

THE TESAWALAMAI

A REGULATION FOR GIVING FULL FORCE TO THE "TESAWALAMAI" OR THE CUSTOMS OF THE MALABAR INHABITANTS OF THE PROVINCE OF JAFFNA, AS COLLECTED BY ORDER OF GOVERNOR SIMONS IN 1706.

Ordinance Nos, [9th December , 1806]

18 of 1806

short title. **1.** This Regulation may be cited as the Tesawalamai Regulation.

Ordinance Nos,

5 of 1869

Tesawalamai as collected by Governor Simons to be in force.

2. The Tesawalamai, or customs of the Malabar inhabitants of the province of Jaffna, as collected by order of Governor , in 1706, shall be considered Simons to be to be in full force.>(* So much of the provisions of the Tesawalamai as is inconsistent with the Jaffna Matrimonial Rights and Inheritance Ordinance, is repealed by that Ordinance ; and so much of the Tesawalamai as is inconsistent with the provisions of the Tesawalamai Pre-emption Ordinance is repealed by section 14 thereof.)

What questions may be decided according to Tesawalamai.

3. All questions between Malabar inhabitants of the said province, or wherein a Malabar inhabitant is defendant, shall be decided according to the said customs.

Questions which relate to the rights and privileges of castes to be decided according to Tesawalamai.

4. All questions that relate to those rights and privileges which subsist in the said province between the higher castes, particularly the Vellales, on the one hand, and the lower castes, particularly the Covias, Nalluas, and Palluas, on the other, shall be decided according to the said customs and the ancient usages of the province. (Promulgated by the Dutch Government of Ceylon in the year 1707.)

Description of the Jaffnapatam Ancient Customs and Rules according to which persons of this Province are in the habit of recovering in Civil Matters, such as Inheritances, Adoptions, Gifts, Seizure, Purchase and Sale, Pledging and Redemption of Land and Gardens, c , drawn up and collected by me, the undersigned, pursuant to the Order of Our honourable Commander the Governor of Ceylon, Cornelis Joan Simons, and the Council at Colombo, by Letter dated 14th August, 1706, directed hither, according to the experience which I, in the period of seven and thirty years that I have been passing here, of which said period most has been in this Province, have acquired.

PART I

OF INHERITANCES AND SUCCESSION TO PROPERTY

1. Different kinds of property.
2. Of dowry. 3 - 6.
- 3-6 Of the marriage of daughters and the dowry given with them.
7. Of the marriage of sons and their portions.
8. Of resignation of property.
9. Of succession to property where children and their mother are left.
10. Property how to be divided where the mother marries again.

11. Of succession to property where children and their father are left.
12. Of the division of property where orphan children are left.
13. Division of property where there are half-brothers and sisters.
14. Division of property where there is issue of both marriages.
15. Division of property where two persons, each being the sole child of their respective parents, die without issue.
16. Property how to be divided where it has been improved.
17. How where a Pagan marries a Christian woman.
18. How where two Pagans intermarry.

I WILL commence by stating that a man and woman being married all descending heirs must proceed from them, and from them likewise can be indicated the inheritance in the ascending relation.

DIFFERENT KINDS OF PROPERTY

1. From ancient times all the goods brought together in marriage by such husband and wife have from the beginning been distinguished by the denomination of *modesium*, or hereditary property, when brought by the husband, and when brought by the wife were denominated in the Tamil language *chidenam*, or by us dowry; the profits during marriage are denominated *tediatetam*, or acquisition. On the death of the father all the goods brought in marriage by him should be inherited by the son or sons, and when a daughter or daughters married they should each receive dowry, or *chidenam*, from their mother's property, so that invariably the husband's property always remains with the male heirs, and the wife's property with the female heirs, but the acquisition or *tediatetam* should be divided among the sons and daughters alike; the sons, however, must always permit that any increase thereto should fall to the daughters' share.

OF DOWRY

2. But in process of time, and in consequence of several changes of Government, particularly those in the times of the Portuguese (when the Government was placed by order of the King of Portugal in the hands of Don Philip Mascarenha), several alterations were gradually made in those customs and usages, according to the testimony of the oldest *Mutaliyars*, so that, at present, whenever a husband and wife give a daughter or daughters in marriage the dowry is taken indiscriminately, either from the husband's or wife's property, or from the acquisition, in such manner as they think proper, that is to say, by parts and pieces, for there is scarcely any person who can say that he possesses the sole property of entire pieces of ground, gardens, companies of slaves, c, for it will generally be found that he is actual owner of not more than the half or one-sixteenth part or less of the property.

OF THE MARRIAGE OF DAUGHTERS AND THE DOWRY GIVEN WITH THEM

3. The nearest relations, either on the father's or mother's side from a particular regard to the bride, in order that such bride may make a better marriage, often enlarge the dowry by adding some of their own property to it: and such a present should be particularly described in the duty, marriage act, or *ola*, which must specify by whom the present or gift is made, and the donor must also sign the act or *ola*; but such a donation or gift is voluntary. When the act of doty is executed it is presumed that it is done without fraud, but the donor

does not point out therein what his share is of the pieces of ground, gardens, or slaves which he gives by pieces to his daughter or daughters, but says merely "such and such part of such a piece of ground", so that frequently, the receiver or bridegroom finds himself deceived in his expectations, which always causes differences and disputes, for many often expect to get a sixth part when they do not get more than one-sixteenth. For instance, a husband and wife having five children, namely, two sons and three daughters, and possessing a quarter or fourth part of a ground called Varakkuli, of which they give as a dowry to each of their daughters, when they marry, a fourth part of their (the husband's and wife's) share in the said ground, which together is three-fourths, and retain the other one-fourth for themselves as long as they live ; but after their death the two sons come and take each the half, consequently the daughters have no more than one-sixteenth part each of the said ground, and the two sons each but one thirty-second part ; and it is the same with the donations of gardens, slaves, c, from which often disputes also arise. The daughters must content themselves with the dowry given them by the act or doty ola, and are not at liberty to make any further claim on the estate after the death of their parents, unless there be no more children, in which case the daughters succeed to the whole estate. And in case the new-married couple, to whom one or more pieces of the said gardens, slaves, c, have been given in marriage, do not take possession thereof within ten years, they forfeit their claim thereto : for there has been of old, since the time of the Tamil kings, a proverb, *Ottiyum chitanamum pattiya*, that is, immediate possession must be taken of dowry and pawns. If this be not done, the lands, gardens, slaves, c, again become a part of the common estate in the same manner as if they had never been given to the young married couple, unless they can produce an act of their parents concerning their delay in taking such possession.

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

5. If one or more pieces of land, garden, or slaves, c, are given as a marriage gift, respecting which at the expiration of some years a lawsuit arises, and the young couple lose the same by the suit, the parents who gave the same (and after their decease the sons) are obliged to make good the loss of the land, garden, or slaves, c, for a well-drawn up and executed doty ola must take effect because it is by this means that most of the girls obtain husbands, as it is not for the girls but for the property that most of the men marry ; therefore, the dowry they lose in the manner above stated must be made good to them, either in kind or with the value thereof in money. Should it happen that after the marriage of the daughter or daughters the parents prosper considerably, the daughters are at liberty to induce their parents to increase the doty, which the parents have an undoubted right to do. If all the daughters are married in the manner above stated, and each has received the dowry then given by their

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

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

OF THE MARRIAGE OF SONS AND THEIR PORTIONS

7. Having pointed out the manner in which the daughters are given in marriage, and what becomes of their property when they die, I will now proceed to state what relates to the sons. So long as the parents live, the sons may not claim anything whatsoever ; on the contrary, they are bound to bring into the common estate (and there to let remain) all that they have gained or earned during the whole time of their bachelorship, excepting wrought gold and silver ornaments for their bodies which have been worn by them, and which have either been acquired by themselves or given to them by their parents, and that until the parents die, even if the sons have married and quitted the paternal roof. So that when the parents die, the sons then first inherit the property left by their parents, which is called *modesium*, or hereditary property; and if any of the sons die without leaving children or grand -children, their property devolves in the like manner as is said with respect to the daughters' property, which devolves to the women as long as there are any. The property of the sons, therefore, devolves to the men, and in failure of them to the women ; and although the parents do not leave anything, the sons are nevertheless bound to pay the debts contracted by their parents, and although the sons have not at the time the means of paying such debts they nevertheless remain at all times accountable for the same ; which usage is a hard measure though according to the laws of the country.

OF RESIGNATION OF PROPERTY

8. Should it happen that age renders the parents incapable of administering their own acquired property, the sons divide the same, in order that they may maintain their parents with it, and it will be often found that sons know how to induce their parents to such a division or resignation of their property, with a promise of supporting them during the rest of their life ; but should the sons not fulfil their promise, the parents are at liberty to resume the property which has been so divided among the sons, which is not done without a great deal of

trouble and dispute. And the experience of many years has taught us that such parents (in order to revenge themselves on their sons) endeavour by unfair means to mortgage their property for the benefit of their married daughters or their children ; and for this reason it has been provided by the Commandeur that such parents may not dispose of their property either by sale or mortgage without the special consent of the Commandeur, which is now become a law.

OF SUCCESSION TO PROPERTY WHERE CHILDREN AND THEIR MOTHER ARE LEFT

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

PROPERTY HOW TO BE DIVIDED WHERE THE MOTHER MARRIES AGAIN

10. Should, however, the mother marry again and have children by her second marriage, then she does with the daughters as is above stated with respect to parents. But it is to be understood that if she has daughters by her first husband she is obliged to give them, as well as the daughters by her second husband, their dowries from her own doty property ; and if the son or sons marry or wish to quit her, she is obliged to give them the hereditary property brought in marriage by their father and the half of the acquired property obtained by the first marriage, after deducting therefrom the dowry which may have been given to the daughters. If the mother of whom we have just spoken also dies, the sons, both of the first and second marriage, succeed to the remaining property which the mother acquired by marriage ; besides which such son or sons are entitled to the half of the gain acquired during the mother's marriage with his or their father, and which remained with the mother when he or she married, and provided that therefrom are also to be paid the debts contracted by her or their father when alive. But, if any part of that property is diminished or lessened during the second or last marriage, then the second husband, if he still be alive, or if he be dead, his son or sons, are obliged to make good the deficiency, either in kind or in money, in such manner as may be agreed upon. On the other hand, the son or sons of the second marriage are entitled to the hereditary property brought in marriage by his or their father, and also to the property acquired during marriage, after all the debts contracted by him shall have been paid from the same.

OF SUCCESSION TO PROPERTY WHERE CHILDREN AND THEIR FATHER ARE LEFT

11 If the mother dies first, leaving a child or children, the father remains in the full possession of the estate so long as he does not marry again, and does with his child or children and with his estate in the like manner as is above stated with respect to the mother. If a father wishes to marry a second time, the mother-in-law or nearest relation generally takes the child or children (if they be still young) in order to bring them up ; and in such case the father is obliged to give at the same time with his child or children the whole of the property brought in marriage by his deceased wife and the half of the property acquired during his first marriage. When those children are grown up and able to marry, that is to say, the daughters (if any there be), the father must go to

the grandfather or grandmother with whom the children are, in order to marry them and to give them a dowry both from their deceased mother's marriage portion and from the acquired property, which, as before stated, had been given to the relations with the children, and from his own hereditary property. This being done, and if anything remains of what had been given to the relations with the children as above stated, and if the son or sons have acquired a competent age to administer what remains, they then take and possess the same without dividing it until they marry, when they divide it equally among themselves, together with the profits acquired thereon ; but if they make a division immediately on taking possession of what remains, so that each possesses his share separately, then they are not obliged to share with each other what each has acquired. But should there remain nothing of the mother's property and of the half of the acquired property during marriage, the sons, whether young men or married, must do as well as they can until their father dies ; for these sons by the former marriage cannot claim anything from this their father. If such a father has by his second wife a child or children, and among them a son or sons (for it is unnecessary to say anything further concerning daughters), and dies, his property which exists is divided into two equal shares, one of which the son. or sons by the first wife take and the other the son or sons by the second wife, although there should be but one son of the first and five or six of the second. And what remains of the half of the acquired property during the first marriage must also devolve to the son or sons of that marriage ; but if any part thereof has been diminished during the second marriage, then the sons of this marriage are obliged to make good the deficiency to the sons of the first marriage in the manner above stated, and the son or sons of the second marriage divide the property acquired during that marriage, and also the remaining part of that which has not been given as a dowry to the sisters (but not before their mother is dead) ; in which case the sons are obliged to pay all the debts contracted by the father during his marriage with their mother.

OF THE DIVISION OF PROPERTY "WHERE ORPHAN CHILDREN ARE LEFT

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

happen that both the brothers after they have grown up and are married possess the before-mentioned property without having divided it, and that the unmarried sister receives nothing else besides what is necessary to provide herself with subsistence and clothing until her death, in such a case the whole of the property remains with the brothers, and the married sister has no right or claim thereto ; and should it happen that the unmarried sister had allowed herself to be deflowered and thereby had a child, she (in order to bring it up decently) ought to agree with the brothers and sister to divide the estate of their parents, in order to enable her to allot her child a certain portion thereof.

DIVISION OF PROPERTY WHERE THERE ARE HALF-BROTHERS AND SISTERS

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

DIVISION OF PROPERTY WHERE THERE IS ISSUE OF BOTH MARRIAGES

14. If the husband has been married twice, and has by his first wife had a son and daughter, and only one daughter by his second wife, and if the daughters have been married and received a dowry, and the father dies, it would be supposed, from what has been stated, that the son must succeed to the estate of the deceased ; but in this case it may not take place, for the daughter of the second marriage must inherit equally with her brother, there being no full brother to inherit. If a man has a child or children and his brother and sister die before or after him without children, then this man's son succeeds both to his brother's and sister's property as well as to that of his deceased father. It is the same with a woman who has a child or children, and whose brother or sister dies afterwards without leaving children, for this woman's daughter or daughters inherit both from the brother and sister of her or their deceased mother ; but if the said brother and sister die first, and if the mother of the before-mentioned daughter is still alive, then the mother inherits from the brother and sister, whereby the daughters remain deprived of that inheritance, for when the mother afterwards dies her son or sons are justly entitled to all that their mother leaves at her death.

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

15. In the case of two married persons, each in particular being the sole child of their respective parents, all that the mutual parents possessed must be brought together; and if the husband dies without leaving a child or children, then the property which proceeded from the father returns to the father's

nearest relations, and to his mother's nearest relations all her dowry which he inherited and of the acquired property and debts, each a fourth part. The same usage obtains, as it respects her, for all that she inherited from the father returns to the father's nearest relations, and her mother's dowry to the mother's nearest relations, and of the acquired property and debts to each a fourth part, excepting that the gold and silver made for the husband's use goes reciprocally to his own father and to his mother's relations, and all that was made for the wife's use and worn by her goes to her relations, although there should be on the one side the value only of ten rix-dollars and on the other the value of one hundred rix-dollars. Having thus stated what is to be done with the property when a husband and wife die, one after the other, without leaving a child or children, it is now necessary that we show, in case one of them dies, what the heirs ought to do to prevent all difficulties and losses. They must cause the survivor to return what was brought in marriage by the deceased, and also the half of the acquired property, they being justly entitled thereto ; but if from motives of affection or otherwise the heirs wish to leave the survivor in the possession of any part of the inheritance, they must do it in writing. If they neglect to do this, they must when the survivor marries again, take back the property left in his or her possession. But if they do not do this also, and if he or she, having children by the second marriage, dies, in such case the heirs who have suffered so many years to elapse without claiming the property as are established by the laws of the country remain deprived thereof. With respect to the crops that have been gathered, when one of them has died, disputes have often risen, one pretending that so much was produced from the hereditary lands, while the other pretends that so much was produced from the dowry lands ; but no attention is paid to such claims, for all kinds of grain collected are considered as acquired property, which they really are, and as such are divided equally. Should any of the man's hereditary property or woman's dowry be diminished during marriage, when one of them dies and the property is divided the same must be made good from the acquired property, if it be sufficient; if not, he or she who suffers the loss must put up with it patiently.

PROPERTY HOW TO BE DIVIDED WHERE IT HAS BEEN IMPROVED

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

How WHERE A PAGAN MARRIES A CHRISTIAN WOMAN

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

child or children, the husband is lawfully entitled to the half of the acquired property, it having been gained by his industry.

HOW WHERE TWO PAGANS INTERMARRY

18. If a Pagan comes here as just stated and marries a Pagan woman, and such Pagan dies without leaving a child or children, his relations inherit the half of the property acquired during marriage, because should he have left any child or children, and should they or his relations claim the inheritance, they certainly would get it without his having brought anything in marriage, they being Pagans ; but having once embraced the Christian religion the Pagan's relations are not entitled to anything. Pagans consider as their lawful wife or wives those around whose neck they have bound the tally with the usual Pagan ceremonies ; and should they have more women, they consider them as concubines. If the wives, although they should be three or four in number, should all and each of them have a child or children, such children inherit, share and share alike, the father's property ; but the child or children by the concubines do not inherit anything.

PART II OF ADOPTION

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

1 If a man and woman take another person's child to bring up, and both or one of them being inclined to make such child their heir, they must first ask the consent of their brothers and sisters, if there be any -if not, that of their nearest relations who otherwise would succeed to the inheritance ; and if they consent thereto, saffron water must be given to the woman or to the person who wishes to institute such a child their heir, to drink in the presence of the said brothers or sisters or nearest relations, and also in the presence of the witnesses, after the brothers and sisters or nearest relations, and also the parents of the child, shall previously have dipped their fingers in the water as a mark of consent. Although there be other witnesses, it is nevertheless the duty of the barbers and washermen to be present on such occasions. If the brothers and sisters refuse to give their child, such a man and woman may take the child of another person, although a stranger, but they are not at liberty to drink saffron water without the consent of their brothers and sisters or of those who conceive themselves to be heirs ; although this litigious people, from mere motives of hatred, often endeavour to prevent a man and woman who have brought up a child with the same love and tenderness as their own from adopting such child. Nevertheless, according to the testimony of all the Mutaliyars, such a man and woman may, in spite of the opposition, adopt such a child and bequeath it one-tenth part of the husband's hereditary or wife's

dowry property ; out of the acquired property they may bequeath more than one-tenth, provided they have not many debts. But such an adoption may not be made without the consent of the Magistrate, in order to keep them within the bounds of discretion, and also in order to prevent them from adopting children from motives of hatred towards their relations.

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

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

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

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

6. If there are three brothers, one of whom has two children and the other two have none, and if one of these wishes, from pure motives of affection, to adopt one of his brother's children, which the other brother who has also no children wishes to approve,* the two brothers may carry their design into execution, leaving to the third brother the action which he pretends to have on the inheritance. On the death of such adopting brother all his property is divided between the adopted child and the non-consenting brother, share and share

alike. If the non-consenting brother, who has no children, wishes to give some of his property to the child who has remained with the father unadopted, the question is, whether the adopted child can prevent it ? The general opinion now is that on account of the right which he had thereto (as nephew and heir of his uncle) being lost by the adoption, he must allow the giver to do with his property what he pleases as long as he lives.

7. If a man adopts in the manner above stated a youth of a higher or lower caste than his own, such child not only inherits his property, but immediately goes over into his adopted father's caste, whether it be higher or lower than his own. But if a woman adopts a child, such child cannot go over into her caste, but remains in the caste of his own father, and will only inherit the woman's property after death. If a man adopts a girl of another caste in the manner above stated, she (it is true) goes over into the caste * The Tamil version in Mutukishna's Thesawalamai reads " even though the other brother who has also no children does not approve". of her adopted father, but not her children or descendants : for if she marries, and has a child or children, they follow their father, except among slaves, in which case it has another tendency, for there the fruit follows the womb.

PART III

OF THE POSSESSION OF GROUNDS AND GARDENS, c.

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

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

2. If a person has not a proper piece of ground of his own on which to plant coconut trees, and is allowed to do it on another man's ground, he gets two-thirds of the fruits which the trees planted by him produce, provided that he himself furnished the plants, and the owner of the ground receives the other third ; but if the owner of the ground supplies the plants, the planter gets but one - third and the owner of the ground the other two-thirds ; if, however, they

have both been at an equal expense for the plants, then they are each entitled to an equal share of the fruits and trees. This division mostly takes place in the province of Ten- maradchi, for in the other provinces they know better how to employ their grounds than to let strangers plant coconut trees thereon. If a labourer squeezes out his penances and sows the kernels in order to obtain plants, and on digging them out forgets some of them, which afterwards become full-grown trees bearing fruit, the fruit which they produce remains the property of the owner of the ground, the trees having grown of themselves without any trouble (such as watering them) having been taken.

3. If anyone plants on his ground near the boundaries thereof any fruit-bearing trees which must be cultivated with a great deal of trouble, and if by a crooked growth the tree or any of the branches grow on or over the neighbour's grounds, the fruits of such tree nevertheless remain the entire property of the planter, without his neighbour having any right to claim the fruit of the branches which hang over his ground ; but if any trees, such as tamarinds, illupai, and margosa, grow of themselves without having been planted or any trouble having been taken, in such case the fruit belongs to the person whose ground they overshadow. It seems that many customs have been invented here for the sole purpose of plaguing one another: for it is sufficient to say that the trees which stand on a person's own ground have grown up of themselves without trouble or labour, and that he is not to be the owner of the branches and fruit which grow over his neighbour's ground, the fruit of such branches being indisputably his ; and he is even at liberty to cut the branches, if they hinder him, and sell the same for his own profit without the consent of the owner of the ground on which the trees stand. And the owner of the branches cannot also prevent the owner of the tree from cutting it down, but in such a case he must give the branches to the person over whose ground they hang. But, on account of the margosa oil, it has been ordered, since the Company has had possession of the country, that the trees are not to be cut down without the special consent of the persons in power ; and it is the same with all other fruit-bearing trees.

4. Although a piece of ground belongs to one person and the old palmyra trees standing thereon belong to another person, the owner of such trees cannot claim the young trees, as they must remain to the possessor of the ground, excepting in the village of Arali, where it is an ancient custom that the owner of the old trees takes possession of the young trees, which is the reason why only a few young trees are found in that village. For although a few ripe panankays fall occasionally from the trees upon the grounds from which young plants proceed, the owner of the ground, when he wants to cultivate it, has a right to extirpate such plants in order to get rid of other persons' trees on his ground. In the province of Tenmaradchi and Pachchilaippalli, in so far as the trees and not the grounds stand mentioned in the Company's Tompu, the owners of the old trees take the young ones ; but where the grounds are mentioned and also the young trees, and for which rent is paid, then the young palmyra trees belong to the owners of the grounds.

PART IV

When any person has hired one or more beasts in order to plough his land, the proprietor of such beasts is not obliged to furnish the person who has hired the same with fresh beasts in case such as were hired become sick or happen to

die during the time that they were used to plough the land. In case any person borrows from another any beasts for his use with the free consent of the proprietor, such proprietor, according to the custom of the country, may not demand from the borrower any indemnification for such of the beasts as are hurt or have broken their legs, but must consider the loss as accidental and consequently bear the same.

OF A GIFT OR DONATION

1. In what cases a gift may or may not be made where husband and wife live separately.

2. How far they may make donations to their nephews and nieces.

3. When they receive a gift of land from another person.

4. How far gifts to one of two sons are good.

5. Presents to sons being bachelors, by relations, remain to them on their marriage, but no other presents.

1. When husband and wife live separately on account of some difference, it is generally seen that the children take the part of the mother and remain with her. In such a case the husband is not at liberty to give any part whatsoever of the wife's dowry away ; but if they live peaceably he may give some part of the wife's dowry away. And if the husband on his side wishes to give away any part of his hereditary property which he has brought in marriage, he may then give away one-tenth of it without the consent of the wife and children, and no more ; but the wife, being subject to the will of her husband, may not give anything away without the consent of her husband.

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

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

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

from a greater affection which he bears the eldest son more than the youngest, wishes to give him a part of his hereditary property, he may do it by executing a regular deed ; and if, after the expiration of some time, the youngest son dies without issue, and afterwards the parents die one after the other, then it will be as if the gift never had been made, for everything devolves to him who received the gift; and if he dies also without issue his property is inherited in the manner above stated. The father's hereditary property and the half of the acquired property, after deducting therefrom the debts, go to his brother or brothers, and the mother's dowry property and the other half of the acquired property (after deducting also therefrom the half of the debts) go to his sister or sisters, without the latter being at liberty to claim anything on account of what the father gave to his son as above stated. The same also obtains if the grant or gift had been made on the mother's side ; but if the gift has been obtained from any other person besides the father and mother, then it is divided both on the father's and on the mother's side. If husband and wife have two, three, or more sons, and have given and delivered to them a piece of ground or garden, and if, after having possessed it for several years, the father and mother die, which causes a division of the estate, and if the above-mentioned son who has obtained the grant or gift demands that it shall be first delivered him from the estate, it may not be refused to him if he can prove it by a written document ; if not, the gift is considered of no value, and is equally divided.

5. We have stated above that all the property acquired by the son or sons while they are bachelors must be left by them to the common estate when they marry ; but this is by no means understood to include the presents that have been made them by relations or others, which must remain to the persons to whom they have been given. Should a husband and wife who have no children have acquired during their marriage any property, and should the husband, without the knowledge of his wife, give a part thereof to his heirs, and both afterwards die, in such case on the division of the estate the relations of the wife must receive beforehand a part equal to that which was given away by the husband to his relations when he was alive.

PART V OF MORTGAGES AND PAWNS

1. Of mortgages of lands, on condition that the mortgagee should possess the same, and take the profits thereof in lieu of money.
 2. Mortgagee so in possession to be liable to all land taxes or duties.
 3. Of redemption of a mortgage where due notice has not been given by the mortgagor.
 4. Of mortgages for certain terms of years.
 5. Of mortgages of fruit trees.
 6. Of mortgages of slaves.
 7. Of loans of money for the use of beasts.
 8. Of pawns of jewels, .
1. When any person has mortgaged his lands or gardens to another for a certain sum of money, upon condition that such lands or gardens be possessed by the mortgagee, and that the profits thereof should be enjoyed by him instead of the interest of his money, then the mortgagor of such lands or

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

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

3. In case the mortgagor wishes to redeem his mortgaged ground, but out of ignorance informs the mortgagee too late of his intention, namely, after the ground has been dug or other labour has been bestowed on it, in that case the redeemer must give to the mortgagee his proper share from the fruits which the land has produced in that year for the labour and expenses which he has bestowed upon such lands ; in such case the redeemer must observe the customs prevailing in the province and village. Yet when the mortgagee receives the money advanced by him, but cannot agree with the proprietor with respect to the profits expected by him according to the custom of the country, the proprietor in that case must permit the mortgagee himself to sow that piece of land, provided that he gives to the proprietor of the land, according to the custom of the country, the taraivaram, that is, the ground duty.

4. At present it is the prevailing custom here that many persons mortgage their

lands for a fixed term of three, five, eight, or ten years; yet, in case the mortgagor before the expiration of the stipulated time shall be compelled to sell a piece of mortgaged land either for the purpose of discharging his debts or for some other reasons, the mortgagee cannot, prohibit such a sale, but must consent to it and receive or accept the sum of money advanced by him according to the custom of the country.

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

7.* Should any person lend a sum of money to another upon condition that the debtor, instead of paying the interest, should furnish the lender with one or more beasts for the purpose of having his land ploughed, without mentioning, however, what buffaloes or bullocks are to be delivered by him during the period * Section 6 -" Of mortgages of slaves ", omitted. that he keeps the borrowed money under him, and should a beast or beasts so delivered to be used in ploughing the land happen to die during the said period, the debtor or the proprietor of such beast or beasts is obliged to furnish the lender of the money with one or more beasts instead of those which are dead, in order to be kept by the lender of such sums of money until his land has been ploughed, after which the borrower of the money may acquit himself from the said obligation by returning such sums of money as were borrowed by him.

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

PART VI

OF HIRE OF THE HIRE OF BEASTS

PART VII

OF PURCHASE AND SALES

1. Of sales of land.
2. Of sales of cattle.
3. Of the sale of children.

* 1 Formerly, when any person had sold a piece of land, garden, or slave, c, to a stranger without having given previous notice thereof to his heirs or partners, and to such of his neighbours whose grounds are adjacent to his land, and who might have the same in mortgage, should they have been mortgaged, such heirs, partners, and neighbours were at liberty to claim or demand the preference of becoming the proprietors of such lands. The previous notice which was to be given to persons of the above description was to be observed in the following manner, namely, to such as resided at the village, one month ; to persons residing in the same province but out of the village, three months ; to those residing in another province, six months ; and to those who reside abroad, one year. The above periods having expired without such persons

having taken any steps upon the information given to them, the sale was considered valid ; yet this mode of selling lands underwent an alteration afterwards in consequence of the good orders given on that subject during the time of the old Commandeur BLOOM (of blessed memory), as since those orders no sale of lands whatever has taken place until the intentions of such as wish to sell the same have been published on three successive Sundays at the church to which they belong, during which period such persons as mean to have the preference to the lands for sale according to the ancient customs of the country are to come forward and to state the nature of their preference in consequence whereof they then became the purchasers of the same.

* So much of the Tesawalamai as requires publication and schedule of intended sales or other alienations of immovable property is repealed by Ordinance No. 4 of 1895. It is customary under this nation that a piece of land which has been mortgaged to one person is sold to another, for which sale, according to the above-cited order proper title deeds are granted, although the new purchaser is unable to discharge the amount of the purchase-money, and in consequence thereof pays immediately to the seller only that part of the purchase-money which exceeds the sum for which the land has been mortgaged and afterwards leaves the same in possession of the former mortgagee for the amount for which it was mortgaged by the former proprietor, until the new purchaser has the means to pay the amount for which the said land has been mortgaged. This manner of dealing creates many disputes, as it occurs very often that such sums of money are not discharged before the expiration of eight, nine, or ten and more years, on which account I am of opinion (yet submitting mine to wiser judgment) that the passing of title deeds without the purchase amount being fully discharged should be prohibited or at least that orders should be given that in cases of the above-described nature the mortgage deed made previously in the name of the seller should be repealed, and that a new one should be passed in the name of the purchaser instead of that which has been repealed.

2. If any person wishes to sell cattle, namely, bullocks, cows, buffaloes, sheep, c, the sales thereof are to take place without any application or acts in writing, which sales are considered valid when the dry dung or excrement of such animals as were sold has been delivered by the seller to the purchaser ; and in case the animals so sold happen to die or to get young ones before they are delivered up, the purchaser being able to prove by witnesses that the seller has sold them to him for a sum of money, and that the dry dung or excrement of those animals has been received in token of their having been sold, obtains the right of a proprietor of such animals as were purchased by him as well as of their young ones, without any claim whatever being made to them by any other person whomsoever, or any compensation for loss in case of death. Should any person sell any of his bullocks or buffaloes, c, upon a statement that they are fit to be employed in ploughing lands, and should the contrary appear to be the case after the price has been agreed upon and paid for them, the purchaser may in such case, within the period of fifteen days, deliver back to the seller such of the above-described animals, and may demand from him the price paid for the same, who in that case is also obliged to restore it to the purchaser. Should any person sell a cow or a she-buffaloe to another stating that the animal sold has once or several times had young ones, and should it appear afterwards that the animal sold upon the above statement, instead of

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

PART IX

OF LOANS OF MONEY UPON INTEREST

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

1. When any person lends a sum of money upon interest to another upon condition that the borrowed sum should be restored within the time fixed by the lender, with such interest as was usually paid to others

* Section 3 of Part VII, and Part VIII omitted. at the time that the money was lent by him, should such conditions not be fulfilled by the debtor, the creditor in that case must cause the pawn to be sold, if he has had the prudence to take any lands or any other goods whatever in pawn ; and in case the debtor does not consent to the said pawns being sold, the lender of such sums of money must prefer his complaint to Government and request from the same that such mortgaged goods be sold for his benefit.

2. Should there be securities and should the debtor or borrower abscond or be in reduced circumstances and unable to discharge the debt contracted by him, the creditor may then demand the payment of such debt from the securities, who in such case are obliged to discharge the debts for which they became securities, and such securities reserve the right of instituting an action against the debtor should the latter be improved in circumstances. If two persons jointly borrow a sum of money from another and bind themselves generally for the amount borrowed, the lender in that case may demand the payment of the amount so lent from such a debtor as he may happen to see first, provided that the following expressions are inserted in the alai, or bond, namely, Munninran munirukka, which signifies, " He who is present or before me must pay the debt" ; the consequence whereof then is that the debtor who comes first before the creditor, when he intends to demand the money, must pay the whole debt; but such a debtor who pays the whole debt has a right to demand the payment of half the amount paid by him from his fellow-debtor wherever he may find him.

3. When a man has contracted debts in his lifetime without the knowledge either of his wife, child, or children, and happens to depart this life before he

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

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

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

6. In case any person wishes to exchange grain, paddy, chami, kurakkan, kollu, * rice, and cadjan must be exchanged for an equal quantity, because they bear the same price ; but any person wishing to exchange paddy for varaku must give one and a half parai of varaku for one parai of paddy.

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

negligence ; yet should it happen that he has had a tolerably good harvest and the other inhabitants of his village a bad one, then the proprietor * An old Tamil version has, " Peas and rice are exchanged for an equal quantity ". of the ground must be satisfied with the quantity produced by the field, and may not claim anything more from the sower. The above laws and customs of Jaffnapatam were composed by me in consequence of my experience obtained by my long residence and intercourse at that place. I have written the above laws and customs after a strict inquiry into the same by order of His Excellency the Governor and Doctor of Laws, CORNELLS JOAN SIMONS, and I hope my endeavours will satisfy His Excellency the Governor's intention ; in the expectation whereof I have the honour to be, Honourable Sir, Your Excellency's most obedient, humble Servant, (Signed) CLAAS ISAAKSZ. Jaffnapatam, 30th January, 1707.