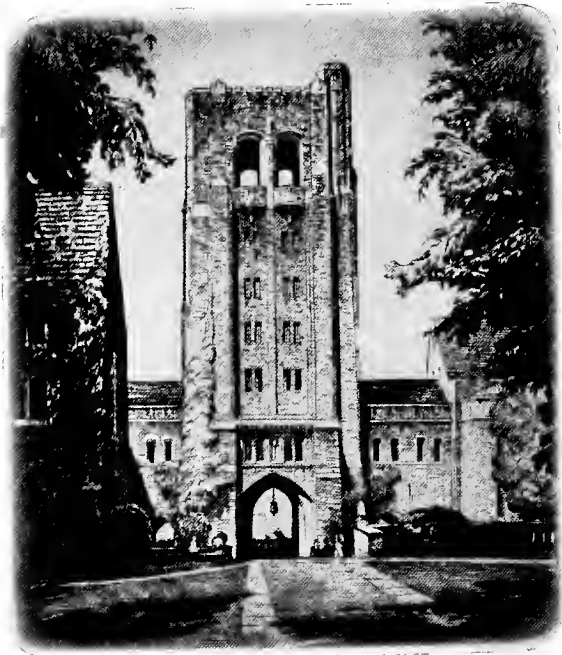


KPS
770
.B86
1876

KPS
770
B86 86
1876



Cornell Law School Library

Cornell University Library
KF 1575.B86

Mukkuva law:



3 1924 025 034 855 law,fore

THE
MUKKUV A L A W:

OR,

THE RULES OF SUCCESSION AMONG
THE MUKKUVARS OF CEYLON.

BY

C. B R I T O,

ADVOCATE.



COLOMBO:
H. D. GABRIEL, BAILLIE STREET.
1876.

MA 317

PRINTED BY FRANCIS FONSEKA, FORT.

PREFACE.

THIS is an attempt at a scientific exposition of the Customary Laws of the Mukkuvars, of which, this is also the first collection.

With the view of facilitating the pronounciation of the Mukkuva law-terms occurring in this treatise, a key has been added, which, it is hoped, will be found useful.

The compiler has to offer his acknowledgments to those of his friends who have assisted him with information on the subject, and especially to the Mukkuva Pandithan **LOUIS VITHANAI ANTHONY PILLAI** of Navetkadu, Calpentyu.

He has also to acknowledge his obligations to **Mr. G. E. WORTHINGTON**, the learned District Judge of Batticaloa, for affording facilities of reference to the records of his Court, which the compiler has availed himself of, through the industry of his friends **Messrs. PROCTORS, R. KADRAMER** and **J. J. B. SWAMINADAR** of Batticaloa.

TABLE OF CONTENTS.

	PAGE
Introduction - - -	- 1—4
THE MUKKUYA LAW.	
CHAPTER I.	
Definitions - - -	- 5—20
CHAPTER II.	
Where husband and wife are both living	- 21—23
CHAPTER III.	
Where they are both dead -	- 24—28
CHAPTER IV.	
Succession to maternal Muthu Som -	- 29—36
CHAPTER V.	
Where one Spouse survives the other	- 37
CHAPTER VI.	
Popular Views of the Mukkuva Law	- 38—40
CHAPTER VII.	
The origin of the Mukkuva Law -	- 41—45
SUMMARIES OF CASES.	
No. 10236, and notes - - -	1—3
No. 10524, and notes - - -	- 4—8
No. 11765, and notes - - -	8—11
No. 12668, and notes - - -	- 11—16
No. 12460, and notes - - -	- 16—20
No. 13341, and notes - - -	- 20—24
No. 16151, - - - - -	- 24
No. 16384, - - - - -	- 25—30
KEY TO THE PRONUNCIATION	
OF MUKKUYA TERMS.	- 31—35

INTRODUCTION.

THE MUKKUVARS of Ceylon are a class of Tamils chiefly found in the Districts of Calpenty, Jaffna and Batticaloa. The Calpenty MUKKUVARS are either Christians or Mahommedans and are now subject to the general Laws of Inheritance applicable to the Christian and Mahommedan inhabitants of the Maritime Provinces of the Island. The MUKKUVARS of Jaffna and Batticaloa are Sivites, with a sprinkling of Christians among them. Whether Christian or Sivite, these MUKKUVARS have their succession to intestate property regulated, in Jaffna, by the THESAVALAMAI of that province; in Batticaloa, by a custom peculiar to themselves. That custom is commonly called "THE MUKKUYA LAW." Customs of a similar nature are known to exist in some parts of India also. A discussion into their origin, however interesting it might be, would be unsuited to the character of the present compilation. There is no reliable information on the subject, and tradition, as is usual in such cases, has not been slow to invest it with a halo of romance. The true origin should, probably, be looked for in those primitive times when the MUKKUVARS had no rules of moral or positive law to determine the paternity of their offspring.

The MUKKUYA LAW of Batticaloa is involved in much uncertainty. The only reliable materials are a few decisions of the District Court and the Court of Requests of Batticaloa. Some of these decisions have been reviewed in appeal by the Honourable the Supreme Court, and the points determined therein have become settled Law. Still there remain a great many moot points, which must necessarily remain so until occasions arise for legal adjudication.

The following pages contain the result of the compiler's inquiries among the learned MUKKUVARS of Batticaloa and Calpentyn, and an examination of cases consulted by him, while practising law at Batticaloa. None of these cases are older than the year 1844. But there is reason to believe that a careful search among the records of the Batticaloa Courts would be rewarded with the discovery of older and more important cases. It is to be hoped that some friend of the profession would make the search and add to the scanty information now presented to the public.

The MUKKUVARS of Calpentyn seem to have abandoned the custom of their caste long before the establishment of the Provincial Court of Puttalam and Chilaw. But the records of the Land Raads of Chilaw and of Puttalam, if they could be found now, would probably supply much valuable information on the subject.

The Rules set forth in this *brochure* have, most of them, no better authority than the dicta of old men. There can be no doubt that all these rules were once in force among the MUKKUVARS. But the reader is specially warned against accepting any of them for law now, that are not directly or by inference supported by legal decision. They are given here to serve as a guide to direct future investigation as to whether they have any place in the modern usage of the MUKKUVARS of Batticaloa.

Among the cases consulted by the compiler, of some of which Summaries are given in these pages, will be found inserted last, an able judgment delivered in Case No. 16384 of the District Court of Batticaloa, by Mr. Deputy Queen's Advocate Hay, while acting as District Judge. It gives an excellent *resume* of nearly all the important recent decisions on the MUKKUVAR LAW.

The following decision of the Supreme Court in appeal, reported in Prins and Conderlag (pp. 381,382) is inserted here as shewing that the customs of the MUKKUVARS of Batticaloa have never been interfered with either by the Dutch or the English Government.

“ December 13th, 1874.

CHINNATTAMBY.

Vs,

MINNY.

By the Ordinance No. 5 of 1835, the Proclamation of 23rd September, 1799, is declared to be in force, in

so far as "that the administration of Justice and Police within the settlements then under the British Dominion, and known by the designation of the Maritime Provinces, should be exercised by all Courts according to the laws and institutions that subsisted under the ancient Government of the United Provinces," and these laws and institutions are by the said Ordinance to continue in force 'subject' &c.

The Supreme Court has every reason to believe that the laws and customs of the Tamils residing in Batticaloa, regarding the rights of succession to property, were never interfered with by the Courts of judicature under the Dutch Government: and the special customs of the "*Moquas*." * and Vanniahs were recognized in a case at the last sessions holden at Jaffna without its even being contended that they were abrogated. (No. 8933, D. C. Batticaloa)."

* This is one of the several ways in which the word *Mukku-vars* was formerly spelt.

THE MUKKUYA LAW.

CHAPTER I.

DEFINITION.

I. The MUKKUYAS distinguish between

Division of property.

Acquired property
and
Ancestral property.

II. *Acquired property* is called THEDDAM or THEDIYA THEDDAM.

Theddam.

THEDIYA means *Acquired*,
THEDDAM means *Acquisition* or
Property.

Theddam
derived.

THEDIYA and THEDDAM are paronymous terms derived from the verb THEDUKIRATHU, *to seek, earn or acquire.*

III. *Ancestral property* is called MUTHU SOM.

Muthu Som.

MUTHU means *Old* or *Ancestral*.
SOM means *Wealth* or *Property.*

Muthu Som
derived.

Theddam
defined.

IV. THEDDAM is property acquired or earned in one of the following modes :

Occupancy,

Purchase,

Prescription,

Bequest or Legacy, obtained
from *strangers*,

Donation or Dowry obtained
from *strangers*,

Successio pactitia or Inheritance
by contract.

Strangers.

The term *strangers* includes all persons who are not MATHAKKAL or MUTHAKKAL.

Mathakkal
derived.

V. MATHAKKAL is the plural form of the word MATHA, *mother*, and signifies literally *mothers*.

Mathakkal
defined.

Under the term MATHAKKAL, a MUKKUVAN includes not only

His mother

and

Her collaterals,

but he includes also

His father

and

His father's collaterals.

VI. Neither the term, **THATHA**, *father*, nor its plural form **THATHAKKAL**, *fathers*, is ever found in use.

Thatha and Thathakkal not in use.

When we come to consider the origin of the **MUKKUYA** Law of succession, we shall see the reason why the **MUKKUYARS** spoke of their **MATHAKKAL** and **MUTHAKKAL** only, but not of their **THATHAKKAL**.

Its reason.

In accordance with the **MUKKUYA** usage, the term **MATHAKKAL** shall, in these pages, be used to include **THATHAKKAL** also.

Mathakkal how used.

VII. **MUTHAKKAL** means *Ancestors*, and it includes

Muthakkal defined.

One's parents' ascendants
and

The collaterals of those ascendants.

VIII. The term **KUDI** is used by all the Tamil-speaking classes of Batticaloa to mean every person who is related to one on one's mother's side only.

Kudi defined.

Persons of the same **KUDI**, however distantly related they may be, recognize each other as relations.

Mother's kudi.

Father's kudi Beyond one's father and his immediate relations, one scarcely recognizes any relations in one's father's KUDI.

Vayittu Var
how used. IX. VAYITTU VAR is a term used in Batticaloa as a synonyme for KUDI, generally among the KARAIYAR and occasionally among the other classes also.

Its meaning. VAYITTU VAR means *womb-tie*.

Derivation. It is derived from
 VAYIRU, *womb*
 and
 VAR, *Tie* or *Band*.

Muthu Som
defined. X. MUTHU SOM may be defined, in MUKKUYA phraseology, to be
 MATHAKKAL SOM
 or
 MUTHAKKAL SOM

Natural ac-
cession. XI. *Natural Accession*,
 if derived from or added to
 a THEDDAM is reckoned as THEDDAM,
 if, to a MUTHU SOM, it is
 reckoned as MUTHU SOM.

Commixtion
confusion. XII. In cases of the *commixtion* or the *confusion* of THEDDAM and MUTHU SOM, the greater in value would, as in the Dutch Roman Law, seem to attract

to itself the less in value : and the heir of the owner of the less would seem to be entitled to compensation for the value of that which he gives up.

The traditions of the MUKKUVARS are silent on this point.

XIII. Whatever is inseparably fixed to the *ground* by *cultivation* or *construction* follows the condition of the ground with respect to the question whether it should be considered as THEDDAM or as MUTHU SOM.

Accession by cultivation & construction

XIV. SOM includes *movable property* and *immovable property*.

Som and kani distinguished

Kani properly means *arable land*, as distinguished from other descriptions of land. But it is generally used for *immovable property*.

XV. The division of property into movable and immovable was not known in ancient times to the MUKKUVARS or other Tamils.

Movable, immovable.

The words SARAM, ASARAM, and, ASAI-VULLA, ASAIVATTA, which distinguish *movables* from *immovables* are of modern usage.

Thalavalam. THALAPADAM or THALAVADAM, *recte* THALAVALAM strictly means things necessary, and is generally used for *furniture, utensils, tools &c.*

Saman SAMAN (plural SAMANKAL) is a word of foreign origin, meaning, among the Tamils, all kinds of movables except living animals and money. It is also used collectively, for *cargo, goods* in a shop or house, and *luggage*.

XVI. When the Tamils had occasion to describe their possessions they enumerated them in the following alliterative or rhyming couples of words.

Adu.	{	ADU..... sheep and goats.
Madu.		MADU..... <i>genus bos</i> .
Kantu Ka'i,	{	KANTU..... the young of cow, buffalo elk, deer, camel, horse, elephant, &c. but not of dog, pig, jackal &c.
		KALI..... herd of (domesticated) animals.
Madu.	{	MADU as before.
Kantu.		KANTU..... as before.
Thaddu. Muddu.	{	THADDU ... things which lie flat on the ground or which would so lie if not raised by support.
		MUDDU..... supports.

These two words are always used as a compound word signifying *house-hold stuff*.

{	KANI.....see rule xiv.	Kani
	PUMI.....the Earth, meaning un- cultivated ground.	Pumi
{	VIDUhouse.	Vidu
	VALAVU ...garden; ground sur- rounding a house; a piece of waste land fit for a garden, or for building on.	Valavu
{	VIDU.....as before.	Vidu
	VASAL.....dwelling or residence:	Vasal

The history of the word VASAL in this connexion is not a little curious. The Tamil word VAY originally meant *place* and then *way* or *mouth*. Compounded with another Tamil word, IL, *a house*, it took the form VAYIL, *way-house*, instead of, what would be the more regular form, ILVAY, *house-way* or *door*. Vasal derived

VAYIL was corrupted into, or confounded with VAYAL (a word of doubtful authority) also derived from VAY and meaning *side*.

In imitation of words, derived from Sanscrit, which use *s* and *y* as inter-

changable letters, VAYAL was changed into VASAL.

And VASAL would seem to have been confounded with VASAM, *dwelling, residence or village.*

Thoddam
Thuravu

{ THODDAM...garden: landed estate,
{ THURAVU...an open well.

Urimai and its
compounds

XVII. URIMAI is the Tamil word for *Inheritance.*

When compounded with the words,

PILLAI	<i>child</i>
AN	<i>male</i>
PEN	<i>female</i>
VALI	<i>way or line,</i>

it assumes the following forms and meanings.

URIMAIP PILLAI	<i>heir</i>
URIMAI YAN PILLAI	<i>male heir</i>
URIMAIP PEN PILLAI	<i>female heir</i>
PEN VALI YURIMAI	<i>inheritance from a female line.</i>

PEN VALI YURIMAIP PILLAI, *an heir
from a female line.*

PEN VALI YURIMAIP PEN PILLAI *a fe-
male heir from a female line.*

A person, *male* or *female*, deriving his or her descent from a *female* through an unbroken *succession of females* is said to be the PENVALI YURIMAIP PILLAI of that female.

Pen vali
yurimaip
pillai.

A *female* who derives her descent from another *female* through an unbroken *succession of females* is said to be the PEN VALI YURIMAIP PEN PILLAI of that other female.

Pen vali
yurimaip
pen pillai.

All these terms are not in general use at Batticaloa : but their signification is expressed in other words.

XVIII. Mother's MUTHU SOM is called
MATERNAL MUTHU SOM.

Maternal
Muthu som
defined

When a female holds, or is entitled to, a property, by right of its being her MUTHU SOM, it is called, by and with reference to her children, their MATERNAL MUTHU SOM.

As great ignorance and much confusion of thought prevail as to what MATERNAL MUTHU SOM is, it requires to be explained at some length.

& explained

Take a married couple of MUKKUVARS who have no other property than their THEDDAM.

This THEDDAM is MUTHU SOM to their children; and when the children get it, although they might regard it as consisting of a PATERNAL moiety and a MATERNAL moiety, and although they might be actually possessing it in two such moieties, having received each moiety, let it be supposed, at different times according to the order in which their parents departed this life, yet there would not be a PATERNAL or MATERNAL MUTHU SOM, but only a PATERNAL SOM and a MATERNAL SOM, so to speak.

The expression *paternal* or *maternal* MUTHU SOM would imply that the SOM was MUTHU to the typical couple, which, by hypothesis, is not the case.

But if a female child of the typical couple die, leaving children, the share of that female child will be styled, with reference to her children, their MATERNAL MUTHU SOM.

The reason is obvious:

It was THEDDAM to the original proprietors,

It was MUTHU SOM to the children of those proprietors,

And it is MATERNAL MUTHU SOM to the children of the *daughters* of those proprietors.

The MUKKUYA definition is,

“What was MUTHU SOM to my mother is MATERNAL MUTHU SOM to me.”

The Mukkuva definition of it.

Hence, one's MATERNAL MUTHU SOM includes

What maternal muthu som consists of.

1. one's mother's PATERNAL SOM: that is, her father's THEDDAM.
2. her PATERNAL MUTHU SOM ; that is, her father's MUTHU SOM, not derived through his mother.
3. her MATERNAL SOM; that is, her mother's THEDDAM.
4. her MATERNAL MUTHU SOM ; that is, SOM which was MUTHU to her mother.

Maternal
muthu som
ought not to
be confound-
ed with mater-
nal som,

The terms PATERNAL SOM, PATERNAL MUTHU SOM and MATERNAL SOM are not found in MUKKUYA usage, for reasons which will appear hereafter: but the reader is requested to bear in mind the difference between MATERNAL SOM and MATERNAL MUTHU SOM, as, much of the difficulty which a beginner finds in understanding the MUKKUYA Law consists in his ignorance or forgetfulness of this difference.

Other names
for maternal
muthu som.

MATERNAL MUTHU SOM is, by way of excellence, sometimes called simply MUTHU SOM.

It is also called sometimes
mukkuva muthu som,
mukkuva kani,
mukkuva land,
paravanik kani,
paravani muthu som,
and
marumakkal kani.

Paravani
defined.

PARAVANI is a word of Sanscrit origin and means *lineal descent* or *hereditary succession*,

And PARAVANIK KANI is a KANI which comes by such descent or succession,

MARUMAKKAL is the name by which a man calls his sister's children, and a woman her brother's children.

XIX. MUTHU SOM continues to be reckoned as MUTHU SOM,

What is reckoned as muthu som.

whether it is received by the URIMAIP PILLAI immediately from his MATHAKKAL and MUTHAKKAL,

or it is received from them, mediately, that is, through the interposition of their other descendants or of trustees.

MUTHU SOM also continues to be reckoned as MUTHU SOM whether it comes to the URIMAIP PILLAI,

by Law, as, Inheritance *ab intestato*,
or by Will, as, Bequest or Legacy;
or by Gift, as, Donation or Dowry.

MATERNAL MUTHU SOM cattle kept for, and usually employed in, the cultivation of a MATERNAL MUTHU SOM land is reckoned as part of that land.

Maternal muthu som cattle when considered as part of land.

The same is the law as respects implements.

When implements are so considered.

XX. The produce of a MUTHU SOM land, when separated from the land, becomes THEDDAM.

What is reckoned as Theddham.

A thing purchased with MUTHU SOM money or obtained in barter for MUTHU SOM property does not partake of the nature of MUTHU SOM but is ranked among THEDDAM.

What Theddams may consist of.

THEDDAM may consist of every species of property,

whether movable or immovable,
whether acquired by the husband alone,
or by the wife alone,
or by both of them together,
whether obtained before their marriage,
or after their marriage,
whether from actual strangers,
or from their own descendants and other relatives.

Presumption in favour of Theddams:

A property is always presumed to be THEDDAM until the contrary is established by proof.

Maternal Muthu som land.

XXI. All questions connected with MATERNAL MUTHU SOM land consist of the rights of

1. BARE DOMINIUM:
2. POSSESSION, including the right in the possessor to cultivate the land and

to retain a reasonable share of the produce, as compensation for the trouble, risk and expenses of cultivation :

3. ENJOYMENT consisting of *usus and fructus*, as distinguished from the other rights;

4. DISPOSAL, including alienation, alteration, and encumbrance.

Each of these four rights has to be viewed as separate and distinct from the others.

1. While the DOMINIUM is vested in one heir, the POSSESSION and the ENJOYMENT are vested in another, and the DISPOSAL, in both .

There are, however, two instances in which the right of DISPOSAL is vested solely in the holder of the ENJOYMENT.

2. While the POSSESSION is vested in one heir, the DOMINIUM, the ENJOYMENT and the DISPOSAL are vested in others.

3. While the ENJOYMENT is vested in one heir, the POSSESSION is sometimes vested in the same heir, and sometimes

in a different heir, according to certain fixed rules to be explained hereafter.-

4. The DISPOSAL is always vested in the holder of the DOMINIUM, subject to the rights of the holder of the ENJOYMENT.

And, as pointed out above, the DISPOSAL is sometimes vested in the holder of the ENJOYMENT solely.

CHAPTER II.**WHERE HUSBAND AND WIFE ARE BOTH LIVING.**

XXII. The husband exercises all the rights of property, to the fullest extent and without the consent of his wife, over

All property is under marital power except maternal muthu som.

All the THEDDAM,

his PATERNAL SOM *movable and immovable,*

his PATERNAL MUTHU SOM *movable and immovable,*

his MATERNAL SOM *movable and immovable,*

his wife's PATERNAL SOM *movable,*
her PATERNAL MUTHU SOM *movable*
and

her MATERNAL MUTHU SOM *movable,*

XXIII. But, as respects

her PATERNAL SOM, *immovable,*
and

her PATERNAL MUTHU SOM, *immovable,*

1. He has the mere management of them.

2. He cannot aliene them without her concurrence.

3. No contract, entered into by him without her concurrence, will, after the dissolution of the marriage by the death of either of the spouses, be binding on her or her heirs.

The husband cannot aliene his maternal muthu som.

XXIV. The MATERNAL MUTHU SOM of the husband (to use a somewhat inaccurate expression, as, by the Mukkuwa Law, the male with whom a MATERNAL MUTHU SOM is found, is considered to be only the *life-tenant* of it) is subject to his power in all respects, except that, without the consent of his sisters, he cannot alienate or encumber it beyond his life for any other purposes than for debts incurred by himself or by his predecessors,

Exceptions.

1. in its cultivation, or
2. in payment of tax due on it to Government,

He cannot aliene his wife's maternal muthu som land for any purpose whatsoever. Her brothers may, for tax or cultivation debt.

XXV. The MATERNAL MUTHU SOM immovable of the wife is entirely out of the marital power.

Her brothers may alienate and encumber it without her consent for purposes of tax or cultivation.

And she may, without her husband's consent, but subject to her brother's rights, alienate and encumber it. But see Rule xxxviii §§ 6.8.10.

Her brothers, and not her husband, can represent her in a court of law in respect of her MATERNAL MUTHU SOM land : and, they are bound to carry on all suits relating to such land at their own expense.

They represent her in Court.

XXVI. There is no doubt as to the power of the husband and wife to alienate conjointly any of their SOMS except their MATERNAL MUTHU SOM LANDS.

Husband and wife may together dispose of all their soms except their maternal muthu som land.

XXVII. Nor is there any doubt as to the power of the husband to alienate all his wife's *movables*, including her MATERNAL MUTHU SOM, without her consent.

Husband may alienate all his wife's movables including her maternal muthu som.

XXVIII. The person of the wife, her rights and her property are under the marital power in all respects save as mentioned above.

Wife's person and her rights are under the marital power.

CHAPTER III.

WHERE THE HUSBAND AND WIFE ARE
BOTH DEAD.

When no
common
issue.

XXIX. If they have left no descend-
ants common to both of them, a division
is made of their Estate into *two portions*.

One consists of all the

PATERNAL SOM of the wife,

her MATERNAL SOM,

her PATERNAL MUTHU SOM,

and

her MATERNAL MUTHU SOM,

together with

ONE HALF of the THEDDAM.

Wife's
portion.

This is called the WIFE'S PORTION.

Husband's
portion.

The other portion consists of the re-
mainder of the estate and is called the
HUSBAND'S PORTION.

Wife's
portion goes
to her own
children.

XXX. If the wife has left children of
her own by a former marriage, HER POR-
TION goes to those children subject to the
claims of her collaterals in respect of her
MATERNAL MUTHU SOM land as will be ex-
plained hereafter.

XXXI. If she has left no such children,
HER PORTION goes, in order, to her

When no
descendants,
to ascendants

1. mother,
2. mother's PEN VALI YURIMAIP PILLAI.
3. maternal grandmother,
4. maternal grandmother's PEN VALI
YURIMAIP PILLAI,
&c. &c.

The rule is, that, in the absence of direct descendants of a spouse who is deceased, that spouse's portion goes to his or her nearest PENVALI *female ascendant* or such ascendant's *nearest* PEN VALI YURIMAIP PILLAI.

XXXII. The same rule applies to the HUSBAND'S PORTION also.

XXXIII. If a spouse has left children by more than one marriage, the children of each marriage should get a portion equal to what they would have got, had a division of the property been made immediately after the dissolution of the marriage of which they were born.

Children of
different
marriages.

So that, before any division is made of an estate belonging to a subsequent marriage, it is necessary first to separate therefrom all the sums that should have gone to the children of former marriages.

Children
common to
both parents.

XXXIV. Where the spouses have left sons and daughters who are their common offspring

Maternal
muthu som
immovable.

1. The MATERNAL MUTHU SOM *immovable* of the husband goes to his collaterals.

Theddam.

2. All the THEDDAM is divided into two halves: one of which is divided *per capita* among all the children born of all the marriages of one spouse (including the present marriage) with right in the descendants of deceased children to take *per stirpes*.

3. The other half is divided, in like manner, among all the children of all the marriages of the other spouse, with the like right in the descendants of deceased children to take *per stirpes*.

Husband's
muthu som
not
maternal.

4. All the MUTHU SOM of the *husband* whether *movable* or *immovable*, consisting of his

PATERNAL SOM,

his MATERNAL SOM, and

his PATERNAL MUTHU SOM,

is divided among *all* the children of *all* his marriages *per capita*, with right in the descendants of deceased children to take *per stirpes*.

5. The *movable* MUTHU SOM of the wife, whether PATERNAL to her or not, is divided among *all* the children of *all* her marriages *per capita*, with right in the descendants of deceased children to take *per stirpes*.

6. As soon as the division is effected under §§ 2. 3. 4. and 5, and before the shares are given away, the sons of each marriage of each spouse take for themselves all the shares in *money* and *grain*, due to their full sisters.

7. The sons also do the same with their full sisters' shares in *wares* and *cattle*, kept by their parents for sale in course of trade.

8. The *immovable* MUTHU SOM of the wife consisting of

her PATERNAL MUTHU SOM,

her MATERNAL MUTHU SOM

her PATERNAL SOM,

and

her MATERNAL SOM,

(these having all become MATERNAL MUTHU SOM with reference to her children,) follow certain rules of succession which will be treated of in the next chapter.

Wife's muthu
som
immovable.

Where there
are either
common sons
only or
common
daughters
only.

XXXV. Where the spouses have left only sons that are common to them, but no common daughters, or have left common daughters but no common sons, all the sections of the last rule will still apply, if the wife has left any daughters of her own, or any PEN VALI YURIMAIP PILLAI of such daughters.

I. If she has left no such daughters or their PEN VALI YURIMAIP PILLAI, her MUTHU SOM and her PATERNAL MUTHU SOM, both movable and immovable, will descend to her sons *per capita*, with right in the descendants of deceased sons to take *per stirpes*.

There are some persons at Batticaloa who hold that her PATERNAL MUTHU SOM can never descend to her sons so long as there are *females* descended from her mother's or her maternal grand mother's PEN VALI.

All agree that the MUTHU SOM of the wife will go to her sons, if she shall have left no daughters.

Where the spouses have left only daughters who are common to them, but no common sons, it is scarcely necessary to say that *money, wares, cattle, and grain* also descend to the common daughters.

CHAPTER IV.

**SUCCESSION TO MATERNAL MUTHU
SOM LAND.**

XXXVI. When a woman dies leaving an immovable MUTHU SOM property that is MATERNAL to her children, whether it had been MATERNAL to herself also or not, Muthu som.

1. THE RIGHT OF DOMINIUM descends to her daughters in equal shares. The
succession as
to dominium.

If any daughters have predeceased her, the shares of the DOMINIUM that would have gone to those daughters descend to their PEN VALI YURIMAIP PEN PILLAIS *per stirpes*.

DOMINIUM can never descend to her sons so long as her daughters or their PEN VALI YURIMAIP PEN PILLAIS are living.

PEN VALI YURIMAIP PEN PILLAIS of remote grades succeed, by representing their deceased mothers, to a share in the DOMINIUM, at the same time with those of nearer grades.

To
possession.

2. THE RIGHT OF POSSESSION descends to her sons *per capita*.

The children of her sons who had predeceased her have no privilege of representing their parents, and therefore, they get no share in the POSSESSION.

POSSESSION can never descend to her daughters or their female descendants, so long as her sons or her PEN VALI YURIMAI YAN PILLAIS are living.

Her PEN VALI YURIMAI YAN PILLAIS of nearer grades exclude from the POSSESSION those of remoter grades: hence POSSESSION cannot be in the hands of heirs of different grades at one and the same moment.

To
enjoyment.

3. THE RIGHT OF ENJOYMENT descends to her sons *per capita*.

The children of her sons who had predeceased her have no privilege of representing their parents for a share in the ENJOYMENT.

ENJOYMENT can never go to her PEN VALI YURIMAIP PEN PILLAIS so long as there is a brother of those PEN PILLAIS living.

If all her sons are dead, the ENJOYMENT goes to her daughters in equal shares.

When the ENJOYMENT goes to her daughters, on the death of all her sons, if any of her daughters are dead, the descendants of her deceased daughters take shares *per stirpes*.

4. THE RIGHT OF DISPOSAL descends to her daughters subject to the rights of her sons for ENJOYMENT. To disposal.

The holder of the ENJOYMENT has the right of DISPOSAL for purposes of cultivation and tax.

XXXVII. To explain the succession further : Further succession.

1. When a woman holding a share of the DOMINIUM dies, that share descends to her daughters according to Rule xxxvi. §1. To dominium.

2. POSSESSION descends from a male to his male MARUMAKKAL directly. To possession.

It can never go into the hands of a female except when she has no brother or sons, or when her brothers and sons are incapacitated by lunacy, infancy, or other causes from possessing.

To
enjoyment.

3. ENJOYMENT descends, from a male who dies, to his brother or brothers who survive him.

When all the brothers are dead, it descends to their sisters *per capita*, and to the children of those sisters *per stirpes*.

When one of these sisters dies, her share of the enjoyment goes to her sons *per capita*.

Hence ENJOYMENT descends

(a) from *mother* to her sons:

(b) from a male, to his surviving brothers:

(c) when all the brothers are dead, it descends to their sisters *per capita*, with the right in the children of deceased sisters to take by representation.

The nearest PEN VALI YURIMAI YAN PILLAI succeeds to the ENJOYMENT to the exclusion of more remote ones.

To
disposal.

4. DISPOSAL is always vested in the holder of the DOMINIUM, subject to the rights of the holders of the ENJOYMENT.

The holder of the 'ENJOYMENT having always the right of DISPOSAL for purposes of cultivation-debt and tax.

**XXXVIII. General rules relating to
MATERNAL MUTHU SOM.**

1. Brothers and sisters or their descendants have nothing at all to do with a MATERNAL MUTHU SOM movable or immovable unless they are brothers and sisters born of the mother whose MUTHU SOM the property in question is.

Only brothers and sisters born of the same mother inherit her muthu som.

2. Relationship on the side of the father is never taken notice of in succession to MATERNAL MUTHU SOM.

Affinity is not regarded in muthu som succession.

3. When ENJOYMENT vests in a male the POSSESSION also vests in him, but when POSSESSION vests in a male, the ENJOYMENT does not necessarily vest in him.

Life interest.

POSSESSION and ENJOYMENT when vested in the same individual are spoken of as "life interest."

4. When, for default of other heirs, all the four rights of DOMINIUM, POSSESSION, ENJOYMENT and DISPOSAL are united in the same male, the MUTHU SOM becomes THEDDAM and follows the law of succession applicable to THEDDAM.

When maternal muthu som becomes Theddam.

5. A brother who is in POSSESSION and ENJOYMENT of the MATERNAL MUTHU

A brother in enjoyment not bound to

give any
share to his
sisters.

som land is expected to behave generously towards his sisters: but he is bound by no law to give them any share.

The elder
brother's
rights.

6. In rule xxxvi. § 3, it was stated that the ENJOYMENT descends from a mother to her sons in equal shares. In actual practice, in Batticaloa, the eldest brother is considered to be the holder of the whole ENJOYMENT and he has the entire management and cultivation of the land. The younger brothers are regarded as his assistants, or a little better than his servants. But in law, all brothers are equal share-holders.

When the eldest brother is dead, the next in age succeeds him.

Maternal
muthu som
vidu valavu.

7. When the MATERNAL MUTHU SOM is a VIDU, the holders of the DOMINIUM have the right of living in it and taking the produce of the VALAVU immediately attached to it.

Power of
Donating a
maternal
muthu som.

8. A female in whom the DOMINIUM of the MATERNAL MUTHU SOM is vested may deprive her sons of their claims, during her life time, for POSSESSION, and after her death, for ENJOYMENT in it, by giving it away to her daughter in

Donation, Dowry, or by Sale. But see § 10 infra.

9. The Government may sell a MATERNAL MUTHU SOM land for tax due on it.

Power of Government.

10. There is no law that prevents the holder of the DOMINIUM from disposing at will her MATERNAL MUTHU SOM movable or immovable, provided the DISPOSAL is effected subject to the rights of her brothers. But see contrary opinion hinted at in the judgments in Nos. 10524 and 12668. From the libel in No. 13341, it plainly appears that MUKKUA women, having the DOMINIUM, are in the constant habit of selling their MATERNAL MUTHU SOM lands with the consent of the holders of the *life interest*. In No. 12460, a sale made by a brother who was in POSSESSION and ENJOYMENT, without joining his sisters in it, was held valid, as the sisters did not object to the sale, although their cousins did.

Disposal.

11. If a daughter, receiving from her mother a MUTHU SOM land or a MATERNAL MUTHU SOM land, in Legacy, Gift or Dowry, does not dispose of it during her life time, but allows it to remain in her

Effect of a gift or legacy to an heir.

estate after her death, all the burdens of MATERNAL MUTHU SOM will revive in it together with her son's claim for *life interest* as against her daughters.

This rule obtains also in the analogous customs of the PANDARAP PILLAIS of Batticaloa.

Right to will
away a
maternal
muthu som
land.

12. It is certain beyond doubt that no person can *will* a MATERNAL MUTHU SOM away from all URIMAIP PILLAIS in favour of strangers.

Cattle and
implements.

13. Agreeably to Rule xix, succession to MATERNAL MUTHU SOM cattle and implements follows the law of the MATERNAL MUTHU SOM land to which they are attached.

14. Other cattle and implements follow the law of movables.

CHAPTER V.

WHERE ONE SPOUSE SURVIVES THE
OTHER.

XXXIX. The law is the same as in Chapters iii, and iv, except that the survivor keeps his or her PORTION as defined in Rule xxix and allows only the other PORTION to be divided among the heirs of the deceased.

Survivor's
portion.

The survivor has the right of disposing all his or her portion at will, except the MATERNAL MUTHU SOM land.

Right of
disposal.

The husband who is in the POSSESSION and the ENJOYMENT of his MATERNAL MUTHU SOM land cannot aliene it except for purposes of tax and cultivation.

As to the power of the wife over her MATERNAL MUTHU SOM. See Rule xxxviii.

CHAPTER VI.

**POPULAR VIEWS OF THE MUKKUYA
LAW.**

XL. One of these views holds

Some hold
that only
maternal
muthu som
land is
subject to
Mukkuva
Law.

1. That except MATERNAL MUTHU SOM land all other property follows the Dutch Roman Law in all respects : as for instance, in respect of,

The division of the estate into two halves representing the shares of each spouse ;

The various kinds of kindred, as ascendants, descendants, and collaterals, who are admitted to or excluded from the succession according to circumstances ;

The operation of the south Holland Law as to succession and the exceptions observed therein ;

Collation or hotch-pot ;

The respective rights of collaterals of full and half blood ;

The rights of illegitimate children ;

&c.

&c.

2. It holds the MATERNAL MUTHU SOM land as descending from uncles to their MARUMAKKAL, calls the land itself MARUMAKKAL KANI, and imposes upon the MARUMAKKAL the necessity of maintaining their mothers.

And that it descends to marumakkal.

3. Another view holds that the MATERNAL MUTHU SOM land descends from mother to daughters.

4. That the daughters, by reason of their sex, are unfit to possess or cultivate their land, which is accordingly given over to their brothers and their sons, in succession, for management.

5. That the brothers are hence called *managers* or *trustees* for their *sisters* :

Males regarded as managers or trustees for their sisters.

6. That when sons come to manage the MATERNAL MUTHU SOM land, on the death of their uncles, they are not regarded as trustees for their mothers, but, by a fiction, as trustees for their sisters.

7. That the eldest of the male MARUMAKKAL is *chief* manager or trustee, and that it is left to his option whether he would allow his brothers or sisters to have any share in the cultivation or *produce* of the land : but that he is bound to support his mother.

The chief manager and his rights.

8. It is not necessary to state these views further, or to point out wherein they agree with or differ from the true rules laid down in the preceding pages.

Why
marumakkal
kani occurs
in use.

9. But the reader will not fail to note the words *trustee, manager, chief manager* and *marumakkal kani*, which occur in these views, and the sense in which they are used.

But not
marumakkal
som.

10. It is worthy of remark that the term *marumakkal* is never found joined to any other words (whether expressing movable or immovable thing) than *Kani*. The reason seems to be that MATERNAL MUTHU SOM movables never go to nephews and that the ancient MUKKUVARS had no THODDAM or THURAVU as distinct from their VIDU and VALAVU, which, like movables, never descend to male MARUMAKKAL when there are female MARWMAKKAL.

CHAPTER VII.

THE ORIGIN OF THE MUKKUVA LAW.

The origin
of the
Mukkuva
Law.

At the suggestion of a kind friend who overlooked the "Mukkuva Law" as the sheets issued from the Press, the compiler has been induced to add these hasty notes on the origin of the Mukkuva polity. They are based on the language, customs and traditional tales of the people, which cannot with propriety be entered upon in a work of the present character.

1. Intercourse between the sexes was once promiscuous, and in the broadest sense of the word.

Marriage
was unknown
at first.

2. By degrees the following restrictions were introduced.

Afterwards
introduced.

(a) Persons of the same KUDI abstained from each other.

(b) A person of the direct ascending line and those with whom that person was having intercourse abstained

from a person of the direct descending line and from those with whom the latter person was having intercourse.

(c) Collaterals abstained from each other, although two or more collaterals habitually chose to have intercourse with the same persons.

(d) Persons abstained from the direct descendants of their collaterals.

A man's
earning went
to the
women with
whom he
lived.

3. In a state of society in which there was no marriage, natural prudence would dictate to the female the expediency of securing means of livelihood for herself and her future offspring by requiring every male to give up to her whatever he earned during the period he continued to visit her.

And they
transmitted
it to their
children.

4. And, when a female died, every thing she left went naturally to her children and was as naturally divided among all her sons and daughters alike.

5. The daughters would continue to earn from their lovers, in the same manner as their late mother did and would transmit their **TREDDAM** and **MUTHU SOM** to their issue, male and female alike.

6. But the case of a son was different.

Males had to leave their kudi.

As distinct KUDIS lived in distinct villages, a male had to migrate from his own village in search of women and to abandon to his sisters all that he could not easily carry away with him.

The idea of selling or bartering a *land* was unknown in ancient times.

7. Whether the male afterwards returned to his own KUDI, or died in the KUDI or KUDIS in which he had found his women, there could arise, after his death, no question with respect to his THEDDAM, as he could have left no THEDDAM that he had not disposed of during his life time. Nor could any persons, on the ground of being his children, claim the MUTHU SOM which he had left in his own village. For, no MUKKUA child knew its father.

They had no children, nor left any Theddams.

The MUTHU SOM accordingly would go to his sisters, his only undoubted relatives, on the principle that the mother makes no bastard.

Their muthu som went to their sisters.

8. When in process of time, man in the exercise or abuse of his superior

Disabilities imposed on the female.

strength, began to tyrannize over the woman, her property was placed under the power of her brothers, and, even of her own sons.

XLV. All the modern rules of MUKKUYA SUCCESSION seem to be but mere adaptations of the foregoing principles to suit the requirements of the civilized commerce which now obtains between the sexes.

The MUKKUVARS have, in imitation of European nations, long since abandoned their polygamous and polyandrous practices.

The
fundamental
principles of
the
Mukkuva
Law.

XLVI. From the foregoing remarks it is easy to see the reason of the following principles which form the foundation of the MUKKUYA Law.

1. All inheritance is from the mother and none from the father.

2. Succession is traced through the mother.

3. MUTHU SOM land is out of the marital power.

4. Males are managers of it for the females.

5. The elder brother is supreme manager.

Fundamental
principles of
the
Mukkuva
Law.

6. Managers are bound to support their mother but not their sister.

7. Women cannot hold land.

8. The most valuable movables go to the males.

&c.

&c,

XLVII. The curious reader would derive much valuable and interesting information in support of the principles on which this chapter is based, from Sir John Lubbock, "On The Origin of Civilization" chapter iii.

SUMMARIES OF CASES.

BEARING ON THE MUKKUVU LAW OF BATTICALOA.

No. 10236.

- | | |
|-------------------------------------|---------------|
| 1. Kathiramappodi Udaiyar | } Plaintiffs. |
| 2. His wife Velatthai | |
| 3. Palahappodi Alvappodi | |
| 4. Kanthappodi Nahandappodi | |
| Vs. | |
| 1. The Hon'ble The Queen's Advocate | } Defendants. |
| 2. Velappodi Periatthampi | |

Libel Octr. 29th, 1845.

By Mr. Proctor John George De Vos.

Valappodiar, a Mukkuvan, was the original proprietor of the field Iravu Veli. After his death it descended to his nephew Nilamai Velappodi. After Nilamai Velappodi's death his sisters Muththamma (mother of the 2nd and 3rd plaintiffs) and Paththanatchi (mother of the 4th plaintiff) became entitled to the land, and they being dead, the plaintiffs became entitled to it. The 1st defendant has caused the Fiscal to seize it as the property of the 2nd defendant for a debt due to the Crown under writ in case No. 5343.

Prayer to set aside the seizure and to declare the land to be the plaintiffs'.

Answer of 1st defendant, January 14th, 1846.

By his deputy Mr. Proctor T. Roelofs.

Nilamai Velappodi possessed the land in question. On his death his son the 2nd defendant took out letters of administration and included it in his father's estate with the knowledge of the plaintiffs.

The 2nd defendant commuted the payment of the tythe due on this land for the years 1835-6-7 by promise of payment in money, as will appear by his bond filed in No. 5343, to which the plaintiff is one of the sureties.

The 1st defendant's judgment against the 2nd defendant is for

tythe due to Government on the land. The 1st defendant admits the custom of descent pleaded by the plaintiffs, but says that muthusom lands are liable to be sold for debts contracted in them.

The 1st defendant is willing to relinquish the sequestration, if the plaintiffs will pay the writ in No. 5343. It being also a custom of the country that the heir is liable to pay the debts incurred on muthusom property for cultivation or tax.

The plaintiffs have no right to sue without having obtained a title deed from 2nd defendant the administrator.

February 5th 1840.

Answer of 2nd defendant.

The 2nd defendant's father possessed the land for a long time. On his father's death, 2nd defendant obtained letters of administration in 1833 and included this land in the inventory as property belonging to his father.

This is muthusom land and individuals coming to possess such lands are bound by custom to pay debt resting thereupon (sic orig.)

There are five other persons not joined in this suit who will be entitled to like shares with the plaintiffs if the plaintiffs' title be true.

March 14th 1846.

Replication by Proctor De Vos.

The plaintiffs say they are ready to pay to Government whatever debt the 2nd defendant legally contracted on the land.

September 2nd 1846,

Assessors affirmed.

Parties and Proctors present and move the Court that the land be released from sequestration on the following terms, namely, plaintiffs to pay 1st defendant £3 0s 3d: parties to pay their own costs each.

Assessors concur.

(Signed) H. O. GRADY.

D. J.

NOTES.

1. The pleadings in this case are extremely faulty. The expression "original proprietor" implies that the property was Velappodiar's acquisition. If he had acquired it, it could not have descended to his nephew Nilamai Velappodi but to his own children. If he had no children and if his sisters had been dead, it would certainly have descended to Velappodi and to Velappodi's sisters in equal shares with him, under the general laws applicable to the case of a man dying without issue and leaving nephews and nieces and acquired property. The whole case however bears ample evidence that Iravu Veli is meant to be described as maternal nuthusom of Velappodiar and that on his death the possession and enjoyment descended to his nephew Nilamai Velappodi, and the *dominium* to his (Nilamai Velappodi's) sisters Mutthamma and Patthanatchi. On the death of Nilamai Velappodi if Mutthamma and Patthanatchi were living, the *dominium* and the right of enjoyment would descend to them, and the right of possession to their sons (the 3rd and 4th plaintiffs and others not joined in this case.) From case No. 13341 it appears that Mutthamma and Patthanatchi predeceased their brother Nilamai Velappodi. On the death therefore of Nilamai Velappodi the *dominium* descended to the 2nd plaintiff Velaththai and to the 4th plaintiff's sister Valliammai (see No. 12460); and the rights of possession and enjoyment, to the 3rd and 4th plaintiffs and their brothers. But on the death of Nilamai Velappodi his son the 2nd defendant took possession of it. This was no doubt wrongful possession. And the plaintiffs were not bound to pay any debt incurred by 2nd defendant for purposes of cultivation. In the present case it is not a cultivation debt that is in question but arrears of tax due to Government. And the plaintiffs have properly consented to pay it themselves. Every land owes tax to the Government irrespective of the validity or weakness of the title of the occupant.

2. In No. 12460, this land is properly described as maternal nuthusom.

No. 10524.

- | | | |
|--------------------------------|---|-------------|
| 1. Kathiramappoddi Udaiar | } | Plaintiffs. |
| 2. His wife Velaththai | | |
| 3. Palahappodi P. H. Alvappodi | | |
| 4. Kanthappodi Nahandappodi | | |

Vs.

- | | | |
|--------------------------------|---|-------------|
| 1. Manappodiar Valliammai | } | Defendants. |
| 2. Velappodi P. H. Periathambi | | |

Libel

By Mr. Proctor S. G. De Vos.

Sampalthinni Velappodiar a Mukkuvan was in possession of Iravu Veli (field and tank) at Kokkaddi Cholai. After his death, the field and tank according to the custom or usage observed and recognized in this District among Mukkuvars descended to his nephew Nilamai Velappodi who possessed it. After his death, his niece the 2nd plaintiff and his nephews the 3rd and 4th plaintiffs (the 2nd and 3rd plaintiffs being the children of his sister Muththamma, the 4th plaintiff the son of his sister Patthanatchi) having succeeded to the possession thereof hold the same without interruption.

For the recovery of a certain sum of money due by the 2nd defendant to the 1st defendant upon a judgment of this Court in No. 10076, the Fiscal sequestered the said field and tank for sale, the same having been pointed out by the 1st defendant as belonging to the 2nd defendant.

Prayer to remove the sequestration.

Answer of 1st defendant—February 9th, 1847.

The field solely belonged to Nilamai Velappodi (father of 2nd defendant) who possessed it from the Dutch time up to 1834. 2nd defendant obtained letters of administration about 12 years ago and included it in the inventory of his father's estate. The plaintiffs then made no objection. The 2nd defendant is yet in possession, but he is acting in collusion with the plaintiffs to defeat the 1st defendant's right to recover her money by the sale of this land.

The property is 2nd defendant's by prescriptive possession under the 2nd clause of the Ordinance No. 8 of 1834.

June 2nd, 1847.

GENERAL REPLY

June 7th, 1847.

The 1st defendant in this case asserts in her answer to the plaintiffs' libel that her debtor the 2nd defendant derives his title to the land from his father the late Nilamai Velappodi who possessed the land from the time of the Dutch Government down to the year 1834. The plaintiffs derive their title from the same source, as being the nephews and nieces of the late Nilamai Velappodi. The question to be considered therefore is, are they (nephews and niece) to be preferred to the son. This will depend on whether the land devolved upon the late Nilamai Velappodi himself through his being the son or nephew of the previous possessor.

The custom which has so long obtained amongst the members of the Mukkuva caste of this district, namely, of nephews and nieces inheriting to the exclusion of sons and daughters has been too constantly recognized by the decrees of the local Courts and the Supreme Court to admit of any doubt as regards rival claims which may be preferred to Mukkuva lands. But in the present case owing to want of precision in the drawing of the pleadings, it is only from the circumstance, of the assertion not being contradicted in the 1st defendant's answer, the Court infers that the plaintiffs are the nephews and niece of the late Nilamai Velappodi and that the latter inherited the land from his uncle. And on the other hand, the plaintiffs, in their reply deny in a general manner the matters and things set forth in the 1st defendant's answer. Now, one of the things set forth therein is, that the 2nd defendant is the late Nilamai Velappodi's son. Do the plaintiffs mean to contend that he is not?

For the above reason the Court will postpone its decision as to whether evidence need or need not be taken in respect of length of possession till after examination of the parties. Case fixed for the 14th instant.

H. O. GRADY.

June 14th 1847, postponed to June 21st.

June 21st 1847.

Assessors Affirmed.

Parties present—Case explained to the Assessors.

The Court is of opinion that as the 1st defendant does not deny the allegation that the 2nd, 3rd and 4th plaintiffs are the niece and nephews of the late Nilamai Velappodi but attempts to found the 2nd defendant's claim on the circumstance of his having included the field and tank in question in the inventory returned by him as administrator to his father's estate (the which proves nothing one way or the other) the field &c. must be released from sequestration agreeably with the custom which obtains in this district in regard to Mukkuva lands. The 2nd defendant to pay all costs. The assessors concur.

H. O. GRADY,

NOTES.

1. This case is substantially the same as the last, excepting that the debt for which the land was seized is not one for tax or cultivation. The 1st defendant ought to have been allowed to prove prescriptive possession in the 2nd defendant. The judge seems to have taken it for granted that no prescription can run against a Mukkuva mudusom, a position in support of which he cites no authority or evidence of any witness. As pointed out in the last case, on Nilamai Velappodi's death in 1834, the plaintiffs (and their brothers and sisters not joined in this case) became entitled to the dominium, possession, enjoyment and disposal of the land. But they allowed the 2nd defendant, without any colour of title either as trustee or as agent, to keep the land for 12 years and to treat it as his in every respect. They should not now have been allowed to defeat the 1st defendant's honest claims, without having been called upon to establish, by clearest evidence, the custom of an eternal mukkuva mudusom entail.

3. The Mukkuva Law of entail which the judgment implies does not exist in reality. At least the reader ought not to accept it without requiring satisfactory proof of its existence. It only exists in respect of maternal muthusom lands. It may nevertheless be broken by an owner of the dominium with the consent of all the life-interest holders. That owner is generally a female, and although she has children she is

neither bound to preserve her maternal muthusom for her children nor consult them, if she wishes to alienate it. If she has a brother or brothers, she is bound to obtain their consent before she could alienate it. In Case No. 12668, the 1st defendant had a perfect right to sell away, and her creditors therefore to take in execution her share of the muthusom. Likewise if the 3rd defendant and his brother had no sisters, it would be competent for them to sell away the share held by their mother in the maternal muthusom.

The impression that a Mukkuva muthusom is subject to an eternal entail is one of the many sources of error that have contributed to throw the Law of Batticaloa into confusion. Every village teems with instances of maternal muthusom lands alienated away in perpetuity without the excuses of the necessities of cultivation and tax. Yet people are told that such lands cannot be sold without such excuses. The ignorance of parties and the indifference of judges and practitioners of law have given rise to many absurd rules that were unknown to the Mukkuva Caste. If distinct and unequivocal decrees could be found in support of an everlasting entail, it would still be necessary to consider, further, how far such decrees would be consistent with the civilized principles of Law which look with disfavour upon all *fiedi commissa* and gifts to "dead hands."

Nos. 13341 and 12460 shew that alienations of Mukkuva lands are common.

In actual practice there have been in Batticaloa innumerable instances of alienations (see libel in 13341.) A brother who possesses and enjoys the muthusom, and the son who possesses it as agent for his mother are found taking upon themselves the right of disposing of the muthusom, with the open and not unfrequently the silent consent of the rightful persons. By far the most frequent transactions with maternal muthusom lands are effected by all parties interested taking part in them as if they all had equal and similar rights.

The belief that Mukkuva Muthusom lands can never be sold or lost to the family is gaining ground in Batticaloa. And, considering the growing wealth and importance of the caste, it is extremely desirable that the question should be thoroughly investigated and set at rest by an authoritative decision thereon.

3. The minutes in this case shew that there had been several decrees of the District and Supreme Courts before this Case on the Mukkuvu Law of Batticaloa.

No. 11765.

Arumuhathhappodi Katpurappodi.....Plaintiff.

Vs.

1. Nalla Panikkipodi Tholippodi..... } Defendants.
2. Manahappodi Panikkipodi }

Libel, January 6th, 1858.

One fourth share of Periya Veli, the whole being 16 acres in extent is devolvable on the Plaintiff on the death of his uncle the 1st defendant.

The 1st defendant sold to 2nd defendant 4 acres of Periya Veli. The 2nd defendant mortgaged it with Adappan Arumuhan Velatchi and Adappan Kathiramanalai who obtained judgment in 11406 and seized it for sale.

Prayer for an injunction to release the seizure and to set aside the sale to 2nd defendant by 1st defendant.

Auswer May 25th, 1853.

By Mr. E. G. COLLETTE.

In 1824 Ilaiya podi Kunjikkanthappodi Periya Veli to the 1st defendant and three others, the children of his four sisters. The land was then much encumbered into debt. (*sic. orig.*)

In 1835 one of the said share-holders Sinnavappodi Kumarappodi paid off the incumbrance, and redeemed the land.

The 1st defendant, in order to pay off his one fourth share of the debt paid by Kumarappodi for his sake, and to cultivate his one fourth share of the land, borrowed paddy from the 2nd defendant. The failure of crops for several years obliged 1st defendant to sell off his share to pay the debt, as mentioned in the transfer deed of May 6th, 1842.

The 2nd defendant has been possessing since 1842, and pleads prescription.

Replication. September 17th, 1853.

By Mr. Proctor Roelofsz.

The debt contracted by the late Kunjikkantappodi was to be paid from the Mutthaddu produce of the land. Arumuhattappodi Palippodi was the creditor of Kunjikkantappodi and he possessed the Mutthaddu until his debt was satisfied from the produce.

Prescription cannot run against the Plaintiff as his right will not commence till after the 1st defendant's death.

Rejoinder. November 18th, 1853.

By E. G. COLLETTE.

The creditor of Kunjikkantappodi suffered loss in the cultivation, and in terms of the documents of 1819 and 1824, one of the share holders paid the debt and redeemed the land.

Document of October 1st, 1819.

Kunjikkantappodi borrows 30 avanams of paddy payable in 2 years. Interest 50 per cent per annum. The whole paddy to be deducted from the share of the Mutthaddu produce excluding the share of Palippodi for getting the field cultivated. Those who come to take possession of this land must redeem it by paying this paddy to Palippodi.

Document, April 5th, 1824.

Kunjikkantappodi borrowed 5 avanams of paddy for cultivation of Periya Veli and 18 Rix dollars for paying tax. He now borrows 18 avanams. The creditor Palippodi is to cultivate the field and reduce the debt, from the share of the Mutthaddu produce, excluding the cultivator's share. Interest at 50 per cent per annum. If heirs want this land they must pay off these debts.

Document, October 27th, 1835.

Kumarappodi Palippodi the creditor acknowledges to have received the debts of 1819 and 1824 from Kumarappodi and releases Periyaveli from the mortgage.

Document, May 24th, 1842.

The 1st defendant sells his one fourth share to the 2nd defendant to pay off debts incurred by the 1st defendant in order to redeem the land from its previous mortgage and to cultivate it.

November 22nd, 1853.

The plaintiff's case dismissed on the pleadings.

December 23rd, 1854.

Supreme Court Judgment.

If by the customary law, the 1st defendant has only a life-interest in the property and the land is liable for debts incurred in its cultivation, he cannot otherwise alienate the land as he has done in perpetuity away from his heirs, who can maintain a suit against him.

September 17th, 1856.

Mr. Roelofsz for Plaintiffs.

Mr. Advocate Mutukistna and

Mr. Proctor Kadramir for Defendants.

Mr. Roelofsz states the only point he requires defendant to prove is, that the debts were *bona-fide* incurred in the cultivation of the land and that if defendant proves that, he admits he has no case.

[Evidence gone into on this point only]

September 18th, 1856.

Judgment.

Defendants have proved that the debts were incurred for the land and its cultivation. The 1st defendant could therefore sell. The plaintiffs case is dismissed with costs.

J. W. W. BIRCH.

D. J.

January 21st, 1857.

Supreme Court Judgment.

Affirmed.

NOTES.

1. The proceedings assume that the field is maternal muthusom to Kunjikkanthappodi.

2. A Veli consists of several parcels of arable land in extent from three to twelve acres. One of these parcels is called Muttaddu. This, like the Kandyan Ninda Muttettu, is sown entirely and gratuitously for the benefit of the proprietor, by the cultivators, in consideration that they take the produce of the other parcels called Vayals for their labour. In this case the creditor is the cultivator and he keeps the Muttaddu produce in reduction of the debt due to him by the proprietor.

The customs connected with the paddy cultivation of Batticaloa form an extensive and elaborate system, which must be studied as a whole, if one would wish to know more about Muttaddu.

No. 12668.

1. Kathiramar Viraccuddi }
2. Pokkaniyar Sinnathampi } Plaintiffs

Vs.

1. Kumarappodi Alamankai }
2. Kamalappodi Andippodi }
3. Pariharippodi Kanthappodi } Defendants.
4. Alahippodi Kathiramappodi }

Libel, May 31st, 1858. By Proctor P. F. Touissaint.

Plaintiffs obtained judgment against the 1st and 2nd defendants in No. 12022 and seized for sale Mutthu Vayal as the property of the 1st, 2nd and 3rd defendants, but the 3rd and 4th defendants oppose the sale, saying the property is theirs.

Answer of 3rd and 4th defendants, July 22nd, 1858. By Roelofsz.

Mutthu Vayal is Muthusom. It cannot be sold by the heirs except to satisfy debt incurred in its cultivation. The present debt is not such a one. The property is one that has to descend to these defendants.

Replication—October 29th, 1858. By P. F. Toussaint.
GENERAL.

June 27th, 1859.

2nd defendant examined states.—The 1st defendant is my mother, the land belongs to her. To improve and cultivate it, she and I borrowed money from the Plaintiffs.

The Plaintiffs Proctor in consultation with his clients admits on their behalf, that by the customary law of the Mukkuvars, muthusom landed property cannot be executable for debt save for that contracted for the cultivation of the particular land and for its tythe.

(Signed) A. C. MURRAY,
D. J.

3rd defendant examined.

The land is Muthusom of 1st and 2nd defendants. I am son of the 1st defendant's sister. I have a present joint share in the land with 1st, 2nd and 4th defendants and others. My brother and the 2nd defendant are now in possession as managers. They have cultivated it these 10 years and have commuted for the tax.

4th defendant examined.

I am grand nephew of the 1st defendant. My grandmother was cousin to 1st defendant. My grandmother and 1st defendant are daughters of 2 sisters.

The onus is on the Plaintiffs to prove that the debt due to them by the 1st and 2nd Defendants was of the privileged class

giving the Plaintiffs, as creditors, a right to attach the land in question for its liquidation. Plaintiffs' Proctor states he is taken by surprise and asks for time to cite witnesses. Postponed.

A. MURRAY,

D. J.

September 21st, 1859.

Mr. Toussaint for Plaintiffs. Plaintiffs present.

1st and 2nd Defendants in person.

Mr. Roelofsz for 3rd and 4th Defendants. 3rd and 4th Defendants present.

Parties and Proctors agree that the property sequestered and now in question if muthusom or hereditary property of 1st defendant would, if no preferment of 1st defendant's rights for cultivation debts or tythe existed over it, go, according to the customary Mukkuva Law, to the 3rd defendant after the death of the 1st defendant. The 3rd defendant being a son of the sister of 1st defendant.

[Evidence heard only as to whether the debt was incurred for cultivation and tax, and whether the whole or only half of the laud was seized.]

JUDGMENT.

The plaintiffs as judgment creditors of the 1st and 2nd defendants sequestered and put up for sale through the Fiscal a certain land as the property of their said debtors. The 3rd and 4th defendants opposed the sale, and hence this action to have the opposition set aside and the land decreed executable for the 1st and 2nd defendants' debt.

The 3rd and 4th defendants say that the land is muthusom or hereditary property and is not liable to be sold save for debt incurred for cultivation of the land which they say the debt to plaintiffs is not. It is admitted that the land is muthusom property and the 1st Defendant a Mukkuva woman, whose son the 2nd Defendant is. It is also admitted by plaintiffs that by customary law of the Mukkuvars to which caste the defendants belong, such lands cannot be sold save for cultivation-debts or for tythe.

Therefore the only issue remaining is, was this judgment debt of 1st and 2nd defendants to plaintiffs incurred solely or partly on account of expenses of cultivating the land in question.

The bond (filed in No. 12022) of September 16th, 1851, by 1st and 2nd defendants to plaintiffs, upon which the judgment against the 1st and 2nd defendants is founded, appears to be for a paddy debt, being the quantity doubled by adding interest as per debt-bonds dated October 20th, 1847 and November 22nd, 1848.

These two latter bonds are not produced and there is nothing in the one of September 16th, 1851, to indicate that the debt was incurred for expenses of cultivation of the 1st and 2nd defendants' land now under sequestration.

* * * * *

Nor do Plaintiffs' witnesses better the Plaintiffs' case.

* * * * *

The Mukkuva Law of entail may be a bad one and calculated to entrap, but its existence being admitted, the Court cannot though so inclined, disregard it.

It is therefore decreed that the Plaintiffs' libel and claim be and they are hereby dismissed with costs : and that the land in question be and it is hereby released from sequestration under writ No. 12022.

A. MURRAY,
A. D. J.

NOTES,

1. It is assumed in the pleadings that Muththu Vayal was maternal muthusom at least to 1st defendant, to 3rd defendant's mother, and to 4th defendant's grand-mother. It might have been maternal muthusom to 1st defendant's mother, or even to her grand-mother who is the common progenitor of the 4th defendant's branch, and of the branch to which the 1st and 3rd defendants belong. Whether it was the common progenitor's acquisition or muthusom, it is now immaterial to inquire, since it has become maternal muthusom to her grand children irrespective of what it may have been to her.

2. In the statement agreed to by the Proctors and parties on September 21st, 1859, it is said that the 3rd defendant, being a son of a sister of 1st defendant, the muthusom would go to him *on the death* of the 1st defendant. This is a mistake. The 1st defendant, the mother of the 3rd defendant, and the grand-mother of the 4th defendant were the rightful owners of the *dominium*, all deriving their title from their common progenitor the grand-mother of the 1st defendant. The 4th defendant, as being the sole representative of one branch, would be entitled to one half of Muththu Vayal. The 1st defendant and the mother of the 3rd defendant would be entitled jointly to the other half. The 3rd defendant's mother is dead. Her share cannot go to her sister, the 1st defendant, or to the 1st defendant's son. It must go to her own sons, the 3rd defendant and his brother. By virtue of this right we see the 3rd defendant's brother in actual possession, as representative of his mother's branch, together with the 2nd defendant as representing his mother, the 1st defendant. The 3rd defendant in his examination states the matter very correctly when he says. "I am the son of 1st defendant's sister. I have a *present* joint share in the land with the 1st, 2nd and 4th defendants and others. My brother and the 2nd defendant are now in possession as managers."

No. 12460.

- | | |
|--|---------------|
| 1. Velaththaippillai | } Plaintiffs. |
| 2. Her husband Velappodi Kathiramappodi | |
| 3. Kannammai and | |
| 4. Her husband Arumuhaththappodi
Kumanie Podi | |

Vs.

- | | |
|--------------------------------------|---------------|
| 1. Kanthappodi Nahandappodi | } Defendants. |
| 2. Kanthappodi Kathiramappodi | |
| 3. P. H. Peria Thampi Vasuthevappodi | |
| 4. Nahandappodi Usumundappodi | |
| 5. Nahandappodi Kannappodi | |

Libel, June 5th, 1857.

Iravu Veli is the maternal muthusom property of 1st and 3rd Plaintiffs. and has (exclusive of certain portions sold and donated to K. Vannia, P. Allehappodi, and Velaththai Pillai, been possessed by the plaintiffs these 25 years. It was in dispute in Nos. 10236 and 10524 and was released from sequestration at the instance of the 2nd plaintiff.

In October last the 4th and 5th defendants pretending to have purchased Iravu Veli from 1st, 2nd and 3rd defendants interrupted the Plaintiffs in their possession.

Answer November 30th, 1857. By Proctor Roelofsz.

The land was originally of 50 avanams' sowing extent and was possessed by Nilamai Velappodi. It is muthusom to the parties. After Nilamai Velappodi, it descended thus to his nephews and nieces: namely, to 1st and 3rd plaintiffs and their brothers Alvappodi and Kathiramappodi, one-half; to 1st and 2nd defendants and their sister Valliyammai (mother of the 3rd defendant) one-half. But Nilamai Velappodi's son Periya Thampi administered the estate of his father and included this land in the inventory of that estate and possessed it until 1843. He then gave up the land: whereupon the 1st, 2nd and 3rd defendants being heirs to one-half took that half and sold it to the 4th and 5th defendants.

Replication September, 30th, 1858.

The 1st, 2nd and 3rd defendants having only a life interest could not by custom donate or alienate the land. Assuming they

could, they have alienated 11 avanams' sowing extent, being more than their half of the remainder that was left out of the fifty avanams, after deducting the extent of the portions sold by former possessors to pay off debts incurred in the cultivation of the land.

ARBITRATORS.

Mr. Advocate Peter Mutukistna for Plaintiffs.

Mr. Proctor Roelofsz for Defendants.

Mr. Canaganayagam Secretary, District Court, Umpire.

January 22nd, 1861.

AWARD.

The Plaintiffs have failed to prove to our satisfaction that the land in question exclusively belongs to 1st and 3rd Plaintiffs by right of muthusom or any other right whatever. The Plaintiffs have also failed to prove undisturbed possession. It is clear from the evidence adduced by both parties that the land in question and certain other lands adjoining it and admitted on all hands to have been sold for ancestral debt, and a parcel now in possession of the 1st and 2nd Plaintiffs, were inherited from one common source by the 1st and 3rd Plaintiffs and the Defendants who are all near relatives.

The 1st and 2nd Plaintiffs are in possession of 8 avanams' sowing extent, and looking at the proved extent of the whole land, and excluding therefrom the parcels sold for ancestral debt, it does not appear to us that the Plaintiffs are entitled to any more than the said eight avanams. We award that the Plaintiffs be nonsuited, and that the costs of the suit be divided.

NOTES.

1. In this case the land is described in full as maternal muthusom though it is elsewhere called muthusom simply.

2. This is a very important award. It furnishes an argument against the supposed eternal entail of Mukkuva Lands. From Nos. 10,236 and 10,524, and from the admissions of the parties and the documents filed in this case, it is certain beyond

doubt that Iravu is maternal muthusom to the Plaintiffs and the Defendants. The arbitrators who, from their position and intelligence, it would be madness to suppose were ignorant either of the fact of the land being maternal muthusom, or of the Mukkuva Law of succession, uphold the sale by the 1st, 2nd and 3rd defendants of their shares to the 3rd and 4th defendants.

The original land consisted of 50 avanams' sowing extent. The last possessors left only 16 avanams to descend to the present litigants, whose genealogy may, from what is to be gathered from No. 13,341 and the previous cases, be stated thus:—

Nilamai Velappodi had two sisters, Muththamma and Paththanachchi. He had issue one son, Periya Thampi, who married his cousin. Valliyammai (daughter of Paththanachchi).

Muththamma had issue; namely, 1st Plaintiff, 3rd Plaintiff, Alvapoddi dead, and 5th defendant.

Paththanachchi had issue: 1st defendant, 2nd defendant. Valliyammai (wife of Periya Thampi).

1st defendant had issue: 4th and 5th defendants.

Valliyammai had issue; 3rd defendant and his two sisters, Paththanachchi and Kunchinachchi.

The possession held by Periya Thampi of this muthusom being a wrongful possession, it may be dismissed without any further remark. On the death of Nilamai Velappodi, one half went to Muththamma's issue and the other half to Paththanachchi's issue.

Now, so long as there is one descendant of Muththamma, male or female, the half that went to her could never come to Paththanachchi's descendants. In like manner Paththanachchi's half could never go to the other side so long as there is one lineal descendant of Paththanachchi. And it seems that on this principle the arbitrators dismissed the Plaintiffs' case summarily without entering upon the question of the defendants' rights as amongst themselves:—a question which was perfectly immaterial to the decision of this case, though it would have been instructive if they had entered upon it.

If maternal muthusom lay under the burden of an eternal entail, this award would have been certainly erroneous. Muththamma's branch would then have had an undoubted right to watch that the half that went to Paththanachchi's branch was not alienated at all. For, if Paththanachchi's branch became

extinct, her share would go to Muththamma's branch. The circumstance that the 4th and 5th defendants are the sons of the 1st defendant does not make any difference as to the rights conveyed to them by their purchase. As they own the land by right of purchase, they could alienate it out of the family and their creditors could take and sell it in execution.

As to the rights of the defendants among themselves, the case would stand thus:—

Paththanachchi's 8 *avanams*-extent descended to her daughter Valliyammai with right of possession and enjoyment to the 1st and 2nd defendants till their death. Valliyammai is dead leaving issue, the 3rd defendant (a son), and two daughters Paththanachchi and Kunjinachchi not joined in this suit. Accordingly, the dominium of the 8 *avanams* of Valliyammai has descended to her daughters Paththanahchi and Kunchinachchi. The rights of possession and enjoyment yet remain with the 1st and 2nd defendants, as they are still alive. On their death these rights will descend to the 3rd defendant. And, if there is no law against alienation, it is competent for the 1st, 2nd and 3rd defendants, having the rights of present and future possession and future enjoyment, to alienate the muthusom with the consent of the owners of the *dominium*, namely, the sisters of the 3rd defendant. But it does not appear that the consent of these sisters has been obtained for the alienation in a formal way. This is an objection that would certainly have been entitled to great weight, if it had been urged by these sisters. But if it be assumed that these sisters could alienate the muthusom with the consent of those who have a claim for life interest, there can be no valid objection to those who have a claim for life interest alienating the muthusom with the consent of the same sisters.

3. With respect to the plea of prescription, the arbitrators remark "The Plaintiffs have failed to prove undisturbed possession," implying thereby that if such possession had been proved their award might have been different.

There is a strange inconsistency in the attitude of the Plaintiffs in grounding their claim partly on the supposed eternal entail, and partly on their own prescriptive title.

4. In the replication, the Plaintiffs, in a manner, abandon the question of eternal entail and allege that the defendants have been meddling with more than their just half.

The allegations in the Replication that "the 1st, 2nd and 3rd defendants have only a life interest" and that they "cannot donate or alienate the share," are perfectly true and valid only as respects the rights of Paththanachchi and Kunchinachchi. But the truth or validity of which can in no way affect the rights of the Plaintiffs.

No. 13,341.

- | | | |
|--|---|-------------|
| <ol style="list-style-type: none"> 1. Velaththaippillai, 2. Her husband, Velappodi Kathiramappodi, 3. Kannammai, 4. Her husband, Arumanthappodi Kumanippodi, | } | Plaintiffs. |
|--|---|-------------|

Vs.

- | | | |
|---|---|-------------|
| <ol style="list-style-type: none"> 1. Kanthappodi Nahandappodi 2. P. H. Periyathampi Vasuthevappodi 3. Nahandappodi Usumundappodi 4. Nahandappodi Kannappodi 5. Palahappodi Kadiramappodi. | } | Defendants. |
|---|---|-------------|

Libel, March 15th, 1861.

By Proctor J. F. Toussaint.

Nilamai Velappodi, having inherited Iravu Veli, of the extent of 50 avanams of paddy sowing extent, died in 1833, and the land devolved on the children of his 2 sisters, Muththamma and Paththanachchi, both of whom predeceased him. The children of Muththamma are 1st and 3rd Plaintiffs, the 5th defendant and one Alvappodi are now dead. The 1st and 3rd Plaintiffs, being sisters of Alvappodi, are entitled to his share. Paththanachchi's children were 2nd defendant's mother and five sons, of whom 1st defendant is one, and the other four, Kathiramappodi, Alvappodi, Nahandap-

podu and Kunchiththampy are now dead. And their shares ought to devolve on their brother the 1st defendant and on the 2nd defendant. After the death of Nilamai Velappodi the 1st and 2nd Plaintiffs, the 5th defendant and Alvappodi, with consent of the rest of the persons interested in the Estate, sold portion A of 10 avanams to Alakippodi on November 12th, 1847. On the same day the 1st defendant and Alvappodi, with like consent as aforesaid, sold B of 8 avanams to 1st and 2nd Plaintiffs.

About nine years ago the 1st and 2nd Plaintiffs and the 1st defendant sold C of 8 avanams to Kunchiliappodi Vannia. The Vannia and the 1st and 2nd Plaintiffs have exchanged their lands, and are respectively in possession of B and C now. The remaining portion D of 24 avanams sowing extent, has been in the possession of the Plaintiffs, the 1st and 2nd defendants and the 5th defendant. The 5th defendant having renounced his right in favour of the 1st and 3rd Plaintiffs, these Plaintiffs thus became entitled to 12 avanams sowing extent. The 3rd and 4th defendants ejected the Plaintiffs from their share of D in October 1856, pretending to have purchased the whole of D from 1st and 2nd defendants.

[The above summary of the libel is given here to shew that Mukkuvars are in the habit of alienating their maternal muthusom.]

The rest of the proceedings are not given here as the judgment sets out the facts fully.]

JUDGMENT.

*

*

*

The Plaintiffs allege that the land was possessed by one Nilamai Velappodi who possessed it up to his death in 1833, with his two sisters, Muththamma and Paththanachchi, having inherited it as maternal muthosom, they being Mukkuvars and the land being subject to the usual Mukkuva Customs. At Velappodi's death therefore (his sisters having died before him) the land would in the course of such custom descend to his sisters' children.

Muththamma had issue:

1. Velatthai1st Plaintiff.
2. Kannammai3rd do
3. Alvappodidead
4. Kathiramappodi5th Defendant.

Paththanachchi had issue :

- 1 Nakandappodi, 1st Defendant.
- 2 Valliyammai dead, but left issue:
 - 1 Vasu Thevappodi, 2nd Defendant.
 - 2 Paththanachchi
 - 3 Kunchinachchi
 } Not joined in this suit.
- 3 Kathiramappodi, dead.
- 4 Ithiyapodi, dead.
- 4 Nanchippodi, dead.
- 6 Kunchiththampi, dead.

And they allege that each of these branches was entitled to a half share : the 5th Defendant admits this and waives all claim to any share, even to the life interest, other than which he could not, by the Mukkuva custom, hold.

* * *

There appears to have been previous cases about this land admitted on all sides and produced in evidence.

* * *

The present case was instituted on March 15th, 1861. In neither 12,460 nor in this case is any thing whatever said in the pleadings as to the rights of Konaththai and Viraththai under whom the Defendants (1st, 2nd, 3rd and 4th) claim. Nor is it shewn anywhere in the pleadings or in the evidence who they were or by what right they claim.

The cases 10,236 and 10,524 bear out exactly the Plaintiffs' assertion and apparently shew only two lines as heirs, viz : Muthamma's and Paththanachchi's.

The Kachcheri registers satisfactorily shew the same and their possession. The Vannia of the Paththu who holds the portion B by purchase, proves also the Plaintiffs' possession till ousted by 3rd and 4th Defendants.

I am unable to understand how Defendants claim the whole portion D, as their deeds only give them $\frac{1}{2}$ and $\frac{1}{4}$ respectively, unless it be that they consider that the gift to 1st and 2nd Plaintiffs of November 1847 of B, subsequently exchanged with the Vannia for C, represents the other $\frac{1}{4}$ share.

The Defendants have proved nothing. But have called a lot of witnesses to no purpose.

It appears that some portions were alienated by all parties, that is, by both Muththamma's and Paththanachchi's heirs; but it also appears that the crown has claimed half value for some of these alienated shares, and in fact, for all in excess over the 18 avanams, which the field appears to have been in the old register, and it is therefore probable that these alienations were Crown lands and not part and parcel of the original field to which parties were heirs. The Plaintiffs, being Muththamma's heirs, have, in the opinion of the Court, satisfactorily proved their title to an undivided one-half share of Iravu Vely represented by D. And it is decreed that they be quieted therein with a proper share of its tank and that the 1st, 2nd, 3rd & 4th Defendants do pay costs.

*

*

*

J. W. BIRCH,

D. J.

NOTES.

1. The libel says that the shares of the deceased brothers of the 1st Defendant devolved on the 1st defendant and his nephew the 2nd defendant. This only means that the shares in the life interest held by the deceased devolved on the 1st defendant, and that on the death of the 1st defendant, they would devolve on the 2nd Defendant and on his sisters, the owners already of the *dominium*. In like manner, the allegation that the 1st and 3rd Plaintiffs are entitled to the share of their deceased brother Alvappodi means that the share of life interest held by him has come to be added to that of the 5th defendant, and that on the 5th Defendant's death, the whole land held by Muththamma would devolve on the 1st and 3rd Plaintiffs as full owners.

2. The sale of A by the children of Muththamma is said to have been effected with the consent of the children of Paththanachchi, and that of B by Paththanachchi's children, with the consent of Muththamma's children. These consents were necessary to give valid title to the purchasers, as the maternal muthusom appears to have then remained undivided between the two branches. Had each branch held its share divided and independently of the other, there would have been no occasion for the individuals of the one branch to obtain the consent of those of the other in their transactions over their respective shares of the muthusom.

3. It is scarcely necessary to remind the reader that when a share of land is said to have devolved on the *children* of Muthamma or Paththanachchi, it means that it devolved on the *males* as having right of possession and enjoyment, and on the *females* as present owners of the *dominium* with right of future enjoyment.

4. The sisters of the 2nd defendant ought to have been joined in the suit as the dominium is in them to the extent of their just half. From their not having been joined, it would seem that they had no wish to claim more than their just half.

5. The concluding remarks in the judgment favour the view that a maternal muthusom is inalienable. The fact that alienations have actually been made with the consent of all parties interested in the land is strong proof in favour of the position laid down in Rule xxxviii. § 10.

No. 16151.

Libel, November 20th, 1869.

Judgment, October 30th, 1870, by G. H. POLE. D. J.

It is unnecessary to give a summary of this case.

A Mukkuva woman sold her land to the Plaintiff, and afterwards in collusion with her relatives asserted the land to be her maternal muthusom and prevented the Plaintiff from possessing it. At the trial the Plaintiff was not ready with his witnesses, and he was non-suited.

No. 16384.

Sinnaver Velayudan

Plaintiff.

Vs.

- | | |
|--|---------------|
| 1. Paththar Adappan Kathiraman | } Defendants. |
| 2. Manakappodi P. H. Sinnaththampipodi | |
| 3. Manakappodi Mailappodi | |

[The judgment in this case contains a review of the law and facts involved not only in this case but also in a number of other cases bearing on the Mukkuva Law.]

February 27th 1871.

Mr. Proctor Crowther for plaintiff.

Messrs. Advocates Purcell and Driberg with

Mr. Proctor Kadramer for 1st defendant.

Mr. Proctor Swaminadar for 2nd and 3rd defendants.

Judgment.

In this case the plaintiff sues the defendants to recover from them the value of 30 avanams of paddy, the produce of two parcels, Karachchi Vayal and Punni Ilavisam, of the field Sinna Vannian Veli ottied by the 2nd and 3rd defendants to the plaintiff, of which produce it is alleged that the 1st defendant took forcible possession.

The 1st defendant denies the validity of the Otti bond A, bearing date 20th October 1869, granted to plaintiff by 2nd and 3rd defendants and avers his (first defendant's) right to cultivate the said field of 10 avanams in extent under an Otti bond A A, bearing date 22nd October 1864, granted to him by the grand uncle of the 2nd and 3rd defendants, Kannappanikkippodi.

The 2nd and 3rd defendants deny that Kannappanikkippodi had any right whatever to otti the whole field to 1st defendant and further say that Kannappanikkippodi having had only a life interest in any portion of the field his interest died with him in 1864.

It appears from the evidence that the whole of the field Sinna Vannian Veli of 20 avanams in extent originally devolved on Nilamai Kamalappodi Kannappanikkippodi grand uncle of the 2nd and 3rd defendants according to Mukkuva custom : that during his life

time one Nilamai Palippodi in an action against Kannappanikkippodi and his brother Parikarippodi obtained a decree for one-half of the field, so that after the date of that decision (not proved in evidence) Kannappanikkippodi would only have been entitled to one-half of the field namely 10 avanams' sowing extent.

It would appear that Kannappanikkippodi had one brother and three sisters:

1. Parikarippodi who predeceased him.
2. Thirayammai who predeceased him without issue.
3. Kannammai or Kannachchi, deceased, leaving issue.
 - (a) Palaththai, deceased, mother of 2nd and 3rd defendants.
 - (b) Valliyammai living.
 - (c) Kanthappodi dead.
 - (d) Paramakkuddi dead.
4. Mathamma deceased mother of
Velappodi Kanthappodi and Vellappodi Sadaipodi.

It would further appear from the evidence that there was a dispute between the plaintiff and 1st defendant about their respective rights to cultivate; that, in the ordinary course a complaint was made by the 1st defendant to the Assistant Agent and that the then Vannia Sinnathampippodi, since deceased, made some inquiries, and, as it is alleged by both parties, made an order in the matter. Had the 1st defendant acquiesced at the time in the alleged arrangement it might have been necessary to inquire how far the plaintiff could have recovered for subsequent breaches, but the Court thinks there is not sufficient evidence to shew that the 1st defendant acquiesced in the arrangement.

The plaintiff alleges that he cultivated 3 avanams of this field, but that the crop of 30 avanams was taken by the 1st defendant. The Court considers that the 1st defendant certainly did on all occasions interrupt plaintiff in his attempt to cultivate the field or any portion thereof. The 2nd and 3rd defendants however allege that the plaintiff cultivated 3 avanams.

The plaintiff's Proctor has put in evidence several cases, Nos. 11765, 12668, 13341, and 13452, to shew that according to Mukkuva custom Kannappanikkippodi had only a life interest in the land as it was maternal muthusom property, and that after his death the 2nd and 3rd defendants had a right to otti it to the Plaintiffs.

In 11765, the plaintiffs, the nephews of the 1st defendant sought to set aside a sale of a paddy field Periya Vali a maternal muthusom property, by 1st defendant to 2nd defendant, as by the Mukkuva custom, maternal muthusom property, which, as it was alleged, descends to sister's children, could not be sold by the occupier except for debts incurred in the cultivation of the land or for its tythe.

The District Judge dismissed the plaintiffs' claim because he held that admitting the view of the plaintiff to be correct, that is to say, that after the death of his uncle the 1st defendant, the land or some parts thereof would devolve on the plaintiff, yet that during the life time of his uncle he could not maintain an action.

This Judgment the Supreme Court set aside, and sent back the case for further hearing. "If by the customary law the 1st defendant has only a life interest in the property and the lands liable only for debts incurred in its cultivation, he cannot otherwise alienate the land as he has done in perpetuity away from the heirs who can maintain a suit against him."

At the 2nd trial the District Judge held that the simple point to be decided was whether the debts were incurred for the land or its cultivation, and considering this point to be proved, he held that the 1st defendant had a right to sell the land and dismissed the plaintiffs' claim.

This Judgment the Supreme Court affirmed on the 21st January 1857.

Though the Judgment in 12668 was not appealed against, yet as the points found by the learned District Judge have been recognized by the Supreme Court in 13341 and 13452 they are worthy of notice : thus

"It is also admitted by the plaintiffs that by the customary law of the Mukkuvars to which caste the defendants belong, such land, (meaning muthusom property) cannot be sold save for cultivation debt or for tithe. The Mukkuva Law of entail may be a bad one and calculated to entrap, but its existence being admitted, the Court cannot though so inclined disregard it."

No. 13341. In this case the Mukkuva custom that maternal muthusom property descends to sister's children to the exclusion of the children of the occupier seems to have been admitted. The land, as it was alleged, was held by one Velappodi who had two sisters, Muththamma and Phatthanachchi both of whom predeceased him.

The District Judge therefore held that the land would devolve at the death of Velappodi in equal undivided shares on the children of Muththamma and Paththanachchi. This Judgment was affirmed by the Supreme Court on the 5th of November 1862.

In 13452 I can discover nothing in favour of Plaintiff's Proctor's contention. I find in the evidence of one witness Kayilayar Kanthan (at the 2nd trial page 103) as follows : " This garden (meaning the garden in dispute in that case) is maternal muthusom property : The parties are Pandarap Pillais : land belonging to Pandarap Pillais as muthusom can neither be sold nor mortgaged. It descends in the female line. There may be deeds in favour of the males but it always descends on the females." On this evidence the Supreme Court comment in their Judgment of the 27th October, 1863, as follows :

" It is stated in the evidence of one witness for the defence on the second trial that ' The land in dispute was maternal muthusom property, the parties are Pandarap Pillais and land belonging to Pandarap Pillai caste as muthusom could neither be sold nor mortgaged. It descends in the female line. If this were so, the deed of 1837 would be void and the 1st Defendant would be entitled as representative of the female line.' But the Supreme Court cannot find any such tenure recognized in the books of law and if this tenure is a Custom peculiar to Batticaloa it ought to have been legally proved." No legal interest is therefore set up by this evidence. The Pandarap Pillai customs are to a great extent identical with those of the Mukkuvars. In this last case none of the previous Cases on Mukkuva Customary Law seems to have been cited. Had those judgments been laid before the Court and evidence led to shew that Mukkuva Customs are identical with those of Pandarap Pillais, possibly the finding might have been somewhat different. For, adjudications upon subjects of a public nature such as customs will be admissible, and if the

parties be the same in both suits they will be bound by previous judgments, but if the litigants in the second suit be strangers to the parties in the first, the judgment though admissible will not be conclusive.

The weight of these decisions goes to shew that, among Mukkuvars, maternal muthusom property descends in the female line not however to daughters but to the children of sisters, the nephews according to seniority managing the property for their sisters during their life time, and at the death of the last survivor, the property descends to the sisters' children : the nephew however is merely a servant for life and except for the cultivation of the land or for payment of tithe he can create no interest which will endure beyond his own estate, so that if he make a lease for a term of years it will end upon his death.

Thus in this case according to Mukkuva Customary law the 10 avanams of Sinna Vannian Veli admitted to be the maternal muthusom property of Kannappanikkappodi who was tenant for life, his brother Podiyar having predeceased him, would at his decease descend to the children of his sisters Thireyamma, Kannamma, and Muththamma, or in the event of their having predeceased him to their heirs ; and any incumbrance or alienation of the land save for the purposes above mentioned by Kannappanikkappodi would end with his life. It is therefore material to examine the *otti* bond A A A and see whether it comes within the exception.

An *otti* bond appears to the Court to be a lease for a term of years of a certain land by the land holder on condition that the *otti* holder do lend unto the land holder a certain sum of money with interest, the said lease not to be determined until the principal be repaid in full : unless therefore the *otti* bond A A A came within the exception mentioned, it would have ended upon the death of Kannappanikkappodi.

That the *otti* comes within the exception can, I think, admit of but little doubt, for, the very reason given by the 2nd and 3rd Defendants for granting an *otti* bond (see *otti* A) to the Plaintiffs, was to " pay and settle the debt which our grand father Kannappanikkappodi incurred and left unpaid by ottying the share of the land called Sinna Vannian Veli situated near the said Kallar and

belonging to us by right of hereditary possession to one Paththar Adappan Kathiramar" and if we bear in mind that Tamils sometimes speak of their grand uncles as grand fathers, and that Paththar Adappan Kathiraman is the first Defendant, it seems to the Court that we have here a very valuable admission that the debt was one incurred for the land, otherwise the 2nd and 3rd Defendants would not have made arrangements to pay it. Had the debt been a personal one of their grand uncle, the Court feels sure that they would have repudiated it, but in addition to this documentary evidence, we have oral testimony that of the 2nd and 3rd Defendants themselves that they wished to pay off the debt after cultivation had commenced, but that the first Defendant said that he would not accept the money; and the Court considers that, even if the money had been tendered of which no evidence is before the Court, he would have had a right to refuse to accept it after cultivation had commenced and the land had been prepared for sowing. Again we have the evidence of Velappodi Sadaiappodi the 1st witness for 1st Defendant the son of Mathamma one of the persons upon whom the land would devolve after the death of Kannappanikkippodi, that he paid off 1st defendant's *otti* bond.

As the Court upholds the *otti* bond granted to 1st Defendant the 1st Defendant is therefore entitled to be absolved from the instance with cost and is so absolved.

It seems to the Court that as the heirs of Kannamma and Mathamma are each entitled to an undivided one-half part or share of the field, the 2nd and 3rd Defendants should pay to the 1st Defendant one-half, and Sadaiappodi the other half, of the *otti* bond, and thus obtain a right to *otti* out the share to which they are entitled.

It is decreed that the Plaintiff do recover from the 2nd and 3rd Defendants 30 *avanams* of paddy or its value at the rate of 18 shillings per *avanam* and cost of suit.

C. HAY.

A. D. J.

A
K E Y
TO THE PRONUNCIATION
OF
TAMIL WORDS
OCCURRING IN
THE MUKKUA LAW.

English letter.	Corresponding Tamil letter.	Pronounced like	As in these instances.
a	அ	u	<i>But</i>
â	ஆ	a	<i>Father, Arm</i>
i	இ	i	<i>Tin</i>
î	ஈ	i	<i>Machine, Police</i>
u	உ	u	<i>Rull</i>
û	ஊ	oo	<i>Moon, Booty</i>
e	எ	e	<i>Send</i>
ê	ஏ	a	<i>Make, Race</i>
ai	ஐ	i	<i>Ice, Fine</i>
o	ஓ	o	<i>Dominical, Domestic</i>
ô	ஔ	o	<i>Note, Old</i>
au	ஔ	ow	<i>Now</i>
k	க	k	When <i>k</i> is immediately preceded and followed by vowels, it is pro- nounced like <i>h</i>
ng	ங	ng	<i>Sing, King</i>

English letter.	Corresponding Tamil letter.	Pronounced like	As in these instances.
ch	ச after a consonant.	tch	<i>Thatch</i>
s	ச in all other positions.	s	<i>Science</i>
ñ	ஞ	gn	The French <i>regne</i> and nearly like <i>ng</i> in <i>Angelus</i> when the <i>g</i> is pronounced like <i>j</i> .
d	ட	d	<i>Modify</i> . When <i>d</i> is followed by a consonant it is pronounced like <i>t</i> in <i>Forty, Dirty</i> .
n	ன	n	<i>Warn</i>
th	த	th	<i>Sixth</i> . When <i>th</i> is immediately preceded by a vowel and followed by another vowel it is pronounced like <i>th</i> in <i>sythe</i> .
n	{ ட் ன	n	<i>Nun</i>
p	ட	p	<i>Put</i>
m	ட	m	<i>Man</i>
{ y a consonant.	ய	y	<i>Young, Yard</i>
r	ர	r	<i>Various, Mary</i> as distinguished from the sound of <i>r</i> in <i>Broad &c.</i>
l	ல	l	<i>Long, Polish</i>

English letter.	Corresponding Tamil letter.	Pronounced like	As in these instances.
v	வ	v	<i>Vain</i>
l	ழ	rl	In <i>Earl, Pearl</i> where the <i>r</i> is silent but intensifies the sound of the <i>l</i> .
l	ள	,	This letter has no equivalent in English but it is nearly like <i>l</i>
r	ற	r	In <i>Rape, Broad</i> .
t	{ த் before க ச த ப ற, and ற after ற் ன	t	In <i>Putty</i> .

Tamil Words.	How pronounced.
Adu	â du
An	ân
Asaivulla	a sai vu ʃa
Asaivatta	a sai vat ta
Asaram	a sa ram
Avanam	a va ñam
Ilavisam	i la vi sam
Kali	kâ li
Kani	kâ ñi
Kantu	kan tu
Karaiyar	ka rai yâr
Kudi	ku di
Madu	mâ du
Marumakkal	ma ru mak ka
Mathakkal	mâ thâk ka
Muddu	mud du
Mukkuva, <i>adj.</i>	muk ku va
Mukkuvan, <i>sing. num.</i>	muk ku van
Mukkuvar, <i>plural</i>	muk ku var
Muthakkal	mû thâk ka
Otti	ot ti
Pandarappillai	pañ dâ rap pi ai
Paravani	pa ru vañi
Pen	peñ
Pēriya	pe ri ya
Pumi	pû mi
Saman	sâ mân
Samankal	sâ mân ka
Saram	sa ram
Sinna	sin na
Som	som
Thaldu	thad du

Tamil Words.	How pronounced.
Thalavadam	tha la vâ dam
Thalavalam	tha la vâ lam
Thathakkal	thâ thâk kal
Theddam	thêd dam
Thediya	thê di ya
Thesavalamai	thê sa va la mai
Thoddam	thôd dam
Thuravu	thu ra vu
Udaiyar	u dai yâr
Urimai	u ri mai
Valavu	va la vu
Vali	va li
Var	vâr
Vayal	va yal
Vayal	vâ yal
Vayil	vâ yil
Vayiru	va yi ru
Vayittuvar	va yit tu vâr
Veli	ve li
Veliyan	ve li yan
Vellalar	vel lâ lar
Vidu	vî du

