child or other heir apparent of the proprietor for the time being had not the power of preventing such disposal of that Estate, on the ground that the terms of the Royal Sannas prescribed the devolution of that Estate in continuity, or by entail, from generation to generation nor could the proprietor insist on such a plea, in order to defeat the claims of his creditors, if he had not other means of discharging his debts, that Estate was liable to seizure, for the benefit of the creditors.

G.

DECISIONS OF THE SUPREME COURT.

12435. D. C. *Kornegalle.*
20898. D. C. *Kandy.*
3574.
——— D. C. *Matella.*
19159.

In these cases the Supreme Court held that where a father dies intestate leaving children by two separate beds, his property must be divided into two equal portions, and that the issue of the first marriage are entitled to succeed to the one half of his property, and the issue of the second marriage to

the other half thereof. A daughter also will not in such a case forfeit her share upon a *Deega* marriage in favour of her brothers and sisters of the half blood.

1085. C. R. *Kaigalle.* In this case plaintiff laid claim to certain Lands by virtue of a Bill of Sale executed in his favour by a Grand-daughter of the deceased who was the only surviving heir at law. The defendant was the widow of the deceased and pleaded on Olah Deed of gift in her favour, which the Court disbelieved but reserved her right to a life interest, and non-suited the plaintiff. In appeal this Judgment was affirmed. "Whatever the rights of the plaintiff may be under the alleged conveyance in his favour from the heir at Law, the widow having the life interest cannot be ejected from the land as prayed for in the plaint, and it was quite competent for the Court below to uphold such life interest though it saw reason to negative the absolute title set forth by the widow."

26361. ——— D. C. *Kandy.* 19937. Held in appeal that a widow having administration of her husband's estate cannot sell any of his lands. If she does, the heir at Law is not precluded from suing her.

2292. D. C. *Ratnapoora.* In this case the Court below held that a *Beena* husband was entitled to a life interest in his wife's property. In appeal it was stated at the bar that the Kandyan Law was the other way; but the judges entertained doubt, whether the Ouderatte and Saffragam rule was the same on the point. Sir Charles Marshall having held that the Laws of the two Districts were not the same. The case were therefore remanded for a new trial with a view that witnesses might be called to certify as to the Law or Custom touching the right of a *Beena* husband to the land of his deceased wife.

14512. D. C. *Badulla.* The mother is heir to her deceased child's estate. The division among children of several beds is *per stirpes* and not *per capita*. See also Kurnegalle D. C. 12434.

14334. D. C. *Badulla.* In appeal. In cases of alleged adoption, there should be a clear intention on the part of the adopting parent, that he adopted them with a view of allowing them to inherit his property.

23413. D. C. *Kandy.* In appeal held that a niece married out in *Deega* by her uncle is entitled equally with the nephew to the uncle's estate. In Kaigalle however it appeared that during the uncle's life time he had granted his niece a portion of his landed property upon a Notarial Deed. The Supreme Court there-upon held that she was not entitled to any further portion, it clearly having been the intention of the donor that she was only to possess the portion so gifted to her during his life time.

29890. D. C. *Kandy.*

In this case the plaintiff stated in her Libel that she, on the 6th September 1854, by Deed of Gift, transferred certain lands to the defendant (being her *Beena* married husband); which deed she afterwards, on the 26th April 1856, wholly 29,890, D. C. *Kandy* revoked. The defendant in hisanswer pleaded that the plaintiff had by the same deed of the 6th September 1854, renounced her right of revoking the gift, as well as her right by Kandyan Law "to alter cancel or break" the same; and that the deed with knowledge of the plaintiff had been deposited in the Cutcherry for his debt.

On the 26th November 1857, before T. C. *Power*, A. D. J. *Vanderwall* for the plaintiff submitted, that, upon the pleadings, and according to the Kandyan Law, the plaintiff was entitled to judgment. *Ferdinands*, Proctor for the defendant, urged that the Kandyan Law being silent on the question raised in the present case, recourse must be had to the Civil Law; and that the deed, containing as it did, a clause by which the donor renounced all right to revoke the gift, must be held to be an irrevocable instrument.

The judgment of the Court below was as follows:—

"The Court is of opinion that the Kandyan Law is not silent as regards the question now raised, and recourse must not therefore be had to the Civil Law to determine it. The Kandyan Law is that "all Deeds of Gift, except those made to Priests and Temples, whether conditional or unconditional, are revocable by the donor in his life time. *Armour* p. 179.* It is true that there are exceptions to this rule, and some deeds, other than those to Priests and Temples, are irrevocable; but the exceptions are expressly mentioned by *Armour*, see pp. 180—181;† and the deed of the 6th September 1854 cannot be considered as forming an exception, it being simply a deed of gift from a wife to her *Beena* married husband, which she has the power of revoking whenever she may think fit. The Court considers that the plaintiff is entitled to judgment; and it is decreed that the plaintiff be entitled to, and quieted in the possession of the lands in the Libel mentioned; and that defendant do pay costs of suit."

Against this decision the defendant took the present appeal.

[*Morgan* Q. A. (*Lorenz* with him) for the defendant and Appellant] The District Judge holds that all Deeds of Gifts in Kandy, whether "conditional or unconditional" are revocable. But if the clause of renunciation was valid the plaintiff could not revoke. A person may renounce any right which the law allows him to exercise. [STERLING J. A Power of Attorney is revocable unless coupled with an interest.] That goes upon a different principle. Here, by the Kandyan Law, certain deeds of gift, are revocable: that is, the law allows a donor the right of revoking a deed of gift, if so inclined; but here the donor by express convention renounces the right. The Kandian Law is silent as to the effect of renunciation. Now, the right of revocation is a right introduced for the benefit of the

* Now page, 90. † Ib. pp. 90—97.

OMISSION.

The owner of a field is not at liberty to effect any work therein, which may cause damage and detriment to the adjacent fields that belong to others—thus, if the proprietor of a paddy field be prevented from draining his field, at the proper time and season, by means of the usual outlets, in consequence of the owner or cultivator of an adjacent field having blocked up the gaps and outlets in the embankment between the two fields, through which outlets the draining was usually effected—or in consequence of the occupant of the adjacent field having constructed a new embankment which rendered those outlets useless—and if therefore the first mentioned field, becoming submerged, was thrown out of cultivation for the season, or if the crops thereon were damaged in consequence of the submersion—in such case the owner of this field will be entitled to recover damages from him who caused the said damages—and likewise if the owner or cultivator of a field did maliciously open a new channel and by that means drain his field in an unusual way, or if he drained his field in an unusual and improper time, and thereby prevented the adjacent field (the property of another person) from being sown, or caused the crops thereon to be damaged, the owner of that adjacent field will be entitled to compensation from the wrong doer.

A tank within the bounds of one proprietor's estate wherefrom water was always supplied for irrigating a tract of paddy land belonging to other proprietors, must not be drained by the proprietor of the first mentioned estate—in seasons of drought when the water is dried up, the proprietor of the said estate may cultivate the bed of the tank and reap the product, but he must not demolish the bund or embankment of the tank so that it should not be replenished—nor when the tank is replenished, can the said proprietor of the estate wherein it is situate, prevent the owners of the tract of paddy land aforesaid, from conveying water therefrom through the usual channels for irrigating that land.

Some of the trees in a garden may belong to one person, and the rest of the trees together with the ground may belong to another—in such a case, the owner of the first mentioned trees, is entitled only to the usufruct thereof, but he has no right to plant any more trees in that garden, without the consent of the proprietor of the soil

District Judge says "there is no clause in the Deed barring the right of revocation, but only the usual Kandian form of renunciation of right," viz. "that neither I nor my descendants shall make any dispute ; that the donee, may from generation to generation possess for ever in undisturbed parveny doing whatsoever he pleases."

Armour is only a collection of cases ; but as the cases are put by him, they support our position. All gifts are revocable, whether for consideration or not. The only question is where the donor has barred himself from revoking. Want of *natural* love and affection is not an objection in a Kandian Deed of Gift.

Sed per Curiam.] The judgment of the Court below was—*affirmed.*

H.

NAYA AND TOORAHA.

(*From Armour's Grammar of the Kandyan Law, page* 270.)

Naya means a Debt resulting from a contract or agreement between thee Debtor and the Creditor. If one borrowed a sum of money, or purchased goods on credit, or hired a house or took in rent a garden or a paddy field or any other firm—the obligation resulting from any such transaction is called *Naya.*

If without proper authority and sanction, a person expended the money or disposed of the goods that belonged to another person, and which had been intrusted to him—or if owing to his negligence the money entrusted to him was lost or stolen—or the goods were lost, stolen, damaged, or perished—if he did by unfair means appropriate to himself another person's goods—or if he received stolen goods and disposed of the same—or if he did carelessly or maliciously damage or destroy another person's goods—the pecuniary liability resulting from any such occurrence is called *Tooraha.*

Naya signifies also the liability of a surety to discharge an obligation incurred or contracted by the principal—and *Tooraha* means also the pecuniary penalty incurred by one convicted of slander or defamation.

GLOSSARY.

—oo—

A.

Addrawyawat, (from the Singhalese *a* not, *drawya* substance, *wat* an affix implying possession) unsubstantial.

Ama rasa, (the Elu form of the Sanscrit *amurta rasa*, from *amá* ambrosia, the food of the gods, *rasa* savour) ambrosia, the food of the gods.

Amblam, (from the Singhalese *ambalama*) a native rest-house.

Anto jato, (from the Pali *anto* in, *jato* born) slaves born at home.

Aswedduma, (probably from the Singhalese *as* border, *waddanawá* to drive into.) There is a custom among the natives of enlarging their fields by cutting down a slip of the high ground immediately adjoining the field and converting the same into low ground. The portion of land thus converted is called an *aswedduma*.

Aswedduma panama, (from the Singhalese *aswedduma* the act of converting a high land into a paddy field, *panama* money) a small rent which a cultivator pays annually to the land-proprietor for a waste piece of ground which he has cultivated with his permission.

Awinyanaka, (from the Pali *a* not, *winyana* sensibility, *ka* an affix) inanimate.

Aya, an individual ; it is applied alike to man, woman, or child.

B.

Badaa lata, (should be *bhaddra latá*, from the Sanscrit *bhaddra* goodly, *latá* creeper) good creepers. A creeper whose stems, leaves, yams, &c. were esculent.

Bandaare waliya, (from the Singhalese *bandár* the son of a chief, *walia* race) descendants of noblemen.

Bat kawapoo nam, (from the Singhalese *bat* rice, *kawápu* eaten, *nama* name.) There is a ceremony among the natives of making the child eat rice for the first time upon an auspicious day, and on that occasion it was usual to give him a name also ; and this name is called *Bat kawápu nama*, which answers to our Christian name.

Beena, (from the Sanscrit *bhinna* broken or separated) is that species of marriage among the Kandyans where the husband is received into the

house of the bride and abides therein permanently. This word is invariably connected with the word *Bahinawá* (going down.)

Bhumi parpataka, (from *bhúmi* ground, *parpataka* moss) a kind of moss said to have sprung spontaneously at the time when this world was peopled by the Brahmeyas after it had been once destroyed by a deluge.

Brahma loka, (from *Brahma* Brahma, *loka* world) that division of the universe supposed to be the residence of Brahma.

Brahmeyo, the gods who inhabit the *Brahma lóka*.

Brahmena wangsa, (from *Bráhmana* Brahma, *wangsa* tribe) the Hindu sacerdotal caste.

C.

Calpa warkshas, (from the Sanscrit *kalpa* wish, *wriksha* tree) a fabulous tree in heaven which is said to yield every thing desired.

Chanchela dey, (from *chanchala* shaking, *deya* things) moveable property.

D.

Daa himi, (*dá* the Elu form of the Sanscrit *játaká* procreate, *himi* ownership or right) procreate or paternal right, comprising both the father's right to the children's estate and *vice versâ*.

Dahasoon, literally those not free: hence slaves, persons under thraldom and bondage and who belong as property unto others.

Daladaa dhaatu, (should be either *dala dá* or *danta dàtu:* because *dá* and *dátu* mean the same thing, improperly connected into one expression as if to say *Magna Charta Charter*, instead of *Magna Charta* or *the Great Charter*: from *dala* or *danta* tooth, *dá* or *dàtu* a constituent part of any thing) the tooth relic of Buddha.

Danna aya, (from the Singhalese *danna* knowing, *aya* people) adults.

Daroo urume, (from *daru* children, *urume* right) the mother's right to her children's estate.

Deega, (probably from the Pali *dhígha* far or away) is a species of marriage among the Kandians, wherein a woman is given away to live permanently with her husband.

Deya, things.

Dewalle, (from *déwa* god, *ála* house) a temple where some heathen god or demon is worshipped. In these places the officiating priest is a *Capua*.

Dhanakkeeto, (from the Pali *dhana* wealth, money, &c. *kèto* bought) slaves by purchase.

Drawyawat, (from *drawya* substance, *wat* an affix implying possession) substantial, or consisting of matter.

E.

Esskooli, (from the Singhalese *es* eyes, *kuli* wages) reward for finding and restoring lost things.

Ewessee, the feminine of *ewesseya*, which see.

Ewesse Bædawee, (should be *bedawi*, from the Sanscrit *baddràhni* the lovely one) a female cousin—the daughter of either the mother's brother or father's sister. The word *bedawi* is now almost obsolete—*ewesse nana* being now used instead.

Ewesseya, (the Singhalese from the Sanscrit *awasya*, direct) a male cousin—the son of either the mother's brother or father's sister.

G.

Ganeswere, (from *gana* a multitude, *íswara* a chief) the Hindu god of wisdom. He is considered the chief of the inferior set of deities; hence the name.

Gedere nama, (from the Singhalese *gedara* house, *nama* name) the family or ancestral name, answering to our surname.

Goigame, (from the Singhalese *gowi* a husbandman, *gama* village) literally Wellale man's village; but this term is used to signify the Wellale caste.

Goi wanse, (from *gowi* as above, *wangsa* caste) the Wellale caste.

H.

Handooroowo, another term for the Wellale people.

I.

Irdhi. This word signifies power, or ability; but it is applied to the power of flying through the air said to have been possessed by the *Rahatus*—a sect of Buddhist saints who attained to it by previous merit and devout meditation.

Ittan keré, (from *ittang* the act of emancipating, *keraya* a deed or writing) deed of emancipation.

J.

Jateke urume, (from *jàtaka* procreate, *urume* right) the right of paternity.

K.

Karramaraneeto, (from the Pali *karámara* to tease, *anéte* bought) persons doomed to slavery.

Kœerræpota. (from *karaya* Deed, *pata* leaf) an olah writing of slavery.

Kili reda hela, or *Kili kada redda,* (from *kili* literally the menses, *redda* cloth, *héla*) a dress of about twelve cubits. There was an unbecoming ceremony among the Singhalese of testing the bride's virginity by inspecting the cloth on which the couple lay on the first night of their nuptials, and this cloth which is sent by the Bridegroom may have been intended for that purpose. Although the ceremony itself is now almost done away with, the original custom of sending the cloth is yet retained.

Kshetroo, (should be *kshattria*) royal.

Kshetria wangsa, (from *kshattria* royal, *wangsa* race) royal family.

Kula, family, tribe, race, caste; but now the word is invariably used to signify a stain in one's family.

L.

Lat himi, (from the Singhalese *ladà* acquired, *himi* right) right of acquisition.

M.

Magool paha, (from the Sanscrit *mangalya* auspicious, fortunate, *paha* five) the five wedding feasts which precede a regular and lawful marriage among the Kandians.

Magool patta, (from *mangalya* same as above, *pata* urn) the wedding plate.

Magool poroa, (from *mangalya* same as above, *pórua* board) a raised platform on which the bride and the bride-groom are made to stand while their hands are being tied together with a string, which completes the marriage ceremony.

Magool Sakwala, (from *mangalya* same as above, *sakwala* universe) an epithet applied to this world in consequence of its being favoured with the religion of Buddha.

Maha Brahma, (from *maha* great, illustrious, *Brahma* Brahma) the Supreme Being of the Hindu mythology.

Mala paloo, (from the Singhalese *mala* dead, *pàlu* waste) an estate untenanted in consequence of the death or extinction of the *parveny* proprietor, or his family.

Modele peroa, (probably from the Tamul *modely* a head-man, a chief, *pér* name) of the family of Modely.

N.

Nilleyakkareya, (from the Singhalese *nilaya* an office, *kàrayà* a doer) literally one who holds an office; but it is meant for one who possesses his share on condition of cultivating a certain portion of *Muttettu* field, or any other defined service which may have been attached to the service portion of the land held by *Nila kárayá*.

Ninde game, (from *ninda* unencumbered, *gama* village) a village which for the time being is the entire property of the grantee or temporary chief; if definitely granted by the King with sannas, it becomes *parveny*.

Nischalla dey, (from the Sanscrit *nis* not, *chala* shaking, Singhalese *deya* things) immoveable property.

Nodanna aya, (from the Singhalese *no* not, *danná* knowing, *aya* people) literally innocents; those under age, minors.

O.

Olah, by this word are meant Palmyra leaves used by natives for writing purposes. The term is sometimes applied to a Deed, because all native instruments were executed upon these leaves in former times.

P.

Pagoda, an Indian gold coin.

Panduru mille, (from the Singhalese *pandura* a tribute, *mila* price) same as *asweddum panama*, which see.

Paraveny, (originally from the Pali *pavéni* corrupted into *prevéni*, from thence into *paraveny* literally, inheritance) means ancestral property, distinct from one's acquired property; may be *Paternal* parveny or *Maternal* parveny, the former if obtained on the side of the Father, the latter if one the side of the Mother.

Patte bendi name (from the Singhalese *pata* bark, *bendi* tied, *nama* name.) It was customary for the Kandyan Government to distinguish a person by giving him a title of honor for the performance of some meritorious act. This cerimony was originally performed by tying a piece of bark on which the title is inscribed, round the forehead of the individual thus marked out. This title, which afterwards became a name in the family, was borne down to perpetuity on the male side of the man's descendants, by the term *Pata bendi nama* (the titled name), to distinguish it from the *Gedere name* (the surname), and the *Bat kawápu nama* (as we would call it, the Christian name).

Patte tahado, (an abbriviation of *pata bandina tahadu*, from *pata bandina*, literally tying the bark, or giving a title in the manner above described, *tahadu* a sheet of metal) the sheet of metal used in giving one the title of honor. Because in process of time the title of honor was inscribed on metal instead of being written on the bark.

Piye urume, (from the Singhalese *piya* father, *urumè* inheritance) Paternal inheritance.

Prawargita, (from the Sanscrit *pra* an emphatic prefix, *wargita* abandoned) those that have assumed the robes of (Buddhist) Priest-hood, "because to take the Robe is to resign all wordly wealth."

Purappaadu, (probably from *purana* full, complete, *pádu* literally deficient, or incomplete) untenanted. A land becomes *purappádu* in three ways—1. By failure of heirs. 2. By abandonment, 3. By forfeiture. In the latter case it assumes the name of *Gabedà gama*.

R.

Raja kariya, (from the Singhalese *raja* of or belonging to the King, *kàriya* work) literally service to the King; but it is also applied to service rendered to Temples as well as to land-proprietors in general.

Raja wangsa, (from *ràja* same as above, *wangsa* race) royal family.

Natte, another term for *Goi gama* or *Wellale* people: literally the word signifies country-men or soil owners; and is meant to signify the *Wellale* people; from the fact that originally none but the *Wellale* people having been the land owners; because people of the other castes had their respective occupations—the cultivation of land being confined to the *Goi wangsa* or the cultivating class alone.

Ridy, literally silver; signifies a silver coin of about eight pence in value.

S.

Saman daasawyo pagato, (from the Pali *saman* voluntary, *dá sawya* to enslave *opógé* become) persons who became slaves of their own accord.

Sannas, (from the Singhalese *san* name, *as* seal also a sign) a grant from the king, usually upon a piece of metal with the king's signature ශ්‍රී.

Sawinyanaka, (from the Sanscrit particle *sa* with, *wigyana* sensible or sensitive) possessed of intellect.

Sewralle, (from *siwra*, a priestly robe, *hala* he who has thrown off) he who has thrown off his robe; an ex-priest. The asperate *ha* is changed for its corresponding vowel *a*, for the sake of euphony and respect.

Silwat, (from the Singhalese *sil* moral duties, *wat* possessing) persons who devote themselves to a course of rigid life by observing the moral and religious duties of Buddhism.

ශ්‍රී, this character is read *sri*, it is the regal sign of the Kandyan kings, and means illustrious.

W.

Wadaa himi, (from the Singhalese *wadà* parturiate, *himi* right) parturiate or maternal right.

Wadaale panatin sittu, (*wadála* declared, *panatin* by order, *sittu* a writing) a kind of Grant inferior to that of a Sannas only from its being not signed by the King but by his Prime Minister.

Wangsa, race or family.

Waniga, (the Sanscrit form of *welenda* merchant.) The third in order of the four superior castes—*Raja* (royal), *Bamunu* (Brahminical), *Welanda* (mercantile,) and *Gowi* (agricultural.)

Wasto, property, wealth.

Wedda, (from the Sanscrit *widja* to shoot) an archer. A remnant tribe of the Singhalese, supposed to be the aboriginies of the Island.

Wihare, (from *wihara* to dwell) a Buddhist place of worship, a temple wherein there is some relic of Buddha. It is distinct from a *Pansalla*, which is only a residence of a Buddhist Priest. To the former are attached lands and other valuable treasure.

Winyana, literally sensible; hence animate.

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