THE

OTTOMAN LAND LAWS

WITH

A COMMENTARY

ON THE OTTOMAN LAND CODE

OF 7th RAMADAN 1274

BY

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Ptd. at Greek Conv Press.

This book is dedicated to my friend

John Buchan.

PREFACE.

This book is intended to furnish an explanation of the Law of Mirie and other State lands in Palestine, for the benefit of English speaking judges and lawyers

It is the only book in English which deals with the development of this branch of Turkish Law in Palestine, and for this reason apologies, which may be needed for its contents, are not needed for its existence.

It gives the text of the Ottoman laws contained in Sir Stanley Fisher's "Land Laws" together with the Iraq translation of the Provisional Laws. This makes it a fairly complete book of reference up to the time of the Occupation.

The numerous Orders-in-Council and Ordinances, which have been passed since that date, are collected in the two volumes of "The Legislation of Palestine" compiled by Mr. Norman Bentwich M C, which is adequately indexed. Their inclusion in this volume would, therefore, serve no useful purpose

The commentary is confined to the Ottoman Land Code, though of course the notes contain frequent references to subsequent legislation.

It differs from the ordinary legal text book in that it does not contain references to decided cases. This is due to the fact that, in the absence of an adequate system of law reporting, it is impossible to ascertain either, what decisions have been passed, or what decisions are operative on any given point.

Under these circumstances an attempt to quote cases would necessarily be incomplete, and almost certainly misleading.

The most that can be safely attempted in this direction is to give the trend of decisions, where such a trend can be clearly discerned. This has been done.

The author has taken considerable pains to explain the underlying principles of the Ottoman Law of Immovable Property. This has led to short disquisitions on those Articles of the Mejelle on which the Land Law is, in part, based.

Pains have also been taken to show the policy underlying matters which are likely to be unfamiliar to the English lawyer, such as the devolution of land by right of Tapou, and the manner in which the strange tenure known as Quasi Mulk came into existence.

It is hoped that notes of this character will assist the English reader to grasp the meaning and scope of the Land Law with some facility.

The writer is acquainted with no work in a European language which proceeds on these lines, except Chiha's fine essay written in the French language.

Sir Stanley Fisher has kindly permitted the use of the admirable translations contained in his book on the Land Code. As they have established themselves as the standard English tivt in Palestine, a commentary based on a fresh translation would have suffered under grave disability.

Thanks are due to my friend, and brother Judge Aziz, Eff. il Daoudi for help, which he has kindly given, in completing the notes on the last chapter of the Land Code.

The author is keenly conscious of the inadequacy of the equipment of an English lawyer for the task he has undertaken. He has, however, done his best to convey to his readers the result of several years experience as President of a Land Court, in such a form as will enable them to avoid difficulties and perplexities, which cost him much time trouble to surmount.

He will be grateful for such suggestions and corrections as they may care to furnish.

Before closing it is necessary to stress the fact that questions of jurisdiction and procedure are not discussed in this commentary. It is confined to substantive Law.

The reason for this decision is that the law relating to jurisdiction and precedure is in an unsettled state. Many changes have been introduced since the Occupation and the advent of a Land Settlement will necessitate many more.

Under such circumstances no discussion of these branches of the law in their relation to the work of the Land Courts can have more than an ephemeral interest or importance

R. C. TUTE.

Jerusalem, 4th January, 1927.

THE OTTOMAN LAND CODE

OF 7th RAMADAN 1274 (= 21st APRIL 1858)

INTRODUCTORY CHAPTER

ARTICLE 1.

Land in the Ottoman Empire is divided into classes as follows:

(I) "Mulk" land, that is land possessed in full ownership:

(II) "Mirie" land;

(III) "Mevqufe" land,

(IV) "Metrouke" land;

(V) "Mevat" land.

NOTE 1 (ART 1)

Classification of Lands in the Code.

The classification of lands which is given in this Article is somewhat illogical.

Classes II. IV and V. are all varieties of land of which the State is the Supreme owner.

Mulk land is land held in private ownership, and Mevqufe is land held, theoretically, in the ownership of the Deity, and, for practical purposes, by the properly constituted Wakf or Trust authority

There are thus three main classes of land:- MULK, MEVQUFE, and STATE lands.

Mulk lands are governed by the provisions of the Mejelle, Mevqufe lands by the general Sharia law, and Mirie lands by the Land Code. It will be seen later that this statement is a little too wide. It will however serve to emphasise the fundamental distinctions between the three main classes of land (Vide Art. 2 Note 6).

In each class the ultimate ownership, or rakaba, lies in different hands.

In the case of Mulk property it lies with the mulk owner, with the result that his is the most complete form of ownership known to Moslem Law. In the case of Mevqufe land, the circumstance that ownership is attributed to the Deity is responsible for the fact that these lands cannot normally be transferred or diverted from the use to which they were originally dedicated. In the case of Mirie land, the fact that the rakaba resides in the State has rendered it possible for the State to assume the management of these lands under the provisions of the Land Code. State lands consist in Mirie (II), Metrouke (IV) and Mevat (V). These are the lands with which the Land Code and this Commentary deal.

Mirie, as already indicated, is agricultural land held from the State. Metrouke lands are those which are reserved for public or communal use — such as roads and pastures. Mevat lands are those uncultivated areas which lie outside the boundaries of existing villages, and which are usually available for clearing and cultivation.

NOTE 2. (ART. 1)

Objects of the Land Code.

Previous to the passage of the Ottoman Land Code lands of all kinds, except Wakfs of the perfect, or Sahih, class, were dealt with by the Courts under the Civil Law which is codified in the Mejelle

At that time it was easy to convert Mirie land into mulk by building or planting. This transferred the rakaka from the State to the individual. On becoming full owner in this way, the individual was under considerable inducement to pass the land into the Wakf class by dedication. He could do so on terms which would ensure all its benefits to himself and his descendants, while his property was protected by the strongest legal and religious sanctions known to Moslem Law from seizure by the State or its Officers

The process was one of breaking the control of the State in two stages. Its result was the progressive deprivation of the State of very valuable rights. One of the main objects of the Land Code was to put a stop to this process

An equally important object was to bring the persons who cultivate State lands into direct relations with their overlord. Before the passage of the Code these lands were managed by feudatories and farmers, who purchased the right to collect tithes by payments in money or service. The interest of such persons lay in immediate and rapid acquisition - in other words, in extortion. It was opposed to the interest of the State, which is best secured by the development and extension of cultivation, and the well being of the cultivator.

The Land Code therefore contains provisions which are designed to bring the State into direct relations with the cultivators of its lands.

The means adopted to achieve the two ends which are here indicated are to be learned from the articles of the Land Code, and the provisions of subsequent legislation.

NOTE 3. (ART. 1)

Public Lands.

The Order in Council published in the Gazette of the 1st. September, 1922 brings into existence a class of lands called Public lands. They are defined (Art. 2.) as "All lands in Palestine which are subject to the control of the Government of Palestine by virtue of Treaty, conventions, agreement or succession, and all lands which are or shall be acquired for the public service or otherwise." Article 12 vests these lands and all rights therein in the High Commissioner, and Article 13 gives him the power to grant or lease them in accordance with law, then existing, or to be passed hereafter.

It is difficult to assign limits to the application of the very wide terms of the definition of Public lands given in Article 2 of the Order in Council Under Arsicle 12 (2) all mines are included in the category of public lands, except those which are the subject of an existing and valid concession

The lands dealt with under the Land Code as "Mahlul", i.e. as left vacant by failure of heirs or cultivation, must under this definition be classed as public lands. The Mahlul Ordinance of the 1st October, 1920 recognises that lands of this class should now be deald with by way of lease instead of grant, as provided for in the Land Code.

ARTICLE 2.

Mulk land is of four kinds.

(I) Sites (for houses) within towns or villages, and pieces of land of an extent not exceeding half a donum, situated on the confines of towns and villages, which can be considered as appurtenant to dwelling houses.

(II) Land separated from State land and made mulk in a valid way, to be possessed in the different ways of absolute ownership according to the Sacred Law.

(III) Tithe-paying land, which was distributed at the time of conquest among the victors, and given to them in full ownership.

(IV) Tribute-paying land, which (at the same period) was left and confirmed in the possession of the non-Moslem inhabitants. The tribute imposed on these lands is of two kinds:-

(a) "Kharaj-i-moukasseme", which is proportional, and is levied to the amount of from one-tenth to one-half of the crop, according to the yield of the soil.

(b) "Kharaj-i-mouvazzef", which is fixed and appropriated to the land.

The owner of Mulk has the legal ownership.

It devolves by inheritance like movable property, and all the provisions of the Mejelle, such as those with regard to dedication pledge, or mortgage, gift, pre-emption, are applicable to it.

Both tithe-paying and tribute-paying land become State land when the owner dies without issue. and land becomes vest in the Treasury (Beit-ul-mal.)

The provisions and enactments which are applicable to the four kinds of mulk land are stated in the books of the Sacred Law, and will not therefore be dealt with in this Code.

NOTE 1. (ART 2.)

Kinds of Mulk Land.

This Article describes the various kinds of mulk lands which are to be met with in the area of the old Ottoman Empire. The kinds described under III. and IV. (a) need not be discussed, as they are not met with in Palestine. Of the others (I) refers to urban properties. This kind of mulk can no longer be brought into existence by the improvement of land in urban areas. The Mulk Titles Act of 1874 put an end to this process in a manner which will be explained later. Vide note 2 infra.

The second kind—described in (II)—refers to dead land which has been appropriated with the leave of the Sultan on terms which transfer the rakaba from the State to the occupier. The method by which this was effected is shown in Article 1272, Mej.

The same article shows that by a similar process Mevat or dead lands can be occupied and improved without a transference of the rakaba. Such lands become Mirie and not Mulk.

As to IV. (b)—This class includes the greater part of the mulk properties which are in existence outside of the towns. They are held subject to the payment to the State of a fixed tax which is collected by the Verko Department.

NOTE 2. (ART. 2.)

Mulk Titles Act.

Mulk property is the most complete form of private ownership known to Moslem law. The mulk owner is under no obligation to cultivate, or to make any given use of the land. He can transfer it to the Wakf class at will, thus

placing it still further beyond the reach of the State. In the old days, the best method of insuring that property was secured from the interference of the State was to turn it unto mulk, and then to dedicate it to a Wakf, in such a way that its benefits were secured to the dedicator's descendants by any scheme of inheritance which he might lay down. The only way to stop this process was to stop the creation of mulk.

To this end the Mulk Tithes Act of 1874 was passed.

It provides, that, from the date of its becoming law, no one may possess land as mulk, unless he holds a title deed which describes it as such, or, unless he is permitted to do so by a Firman of the Sultan.

The result is that all claims to hold land as mulk which are supported neither by a title deed nor by a Firman must fail. In particular the improvement of urban lands no longer gives rise to a right under Article 2 (1) to hold them as mulk. Whether proof that the improvement is older than the date of the passage of the Mulk Titles Act would suffice to revive the operation of the sub-section under reference is a matter which has not, so far, been judicially decided.

With this possible reservation mulk property may now be defined for the lawyer as property which is held as such by title deed or by Firman

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NOTE 3 (ART. 2.)

Legal Incidents of Mulk Property compared with those of Mirie.

Article 2 goes on to state that the owner of mulk land has the legal ownership thereof. In other words that the rakaba is vested in him.

It follows that the Land Code is not applicable to this class of property; since the land dealt with by that Code is land of which the rakaba is vested in the State. The law which applies to it is that contained in the Mejelle. The Article goes on to specify some of the main points in which, for this reason, the legal incidents of mulk differ from those of Mirie property.

We have already noted (Note 2 above) that the owner of mulk property can make it Wakf at his discretion. This has the effect of placing its devolution and user under a scheme devised by the dedicator, and of bringing its legal incidents under the control of the Sharia Courts, and the Sharia Law.

Gifts and sales of mulk property are dealt with under the provisions of the Mejelle. Under that system of law transfers are subject to restrictions when they are made by a person in "mortal" sickness. (Mejelle 393 et seq - 877 et seq.). In the case of Mirie property gifts or sales made by a man on his death bed are in all cases valid, if the proper procedure is complied with. (Art. 120 Land Code).

Pre-emption is a right which is peculiar to mulk property; but an analogous right of prior purchase exists also with regard to mirie. There are important differences in the grounds and procedure under which each of these rights can be claimed. The inheritance of mulk property is the same as that for movable property. The inheritance of mirie is governed by Statute and cannot be altered by will. It can however be evaded by a death bed gift or transfer as already noted.

NOTE 4 (ART 2)

Creation of new Mulk.

The transfer of the rakaba of mulk land to the State which takes place when the owner dies intestate, and which has the effect of making the land Mirie in the case of the kind of mulk defined in Article 2 (IV) b, may be compared with the reverse process of changing mirie into mulk.

We have already noticed (Art. 2 note 2) that mirie land cannot be made into mulk, merely, by placing thereon certain improvements, when it is situated in an urban area. This process was stopped by the Mulk Titles Act 1874. The only valid ways in which mirie or state land, of any kind can now become mulk are (1) by Firman, or in these days by order of the Head of the Palestine Government; and (2) by prescription. As to the latter, the prescription required to change the rakaba of any class of immovable property is one of 36 years. Thus if an owner of mulk property which adjoins mirie land encloses a portion of the latter with his mulk holding, or otherwise converts it to his use, he will be able to claim the area so appropriated as part of his mulk holding only after 36 years.

It is of course the right of the state to convert mirie to mulk at its pleasure - or at any rate with the object of securing, thereby, some benefit to the State. This has been done recently in the case of mirie lands which have been converted into war cemeteries. The change was necessitated by the fact that the Land Code (Art 33) forbids burial in Mirie land, and also by the circumstance that the acquisition of uncultivated mirie land by a squatter is deliberately facilitated by the Land Code (vide Art. 78).

NOTE 5. (ART. 2.)

Prescriptive Periods.

The period of prescription which suffices to transfer the ownership of mulk property from one owner to another **without changing its class** is 15 years. In the case of mirie property, as will be seen later, the period is 10 years. (Vide Art. 20 Land Code) To change the rakaba from one class to another requires, as has been shown in Note (4), a prescriptive period of 36 years.

NOTE 6. (ART. 2.)

Quasi Mulk.

Article 1272 of the Mejelle states that in all cases a person who sinks a well or makes a water course in Mevat land, with the leave of the State, becomes the mulk owner of these accretions. The right is not dependant on whether the land was originally given to him as mirie, or as mulk.

It follows that, under this Article, a mirie holder can put certain accretions on his property, and by doing so, becomes the mulk owner of them, though his rights to the land remain those of a mirie holder. The Land Code further amplifies this position, and enacts that buildings or plantations of trees or vines have the same effect. The result is to create an intermediate class of property which is conveniently termed Quasi Mulk. Its legal incidents are fully described in the Code. (Vide Art. 25 and much of Bk. 1 Ch. II).

It may here be stated that, so long as the land and the accretions remain in the hands of the same owner, the property devolves under mulk inheritance; its acquisition by prescription comes under the mulk period of 15 years; it is not liable to be claimed either by pre-emption or prior purchase; it cannot be dedicated as a whole to a Wakf, on the complete disappearance of the accretions it reverts to mirie.

The further creation of this class of property was stopped by the Provisional Law of Disposal of 1329 (30 the March). Since its passage accretions on mirie land follow the law of the land, and do not rank as mulk, either in themselves, or for the purpose of altering the legal incidents of the holding.

ARTICLE 3.

State land, the legal ownership of which is vested in the Treasury, comprises arable fields, meadows, summer and winter pasturing grounds, woodland and the like, the enjoyment of which is granted by the Government.

Possession of such land was formerly acquired, in case of sale or of being left vacant, by permission of or grant by feudatories (sipahis) of "timars" and "ziamets" as lords of the soil, and later through the "multezims" and "muhassils".

This system was abolished and possession of this kind of immovable property will henceforward be acquired by leave of and grant by the agent of the Government appointed for the purpose. Those who acquire possession will receive a title-deed bearing the Imperial Cypher.

The sum paid in advance (muajele) for the right of possession which is paid to the proper Official for the account of the State, is called the Tapou fee.

NOTE 1. (ART. 3.)

Some Incidents of Mirie Land.

As stated in this definition Mirie Lands belong, in respect of the rakaba, to the State. This fact enabled the State to make a special Code of Law to govern them in the shape of the Ottoman Land Code. Such lands were originally held by feudatories or farmers, who had the right to collect tithe in return for services rendered, or monies paid for this privilege to the State. Some Mirie lands also came into existence by the clearing of Mewat under the conditions described in Art. 1272 Mejelle, the chief of which was that the rakaba should remain with the State. It is clear that the system thus indicated left the cultivator at the mercy of men whose interests were best served by extortion.

The Land Code was designed to set it aside, and to bring the cultivators of mirie land into direct relation with their overlord, the State. It enacted that, from the date of its passage, holders of mirie should enjoy their lands under a grant direct or implied from the Sultan.

The State imposed conditions on these grants, which are set forth in the Land Code and in subsequent amending legislation. By this body of law the rights of the State are deliberately curtailed in certain directions; while those of the grantees fall short of full ownership only in the respects set forth in the law. It is impracticable to give here a resumé of these rights and liabilities. To do so would amount to making a resumé of the greater part of the Land Code, and subsequent legislation on the subject of mirie land.

It is sufficient for our present purposes to say that the State permits the grantee to hold in perpetuity, provided that he obtains the grant in a proper manner (generally on payment of a fee), that he keeps the land under cultivation, and that he pays tithe and taxes. The inheritance of mirie is laid down by the Land Code, and has since been modified by Statute. Such land cannot be passed by will. It can however be transferred by sale gift and mortgage under conditions of which the chief is that all such transactions must be registered in the Tabou or Land Registry.

The obligation to register has been extended by legislation to owners of mulk holdings by the Mulk Titles Act of 1874 and later acts.

NOTE 2. (ART. 3.)

Prescriptive Periods.

Prescrition in respect of mirie lands falls under three heads.

(a) as between private individuals.

(b) as between the individual who claims as a grantee and the State.

(c) as between the individual who claims as a mulk owner and the State.

The period under (a) and (b) is 10 years. Under (c) which has been discussed under Art. 2 Note 4 it is 36 years.

NOTE 3. (ART. 3.)

Grants in Common :

The intention of the Land Code was that each cultivator should be given a separate piece of land on a separate title deed. This is explained in Article 8. In the notes to that article it is shown also that, in spite of its provisions, lands are still held in common in large areas, The confusion which results from this state of affairs is also briefly indicated.

NOTE 4. (ART. 3.)

The Provisional Law of Disposal.

The Land Code limits the right of user of mirie land in many directions Thus the holder may not build on it; he may not use the soil for brick making. His rights are virtually limited to the use of the surface of the land for the purpose of cultivation The mulk owner on the other hand enjoys without conditions "ab coelo usque ad inferos".

These restrictions have been set aside by the Provisional Law of Disposal of 1329; the result being that the modes of use of mirie are now practically unrestricted except in respect of burial, and mining, or prospecting (see Notes to Art. 107).

NOTE 5. (ART. 3.)

Takhsisat Wakfs.

The grantee of mirie land cannot dedicate his rights to a Wakf without the leave of the Sultan. On the other hand certain mirie lands have in the past been dedicated by bygone Monarchs, or, with their consent, by their feudatories. These dedications do not suffice to take the lands out of the mirie class, or out of the operation of the Land Code, unless all the benefits arising from them have been alienated. The point will be further elaborated under Article 4. This class of Wakfs is known as the "Takhsisat" class.

NOTE 6. (ART. 3.)

Quasi mulk.

The tenure which arose, and still continues, from the existence of mulk accretions on mirie land, which date from a period prior to the passage of the Provisional Law of Disposal of 1329, has been discussed in Nate 5 Article 2. This is the Quasi Mulk tenure. It is further discussed under Article 25 and other articles.

NOTE 7. (ART. 3.)

The position of the Mejelle in relation to The Land Code.

The Land Code purports in its last paragraph to repeal all previous legislation which its provisions replace, or with which they are inconsistent. This leaves a great deal of the earlier law on the subject untouched. It has to be sought for in the Mejelle. For this reason numerous references to the Mejelle will be found in the notes to this work.

NOTE 8 (ART. 3.)

Once mirie always mirie.

Once land has been classed as mirie it is always mirie. Thus land which has once been redeemed from mewat by clearing and cultivation, or for which a title deed has once issued, does not, on failure of cultivation, lapse to mewat status, however much the traces of former cultivation and clearing may have been obliterated. Such land can, for example, always be claimed from the State by the squatter of 10 years standing, who bases his claim on Article 78. His rights in this respect have been, however, importantly modified by the Mahlul and Mewat lands Ordinances, passed by the present Government.

ARTICLE 4.

Mevqufe or dedicated, land is of two kinds:-

(I) That which having been true mulk originally was dedicated in accordance with the formalities prescribed by the Sacred Law. The legal ownership and all the rights of possession over this land belong to the Ministry of Evqaf. It is not regulated by civil law, but solely by the conditions laid down by the founder The Code therefore does not apply to this kind of mevqufe land.

(II) Land which being separated from State land has been dedicated by the Sultans, or by others with the Imperial sanction. The dedication of this land consists in the fact that some of the State imposts, such as the tithe and other taxes on the land so separated have been appropriated by the Government for the benefit of some object Mevqufe land of this kind is not true waqf. Most of the mevqufe land in the Ottoman Empire is of this kind. The legal ownership of land which has been so dedicated (of the takhsisat category) belongs as in the case of purely State land to the Treasury, and the provisions and enactments hereinafter contained apply to it in their entirety. Provided that, whereas in the case of purely State land the fees for transfer, succession and the price for acquiring vacant land are paid into the Public Treasury, for this kind of mevqufe land such fees shall be paid to the vaqf concerned.

The provisions hereinafter contained with regard to State land are also applicable to mevqufe land, therefore, whenever in this Code reference is made to mevqufe land, this land which has been so dedicated is being understood as being referred to.

But there is another kind of such dedicated land of which the legal ownership is vested in the Treasury (Beit-ul-mal) and the tithes and taxes thereon belong to the State and of which only the right of possession has been appropriated for the benefit of some object, or the legal ownership is vested in the Treasury and the tithes and taxes as well as the right of possession have been appropriated for the benefit of some object.

To such dedicated land the provisions of the civil law with regard to transfer and succession do not apply; it is cultivated and occupied by the Evqaf Authorities, directly or by letting it and the income is spent according to the directions of the dedicator.

NOTE 1. (ART. 4.)

Classes of Wakfs.

This article deals with perfect, or Sahih, and imperfect dedications. To the former class belong dedications of true mulk property. It has been shown in Note 6. Art. 2. that Quasi Mulk land cannot be dedicated.

Such dedications are dealt with under the Sharia Law by the Sharia Courts, which alone administer that Law.

They are excluded from the jurisdiction of the Land Courts, unless a claim to ownership has to be decided.

Imperfect dedications are called Takhsisat Wakfs. They are dealt with under the second paragraph of the Article. It is a master-piece of confused exposition.

Its effect may however be stated in a fairly simple form. It lays down that mirie land may not be dedicated except by, or with the leave of the Sultan. Dedications of Mirie land made with such permission may embrace either (a) all the benefits arising from the land or (b) only some of those benefits.

In the first case the land is taken out of the categories with which the Land Code deals, and is regarded as true wakf. The reason for this is that, as no benefit remains to the State, the rakaba is regarded as having passed to the Wakf.

In case (b) the rakaba is regarded as remaining vested in the State, and the Land Code applies to the property in full.

The benefits arising from Mirie land are those of possession, tithes, taxes, and fees.

NOTE 2. (ART. 4).

Classification of Takhsisat Wakfs.

Takhsisat Wakfs are classified as

(1) Mazbuta
(2) Molhaka
(3) Mostasna

Wakfs of class (1) are fully controlled by the Wakf Council, officially known as the Supreme Moslem Sharia Council. This body succeeds to most of the rights and powers of the Turkish Ministry of Evkaf. They are, for the most part, dedications made for a charitable or religious purpose.

Wakfs of Class (2) are controlled by thier Mutawallies, or managers. The appointment of the Mutawalli is regulated by the deed of dedication, or Wakfieh. They are controlled, chiefly in respect of finance, by the Wakf Council, which has periodical inspections made through its officers, and is empowered to take fees for this service. Such Wakfs are, for the most part, intended to benefit the descendants of the dedicator along a line of devolution which has been defined by him.

Wakfs of class (3) are for the most part private wakfs, like those in class (2), but are not subject to control and inspection by an outside authority.

NOTE 3. (ART. 4.)

Representation of a Wakf.

For the purpose of litigation a Wakf must be represented by its Mutawalli. When no Mutawalli exists the Court must refer the party interested to the Sharia Court, to have one appointed. The fact that a person is a beneficiary of

a Wakf does not enable him to bring or defend a suit concerning the corpus of the Wakf property. He is not regarded in Moslem Law as having an interest in the trust of a proprietary nature. He is entitled to receive a certain proportion of the money, or other benefit, which the property periodically produces, and there his rights cease. In the case however, of a Wakf of the private class on which there is only one surviving beneficiary no Mutawalli need be appointed, and the beneficiary in question has the right of suit.

NOTE 4. (ART. 4)

Period of prescription.

The period of prescription applicable to Wakf property is 36 years vide Mejelle Article 1661-from which period time may be deducted under the provisions of the later articles of the Chapter in which this article occurs.

NOTE 5. (ART. 4.)

The rakaba of true Wakf property.

In theory the rakaba of true Wakf property rests with the Almighty. For this reason Wakf property cannot be transferred by sale or gift except under very rare circumstances This fact supplies the reason for denying to beneficiaries any proprietary status.

NOTE 6. (ART. 4.)

Resumption.

The power of the State to resume Wakfs of the Takhsisat class is an interesting question. It turns mainly on (a) the extent to which the Head of the State, who was responsible for the dedication, acted in the interests of the State in making it, and (b) the extent to which under Moslem Law he was bound to regard himself as a trustee for the State.

Instances of such resumption exist in the history of the Ottoman Empire.

The resumption of a Wakf of the perfect or Sahih class is legally impossible; though such lands are no more exempt than lands of any other kind from acquisition by the State or by a Municipality under the special statutes which regulate this form of acquisition.

ARTICLE 5.

Land left for the use of public (metrouke) is of two kinds:-

(I) That which is left for the general use of the public, like a public highway for example;

(II) That which is assigned for the inhabitants generally of a village or town, or of several villages or towns grouped together, as for exambe pastures (meras).

NOTE 1. (ART. 5.)

Distinctions between Public and Communal Lands.

The distinction drawn by the article between lands which are left for the use of the public in general, and those assigned to the use of a community, or group of communities, is important.

This arises from two considerations. In the first place the right to sue in respect of trespass or damage to a public reservation is inherent in any member of the public, which makes use of it Similar actions in regard to communal reservations can be brought by a member of the interested community, only if it exceeds in number 100 persons. If it is less than that number all members of the community interested must be joined as plaintiffs. This arises from the provisions of Articles 1645 and 1646 of the Mejelle. They press very unfairly on small communites, since the inclusion of every person entitled is often difficult to secure; and it is easy to make non-inclusion the ground of constant applications for postponement.

The second consideration is even more important. The Article under discussion states, that communal reservations are "assigned", while public reservations are merely "left".

The distinction appears to throw on the asserter of a communal right the burden of proving an act of assignment.

This matter is discussed in the notes on Book II which deals with Metrouke and Mewat lands.

NOTE 2. (ART. 5.)

Other rights of Common.

There are two classes of land in which the public has rights; but which are not classed by the Code as Metrouke. They are (1) Moubah, or mountainous areas, over which the general public has the right to cut wood, and (2) unassigned pastures. These classes are dealt with in Arts. 104 and 105 respectively under the general heading of Mewat.

The first of these classes cannot be resumed by the Land Registry Department, and cannot he granted by it to individuals for clearing and cultivation.

Land in the second class can be used by the villages, within whose boundaries its lies, as a free pasture. But outsiders must pay fees to the State for its use. There appears to be nothing to prevent the State from resuming these lands, or turning them to another purpose.

The fact that these pastures are described as unassigned, reinforces the argument which places the burden of proving an assignment on the person who asserts that it took place.

NOTE 3. (ART. 5)

Unchangeable use of assigned Metrouke.

The most important incidents of true metrouke lands of both classes are that they can never be acquired by an individual, and may never be put to any use, other than that for which they were originally intended.

No period of prescription avails to break this rule. So long as the present law remains unrepealed, it holds good against the State with the same force as against the individual

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ARTICLE 6.

Dead land (mevat) is land which is occupied by no one, and has not been left for the use of the puplic. It is such as lies at such a distance from a village or town from which a loud human voice cannot make itself heard at the nearest point where there are inhabited places, that is a mile and a half, or about hall an hour's distance from such.

NOTE 1. (ART. 6)

Definition of Mewat Discussed.

This curious definition is derived from Art. 1270 of the Mejelle. It is repeated with some amplification in article 103 of the Land Code. It was framed for the purpose of excluding from the Mewat area the pastures of adjoining villages. The method of exclusion is very rough, because the land was regarded as of little value, and because delimitation by metes and bounds was regarded as impracticable. In this connection it must also be borne in mind that no cadastral survey has ever been made.

Under these circumstances, it is difficult to see how the end in view could have been attained otherwise than as the Article under discussion indicates.

NOTE 2. (ART. 6.)

Its Shortcomings.

The Land Code (vide Art. 31) did not contemplate the extension of the inhabited sites which were in existence when it was passed. It was not therefore foreseen that the extension of those sites would create difficulties.

Their rapid growth in recent years brings them continually nearer to the former Mewat area, and, under the definition we are discussing, must result, in a progressive curtailment of that area. The process, at the same time, brings into existence an indeterminate class of land, which was formerly Mewat. On this area which is neither Mewat, Mirie, nor assigned pasture, squatters are likely to settle, against whom the present law gives the State no rights, other than those conferred by a strict enforcement of the prohibition of building contained in Art. 31. Such land cannot regarded (under Art. 105) as unassigned pasture, because, *ex hypothesi,* it lies outside the boundaries of any town or village.

NOTE 3. (ART. 6).

Method of Acquiring Mewat:-

Mewat land is granted out for clearing and cultivation under the rules given in Art. 103. The unauthorised squatter, who reclaims such land, can demand a title deed; but only on condition of paying the value of the land to the State.

No right to such land can be acquired by prescription. The Mewat Lands Ordinance, which importantly modifies the rights of the unauthorised squatter on Mewat, should be consulted. Its effect is dealt with in the notes to Art. 103.

ARTICLE 7.

This Code is divided into three Books.

Book I. — State Land. "Arazi Mirie".

Book II. — Land which has been left for the public, "Arazi Metrouke", and "Arazi Mevat". In this Book jebali moubaha will also be dealt with.

Book III. — Miscellaneous kinds of land not clasified in the preceding categories.

CHAPTER I.

PREFATORY — NOTE 1

Only four Articles of this chapter, the 8th, the 20th, the 23rd and 33rd can be regarded as operative. The rest have been replaced by the Provisional Law of disposal of the 31st March 1329, and by the Law of Partition of the 1st of December, 1329 The rights which have accrued under replaced articles - e.g. under Articles 13 or 14 - continue, of course, to exist.

The replaced Articles regulated (a) the uses to which Mirie land may be put, (b) damage and trespass by strangers and co-owners, and (c) partition

The new Law of Disposal has restated (a) in such away as to abolish almost all the pre-existing restrictions on user. It has restated (b) with modifications. The old law of Partition (c) is replaced by an entirely new law.

Hence, for all practical purposes, the Chapter may be regarded as having been reduced to the four Articles named.

The first of these (8) prohibits the issue of title deeds to groups and communities. The second (20) and third (23) state the law of prescription obtaining between private persons. The fourth (33) prohibits burial in Mirie land.

PREFATORY — NOTE 2.

It should be noted that the Provisional Laws do not purpot to repeal the old laws. It may therefore be held that the latter remain unrepealed in respect of such provisions as are not inconsistent with the new laws, and are not restated in them.

The question is probably of little practical interest, since the doubtful points do not seem to affect matters about which litigation is likely to arise.

ARTICLE 8.

The whole land of a village or of a town cannot be granted in its entirety to all of the inhabitants, nor to one or two persons chosen from amongst them Separate pieces are granted to each inhabitant and a title deed is given to each showing his right of possession.

NOTE 1. (ART. 8.)

Scope of Article:-

This Article states that the whole land of a village cannot be granted to a community, or to a person or persons selected to represent a community.

Each person who holds land is to be given a separate title deed, and to enjoy separate ownership.

The proviso implied by making the article apply only to a grant of the whole of the lands of a village, appears to legalise a grant of some of the lands in common.

NOTE 2. (ART. 8.)

Its Effect on Registration:-

When registration was first introduced the authorities were faced with the fact that large areas of mirie land were, de facto, held in common. The ownership of these lands had to be registered so as to show the facts, and at the same time comply with the provisions of the law contained in Art. 8. The two requirements are often contradictory. In the result, two methods for the registration of "Masha" lands were adopted. Some of these lands were registered as held in common by all the de facto co-owners, each being shown as holding a stated proportional share. Others were registered as being owned by the heads of the families, whose members were the actual co-owners. The last named scheme of registration has led to a number of suits, by which the descendants of the recorded owners seek to exclude the heirs of owners who were not recorded.

NOTE 3. (ART. 8.)

Confusion in the Records of Masha Lands:-

It has been the custom in a number of villages to allow the co-owners to retain a portion of the Masha in individual ownership, and to apply the process of periodical division only to the balance. The principle on which this was carried out has never been recorded in the land Registers. The result is inextricable confusion. Lands, which are recorded as Masha, are actually held, without record of the fact, in separate ownership, and, as the process often dates back to ancient times, these separatly owned portions were often developed into a subordinate division of Masha, claimed by the descendants of

those who originally assumed individual ownership, as co-owners. In some cases the last named process has even resulted in a fresh set of individually owned plots, based on the subordinate Masha, together with a residual area of the secondary Masha.

NOTE 4. (ART. 8.)

Effect of Custom which runs counter to statutory inheritance.

The confusion discussed in Note 3 is sometimes intensified by the existence of customs of inheritance, which are contrary to the scheme laid down by Law. A custom by which women are excluded is commonly met with. Another, frequently pleaded custom, is that women who marry into another village give up their shares. Such customs, when proved, are given effect to by the Courts. They are not recorded in the Land Registers, so that the Courts are deprived of all guidance in dealing with cases based on them, other than that afforded by oral evidence of a highly partisan kind

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ARTICLE 9 (Obsolete)

State land may be sown with all kinds of crops such as wheat, barley, rice, madder (boia), and other cereals It may be let on lease or loaned for the purpose of being sown but it must not be left uncultivated, except for sound and duly established reasons set out in the chapter headed Escheat of State Land.

ARTICLE 10. (Obsolete)

Meadow land and crop of which is harvested by **ap antiquo** usage, and on the produce of which tithe is taken is reckoned as cultivated land. Possession of it is given by title-deed. The possessor alone can profit from the herbage which grows there, and can prevent all others from making use of it It can be broken up and put under cultivation by leave of the Official

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ARTICLE 11. (Obsolete)

The possessor by title-deed of an arable field which is left fallow in accordance with its needs can alone derive profit from the herb called "kilimba" which grows there He can also refuse admission to the field to anyone wishing to pasture cattle there.

ARTICLE 12. (Obsolete)

No one without the leave of the Official first obtained can dig up the land in his possession for the purpose of making bricks or tiles. Should he do so, whether the land is State land or mevqufe land, the offender shall pay the price of the soil thus used by him, according to its local value, into the Treasury.

NOTE 1. (ART. 12.)

Vide Art. 7 of the Provisional Law of Disposal of 1329.

ARTICLE 13. (Obsolete)

Every possessor of land by title deed can prevent another from passing over it, but if the latter has an **ab antiquo** right of way he cannot prevent him.

NOTE 1 (ART 13.)

Vide Art. 10 of the Provisional Law of Disposal of 1329

ARTICLE 14. (Obsolete)

No one can arbitrarily make a water channel or a threshing floor on the land of another, nor do any other arbitrary act of possession on it without the sanction and knowledge of the possessor.

NOTE 1. (ART. 14.)

Vide Art. 10 of the Provisional Law of Disposal of 1329.

ARTICLE 15. (Obsolete)

If any land possessed in individual shares by several persons is capable of being divided, that is to say if each portion can yield separately as much produce as if it continued to form part of the whole, if partition is demanded by the co-possessors, or by one or more of them, shares shall be parcelled

out, according to their value, and distributed by lot in accordance with the provisions of the Sacred Law, or in any other equitable manner. The partition shall be made in the presence of the interested parties or their representatives by the Official, who shall allot to each his share.

If the land is incapable of being divided it must remain undivided. In this event partition of enjoyment (moubaia) that is possession by the co-possessors in turn cannot be resorted to.

NOTE 1. (ART. 15.)

This Article has been replaced by the Provisional Law of Partition of 1329

ARTICLE 16. (Obsolete)

After partition in manner described in the preceding Article and after each co-possessor has set his boundaries and entered into possession of the share which hass fallen to him none of them can annul the partition which has taken place and demand the making of another.

NOTE 1. (ART. 16.)

This Article refers specifically to Article 15 which has been repealed by the Provisional Law of Partition.

ARTICLE 17. (Obsolete)

Partition of land cannot take place without the leave and knowledge of the Official, nor in the absence of a possessor or his agent. Every partition which has so taken place is invalid.

NOTE 1. (ART. 17.)

The present position is that a partition made by consent cannot be annulled after it has been approved by the Registration Officer (Mamour Tapou) and attested by him.

A partition made by the Court, and set forth in a decree, can be appealed under the general rules governing appeals from Civil Magistrates Courts.

Article 17 of the Land Code provides for the sanction of the Tapou Office as essential to the validity of a partition. The reference is, of course, to a partition made by consent. Article 4 of the Provisional Law of Partition contains a provision for submission to the Mamour El Tapou, and replaces the old Article.

ARTICLE 18. (Obsolete)

If one of several of co-possessors of either sex are minors partition of land in their possession which is capable of being divided in accordance with Article 15 must be carried out through their guardians. So also with regard to land possessed by lunaties or imbeciles of either sex partition must be effected through their guardians.

NOTE 1. (ART. 18.)

This Article again must be taken as applying to partition by consent. Partitions made by a Court are conducted and safeguarded under the provisions of the Code of the Civil Procedure. The Article states that all persons under disability, who are parties to a partition, must be legally represented.

This provision must be regarded as still operative Vide Mejelle Arts. 943 and 966 also Arts. 944 and 945. Vide also the Provisional Law of of Partition.

ARTICLE 19 (Obsolete)

Any one who has sole posssession by title deed of woodland or "pernallik" can clear it in order to turn it into cultivable land But if such woodland or pernallik is in joint possession one co-possessor alone cannot without the consent of the others clear all or part of it in order to turn it into cultivable land. Should he do so the other co-possessors will also be co-possessors of the and so cleared.

NOTE 1. (ART. 19.)

This Article has been set aside by Article 12 of the Provisional Law of Disposal.

"Pernallik" is the land in which the holm oak grows.

The Law gives a right to the possessor of "Pernallik" to out down the trees, and render the land fit for cultivation, without its being necessary to obtain the sanction of the Department concerned (Article 19 of the Land Code).

Article 12 of the Provisional Law of Disposal gives an equivalent freedom of user.

ARTICLE 20.

In the absence of a valid excuse according to the Sacred Law, duly proved, such as minority, unsoundness of mind, duress, or absence on a journey (muddet-i-sefar) actions concerning land of the Kind that is possessed by title-deed the occupation of which has continued without dispute for a period of ten years shall not be maintainable. The period of ten years begins to run from the time when the excuses above-mentioned have ceased to exist. Provided that if the Defendant admits and confesses that he has arbitrarily (fouzouli) taken possession of and cultivated the land no account is taken of the lapse of time and possession and the land is given back to its proper possessor.

NOTE 1. (ART. 20.)

Scope of Article.

This important Article has not been repealed. It states the Law of prescription between private persons in respect of Mirie land. This is, of course, the land which is referred to in the Article as being "of the kind that is possessed by title deed".

The period is ten years.

It commences to run from the date of occupation, provided that the legal owner cannot show, (1) that he was prevented from taking his land by duress; or (2) that he was absent on a journey during a part of the period; or (3) that he was a minor when the period commenced or a lunatic.

In case (1) time begins to run from the cessation of the duress. In case (2) time begins to run from the date of the legal owner's return. In case (3) time begins to run from the legal owner's majority or recovery.

The Article goes on to state that a person who admits that he originally occupied the land without show of right cannot claim to benefit by prescription.

The Defendant is not compelled to show how his occupation originated. If however he elects to make such a disclosure, it must be truthful. If the disclosure is shown to be untruthful, the Courts have assumed that his occupation originated in some form of usurpation, which forbids the acquisition of a right to hold by prescription.

In a case from the Beersheba district, plaintiff sued for the return of land, which he claimed to be held by Defendant as mortgagee.

Plaintiff had no documents, and offered very poor oral evidence of the mortgage.

Defendant claimed that he held by inheritance runing back through several generations. His own witnesses stated that the land originally belonged to the

plaintiff. The Court held that, as defendant's, story was shown to be untruthful, it must accept the plaintiff's version of the origin of the occupation: though that version was supported by evidence of poor quality. On this ground it held defendant. to be a mortgagee.

NOTE 2. (ART. 20.)

Holding of Title deed not essential to suit.

It should be noted that the legal owner need not hold a title deed in order to maintain a suit. It is only necessary that the land should be of the kind for which title deeds ought to be issued. In other words the land must be Mirie, or Wakf based on Mirie, i.e. of the Takhsisat class.

NOTE 3. (ART. 20.)

Duress.

The excuse of ' duress" is one which is not likely to be pleaded, at the present day,

It must not be compared with an unsuccessful attempt to regain possession by force. Such an incident does not furnish the rightful owner with a reason for curtailing his opponents' period of effective occupation; still less does it relieve him from the necessity of bringing a suit before the expiry of 10 years, if he desires to retain his land.

The meaning of duress is explained in Article 1663 of the Mejelle. The relevant paragraph states that "when a person's action is with one who is in power, if time elapses in consequence of his not being able to bring his action, while the power of his opponent lasts, it does not prevent the hearing of that action".

The state of affairs to which such a provision of the law could relate has passed away.

The Mejelle deals also with other forms of duress which are defined in Articles 948 and 949 of the Mejelle, as major and minor forms of illegal compulsion through fear.

These forms of compulsion must, in order to have legal effect as such, take place in the presence of the person exercising the compulsion, or in the presence of his agent. (article 1005 of the Mejelle).

Their applicability to the adverse possession of land is doubtful; since the continued presence of the "compeller" or his agent, throughout a period of 10

years, is an unlikely contingency. In all ordinarily conceivable cases the rightful owner can have recourse to the Courts, at some time or other, and, if he desires to maintain his rights is bound to do so.

NOTE 4. (ART. 20)

Absence.

The excuse of absence has reference to Section 1664 of the Mejelle.

The absence must be absence at some place distant from the property by a journey of more than three days, at a moderate rate of travel. This has been held to be equivalent to 18 hours journey on a camel.

The extent to which this old fashioned estimate should be modified by the development of rapid means of transit does not appear to have been judicialy ascertained

It is presumed that the 3 days travel enjoined by Art. 1664 will be interpreted to mean travel by the most rapid means of transit ordinarily available in the locality to which the suit relates.

NOTE 5. (ART 20.)

Disability.

The excuse of disability is dealt with in Article 1663 of the Mejelle.

Time which elapses while the legal owner is an infant, an idiot, or a lunatic does not count towards prescription.

NOTE 6. (ART. 20)

Effect of Admissions and value of Prescriptive Title.

The provision which allows the adverse occupier to deprive himself of benefit by admitting that he never had a good title to the land is based on Article 1674 of the Mejelle. That Article states that "a right is not destroyed by the time being passed for hearing an action". It then proceeds to enable an adverse occupier to nullify his claim to prescription in the manner we have indicated.

The words quoted from Art. 1674 are held by Arabic lawyers to show that a prescriptive title is in some way less valid than a title of the ordinary kind.

Since the advent of registration this is not the case.

The successful claimant by adverse possession is entitled to receive a title deed, and in this respect is on the same basis as any other owner.

Moreover a prescriptive title, once acquired, is not subject to defeat by dispossession at the hands of the original owner, provided that the dispossession is for a less period than ten years. This holds whether the adverse occupier has perfected his title by obtaining registration or not. Thus adverse possession for an effective period of ten years cancels the right of the original owner and creates a new right in the adverse holder, which cannot be defeated by a brief period of dispossession, and which is independent of registration.

From this point of view, therefore, the title of adverse possession is one of an exceptionally complete kind, and in practice is indistinguishable, after registration, from any other title, except for the fact that the Koshan shows prescription as the origin of the holder's right

It has been repeatedly ruled by the Turkish Court of Cassation that a holder by prescription cannot come into Court as a plaintiff for the purpose of claiming the land.

The prohibition, of course, disappears as soon as he has been granted a title deed.

Cases arise in which the rightful owner sues for trespass in the Magistrate's Court. That Court, on ascertaining that the defendant claims to own the land, refers the parties to the Land Court It has been held that a suit instituted in the Land Court by the former defendant is, under these circumstances, maintainable, since the claimant was a defendant when the litigation was first instituted.

The argument thus outlined must be considered in relation to Art 78, which gives the person holding without dispute for ten years the right to claim a title deed from Government without payment.

This shows that the disability under which such a holder has been held to lie in respect of instituting a case against the legal owner, does not extend to a suit brought by him against the State.

It would appear therefore that the proper procedure of the holder who desires to perfect a claim based on 10 years occupation, is to bring a suit against the State under Article 78.

To this suit the legal owner may be made a party

Further if the legal owner seeks to oust the occupier by force, the latter is certainly entitled to bring a suit against him for trespass.

Such a suit originates in the Civil Magistrate's Court, and, if it involves a claim to ownership, the parties will be referred by him to the Land Court. Under such reference the occupier can institute proceedings, which should not be open to the objection of disability.

Even in this case, it is probable that the soundest course would be to institute proceedings against Government under Article 78, and make the legal owner a party to them.

NOTE 7. (ART. 20.)

Effect of some Combinations of the Legal "Excuses".

In legal practice the excuses of absence and disability are often found together.

This state of affairs arises when an absent owner dies leaving minor children.

When such an heir subsequently sues he is entitled to deduct from his opponent's period of occupation.

(a) the absence of his father, till the latter's death, and,

(b) the period of his own minority from the date of his father's death.

Cases arise in which the absent owner dies leaving both adult and minor children.

The former are entitled to benefit only under (a) the period of their father's absence. In the result it often happens that the claim of the adverse holder succeeds against the children who were adults at their father's death, and fails against those who were minors when that event occured In such cases the minor children succeed only to the extent of their undivided shares by inheritance.

NOTE 8. (ART 20)

What Constitutes return from Absence.

The excuse of absence is nullified by the return of the absentee to the property, if the circumstances of the return were such as to cause him to be aware of the fact of adverse possession, and to allow of his filing a suit against the adverse possessor.

In such cases the absentee forfeits the right to deduct the period of his absence prior to the visit.

The onus of proving that the return was not of a nature which can be regarded as giving the legal owner notice of the adverse possession, is on the legal owner, and is, in practice, difficult to shift. It has been shifted in an instance in which the legal owner was a soldier, and revisited his home on short leave, after which he rejoined his regiment abroad.

NOTE 9. (ART. 20.)

Prescription may be defeated by presumed Trusteeship.

The acquisition of a title by preseription is subject to another important limitation, when the claimant to this benefit holds adversely to co-heirs. In

such a case the claim will fail; as an heir who is in possession of the shares of co-heirs is regarded as in the position of a trustee. In these circumstances, no length of adverse possession, whether by an original adverse holder, or by his children, will suffice to cancel the rights of the original co-heirs, or those of their descendants.

For this reason, an inheritor, who seeks to oust his co-heirs by a plea of prescription, generally alleges a title to the property, which is independent of his heirship.

If he can succeed in doing this, he can rely on the provisions of Art. 20 to the same extent as a stranger who has occupied the land

Cases occur in the following forms.

X dies leaving three sons A, B, and C, of full age, and in possession of their faculties.

"A" takes possession of the property on the death of his father, and 11 years afterwardwards B and C sue him for their shares, as co-heirs of X

B and C have lived in the neighbourhood since the death of X

In such a case A may plead inter alia.

(1) That he is entitled by prescription, as having held for over 10 years.

(2) That X partitioned the property among his three sons before his death, and that the land in suit falls in his share.

(3) That X sold his property to him before his death.

(4) That B and C sold him their shares after X's death

Under (1), as we have seen, A will fail, since he is to be regarded as a trustee for B. and C

Under (2), if A proves the partition he will succeed None of the sons claim by inheritance, and A is not in a position of implied trusteeship for his brothers.

Under (3), if A proves the sale he will succeed. If X sold to A while in mortal sickness, and A cannot prove that B and C ratified the sale after X's death, A will still succeed (vide Art. 120), as Article 393 of the Mejelle does not apply to Mirie Land.

This holds good also in the case of a gift in mortal sickness to one of the heirs (Mejelle Art. 879 and Land Code Art. 120).

Under (4) A will succeed on proof of the sale

The above considerations are liable to modification, if the partition in (2) and the sales in (3) and (4) were not made in a legal manner - i.e. by registration. The Court will then have to consider, whether, in the exercise of its discretion under Art. 7 of the Land Courts Ordinance, it should, or should not validate the transactions retrospectively.

If it decides to validate, the consequences already detailed will follow.

If it does not do so, A will fail under (2), (3) and (4), unless the Court considers that B and C have made admissions, which relieve A from his implied trusteeship. Decisions bearing on this point are not available.

NOTE 10 (ART 20)

Age of a Litigant, and dates of Death and Birth how proved.

A Land or District Court is entitled to assess the age of a litigant, and its finding on this matter is final.

The date of a death is usually established by an Alam, or certificate, of the Sharia Court, but, if the date so found is disputed, a Land or District Court may require evidence to be produced on the point, and proceed to settle it itself.

The date of a death may also be proved by the certificate of the religious authority of the community to which the deed belonged; by the certificate of his Consul, or by the production of documents, which suffice to prove the date in the country in which the man died

Similar considerations apply to proof of birth, except that in this case, birth certificates are occasionally available These certificates were required by the Turkish Government to enable it to trace the persons available for service in the army. In order to put off the date of the enforcement of this obligation they were frequently post-dated by several years They cannot, for this reason, be accepted by a Court with a great degree of confidence.

NOTE 11. (ART. 20)

Determination of Heirs.

The determination of the heirs of a Moslem, and the shares to which they are each entitled in the Mulk and Miri properties left by their "testators", is the business of the Sharia Court.

The decision of such a Court on these points can not be questioned by any other. If inaccuracy is suspected the party interested must be referred to the Sharia Court to get the certificate amended by way of appeal, or otherwise.

Previous to the Palestine Order in Council of 1922, which confers rights similar to those of the Sharia Courts on certain religious communities other than the Moslem, the Sharia Courts dealt with the members of all religious communities in the country, who were Ottoman subjects

NOTE 12 (ART 20.)

Prescription against the State.

The Law of prescription as between the individual and the State is discussed under Article 78. Under that Article will also be found a discussion as to the conditions under which a claim to alter the "rakaba" of the land from Mirie or Mewkoufe to Mulk will succeed.

NOTE 2. (ART. 3.)

Under the old Turkish Procedure a claim to hold by prescription had to be decided by the Court before issues were examined. Since the passage of the addendum to the Code of Civil Procedure (Article 14) this is no longer the case.

NOTE 14. (ART. 20.)

Admissions considered as Gifts or as Restorations.

A few words are needed on the last para of this article.

It was intended to keep the Land Code in harmony with Chapter III Sect. 2 of the Mejelle.

This Chapter lays down the conditions under which property may be transfered by an admission.

Put very briefly, such an admission must be intended to operate by way of gift in which case it must be accompanied or followed by delivery; or it must be intended to operate as a restitution, by the maker, of property which he considers to belong rightfully to another.

It was in order to keep alive the possibility of making such restitution that the last para of Art. 20 was framed.

Because the possibility of restitution always exists in the case of a title by prescription, the Moslem lawyer has come to regard it as of inferior validity.

NOTE 15. (ART. 20.)

Admissions when valid.

Article 1674 of the Mejelle lays down, that an admission to be operative must be made in writing and must be rigorously proved.

Such an admission operates only to cancel the period of possession which elapsed before it was made.

It is of course clear that no power is given to a Court to compel a person who claims by prescription to disclose the origin of his possession.

NOTE 16. (Art. 20.)

Prescription applied to judgments.

Cases arise in which one of the parties has been in possession for over 10 years, in virtue of a Judgment passed by a criminal or civil court, which was not competent to decide ownership.

Thus A sued B for ejectment as a trespasser in the Civil Magistrate's Court. He got a decree. More than ten years after B sues A in the Land Court, for a declaration that he is the owner of the land. His suit will not be entertained; since he was bound to contest the judgment putting A in posssession within ten years.

In the case of mulk property the corresponding period would be 15 years. In general the period of prescription applicable to the subject matter of the litigation is the period applicable to the judgment

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ARTICLE 21. (Obsolete)

When land which has been taken and cultivated unlawfully or by violence and on which the taxes have been paid has after trial been restored to the possession of the rightful occupier by the Official neither Official nor the rightful occupier shall be entitled to claim from the person who unlawfully or by violence seized and cultivated it either damages for depreciation *(noksan arz)* or an equivalent rent *(eyr misl)*. the same provisions apply to land belonging to minors, lunatics, and imbecies of either sex.

NOTE 1. (Art 21.)

This Article has been taken up by Arts 11 and 14 of the Provisional Law of Disposal of 1329.

It should be noted that, under the last named Law, the provision as to the payment of compensation is no longer operative

The effect of the new law is to allow a person who has been dispossessed to claim rent for the period of dispossession. The old law expressly left him without this remedy.

ARTICLE 22. (Obsolete)

On restitution of land taken and cultivated arbitrarily or by force the person who has reclaimed the land can have the seeds or crops which the usurper has sown or caused to grow there removed through the Official, he has no right to take them for himself.

Addition 15 Jemazi'ul Evvel, 1302. When the seeds have not yet issued from the soil at the time of restitution the claimant shall take possession of the land with the seeds as they are on condition that he pays their value to him who has sown them

NOTE 1 (Art. 22.)

It may taken, though with no great certainty that this Article is repealed by Article 14 of the Provisional Law of Disposal of 1329.

Under the last named Article rent is the only form of compensation claimable for dispossession. Article 22 of the old law gives him a further remedy.

It remains to be seen whether the remedy in the new Law is held to be in substitution for the old, or in addition to it.

ARTICLE 23

A person who takes land from the possessor under a lease or loan acquires no permanent right over the land by reason of the length of time for which he cultivates and possesses it, so long as he acknowledges himself a lessee or borrower. Consequently no account is taken of lapse of time and the possessor will always have the right to take back his property from the lessee or borrower.

NOTE 1. (Art. 23)

This Article states that a person holding land by lease, or loan, cannot count towards prescription the period during which he holds as a lessee or borrower.

This, of course, continues to be operative.

Difficulties suggest themselves. For example, does a tenant who holds over after the expiry of his lease, without paying rent, hold adversely? This will pro-

bably be answered in the affirmative if he pays werko tax after his lease has expired, and in the negative if payment of werko continues to be made by his landlord

The well known rule of English law that the tenant is not allowed to deny his landlord's title corresponds with the rule enunciated in Article 23.

ARTICLE 24. (Obsolete)

Places which have been used as winter (kishlak) and summer (yaylak) parsturing grounds *ab antiquo* other than those that are appropriated to the common use of one or several villages, differ in nothing from cultivable land when they are possessed by title-deed by one person exclusively or by several persons jointly All enactments hereinafter applicable to State land, are equally applicable to such pasturing grounds From the owners of both kinds of pasturing grounds (whether those of communities or private persons) are taken dues called "yaylakié", and "kislakié", in proportion to the yield.

ARTICLE 25 (Obsolete)

No one can plant vines or fruit trees on land in his possession and make it a vineyard or orchard without the leave of the Official. Should he do so the State has the right, for 3 years, to have what has been planted removed. At the end of that period trees which have reached a fruit-bearing state must be left as they are. Trees and vines planted with the leave of the Official and those planted without leave which have been left for 3 years, are not considered as subject to the land but belong in full ownership to the possessor of the land. But tithe is taken of the produce annually Fixed rent *(moukataa)* shall not be charged on the sites of such vineyards and orchards on the produce of which tithe is taken.

NOTE 1. (ART. 25.)

Article 25 defines the interesting tenure which is conveniently known as Quasi Mulk. When vineyards groves or buildings are put on Mirie land two kinds of ownership are physically fused into one The land is the property of the State, but the accretions are (or were) the mulk property of their possessor

As, when the Code was written, the distinction between the two forms of ownership was acutely felt, its framers considered it incumbent on them to make special provision for the case in which they presented themselves in combination.

They tried therefore to reconcile a complete form of ownership, which carried the right of dedication, which was subject to a special and sacred form of devolution, and which was protected by a prescriptive period of 15 years: with an ownership of a subordinate kind (that of the mirie holder), which could not be alienated by dedication; which was subject to a statutory form of devolution; and which could be extinguished by a period of 10 years adverse possession.

The attempt to deal with this question led to a number of intricate provisions in the Land Code which have not been very successful.

A variety of problems had to be solved

What happens when the land is sold; but not the accretions; - or vice versa?

What happens when trespass takes the form of placing mulk accretions on Mirie Land?

What happens when the accretions disappear?

What happens when the accretions are dedicated?

When the land becomes vacant, or mahlul, through failure of heirs, how are the rights of Tapou (vide Art. 59 et seq.) dealt with?

The Articles under which these matters are treated are Nos. 35, 44, 49, 59 (1). 66, 77, 82 and 83

NOTE 2. (Art 25)

Effect of Provisional Law of Disposal.

Quasi Mulk property cannot now be created by planting or building. The Provisional Law of Disposal of 30th. March, 1329 lays down that, from the date of its passage, the status of Mirie land shall not be capable of alteration by these means. Since the passage of that law accretions put on mirie land follow the law of the land, and are treated as mirie, and not as mulk property. New registrations of property as Quasi Mulk still take place, as the result of Judicial decisions, since accretions which are shown to have existed prior to the passage of the law of Disposal, ipso facto, constitute the land Quasi Mulk. The special provisions of the Land Code, which govern Quasi Mulk, continue to be of force in respect of the remnants of this tenure

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NOTE 3. (Art. 25.)

Scope of Holding.

It has been judicially decided that when a portion, only, of land held under a single title deed carries mulk accretions of the requisite age, this portion must be classed as Quasi Mulk. The rest of the land continues to be mirie.

The rule holds even when the accretions cover only a very small part of the land; as when a hut has been put up on a large agricultural holding. The result is to create confusion and litigation, as under the mulk scheme of inheritance persons often exist who share in the mulk accretions, but not in the mirie land.

It is doubtful whether the rule holds in cases in which separation of the holding into two portions cannot be achieved without reducing its value as a whole.

NOTE 4. (ART 25)

Devolution and Prescription.

Quasi mulk descends by mulk inheritance, with a prescriptive period of 15 years, so long as the land and the accretions are owned by the same person.

When the land is separately held — a case which arises on sale of the accretions — it passes under mirie inheritance In the unlikely case, in which adverse possession of the land as apart from the accretions is claimed, the period would be one of 10 years.

NOTE 5 (ART. 25)

Pre-emption and prior purchase.

Claims to purchase by either pre-emption or prior purchase are alike inapplicable to Quasi Mulk property, and cannot be entertained by a Court In this connection however Art. 44 should be consulted.

NOTE 6 (ART 25.)

Effect of Inheritance.

The person who owns the mulk accretions by inheritance has peculiar privileges He has the senior right of Tapou under Art. 50 (1). and when the land becomes Mahlul, he can occupy under Art. 77 before laying to claim to it through the Tapou Office.

The acquirer of mulk accretions, otherwise than by inheritance, has none of these rights, though he can claim a right of Tapou in succession to all other claimants under Art. 66.

NOTE 7. (ART. 25)

What constitutes planting.

The question whether trees or vines of the requisite age, which stand on mirie land, suffice to make it a Quasi Mulk tenure, turns on whether they are

planted thickly enough to prevent the use of the land for the growing of ordinary crops, or not.

In this connection it should be noted that, if it can be shown that the plantation was once thick enough to prevent ordinary cultivation by the plough, and if some of the trees remain, the tenure is established, since all trace of the grove has not disappeared.

Reversion to Mirie does not take place till all trace of the accretions has gone, whether they take the form of groves, vineyards, or buildings.

ARTICLE 26. (Obsolete)

Everyone who grafts or cultivates trees standing naturally on land in his possession, with a sole or joint title, acquires full (mulk) ownership of them, and neither the Official nor the joint possessor can interfere with the ownership of such trees. But tithe shall be taken on their annual produce.

ARTICLE 27. (Obsolete)

No one has the right to graft or cultivate trees standing naturally on the land of another without the leave of the possessor of the land. If he attempts to do so the possessor can prevent him. If the grafting has taken place the possessor of the land has the right, through the Official to have the trees cut down from the place where they have been grafted.

NOTE 1. (ART. 27.)

Article 27 has been replaced by Article 10 of the Law of Disposal.

ARTICLE 28. (Obsolete)

All trees without exception, whether fruit-bearing or not, such as "*palamud*" trees, walnut trees, chestnut trees, yoke elms, and oak trees, growing naturally on State land are subject to the land: the produce goes to the possessor of the site, but tithe is taken of the produce of the fruit-bearing trees by the State. Trees standing naturally can neither be cut nor uprooted either by the possessor of the site or anyone else. Whoever cuts or uproots any such tree shall be liable to pay to the State the standing value of the tree.

ARTICLE 29. (Obsolete)

Everyone who, with leave of the Official, plants non-fruit-bearing trees on land in his possession and makes it woodland (kurou) has full ownership of them; he alone can cut them down or uproot them. Anyone who cuts them down must pay their standing value. On this kind of woodland a ground-rent *(i jarae-i-zemin)* is charged, equivalent to tithe, taking into consideration the value of the site according to its situation.

ARTICLE 30. (Obsolete)

Woodland, not being woodland on the mountains *(jebali mouhaha)* or forests and woodland appropriated to the use of inhabitants of villages, on which the trees growing naturally are destined for fuel, and which has devolved by succession or has been bought from a third person, is possessed by title-deed, and the possessor alone can cut the trees thereon. If anyone else attempts such cutting the possessor, through the Official, can stop him. If the cutting has taken place, the standing value of the trees cut shall be paid to the State. A ground-rent equivalent to the tithe is taken by the State for the site of such woodland. The same procedure as is applicable to State land is applied to this kind of woodland.

ARTICLE 31. (Obsolete)

No one can erect a new building on State land without previously obtaining the leave of the Official. Buildings erected without such leave may be pulled down by direction of the State.

ARTICLE 32. (Obsolete)

With the leave of the Official a possessor of State land can erect, in accordance with the necessity of the case, farm buildings such as mills, mandras, sheds, barns, stables, straw-stores, and pens upon it. A ground-rent, equivalent to the tithe, is assessed and appropriated for the site, according to the value of the situation. But for building a new quarter or village by erecting new dwelling houses on bare land, a special Imperial decree must be obtained: in such a case the leave of the Official alone is not sufficient.

NOTE 1. (ART. 32.)

Articles 28, 29, 30, 31 and 32 have been replaced by Art. 5 of the New Law.

ARTICLE 33.

Neither the possessor, nor a stranger, can bury a corpse on land held by title-deed *(ba tapou)*. In case of contravention of this provision if the corpse is not already reduced to dust it shall be exhumed by the Official and removed to another place; if nothing is left of it the ground which covered it shall be levelled.

NOTE 1. (ART 33.)

Article 33 forbids burial on Mirie Land held by title-deed.

It does not appear to have been set aside by Art. 5 of the law of Disposal as the very full liberty of user conferred by that Art does not specifically include the right of burial.

This Article provides the main reason for the conversion of the Mirie lands on which war graveyards are placed into Mulk, by order of the High Commissioner. This order is equivalent to the Sultan's Firman.

ARTICLE 34. (Obsolete)

Land separated from State land to be used as a threshing floor, the possession of which has been granted by title-deed with a joint or separate title, follows the procedure applicable to other State land. In this class are ranked also salt-pans which are separated from State land. For such threshing floors and salt-pans a ground rent, equivalent to the tithe, is taken annually.

NOTE 1. (ART. 34.)

This is replaced by Articles 9, 11 and 13 of the New Law.

ARTICLE 35. (Obsolete)

(i) If any one arbitrarily erects buildings, or plants vineyards or fruit-trees on land in the lawful possession of another the latter has the right to have the buildings pulled down and the vines and trees uprooted through the Official.

(ii) If any one erects buildings or plants trees on the entirety of land held under a joint title by himself and others without being authorized so to do by his co-possessor, the latter can proceed in the manner pointed out in the preceding paragraph so far as their share is concerned.

(iii) If any one erects buildings or plants trees on land which he possesses by a lawful title which he has obtained by one the means of obtaining

possession, as for instance by transfer from another person, or from the State, supposing that the land was vacant (mahloul), or by inheritance from his father or his mother, and there afterwards comes forward another person claiming to have the right to the site on which the buildings or trees are situated, and proves his right to it, in that case if the value of the buildings or of the trees, if they were to be uprooted, exceeds that of the site payment shall be made to the successful claimant of the value of the site, which shall then remain in the hands of the owner of the buildings or trees. If on the contrary the value of the site is greater than that of the buildings or trees then the value of the buildings or of the trees as they stand shall be paid to their owner and they shall be transferred to the successful claimant of the site.

(iv) If anyone erects buildings or plants trees on a part of land which is possessed in common by himself and others without the leave of his co-possessor, the land shall be partitioned in conformity with the provisions of Art. 15 and if the site of the buildings or trees falls to the share of one of the other co-possessors the said procedure shall be likewise applied.

NOTE 1. (Art. 35)

The provisions of this Article are unlikely to invoked in the future as suits based on them are presumably barred after 15 years from the date of the building or planting to which they refer.

Such suits must of course deal with building or planting which took place prior to the passage of the Provisional Law of Disposal of 1329.

CHAPTER II.

ARTICLE 36. (Obsolete)

A possessor by title-deed of State land can, with the leave of the Official, transfer it to another, by way of gift, or for a fixed price. Transfer of State land without the leave of the Official is void. The validity of the right of the transferee to have possesion depends in any case on the leave of the Official, so that if the transferee dies without the leave having been given the transferor (farigh), can resume possession of it as before. If the latter dies (before the leave is obtained), leaving heirs qualified to inherit State land as hereafter appears they inherit it. If there are no such heirs it becomes subject to the right of tapou (mustahiki tapon) and the transferee (mufroughunleh) shall have recourse to the estate of the original vendor to recover the purchase money. In the same way exchange of land is in any case dependent on the leave of the Official Every such transfer must take place with the acceptance of the transferee or his agent.

NOTE 1 (Art 36)

Importance of repealed Laws of Transfer.

The Law of Transfer contained it this and the two following articles is no longer in force. It was replaced by the Provisional Law of Disposal of 1329 and has been further modified by the Land Transfer Ordinance of 1920 since the British Occupation. As however the rights of parties may depend on whether a given transfer was or was not valid at the time at which it took place, it is essential that the provisions of the past law on the subject should be understood.

NOTE 2. (Art. 36.)

Effect of presence or Absence of Consent of the Tapou Office.

Article 36 states that a transfer made without the leave of the Official- i.e. of the Registration Authority entitled in this behalf, is void.

If the buyer dies the seller can resume the property from his heirs. If the seller dies his heirs can set aside the sale. If the seller dies without heirs, the possessors of the right of Tapou (Art 59) can claim as if no sale had taken place. The same provisions apply to transfer by gift and to exchange.

The sole right of the transferee on a transfer, which is void as having been made without consent, is to recover what he has paid from the seller, or from his estate, if he has died before resumption.

All this may be summarised by saying that a transfer made without registration is void, and that the only right of the transferee is to recover any consideration that has passed. The Provisional Law of Disposal 1329 abolished the necessity for consent. It was however reintroduced in the Land Transfer Ordinance of 1920.

NOTE 3. (ART 36.)

Possibility of Escheat.

The State could clearly claim property by escheat in the event of the seller without the consent of the Tabu Office dying without heirs, or in the absence of claimants by right of Tabu, It is possible however that such a transfer without consent would now be validated by a Land Court. (Vide Article 7 of the Land Court Ordinance. Vide also Article 120 of Ottoman Land Code.

NOTE 4. (ART. 36.)

Condition as to consent withdrawn by Provisional Law.

The Provisional Law of Disposal of 1329 (30th. March) modified these provisions by the withdrawal of the condition of consent

This means that, whereas under the old Law "the Official" could refuse to register a sale, under the new he had no such power.

Since the occupation consent has again been made a condition of legality, as has already been noted.

NOTE 5. (ART 36.)

Private Modification of Registered Conditions forbidden.

Under the old law parties were not prohibited from modifying the conditions of a sale, as registered, by private agreement. Under the new law of Disposal such modification was forbidden. In the case of mulk property it may be noted that it was forbidden much earlier by the Mulk Titles Act of 1874.

NOTE 6 (ART. 36.)

Special treatment accorded to transfers made during the war.

Although the Provisional Law forbade the modification of the terms of a registered sale by private agreement, nevertheless, such modifications were

extensively made during the war. During this period lenders would not advance money on mortgages, because they were afraid of being repaid in a currency which was rapidly falling in value. They therefore insisted on the transaction taking the form of a registered sale, while giving the borrower a writing to say that he could reclaim the property on payment of his debt in a specified currency generally in Gold. The Courts have often given effect to these private undertakings in the exercise of the powers conferred by the Land Courts Ordinance (Art. 7).

It is submitted that effect should only be given to them if they took place either before the 30th. March 1329, or after the outbreak of the war with Turkey. During the intermediate period they were forbidden by law, and there appears to be no general principle of equity which would justify a Land Court in validating them.

NOTE 7. (ART. 36)

Transfers ptohibited after occupation.

After the occupation all transfers were prohibited by the well known Ordinances Nos 75 and 76.

Each deals with a specified portion of Palestine, and between them they cover the whole country.

The dates of occupation are stated to be as follow: For the Sanjak of Jerusalem 1st December, 1917 and for the Sanjaks of Nablus and Acre 1st. October, 1918

The Ordinances are themselves dated in 1918 but are retro-pective in their effect. They make all transfers and leases of over three years void if they took plase on or after the date on which the Sanjak in which the property is situated, was occupied.

The only exception is provided by the case in which a transfer has been made with the written consent of an Officer of the Administration.

NOTE 8. (ART 36.)

Priority of registered over unregistered transfer.

The question as to the extent to which a purchaser by registered sale can claim priority over an earlier purchaser by unregistered deed must be considered.

Under Art. 7 of the Land Courts Act a Land Court is authorised to accept deeds of the last named class and to validate them as transfers. The validation

is of course ex post facto, The deed is not valid until it has been made so by the Court under the anthority of the Article quoted.

If a purchaser by such a deed is followed by a second purchaser, who, acting in good faith, buys by registered purchase, the Court has no power to set aside the second transfer. It must therefore abstain from validating the first. This line of reasoning has not always been followed by the Courts. It has been argued that proof of the first transaction establishes the fact that the seller had no property which he could transfer by the later transaction. The argument fails to notice that the unregistered transaction was not a legal sale, and cannot become one, unless the Court in the exercise of an equitable jurisdiction decides to validate

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NOTE 9. (ART. 36.)

If the second purchaser, who takes by registered transfer, was not acting in good faith - i e if he knew of the first transaction, and purchased simply in order to deprive the first transferee of benefit - a further problem arises, which may be considered under two heads, according to whether the registered purchaser has proceeded promply to take possession, or has taken no steps to this end.

In the first case it is difficult to see how he can avoid winning his case. He holds on a registered transaction, which the Court has no authority equitable or otherwise to set aside. No equity exists in favour of the holder by an illegal transfer for the reason that no equity exists against the law

In the second case it might be held that in permitting the first purchaser to continue to hold the land and (presumably) to pay tithe and taxes for it, the second purchaser has estopped himself from claiming. Such a case would propably turn in great measure on the time which the registered purchaser allowed to elapse before trying to take possession.

It should be noted that vis a vis the State the second purchaser has no right to rely on his title deed after he has been out of possession for three years. This provision of the Law (Art. 68) cannot be made use of between private parties. It indicates however that postponment of action for more than three years might be regarded more unfavourably than postponment for a shorter period by the Courts.

NOTE 10 (ART 36)

Interpretation of sale deeds.

Cases frequently arise - chiefly over unregistered deeds of sale - as to the meaning of the transaction. The buyer claims that it was an outright sale, the seller that it was a mortgage The case of transactions made during the war in the form of registered sales with a private undertaking, to return the property on repayment, has already been considered.

Where however the case is concerned with the interpretation of a single deed certain established rules exist.

They make be summarised under the following heads:-

(a) The deed whether registered or unregistered is on the face of it a sale.

In this case the parties are bound by the terms of the document or of the registration, unless, in the case of the registered deed, a private undertaking in writing exists, which modifies its terms. In the case of the registered transaction, the private document must, as we have seen, date either prior to the passage of the Provisional Law of Disposal, or after the outbreak of the war In the case of the unregistered deed. such private undertakings are more rare. It is presumed however that if proved they would be given effect to irrespective of the period within which they are dated Oral evidence is not admissible to vary the terms of either the registered or the unregistered sale. Even the evidence of the attesting witnesses cannot be heard for this purpose. Their business is to prove the execution of the document. They are in no way responsible for its contents.

This rule is sometimes rendered inoperative by a plea that the deed of sale has been lost. On proving the loss the party concerned proceeds to prove its contents by oral evidence. This enables him to give the latter whatever colour he chooses, if he is sufficiently unscrupulous.

(b) The deed is unregistered and is a sale with a condition for the return of the property on repayment.

This is a mortgage and not a sale and must be treated as such in all cases.

(c) Is allied to (b). Here the document purports to be a mortgage, which is to become a sale, only, if repayment is not made within a specified time.

Such a document is a mortgage and must remain one in spite of the condition. The latter is to be treated as wholly inoperative. The Mejelle forbids sales which are intended to take effect at a future date, and, on this ground, the Moslem Lawyer comes to the same conclusion as that conveyed by the English legal saw "Once a mortgage always a mortgage". (Vide Mefelle Art. 170).

ARTICLE 37.

The leave of the Official being the sole requirement for the transfer of State land, if the transferor, having obtained leave, dies before the transferee has obtained his title-deed, the transfer is nevertheless valid, and the land cannot be deemed to be vacant.

NOTE 1. (ART. 37.)

Consent.

This Article regards the obtaining of consent as preliminary to the issue of the Title deed.

Once registration has been effected and the title deed issued consent is presumed.

ARTICLE 38.

In case of a transfer by way of gift, that is without any price being specified, neither the transferor nor his heirs in case of his death, can claim any purchase money. But if a transfer has taken place with leave of the Official in consideration of a definite sum, and the amount has not been received, the transferor or in case of his death, his heirs entitled to inherit have the right to have the land restored by the transferee, or his heirs in case of his death. If however the price has been paid they have no right to bring an action for retransfer

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NOTE 1. (ART. 38.)

Gift - no price can be claimed on failure of sale unless specified.

Gift is defined in this section as a transfer which takes place without any price specified. If no price is specified none can be claimed. Non-payment of the price is a good ground for claiming re-transfer by the transferor or his heirs.

ARTICLE 39.

No one who in a valid and definite way with leave of the Official has parted with his land, gratuitously or for a fixed price. can go back on such a transaction.

ARTICLE 40.

If anyone, having transfereed his land with the leave of the Official, transfers it to another without the leave of the first transferee this second transaction is void.

ARTICLE 41.

The owner of an undivided share in State land cannot transfer his share, by way of gift or in consideration of payment, without the leave of the persons jointly interested. If he does so the latter have the right, within 5 yrs., to claim from the transferee the restitution of his share, on paying him its value at the time of the claim. The right of claiming back the land lapses at the expiration of the said term, even if there exist the excuses recognised by law, viz., minority, unsoundness of mind, or absence on a journey.

But if any person jointly interested at the time of the transfer has given his consent to it, or has refused to take the share in question although offered to him, he cannot afterwards maintain any claim.

ADDITION 19 Sha'ban 1291. In the event of the person jointly interested dying within the said period of 5 years his heirs, having the right of succession, shall have the right to claim possession of the property from the transferee or his heirs in the event of the death of both the person jointly interested and of the transferee the heirs of the former shall have the right to claim possession from the heirs of the latter.

NOTE 1. (ART. 41)

Conditions of prior purchase.

This Article defines the right of prior purchase, which is to mirie land what the right of pre-emption is to mulk.

Mulk property can be pre-empted by

(a) A Cosharer.

(b) A Khalit or sharer in a private right of way or water (vide Mejelle Art. 954).

(c) By an adjoining neighbour. Vide Mejelle 1008.

The right of prior purchase can be claimed by the co-sharer and the Khalit but not by the adjoining owner.

NOTE 2. (ART. 41.)

By Cosharer.

Transfer by an undivided cosharer without the consent of his co-owners gives the latter the right to claim the share sold on paying its value - not the price actually paid at the time of the claim. The claim must be by suit within 5 years of sale. The period cannot be extended by any of the "legal excuses"

which are effective in defending claims to hold by adverse possession. (see Art. 20).

If some of the co-sharers consent and others do not, the consenting co-sharers are debarred from claiming.

NOTE 3. (ART. 41.)

By a Khalit.

The Khalit is one of the persons "jointly interested" referred to in the Article. The term is defined in the Mejelle Art 954. The Khalit is a person who shares in a right to a private road or a private water channel, which serves both his property and the land which is the subject of the claim.

The two lands need not adjoin.

The Khalit can claim under precisely the same rules as the co-sharer.

A water channel or road are private when the right to use them is limited to a certain number of persons

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NOTE 4. (ART. 41.)

Priorities.

In the case of pre-emption the priorities run as shown in Note 1. If a co-sharer claims, a Khalit is excluded from making a claim.

It is presumed that the same rule would be applied by the Courts in the case of a claim to purchase by priority.

NOTE 5. (ART. 41.)

Prior purchase not claimable over Quasi Mulk.

Quasi Mulk land as defined in Article 25 is neither true mulk nor true mirie. For this reason claims for either pre-emption or prior purchase cannot be made in respect of this class of property except in the special case dealt with in Art. 44.

NOTE 6. (ART. 41.)

Prior Purchase and Heritable Right.

The last para of Article 41 states that the right of prior purchase is heritable, provided that the period of claim is kept within the 5 years. This para is a later addition to the Land Code.

NOTE 7. (ART. 41.)

The right of purchase by priority has considerable resemblance to that of pre-emption, and in part was founded on it.

There are however important differences between the two which should be noted.

The right by pre-emption arises

(a) in respect of sale of mulk property,

(b) in favour of cosharers khalits and adjoining neighbours,

and (c) is based on the price actually paid.

In the case of prior purchase the property must be true mirie. Transfer by gift as well as sale gives rise to the right. Contiguity is not a ground on which it can be claimed. The price at which prior purchase may be demanded is the value of the property at the time of claim, not the price actually paid.

Apart from these differences it should be noted that the right of pre-emption can only be claimed after the meticulous performance of certain formalities by the claimant

The right of prior purchase arises automatically from an omission on the part of the seller of the property, and is perfected without any effort on the part of those entitled to claim as soon as transfer has taken place.

For this reason the right of prior purchase cannot be lost like the right of pre-emption by conduct after transfer on the part of the claimant from which consent may be deduced. Actual waiver of the right may of course be made

The right of pre-emption is personal, and must be claimed as soon as the sale on which it is based is made known to the claimant. The right of prior purchase is heritable, and the period within which the claim may be made is limited to 5 years from the date of transfer.

ARTICLE 42.

If amongst three or more co-possessors there is one who wishes to transfer his share, he may not give preference to anyone of those jointly interested If the latter wish to acquire the share they can take it in common. If one co-possessor disposes of the whole of his share to one of the other co-possessors the others can take their proportionate shares in it. The provisions of the preceding Article are applicable in this case.

NOTE 1. (ART. 42.)

Suits in succession.

The last para of this Article appears to give the persons jointly interested leave to sue in succession provided that the suits are brought within 5 years from the date of transfer.

Thus is A,B,C & D are co-sharers. A sells his share to X and B sues X for a transfer of the land by prior purchase. It appears that C can afterwards sue B for half the share he has obtained from X, and D can then sue B & C for a third of the interest obtained by them. This can be avoided if the Court takes the precaution to make all the cosharers parties to the first case.

NOTE 2 (ART 42)

As the addition to Art 41 is not specifically made applicable to Art 42 it is doubtful whether it can be taken to apply to it.

ARTICLE 43.

If anyone, with leave of the Official, but without the authorization of the possessor, arbitrarily disposes of land of a third person or of his co-possessor, and if the transaction is not ratified by the possessor, the latter shall have the right, through the Official to recover the land from whomsoever it has become vested in consequence of the arbitrary act.

NOTE 1 (ART. 43.)

This Article is a re-statement of Art. 378 of the Mejelle.

ARTICLE 44.

The possessor of any land on which there are mulk trees or buildings, land of which the cultivation and possession are subordinate to (tebsiyet) the trees and buildings, cannot part with the land by way of gift or for a price, to anyone other than the owner of the trees or buildings, if he claims to have it transferred to him on payment of its tapou value (tapou-i-misl).

Should such transfer however take place, the owner of the trees or buildings shall, for ten years, have the right to claim the land, and to take it on paying the value at the time when he made the claim (bedl-i-misil). The excuses of minority, unsoundness of mind, and absence on a journey are not applicable to this case.

NOTE 1. (ART. 44.)

Land and accretions separately owned.

This article refers to Quasi Mulk accretions which are owned by one person while the land is owned by another.

The article states that, on sale of the land, the owner of the accretions has a right to claim it by prior purchase at its value as assessed at the time the claim is made. The last noted condition differentiates this species of claim from one under Art. 41, and is intended to penalise delay. The claim can be made within 10 years instead of the 5 allotted to co-sharers and Khalits. In both cases the period cannot be extended by the use of the "legal excuses".

NOTE 2. (ART. 44)

Distinguished from Art. 49.

This Article should be distinguished from Art 49, which deals with the case in which the accretions and the land are in the same hands, and the owner of the land is at the same time the author of the accretions

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NOTE 3. (ART. 44.)

Owner by accretions by inheritance.

The owner of the mulk accretions who has obtained them by inheritance has a prior claim to the land on failure of heirs by right of Tapou (Art. 59 (1), and under these circumstances is further entitled, to seize the land (Art. 77) before making his claim. The owner of the mulk accretions, who has obtained otherwise than by inheritance, has the right to claim at the Tapou value in succession to the possessors of that right enumerated in Art. 59.

ARTICLE 45.

If the possessor by title-deed of land lying within the boundaries of a village has transferred it to an inhabitant of another village the inhabitants of the former place who are in need of (zarourat) land have, for one year, the right to have the land adjudged to them at the price at which it has been sold.

NOTE 1. (ART. 45)

Right of Tabu by co-villages.

The transfer of land lying within one village to an inhabitant of another village gives the inhabitants of the former the right to claim by prior purchase at its Tapou value at the time of the sale The right must be claimed within one year.

Fisher's translation is incorrect in stating that the price at which re-transfer is claimable is that actually paid.

NOTE 2 (ART 45)

Zarurat.

The phrase which limits the right to persons having need of the land which they claim, must be strictly interpreted. "Zarurat" indicates need of an urgent kind. It may be laid down that the need must be for land to be used for cultivation; that the possession of other land in sufficient quantity would be a disqualification; and that the mere speculator in land would not be eligible under the article under discussion.

Land which though recorded as mirie is actually building land would propably be excluded from the operation of this section.

NOTE 3. (ART. 45.)

Not applicable to clearings from Mewat.

A transfer of land which has been cleared from Mewat under the conditions laid down in Art. 103 does not give rise to the right defined in this section; since such land does not lie within the boundaries of any village.

ARTICLE 46.

The right of pre-emption (shoufaa) which is applicable to mulk land, is not applicable to State or mevqulé land, that is to say if any one has alienated land which belongs to him for a fixed price, his immediate neighbour cannot claim it by saying "I will take it at the same price".

NOTE 1. (ART. 46).

The contents of this article have already been referred to in the Notes to Art. 41.

ARTICLE 47.

When there is a question as to land sold as being of a definite number of donums or pics the figure alone is taken into consideration. But in the case of land sold with boundaries definitely fixed and indicated the number of donms or pics contained within them are not taken into consideration whether mentioned or not, the boundaries alone are taken into account. So for example if a piece of land which has been sold, of which the owner has fixed and indicated the boundaries, saying that they contained 25 donums, is found to be 32 donums, such owner cannot claim from the purchaser either the separation and return of 7 donums of the land or an enhancement of the purchase money, nor if he dies after the transfer can his ascendants or descendants prosecute such a claim Similarly if the piece of land only contains 18 donums the transferee cannot claim the refund of a sum of money equal to the value of the 7 donums

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NOTE 1 (ART 47).

Effect of indefinite boundary.

This article has given rise to a great deal of trouble Owners of title deeds which show one or more boundaries as "waste" often act as if they had a free hand to encroach on the waste without limit. So long as the formal statement of boundaries contained in the title deeds continues applicable - i.e. so long as all the waste is not enclosed - they consider that they can rely on the provisions of this article to secure them against an action brought by the Government for the recovery of the area enclosed.

This is not the case. The article says that the boundary must be **definitely** stated A statement that on one side a property is bounded by "waste" land is not a definite statement of the boundary.

If a boundary is not definitely stated, and the area is, the owner is limited to the area given

Cases under this article may therefore be expected to turn chiefly on the question as to whether a given boundary or boundaries are stated in a definite manner or not

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ARTICLE 48. (Obsolete)

Trees growing naturally on the land of a person who has sold it, being subject to the soil, are included in the sale.

But unless the transferor has sold the mulk trees on the land, mentioning them at the time of the sale, the transferee has no right to take possession of them.

NOTE 1. (ART. 48).

Mulk Trees.

Mulk trees are trees planted on the land as opposed to natural growths, when planted closely enough to constitute a grove or orchard, and to prevent ordinary crops from being raised Such planting converted the land into Quasi Mulk. The planting must of course have taken place prior to the passage of the Provisional Law of Disposal of 1329 (30th. March), which forbids the further creation of Quasi Mulk

Mulk trees remained the mulk property of the planter, and did not pass with the land on sale of the latter, unless the fact was specifically mentioned in the sale deed.

Since the date of the Provisional Law all trees planted on miri land go with it, and on sale of the land pass with it

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ARTICLE 49.

When the owner of mulk trees, vines or buildings, planted or built with the leave of the Official subsequently to his taking possession, on land held by title-deed has sold them, he is bound to transfer the ground through the Official to the purchaser of the trees, vines or buildings. The same result follows in the case of woodland of which the ground is State land and the trees mulk.

NOTE 1. (ART. 49).

Accretions cannot be sold without the land by the owner of both.

This article refers to the case of a man who has put mulk accretions on his land. It states that he cannot sell the accretions without the land. It appears however that if he sells the land he is not bound to sell the accretions with it.

NOTE 2. (ART. 49).

The heirs of the owner referred to in Note 1 do not appear to be bound by this article.

ARTICLE 50.

Persons who have not attained the age of puberty, lunatics and imbeciles of either sex cannot transfer their land. If any such person does so and dies before the age of puberty or before recovery the land passes to his heirs who have the right of succession as hereinafter appears, and failing them it becomes subject to the right of tapou.

ARTICLE 51.

Persons of either sex who are minors, lunatics or imbeciles cannot buy land Nevertheless if it is shown that it is for their profit or advantage their natural or appointed guardians can, in their capacity as such, buy land in their name.

NOTE 1. (ART. 51)

Disability.

The prohibition contained in this article is based on art. 361 of the Mejelle, which requires that both parties to a contract of sale must be reasonable persons. The guardians of persons under disability can act for them when such action is in accordance with their duty.

ARTICLE 52.

Natural and appointed guardians of minors of either sex cannot transfer to another or to themselves land which has devolved on their wards by inheritance, or in any way come into their possession, under pretext of payment of debts, expense of maintenance or otherwise. Should they do so the wards have the right, for ten years after attaining their majority or after having become capable of having possession, to reclaim from the possessor through the Official the restoration and possession of property. If they die before attaining their majority the land will pass to their heirs, and in default it will become subject to the right of tapou. But when it is shown that chiftliks belonging to minors of either sex cannot be managed by their guardians except in a manner which occasions loss to the wards, and that, the appurtenances of the chiftlik being valuable, it would be injurious to the wards to leave them to be destroyed or lost, and that in these circumstances the sale of it would be sanctioned by the Sheria Law, if it is proved that retention of the land alone would, by reason of its being separated from the buildings and other appurtenances, be injurious to the interests of the minor the sale of the land and its appurtenances at the true value is allowed after getting a hudjet from the Sheria Court. When a sale has been effected under these conditions minors will have no right to claim the restitution of the chiftlik or its appurtenances after attaining their majority. The same provisions apply to the land of lunatics and imbeciles.

NOTE 1. (ART. 52.)

Guardians defined.

Art. 974 of the Mejelle describes the various kinds of guardians and the order in which the natural guardians assume their responsibilities.

NOTE 2. (ART. 52.)

Chiftlik.

Chiftlik is defined in Art. 131. The notes on that section should be consulted as to the scope of the definition.

ARTICLE 53.

When persons of either sex who are minors, lunatics or imbecile possess trees or vines which have become orchards or vineyards, or newly erected buildings on State or mevqufé land their natural or appointed guardians can sell such orchards, vineyards or buildings on Sheria musaveghat conditions and they can also sell the land on which they are as being subordinate to them

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NOTE 1 (ART. 53.)

Musasavaghat conditions.

The Musavaghat conditions are given by Khalis Ashraf 1315 Ed page 334. They are :-

1 When there is a candidate to buy at double value

2. When the minor needs maintenance and has nothing except immovable property, and when it is necessary to sell it for his maintenance.

3. When the deceased leaves debts and there is nothing to pay them except the immovable property.

4. If 1/3 or 1/4 of what the deceased left is bequeathed to some object and it is necessary to sell the property in order to carry out the testator's wishes.

5. If the income of the property is insufficient to pay the dues on it.

6. If the propety is a house or shop or similar building and the minor has no funds to repair it with.

7. If the property is possessed in partnership and the share of the minor will not bring in a profit when separated

8. If there is a fear of unavoidable interferance by someone by duress— See note to art. 20 for meaning of duress.

CHAPTER III.

DEVOLUTION OF STATE LAND BY INHERITANCE.

ARTICLE 54.

On the death of a possessor of State or mevqufé land of either sex the land devolves in equal shares, gratuitously and without payment of any price, upon his children of both sexes, whether residing on the spot or in another country If the deceased leaves only sons or only daughters, the one or the other inherit absolutely without the formality of purchase. If the deceased leaves his wife pregnant the land remains as it is until the birth.

NOTE 1. (ART. 54)

Article repealed.

The Chapter which opens with this Article deals with a scheme of inheritance which was modified by the Law of 21st. May 1867 (1284) and replaced by the Provisional Law of Inheritance of 1328 (27th. Feb.). Its interest is therefore of an academic nature, except in respect of devolution which took place before modification.

NOTE 2. (ART. 54)

Statutary devolution cannot be changed by will.

The Succession to Mirie land being statutory cannot be altered by will. It may however be defeated by death bed gift or sale, if the transfer so made, takes place in valid form (vide Art. 120). The right of the State to hold by escheat in default of heirs can be defeated by the same means.

NOTE 3. (ART. 54.)

Customary Inheritance.

Though Mirie succession is statutory and forms one of the conditions on which grants of mirie land are made, it is by no means invariably observed.

Ancient and invariable customs exist which the statute law has not been able to break. Thus in some villages there is a custom which forbids women from taking a share by inheritance in the common lands. In other villages, and among some of the Bedouin tribes, a woman who marries out of her community foregoes her interest in the communal or tribal land. It is clear

that these customs originally arose for the purpose of preventing one tribe or village from obtaining a pretext for interfering with the lands of another

When such a custom exists it lies at the root of practically all the rights to land enjoyed in the area which it affects. It cannot be set aside without throwing all these rights into confusion, and creating a swarm of claimants whose operations must plunge the community into endless litigation Under these circumstances a great increase of violent crime may be anticipated. Since prescription does not apply to possession which is passed by inheritance, and is adverse to co-heirs, there is no limit to the period of past time over which an inquiry intended to bring the rights of the inhabitants into line with the Statute must extend

It follows from these considerations that the enforcement of a Statutory scheme of inheritance is a legal as well as a practical impossibility in the areas over which these ancient customs obtain.

It is for this reason that the Courts have held that such customs are valid when shown to be ancient and invariable, *in spite of* the fact that they run counter to Statute Law.

Cases have been decided in this sense both in Samaria and in Jerusalem.

The Mejelle furnishes a certain amount of support to these decisions. Arts. 17,36,41 and 45 may be consulted. They lay down, in effect, that what is sanctioned by custom is sanctioned by law; that "continuous and preponderant custom should be given effect to"; and that equitable relief may be given by the Courts in certain cases. It should also be noted that Art. 7 of the Land Courts Ordinance gives to those Courts a wide equitable discretion in the application of Ottoman Law.

It is often difficult to attach a meaning to the term "equitable" which is capable of translation into Arabic in a form which an English lawyer would recognise.

In the Land Courts Ordinanace it is rendered as "according to sacred Law or Custom".

In the case in hand however, this rendering suffices to justify the decisions we have been discussing, when read with the articles of the Mejelle which have been quoted.

NOTE 4 (ART. 54.)

Legitimacy.

Inheritance is not dependent on legitimacy. Natural sons and daughters have the same rights those born in wedlock.

NOTE 5. (ART. 54.)

Proof of Inheritance.

It is the business of the Sharia Court to set forth in the Inheritance certificate the names of the heirs and their respective shares in both the mulk and mirie properties left by the decd, when the dect was a Moslem.

This document cannot be questioned by a civil Court. If error is suspected it must be referred to the Sharia Court for amendment at the instance of the party interested

Other Religious Courts are now given analogous powers to those of the Sharia Courts. Vide Order in Council of 1922 and the Succession Ordinance of 1923.

ARTICLE 55 (Obsolete)

State and mevqufé land of which the owner dies without leaving children passes gratuitously as above to the father or if he leave none to the mother.

ARTICLE 56.

If some of the children of the deceased are present and some absent under conditions called ghaibet-i-munqata (absolute disappearance) the land devolves on the present living children Provided that if the absent one reappears within three years from the death of his parent or is proved to be still alive, he takes his share in the land. These provisions apply also in the case of a father or a mother.

NOTE 1. (ART. 56.)

Article not repealed.

This article has not been repealed by subsequent Statutes which modify inheritance.

NOTE 2. (ART. 56.)

Proof of disappearance.

It is the business of the Sharia Court to pronounce whether a disappearance is of the absolute kind referred to in the article or not in the case of Moslems.

ARTICLE 57.

The land of a person who is not known to be alive or dead and who has disappeared under the aforesaid conditions for three years shall pass as stated in the preceding Article to his children and in default to his father and failing him to his mother. In default of such heirs the land becomes subject to the right of tapou, that is to say that if under the conditions hereinafter set forth there are persons having the right of tapou, the land will be granted to them on paying the tapou value. If there be no such heirs it will be put up to auction and adjudged to the highest bidder.

ARTICLE 58.

A soldier in the Army actually serving in another country whether he is known to be alive or has disappeared under ghaibat-i-munqata conditions, succeeds to the land left by his father, mother, grandfather, grandmother, sister, wife or child It cannot be granted to another without proof of his death in accordance with the Sheria Law. Even if transfer takes place and the soldier heir reappears at any time he has the right to recover the land which devolved upon him from whomsoever is in possession of it, and to take possession of it. Provided that, solely with a view to safeguarding the rights of the Treasury, the land of such soldiers is caused to be cultivated by his relatives, or persons to whom he has entrusted his movable property and goods, or failing them by a third person, and thus the collection and payment of the dues are ensured.

NOTE 1. (ART. 58.)

Serving soldiers.

This article does not appear to have been repealed in the sense that the special privileges which it confers on the serving soldier are set aside.

It seems however that it should be interpreted, in the light of subsequent legislation, to read that under the circumstances stated in the article the soldier will inherit according to the scheme of inheritance in force at the time of the death of the person from whom he takes. The article is unlikely to assume importance since Palestinians do not now serve in the army.

CHAPTER IV.

ESCHEAT OF STATE LAND.

PREFATORY NOTE TO CHAPTER IV, BOOK 1.

This chapter deals with the legal incidents which are created by,

(a) failure of heirs,

(b) failure to cultivate,

(c) disappearance of mulk accretions.

Cases (b) and (c) are sufficiently dealt with in the notes to the articles which treat of them.

Case (a) is of sufficient importance to merit a certain amount of preliminary discussion, in order to bring the somewhat disjointed articles of the Code which deal with it into focus.

When land falls vacant from failure of heirs, two sets of rights have to be provided for, to wit, the rights of the possible squatter, and those of the claimant by right of Tapou.

Anyone can seize vacant land. If he reports his occupation he is entitled to a title deed on payment of the Tapou value or badal il misl as defined in art. 59. If he omits to report he may be ejectet when his occupation is discovered, provided that it has not continued without challenge for 10 years. Ten years unchallenged occupation give the squatter the right to claim a title deed without payment of badal il misl

These privileges are described in arts 77 and 78, and may be termed the squatter's rights.

The right of the holder of a right of Tapou as against the squatter is that of bringing a suit for ejectment, whether the squatter has or has not reported his occupation In the case in which the squatter has reported and paid badal il misl he cannot be ejected until its value is repaid to him by the successful plaintiff.

The holders of the right of Tapou fall into four classes. A claim by a holder in a given class excludes all claims from classes below it The classes are;

(1) The inheritor of the mulk accretions

(2) The Cosharer and Khalit (Vade art. 41)

(3) The local resident who has need of the land

(4) The holder of mulk accretions otherwise than by inheritance.

(1) and (4) must claim within 10 years, (2) within 5 years, and (3) within 1 year. The periods cannot be extended. The right is not heritable

The mahlul Land Ordinance seeks to curtail the rights we have been discussing, more especially those of the squatter. It has not been a successful piece of legislation for reasons which are explained in the notes to art.

ARTICLE 59.

When a possesor (of either sex) of State land dies without leaving heirs qualified to succeed under the Law of 17 Muharram, 1284, the land will be given on payment of the tapou value, that is to say for a price to be fixed by impartial experts who know the extent, dimensions, boundaries and value of the land, according to its productive capacity and situation.

(i) In equal shares to those who have inherited any mulk, trees or buildings which are on the land. Their right to claim lasts for ten years

(ii) To co-possessors, or those having a joint interest Their right to claim lasts for five years.

(iii) To such inhabitants of the locality, where the land is as are in need and want of it (zarourat vé ihtiyaj). Their right to claim lasts for one year. When several such inhabitants claim a right to take the land so to be disposed of as aforesaid, if there is no obstacle to partition and if no damage will result from it, the land is divided into shares, and a share is given to each of them. But if the land cannot be divided, or if damage will result from division it is given to the inhabitant who needs it most. If several have equal need of it one who has personally and actually served in the Army and has returned home after completing his time will be preferred to the others. In default of such recourse shall be had to drawing lots and the land will be given to him on whom the lot falls. After being so allotted no other person can lay claim to the land.

NOTE 1. (ART 59.)

Assessment of Tapou value.

The law which governs the devolution of Mirie land is now the Provisional Law of Inheritance of 27th. February, 1328

NOTE 2. (ART. 59.)

Owners of mulk accretions.

The right of the person who has inherited mulk accretions is more valuable than that which belongs to the stranger who has acquired them.

The former has the right of Tapou in the highest degree. He can also anticipate the decision of his claim by seizing the land (Art. 77).

The latter has the right of Tapou in the lowest degree-ranking in this respect after all the classes mentioned in Art. 59. (vide Art. 66).

NOTE 3. (ART. 59)

Reference to Art. 41.

The possessors of the right of Tapou in the second degree are those, who are entitled to claim by prior purchase in the event of sale. (vide Art. 41). The period, within which they may claim the right of prior purchase is that within which they may claim by right of Tapou i.e. 5 years.

NOTE 4. (ART. 59.)

Rights of neighbours.

The third class consists in inhabitants of the locality who are in need of the land

Such claimants are entitled to obtain a partition of it among themselves. If it is incapable of partition the Article goes on to specify a further procedure The interpretation of the term "locality" has not been ascertained as yet byjudicial decision. It can only be supposed that if the Land Code meant by it persons living within the boundaries of the village in which the property is situated it would have said so. Persons so defined are elsewher referred to in the Code. It may be that the framers had in mind the possibility tha the land under claim had been taken from mewat. and was included within no village area.

Judicial decision as to what constitutes "need" or "want" is also lacking. Presumably the conditions required are those set forth in the notes to Art. 45.

NOTE 5. (ART. 59)

Position of strangers.

This article is framed in order to exclude strangers. It was the policy of the framers of the Code to keep agricultural areas unchanging and unprogressive In this connection vide Art. 31., which prohibits building on them.

Article 66 is a slight concession to the stranger who purchases mulk accretions.

It shoul be noted however that any person can seize vacant land, and that on reporting his seizure and paying the Tapou value, he is entitled to a deed (vide Arts. 61 and 77, 78).

The holders of the right of Tapou can however dispossess the squatter who gets a title deed by this means, if they make their claim within the period allotted by the Code.

ARTICLE 60.

If a possessor of land, of either sex, dies without direct heirs, that is to say without leaving heirs as designated by Art. 1 of the Law of 17 Muharram, 1284, nor any persons having the right to take the land on payment of the tapou value as above mentioned, or if having left such persons they have forfeited their right by refusing to pay the tapou value, the land becomes purely and simply vacant (*mahlul*), and it is put up to auction and adjudged to the highest bidder.

If those who have the right to acquire possession of the land on payment of its tapou value are minors, or of unsound mind, forfeiture of the right cannot be alleged against them or their guardians

NOTE 1. (Art. 60)

Explanatory.

This article is a definition of the term mahlul or vacant land

When land becomes mahlul it can be occupied and cultivated by any person without penalty Should the occupation continue without challange for 10 years the squatter can claim a title deed (vide arts 77 and 78) from the State without fee.

NOTE 2. (Art. 60.)

Disability.

Minors and persons of unsound mind are entitled to claim by right of Tapou provided of course that they do so within the appropriate statutory period.

NOTE 3. (ART. 60.)

The State incurs no liability for debts of former title holders.

Land which reverts to the State as Mahlul does not carry with it a liability against the State, to the extent of its value, to pay the debts of the deceased. (Yanni v. The Queen's Advocate (1888) CLR. I. 46).

NOTE 4. (ART. 60.)

How land becomes vacant.

Land becomes mahlul on failure of heirs to the deceased title holder.

It may then be

(a) claimed by a holder of the right of Tapou or

(b) occupied by a squatter, who may either report his occupation or neglect to do so.

The prefatory note outlines the legal incidents which follow each of these cases Vide also the notes to arts. 77 and 78.

ARTICLE 61.

The above mentioned periods of time for claims run from the death of the possessor of the land. During the currency of the said periods, whether the land has been given to someone else or not, those having the said right of tapou, can have the land granted to them by the State on payment of the tapou value at the time when the claim is made. After the expiration of the said periods, or if those who have such rights have forfeited them no claim concerning such rights shall be any longer maintainable. Excuses such as minority unsoundness of mind, or absence do not apply in respect of claims of right of Tapou, and after the expiration of the prescribed periods, notwithstanding the existence of any of these excuses, the right of tapou lapses.

NOTE 1. (ART. 61.)

Right of Tapou not heritable and period of claim cannot be prolonged.

It should be noted that a right of Tapou in any degree is not heritable, and that the statutory period cannot be extended by the use of any of the legal excuses.

NOTE 2. (ART. 61)

Squatter's right versus right by Tapou.

Art. 78 (second para) gives the right to any person to take any land and to get a title deed for it on paying the Tapou value as soon as it becomes mahlul or vacant, provided that he acts openly; in other words if he reports his occupation. This privilege is stated by Article 61 to be given subject to the right of a claimant by right of Tabou to claim the land from him, provided that the claim is not time barred.

ARTICLE 62.

If one of those who have a right of tapou of the same degree refuses to take his share of the vacant land on payment of its tapou value and thus loses his right over it, the others can take the entirety of the land on payment of the tapou value.

ARTICLE 63.

If minors, persons of unsound mind, or persons who are absent who have a right of tapou over vacant land, have not been able to take the land, the disposal of the land is not stopped nor postponed but it is given, on payment of the tapou value, to those who have a right of tapou of the same degree as that of those who have not taken it, or to those who have a right of a lower degree, preserving for the first mentioned, according to their degree, their right to assert their claim within the prescribed period. If there are no such persons, or if they have lost their right, the land will be put up to auction.

NOTE 1. (ART. 63.)

Effect by absence or disability.

This article preserves the right of persons who are absent or under disability to claim their right by Tapou even against those of the same or lower degrees of right who have in the meanwhile received the property.

As against holders of the right in the same degree their claim would have to be for a proportional share.

ARTICLE 64.

If persons having rights of tapou in the first of the three degrees enumerated above lose their rights by refusal to take the land over which they have the right on payment of the tabou value, it shall be offered to those of the subsequent degrees successively in turn. If they all refuse it it shall be put up to auction and adjudged to the highest bidder.

If anyone who has the right of tapou dies before having exercised it the right does not pass to his children or other heirs.

ARTICLE 65.

If any of those who have a right of tapou are minors, lunatics, or imbeciles in whose interest it is advantageous to acquire the land over which they have such right their natural or appointed guardians shall acquire it on their behalf on paying the tapou value.

ARTICLE 66.

If a possessor of land which is possessed and cultivated as subordinate to mulk trees or buildings upon it belonging to another who is a stranger as regards family, dies without leaving anyone with a right of tapou as stated above, the said stranger shall have preference to any other person, if he claims the land it shall be granted to him on paying the tapou value. If it is given to a third person without being offered to him he shall have the right for ten years to claim it, and to recover it on payment of its value at the date of the claim.

NOTE 1. (ART. 66)

Right of holder of Quasi Mulk by Inheritance.

We have already noted this case in the Notes of Art. 59 (1).

The distinction between the holder of mulk accretions by inheritance and the holder who has taken in some other fashion is that the former has the right of Tapou in the 1st. degree and may also seize the land prior to claiming his right; the latter has a right of Tapou only in succession to all other holders of that right and has not the privilege of seizing the land on its becomming vacant.

ARTICLE 67.

To those having a right of tapou who shall be proved to have served, actually and personally, for five years in the regular army, there shall be granted gratuitously and without any payment five donums of the land over which there is a right of tapou. In respect of anything more than five donums they shall be subject to the same provisions of the law as others having a right of tapou.

ADDITION. 25 Muharram, 1287. The privilege of having five donums of the land over which they have a right of tapou given to them gratuitously is accorded to officers in the regular army, and to retired officers and private soldiers who are on pension. To those who have completed the military age and passed into the reserve, whether they are actually serving in the reserve or not, there shall be given gratuitously two and a half donums of the land over which they have a right of tapou. Those who joined the regular army as substitutes are not entitled to this privilege.

ARTICLE 68.

Except for one of the following reasons, duly established, namely:-

(i) Resting the soil for one or two years, or even more if owing to its exceptional nature and situation it is requisite:

(ii) Obligation to leave land which has been flooded uncultivated for a time after the water has subsided in order that it may become cultivable.

(iii) Imprisonment of the possessor as a prisoner of war, land which has not been cultivated, either directly, by the possessor, or indirectly, by being leased or loaned, and remains unproductive for three years consecutively becomes subject to the right of tapou, whether the possessor be in the locality or absent. If the former possessor wishes to recover the land, it shall be given to him on payment of its tapou value. If he does not claim it it shall be put up to auction and adjudged to the highest bidder.

NOTE 1 (ART. 68)

Effect of Provisional Law.

This article sets forth the obligation to cultivate which is one of the prime conditions under which mirie land is held.

The provisions of the Land Code greatly restricted the right of user of a mirie holder. He could not use the land for making bricks: he could not claim to share in the profits of any mineral deposit (Art. 107). In short his rights were confined to the use of the surface of the land for the purpose of tillage.

This state of affairs has been completely altered by the Provisional Law of Disposal of 1329. under Art. 5 of that law all restrictions as to user except those which attached to mining (Art. 107 of the Land Code) have been removed.

A mirie holder may now build on his land, but he must have the fact recorded by registration, and must pay an annual rental estimated as equivalent to the tithe.

He must however make some use of the land. If he does not build he must cultivate under the rules laid down in the Land Code. If he fails to do either he can be dispossessed, unless he pays the Tapou value, and thus obtains a renewal of his title deed.

Mining is now dealt with under a special Ordinance. Vide notes to Art. 107 of Land Code.

NOTE 2. (ART. 68.)

Penalty for non cultivation.

Dispossession for non cultivation is not absolute as the holder can take the land back on payment of its Tapou value If he fails to claim this right the land is put up to auction

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NOTE 3. (ART. 68.)

Effective cultivation - practical difficulties.

It is sometimes difficult to say what constitutes effective cultivation in Palestine. Some of the Mirie Lands which are situated in rocky localities are only capable of being ploughed in small patches. Again there are lands which can only be cultivated in alternate years owing to their poverty. Under these circumstances the only test is whether or no the holder has made as much use of the land as its nature permits.

An inquiry to ascertain whether land should be forfeited or not under this article takes the form of a case brought by the Government against the holder in the Land Court. The Court generally calls on the Plaintiff to furnish proof of the exact extent of the cultivation, by means of a detailed map showing all the ploughed land. The making of such a map may cost more than the land is worth in the poorer areas, as in these areas the detail showing all the patches which have been cultivated is apt to be excessive.

NOTE 4. (ART. 68.)

Abandonment.

Abandonment of a holding by the title holder does not render the land vacant or mahlul.

So long as the title deed remains uncancelled the land is technically occupied whether it is, as a fact, cultivated or not.

After proceedings under this section, the title deed is either renewed on payment of badal il misl, or a fresh title deed is issued to the auction purchaser in cancellation of the old deed. Under either circumstance, the tenure is maintained, and the land is not at the disposal of the State.

If as a fact the title holder has failed to cultivate, and has let in a squatter, the cultivation of the latter bars a suit by Government under this article against the title holder, but the latter has a remedy by private suit until the squatter has acquired a right by prescription

Thus abandonment of cultivation cannot give rise to rights against the State on the part of a squatter in the case in which the land is not ownerless, that is to say not strictly Mahlul: until the said squatter has completed 10 years of unopposed occupation.

When this condition has been fulfilled, he is entitled to a title deed without payment of badel il misl under Art. 78. Until the 10 years have been completed, he is liable to ejectment at the suit of the owner, but the State cannot interfere.

His proper course is to bring a suit for a title deed against the Land Registration Department under article 78. To this suit the "legal" owner can be made a party If he commences the suit under article 20 against the latter the Court may refuse to entertain it on the ground that a claim to hold by prescription can not form the basis of an action. This may be compared with the English equitable ruling that prescription is to be regarded as available for defence only. It is a shield not a sword.

ARTICLE 69.

Land, by whomsoever it is possessed, which has been flooded for a long time and on which the water afterwards subsides does not for this reason become subject to the right of tapou, the former possessor keeps it in his possession and under his control as before. If the former possessor is dead his heirs shall have possession and enjoyment of it, and failing them it shall be given on payment of the tapou value, to those who have the right of tapou. But

if on the water subsiding, and when the land can be cultivated the possessor, or his heirs do not enter into possession of it, and leave it unproductive for three years without valid excuse it shall then become subject to the right of tapou.

ARTICLE 70.

If land which has been abandoned and left unproductive by the possessor for two consecutive years without valid excuse is then transferred by him, or, owing to his death devolves on his heirs, and is left uncultivated as before for a further one or two years by the transferee or by the heirs without valid excuse it shall not become subject to the right of tapou.

NOTE 1. (ART. 70.)

Liability for non cultivation is personal.

This means that the period of non cultivation is reckoned during the holding of the person against whom proceedings under Art. 68 are being taken.

The purchaser of a bolding which has remained untilled for more than three years is not liable for the neglect of his predecessor, unless the latter's neglect has covered a period of at least three years.

NOTE 2. (ART. 70.)

Rights of heirs.

If the holder disappears for 3 years and the land remains untilled during his absence rights to it arise in favour of certain relatives detailed in Art. 57, and the right of resumption cannot be claimed by the State, until a further period of 3 years expires, during which the land is still unclaimed. It will then arise against the persons entitled undr art. 57.

The next article (Art. 71) states that on the death of a holder whose holding is liable to resumption the heirs must pay the Tapou value as a condition of being permitted to take the land.

ARTICLE 71.

If a possessor of land, who shall be shown to have left the land uncultivated for three consecutive years without valid excuse, dies after the expiration of the three years, without the land having been given by the Official to another,

leaving heirs, they cannot inherit the land gratuitously, but it shall be offered to them on payment of the tapou value. If they refuse it, or if the possessor died without heirs having the right to succeed, search shall not be made for persons having the right of tapou; the land shall be put up to auction and adjudged to the highest bidder.

NOTE 1. (ART. 71.)

See Note 2. Article 70.—Also Notes to Article 78.

ARTICLE 72.

If all, or a portion of, the inhabitants of a village or town leave their country *(vatan)* for a legitimate reason, the land in their possession does not become subject to the right of tapou. If however their abandonment of their country has taken place without legitimate reason, or if they do not return for three years from the day when the legitimate reason which constrained them to go away ceased and the land has thus been left unproductive without reason it shall then become subject to the right of tapou.

ARTICLE 73.

Land possessed by a soldier actually and personally employed in the army in another country, whether it be under lease or loan or left uncultivated, shall not become subject to the right of tapou so long as the death of the possessor has not been proved. If by chance it has been given to another, the soldier on returning home at the expiration of his time of service, can recover it from whomsoever is in occupation of it.

ARTICLE 74.

If a person who is known to be alive and who is absent inherits land from his father, mother, brother sister, or spouse, and neither comes himself to personally take possession of the land he has inherited, nor gives anyone authority, by writing or otherwise, to cultivate it, and leaves it unproductive for three consecutive years without valid excuse it shall become subject to the right of tapou.

NOTE 1. (ART. 74.)

Liability of absent heir.

An absent heir who becomes entitled must make use of the land within three years on penalty of forfeiture.

In this case the absentee does not appear to have the right of resuming

the land on payment of the Tapou value. This arises presumably, from the probability that his whereabout are unknown to the authorities.

NOTE 2. (ART. 74.)

Explanatory.

The person to whom the authority is given must cultivate in accordance therewith. If he fails to do so the penalty indicated in the article can be exacted. The wording is a little obscure but this seems to be the meaning.

ARTICLE 75.

If on the death of a possessor of land, of either sex, it is unknown whether an heir with right of succession who is absent under conditions of ghaibet-i-munqata (absolute disappearance) is dead or alive the land shall become subject to the right of topou. Provided that if the heirs re-appear within three years of the day on which the person whose heir they are died, they shall have the right to take possession of the land without payment. If they appear after the expiration of that period they cannot make any claim nor bring an action.

ARTICLE 76.

Land possessed by persons, of either sex, who are minors, lunatics or imbeciles can never become subject to the right of tapou by reason of its being left uncultivated. If their natural or appointed guardians leave it uncultivated or do not cause it to be cultivated for three consecutive years without valid excuse, the guardians shall be requested by the Official to cultivate the land themselves or by means of others. If they decline to do so it shall be let by the Official to anyone wishing to lease it on payment of the estimated rent, solely for the purpose of preserving it from remaining uncultivated. The fixed rent received from the lessee shall be paid to the guardians on behalf of their wards. When the wards attain their majority, or are cured, they can recover their land from the lessee.

ARTICLE 77.

If it is shown that a person having the right of tapou of the highest degree over vacant land has secretly and arbitrarily occupied it, without having had it transferred to him by the State, for less than ten years, the land shall be

granted to him on payment of its tapou value at that time. If he does not wish to acquire it, and if there is any other person having a right of tapou in respect of whom the period of time applicable to the degree to which he belongs has not expired, it shall be granted to him. Failing such persons, or if being such persons they have lost their right, the land shall be put up to auction and adjudged to the highest bidder. If it is shown that the person who has so arbitratily occupied and cultivated the land for less than ten years as mentioned above is a stranger, the land shall be taken from him and given to him who has the right of tapou on payment of the tapou value at the time of his taking it. Failing such person, or if he has forfeited his right, the land shall be put up to auction and adjudged to the highest bidder.

NOTE 1. (ART. 77.)

Meaning of Mahlul.

Vacant or Mahlul land is defined in Art. 60. It may be briefly described as land which has been left vacant through failure of heirs. Such land is liable to claims by right of Tapou, and also carries the legal incidents described in this article.

The right of Tapou also arises in respect of land which is left uncultivated but in respect of which failure of heirs cannot be assumed — vide Arts. 68 74, 75. — To such land art 77 does not apply

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NOTE 2. (ART. 77.)

State a necessary party to suits under Articles 77, 78.

The squatter on vacant land which is also mahlul in the sense defined in Art. 60 has rights against and liabilities towards the State which are defined in Arts. 77 and 78.

The squatter on vacant land which is not mahlul, in the sense of art. 60. has rights and liabilities vis à vis the persons entitled to the land, and not vis à vis the State. He is liable to be ejected at the suit of such persons if suit is brought in time, otherwise he acquires a prescriptive title (Art. 20). Vide note to art. 68.

NOTE 3. (ART. 77.)

Rights of inheritor of Quasi Mulk accretions.

The only person who can as of right squat on mahlul land, before his claim to hold by right of Tapou is either made or established, is the **inheritor**

of the mulk accretions (if any) on the land. If there are no mulk accretions, i.e. buildings or plantations which date prior to the passage of the Provisional Law of Disposal of 1329, no one has the right to seize the land on its becomming mahlul, unless he reports and expresses willingness to pay the badal il misl (vide para 2 Art. 78).

NOTE 4. (ART. 77.)

The stranger.

The stranger is clearly any person, who has not a right of Tapou. In this connection it should be noted that any resident of the locality can claim a right of Tapou over mahlul land in the third degree (vide Art. 59 (iii)).

If a stranger occupies mahlul land and pays tithes and taxes for it, the State will not ordinarily interfere unless it is moved to do so by a person, who claims to take by right of Tapou. The power of ejectment is however reserved by the article, even in the absence of any claimant by right of Tapou.

NOTE 5. (ART. 77.)

For effect of Mahlul Ordinance of 1st. October, 1920, on this article vide note 7 to the next article (78).

NOTE 6 (ART. 77.)

Land excludes mulk accretions on sale.

In the case of Quasi Mulk it is to be noted, that the right of sale conferred by this article extends only to the land. The accretions are of course private property. If the land is heirless, it does not follow, that the accretions are also heirless, and liable to escheat; since (as we have seen) mulk succession is different from the Statutory Succession by which mirie land passes at death.

NOTE 7. (ART. 77.)

Secret taking of possession.

This is dealt with under the law of Tapou Sanads (7 Sha'ban 1276, Art. 4). This article lays down that if the secret occupier has a right of Tapou the land will be given to him on payment of badal il misl calculated on the value at the time of discovery.

If he refuses to take it, or if the secret occupier has no right of Tapou the land is to be auctioned. A person having a right of Tapou must report his occupation within 6 months, unless he can show that he is entitled to the benefit of one of the legal "excuses".

If he fails to report within 6 months the land will be put up to auction and he will have the option of taking it at the value of the highest bid. If he refuses it the highest bidder takes.

Under Art. 6 of the same Law it is declared illegal to put up for auction any land over which there is a right of Tapou. This provision must be read in the light of the provisions of Art. 4 which provide auction as a penalty for failure to report within 6 months.

It is to be presumed that the holder of the right of Tapou who seizes land must be the holder in a senior degree as compared with other actual claimants.

ARTICLE 78.

Every one who has possessed and cultivated State or mevqufé land for ten years without dispute (bila niza) acquires a right by prescription and whether he has a valid title-deed or not the land cannot be regarded as vacant, and he shall be given a new title-deed gratuitously. Nevertheless if such person admits and confesses that he took possession of the land without any right when it was vacant, the land shall be offered to him on payment of the tapou value, without taking into account the lapse of time; if he does not accept, it shall be put up to auction and adjudged to the highest bidder.

NOTE 1. (ART. 78.)

Meaning of "without dispute".

The first para of this Article confers a right against the State. The conditions under which it may be claimed are defined so as to ensure, as far as, possible that there will be no rival claimant. If the squatter has been sued in respect of the land within the ten years a title deed is not issuable under this article; since whatever the result of the suit, time does not commence to run, till after its termination. The words "without dispute" means therefore without legal proceedings. This point has been discussed in the notes to Article 20.

NOTE 2. (ART. 78.)

"Vacant" - Meaning of the term. -

The word "vacant" means subject to claim by right of Tapou or in default auctionable by the State. It is the translation of the word Mahlul - a term which has been defined in Article 60.

NOTE 3. (ART. 78.)

Art. 78. wider than Art. 77.

It will be noticed that article 78 is more than a mere continuation of the provisions of article 77, since the latter refers to mahlul only, while the former refers to any land subject to the Law of Mirie. But in this connection the last note on this article should be consulted.

NOTE 4. (ART. 78.)

Article 77 deals with the case of a person, who has "secretly and arbitrarily" occupied mahlul land. The second para of Art. 78 deals with the case of a person, who has done so openly and admittedly. In either case the taking is without legal title.

The second para must be read in the light of article 61, which states that a holder of the right of Tapou, who claims within his allotted period, can obtain the land, whether in the interim it has been given to some one else or not. Thus para two of article 78 provides for giving out the land as a provisional arrangement to a third person pending a claim by right of Tapou. It states that any person, who takes the land openly-presumably after reporting to the Tabou authorities- when it is mahlul, is to be permited to pay the Tapou value. If he does so he can continue to hold, until be is dispossessed under Article 61 by a holder of the right of Tapou, who claims within his legal period. In this connection vide also Art. 80.

On the other hand the person, who "secretly and arbitrarily" takes the land, has no such privilege and may be ejected at once. Occupation which was originally secret and arbitrary, can be regularised by report to the Tapou Office, provided that the report is made before that Office has taken steps to eject the occupier.

Whether a title deed would, or would not, be issued before the expiration of the period, during which a claim by right of Tapou might be made, is a matter of administrative detail. If a deed is issued, it should set forth the provisional character of the right, which it confers. In this connection Art. 1 of the Regulations as to Title deeds (7th Sha'ban 1276) should be consulted. Para Art. 8 of these Regulations is important.

Its effect is to limit the powers of the Land Registration officials to cases in which the claimant has a right to the land arising out of inheritance, sale, or grant, as well as a right by prescription.

This simply means that the Tapou Office is not competent to issue title deeds based on prescription only, but is compelled to refer the applicant to the Courts.

When the Registers were first made towards the end of the 13th century this restriction was inoperation. A very large number of title deeds issued in this period were frankly based on possession of more than ten years duration. Such entries are generally described as having been made by "euklama" i. e. as the result of local inspection and enquiry.

Title deeds of this character are generally accepted by the Courts, with the reservation that a party who desires to prove that the name so entered was intended merely to represent a number ot co-owners is given an opportunity to do so. Such proof generally takes the form of showing that the registered owner held by inheritance, and that in consequence his co-heirs were also co-owners

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NOTE 5. (ART. 78.)

Overlapping of private prescription with rights defined in Art. 78.

To return to the first para, it must be pointed out that under art. 20 the period of private prescription (which is also 10 years) can be extended by the "legal excuses". It follows that a squatter may claim and obtain a Title Deed under the first para of Article 78 before the possibility of a private suit being brought against him has been extinguished. It is to be carefully borne in mind that this para is not explicitly limited to land, which is, or is believed to be, mahlul.

A successful suit under Article 20 would involve the cancellation of a title deed granted under the first para of art. 78, and a deed issued under the second para might be contested and set aside by a claimant under art. 61. who takes proceedings within time

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NOTE 6. (ART. 78.)

Effect of Article 75.

If land treated as Mahlul under the second para should turn out to have been incorrectly placed in this category, the provisions of art. 75 come into operation. By that article a claim on the part of the missing heir is barred on the expiry of three years from the death of the person from whom he inherits. Within the three years he can claim the land from any transferee of the State.

NOTE 7. (Art. 78.)

Effect of the mahlul land ordinance.

The Mahlul Land Ordinance of 1st. October, 1920 was issued for the purpose of obtaining a correct record of all cases of occupation of mahlul lands.

It calls upon all who have occupied such lands, prior to the date of the promulgation of the ordinance, to report the fact within 3 months. Failure to report may be visited with a fine not exceeding L.E. 50, or imprisonment not exceeding 3 months, or with both these penalties. The Ordinance does not purpot to set aside the existing law as stated in Articles 77 and 78. Hence although failure to report may be punished criminally, the rights accruing under arts. 77 and 78 appear to remain unaffected.

When a report is made those rights are taken away; though the the Administration may "in proper cases" grant a lease to the person, who has thus complied with the Law

Hence if no report is made, the squatter apparently retains his rights; but may be criminally punished. If a report is made he loses his rights; but is not liable to punishment.

It should be noted that the Ordinance deals only with occupation which took place prior to the promulgation of the Ordinance. Occupation subsequent to that date does not come within its scope, and is dealt with, presumably, under the ordinary Law.

NOTE 8. (Art. 78.)

It has been shown elsewhere (vide notes to Art. 20) that the claimant by prescription should in all cases proceed against the State under Art. 78 and not against the Title holder or his heirs under Art. 20. In this connection the two following notes should be consulted.

NOTE 9. (Art. 78).

The question as to how the holder of land, otherwise than by title deed, is to defend himself against trespassers or persons who desire to oust him is of interest.

The Magistrate's Law (Provisional) of 1913, Arts. 24, 25 and 26, deals with this matter.

In the case of registered lands the holder who claims by prescription is entitled, under the last para of Art. 24, to sue the legal owner, who possesses a title deed, in the event of being ousted by force. He should sue for an order to compel the title holder to bring a formal suit for the property, and ask to have him dispossessed till he does so.

When the suit is brought as a result of the Civil Magistrate's order, the title holder will be a plaintiff, and the claimant by prescription will be in the right position to defend himself by proving 10 years continuous holding under Art. 20.

An alternative course would be (it is suggested) to sue direct in the Land Court for a title deed under Art. 78: to make the title holder a party to the suit: and to allege that, though actually out of possession, possession has been constructively continuous; since the title holder, having ousted the occupier by an illegal act, is a trustee for his interests.

In the case of lands for which no title deed has been issued the holder is in a difficult position, since the provisions of the Magistrate's Law appear to apply only to registered lands.

It has however been held in certain Beersheba cases, where registration is almost unknown, that, when neither side can produce a title deed, the holder who has been ousted can recover his land under Art. 24 of the magistratis Law.

Unregistered sale or mortgage deeds are treated by the Magistrates Courts as presumptively valid title deeds; though it appears that registration in the Werko register only is not regarded as having this force.

Hence, in the case of unregistered lands, the holder who has been ousted by force must, it would appear, meet the production of an unregistered document of title by the other side, with a demand for an order to compel his opponent to bring a formal suit for the land under the last para of Art. 24, or else by suit under Art. 78.

In this connection Note 6 to Art. 20 should be consulted, also note 10 to Art. 78.

NOTE 10. (ART. 78)

The view taken in these notes as to the scope of Art. 78 is not accepted without controversy. It is therefore advisable to give an outline of the alternative theory as to its proper use.

It proceeds from the position that Art. 78 can refer only to mahlul land, in spite of the general terms in which it is couched, because the heading of the chapter in which it occurs professes to deal with land of this kind.

From this position the following consequences flow.

(1) The adverse holder has no recourse against the title holder under Art. 78, or indeed under any article of the Land Code: unless

(2) he can show that he occupied the land when it was uncultivated under the conditions laid down in Art. 71, and therefore mahlul: but

(3) his heirs can sue under Art. 78 after his death, because they can plead heirship in addition to adverse occupation, a circumstance which is expressly provided for in Art. 8 of the Regulations as to Tapou Sanads of 1276.

This opinion is probably unsound for the following reasons:

In the first place it depends on a very arbitrary view of the force to be attributed to the heading of a chapter.

In the second it is entirely contrary to the policy of Art. 1 of the Regulations as to Title Deeds of 1276, which states that no one may possess State land without a title deed for any reason whatever.

As these regulations were passed two years after the Land Code became law, it is fair to assume that the provisions of the latter were supposed by the framers of the Regulations to make adequate provision for the case of the adverse holder. Hence they must have regarded Art. 78 as operative for this purpose.

In the third place, the view in question commits the legal solecism of giving to a man's heirs rights in excess of those held by their predecessor in interest.

In the fourth place the theory of recourse to Art. 78, if the occupier can show that the land was uncultivated under the comditions laid down in Art. 71 when he took possession, involves another breach of legal principle, in as much as it allows the said occupier to sue under a contract to which he was not a party. The contract in question is of course that between the State and the title holder.

ARTICLE 79.

Nothing shall be recovered in respect of diminution in value (noksan arz) or by way of rent (ejri misl) from a person who has arbitrarily occupied and cultivated vacant State or mevqulé land, as stated in the two preceding Articles and regularly paid the imposts on it.

NOTE 1. (ART. 79).

Effect of Provisional Law of Disposal.

Article 21 of the Land Code contains a similar provision, to cover the case of land which is not mahlul, and which has been occupied by a squatter. The protection which it affords the latter, if he has paid the State dues on the land, has been removed by Art. 14 of the Provisional Law of Disposal of 1329, which makes the squatter liable to pay back rent at the suit of the owner.

Art. 79 is apparently designed to protect the squatter in the same way against a demand for damages, or back rents, made by the State.

If this is its meaning it appears to be unaffected by art. 14 of the Provisional Law.

If however it is intended to have reference to the rights of a private plaintiff, such rights cannot arise in the case of land which is mahlul, and therefore, by definition, ownerless. They might arise under the first para of article 78 when the rightful pwner, who has been able to prove himself entitled to benefit by one of the legal excuses, has brought, a successful, suit. To this extent Art. 79 has been repealed by Art. 14 of the Provisional Law.

A squatter who obtains a title deed under second para of Art. 78, may be ejected by a missing heir under art. 75. Under Art. 79 such an heir could not claim damages, or back rents. Under Art. 14 of the Provisonal Law of Disposal he apparently can claim back rent, at any rate for the time which elapsed between the actual seizure of the land, and the time at which the squatter reported his occupation, and applied for a title deed.

It is clear that the law is stated in an exceedingly confused manner. Article 14 of the Provisional Law gives the rightful owner the right to claim back rents from the squatter. Can he make a similar claim when squatting took place in the reasonable belief that the land was mahlul and therefore ownerless?

This is the essence of the matter.

Under the old law the squatter was protected; provided that he paid his dues on the land to the State. Under the new law payment of dues does not protect him.

There is however a difference in equity between the case of the squatter who occupied in the belief that the land was mahlul, and that of the squatter who took without such belief.

It is probable that the Courts would hold that the latter is protected by Art. 79, and that to this extent the old Law stands unrepealed.

ARTICLE 80.

If a possessor of a field dies after sowing it, leaving no heirs entitled to succeed to it, the Official grants it to a person who has a right of tapou over it, or to some other applicant. The crops which have already come up in the field shall be reckoned as part of the estate of the deceased possessor, and the purchaser has neither the right to have them removed nor to claim any rent from the heirs. The same provisions apply to herbage which grows by cultivation or irrigation as to sown crops. As to herbage which has come up naturally without any labour on the part of the deceased, it does not pass to the heirs.

NOTE 1 (ART. 80.)

Explanatory.

The first paragraph of this article throws light on the meaning of the second para of Article 78 and explains the procedure contemplated when land becomes mahlul.

ARTICLE 81.

Vineyards and gardens made on the State land possessed by title-deed by planting, after taking possession, mulk trees and vines thereon with the leave of the Official, as also mulk buildings newly erected thereon, pass on the death of the owner of the trees, vines or buildings to the ownership of his heirs in the same way as his other mulk property. A fee in the nature of succession duty (intiqal) shall alone be charged upon the assessed value of the land upon which the trees are and the land shall be granted gratuitously to the heirs in proportion to the shares of the trees, vines and buildings which they respectively inherit, and the records in the registers deposited at the Defter Khané shall be amended accordingly and a note thereof made in the margin of the title-deeds given to the parties.

NOTE 1. (ART. 81.)

Inheritance of Quasi Mulk.

This article lays down that Quasi Mulk passes by mulk and not by mirie inheritance This has been noted in Note 4 to Article 25. The general incidents of Quasi Mulk property are discussed in the notes to that article and elsewhere.

ARTICLE 82.

If mills, enclosures, sheepfolds or other mulk buildings built on State land possessed by title-deed have fallen into ruin and leave no traces of building, the site on which they stood becomes subject to the right of tapou and will be given to the owner of the structures if he claims it, if not, to another. Provided always that if such land has passed in possession of the owner of the structures by inheritance, from his father, mother, grandfather, grandmother, children of his brothers or sisters of from his spouse, or otherwise, if he pays the fixed rent for it to the State he cannot be turned out or deprived of the possession of it.

NOTE 1. (ART. 82.)

Explanatory.

This article deals with two cases.

In the first the owner of the mulk accretions is not the owner of the land, and in the second he is. The words "or otherwise" in the second para appear to deprive the proviso, that the owner of the land and the accretions shall have acquired the latter by inheritance, of all meaning.

NOTE 2. (ART. 82.)

Explanatory.

It should be noticed that to make the article operative, the mulk accretions must have disappeared in the most complete manner.

NOTE 3. (ART. 82.)

Explanatory.

On complete disappearance of mulk accretions, when they are separately owned, Government can claim the land for agricultural use, and can deal with it under the rules by wich the right of Tapou is regulated. The owner of the structures is given first place in the chain of claimants to take the land on payment of its Tapou value. The claim of the actual owner of the land appears to be destroyed.

When however the structures and the land are in the same hands, the owner is unaffected by disappearance of the accretions, so long as he pays the fixed rent.

It does not appear that the right to hold on these terms is transferable. If it is, the effect of the article under discussion is to create a mulk holding in favour of the owner of the land and the vanished accretions.

ARTICLE 83.

If mulk trees and vines of a garden or vineyard planted on State land held by title deed afterwards wither away or are rooted up, and no trace of them is left, the site becomes subject to the right of tapou and will be given to the owner of the trees or vines if he claims it, if not to another. Provided that if the site has passed into the possession of the owner of the trees or vines by inheritance from his father, mrther, grandfather, grandmother, children of his brothers or sisters or from his spouse or in any other way, he cannot be dispossessed of it nor can his possession of it be contested.

NOTE 1. (ART. 83)

This article repeats article 82 for the case of accretions which take the form of plantations.

ARTICLE 84.

Summer and winter pasturing grounds held by title-deed which have not been used for three years consecutively without excuse, and of which the dues have not bees paid, become subject to the right of tapou.

ARTICLE 85.

Meadow land held by title-deed, on the produce of which tithe is taken, and has been taken *ab antiquo*, which has not been sown and of which the tithe has not been paid for three years consecutively without excuse, and has thus been left unproduction becomes subject to the right of tapou.

ARTICLE 86.

If when a person having a right of tapou over land desires to acquire it on payment of the tapou value, and a stranger to the family comes forward and seeks to take it for a sum in excess of the tapou value, his offer is not taken into consideration.

ARTICLE 87.

If after vacant land, whether State or mevqufé land, has been put up to auction and adjudged to the highest bidder another person comes forward and offers an enhanced price, the latter cannot for the reason of that the title-deed has not been yet handed over enter in and dispossess the former of the land which has been adjudged to him. Provided that if after such land has been given to anyone it is shown that it was given for a price very much less than its tapou value, the grantee shall be bound within ten years to make up the price to the amount of the tapou value at the time it was adjudged to him. In default of his doing so the purchase money paid by him will be returned to him, and the land shall be given to the applicant for it. After the expiration of the ten years from the time when the land was adjudged to him he can no longer be interferred with nor can the land be taken from him. These provisions apply also to those who, having a right of tapou, have taken vacant land on payment of its tapou value.

NOTE 1. (ART. 87.)

Ghabin el Fahish.

Sale by auction of mahlul land is absolute in favour of the auction purchaser; even before he obtains a title deed.

The only exception to this is provided by the case in which the auction price is scandalously inadequate.

Article 165 of the Mejelle defines "Ghabin el Fahish" in respect of real property as a defect in value to the extent of one fifth or more. This is the standard which the Courts would probably adopt in dealing with a case under Article 87.

NOTE 2. (ART. 87.)

Explanatory.

The State can force the auction purchaser to make up the value until 10 years from the sale. It has then no further power of interference.

Before the lapse of 10 years the State can presumably dispossess the auction purchaser, if he refuses to pay the difference in value due from him.

NOTE 3. (ART. 87.)

When the Tapou value has been inadequately assessed, the person who pays it is dealt with under the same rules as the auction purchaser.

ARTICLE 88

A tapou official in a Qaza cannot acquire vacant land or land which has become subject to the right of tapou during the duration of his service, nor give it to his children, brother, sister, father, mother, wife, slave of either sex, or any of his dependents. He can only acquire possession of land which has devolved upon him by inheritance. If he has a right of tapou he must obtain possession of the land in the proper way through a tapou official of another Qaza.

ARTICLE 89.

If a building, standing on State land dedicated to a certain object falls into ruin leaving no traces and if the trustee (mutawelli) does not repair it and pay the State the ground rent, the place is taken from him and given to whomsoever wishes to buy it. But if the trustee repairs the building or pays the rent, there

shall be no interference but it shall remain in his hands. The same provisions apply to places where the site is mevqufé and the building dedicated to another object.

NOTE 1. (ART. 89.)

Explanatory.

This article deals with two cases. The first is that of mirie land which has been made Wakf (thus comming into the Takhsisat class), and carries mulk accretions appertaining to the Wakf. The second is the case of state land carrying buildings which have been dedicated, while the land itself remains under the rakaba of the State.

NOTE 2. (ART. 89.)

Avoidance of liability by trustee.

In both the cases noted, the mutawalli or trustee of the wakf can avoid liability to the State by, either, repairing the building, or, by continuing to pay the rent assessed on the property in lieu of tithe.

NOTE 3. (ART. 89.)

Effect of Provisional Law.

As we have seen (vide Art. 25) buildings erected on Mirie land, with the acquiescence or consent of the State, became the mulk property of the person who built them. They could therefore be dedicated apart from the land. This state of affairs continued till the passage of the Provisional Law of Disposal of 1329. Under art. 5 of that law, buildings put on mirie land follow the law of the land. In other words they cannot be made Wakf.

Hence Article 89 only applies to buildings erected prior to the passage of Provisional Law referred to.

ARTICLE 90.

If a vineyard or orchard on State land, the vines and the trees of which are dedicated to a certain object, is ruined and no trace of the tree and vines remains, and the trustee leaves them abandoned for three consecutive years without excuse, and does not pay the fixed ground rent, and does not restore

the property to its original state by planting trees and vines, the laud becomes subject to the right of tapou. The same provisions apply to places where the site is mevqufé, and the trees or vines dedicated to another object.

NOTE 1. (ART. 90.)

This article makes provision for the case of plantations on State land which are dedicated to a Wakf on the same lines as the preceding article.

BOOK II.

LAND LEFT FOR THE USE OF THE PUBLIC AND DEAD LAND.

CHAPTER I.

LAND LEFT FOR THE USE OF THE PUBLIC.

ARTICLE 91.

The trees of woods and forests called "baltalik" assigned *ab antiquo* for the use and for the fuel of a town or village shall be cut by the inhabitants of such town or village only, no one of another town or village can cut wood there. So also with regard to woods and forests assigned *ab antiquo* for the same purpose to several towns or villages, the inhabitants of such places alone shall cut wood there and not the inhabitants of other places. No due shall be taken in respect of such woods and forests.

ADDITION. 10 Rabi' ul Awwal, 1293-3 March, 1292.

If it is proved that the inhabitants of another village have encroached upon or cut wood from a baltalik assigned to the inhabitants of a village, having had no right to do so, the standing value of the trees which have been cut or uprooted shall be collected from those who have wrongfully interfered or cut them and the money so collected shall be divided amongst all the inhabitants of the village who have the right to cut wood from the baltalik.

NOTE 1. (ART. 91.)

Explanatory.

The importance of the qualifying words "assigned ab antiquo" will be discussed under Article 97.

NOTE 2. (ART. 91.)

Explanatory.

Metrovki is defined in article 5; and the Notes on that Article give a brief account of the subject.

NOTE 3. (ART. 91.)

Explanatory.

Baltalik means land for the axe.

ARTICLE 92.

Neither individual nor joint possession of part of a wood or forest assigned to the use of the inhabitants of a village can be given to anyone to make it into a private wood or to cut it down and plough up the ground for cultivation. If anyone acquires such possession the inhabitants can at any time stop it.

NOTE 1. (ART. 92.)

Unchangeable nature of assigned land.

This Article should be read with Article 102. The Law is that land assigned to a community for a given use cannot be acquired for any purpose by an individual, and must be put to the use contemplated in the assignment for ever.

Prescription canot be relied on as a defence to an action brought by or on behalf of the community to eject a squatter, or to restore the ancient usage.

ARTICLE 93.

No one shall erect buildings or plant trees on a public road. If anyone does so they shall be pulled down or uprooted. In general no one shall do any act of possession on a public road, and if anyone does so he shall be stopped.

NOTE 1. (ART. 93.)

Assignment not necessary in case of public rights.

Metrouki left to the use of the public is not necessarily characterised by assignment. Proof of ancient user is sufficient to establish the legal existence of this kind of Metrouke.

NOTE 2. (ART. 93.)

Right of suit.

Any member of the public can sue in respect of the infringement of a public right.

NOTE 3. (ART. 93.)

Mejelle on user of public roads.

Mejelle Article 926 states that every one can use a public road for passage so long as he does not endanger others or their property.

Mejelle Art. 927 forbids hawkers from making stands on a public road without leave from the Goverment Vide also Articles 932, 933, 937, which deal with riding and driving animals on a public road.

ARTICLE 94.

Places such as those assigned for worship, and open spaces left, either inside or outside towns or villages, for the use of the inhabitants for putting vehicles or collecting cattle are treated in the same way as public roads, and can neither be bought nor sold, trees shall not be planted, nor shall buildings be erected, upon them. No one can exercise a right of exclusive possession over such places. If anyone does so the inhabitants can stop him from doing so.

NOTE 1. (ART. 94.)

Rights to "Standings".

This Article deals with (a) places **assigned** for worship and (b) spaces left (but not necessarily assigned) for collecting cattle and standing vehicles.

In the case of (b), although the Article does not state that user must be ab antiquo, proof of such user would clearly establish the right. If the land in (b) is of the kind which might be held by title deed i.e. agricultural land, which has been diverted to the use of the village, it is possible that a prescription of 10 years would suffice to establish the right of the community either against an individual, or against the State (Vide arts. 20 and 78). The point is however somewhat doubtful and does not appear to have been judicially decided. In this connection Art. 8 which forbids the grant of title deeds in common would have to be considered.

ARTICLE 95.

Places registered at the Delter Khanė as having been left and assigned *ab antiquo* for use as a market, or for a fair, cannot be bought or sold, nor shall a title deed giving a right to exclusive possession of such places be given to anyone. If anyone enters into possession of such a place he shall be stopped, and the dues, whatever they may be, for such places shall be taken by the Treasury.

NOTE 1 (ART. 95.)

Effect of Registration.

Places used for markets and fairs, and which are registered as such, are dealt with in this Article In such cases the State has a right to the dues

Places similarly used, but which are not registered, are not dealt with by the Article.

The framers of the Code do not seem to have contemplated the existence of sites for fairs and markets in which the State has no rights of collection.

Presumably, the community which claims a right to such places and their dues would be able to establish it in the Courts by proof of ancient user, on the analogy of Article 96.

ARTICLE 96.

Threshing floors set apart *ab antiquo* for the inhabitants of a place in general, shall neither be sold nor cultivated. No one shall be allowed to erect any building thereon. Possession thereof cannot be given by the title-deed either to an individual, or to persons jointly. If anyone takes possession of such a place the inhabitants can eject him. Inhabitants of other villages cannot bring their crops and thresh them on such threshing floors.

NOTE 1. (ART. 96.)

Threshingfloors - Proof of right. -

The right to threshing-floors is to be established by proof of ancient user. Assignment is not necessary.

ARTICLE 97.

In a pasturing ground (mera) assigned *ab antiquo* to a village, the inhabitants of such village only can pasture their animals. Inhabitans of another village cannot bring their animals there A pasturing ground assigned *ab antiquo* to a group of two. three or more villages in common shall be the common pasture of the animals of such villages, no matter within the boundaries of which of the villages the pasturing ground is situated, and the inhabitants of one of the villages cannot stop the inhabitants of another of the villages from using it. Such pasturing grounds assigned *ab antiquo* for the use of the inhabitants of one village exclusively, or of several villages collectively, can neither be bought nor sold, nor can sheepfolds, enclosures, nor any other buildings be erected upon them; nor can they be turned into vineyard or orchards by planting vines or trees on them. If anyone erects buildings or plants trees thereon, the inhabitants may at any time have them pulled down or uprooted. No one shall be allowed to plough up and cultivate such land like other cultivated land. If any one cultivates it he shall be ejected, and the land shall be kept as a pasturing ground for all time.

NOTE 1. (ART. 97.)

No presumption of assignment.

It is to be observed that assigned pastures and unassigned pastures can exist side by side in the same village area (vide Art. 105). This throws upon the asserter of an assignment the burden of proving that it took place. For this purpose, when the actual deed cannot be produced, registration as assigned pasture would probably be accepted by a Court as sufficient. There is clearly no presumption in favour of assignment. Indeed Art. 105 shows that the presumption is the other way.

NOTE 2. (ART. 97.)

Nature of deed of assignment.

The assignment alleged must be *ab antiquo*. This makes it unlikely that an original deed of assignment can ever be produced which purports to originate the holding. The deed would have to be in the nature of a comparatively recent confirmation of rights anciently enjoyed.

NOTE 3. (ART. 97.)

Prescription barred by Art. 102.

The rights of a community to its assigned pasture are protected from infringement by an individual or by the State by art. 102, which states that no lapse of time will suffice to protect such infringement.

NOTE 4. (ART. 97.)

Pasture to a suit for assigned Metrouke.

Art. 1645. of the Mejelle states that a "limited" community can only sue by having all its members joined as Plaintiffs. An "unlimited" community can on the other hand sue through "some" of its inhapitants This limitation of the rights of a small community practically destroys its right of suit, as litigation can be indefinitely prolonged by pleas of non-joinder by the opposite party. A limited community is one which does not exceed hundred persons.

NOTE 5. (ART. 97.)

Assignment involves specification of area.
Rights to pasture cannot be acquired by prescription.

Art. 99 states that when land has once been assigned as pasture the area so assigned cannot afterwards be altered. This means that an assigned area is also a defined area. This again indicates that the burden of proving an assignment rests on the community which asserts it. There is a note to this effect in Young's Corpe de Droit Ottoman vi. p. 72. The note states that a community cannot acquire a right to pasture by prescription. This appears to be the fact. The only right of acquisition by prescription against the State, is that defined in art. 78. The lands dealt with in that article are mirie and mevkufé lands. Metrouke lands do not fall whithin these classes; nor do pasture lands, whether assigned or unassigned The same result may be reached from another point of view. The pastures in suit must be either assigned or unassigned. If unassigned art. 103 applies and brings the land under Chapter II. Book II dealing with lands owned by the State which are not mirie, and therefore not acquirable by prescription under Art. 78.

NOTE 6. (ART. 97.)

Arabic equivalent for the word "assigned".

The word "assigned" is given in Arabic as "Mukhassas" or "set aside for". The word does not in itself imply an act of assignment, but, as already indi-

cated, the possible co-existence of unassigned with assigned pastures throws the onus of proving assignment on the asserter. The circumstance that the area of an assigned pasture cannot be altered necessitates the assumption that an assigned area is a definite area, and this in turn involves the assumption that the area in question was originally defined by a document of assignment.

ARTICLE 98

So much assigned land as has been left and assigned as such *ab antiquo* is deemed to be pasturing ground. Delimitations subsequently made are of no validity

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NOTE 1. (ART 98.)

Vide Note 5 Art 97.

ARTICLE 99.

Whatever number of animals of a chiftlik situated within a town or village have grazed *ab antiquo* in the common pasture of a town or village such number cannot be prevented from continuing to graze there. Pasturing grounds, other than common pasturing grounds of towns or villages, assigned to such chiftlik exclusively *ab antiquo*, are not considered as metrouké land, as pasturing grounds left and assigned *ab antiquo* to the inhabitants of towns and villages are. In such a chiftlik pasturing ground the possessor of the chiftlik to whom it belongs can alone pasture his animals. He can stop others from bringing animals there to pasture. Right of possession of this last kind of pasturing grounds is acquired by title deed, and it is subject to the same procedure as other State land. In respect of such chiftlik pasturing grounds a yearly tax is taken, equivalent to the tithe.

NOTE 1. (ART. 99.)

Chiftlik pasture.

The common pastures under reference may be assigned or unassigned (Vide Art. 105)

The article considers the rights of the owner of an estate (Chiftlik) within a village area. It states that such an owner can continue to exercise an ancient right of pasturage, to the extent sanctioned by ancient user, in the common pastures.

If other pastures have been assigned to him they are not metrouke within the meaning of this Chapter. He should hold a title deed for them, and they are to be reckoned as mirie lands. This indicates that they can be acquired from him by private prescription based on 10 years under Art. 20.

ARTICLE 100.

Whatever number of animals an inhabitant of a village has been accustomed to send to a pasturing ground, whether it be that of a single village or common to several, the succeeding offspring of such animals cannot be prevented from grazing there also. An inhabitant of a village has no right to bring animals from elsewhere there and so prejudice the animals of his fellow inhabitants. A person who comes from elsewhere to a village and takes up his residence there and builds a house can bring animals of his own from elsewhere and pasture them on the pasturing ground of the village, provided that he does not prejudice the animals of the village. Anyone who acquires the dwelling of an inhabitant of a village can pasture without hindrance, the same number of animals on the pasturing ground of the village as did the owner of the dwelling.

ARTICLE 101.

The inhabitants of the places to which they were assigned have the sole and exclusive enjoyment of the herbage and water of summer and winter pastures registered at the Defter Khané and assigned *ab antiquo* to the inhabitants of one village exclusively, or to those of several in common. The inhabitants of other villages who are strangers connot enjoy any benefit from the herbage and water of such pasture. Dues called yaylakié and kishlakié are taken for the State from the inhabitants who enjoy the benefit of the herbage and water of this kind of summer and winter pasturing grounds according to their ability to pay (tehammul). These summer and winter pastures cannot be bought and sold, nor can exclusive possession of them be given to anyone by title deed; and they cannot be cultivated without the consent of the inhabitants.

NOTE 1. (ART 101)

Summer and winter pastures.

The pastures with which this article deals must be distinguished from the assigned pastures of Art. 97 and the unassigned pastures of Art. 105.

The words "registered and assigned *ab antiquo*" probably mean little more than registered, since registration will probably be taken as proof of assignment, once ancient user is established. The registration in this case must, however, be such as to distinguish the kind of pasture to which it refers. If it fails to do this, it is not easy to say to which class a Court would assign pasture lands, in default of other evidence on the point. In such a case the fact that a pasture is used only in the summer, or only in the winter, might be a deciding factor.

These pastures are reckoned as metrouke, but may be cultivated with the consent of the inhabitants.

NOTE 2. (ART. 101.)

Beduin tribes mainly interested.

It may be presumed that the persons chiefly interested in the provisions of this article are members of the Beduin tribes, who wander in search of pasture and water, and do a little sporadic cultivation when the rainfall permits.

ARTICLE 102

Lapse of time is not taken into consideration in actions relating to land which has been assigned and left *ab antiquo* to the use of the public, such as woods and forests, public roads, sites where bazaars and fairs are held, threshing floors, and summer and winter pasturing grounds.

NOTE 1. (ART. 102.)

Reference to Mejelle.

Article 1675 of the Mejelle states that lands from which the public benefits cannot be acquired by adverse possession. It gives as an example the case of a person who has held the common pasture land of the village for 50 years. and states that he has no claim to plead a right based on prescription. Art. 102 repeats and amplifies this provision.

NOTE 2. (ART. 102.)

The State is bound by assignment.

Art. 102 holds against the State as well as against an individual. The only way in which the State can legally acquire land protected by this article is through special enabling legislation, which is not in conflict with the terms of the mandate and which provides for the maintenance of the existing rights of the inhabitants of Palestine.

CHAPTER II.

DEAD LAND.

ARTICLE 103.

The expression dead land (mevat) means vacant (khali) land, such as mountains, rocky places, stony fields, pernallik and grazing ground which is not in possession of anyone by title deed nor assigned *ab antiquo* to the use of inhabitants of a town or vilage, and lies at such a distance from towns and villages from which a human voice cannot be heard at the nearest inhabited place. Anyone who is in need of such land can with the leave of the Official plough it up gratuitously and cultivate it on the condition that the legal ownership (raqabé) shall belong to the Treasury The provisions of the law relating to other cutivated land shall be applicable to this kind of land also Provided that if any one after getting leave to cultivate such land, and having had it granted to him leaves it as it is for three consecutive years without valid excuse, it shall be given to another. But if anyone has broken up and cultivated land of this kind without leave, there shall be exacted from him payment of the tapou value of the piece of land which he has cultivated and it shall be granted to him by the issue of a title-deed.

NOTE 1. (ART. 103.)

Reference to Mejelle Art. 6.

Dead land is defined in art. 6 and also in the Mejelle Art. 1270. The definition in this article is not as complete as that in art. 6.

NOTE 2. (ART 103.)

Purpose of definition.

The definition excludes (a) all lands held by title deed, and (b) all lands which have been assigned *ab antiquo* to a town or village.

It is also framed so as to exclude village pasture lands which adjoin it by the provision that it shall lie beyond the reach of a loud call from the nearest inhabited site. Lands lying within this limit, which are in a rough state, are regarded as being reasonably claimable by the inhabitants as pasture, though not necessarily as assigned pasture.

In the absence of any natural or artificial boundaries, and in the absence of a cadastral survey, it is difficult to see how this quaint definition could have been improved upon.

NOTE 3. (ART. 103.)

Effect of extension of inhabited sites.

The Code does not contemplate any great extension of the village sites which existed when it was framed (Vide art. 31). Of late years the sites of many towns and villages have, however, been greatly extended, and new inhabited-sites have been formed This means that the limits of the Mewat have retreated with the advance of habitation. The process results in the creation of intermediate land which cannot be brought under any of the classes dealt with by the Code.

As the rakaba of such land has never been transfered it apparently remains with the State.

It might however be held that, under the conditions referred to, the boundaries of towns or villages adjoining the Mewat must be held to enlarge with the area reachable by the human voice Whatever view is taken the result is that the mewat lands of the State are being steadily reduced by the subtraction of areas which, are often of great and increasing value. Legislation is clearly required to deal with the situation.

NOTE 4. (ART. 103.)

Effect of Mewat Lands Ordinance.

The Mewat Land Ordinance (Gaz. 38, 1-III-21.) amends Art. 103, and deprives the person who breaks up or cultivates Mewat, of all right to claim a title deed. It further renders him liable to prosecution for trespass. This sets aside the provisions of Art. 103. by which the squatter on Mewat can claim a title deed on payment of the Tapou value.

NOTE 5. (ART. 103.)

What constitutes improvement.

Mewat land may be granted for cultivation on application. Land which remains uncultivated at the end of three years from the date of the grant is resumable, and available for grant to some one else. In this provision the land Code follows Art. 1273 of the Mejelle, except that the latter goes on to state that unimproved land lying on the middle of improved land goes with the latter.

Improvements are defined in Mejelle Arts. 1275-1276.

NOTE 6. (ART. 103.)

Enclosure.

The Mejelle recognizes a right arising from enclosure, which gives the person who makes the enclosure a right to claim a grant (such as that contemplated in art. 103.) for three years. This right has been done away with by the Mewat Land's Ordinance. On this head Arts. 1277-1278-1279 of the Mejelle should be consulted.

NOTE 7. (ART. 103.)

Derivation from Mejelle.

The provisions of Art. 103. to the effect that the rakaba of mewat land which has been granted to an individual must remain with the State is taken from Art 1272 Mejelle. Mewat land which is acquired under Art. 103 becomes, of course, mine.

NOTE 8. (ART 103.)

Mewat Land.

The Law of Tapou Sanads (7 Sha'ban 1276) lays down that land which has once been tilled, but which has subsequently remained uncultivated, is not included in the definition of Mewat and cannot be granted under the provisions of Art. 103. It can only be disposed of by sale (Art. 5).

NOTE 9. (ART. 103)

Art. 5 of the Law of Tapou Sanads, alluded to in the foregoing note, goes on to state that, in the case of a person who cultivates mewat land without permission, the Tapou value is to be calculated as the value at the time of clearing; provided that the cultivator reports his occupation within 6 months. If he delays reporting his occupation for a longer period, the Tapou value will be assessed on the value at the time of report.

ARTICLE 104

Anyone can cut wood for fuel and for building on mountains which are "moubah", which are not woods or forests assigned *ab antiquo* to the public, without anyone being able to prevent him. Trees cut there and herbage collected there are not titheable. No portion of such "moubah,, mountains can be detached and given possession of by title-deed to anyone, either individually or jointly, by the Official in order that it may be made (private) woodland.

NOTE 1. (ART. 104.)

Incidents of Moubah.

This article refers to lands over which the public has the right to take and cut wood. It is called "Moubah", and is distinguished from the "Baltalik" of art. 91 in that it has not been assigned, and is not reserved for any given community.

Art. 13 of the Tapou Law forbids the grant of Moubah to an individual by the Tapou department

It cannot be acquired by prescription.

A great deal of this land has now been converted into forest areas under the provisions of the Forests Ordinance No. 5 of 1926.

ARTICLE 105.

If there is a grazing ground (otlak) within the boundaries of a village, other than the pasturing grounds assigned to the use of inhabitants of towns or villages, the inhabitants of that village shall have the enjoyment of the herbage and water there and the right to send their animals to graze there, without having to pay any fee for so doing. Those who put in animals from elsewhere and profit by the herbage and water of the grazing ground shall pay the State a suitable grazing fee and the inhabitants of the village cannot prevent them nor claim any share of the grazing fee.

NOTE 1. (ART. 105.)

Incidents of unassigned pastures.

On comparing this art with art 97 it will be seen that assigned and unassigned pastures can coexist in the same village area. It follows that, when assignment is unproved, the land must be placed in the unassigned class. In other words assignment cannot be presumed.

This land cannot be acquired by prescription.

ARTICLE 106.

Trees growing naturally on Mulk, State, mevqufé, metrouké or mevat land cannot be possessed by tapou. But trees growing naturally on State, or mevqufé are possessed as being appurtenant to the land, as stated in the chapter dealing with possession.

BOOK III.

UNCLASSED LAND.

ARTICLE 107

Minerals such as gold, silver, copper, iron, different kinds of stone, gypsum, sulphur, saltpetre, emery, coal, salt and other minerals found on State land, by whomsoever it is possessed, belong to the Treasury. The occupier of the land cannot take possession of any of them, nor claim any share of any mineral which is discovered. Similarly all minerals found on mevqufé land of the takhsisat kind belong also to the Treasury, neither the occupier of the land nor the wakf authority can interfere with regard to it Provided that in the case of both State and mevqufé land the possessor must be indemnified to the extent of the value of the land which ceases to be in his possession and under cultivation owing to the working of the minerals. In the case of metrouké and mevat land one fifth of the minerals found belongs to the Treasury and the rest to the person who finds them. In the case of true wakf land the minerals belong to the Wakf. Minerals found in mulk land in towns and villages belong entirely to the owner of the soil. Fusible minerals found in tithe paying (ushrie) and tribute paying (kharajie) land belong as to one fifth to the Treasury, and the rest to the owner of the soil. As regards ancient and and modern coins and treasures of all kinds of which the owner is unknown, found in any kind of land, the legislation which regulates them is contained in the books of the Sacred Law (fiqh).

NOTE 1. (ART. 107.)

Recent legislation on minerals.

The Order in Council of the Gazette of the 1st Sept. 1922 Arts 12 (b), and 13, vests all mines and minerals in the High Commissioner, and gives him the power to grand Concessions for their working.

The Mining Ordinance as published in the Gazette of 1st. July 1925. lays down that no one may prospect or mine without license.

It provides for the exclusion pf certain specified areas (e g , town areas) from the operations incident to mining and prospecting, and gives the High Commissioner power to add to these areas at his discretion.

It lays down that a miner or prospector must obtain the leave of the owner of the land, or, failing that, must provide such security to compensate him for damage as the Controller of Mines may require. The Order in Council lays down that the vesting of all mines and minerals in the High Commissioner is subject to any right existing at the date of the Order held in virtue of a valid concession.

NOTE 2. (ART. 107.)

Former statutes.

The chief statutes which were formerly operative in this connection are;

(a) Law of 14 Safar 1324, (Young vol. vi. p. 17).

(b) Law of 23 Nebi al akpir (Young vol. II. p. 389).

ARTICLE 108.

One who slays another cannot inherit land from his victim nor can he have any right of tapou over his land.

ADDITION. 28 Rabia II, 1292 — 22 May 1291.

Nor can the land of the victim devolve upon those who helped the slayer, nor have they any right of tapou over the land.

ARTICLE 109.

The land of Moslem cannot devolve by inheritance on a child, grandchild, father, mother, brother, sister, or spouse of his who is not a Moslem, nor can the land of one who is not a Moslem devolve by inheritance on a child, grandchild, father, mother, brother, sister, or spouse who is a Moslem. One who is not a Moslem cannot have the right of tapou over the land of a Moslem, nor can a Moslem have the right of tapou over the land of one who is not a Moslem.

NOTE 1. (ART. 109).

No inheritance between different Religious Communities.

There is no right of inheritance, and there is no right of Tapou between members of differerent religions.

NOTE 2. (ART. 109.)

The whole attitude of the law of succession as regards foreigners and non-Moslems has been changed by the Succession Ordinance published in 1923 in Gazette 88 after the Occupation.

Art. 22 of that Ordinance lays down that no person shall be deemed to be under a legal incapacity to inherit by reason only of his nationality or religious belief.

NOTE 3. (ART. 109.)

The sate of affairs indicated in Art. 109 was modified by the Law of 7 Moharram 1293 (23 January 1876) which placed all Ottoman subjects on the same footing as regard the acquisition or transfer of land.

ARTICLE. 110.

The land of an Ottoman subject cannot devolve by inheritance on any heir of his who is a foreign subject, nor can a foreign subject have a right of tapou over land of an Ottoman subject.

NOTE 1. (ART. 110)

This Art. has passed through certain modifications and has now been rendered obsolete by Art. 22 of the Succession Ordinance published in Gezette 88, of 1923.

In 1284 a law was passed giving foreigners all the rights of Ottoman subjects in the matter of possessing immovable properties; provided that they they conform to the existing laws of Succession alienation etc.—pay all dues—and submit to the jurisdiction of the Ottoman Courts.

By a ruling dated 7 February 1330, the Shorai Daulat Council modified this statement of the law by holding that foreigners were not entitled to benefit by the prodisions of Arts. 78 and 103. These articles are those which deal with prescription, and the clearing of Mewat respectively.

NOTE 2. (ART. 110)

The Majlis Wakala in its meeting of 24 Rabia Akhar 1290 (June 1289) lays down that a Turkish woman who has married a foreigner cannot transmit her immovable property to her husband, or to children by him, on her decease; unless the Govt. to which her husband was subject has accepted the procedure laid down by the Turkish Govt. concerning the acquisition of property.

NOTE 3. (ART. 110.)

Art. 110 was again amended on the 24 Rabia Akhar 1290. The amendment states that the children of a foreigner who are Turkish nationals have a right to succed to their father in his Miri lands. The father has however no corresponding right of inheritance from his children.

The Imperial Iradeh of 25 May 1324, gives foreigners a right of succession inte-rse in Mulk property, and immovables which are subject to a servitude.

ARTICLE 111.

The land of a person who has abandoned his Ottoman nationality without obtaining official permission from the Ottomman Government does not devolve by inheritance on his children, grandchildren, father, mother, brothers, sisters, or spouse who are foreign subjects, but immediately become mahlul and, without enquiry whether there is anyone with a right of tapou over it, it is put up to auction and adjudged to the highest bidder. But if a man abandons his (Ottoman) nationality by obtaining permission in the proper way his land does not become mahlul but remains in his possession as he will enjoy all the rights defined by the law giving the right of possession to foreigners on condition that the State of which he has become a subject has signed the protocol attached to that Law.

NOTE 1. (ART. 111.)

This Art. appears to be obsolete in view of the provisions of Art 22 of the Succession Ordiuance.

It is of course operative for transfers which took place by succession before it was set aside.

The amending legislation noted in the comments of the two preceding articles should also be consulted.

It should be observed that under article 5 of the amending law of Safar 1284 the privileges, which are granted by that law to foreigners, are dependant on the prior acceptance of it by the power concerned.

NOTE 2 (ART. 111.)

When a Turkish woman married a foreigner she became ipso facto a national of the Govt. to which her husband was subject. Hence on her death her mirie property could not pass to her husband or other foreign relative (including her children).

NOTE 3. (ART. 111.)

The corporate bodies which can own immovable property are defined in the Provisional Law of 22 Rabia El Awal 1331 (16 February 1328).

Under Art. 8 of the Land Transfer Ordinance of September 1920 any banking Company may take a mortgage of land; but may not acquire land in excess of that required for its business. Similarly any Commercial Company registered in Palestine can, with the consent of the Registrar, acqaire such land as is necessary to its undertaking.

Under Art 122 a monastery may hold land.

ARTICLE 112.

A slave, of either sex, who, with the consent of his master and through the Official, has acquired possession of land cannot either before or after being freed be dispossessed of it by his master nor can the latter intermeddle in it in any way. Nor, if the master die before the slave is freed, can his heirs in any way interfere with such land. If a slave, of either sex, die before being freed, as the land cannot devolve on anyone by inheritance, no one except co-possessors, persons jointly interested or inhabitants of the village who have need of it shall have any right of tapou over it, unless there are mulk trees or buildings on it. If there are any mulk trees or buildings on the land, the master of the slave shall have preference over every other person seeking to acquire it, and shall have his right for a period of ten years on payment of the tapou value If the slave dies after being freed the land will devolve by inheritance on his free heirs.

Failing them if there are no mulk trees or buildings on the land neither his master who freed him nor the master's children shall have a right of tapou but it shall be given to his own free relations who have a right of tapou on payment of the tapou value. Failing them it shall be put up to auction and adjudged to the highest bidder. But if there are mulk buildings or trees on the land it shall be given on payment of the tapou value to such of the heirs, having a right of tapou of the first degree, who have inherited the mulk trees and buildings.

ARTICLE 113.

Transfer of State and mevqufé land brought about by duress, exercised by one who is in position to give effect to his threats, is void. If a person who through such duress has become possessed of land transfers it to another, or if at his death it has devolved by inheritance on his heirs as hereinbefore designated, or if on his death without leaving heirs it becomes mahlul, the transferor,

the victim of the duress, or his heirs after his death can bring an action based on the duress. But if he dies without leaving heirs the land shall not be treated as mahloul, and it remains in the hands of the actual possessor.

NOTE 1. (ART. 113.)

Duress discussed.

Duress is defined in arts. 941-949 of the Mejelle. It is of two kinds — major (mulgi) and minor (ghair-mulgi) —. The first kind consists in compelling a person to act in a certain way by fear of death or grievous bodily harm. The second kind deals with actions induced by fear of pain, distress, or imprisonment. Duress must proceed from a person who is able to execute his threat (Mej. 1003), and the person compelled must be persuaded that the threat will be executed if he fails to comply (Mej. 1004).

The action caused by the Duress must take place in the presence of the person from whom duress proceeds or in the presence of his agent. (1005).

Minor duress can be pleaded to set aside transactions entered into by word of mouth; but major duress must be proved to set aside transactions entered into by deed (Mej. 1006-1007).

NOTE 2 (ART. 113.)

An excepted variety of duress.

As to duress which stops a person from bringing an action by reasons of powerful influence which renders legal recourse impracticable, vide art. 1663 Mej. and Note 3 to Art. 20 of the Land Code.

NOTE 3. (ART. 113.)

The taker by duress is regarded as a trustee.

The position of a person who has aequired property by duress is that of a trustee. His heirs are in the same position. The liability only ends by the death of the transferor without heirs. No prescription canebe pleaded in defence to a plea of duress.

NOTE 4. (ART. 113.)

Both major and minor duress are included in the article.

The wording of the opening lines of this article reads literally "Whoever procures a transfer by force and duress applied by one who can execute his threat". It will be noted that this does not draw the distinction between major and minor duress which appears in the Mejelle. It is therefore open to the courts to hold that either form suffices to cancel a transfer by deed The provisions as to the effect of duress on transfers made verbally need not be considered as such transfers would not in any case be accepted in a Court.

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ARTICLE 114.

Transfer of State or mevqufé land on conditions regarded as unlawful (mufsid) by the Sharia Law, as for instance a transfer on condition that the transferee shall look after and maintain the transferor until the death of the latter, is invalid. Consequently if any one transfers land to another on unlawful condition, or if on the death of the latter it has devolved py inheritance upon his heirs, the original transferor, or on his death his heirs, has the right to bring an action claiming the cancellation of the transfer on the ground of illegality on payment of its value.

AMENDMENT of 18 Safar, 1306-12 October 1304.

Transfer of State land held by tapou on condition that the transferor shall be provided for until his death by the transfere is valid and the condition is permissible. When the transfer has been carried out, and so long as the transferee is ready to provide for the transferor, the latter cannat take back the land. But if the transferor claims that the transferee is not providing for him in conformity with the contract and if the transferee disputes this, recourse is had to experts to ascertain the facts and if the claim of the transferor is found to be well founded by the competent court after trial, the land will be given back to him. If the transferee dies before the transferor, the heirs who have the right of inheritance to the land will be bound to provide for the latter until his death. If they do not discharge this obligation the transfeor shall have the right to take back the land that has passed to the heirs. If the transferee dies without leaving heirs with the right to inherit the land it shall not be given to any one else but shall be returned to the transferor as before. So long as the transferor lives neither the transferee nor his heir shall have power to alienate the land to another. Hereafter transfers executed with such conditions shall be valid, and the condition shall be inserted in the title-deed. Actions based on such conditions which are not so recorded shall not be heard.

ARTICLE 115.

Although a creditor cannot seize land in possesion of his debtor against the debt; he force the latter by taking the appropriate steps to sell it to another and discharge the debt out of the purchase money; at the death of the debtor whether he has any movable property and other effects or not, the land in his possession shall pass to his heirs with the right of inheritance; if he leave none it shall be subject to the right of tapou and granted on payment of the tapou value to those who have the right of tapou, and in default of such it shall be put up to auction and adjudged to the highest bidder.

NOTE 1. (ART. 115.)

This Art. (a) protects a Mirie holder from seizure of his land for debt during his lifetime, and (b) after his death extends the same protection to his heirs, and to persons taking by right of Tapou.

(a) has been modified by the law of the 28th Dec. 1871 (15 Sheval 1288), which made it possible for the creditor, who has obtained a decree for the debt, to have the debtor's property sold in satisfaction, with the exception of a house and land sufficient for the latter's maintenance. On the death of the debtor such a decree can be executed against his heirs to the extent of their inheritance of the deceased's mirie property

Previous to the date of this law an Iradeh Sanieh of 1278 authorised the sale of lands surplus to the cultivator's essential requirements for the recovery of arrears of land taxes due to Govt., but not for similar arrears due to a tithe farmer.

As to (b)—Art. 16 of the Provisional Law of Disposal of 1329-1331, has rendered Art 115 obsolete by enacting that, either during the debtor's lifetime, or after his death, mirie property may be sold for debt, even it becomes mahlul. Land essential for maintenance must however be excepted from sale.

Art. 115 has no application to mortgaged property.

ARTICLE 116.

State and mevquié land cannot be pledged; provided always that if a debtor, against the debt and through the Official, transfers land in his possession to his creditor, on condition that the latter will return it to him whenever he discharges the debt, or if he makes a transfer with right of redemption called feragh-bil-wafa, that is to say that whenever he discharges the debt he shall have the right to claim re-transfer of the land, the debtor cannot without previously discharging the debt, whether there be a time fixed or not, force a re-transfer of the land; he can only have it back after complete discharge.

NOTE 1. (ART. 116.)

This Art. limits the procedure by which mirie land can be pledged for debt to an outright transfer subject to a condition of re-transfer on repayment.

The variety called "firagh bil wafa" gives the debtor the right to claim re-transfer whenever he elects to pay off his debt.

The law of 28 Rejeb 1291 (10 September 1874), which deals with mulk property only, lays down in Chapter II Art. 19 that a condition which is not mentioned in the mortgage deed may not be proved.

This was not the case with mirie property until the passage of the Provisional Laws of Mortgage and Disposal. Hence, until the passage of these laws, it was not illegal to modify the conditions of a transfer, which purported to be an outright sale, by a separate agreement to accept redemption.

The Provisional Law of Mortgage is dated 1st Rabi Uthani 1331 (25 February 1328), and the date of the Provisional Law of Disposal is 5th Jumada II Awwal 1331 (30th March 1329). Art. 4 of the last named law forbids the form of hypothecation under discussion.

The Provisional Law of Mortgage does not however lay down that the form of registered mortgage with which it deals is the only way in which land may be hypothecated for debt. If however another form is adopted the transaction must-under the Law of Disposal-be fully registered. If this condition is complied with, the laws discussed do not forbid the transfer of a property for debt with a condition of retransfer on repayment

In fact, during the period which elapsed between the passage of the two laws, the procedure laid down in Art. 116, which, as we have seen, did not forbid the existence of a concealed modification of the terms of transfer, was allowed as an alternative means of hypothecation.

The Provisional law of mortgage has undergone further modification since the Occupation by the Mortgage Law Amendment Ordinance of 1920.

NOTE 2. (ART 116.)

During the war, owing to the depreciation of Turkish paper money, it was customary, in defiance of the law, to make transfers which purported to be outright sales, accompanied by an unregistered agreement promising the retransfer of the property on repayment in a specified currency-generally French or Turkish gold.

The Land Courts have given effect to such undertakings, if in writing, when they fall within the period of the war in the exercise of their equitable jurisdiction.

NOTE 3. (ART. 116.)

A Mortgage containing a condition that failure to redeen within a specified period converts the transaction into a sale are commonly dealt with in the Land Courts. These Courts have invariably held that the condition is inoperative.

From the point of view of English Law their rulings follow the maxim "once a mortgage always a mortgage." From the point of view of Turkish Law the same end is arrived at from a consideration of Art. 107 Mej, on the ground that a sale cannot be transacted so as to take effect at some future time.

NOTE 4. (ART. 116.)

The Provisinal Law of Mortgage of 1328 lays down in Arts. 9 and 10 that sales of mortgaged property must take place through the Land Registry Department.

The transfer of Land Ordinance (No. 2 of 1921-Gazette 41) sets this aside, and vests this authority in the Presidents of District Courts with power to postpone sale, if they consider that undue hardship would be involved.

It also takes the actual conduct of sales from the Land Registry and gives it to the Execution Office.

ARTICLE 117.

If a debtor after transferring land in his possession to his creditor against a debt, whether on the above-mentioned condition, or in the form of transfer, with right of redemption (feragh-bil-wafa finds himself unable to discharge the debt at the time agreed upon, and if he gives the creditor a power of attorney, (wakalat-i-dowrieh) that is to say if he entirely puts the latter in his position, without power of revocation, and gives him power to sell the land, or caused it to be sold, to repay himself the amount of the debt out of the purchase money, and pay to him any balance; under these conditions, the creditor so empowered, in case of non-payment at the time agreed, can sell the land during the life time of the debtor, through the Official and pay himself the amount due to him; or if the debtor has invested a third person with such powers, the latter can, at the expiration of the agreed pariod, and in virtue of his power of attorney, sell the land and pay the creditor the debt due by the debtor, his principal.

NOTE 1. (ART. 117.)

This Article is based on Article 760 Mej.

Whether the agent is the creditor himself or a stranger, the agency is not sit aside by the death of the principal, if consideration was passed.

It has been claimed in the Courts that the creation of a perpetual attorney for sale is equivalent to actual sale. This is not the case. The attorney's power extends only to having the land sold "through the Official"; and unless and until this procedure has been complied with, ownership has not been transferred.

NOTE 2 (ART. 117.)

The rules which are operative in the event of death may be summarised as follow:

(1) The creditor dies before the date of redemption.

In this case his heirs inherit his rights in respect of sale.

(2) If the debtor dies before the mortgage falls due, the debt becomes immediately payable, and the mortgaged property may be sold unless the heirs settle.

This holds good even if no perpetual agency has been created.

If the heirs fail to settle the debt, and if some of them are absent, or are minors, or under some other disability, the Kadi has power to appoint a person called the Mazun to represent their interests.

(Vide ruling of Shorai Daulat of 19 August; 1317.)

ARTICLE 118.

If a debtor who has transfered his land to his creditor, whether upon the above-named condidion or by transfer with right of redemption, dies before his debt has been entirely discharged, the said debt like his other debts are discharged from his available estate, and if he has left none, or insufficient to discharge his debts, a piece of his land sufficient to discharge the debt shall be put up to auction, and granted to the highest bidder for the price bid for it and the debt is discharged whether the debtor leaves heirs entilted to succeed, or to a right of tapou, or not.

NOTE 1. (Art. 118.)

Explanatory.

This article has been amended by the Law of Forced sale of mortgaged property of 1869 and replaced by the Provisional Law of Mortgage of 1326. The Provisional has in turn been modified by the Mortgage Law Amendment Ordinance of 1920.

ARTICLE 119.

Actions for deceipt (taghrir) or excessive deception (ghubni-fahish) between a transferor and transferee in connection with State and mevqufé land in general shall be maintainable. After the death of the transferor, the heirs having right of succession shall not have the right to institute an action and the land cannot be treated as mahlul.

NOTE 1. (Art. 119.)

Fraud defined together with "excessive fraud".

Fraud is "taghrir" as defined in Art. 164 Mej "Excessive deception" is the usual translation of the term "Ghabn il Fahish". It is defined in Art. 165 Mej.

Excessive deception to be actionable must cause a loss to the extent of at least one fifth of the value of the property in suit, in the case of immovables.

NOTE 2. (Art 119.)

Effect of fraud on a transfer.

Art. 356 Mej. states that, except in the case of property belonging to the State, to a Wakf, or to orphans, excessive deception without fraud does not furnish a ground of action. The wording of Art. 119 Land Code appears at first sight to give a right of action based on either one or the other. It is probable however that the intention of the wording is not to modify Art. 356 of the Mej.; but to include in its scope the second and third paras of that Article. These are the paras by which the property of the State, of orphans, and of Wakfs is preferentially treated in the manner noted above. It may be taken therefore that Art. 356 Mej. applies in its entirety to sales of mirie property as well as to sales of mulk.

NOTE 3. (ART. 119.)

This Article should be compared with Article 113.

It appears that actions arising out of duress (Mej. 948 949) are heritable, while those arising out of "fraud and excessive deception", are not.

The reason is that the Ottoman Land Code follows the provisions of the Mejelle Arts. 356 to 360.

These Articles lay down that, except in the case of certain relations of trust, inadequacy of consideration does not give a cause of action, unless it is (a) substantial and (b) brought about by fraudulent misrepresentation

Substantial inadequacy means that the price paid most vary from the true value by at least one fifth in the case of immovable property (Mej. 164). Such a cause of action is personal and cannot be inherited. It is lost if the property deteriorates, is modified, or destroyed, in the hands of the buyer. It is also lost if the buyer exercises proprietary dominion over it.

It must not be concluded that these Articles are intended to define the scope of actions based on fraud, or breach of trust in general.

Such actions when arising out of contract are, under English Law, inheritable, and it may be laid down that the Courts in this country have usually taken the same view.

In the case of breaches of trust, it has been shown in the notes to Article 20 that an heir who takes possession of, or transfers, property which belongs to co-heirs is regarded as a trustee. He can never acquire a right to it by prescription, and, therefore, can never make a legal transfer of it.

Article 23 in the same way regards the lessee or borrower of land as a trustee for his principal's title.

In the case of fraud, the English rule which regards all contracts entered into under illegal influance as voidable at the option of the injured party, because the reciprocal understanding which is the essence of contractual relations is wanting, is not found in the Mejelle in a specific form.

The rule may however be inferred from various articles of that work.

Thus a contract is void in which

(a) one of the parties is an idiot; and

(b) in which the property is non-existent, incapable of enjoyment, incapable of appropriation, or incapable of delivery (361, 362, 363 M.).

Again, contracts may be void because they have never been completed. This is the case when acceptance is not absolute, or if it is unduly deferred (182, 184 M.); if the purchaser has what is called a money option (315 M.); or if the sale is intended to take effect at a futare date (170 M.).

In all these cases the cause of action is heritable.

It is clear that, except in the two last cases, the contract is void because, either the parties were not *ad idem*, or because the contract was not completed. These provisions cut out a good many of the possibilities of fraud and correspond with English Law.

As to voidable contracts. A contract is voidable for indefiniteness in the description of the property (213 M.). It is voidable if the property has been wrongly described (310 M.). It is voidable if the property sold is defective (336 M.).

In all these cases the cause of action is heritable.

Here again the Mejelle deals with some of the possible bases of fraud, and is much the same as English Law in its result.

On the other hand, causes of action based on a clause in the contract permitting one or both of the parties to annul within a fixed time (300 M.), and the option of inspection, by which the purchaser has a right to see the property before the sale becomes final (320 M.), are not heritable.

These provisions do not however leave much more scope for fraud than the English Law.

Finally, we have an article (230 M.) which states that local custom is to be followed in interpreting the effect of the contract

This brief note is not intended to exhaust a very wide subject It is merely intended to show that, except in certain relatively unimportant instances, actions arising out of contract, and based on an allegation of fraud, are in general heritable; and further, that the conception of fraud and its consequences, as deducible from the Mejelle, corresponds fairly closely with English Law

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ARTICLE 120.

Transfer of State and mevquié land effected in mortal sickness is valid. Land so transferred by permission of the Official shall not pass by inheritance to the heirs; nor failing them, does it become subject to the right of tapou (mustahiki-tapou).

NOTE 1. (ART. 120.)

Legality of transfer in mortal sickness.

This article sets aside the provisions of 393 et seq of the Mejelle as to sales in mortal sickness, and of 877 et seq as to gifts in mortal sickness. In respect of mulk property the provisions of these articles of course hold good.

The result is that a person can make a valid transfer of mirie property on his death bed provided that it takes place in legal form.

NOTE 2. (ART. 120.)

Validatory powers of Land Court.

In case in which a death bed transfer dating prior to the occupation has been made in illegal form, a Land Court might validate in the exercise of its equitable powers (Art. 7 Land Court's Ordinance).

NOTE 3. (ART. 120)

Compensation for inability to pass mirie land by will.

The fact that mirie land cannot be disposed of by will is mitigated by the power given by this Article.

NOTE 4. (ART. 120.)

Effect of death bed transfer on heirs, creditors, and the State.

A transfer under this article will defeat the claims of heirs.

A dying title holder can use the Article to prevent the escheat of his *mirie property to the state as mahlul.*

He can also use it to defeat the claims of creditors unless they are protected by mortgage.

ARTICLE 121.

No one can dedicate land in his possession by title-deed to any object without being previously invested by Imperial patent (mulknamé) with the full ownership of the land.

NOTE 1. (ART. 121.)

Explanatory.

This article renders the dedication of Qasi Mulk land as well as ordinary mirie land illegal. But the Code contemplates the possibility of a dedication of the mulk accretions on Quasi Mulk without the land. (Vide arts. 89 and 90.).

The Provisional Law of Disposal of 1329 (art. 8) has put a stop to the latter possibility also.

ARTICLE 122.

Land attached *ab antiquo* to a monastery registered as such in the Imperial archives (Defter Khane) cannot be held by title-deed; it can neither be sold nor bought. But if land after having been held *ab antiquo* by title-deed has afterwards passed by some means into the hands of monks; or is in fact held without title-deed, as appurtenant to a monasatery the procedure as to State land shall be applied to it, and possession of it shall be given by title-deed as previously.

NOTE 1. (ART. 122.)

Explanatory.

The article contemplates two kinds of land which may belong to a monastery. They are (a) land attached to it under its original charter as registered in the Imperial Archives, and (b) land which is appurtenant to the monastery, or which has passed into the hands of monks from holders by title deed.

In case (a) the land is regarded as Wakf Sahih in that it cannot be registered under the Land Code. In case (b) a title deed may be issued to the monastery.

NOTE 2. (ART. 122.)

Interpretation of Firmans.

Cases arise in which the monastery sues for the ownership of mirie land held by title deed in the name of a deceased monk. In these cases, since the devolution of mirie land is laid down by Law, the monastery cannot succeed, unless it can show a Firman by which an exception has been made in its favour. If such a Firman is produced the case will be decided on the interpretation given to the operative clauses.

ARTICLE 123.

If pieces of land fit for cultivation come into existence by the receding of the water from an ancien lake or river they shall be put up to auction and adjudged to the highest bidder, and shall be subjected to the procedure applicable to State land.

ARTICLE 124.

In disputes as to rights of watering crops and animals (haq-i-shurb) of irrigation and over water channels only *ab antiquo* usage is taken into account.

NOTE 1. (ART. 124)

Ancient user decisive in questions of rights to water.

The article of course refers only to ancient rights (Vide Mej 1262-1269).

It is virtually a repetition of Mej. 1224. which is based in turn on Art 6 Mej.

The treatment of irrigation rights in the Land Code is of a very sketchy character. Usage *ab antiquo* might be pleaded for the purpose of preventing the creation of such rights, as well as for their assertion.

No provision is made for rights to water which are not ancient, though it is clear that new rights of this kind may from time to time be, and have been, created.

ARTICLE 125.

The taking of animals through vineyards, orchards, and fields called geiuktereke is not allowed. Even if there has been a practice of so taking them *ab antiquo*, as damages cannot be of time immemorial. The owner of the animals shall be warned to firmly control his animals until after the crop has been removed. If after the warning they cause damage by being sent to or put in such places by their owner the latter will have to pay compensation. After the crop is removed animals can pass over places over which it has been the practice *ab antiquo* to take animals.

NOTE 1 (ART. 125.)

Geiutercke.

Geiutercke may be freely translated as standing crops The article states that animals may be taken over the lands, over which the custom of such passage exists *ab antiquo*, but that this right may not be exercised when damage would result.

ARTICLE 126.

If the fixed and distinguishing ancient boundary marks of towns or villages have disappeared or are no longer distinguishable, there shall be chosen from among the inhabitants of the neighbouring towns or villages, trustworthy persons of mature years who shall go to the spot and through mediation of the religious authority the four sides of the ancient boundaries shall be fixed and new marks shall be put where necessary.

NOTE 1. (ART. 126.)

Demarcation now in the jurisdiction of a Land Court.

The power of demarcating boundaries whether between villages or individual owners, is now vested in the Land Court. Vide Land Courts Ordinance arts 2 and 9.

ARTICLE 127.

The tithe of agricultural produce and crops is regarded as the produce of the place within the boundaries of which the crop was grown wherever the threshing floor may be. On the same principle the taxes and fixed rates on summer and winter pastures, grazing grounds, inclosures, mills and such like are charged on the villages within the limits of which they lie.

ARTICLE 128.

If the water supply of any rice field registered at the Defter Khane as such deterioratest, it must be repaired by the person who sows the rice field. Possession of rice fields, as in case of all other State land, is acquired by title-deed. Provided that local usages observed *ab antiquo* with regard to rice fields must be observed.

ARTICLE 129.

Possession of land called "khassé" assigned before the organization "tanzimat" to sipahis and others, and of bachtene land assigned to voingha, the system of which has been abolished, and of land granted by tapou by woodland officers, which system has also been suppressed, is acquired by title-deed, and is subject similarly to the procedure applicable to State land in respect of transfer, devolution by inheritance, and grant.

ARTICLE 130.

The lands of an inhabited village cannot be granted in their entirety to an individual for the purpose of making a chiftlik, but if the inhabitants of a village have dispersed, as mentioned above, and the land has become subject to the right of tapou, if it is found impossible to restore it to its former state by bringing new cultivators there and settling them in the village and granting the land in separate plots to each cultivator, in such a case the land can be granted as a whole to a single person or to several for the purpose of making a chiftlik.

NOTE 1. (Art. 130.)

Rights of tenants and villagers.

Vide art 8 which forbids the grant of all the lands of a village to persons in common

This article (130) provides that village lands cannot be granted as a chiftlik unless (a) it has remained uncultivated for more than 3 years and is therefore subject to the right of Tapou.

Even in this case the village must be restarted if possible, instead of being granted as a chiftlik. It is recognized by Ordinance. (art. 8. Transfer of Land Ord. 1920-21), that on the sale of large estates the tenants settled on them must be provided for by suitable grants of land from them.

ARTICLE. 131.

Chiftlik, in law, means a tract of land such as needs one yoke of oxen to work it, which is cultivated and harvested every year. Its extent is, in the case of land of the first quality from 70 to 80 dunims; in the case of land of the second quality from 100 dunims, and in case of land of the third quality from 130 dunims. The dunim is 40 ordinary paces in length and breadth, that is 1,600 pics. Every portion of land less than a dunim is called a piece (kita). But ordinarily speaking "chiftlik" means the land of which it is comprised, the buildings there, as well as the animals, grain, implements, yokes of oxen and other accessories, built or procured for cultivation If the owner of a chiftlik dies leaving no heir or person having a right of tapou, the chiftlik is put up to auction by the State and adjudged to the highest bidder. If he leaves no heir with right of inheritance to the land and the buildings, animals, grain, and so on pass to the other heirs, then the land is granted to the latter on payment of the equivalent value, as they have a right of tapou over the

land possessed and cultivated as subordinate to the chiftlik, as stated in the chapter on Escheat. If they decline to take it the land by itself, appart from such property and goods as devovle upon them, shall be put up to auction and adjudged to the highest bidder.

NOTE 1. (ART. 131.)

Explanation of definition of chiftlik.

The definition of chiftlik has little or no legal utility The land is dealt with under the provisions of the land Code, whether the term is applied to it or not. Thus, as the article states, the inheritors of the mulk accretions are entitled to take the land by right of Tapou in the first degree when it becomes mahlul. This is in accordance with art 59 (1).

Perhaps the only distinction which can be drawn between chiftlik and ordinary mirie is that the chiftlik holder may be granted pasture land, as such. with his plough lands.

NOTE 2 (ART. 131.)

The Mudawara.

The so-called Chiftlik or Mudawara of the Sultan Hamid, which is now owned by the State, was acquired by him by gift, by private purchase and at auction sales. etc.

It includes both mulk and mirie properties. The latter has in part been given out to individual cultivators under the Beisan Lands agreement as mirie by the present Govornment.

NOTE 3. (ART. 131.)

Rights of cultivators in the Mudawara.

The holders of lands under the Sultan in the Mudawara area are not owners or title holders in any sense contemplated by the Land Code. They are merely tenants of the title holder — the Sultan —, and the Land Code does not deal with the rights of such persons. Their rights are regulated by their contracts with the title holder, under the rules laid down in the Mejelle. For this reason, claims for prior purchase, as between such tenants, cannot be maintained. Claims against Government to hold under Art. 78 by prescription would not be maintainable, because Government holds as landlord and not as the grantor of

the title deed. This state of affairs can be changed only when a title deed has been granted by Government under the law in force (or by special agreement) for the grant of mirie lands.

NOTE 4. (ART. 131)

Under provisions of Art. 3 of the Law of 22 February, 1921, the Mussulman and non-Mussulman are on an equal footing as regards the transfer of Mirie and Mevqufeh lands. Disposal of Mirie Lands registered in the name of minors is forbidden by the Land Code. However, unavoidable dispositions are authorized, as in the case of "Chiftliks", when the animals, buildings etc.. forming an integral part thereof, may be sold, together with the land, on proof that proper care cannot be taken of the property, and that prejudice will be sustained by the minors.

ARTICLE 132.

Any person who, with the Imperial sanction reclaims land from the sea becomes absolute owner of it. But if for three years from the date of the Imperial sanction, he does not carry out the reclamation, he shall lose his rights, and any other person, with a new Imperial sanction, can by similarly embanking become the owner of the place. Every reclamation from the sea made without sanction is the property of the Treasury and shall be offered by the Srate on payment of its value to the person who has made it. If he declines to buy it, it shall be put up to auction and adjudged to the highest bidder.

CONCLUSION.

This Imperial Law shall come into force from the day of its promulgation. All Imperial decrees, old or recent, hereto before issued with regard to State and mevqufé land of the takhsisat category which are inconsistent with this Law are repealed, and fetvas issued by the Sheikhs of Islam based on such decrees shall be null and void. This Law shall be the sole enactment which shall henceforward be followed, by the Department of the Sheikh-ul-Islam, the Imperial Offices, and by all Tribunals and Councils. The ancient Laws and Ordinances concerning State and mevkufé land shall not be observed in the Imperial Divan Office, the Defter Khané or elsewhere

ADDENDUM No. 1.

Addition to Article 20: 11 Jumada, I, 1305 (12 January 1302).

No actions may be brought against immigrant settlers after two years without showing "excuse" in respect of the possession of the vacant or mahlul lands which they hold from the State by title deed, and which they have cultivated or built over.

ADDENDUM No. 2.

ARTICLE 59, as originally embodied in the Land Code.

The present article printed in the body of the Code was substituted for the original article in 1294. The original article is as follows:-

The lands of a title holder of either sex who dies without issue and leaves neither father nor mother to survive him devolve as follows:

(1) To his full or half brother on the father's side, on payment of badal il misl — that is to say — for a value assessed by impartial experts, who are acquainted with the quality of the land, its area, boundaries, and productivity, and with the locality.

Claims to hold, take, or recover the lands must be made within 10 years.

(2) Failing the heirs described above, the land devolves on a full sister or half sister on the father's side, whether she is living in the town or village within whose limits the land lies, or elsewhere.

This claim must be made within 5 years.

(3) Failing the above, the land devolves on the grandchildren through males in equal shares

This claim must be made within 10 years

(4) Failing the above the land devolves on the surviving spouse.

This claim must be made within 10 years.

(5) Failing the above the land devolves on the brother or sister (on the mother's side) in equal shares

This claim must be made within five years

(6) Failing the above the land devolves on grandchildren of either sex through a daughter in equal shares.

This claim must be made within 5 years.

(7) Failing the above, if there are accretions of the mulk class on the land such as buildings or plantations, the land devolves on the heirs entitled to these accretions.

This claim must be made within 10 years.

The above named relatives can claim by right of Tapou and no other relatives can claim by that right.

(8) Failing the relatives detailed above, the land devolves for its Tapou value on co-owners and Khalits.

This claim must be made within 5 years.

(9) Failing co-owners or Khalits, the land will be given for its Tapou value to those of the village who need and require it.

This claim must be made within one year.

If several persons entitled in the same class claim land by the right of Tapou, they must share it equally, and if partition is feasible they have the right to have it partitioned amongst them. In this way each will be given a separate portion.

If, however, the land cannot be partitioned, or if partition would cause loss, then the land will be given to the person who most urgently needs and requires it. If claimants are equally needy, and one of them has served as a soldier in person and has completed his service in the army and has returned to his home, he will be given the land.

Failing this lots will be, cast and the land will be given to the person to whom the lot falls.

When the land has been allotted under the foregoing provisions no further claim will be entertained on any account.

Note para (5) is confused. The translation required by the general sense is as given. The article is merely of antiquirian interest as all claims under it are long since time barred.

THE HEJIRA CALENDER & THE TURKISH FISCAL YEAR.

The Hejira calender commenced on the 16th of July, 622. A.D.

This calender is a lunar one divided into 12 months, the odd months, of which have 30 days, while the other months are of 29 days each. The total days of the year fluctuate between 354 and 356. The difference of two days is due to the fact that in the course of 30 Hejira years there are 11 leap years.

The exact length of the lunar month is 29 days, 12 hours, 44 minutes and 2 seconds.

The difference between the Christian and the Hejira years is from between 10 to 12 days per annum. This means that 32 Christian (solar) years equal 33 Hejira (lunar) years minus 6, 7 or 8 days.

The Turkish Fiscal year was commenced on the year 1205 H., (1290 A.D.), when the Sultan Selim the III instructed the then Minister of the Exchequer, Morali Osman, to put the Finances of the Empire on a sound basis. This year is a mixture of both the solar and the lunar calendars. The number of the years is that of the Hejira, while the months are those of the Christian calender. The number of its days is 365 or 366 in leap year. It commences on the first day of March, by the Julian Calender.

List showing Hejira. Fiscal, Jewish and Christian years. beginning from the year, 1255 Hejira.

HEJIRA	FISCAL (Malieh)	JEWISH	CHRISTIAN
1255	1255	5600	1839
1256	1256	5601	1840
1257	1257	5602	1841
1258	1258	5603	1842
1259	1259	5604	1843
1260	1260	5605	1844
1261	1261	—	do.
1262	1262	5606	1845
1263	1263	5607	1846
1264	1264	5608	1847
1265	1265	5609	1848
1266	1266	5610	1849
1267	1267	5611	1850
1268	1268	5612	1851
1269	1269	5613	1852
1270	1270	5614	1853
1271	1271	5615	1854
1272	1272	5616	1855
1273	1273	5617	1856
1274	1274	5618	1857
1275	1275	5619	1858
1276	1276	5620	1859
1277	1277	5621	1860
1278	1278	5622	1861
1279	1279	5623	1862
1280	1280	5624	1863
1281	1281	5625	1864
1282	1282	5626	1865
1283	1283	5627	1866
1284	1284	5628	1867
1285	1285	5629	1868
1286	1286	5630	1869
1287	1287	5631	1870
1288	1287	5632	1871
1289	1288	5633	1872
1290	1289	5634	1873
1291	1290	5635	1874
1292	1291	5636	1875
1293	1292	5637	1876
1294	1293	5638	1877
1295	1294	5639	1878
1296	1295	5640	1879
1297	1296	5641	1880
1298	1297	5642	1881
1299	1298	5643	1882
1300	1299	5644	1883
1301	1300	5654	1884
1302	1301	5646	1885
1303	1302	5647	1886
1304	1303	5648	1887
1305	1304	5649	1888
1306	1305	5650	1889
1307	1306	5650	1889
1308	1307	5651	1890
1309	1308	5652	1891
1310	1309	5653	1892
1311	1310	5654	1893

HEJIRA	FISCAL (Malieh)	JEWISH	CHRISTIAN
1312	1311	5655	1894
1313	1312	5656	1895
1314	1313	5657	1896
1315	1314	5658	1897
1316	1315	5659	1898
1317	1316	5660	1899
1318	1317	5661	1900
1319	1318	5662	1901
1320	1319	5663	1902
1321	1319	5664	1903
1322	1320	5665	1904
1323	1321	5666	1905
1324	1322	5667	1906
1325	1323	5668	1907
1326	1324	5669	1908
1327	1325	5670	1909
1328	1326	5671	1910
1329	1327	5672	1911
1330	1328	—	do.
1331	1329	5673	1912
1332	1330	5674	1913
1333	1331	5675	1914
1334	1332	5676	1915
1335	1333	5677	1916
1336	1334	5678	1917
1337	1335	5679	1918
1338	1336	5680	1919
1339	1337	5681	1920
1340	1338	5682	1921
1341	1339	5683	1922
1342	1340	5684	1923
1343	1341	5685	1924
1344	1342	5686	1925
1345	1343	5687	1926
1346	1344	5688	1927
1347	1345	5689	1928
1348	1346	5690	1929
1349	1347	5691	1930
1350	1348	5692	1931
1351	1349	5693	1932
1352	1350	5694	1933
1353	1351	5695	1934
1354	1352	5696	1935
1355	1353	5697	1936
1356	1354	5698	1937
1357	1355	5699	1938
1358	1356	5700	1939
1359	1357	5701	1940
1360	1358	5702	1941
1361	1359	5703	1942
1362	1360	5704	1943
1363	1361	5705	1944

TAPOU LAW.

Law as to the Granting of Title-Deed for State Land.
8 Jemazi'ul Akhir, 1275—14 December, 1858.

CHAPTER I.

Art. 1.—Inasmuch as the granting of State land in the provinces is entrusted to officials of the Treasury, that is Treasurers, Malmudirs, and District Mudirs, they are considered to be the owners of the land.

Art. 2.—The directors of agriculture having nothing to do with the sale, devolution and transfer of such land, will be treated as regards these matters as ordinary members of the Council with equal rights.

Art. 3.—Every transferor must produce a certificate (ilmouhaber) bearing the seal of the Imam and the Mukhtar of his village or quarter, showing—*(a)* that he is in fact the possessor of the land, *(b)* the sale price, *(c)* the qaza and village where the land is situated, and *(d)* the boundaries and number of donums. The transferor and transferee or their duly authorised agents, then present themselves to the Council of the locality, the certificate is presented and the fee for sale (muajele) is deposited. Declaration of the fact of the proposed sale must be made in the presence of the local Mudir or of the fiscal authorities, according to whether it is made in a qaza, or in a sanjak, or a vilayet A title-deed is given as soon as the registration has been made If the transfer is made in a qaza the title-deed, with a report mentioning the aforesaid fee is sent to the chief administrative authority who retains it, and after having registered it, sends another to the Defter Khané with the title-deed attached to have the transfer written in the margin if the title deed is a new one, or to have it deposited there and a new one issued if it is an old one. In case of a transfer taking place in a chief town of a sanjak a report is forthwith drawn up and sent to the Defter Khané When the transferor has not an old title-deed, note is made of his right of possession in the report to be made as mentioned above.

Art. 4.—To transfer land in a province to a person residing at Constantinople a certificate must be obtained from the Council of the Sanjak interested, showing that the transferor has in fact possession of the land; after which the transferor and transferee, or their representatives make the declaration required by law at the Defter Khané. If the title-deed is a new one the transfer is noted in the margin in accordance with the preceding Article; if the title-deed is not a new one, a new one is issued. Whenever a title-deed is issued, a certificate will be sent from the Defter Khané to the place concerned so that local registration may be made.

Art. 5.—When the right of possession devolves by inheritance, the Imam and the Mukhtar of the village or quarter issue a certificate bearing their seals showing:—

(1) That the deceased in fact possessed the land of which the right of possession has devolved,

(2) The approximate value of the land, and

(3) Upon whom the exclusive right to inherit it has devolved in accordance with Articles 54 and 55 of the Land Code.

The fee to be taken from the heir (succession duty) and the report shall be sent to the Defter Khané in accordance with Article 3. Then the transfer will be made.

ART. 6.—A transferee of land shall pay a fee of five per centum on the purchase money. In case of a false declaration made with a view to lessen the fee, the land is valued impartially and the fee is taken in accordance with the valuation. The same procedure is followed with regard to a transfer of land by way of gift.

Addition. 24 Jemazi'ul Akhir, 1292 (14 July, 1291) If anyone, not being a person employed in Evqaf or Land Office, has given notice to Government and proved that a false declaration has been made as to State or mevqufé land, moussakafat vakf land or mulk land, which has been sold. the transferor and the transferee shall each pay half of double the amount of the fee chargeable in respect of the amount which has not been declared. Half of this sum shall be paid into the Imperial Treasury and the other half shall be given to the informer.

Articles 7 to 10 prescribe the amount of the fees to be taken in respect of various dealings and transactions. They were afterwards amended.

ART. 11.—On the certificate of the village or qurter respectively and on the necessary enquiries being made a report shall be drawn up and they shall be sent to the Defter Khané in order that new title-deeds may be issued— (1) To occupiers of land without title-deeds (other than vacant State land clandestinely occupied) on payment of all fees such as succession duty, and the price of paper; (2) On payment of the price of paper only: *(a)* To persons in possession of land in virtue of old titles issued by sipahis, multezims, and other similar persons. *(b)* To persons who are shown by the the official registers to have lost their title-deeds.

ART 12.—The grant of khali and kirach (stony) land to persons intending to break it up in pursuance of Article 103 of the Land Code is made gratuitously and without fee. A new title-deed is issued to them on payment of three piastres for the price of paper, and they are exempted from payment of tithes for one year, or for two years if the land is stony.

ART 13.—Administrative and fiscal authorities must take care as part of their duty, that dead land is granted only to persons who intend to break it up and cultivate it as above mentioned and that no one should seize such land in some other way. They must take special care that for land on mountains (moubaha) and land left and assigned for purposes of public utility title-deeds are not granted to anyone, and that they are not occupied by anyone. It is incumbent on them also to cause land to be cultivated which for want of cultivation has become subject to the right of tapou (mustehiki tapou).

ART. 14 —In the printed title-deeds bearing the Imperial Cypher at the top issued to occupiers of land stating their title to occupy it there shall be stated the Qaza and village where the land is situated, and the boundaries and number of donums, and they shall be sealed with the seal of the Treasury Office.

ART. 15.—Transfer, devolution by inheritance and other transactions concerning land in a village will be carried out at the chief town of the Qaza to which the village belongs. Declarations of transfer can also be made at the chief towns of the Sanjak or Vilayet within which the Qaza lies. Nevertheless it

can only be proceeded with after it is established that the transferor owes nothing to the Treasury in respect of the land to be transferred, and that it has not been put under sequestration. The necessary enquiries must be made as promptly as possible. In conformity with Aticles 16 and 18 of the law the certificate shall be written in the locality for land concerning which enquiries and biddings take place at the chief town of the Qaza, as well as for that for which the biddings take place at Constantinople.

ART. 16.—If land becomes subject to the right of tapou (mustehiki tapou) when there are persons entitled to a right of tapou an enquiry shall be held at the ptace where the land is, throught the local Administrative Council; after which those having a right of tapou shall be invited in order by the Council to accept the grant, on payment of a sum fixed justly, and not prejudicially to the Treasury. If the offer is accepted, the grant is made without any bidding, and a report of all the proceedings is drawn up. But the valuation of the said Council only suffices in case the extent of the land is under a hundred donums: if it is larger than that the valuation of the Council of the Vilayet is required in addition to that of the Council of the Sanjak; and after that the land is granted, also without being put up to auction. In any case the enquiries and valuations shall not serve as a pretext for postponing the issue of the necessary title-deed; and those who have a right of tapou according to law shall not lose their rights in consequence.

ART. 17.—If those who have a right of tapou renounce it, and do not accept the grant of the land at the price fixed, a report, mentioning the renunciation by the persons having a right of tapou, shall be drawn up, so that the land may be put up to auction as hereinafter mentioned and adjudged to the highest bidder.

ART. 18.—Land which in default of persons having a right of tapou, or in case of renunciation of such right, becomes vacant (mahloul) and which in accordance with Article 77 of the Land Code must be granted by being put up to auction, if it is not more than three hundred donums in extent must be put up to auction and granted to the highest bidder by the Council of the Qaza If the land is from three hundred to five hundred donums it may be put up to auction for a second time by the Council of the Sanjak. But when the land exceeds five hundred donums a fresh auction must be held by the Ministry of Finance after the auctions held by the Councils of the Qaza and the Sanjak. The date of the beginning and close of the biddings to the Councils of the Sanjak and the Vilayet, with particulars of the boundaries and extent of the land, shall be published in the newspapers of the Vilayet; and in case of land of over five hundred donums in those of Constantinople. Copies of these announcements as well as the document relating to the biddings shall be sent to the Minister of Finance before being published Bidders in Constantinople shall address themselves to this Ministry. Tapou clerks shall assist the Councils of Qazas, and officials of the Defter Khané the Councils of Sanjaks and Vilayets Members of such Councils who wish to bid must withdraw from the Council during the bidding. If the land, being of a certain value, is not susceptible of partition or is appurtenant to a chiftlik the right of tapou belongs only to those who have the right pointed out in Article 59 of the Land Code as belonging to the seventh and eighth degrees which have become the first and second since the Law of 17 Muharrem, 1284, that is to say to those who inherit the mulk trees and buldings and to persons jointly interested and associated. If the inhabitants of the place need the land they shall be treated as having a right of the last degree and it shall be granted to them according to their need.

ART. 19.—The sum required in advance for vacant land as well as all fees of transfer or succession and the price of paper to be obtained as before, shall be paid to the Treasury.

ART. 20.—Whoever, not being employed by the State or Evqaf Authorities, shall inform the Administration of the fact of State or mevqufé land or mussaqafat mevqufé or pure mulk, being vacant and of that fact being concealed, the Government not having heard of it, shall receive a reward of ten per centum of the amount for which the land has been adjudged (bedel muajel) after the transfer of the land to the highest bidder.

ART. 21.—As soon as the transfer, devolution or grant of land has been carried out in accordance with what is stated above, and the payment in advance and the fees paid, there shall be issued, without delay, to the new possessor a certificate bearing the seal of the Council authorising him to possess and cultivate the land until the arrival of the title-deed.

ART. 22.—There shall be kept in the chief town of a Sanjak a special register of the lands in each Qaza; and of the sales, devolutions by inheritance, and grants of such lands.

ART. 23.—All reports as to the issue of title-deeds for possession of land shall be sent by post in a separate envelope direct to the Defter Khané. Nevertheless it is also permitted on the request of the future possessor of the land to entrust such a report to him to be presented by him to the Defter Khané.

ART. 24.—All actions for deceit or excessive fraud, and all other disputes of a like nature, concerning State Land, which are judged in accordance with the Sacred Law, shall be prosecuted in the presence of financial officials appointed for the purpose, or their delegates, who represent the owner of the land.

CHAPTER II.

CONCERNING THE RIGHT OF POSSESSORS OF STATE LAND TO MORTGAGE IT FOR DEBTS.

ART. 25.—In accordance with the Land Code every possessor of State land can mortgage it to secure the payment of a debt; but if the debtor dies and leaves no heir with right to inherit the land the creditor cannot keep the land in liquidation of the debt; it becomes by law subject to the right of tapou (mustehiki tapou). Nevertheless he is allowed, in accordance with the Imperial Ordinance of 7 Ramazan, 1274, in view of the public interest requiring it, to recover the debt from the purchase money (bedel) of the land. The following provisions deal with the conditions which are necessary in order to mortgage (vefa en feragh) State land.

ART. 26.—When a possessor of State land wishes to borrow money and mortgage his land as security for the debt, the debtor and the creditor or their representatives must go before the Administrative Council of the Qaza, Sanjak, or Vilayet accordingly as the land is within a or in the chief town of a Sanjak or a Vilayet. They there make a declaration in the presence of the financial authority, as to the extent and boundaries of the land to be mortgaged, the amount of the debt and of the legal interest and the contract of mortgage. Upon that declaration an official document is drawn up and the title-deed of the land is deposited with the mortgagee, and a note is made in the register kept for the purpose. In case the debtor wishes to release

the land by paying off the debt the two contracting parties must present themselves again before the competent Council; the document creating the debt and the title-deed are given up and the registration in the said book is corrected.

ART. 27.—The transfer of land mortgaged as before mentioned cannot be effected either by the mortgagor or the mortgagee: Provided that when in accordance with Articl 117 of the Land Code the debtor has nominated as plenipotentiary the mortgagee or another person to effect the transfer and pay the debt out of amount realized, in the event of the debtor not paying the debt within the time agreed upon, the said plenipotentiary puts the mortgaged land up to auction through the official for a period of from fifteen days to a maximum of two months according to extent of the land and its value. The mortgage debt shall be paid out of the price realized. It follows that the nomination of a plenipotentiary under the said condition must be clearly mentioned in the official document of mortgage of which mention is made in the preceding Article and an action relating to such a power is not maintainable if it is not mentioned in the official document.

ART. 28.—If a debtor, who through the Official, as above mentioned, has mortgaged the land he possesses by title-deed. dies without paying the debt, his estate is liable for the debt in the same way as for all other liabilities. But if he leaves no property, or if his assets are not enough to meet his liabilities, the heirs cannot take possession of the land in question without paying what is due in full. The creditor has the right to prevent them from taking possession of the land until they discharge the debt.

ART 30.—If a creditor and debtor, contrary to the above mentioned provisions, make a private document on their own responsibility it is null and void. All actions withe regard to a mortgage are within the jurisdiction of the local Council, who will determine them, in the presence of the fiscal authority (*mal-memour*) in accordance with the official document creating the mortgage and the remarks in the register before-mentioned.

CONCERNING CHIFTLIKS BELONGING TO ORPHANS.

ART 31.—When chiftliks ordinarily so called, that is to say property comprising buildings, cattle, pairs or oxen, vines and other property, and State land capable of being cultivated attached to it devolve by inheritance on minors, such chiftliks must be preserved in the same condition for the minors until they attain majority; provided that they can be let on lease at a rent equal to 2 ½ per 500 on their estimated value and on condition that existing movable property or cattle which is destroyed or perishes shall be replaced in accordance with the rule concerning *demir bash*, that is by other things of the same kind.

ART 32.—When the greater portion of the property in such a chiftlik is movable property and when the depreciation of the other property of the chiftlik, such as some of the buildings or straw stores, might cause expense which would be very small in comparison with the value of the land, the movable property shall be sold without delay and the land shall be let on lease, no matter at what rent, and kept in the name of the minors

ART. 33—When it is proved in accordance with Sacred Law by experts that immovable property belonging to a chiftlik such as gardens, vines, mills and other large buildings are of considerable value, and that their destruction would cause substantial loss to orphans the whole shall be put up to be sold by public auction, and permission shall be given for the transfer of the land as appurtenant to the properties sold under the document and report *(hujjet re mazbata)* which is received by the Defter Khané Similarly, if proved as above mentioned, land which is used appurtenant to a house, the price of which would be substantially diminished if separated (from the house) may be sold together with the house

Addition 26 Safer, 1278. An action about a mortgage on State or mevkufé land of the tahsisat category is not maintainable in the absence of a document proving the mortgage.

REGULATIONS AS TO TITLE-DEEDS (TAPOU SENEDS).

7 Sha'ban, 1276.

PREAMBLE.

The fundamental provisions as to State land have been set out in the Land Code published in 1274, and in the Tapou Law published in 1275 but further measures having been taken to facilitate, assure, and regularise the system, certain provisions of those enactments have been modified, and others need some degree of explanation. Thus Article 21 of the said enactment of 1275 which provided that provisional certificates bearing the seal of the Council should be given to occupiers of land until the sending of title-deeds by the Defter Khané has been modified so that in future there will be given printed certificates in accordance with special directions; they will be detached from printed counterfoil registers which have been sent for this purpose to all parts of the Empire. Pending the publication of an exhaustive enactment which will complete the enactment in force, the publication of the following instructions has been deemed necessary to meet provisionally the necessities of the moment.

ART. 1.—No one in future for any reason whatever shall be able to possess State land without having a title-deed. Those who have not one will be obliged to procure one, and those who have old title-deeds, excepting always title-deeds (tapou seneds) bearing the Imperial Cypher, must exchange them for new ones. Governors-General (Valis), Mutessarifs, Qaimaqams, Members of Councils and Fiscal Officials, District Mudirs and Tapou Clerks having been charged with the duty of making the necessary enquiries and taking the necessary precautions will all be held responsible for any default or negligence. The most trustworthy and competent of the clerks of the census, or of the Courts, or of the District clerks shall be chosen and employed as Tapou Clerk.

ART. 2.—When anyone desires to part with his land, he must proceed in conformity with the provisions prescribed by Article 3 of the Tapou Law. But as, in consequence of the new procedure it is not allowed to make a separate report (mazbata) for one transaction, every month printed reports shall be drawn up in Districts and in the capitals of Sanjaks as explained in the above mentioned printed direction. When a transfer or any other transaction is effected the lists of certificates accumulating during the month shall be sent from the capital of the Sanjak at the end of the month to the Defter Khané. The said lists may be sent before the end of the month if necessary but it is forbidden to detain them in the place where they originate for more than a month.

ART 3.—As a consequence of the new procedure the writing of notes in the margins of title-deeds is abandoned. For each transaction a new title-deed shall be given, and there shall be charged for each document a fee of three piastres for cost of the paper, and one piastre for cost of writing for the benefit of the local clerk There shall be no charge except these fees

ART. 4.—If an occupier of land dies leaving no heirs entitled to succeed, and if it is found that some one has taken possession of the land which has become subject to the right of tapou (mustehiki tapou) secretly, in such case in accordance with Article 77 of the Land Code if the possessor has a right of tapou the land will be granted to him on payment of its equivalent value at the time the discovery is made In case of his refusal to take it or if the occupier has no right of tapou, the land shall be put up to auction and granted to the highest bidder But in consequence of this new system, now in force,

a person having a right of tapou who has no legal excuse, such as minority, unsoundness of mind, imbecility, or absence from the country, is bound to present himself to the Local Council within a period of six months, from the date of the arrival in country of the counterfoil registers, mentioned above, to demand a certificate in order to get a new title-deed for the land which he possesses secretly. If this formality has been omitted and the irregularity is subsequently discovered, the land will be put up for sale and offered to him to buy at the price it reaches at public auction. If he pays this price the land will be granted to him; if not it shall be adjudged to the highest bidder The Official shall always get from the occupier a document establishing his refusal to have the said land. The local authorities shall be obliged to explain these provisions fully to interested persons.

ART. 5.—Khali and kirach (stony) land far from inhabited places will be granted gratuitously in accordance with Article 12 of the Tapou Law, in order to be broken up; there shall only be payable a fee of three piastres for paper; in accordance with the new system, one pistre shall be paid in addition for the local clerk. Land which has been tilled, but which subsequently remained uncultivated, in default of an owner, shall not come under this enactment, it shall be granted on sale. In accordance with Article 103 of the Land Code, in order to be able to break up land and make it fit for cultivation, the previously obtained permission of the State is necessary. Occupiers of land who after the publication of this Law shall break up land without obtaining the leave of the Official will have to pay the equivalent value of the land at the time when they occupied and cultivated it, and if the possessor does not present himself within the period of six months, as mentioned in the preceding Article, unless there is a legal excuse, and pay the equivalent value as above mentioned, then he will have to pay the equivalent value at that time and the land will be granted to him

ART. 6 —The equivalent value that shall be received for land granted to a person having a right of tapou is not the price that it would realize if put up to auction nor the price that anyone might offer, but in accordance with its actual value, fixed by impartial experts on the basis and according to the ratio of other similar land: therefore it is illegal to put up to auction land over which there is a right of tapou, and if for cash or for any other motive the experts fix the price at higher or lower than the real value, as the price (equivalent value) of the land belongs legally to the Treasury, they shall be punishable with the penalties fixed by the Penal Code Civil and fiscal officials will be specially responsible for this The same formalities will be strictly complied with when valuing land for the payment of the ordinary fee (khar) mutal)

ART. 7.—On the issue of title-deeds in accordance with the law for land on which there are chiftlik buildings, vineyards, gardens and such like a fee of five per centum on the value of the land will be charged In making the estimate no account shall be taken of the buildings, vines, and trees which are thereon; the land shall be valued as a mere field and it is on this valuation that the fee of five per centum shall be taken and not on the actual value In the case of woodland on which the trees grow naturally the fee of five per centum will be taken on the total value of the trees and land

ART. 8.—Persons who, in accordance with Article 78 of the Land Code, have a right by prescription having acquired possession by devolution by inheritance, sale by the previous possessor, or grant by competent persons and having had undisputed possession for ten years, but who do not possess a title-deed shall be given a new title-deed on paying a fee of five per centum. They

will be bound also to conform with the above mentioned provisions within a period of six months; after the expiration of that period, in default of a legal excuse those who have not a title-deed will pay a double fee.

ART. 9.—Article 11 of the Tapou Law provides that holders of title-deeds, issued by sipahis, revenue farmers *(multezims)* and other similar persons, will have issued to them new title-deeds, paying a fee of three piastres for price of paper, provided that the old title-deeds are trustworthy so as to be able to serve as proof; that is to say the seal which these documents bear must be recognized and known in the place. Title-deeds which bear no seal and those of which the seal is not recognized shall not be considered valid, and occupiers of land by virtue of such title-deeds shall be treated in the same way as those who have none; they shall receive new title-deeds, if a right by prescription is proved, on paying five per centum, the price of the paper and clerk's fee. But if a right by prescription is not proved they will be subject to the provisions contained in Article 4 with regard to land possessed secretly. Holders of old valid title-deeds as above mentioned must present them within a period of six months to be exchanged for new ones; after the expiration of that time, in default of a legal excuse, they will pay the ordinary fee of five per centum.

ART. 10.—As provided in Article 11 of the Tapou Law, persons who can prove by official entries that they have lost their title-deeds, can obtain new ones, paying only three piastres for the price of paper This provision applies to title-deeds issued by the Defter Khané bearing the imperial Cypher, when lost. As to persons who claim to have lost title-deeds issued prior to the year 1263 by sipahis, revenue farmers, collectors of taxes *(muhassils)* and such like they will pay the ordinary fee of five per centum. Persons who prove by official entries the loss of title-deeds bearing the Imperial Cypher must, within a period of six months, obtain new ones. If they fail to comply with this formality without a legal excuse, they will be subject in every case to the fee of five per centum. In case holders of old title-deeds bearing the Imperial Cypher wish to exchange them for new ones, they will pay a fee of three piastres for for the cost of the paper, and one piastre for the clerk, and their lists *(dzedveller)* will be sent, in accordance with the new procedure, to the Defter Khané. This exchange of title-deeds is entirely optional.

ART. 11.—If a person wishes to transfer to a third person a share of land possessed in common which has not been partitioned, it must first be offered to the co-possessor and if he declines to take it a declaration in writing must be taken from him

This circumstance must be noted in the transfer column of the Schedule of Certificates. In case of partition of land possessed in common mention must be made in the transfer column of the same Schedule that the partition has been made in accordance with the law, in conformity with Article 15 of the Land Code, which provides for partitisn being made equitably, and the title-deeds in their hands shall be changed.

ART. 12.—When a portion of a piece of land possessed by one or several title-deeds is divided off and sold separatly a certificate will pe sent to the purchaser as in the case of ordinary sales and all the formalities will be complied with. If in consequence of this separation, the boundaries of fields or the number of donums mentioned in the title-deeds are altered the title-deeds shall be changed.

ART. 13.—In case of sale of land which has not been transferred in a legal manner to a person to whom it belongs by right of inheritance, there shall be taken from the vendor, as mentioned in Article 10 of the Tapou Law,

a fee of five per centum as succession duty; there shall also be taken from the purchaser a like fee as transfer fee, but it is forbidden to exact a double fee for the transfer on the pretext that the father of the present vendor of the land inherited it from his father If land which has not been transferred in accordance with the law to the heir is granted gratuitously, the successisn fee payable by the transferor and the transfer fee payable by the transferee shall be fixed in accordance with the estimated value of the land.

ART. 14.—In accordance with the system now in force a person who wishes to sell his land, who already has a certificate detached from the counterfoil register, must previously deposit, before the arrival of the official title-deed issued by the Defter Khané, the amount of the transfer fee in accordance with the rule. After compliance with this formality the official will issue a certificate to the transferee and the certificate which is in the hands of the transferor shall be sent attached to the Second Schedule of the new certificate to the Defter Khané in accordance with system, and in the column of reasons for issue it shall be written as follows.— "The Defter Khané not having yet sent the official document, the old certificate relating to this title is attached hereto". If the Defter Khané draws up and sends the official title-deed to its destination, issued on the basis of the old certificate before receiving the Schedule of the new certificate, in such case the title-deed must be retained at the place to which it has been sent, and when the title-deed to be drawn up on the basis of the new Schedule is received it shall be given to the transferee. and the retained title-deed will be sent with the transferee's certificate to the Defter Khané. The same steps will be taken in case the holder of a provisional certificate dies before the arrival of the title-deed.

ART 15.—The transfer, devolution by inheritance and other matters concerning land in any village can only be carried out in the chief town of the Qaza in which the village is situated; it cannot take place in another Qaza nor in the chief town of the Sanjak. With regard to land in respect of which an enquiary is made, or which is put up to auction in the chief town of a Sanjak in accordance with Articles 16 and 18 of the Tapou Law, and also with regard to land which has to be put up to auction again in the Capital of the Empire, in the case of such land the formalities required by law must first be complied with, and then the certificates must be drawn up, as stated above, at the place itself.

ART. 16.—The counterfoils of certificates, as stated in the explanatory law on title-deeds must be kept as a record in the capital of every Qaza A summary book for each Qaza shall be kept at the capital of every Sanjak These books as well as the counterfoils shall be kept deposited in safe places that they may be consulted when required.

Conclusion. In cases of doubt arising with regard to executing the new system applications for explanation can be made to the Defter Khané.

NOTE (1) TO THE TAPOU LAW OF 1275 AND THE REGULATIONS TO TITLE-DEEDS OF 1276

These enactments were passed in the two years following the passage of the Land Code. They are binding as administrative rules on the persons charged with the administration of that Code, but do not appear to be intended as amendments to the Code.

Under a more modern system of law making they would take the form of rules passed under the authority of an enabling article in the substantive law.

LAW EXTENDING THE RIGHT OF INHERITANCE TO STATE AND MEVQUFE LAND.

17 Muharrem, 1284.– 21 May, 1867.

His Majesty the Sultan, desiring to facilitate transactions (*i.e.* relating to landed property) and to further extent and develop agriculture and commerce and thereby the wealth and prosperity of the country, has sanctioned the following provisions relating to the transfer of State and mevqufé land, held by tapou.—

ART 1.—The provisions of the Land Code which established the right of succession with regard to State and mevqufé land possessed by title-deed in favour of children of both sexes in equal shares are preserved. In default of children of either sex (who constitute the First Degree) the succession to such land shall devolve on the heirs of subsequent degrees in equal shares without payment of any price as follows.—

2nd. Grandchildren, that is to say sons and daughters of children of both sexes.

3rd. Father and mother.

4th. Brother, and half-brothers by the same father.

5th. Sisters, and half-sisters by the same father.

6th. Half brothers born of the same mother.

7th. Half sisters born of the same mother.
and, in default of heirs of all the above degrees,

8th. Surviving spouse.

ART. 2.—An heir of one of the above-named degrees excludes one of a subsequent degree; for instance grandsons and granddaughters cannot inherit State or mevqufé land if there are children (*i.e.* sons and daughters) so too a father and mother are excluded by grand-children and so on. Provided always that the children of deceased sons and daughters take the place of their parents by right of representation in respect of the share to which their father or mother would have been entitled in the estate of their grandfather or grandmother. A surviving spouse has the right to a fourth part of the property which devolves on the heirs of all degrees from the Third to the Seventh inclusive, but not of that which devolves on those of the First and Second.

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ART. 3.—The system of *feragh bil vefa* which is commonly made use of to make immovable property a security for debt, and the conditions under which immovable property, which is not mortgaged, can be made liable for the payment of the debts of the debtor (possessor) as also the procedure to be followed for this purpose, both in the lifetime of the debtor (possessor) and after his death, will be determined by special enactments.

ART. 4.—The rules applicable to State and mevqufé land shall be applied in their entirety to land and chiftliks which are held by virtue of an Imperial Mulknamé. But the annual rent paid by such farms and chiftliks shall continue to be paid as before in accordance with the special rules applicable to them.

ART. 5.—The provisions contained in the Land Code with regard to the possession of buildings and trees on State and mevqué land shall remain in full force as before.

ART. 6.—This Law shall come into force from the day of its publication. The Land Code and the Tapou Law shall be amended in accordance with the provisions hereinbefore contained and they shall be published and proclaimed (*i.e.* as amended).

Addition. 29 Rebi'ul Akhir, 1289. When a spouse dies after a revocable divorce but before the expiration of the legal delay (*iddet*, 130 days) or after the celebration of the marriege but before its consummation, the survivor has a right of inheritance over the land if such right is duly proved according to the Sheria Law and when a man divorces his wife irrevocably being in a state of mortal illness and dies before the expiration of the legal delay the wife shall have a right of inheritance if such right is duly proved according to the Sheria Law.

LAW GIVING FOREIGNERS THE RIGHT TO POSSESS IMMOVABLE PROPERTY IN THE OTTOMAN EMPIRE.

7 Safer, 1284.

In order to secure the extension of wealth and property in the Ottoman Empire and to remove the difficulties, abuses, and doubts of all kinds which arise by reason of foreign subjects becoming possessors of property (emlak), and to place this important matter under a firm Law, and to complete financial and civil security this Law has been enacted by an Imperial Iradé as follows:—

ART. 1.—Foreign subjects are allowed, with the same title as Ottoman subjects and without any other condition, to enjoy the right to possess immovable property, urban or rural, anywhere within the Empire, except the province of the Hedjaz, on submitting to the laws and regulations which govern Ottoman subjects themselves, as is hereinafter enacted.

This provision does not apply to Ottoman subjects by birth who have changed their nationality, who will be regulated in this matter by a special Law.

ART. 2.—Foreign subjects, who are possessors of urban or rural immovable property in accordance with Article 1, are consequently in the same position as Ottoman subjects in all that concerns their real estate. This assimilation has the effect in law —

(i.) Of obliging them to conform to all laws and police and municipal regulations which now govern, or shall govern in the future, the possession, succession, alienation and charging of landed property;

(ii.) Of rendering them liable to all charges and dues of whatever form and under whatever designation they may be, which owners of immovable property, rural or urban, who are Ottoman subjects are now liable to pay or shall in future be liable to pay;

(iii) Of rendering them directly subject to the jurisdiction of the Ottoman tribunals in all questions relating to landed property, and in all real actions, whether as plaintiffs or defendants, even when both parties are Ottoman subjects, without being able in this matter to avail themselves of their nationality; but subject to any privileges attached to their person and movable property in accordance with treaties. Such cases shall be heard in accordance with the rights, conditions and procedure concerning owners of immovable property who are Ottoman subjects.

ART. 3.—In the case of the bankruptcy of a possessor of immovable property who is a foreign subject, the syndics of the bankruptcy must apply to the Ottoman Government and tribunals for the sale of immovable property possessed by the bankrupt, which by its nature and according to law is liable for the debts of the possessor. It will be the same when a foreigner has obtained a judgment in a consular court in a matter not connected with immovable property against another foreigner who is the possessor of immovable property of his debtor, he shall apply to the Ottoman Government and tribunals in order to obtain the sale of such of the immovable property as is liable for the debts of the possessor, and this judgment can only be executed by such authorities and tribunals after it has been established that the immovable property the sale of which is sought really belongs to the class of that which can be sold by law for payment of debts.

ART. 4.—A foreign subject has the right to dispose, by gift or by will, of such of his immovable property the disposition of which in this way is allowed by law. As to immovable property which he has not disposed of, or which the law does not allow him to dispose of by gift or by will, the succession to it shall be regulated in accordance with Ottoman Law.

ART 5.—All foreign subjects shall enjoy the advantage of this Law as soon as the Power on which they are dependent shall have adhered to the arrangements proposed by the Ottoman Government concerning the purchase of immovable property.

LAW AS TO FORCED SALE, AFTER THE DEATH OF THE DEBTOR OF MORTGAGED STATE AND MEVQUFE LAND, AND MOUSSAQAFAT, AND MOUSTEGHILAT PROPERTY.

23 Ramazan, 1286.—26 December, 1869.

As promised in Article 3 of the Law extending the right of inheritance to land, which amends Article 23 of the Tapou Law, and in Article 5 of the Law relating to the extension of inheritance of moussaqafat and mousteghilat vakfs, this enactment points out the procedure to be followed both during the lifetime and after the death of the debtor so that his debts may be paid after his death out of the proceeds of sale of his mortgaged land, or out of his moussaqafat and mousteghilat properties with extension of inheritance.

ART. 1.—In order to mortgage State or mevqofé land possessed by title-deed to a creditor the provisions of Article 26 of the Tapou Law must be complied with,

ART. 2.—If a mortgagor having morgaged his State or mevqufé land to his creditor through the Official dies before paying the debt it shall be paid like other debts out of the estate he leaves. Bdt if he leaves nothing or insufficient estate, part of that land sufficient to discharge the debt shall be sold by auction, for the equivalent value *(bedl-i-misl)* and the debt shall be discharged from the purchase money, The land shall be put up to auctien whether the deceased left heirs with right of snccession to the land or persons having a right of tapou over it or not.

ART. 3.—The provisions of Article 2 shall apply also to moussaqafat and mousteghilat vakfs the right of succession to which has been extended by the Law of 13 Safer, 1284, and the annual rent (ijare muejele) whereof has been increased to *ejr misl*.

ART. 4.—If the sum realised by mortgaged land and moussaqafat and mousteghilat vakfs is not enough to pay the debt of the deceased debtor the creditor cannot have recourse to the other lands and moussaqafat and mousteghilat vakfs of the deceased which he did not mortgage.

ART. 5.—These provisions being an addition to the Laws of 17 Muharrem, 1284 and 13 Safer, 1284, shall come into force from the date of their publication.

ART. 6.—The State and mevqufé land as well as *idjaretein* (double rent) moussaqafat and mousteghilat vakfs of persons who die leaving debts, whether personal or as guarantors, due to the State can be sold for payment of such debts in case their movable and immovable mulk property is insufficient to pay the debt to the State.

ART. 7.—Vacant land (mahloul) shall be excepted from the operation of Article 6. Immovable property mortgaged to a third person can only be sold on condition that the amount of the debt for which the property has been mortgaged is deducted from the sum realised by the sale for the benefit of the mortgage creditor. If the heir who inherits moussaqafat and mousteghilat vakfs has no other house sufficient for his living in, a dwelling place cannot be sold, and if the deceased debtor had no other means of livelihood than husbandry, a piece of land sufficient for the maintenance of the deceased's family shall be left to his heirs, and the extent of the land to be thus left shall be fixed through the Court (*Mejlis*) before whom the case is brought.

SALE OF IMMOVABLE PROPERTY FOR PAYMENT OF DEBTS.

15 Sheval, 1288.—28 December, 1871.

ART. 1.—Moussaqafat and mousteghilat vakfs at double rent as well as State land shall be sold, without the consent of the debtor, like pure mulk property, for payment of a judgment debt, but a house suitable for the condition of the debtor is not sold for his debt, and is left, and in case the debtor is a farmer some land sufficient for his maintenance, unless it is pledged and subject to *vekialet-i-devrié*, also is not sold, but is left and the extent of the land to be thus left shall be fixed by the Court *(mahkemé)* before which the case was tried.

ART. 2.—If a debtor proves that, with the net income of his immovable property, he can discharge his debt within three years, paying also legal interest and costs, and if he assigns the proceeds of the said income to his creditor, the property shall not be sold.

ART. 3.—If a judgment debt has been assigned to a third person who accepts it and gives notice thereof to the debtor he can claim the sale of the debtor's immovable property in the same way as the original creditor.

ART. 4.—The immovable property of a debtor cannot be sold under a judgment given in absence before the period for taking objection has expired

ART. 5.—A creditor shall draw up a notice claiming the sum due to him and stating that in case of non-payment, he will apply that the immovable property of his debtor may be up for sale; he must send the notice to the debtor personally or to his residence together with a copy of the judgment.

ART. 6.—The sale of the immovable property of a debtor cannot be demanded before the expiration of thirty-one days from the sending of the above mentioned notice. If ninety-one days pass after the serving of the said notice a second notice must be sent, and a further thirty-one days must elapse.

ART. 7.—The formalities prescribed by Articles 5 and 6 having been complied with the executive authority will send a special official to take over the immovable property. A document shall be drawn up in duplicate which shall contain a concise statement of the judgment of the Court, the date of the judgment, the cause of sending and the functions of the Official, and the nature of the immovable property, its situation and boundaries. If the immovable property to be sold is a khan, house, shop or such like, the name of the city or town, qaza and quarter where it is situated must be inserted, as well as the name of the street, the number of the door and the nature of the adjoining immovable property (aqar). In the case of land there shall be inserted the name of the qaza and village and the situation of the property and also the approximate number of donums, and if there are buildings and trees on it their number and kind, the name of the Court issuing the judgment and the plaintiff's name and residence.

ART. 8.—The auction shall be announced by special notice in the newspapers, twenty-one days beforehand. Notices shall also be posted in the most central places in the town where the auction is to take place.

ART. 9.—The auction shall last for sixty-one days; at the expiration of that period the property shall be adjudged to the highest bidder, and the adjudication shall be provisionally noted by the executive authority on the document

of adjudication. If within thirty-one days from the above named date a higher bidder comes forward with an advance of at least five per centum the bidding is reopened. The property shall be adjudged to the last highest bidder on payment of the price reached in the biddings and the other expenses. The proper office shall then issue the title-deeds for the property to the said bidder.

ART. 10.—If the bidder to whom the property has been adjudged refuses to take it, the bidding shall be re-opened and any loss resulting as well as the expenses of the business shall be made good by him.

ART. 11.—The officials charged with the duty of putting immovable property up to auction and the members and officials of the tribunal who have ordered the sale cannot take part in the bidding. In case of breach of this provision they will be liable to the penalties laid down by the Law.

ART. 12.—Whoever interferes with the free course of a sale by auction shall be punished in accordance with Articl 218 of the Penal Code.

ART. 13.—If anyone comes forward and claims proprietary rights over immovable property put up to auction he must begin his action before the final adjudication of the property; and if his claim fails any loss or damage caused by the auction having been postponed or otherwise shall be entirely made good by him. His right to bring an action after adjudication is not lost if he proves that he was prevented by a lawful excuse from coming and making his claim before the last adjudication.

ART. 14.—If a creditor does not ask for the sale of his debtor's immovable property within the prescribed period another creditor has the right to do so under the provisions of this Law.

ART. 15.—If part of the immovable property of a debtor is sufficient to pay his debt, if he be present, there shall be sold the part that he wishes, and if he be absent that of which the sale is most beneficial to the debtor.

[An appendix to this Article provides that debts incurred prior to the date of publication of this Law shall be subject to the old Laws in force at the time the debt was incurred].

LAW AS TO TITLE-DEEDS FOR PURE MULK TO BE ISSUED BY THE DEFTER KHANE.

28 Rejeb, 1291.—10 September, 1874.

This Law regulates the issue of title-deeds for pure mulk properties situated in cities, towns villages, and nahiehs of the Empire that is to say houses, of which the ground and the buildings and trees thereon are mulk, shops, vineyards, and gardens, and other immovable property and buildings, vines and trees situated on moukata'ali mevqufé and State land subject to bedel-i-ushr.

INTRODUCTION.

ART 1.—New title-deeds with the Imperial Cypher at the head will be issued for all mulk property in cities, towns, villages and nahiehs, and henceforth possession of mulk property without a title-deed is forbidden.

ART. 2 — These new title-deeds will be of two kinds: (1) For pure mulk, and (2) For moukata'a land with mulk trees and buildings thereon.

ART. 3.—The officials of the Defter Khané are charged with the duty of carrying out this procedure with regard to mulk properties. In each Sanjak there will be a special clerk under the official of the Defter Khané for mulk property business and in each Qaza a Mulk Property Clerk will be associated with the Tapou Clerk as representative of the said official, and they will have such assistants as shall be necessary.

ART. 4.—A special office in the Defter Khané will be set apart as the headquarters of the records of transactions relating to mulk property.

CHAPTER I.

AS TO THE ISSUE OF NEW TITLE-DEEDS FOR MULK PROPERTY.

ART. 5.—Starting from the chief city the Clerk of Mulk Properties will travel round the cities and towns and then the villages and nahiehs of each Qaza and will make an inspection (yoklama) of mulk properties. He will take as a basis of the yoklama the Registration Book of the places in which the registration has been completed. In this way accompanied by a member of the Administrative Council (Mejlis Idaré) of the Sanjak or of the Qaza, who is an expert in such matters, and in the presence of the registration official, of the Imam, and of the Mukhtars and Council of Elders of the Quarter, he will register the mulk properties and will make up the Yoklama Book in accordance with the specimen. He will examine the hujjets and other title-deeds produced by the owners. He will enquire whether the possession of those have no hujjets or title-deeds is based on a legal ground, and this shall be noted in the column for remarks. The hujjets and other title-deeds shall be stamped showing that the yoklama has been carried out and that new title-deeds have been issued. It has been decided that the yoklama in villages and nahiehs shall not be proceeded with until that of the properties in cities and towns has been made and completed.

ART. 6.—[Relates to approval of the yoklamas by Administrative Councils].

ART. 7.—[Deals with issuing provisional certificates].

ART. 8.—[Provides for there being different registers for pure mulk properties, for moukata'ali properties, and for the sending of copies of Yoklama Books to the chief city of the Sanjak with a report, and fees, and for the sending of a summary, with fees, to the Defter Khané].

ART. 9.—Title-deeds bearing the Imperial Cypher prepared on the basis of the registers to be received will be sent by the Defter Khané to its officials who will hand them over to the owners on return of the provisional certificates.

ART. 10.—Besides a fee for paper of three piastres, and clerk's fee of one piastre, in inspection (yoklama) fee will be levied once in the following proportions: for property of the value of from 5,000 to 6,000 piastres a fee of five piastres which will be increased by five piastres for each 10,000 above, up to fifty piastres for 100,000 piastres, and above that 100 piastres. Below 5,000 piastres nothing will be charged for paper fee and clerk's fee.

CHAPTER II.

PROCEDURE ON SALE AND PURCHASE, MORTGAGE SUCCESSION, GIFT AND DEVISE.

ART. 11.—To alienate mulk property the vendor must obtain a certificate (ilmou haber) of the Imam and of the Mukhtar of his Quarter, certifying that he is alive and that the property belongs to him, and, after having obtained a qochan from the registration official, if there is one, he goes to the Administrative Council of the place where the property is and a declaration will be made there by the vendor and purchaser, or their lawful agents, that the sale is legal, real and irrevocable in the presence of the Naib and the Clerk of the Defter Khané or of the Tapou Clerk; and on the offer and acceptance by the parties the document will be registered in the proper book, and approved and sealed by the Council.

If the entirety or part of the price is to be paid afterwards the Council will cause the debt to be secured by a bond and this bond (deyn sened) will also be certified and sealed by them.

ART. 12.—The purchaser shall day for the benefit of the Treasury a proportional fee of ten piastres for every 1,000 according to the price of the property sold, three piastres for paper, and one piastre clerk's fee. A printed provisional certificate will be drawn up in accordance with the specimen form showing the sale, and delivered to the purchaser after being sealed in accordance with Article 7. In a case where the mulk property being sold has a new title-deed only the paper fee and the clerk's fee shall be taken for this provisional certificate; otherwise the special fees set out in Article 10 shall also be taken.

ART. 13.—On the death of the owner of mulk property the Local Administrative Council shall be obliged to proceed in accordance with the Register of Successions *(defter kassam)* or, if there is not one, to act in accordance with the official report *(mazbata)* signed and sealed by the Sheria authorities based on the certificate of the Imam and Mukhars of the Quarter showing the number of the heirs. After the matter has been registered in its special register to be kept in accordance with Article 11 and after has been approved by being sealed at the foot of the page succession duty of five piastres per 1,000, paper fee of three piastres and clerk's fee of one piastre will be taken by the Treasurer and provisional certificates will be given to the heirs.

ART. 14.—The sale fees and succession duty will be calculated on the total value of the pure mulk properties only, but only on the value of the mulk trees and buildings if the property is subject to a fixed rent (moukata'ali).

ART. 15.—The mulk property of persons who die without leaving heirs and intestate shall be sold by auction to the highest bidder like vacant State land (mahloul) and the purchase money paid to the Defter Khané, after being entered in the Book of Receipts.

ART. 16.—For mortgage (terhin) of mulk property the certificate and the registration counterfoil of the quarter where the property is situated, to be obtained as in Article 11, and the bond written on paper duly stamped, and the title-deed of the property shall be taken to the official of the Defter Khané or to the Tapou Clerk and the matter will proceed as follows:—A specially printed document in counterfoil for mortgage transactions will be filled up in the presence of the debtor and the creditor or their duly appointed representatives, sealed at the foot by the official of the Defter Khané, or the Tapou Clerk, and detached from the counterfoil and handed to the creditor with the title-deed and the bond. There shall be taken a mortgage fee of one piastre per 1,000 on the amount of the debt, three piastres cost of paper and one piastre clerk's fee. The same fees shall be taken on redemption and the bond and the title-deed shall be returned to the owner. The mortgage and redemption fees shall be paid to the Treasury and sent to the Sanjak with the montly receipt book to be drawn up where it will be entered in the Summary Book and sent to the Defter Khané. The prosedure in the case of mortgages by *bei-bil-vefa* and *bei-bil-istighlal* shall be the same as above.

ART. 17.—Transfer of mulk immovable property by way of gift or under a will cannot be effected without an ilam of a Sheria Court.

ART. 18.—Title-deeds given for mulk property in conformity with the formalities hereinbefore pointed out, being official deeds, shall be recognised and given effect to by all tribunals and councils.

ART. 19.—Actions based on a pledge or a mortgage assserting that a transaction was subject to a condition of which no mention is made in the bond shall not be heard. Thus after a vendor has sold mulk property absolutely and a bond (sened) of sale has been duly handed to the purchaser, if he brings an action asserting that he pledged or mortgaged it, or sold it conditionally such an action is not heard.

ARTS. 20 and 21.—As to apportionment of fees.

ART. 22.—Enquiries and formalities with regard to mulk property and the drawing up and sending of the books and summaries shall be carried in accordance with the instructions and explanatory Law regulating State land in so far as they are not repugnant to this Law.

LAW AS TO MOUSSAQAFAT AND MOUSTEGHILAT VAKFS POSSESSED IN IJARETEIN.

4 Rejeb, 1292.—24 July, 1291.

ART. 1.—The right of succession to all moussaqafat and mousteghilat vakfs possessed in ijaretein devolves as follows:—

(i) On children of both sexes, as in the past, in equal shares if there are several heirs, or entirely on an only child;

(ii) In default of children of either sex on grandchildren, that is to say on sons and daughters of heirs of the first degree of either sex, in equal shares, or entirely on an only child;

(iii) On parents;

(iv) On full brothers and sisters, in equal shares;

(v) On full brothers and sisters by the same father, in equal shares;

(vi) On brothers and sisters by the same mother, in equal shares;

(vii) On a surviving spouse;

A surviving father or mother shall have the right to the whole portion devolving on both of them. This provision is equally applicable to brothers and sisters.

ART. 2.—An heir belonging to one of the seven degrees above mentioned excludes heirs of a lower degree. For instance grandchildren cannot inherit if there are children: parents are similarly debarred from inheriting if there are grandchildren: Provided that children of sons and daughters who die during the lifetime of their parents take the place of such sons and daughters, inheriting by right of representation the portion of their deceased father or mother in the inheritance of their grandfather or grandmother. So that the share which would have devolved upon a deceased child in succession to his father or mother, supposing he were still living, will devolve in equal shares on his children of both sexes, or entirely on an only child. A surviving spouse shall have the right to a quarter of the inheritance in moussaqafat and mousteghilat vakf property which devolves on the heirs of the four degrees from the succession of the father and mother to the succession of the brothers and sisters by the same mother inclusive. In default also of brothers and sisters by the same mother, belonging to the sixth degree of inheritance, moussaqafat and mousteghilat properties devolve entirely on a surviving spouse, and in default of the latter they become mabloul.

ART. 3.—The system of *feragh bil vefa* made use of to secure a debt will continue as in the past. The conditions of this system and the procedure relating thereto will be determined by special enactments.

ART. 4.—By way of compensation for the loss which vakfs will incur in consequence of the extension of the right of inheritance, an annual rent of one per thousand is imposed on the value of *moussaqafat* and *mousteghilat* vakf immovable property in accordance with their value registered in the new Registration Books, and all other former rents will be abolished. As to *moussaqafat* and *mousteghilat* vakf properties which are mixed with several vakf

properties all possessed in *ijaretein*, the site of all such properties shall be subjected to survey and to delimitation; and the proportion of the rent to be paid to each of the vakfs shall be fixed separately upon the basis of the actual value of the whole property as recorded in the Registration Book. In case of any *moussaqafat* or *mousteghilat* property being mixed with a *moukata'a* vakf, or with a pure mulk property, the annual rent of one per thousand shall be imposed only on such part of the total estimated value of the property shown in the Registration Book as is attributable to the portion which is possessed in *ijaretein*.

ART. 5.—Heirs of the first degree will, as before, pay succession duty at the rate of 15 piastres per 1,000 on *moussaqafat* and *mousteghilat* property. Heirs of the second degree will pay succession duty at the rate of 30 per 1,000 and those of the third degree at the rate of 40 per 1,000. As to heirs of subsequent degrees, they will pay succession duty at the rate of 50 piastres per 1,000. In case of sale the duty to be paid will remain as heretofore at 30 per 1,000, and that for mortgage *(feragh bil vefa* and *istighlal)* and redemption at 5 per 1,000.

ART. 6.—A quarter of the fee received on the transfer of *moussaqafat* and *mousteghilat* vakf property to heirs of the first degree will be paid as heretofore to the clerk and collector *(djabi)* of the Vakf. Except in the case of heirs of the first degree, fees on transfer levied on heirs shall be paid to the Imperial Treasury in order to be placed intact to the credit of the vakf.

ART. 7.—The conditions and procedure above mentioned shall be also applicable in the case of *guédiks* possessed in *ijaretein*, that is to say that according to the values registered in the Registration Book, both of the *guédiks* and of the mulk property to which they are appurtenant, a rent of 1 per 1,000 shall be separately imposed.

ART. 8.—After the annual rent of *moussaqafat* and *mousteghilat* properties has been fixed in accordance with the above mentioned system if any of them are burnt down or destroyed their sites alone will be newly estimated, and only the proportion of the original rent attributable to the new value shall be received and the proportion attributable to the building which has been burnt or the property which has been destroyed shall be deducted.

ART. 9.—After the annual rent has been fixed in accordance with the new system of sites of which the buildings have been burnt down or destroyed, and of sites which had no buildings thereon, if buildings are erected on them, their new state shall be estimated by expests and an annual rent of 1 per 1,000 shall be fixed according to the new valuation.

ART. 10.—For five years from the fixing of annual rent of *moussaqafat* and *mousteghilat* vakf properties in accordance with the new system, no increase or diminution of the rent, based on the increase or decrease in value of immovable property, can be made. Provided that every five years the value of *moussaqafat* and *mousteghilat* vakf properties shall be enquired into, and the rent shall be renewed or altered.

ART. 11.—Title-deeds issued under the new system shall henceforth have no marginal note. In case of sale, succession, division and partition new title-deeds shall be drawn up and issued. The old ones shall be returned to their holders with the note *batal* (null and void) thereon.

ART. 12.— *Moussaqafat* and *mousteghilat* vakf properties the site of which is held under the system of *moukata'a* (fixed rent) on which there are mulk buildings or plantations will be subject to the old system. In case of transfer or devolution of such properties the old *moukata'a* will be levied at the proper rate.

ART. 13.—The law relating to the extention of the right of inheritance to *moussaqafat* and *mousteghilat* properties promulgated on the 17th Muharrem, 1284 (21 May, 1867) as well as the Regulation published on the 2nd Zi'l Qa'dé, 1285, annexed to the said Law, as to putting it into execution, are repealed by the present Law which comes into force from the date of its promulgation. The old rents are, and remain, abolished from the end of the month of February, 1290, and the new rents of 1 per 1,000 shall be levied from the 1st March, 1291.

INSTRUCTIONS AS TO THE ISSUING OF TITLE-DEEDS FOR MEVQUFE LAND BY THE DEFTER KHANE.

6 Rejeb, 1292 —7 August, 1875

ART. 1.—Title-deeds for *moussaqafat* in villages and towns of which the site and buildings are vakf as well as for the buildings only of chiftliks which are *idjaretein* vakfs will be issued by the *Mouhassebedjis* of Evqaf; and title-deeds for *moussaqafat* and *mousteghilat* attached to exceptional vakfs *(mustesna)* will be issued by the *mutevellis* as heretofore. Excepting the above named properties title deeds for all places paying a fixed ground rent, for mevqufé land paying tithe or a fixed ground rent equivalent to tithe, and for vineyards and gardens the vines and trees whereof are vakf will be issued by the Defter Khané; and sales and declarations and sales by auction, according to the law, of the mahlouls of such property, and of other vacant land shall be carried out and heard by the officials of the Defter Khané in Sanjaks and by Clerks of the Tapou Office in Qazas in accordance with the formalities followed *ab antiquo* with regard to State land, mevqufé land, and vakf land.

ART. 2.—[Deals with the duties of Defter Khané officials with regard to inspections *(yoklamas)*.]

ART. 3.—Possession of mevqufé land without a title-deed having been always illegal and possession by title-deeds other than those issued since the 25th Ramazan, 1281 (9 February, 1280) by the Ministry of Evqaf and bearing the Imperial Cypher being equally illegal since the above mentioned date; title-deeds issued by *mutevellis* and agents before that date, bearing recognised seals, must be exchanged for title-deeds bearing the Imperial Cypher on payment of a fee of four piastres, being the fee for the paper, and the clerk's fee. A new title-deed will be issued to persons who have lost their title deeds, after examination of the registers and on payment of the fee for the paper and the clerk's fee.

LAW CONCERNING LAND.

7 Muharrem, 1293.—22 January, 1291.

ART. 1.—Mussulman and non-Mussulman subjects are on the same footing as regards the acquisition or transfer of land belonging to land of chiftliks, pastures or villages in the Ottoman Empire, whether State or mevqufé land sold by auction or by individuals. In the case of any State or mevqufé land which cannot, in accordance with ancient local usage, be transferred to non-Mussulman subjects of the State, this usage is abolished and the provisions of this Law will be equally applied.

ART. 2.—Equality of treatment shall operate, in accordance with the Law, with regard to land and mulk immovable property acquired by Mussulman and non-Mussulman subjects from one another

ART. 3.—Mussulman and non-Mussulman cultivators residing in certain chiftliks shall enjoy a preferential right to acquire land sold by auction or transferred by private persons.

LAW AS TO TITLE-DEEDS FOR MOUSSAQAFAT AND MOUSTEGHILAT VAKFS.

9 Rebi'ul Evvel, 1293.—5 April, 1876.

As it is necessary that title-deeds of *moussaqafat* and *mousteghilat* vakfs, both at Constantinople and in the provinces, shall henceforward be issued by the Defter Khané the following instructions showing the precedure to be followed with regard thereto shall have effect.

CHAPTER I

TRANSACTIONS IN THE CAPITAL.

ART. 1.—The Office charged with the issuing of title-deeds of property of the Ministry of Evqaf is transferred and annexed to the Ministry of the Defter Khané. This Office shall be called the Defter Khané Administration of Constantinople, as in the provinces, and henceforward all transactions relating to every kind of land and property situated within the municipal limits of Constantinople, such as transfer, succession, mortgage *(istighlal)*, redemption of mortgage, and such like will be carried out in this Ministry in accordance with special regulations.

ART. 2.—When transactions, relating to every kind of land and property, are carried out no marginal notes shall be written on old title-deeds, as in the provinces their owners shall be given provisional certificates according to the enclosed specimen until the issue of the Imperial (Khaqani) title-deeds, and the old title-deeds stamped with a stamp bearing the words "A new title-deed has been issued" shall be given back to the owner

ART. 3.—For land and property with regard to which the formalities of registration have been carried out and provisional certificates have been issued the Ministry of the Defter Khané shall cause to be drawn up, in accordance with the tables presented by the Defter Khané Administration of Constantinople, a new title-deed which will be delivered to the owner in return for the provisional title-deed. The final title-deed will be drawn up uniformly, and for every kind of *moussaqafat* and *mousteghilat* vakf property; but the title-deed of properties which have been subjected to an extension of the sight of inheritance shall bear on the reverse side in printed characters the law as to extension of inheritance; and title-deeds issued to foreigners shall have on the reverse side the provisions of the law as to rights of possession.

ART. 4.—Title-deeds of *mazbouta* vakf properties shall be issued by the Ministry of the Defter Khané and shall bear its seal. The title-deeds of *mulhaqa* vakf properties shall bear the seal of the Ministry and the mutevelli of the vakf will be called upon to seal it.

ART. 5.—New special registers shall be opened for each of the thirteen (municipal) areas of the Capital, and all transactions shall be entered therein.

ART. 6.—With the exception of land assigned for the use of the public which cannot be let or sold, all *monssaqafat* preperty in Constantinople and the environs which has become mahloul, as well as that held at a single rent which is required to be converted into *ijaretein*, and sites the sale of which is permitted, shall be sold by public auction, in accordance with special regulations,

at the Ministry of Evqaf. After final adjudication and payment of the price of the property sold, the Ministry of Evqaf shall draw up a report, in order to effect the transfer of the property in question to the purchaser enclosing the *defter*. The Defter Khané acting on this report will make the registration and will give the purchaser the title-deed of the property in return for the delivery of the certificate of adjudication.

ART. 7.—The cost of preparing title-deeds for mevqufé land and moussaqafat property, 3 piastres for paper and 1 piastre clerk's fee, will be paid to the Defter Khané: Provided that the salaries and expenses of the staff who issue the title-deeds, transferred from the Evqaf Ministry to the Defter Khané, shall be paid by the Defter Khané Treasury.

ART. 8.—All fees levied on transfer of moussaqafat property and mevqufé land shall be paid to the Treasury of the Defter Khané. The portion of these fees payable to the mutevellis of mulhaqa vakf properties will be retained to be paid to them and the remainder shall be sent every week, with a special account, to the Ministry of Evqaf. The shares in these proceeds of the clerks *(kiatibs)* and collectors *(djabis)* entitled thereto shall be paid at once to them by the Ministry of Evqaf in accordance with the procedure relative thereto

ART. 9.—Title-deeds for mulk property will be issued, and transactions relative thereto will be carried out, at Constantinople and the environs, in the same way as they are issued and carried out in the provinces by Defter Khané officials under special regulations.

CHAPTER II.

ISSUE OF TITLE-DEEDS IN THE PROVINCES.

ART. 10.—The registers of *moussaqafat* and *mousteghilat* vakfs in each district shall be handed over by the Mouhassebejis of Evqaf to the Sanjak officials of the Defter Khané, as has been done with regard to the registers of mevqufé land in the provinces.

ART. 11.—All dealings with *moussaqafat* and *mousteghilat* vakf property, that is to say, transfer, succession and other transactions shall be carried out according to special regulations by the officials of the Defter Khané. Provisional certificates will be issued by the officials to safeguard the owners until the issue of final title-deeds which will be sent by the Defter Khané as in the case of mevqufé land. Old title-deeds will pe restored to the owners after having been stamped, as in Constantinople.

ART. 12.—A schedule of *moussaqafat* and *mousteghilat* vakf property for which provisional title-deeds have been issued in consequence of any dealing, as well as of dealings with mevqufé land, shall be drawn up and sent every month to the Ministry of the Defter Khané, in order that final title-deeds may be drawn up and sent.

ART. 13.—The fee to be paid to the officials of the Defter Khané and the portion to be assigned to the *mutevellis* of local *mulhaqa* vakfs shall be deducted and retained from the amount of the fees taken on each transaction relating to *moussaqafat* and *mousteghilat* vakf property, and from the mevqufé land fee.

The balance shall be sent to the local Treasury for the account of the Mouhassebejis of Evkaf, who shall give receipts, which shall be forwarded every month with the accounts relative thereto to the Ministry of the Defter Khané.

ART. 14.— In conformity with Article 13 the officials of the Defter Khané shall pay forthwith one-fourth of the amount received from the fees of *mulhaqa* vakfs to the *mutevellis* or their deputies who shall seal the provisional certificates. The portion set apart for *mutevellis* or their deputies who are at Constantinople shall be forwarded with the accounts relative thereto to the Defter Khané and they *(i.e.* the *mutevellis* or their deputies) will be sent for and their shares will be paid to them and the final title-deeds will be caused to be sealed by the Ministry. Title-deeds of vakf properties of which the *mutevellis* or their deputies are not certain, or cannot be found, shall be sealed by officials of the Defter Khané as agents in order that the title-deeds may not be delayed and the portion set apart shall be sent to the Ministry of Evkaf to be given to the *mutevellis* as soon as they appear. Final title-deeds, drawn up at the Defter Khané in accordance with records received from the provinces, will be sent to their destination. Title-deeds of *mazbouta* vakfs as also those of *mulhaqa* vakfs of which the *mutevellis* are at Constantinople shall be given to the owners as they are sent from the Capital; and title-deeds of *mulhaqa* vakfs of which the *mutevellis* are in the provinces, shall be given to the owners by the officials of the Defter Khané, after being sealed by the *mutevellis*, and in exchange for the provisional certificates.

ART. 15.—Transactions with regard to *moussaqafat* properties in the provinces being henceforward within the prerogative of the Defter Khané all salaries and all expenses of the service will be paid by this Ministry. Consequently the fees of three piastres for paper and one piastre clerk's fee taken in accordance with the practice on new title-deeds issued for *moussaqafat* and *mousteghilat* properties shall be paid into the Treasury of the Ministry of the Defter Khané.

ART. 16 — With the exception of land, transactions with regard to which have been carried out in the provinces in conformity with the Land Code, *moussaqafat* and *mousteghilat idjaretein* property becoming *mahloul* and *moussaqafat* of a single rent *(ijare wahide)* which is to be converted into *idjaretein*, and building sites the sale of which is allowed, excepting places which, as stated in Article 6 are not leased to anyone, and are assigned to the public *ab antiquo* and the sale of which is not allowed, such properties shall be put up to auction by the Mouhassebejis of Evqaf as before in accordance with the proper regulations and usages, and the purchase money *(muajele)* shall be received by them and the transfer *(ihale)* shall be carried out by them, and provisional certificates shall be issued to the highest bidders, to whom the transfer shall be carried out by the Defter Khané officials in accordance with the auction bill and the proper report *(mazbata)* to be issued by the Administrative Council.

ART. 17.—The *muajele idjare* fees of *idjaretein moussaqafat* and *mousteghilat* properties in the provinces shall be collected annually by the Mouhassebejis of Evkaf as before who are likewise charged with the sale at public auction and transfer of vacant properties. The officials of the Defter Khané shall send monthly to the Mouhassebejis of Evkaf a table showing the transfers, successions and all other transactions and dealings in order that they may collect regularly the annual *idjare* fees, take cognizance of properties as to which the right of succession has been extended, and distinguish between those which have and which have not become vacant so as to facilitate the collection of rent and carrect the records kept by the Mouhassebejis

ART. 18.—The Ministry of the Defter Khané shall from time to time draw up and circulate the necessary instructions as to departmental procedure both in Constantinople and in the provinces, and as to the duties of Defter Khané officials.

LAW AS TO POSSESSORY TITLES.

Instructions as to Property Drawing up Certificates to be sent to the Emlak Office.

10 Rebi'ul Akhir 1293.

Art. 1.—Certificates *(ilmou haber)* as to transfer, succession, and construction of buildings, to be presented by owners to the Emlak Office at the Prefecture of the Capital shall be applied for and obtained from the Imam of the Quarter where the property lies. In order that Mukhtars may keep themselves acquainted with these matters and make themselves responsible these certificates must be sealed by them

Art. 2.—In the absence of a Mukhtar, or in case of refusal by a Mukhtar to sign, a note of the fact shall be made in the margin of the certificate of whatever kind it may be and sealed again by the Imam.

Art. 3.—Certificates issued for transfers or successions by the Mukhtars or by the Patriarchates or by the Grand Rabbinate shall state the number of the mulk properties, the road or street where they are, the number of the title-deeds, the name, address, and nationality of the owner, and the proportional interest of the co-owners, if there are such.

Art. 4.—The certificates required for transfer of a *guèdik* must state if the owner is living or not, and after such a certificate is issued by the Imam and Mukhtars of the Quarter where the owner of the certificate lives, a note as to his share and as to the value of the *guèdik* shall be made and sealed on the certificate by the head of the body (guild) to which the owner belongs or by the mejlis of the khan, if the *guèdik* is in a khan.

Art. 5.- Certificates as to transfer, successions, or construction, issued by Imams or Quarters, which are undated, or with words struck out or with erasures, are of no validity.

Art. 6.—In order that the fact of mulk property having become *mahloul* by the death of the owner without heirs may be noted it is incumbent on imams and mukhtars to notify the Emlak Office at the Prefecture of the Capital of the fact by certificate of the Quarter at the same time as the Ministry of Evcaf is notified.

Art. 7.—The owner will present to the Emlak Office any title-deeds *(kamessouk)* that he has, together with the certificate for transfer, succession, or construction.

Art. 8.—If anyone, for any reason whatever, renounces the transfer of mulk property after the issue of a license by the Emlak Office it is incumbent on Imams and Mukhtars to send back to the Emlak Office the license issued by it, within ten days.

Art. 9.—The said certificates shall be drawn up in conformity with the form hereto annexed. Application shall be made to the said Office direct for every certificate which requires to be drawn up differently from these forms.

LAW RELATING TO PROPERTIES (EMLAK) AND LAND OF PERSONS EXCLUDED BY ART. 1 OF THE LAW CONCERNING THE ACQUISITION OF PROPERTIES BY FOREIGNERS.

25 Rebi'ul Akhir, 1300.

ART. 1 —Persons who were originally Ottoman subjects and changed their nationality before the promulgation of the law on Ottoman nationality whose assumption of foreign nationality the Imperial Government has recognised and ratified according to treaty, as also those who changed their nationality after the promulgation of the above mentioned law, in accordance with its provisions, shall enjoy all rights conferred by the law of 7 Safer, 1284 which concedes to foreign subjects the right to possess immovable property. Provided always that it is essential that the State of which they have assumed the nationality has adhered to the protocol annexed to the said Law of 7 Safer, 1284.

ART. 2.—Persons who have changed their nationality without obtaining the official permission of the Imperial Government and whose nationality has been divested from them by the Imperial Government are deprived of the rights of acquisition of and succession to property in the Ottoman Empire.

ART. 3.—Immovable property *(aqar)* possessed by persons who, in accordance with the preceding Article, are to be deprived of the rights of acquisition and succession will be, like movable property, divided amongst their heirs who are Ottoman subjects, but in conformity to Articles 110 and 111 of the Land Code such persons will leave no right of tapou over State or mevqufé land. State and mevqufé land of which they become possessed before their change of nationality does not devolve upon their heirs, but becomes vacant *(mahloul)*. These provisions are also applicable in their entirety to moussaqafat and mousteghilat vakf property held in ijaretein.

ART. 4.—The Ministries of Justice and of Finanke are charged with the carrying out of this Law.

TRANSLATIONS

OF

TURKISH LAWS.

PRELIMINARY NOTE.

For the translations of the laws numbered (6), (7), (9), and (11) the Judicial Department is indebted to the Judicial Department of the Palestine Administration.

A provisional law is a law which had not received formal ratification from the General Assembly at Constantinople. Laws were promulgated and put into force provisionally before receiving such ratification, and it has in the majority of cases not been possible to trace any notice of the fact that they have been ratified. It is assumed that they have the force of law in the absence of information to the contrary.

The orders, circulars and instructions issued by various Ministries and published in the Dastur or the Jaridat-ul-'adliyya appear to have been regarded as binding on the Courts.

The following technical terms, which apply only to waqf property, have been allowed to stand untranslated and require some explanation:—

Moussaqafat.—Waqf land on which buildings exist or which is appropriated to building purposes.

Moustaghillat.—Waqf land appropriated to cultivation or tree-planting.

Awqaf madbuta.—Waqf under the direct management of the Waqf Department, and including *(a)* Imperial waqf, of which the Sultan is technically mutawalli and which is actually administered by the Waqf Department on his behalf, and *(b)* waqf of which the administration has been taken over by the Waqf Department on the lapse of the mutawalli-ship provided for by the testator.

Awqaf mulhaqa.—Waqf administered by the mutawalli under the superintendence of the Waqf Department.

Awqaf mustathna.—Waqf administered by a mutawalli who is not under the superintendence of the Waqf Department.

Ijara wahida.—An ordinary lease of waqf property.

Ijaratayn.—Or double lease. Waqf property which had become waste or fallen into disrepair and of which the income did not suffice for its upkeep might be leased for a long term a sum practically equivalent to the value of the property being paid down by the lessee, who was further bound to pay annually a nominal sum as hire.

The transaction was practically a sale, but without transfer of title.

LAW REGULATING THE RESPECTIVE PROVINCES OF THE RELIGIOUS AND CIVIL COURTS OF 23RD DHI-L-QA'DA 1332= 30TH SEPTEMBER 1330.

ART. 1.—The Civil Courts exercise jurisdiction in all commercial and criminal cases, and in all actions relating to the possession, transfer and partition of immovable property, or to lending, borrowing and interest, or to questions of damages, farm leases of concessions and contracts, and of all other matters (except inhibitions) whereof by virtue of the Mejelle and other laws and regulations they have cognisance.

The province of the Religious Courts is confined to matters outside the jurisdiction of the Civil Courts, such as property in waqf, inhibitions and the termination of inhibitions, wills, the nomination and removal of guardians and trustees and the granting of loans from the estates of orphans and wadf estates. They shall also hear suits to decide the shares of the heirs to movable and immovable property in accordance with the laws pertaining thereto and the Sharia procedure, and suits relating to estates in which letters of administration must be taken out, together with all other suits concerning rights under the Sharia law.

In the event of the parties before the Religious Court making a written agreement that, in spite of proper jurisdiction, the suit shall be heard by that Court, no application to hear the suit shall be entertained subsequently by the Civil Court.

ART. 2.—Actions properly within the province of the Religious Courts shall not be heard by the Civil Courts, and in like manner actions properly within the province of the Civil Courts shall not be heard by the Religious Courts.

ART. 3.—This Law shall come into force from the date of its publication.

ART. 4.—The Department of the Sheikh ul Islam and the Ministry of Justice are charged with the execution of this Law.

PROVISIONAL LAW RELATING TO THE INHERITANCE IMMOVABLE PROPERTY.

3rd Rabi'ul awwal 1331=27th February, 1324.

ART. 1.—On the death of a person the mirie and waqf land held by him are transferred to a person or persons according to the following degrees. These are called "ashab haqq al intiqal".

ART. 2.—The heirs of the first degree are the descendants of the deceased, *i.e.*, his children and grandchildren The right of succession within this degree belongs in the first place to the children and then to the grandchildren who are their descendants and then to the children's grandchildren. Therefore when a man dies the descendants of his surviving descendants lose their right of succession, as it is through this surviving descendant that they are related to the deceased. If a descendant dies before the deceased, his descendants represent him and take the share which he would have taken. If all the children of the deceased die before him, the share of each will pass to his descendants who are through him related to the deceased. If any of the children of the deceased have died without descendants the right of succession will be conferred upon the other children and their descendants only. The same rules will be applied where there are several descendants Sons and daughters, grandsons ane granddaughters have equal rights

ART. 3.—The heirs of the second degree are the parents of the deceased and their descendants. If both parents survive, they share equally. If either of the parents have died his descendants represent according to the rules mentioned in the previous article. If the deceased parent has no descendants, the surviving parent, father or mother, will alone have the right If both parents have predeceased him the share of the father will pass to his descendants and that of the mother to her descendants. If either dies without descendants, his or her share will pass to the descendants of the other.

ART. 4.—The heirs of the third degree are the grandfathers and grandmothers of the deceased and their descendants. If all the grandparents on both sides are alive, they will share equally. If one has predeceased, his descendants will represent him in accordance with the rules already mentioned. The share of a grandparent who has no descendants will pass to the grandparent who is his or he spouse. If the spouse is also dead, this share passes to his or her descendants. If all the grandparents on one side, whether paternal or maternal, and their descendants have predeceased then the right of succession passes to the grandparents on the other side and their descendants. The rules relating to the first degree of heirs apply to descendants in this article who succeed to their pasents or grandparents.

ART. 5.—The descendant, whether of the first, second or third degree, who acquires a right of succession though more than one source, retains them all.

ART. 6.—If there is a person in any of the degrees mentioned with a prior right, the others in the later degrees will have no right of succession; but if the deceased leaves children or grandchildren and his father and mother or either of them are still alive, then a share of one-sixth will be given to the latter.

ART. 7.—If the deceased is survived by his or her spouse, the surviving spouse will have the right to succeed to a share. If the heirs are of the first degree this share will be one-quarter If the heirs are either of the second

degree or are the grandparents of the deceased, the share will be a half. If in accordance with article 4 descendants of a grandparent succed with any of the grandpasents their share will also taken by the spouse. If there are no heirs of the first or second degrees or no grandparents surviving the spouse alone succeeds.

ART. 8.—The provisions of the foregoing articles apply also to waqf moussaqafat and moustaghillat, whether let on ijara wahida qadima or ijaratayn or mousteghilat of Muqata'a qadima.

ART. 9.—Owing to the extension of the limits of succession mentioned in the previous article, if existing rents of waqf moussaqafat and moustaghillat, Muqata'a qadima, or Muqata'a badal ushar of waqf lands are less than 8 ‰ per thousand of their value estimated for land tax they will be increased to that amount. The same rule will apply to new creations of Muqata'a.

In addition waqf moussaqafat and moustaghillat, the limits of succession to which have not yet been extended in accordance with the previous rules, will pay the fee for extension of inheritance at the rate of 30 per thousand of the land tax, which will be paid by sixty annual instalments of one-half per thousand.

ART 10.—When the limits of succession to waqf property have been extended by condition of the dedicator of the waqf the conditions will be observed and the rents fixed will continue.

ART. 11.—This Law shall come into force from the date of the promulgation.

ART. 12.—The Ministers of Waqf and Finance shall be charged with the execution of this law

PROVISIONAL LAW CONCERNING THE RIGHT OF CERTAIN CORPORATE BODIES TO OWN IMMOVABLE PROPERTY.

22nd Rabi'al awwal 1331=16th February, 1328.

ART. 1.—The following may own immovable property: (1) the Department of the State and Municipalities; (2) Societies in accordance with their special charters; (3) Turkish Commercial, Industrial or Development Companies in accordance with their charters, contracts and regulations sanctioned by the Government.

ART. 2.—Ottoman Agricultural Companies, the shares of which are registered by name and are held by Ottoman subjects, may own immovable property in accordance with their charters, contracts and regulations sanctioned by the Government; provided that the immovable property is not to be situated within the boundaries of an inhabited village, within the zone of fortifications or at the entrance of a military port or in another place to which the Government may take objection

If these companies desire to sell their land the inhabitants of the village and owners of land in the village have the right to purchase in priority to any other purchaser on payment of the assessed value.

ART. 3.—Charitable Institutions and Ottoman Communities may own immovable property provided that it is house property in towns and villages only, paying taxes and fees. But immovable property formerly connected with a Charitable Institution, whose title has been registered in the Tapou Register, shall be owned as it was owned previously.

PROVISIONAL ARTICLE

Immovable property in towns and villages which up to the present has been owned by Charitable Institution and Ottoman Communities undes a borrowed name may be correcly registered in the names of the said Institutions and Communities if they apply within six months in accordance with the terms of the previous article. This term of six months shall commence from the date of promulgation of this law. After that period no claim made by the said Institutions and Communities will be heard in respect of immovable property in regard to which no petition has been made to the Government Registry Office for rectification within the said period, or in regard to which no action has been brought before the propes court, if an action should become necessasy.

ART 4.—Dispositions in the name of the Corporate Bodies described in this law are made by the offer and acceptance of the following:- In the case of Government Departments and Municipalities, the principal official; in the case of Waqf Madbuta, the Ministry of Waqf, Mudir and Mamur; in the case of Charitable Institutions and Communities, the presidents; and in the case of Societies and Commercial Companies, the presidents and managers.

ART 5.—The corporate Bodies shall pay an annual tax on all immovable property as long as it remains in their possession. This tax shall be in the case of mirie and waqf mirie land one piastre per thousand of its estimated value, and in the case of mulk property a half piastre per thousand. An annual payment of ten piastres per thousand shall be paid in respect of waqf property.

Mulk and mirie property owned by the Government Departments are exempt.

ART. 6.—This law will come into fosce from the date of its approval by the Sovereign.

ART. 7. The Ministers of Waqf and Finance are charged with its execution.

PROVISIONAL LAW FOR THE MORTGAGE OF IMMOVABLE PPOPERTY.

1st Rabi'uth Thani 1331=25th February, 1328.

1. Immovable property whether held as separate property or in common, and whether mulk, mirie, waqf or moústaghillat and moussaqafat waqf land may be given as security for a debd by means of a mortgage.

If the value of the land is greater than the debt, the land may be mortgaged for other debts in the second, third degree or any other degree; and in this case the mortgages of prior degree will have preference over the mortgages of later degree.

2. Immovable property may be mortgaged for the benefit of the Agricultural Bank or of a waqf to secure a sum of money advanced from the money of the waqf as for the benefit of Companies and Banks of Turkish origin, authorised by the Government to lend money on roofed buildings and on land intended to be built on in towns, provided that such Companies and Banks may not definitely obtain the ownership of the immovable property mortagaged.

3 In the first place a certificate, approved by the Municipality, containing a statement whether the immovable property which is to be mortgaged has been leased or not. and if so for what period it has been leasee, will be produced If the period of the lease is longer than the period of the mortgage, when the claim becomes due, or if he does not the mortgagee must agree in writing that he will not proceed to execution until the lease expires

4. The deed of mortgage will be drawn un at the Tapou Registry Office in duplicate and signed or sealed by the parties who must elect a domicile in that town. After the offer and acceptance have been made in the presence of the witnesses and have been approved, a copy be delivered to each of the parties. These formal documents will be considered valid in all Courts and by the Administrative Authorities without further proof.

5. Buildings, trees and vines already erected or planted, or which may be erected or planted on immovable property mortgaged will be considered as forming part of the property and subject to the mortgage.

6. The mortgagors have the right to use and enjoy immovable property mortgaged and in the same way they bear any loss or injury to the same.

7. A mortgagee may assign his right over immovable property mortgaged to him to a third person through the Registry of Tapou and with the consent of the mortgagor, but if the document is payable to "order" the consent of the mortgagor is not necessary.

The mortgagor may sell the immovable property mortgaged with the mortgagee's consent to a third person who undertakes to repay the debt. The rights of the mortgagee over the same remain.

8. Mortgagors may pay their debts secured by formal documents, together with any additions which may have accured, before the date on which they fall due. In that case the principal sum, together with the amount of damages, if provided for in the document, will be paid to the account of the mortgagee at a bank authorised by the Government under the name of the Tapou Registry, and after the receipt has been produced to the Tapou Registry the Tapou will inform the mortgagee of the action taken, and will cancel the mortgage.

9. If the period for the payment of the debt has passed and the debt is not paid, or if the debt becomes due under a condition terminating the mortgage, on the demand of the mortgagee or his heirs, or of any other mortgagee in a later degree, provided that the first mortgagee does not object, the immovable property mortgaged may be sold by the Tapou Registry Office in which the mortgage is registered according to the following articles. Even if the morgagor has died or if he has no heirs or becomes bankrupt it is not necessary to obtain a judgment or decision or to have recourse to the inheritance (*i.e.*, the representative of the debtor) or to the trustee in bankruptcy.

10. When, in accordance with the preceding article, the mortgagee makes a demand to the Registry Office for payment, the Registry Office will notify the mortgagor in accordance with the Rules of Civil Proceduse that he must pay the debt within a week If the mortgagee is dead this notification will be made to his heirs or to their guardians or at their residence or to his trustee in bankruptcy if he is bankrupt.

If, after this period, the debt is unpaid, the immovable property mortgaged will be sold by public auction during the next 45 days. After this period has expired another period of 15 days is allowed for the offer of further bids in advance of 3 per cent at least. It is then sold finally and directly to the highest bidder.

If necessary the Execution Officer on the order of the Registry Office will cause the immovable property mortgaged to be vacated and will deliver it to the purchaser

The proceedings of the auction sale and delivery will not be suspended by opposition made before the Court by the mortgagor. Nor will they be suspended by claims as to the existence of leases which were not mentioned in the document referred to in Art. 3.

But an order of the Court that the mortgagee, if a private individual, shall give personal security, or, if a Company authorised to lend money, shall give an undertaking in writing, shall be executed at once.

11. The remainder of the price after deduction of the expenses will be retained for the payment of the debts which are mentioned in the formal documents made in the Registry Office.

On a claim for payment being made the terms of the contract and the degree of priority of the morgagee will be consided.

Sums due to mortgagees who do not claim payment will be placed to their credit by the Registry Office in an authorised bank.

If the price is not sufficient to pay the whole debt the creditor may claim the balance from the mortgagor.

12. This law shall be applied from the date of its promulgation.

WAKALA DAWRIYYA.

I.—Order issued by the Ministry of Tapou under a decision of the Majlis Wokala and an Imperial Iradah, dated 18th Dhi'l Hijjah 1306=2nd August, 1305.

If the mortgagee of immovable property by "Wakala Dawriyya" and sale with a condition of right to re-purchase, holding an authenticated deed, desire to sell the property according to the law relating thereto, and produce a deed of "Wakala Dawriyya" executed by the debtor, notice may be served upon the debtor through the Mamur of the Tapou Department, and if the debtor thereupon fail to apply to the Court and obtain an order for stay of proceedings, the property may be sold by the agency of the said Mamur.

Provided that, if application have been made to the Court, proceedings will be stayed pending an order of the Court.

If the "wakil dawri", having been appointed under an authenticated deed, refuse to perform the duties which under his "wakala" he is legally bound to perform, proceedings shall be in accordance with the decision of the Court

II.—Order dated 14th Rabi'ul Awwal 1308=16th October, 1306.

In the case of immovable property mortgaged by "Wakala Dawriyya" or sold with a condition of right to re-purchase, transfer may be effected by the Execution Officer upon receipt of an order from the Tapou office without reference to or orders from a Court, as though the trensaction were a lease.

[*Note.*—For "sale with a condition of right to re-purchase" *(v)*. Mejelle Articles 118 and 396 *(ff)*].

PROVISIONAL LAW REGULATING THE RIGHT TO DISPOSE OF IMMOVABLE PROPERTY.

5th Jumad-il-Awwal 1331=30th March, 1329.

ART. 1.—Every kind of disposition of Mirie and mauquf land must be made only in the Tapou Registry and a formal title-deed shall be delivered for every disposition. A disposition without receiving a formal title-deed is not allowed. In places where under the new cadastral law (5th Feb., 1913, New Dustur, vol. 5, p. 79), the new cadastral system has been carried out, the Civil and Shara' Courts will not hear any case, nor will the Administrative authorities allow any dealings with regard to lands for which no formal deed is produced.

This provision also applies to all mulk land and moustaghillat and mous-saqafat land of "waqf madbutah" and waqf mulhaqa and waqf mustathna.

Fees relating to the registration of waqf mustathna will be paid to the waqf and every month information will be given to the waqf. A copy of the books of the moussaqafat and mousteghilat waqf shall be delivered to the Tapou Registry.

ART. 2.—In all dealings with regard to moussaqafat and moustaghillat waqf, if the mutawalli is not present, the Mudir or Mamur or clerk of the Tapou Registry shall act for him

ART. 3.—Formal title-deeds are valid and executory. The Civil and Sharia Courts shall give judgment on these deeds and their registration further proof. A formal title-deed shall not be annuled except by a judgment of a Court based on lawful reasons provided that errors, which contradict unambiguous entries and official documents, may be corrected by the Registry office on an order given by the Administrative Council after informing the parties interested.

ART. 4.—No action of muwada'a or nam musta'ar will be heard in respect of mulk land and immovable property owned by virtue of a title-deed.

[*Translator's Note.*—Muwada'a is the fiction by which a person executed a deed in an illegal form, *i.e.*, not before the Registry which deed expressed the true transaction between the parties and at the same time executed a second deed before the Registry which did not represent the true transaction. The usual case is a deed of absolute sale on the register representing a deed of mortgage which is not registered.

Nam musta'ar means registration in the name of nominee. The effect of the provision with regard to nam musta'ar is that no action will be heard in the Courts in which it is alleged that a person though registered as owner is in fact only a nominee].

With regard to mulk land and immovable property transferred by muwada and nam musta'ar to secure a debt or for any other reason or necessity, a period of two years is allowed during which both parties may by agreement apply to the Registry office and obtain a new title-deed in correction of the former, or if any dispute arises may apply to the Courts. The Courts are not allowed to hear cases brought after this period, unless the party was prevented by legally valid reasons from filing his suit within the period.

ART. 5.—Whoever owns by virtue of a formal title-deed mirie or mauquf land may transfer it absolutely or subject to redemption and may lease it and

lend it and mortgage it as security for a debt, and he alone has the right to all increase and to the full use of it and to all the crops which grow naturally upon it; he is also entitled to cultivate the fields, pastures, and gardens and cut down the timber or vines on it, and, if there are buildings on it, to destroy them or pull them down and convert the land on which they are erected into cultivated land. He may also convert his land into gardens by planting vines or trees and fruit trees provided that the ownership remains with the State. He may erect and construct on the land houses or shops or any buildings for industrial or agricultural use provided that the buildings do not form a village or mahalla (quarter). He may set apart a piece of the land as a threshing floor. In all cases in which any alteration is made a new formal title-deed in correction and in place of the first shall be obtained. The rules for disposal and transfer in the manner specified above, of vines and trees, plants, and buildings together with the fixtures and additions constructed on mirie or waqf land will be the same as for the land itself. A sum will be fixed as an annual tax on land if it is used in a manner which does not permit of the title being levied.

ART. 6.—The building of a new village or mahalla (quarter) on all land owned by virtue of a formal title-deed in subject to the rules of the vilayet law, and the persons who are to inhabit these villages or mahallas as a community must be Ottoman subjects

ART. 7.—Every person owning land, of which he has the right to dispose, may use its soil, may make tiles and bricks and may sell the sand and stone, subject to the rules contained in the special laws on the subject.

ART. 8.—Mirie land owned by virtue of a formal title-deed cannot be constituted waqf or left by legacy unless the State confers the absolute ownership by Imperial mulknama according to Sharia Law.

ART. 9.—If a person owning mirie or mauquf land by virtue of a formal title-deed has erected buildings or planted trees upon it and a third person establish a claim to the land on which these buildings have been erected or trees planted, then, if the value of the buildings or of the trees as they stand is greater than the value of the land, the value of the land will be paid to the claimant and the land remains in the possession of the person who erected the buildings or planted the trees; but if the value of the land is greater than that of the buildings or trees as they stand the latter will be delivered to the claimant and their value will be paid by the claimant to the owner of the land.

ART. 10.—If a person has the ownership of mirie or mauquf land, no other person is allowed to interfere with it or take possession of it or use it or take its natural crops, or to pass through it unless he has that right, or to make upon it a threshing floor or a water channel. If he does any of these things he will be liable for damages. Similarly he shall not plough forests or pastures and convert then into land for cultivation or take timber or cut down the trees or graft them. If he does any of these things he will be liable for damage to the value of the trees as they stand to the owner of the land. The owner of the land may either cut off the grafts and make the grafter pay for the damage to the trees, or he may keep the grafts and pay their value to the grafter.

ART. 11.—If a person erects buildings or plants trees or vines on mirie or mirie waqf land without the consent of the owner may destroy them, or if their destruction is injurious to the land he may dispose of them and pay their value when destroyed (in value of materials).

ART. 12.—If one of the co-owners of mirie or mauquf land held in common, which consist of forests or pernallik and the like, ploughs them and turns them into land for cultivation without the permission of the other co-owners the latter will take their shares of the ploughed land without sharing in the expense and they will also receive their share of the trees cut down or of the value of the trees as they stood: but if the ploughing was authorised by them they will share in the expense in accordance with their respective share.

ART. 13.—If a co-owner without the permission of the other co-owners erects buildings or plants trees or vines on the whole land then on partition the rules of Art. 11 will be followed.

If a co-owner without the permission of the other co-owners erects buildings or plants trees or vines or grafts trees on part of the land then on partition, if the erections or plantations fall into the lot of another co-owner, the rules of Art. 11 will be followed; but in the case of grafting the co-owner into whose lot the grafted trees fall will be indemnified up to the value of the trees as they stood.

ART. 14.—If a person takes possession of mirie or mauquf land and cultivates it without the consent of the owner, the owner may claim its rent for the period during which it was held by the other, but he shall have no right to compensation for the decrease in the value of the land This rule applies to Moussaqafat and Moustaghillat Waqf.

ART 15. The Mamur Tapou represents the State in all actions by or against the State in regard to the raqaba or the disposal of mirie mauqut and mulk mahlul lands.

The period of prescription in cases referring to the raqaba of these lands is 36 years.

It is not necessary that the Mamur Tapou should be present at cases in regard to immovable land between private persons

ART. 16.—Mirie and mauqut land and moussaqafat and moustaghillat of waqf owned by a person are security for his debts during his life and after his death, even if it becomes mahlul land. But if the debtor is a cultivator that part of the land which is required for his support will not be sold unless it is already the object of a contract of conditional sale or mortgage, or unless the debt represents the price of the land.

This rule applies also to the house which is necessary for the accommodation of the debtor, or of his family after his death

ART. 17.—Actions claiming the ownership of immovable property, sold through the Tapou office by public auction in accordance with special laws, must be brought before the sale is completed. In that case if the court suspends the proceedings of the auction and if the claimant in the end loses his claim he will be responsible for the damages and loss of profit caused by the suspension of the auction or from any other cause.

The Courts are forbidden to hear cases where the claim is brought after the sale has been completed unless the delay was due to a lawful cause.

ART. 18.—This law is to be applied from the date of its promulgation.

ART. 19.—This law is to be applied provisionally untill Parliament ratifies it.

[*Translator's Note.*—The words "owners, ownership and own" are used in this translation to represent the actual interest which exists in the land, whether its be Mulk, Mirie, Waqf or any other description of land].

LAW OF THE PARTITION OF JOINT IMMOVABLE PROPERTY.

1 Any co-sharer in Miri or Waqf land, or in "mustaghillat" or "moussaqafat" Waqf property, or in other Mulk and immovable property held in common, may apply for partition thereof, and no previously existing contract for the continuance of joint possession in perpetuity shall entitle any co-sharer to object to such Partition. Property which is capable of partition, that is, property of which the value is not decreased by partition, may be partitioned, and property which is incapable of partition may be sold by auction in order to dissolve joint possession

2 Partition may be postponed for five years by consent of the parties. Upon the expiry of this period, the co-sharers may, if they so desire, renew the agreement to postpone

3. Property which is capable of partition may be partitioned either by consent or by decree For partition by consent, the consent of all the co-sharers is necessary. Partition may be made by decree upon the application of one or more of the co-sharers. The guardian of a co-sharer who is a minor or under tutelage may apply for partition on his behalf.

4. In the case of partition by consent, the co-sharers may effect partition among themselves in such manner as they may deem fit, subject to the provisions of Article (1), and shall then produce before the Mamur of Tapou a statement setting forth the manner of the partition which they shall obtain from the Mukhtar of the quarter or village and two members of the Village Council and, if possible, a map This statement they shall declare and attest before the Mamour of Tapou, and each co-sharer shall thereupon be furnished with a deed showing his separate possession. Or they may make direct application to the Mamour of Tapou, who shall thereupon proceed to the place where the property is situated. The Mamur shall, if possible, be accompanied by the Tapou or Municipal Engineer. He shall inspect the property in the presence of the co-sharers and the Village Council. and, if it appear to be capable of partition, shall effect partition in accordance with the following article.

5. The procedure in the partition of cultivable and waste land shall be as follows:—

First.—There shall be ascertained the area of the land in yards or donums, the advantages of site and other qualities, and its degrees of capacity for production; it shall then be divided into a number of shares corresponding to the number of the co-sharers, care being taken that the shares shall be distinct, so far as possible, in respect of rights of way, rights of water and liability to flood, and that the value of the shares correspond. The value of the shares shall be fixed by the consent of the co-sharers, or, in case the co-sharers fail to agree, by experts appointed by the Mamur of Tapou.

Secondly.—If the shares be of unequal value with respect to productive capacity, adjustment shall be made by cash payments.

Thirdly.—A record of the proceeding and, if possible, a map shall be prepared in the course of the proceeding.

Fourthly.—The shares shall be assigned to the co-sharers by drawing lots. and the result shall be entered in the record of the proceeding which shall be signed and sealed by the co-sharers and attested by the officials present,

Where there are more properties than one to be partitioned, they may, if the co-sharers consent, be partitioned in one proceeding. The partition of "Moussaqafat" shall be effected according to the preceding provisions and article 1151 of the Mejelle.

6. If one of the co-sharers desire partition and others of the co-sharers do not consent, or if one of them be a minor, or be absent, the co-sharer desiring partition shall produce before the Peace Judge a certificate from the Village Council within the jurisdiction of which the property is situated to prove his indentity and that he is a co-sharer. The Peace Judge shall thereupon cause notice to be served upon the other co-sharers or their guardians summoning them to be present at the partition, and shall fix a date not less than seven days later. If one of the co-sharers be absent, the Peace Judge shall proceed according to the provisions of the Code of Civil Procedure regarding the service of notices. Upon the date fixed the Peace Judge or a person deputed by him shall proceed to the place where the property is situated with the co-sharers and shall effect the partition in the presence of the Village Council in the manner set forth in article (4). If no member of the Village Council be present, there shall be present not less than two neighbours. Copies of the proceeding shall be served on the persons concerned and one copy in the form of a decree shall be sent to the local Tapou office.

7. Any share which has been separated according to the preceding articles shall, if it be inherited and held jointly by heirs, be partitioned among them according to the preceding rules.

8. If one of the co-sharers who are in undivided possession of cultivable land, "Moustaghillat," "Moussaqafat" or other immovable property claim that it is incapable of partition and apply for the sale of his sale his share to the co-sharers or to other persons, the Mamour of Tapou shall first inspect the property in the manner set forth in article (4). If he find that it is incapable of partition, the local Administrative Council shall appoint experts to determine the market value of the share, and notice shall be served upon the co-sharers requiring them to state whether they desire to purchase the said share at the price so fixed or not. The applicants to purchase shall then be entitled to purchase in proportion to their interest Provided that, if one of them do not consent to joint purchase and pay and amount exceeding the price fixed, the share shall be auctioned among the co-sherers and shall be sold to the highest bidder.

9. If within the period fixed no one of the co-sharers purchase the share which is to be sold, and if the sharer who has applied for sale persist in his application or if he refuse to accept the market price which has been determined, the whole property shall be sold by auction in accordance with the law concerning the sale of immovable property which is hypothecated, and it shall be transferred to the purchaser and the proceeds divided among the co-sharers in proportion to their share, by the Peace Judge. The transfer to the purchaser of properties thus sold shall, upon applications, be effected by the Execution Office.

10. If no bidder for the whole property be forthcoming, or the price offered be insufficient, the property shall be auctioned among the co-sharers only. If this be impossible, the co-sharer who has applied for the sale of his share may sell the share to a purchaser who is not a co-sharer, if he can find such. In such case the co-sharers who refuse to purchase at the determined

market price shall forfeit their right of pre-emption. If sale in this manner also be impossible, the auction may be re-opened after a reasonable period has elapsed.

11. After the completion of a transfer of property under article (9) no suit instituted by co-sharer or the guardian or executor of a co-sharer for the cancellation of the sale shall be heard.

12. The costs of partition shall be borne by the co-sharers in proportion to their shares according to the value thereof determined at the partition. The costs of auction shall be deducted from the sale proceeds. The costs of an auction which does not result in sale shall be borne by the co-sharer upon whose demand it was held.

13. In places where there is no Peace Judge the Court of First Instance shall effect partitions according to the Peace Judge's Law and the preceding articles.

14. This law shall come into force from the date of its proclamation.

15. It shall be enforced by the Ministers of the Interior, Finance, Justice and Waqf.

(The law is issued provisionally by Imperial Iradah and and is subject to confirmation by the General Assembly, 14th Muharram 1332=1st December, 1329).

IMPERIAL IRADAH ON THE LEASING OF IMMOVABLE PROPERTY OF 28TH JUMAD-IL-AWWAL 1299=5TH APRIL 1298, AS AMENDED BY THE PROVISIONAL LAW OF 18TH RABI-UL-AWWAL 1332=1ST FEBRUARY, 1329.

1. In order to lease houses, shops, land, farms or other immovable property, whether at Constantinople or in the provinces, a deed of agreement must be executed by the lessor and the lessee.

2. There shall be set forth in the deed the names of the lessor and lessee, their occupations, their places of residence, their nationalities, the class and situation of the property, the purpose to which it is applied, the period of the lease and the amount of the rent. If the rent be payable in advance, it shall be recorded as so payable.

3. The parties may introduce into the agreement any condition which is not repugnant to law or public morality

4. There may be prepared a list of the appurtenance of the property with a statement of the condition of the property at the time of the lease, and in such case such list and statement shall be mentioned in the deed of contract. Upon the expiry of the lease, the lessee is bound to deliver to the lessor the things shown in the said list to have been received by him, and shall deliver the property leased in the same condition as is recorded in the said statement. Provided that the lessee shall not be held responsible for deterioration due to natural causes

5. Deeds on behalf of minors, lunatics or idiots may be drawn up by the Court clerk on the application of their guardians or trustees, and leases of waqf property on single lease may be drawn up by the Court clerk on the application of the mutawalli

6 Contracts prepared by the Court shall be stamped with contract-stamps. A fee of one-tenth of the value of such stamps shall be recovered on account of the preparation of the document, and note to that effect shall be recorded on the back of the document over the signature and seal of the Court.

7. Waqf property on single lease shall not be leased for a period exceeding three years. All other immovable property, including waqf on double lease, may be leased for such period as the lessor may desire, according to article 484 of the Mejelle.

8. If the property be held by owners in joint possession, the share of each shall be stated separately in the deed of contract.

9. The deed of contract shall be drawn up in duplicate and each copy shall be signed by both parties and by their sureties, if any.

10. (as amended). A fee of one-quarter per cent. shall be levied on deeds of lease by means of contract-stamps. Such deeds shall also be stamped with the "tamgha" under the Stamp Act. The contract-stamps shall be paid for by the leesor, and the "tamgha" by the parties who retain the copies.

11. Contract-stamps shall be of various values and shall be so printed that they may be divided into two parts. Special stamps shall be printed for each Municipal Office, bearing the number of the Office.

12. (as amended. Contract-stamps of the Municipal Office within the jurisdiction of which the property is situated shall be affixed to the deed of lease, to the value of one-quarter per cent. of the rent for the whole period of the lease. The stamps shall be divided into two halves; one-half shall be affixed to the copy retained by the lessor and the other half to the copy retained by the lessee. If the property be jointly owned by co-sharers, or if there be more lessees than one, and each lessor or lessee desire to have a copy, certified copies shall be granted by the Office which granted the original copies, and no stamps need be affixed except to the first two copies; provided that a fee of five piastres or of the value of the stamps on the first two copies, if that be less than five piastres, shall be recovered for every such copy.

13. If it be impossible to procure a single stamp to cover the whole fee, more stamps than one may be affixed.

14. The stamps shall be affixed at the time of signing and sealing the document, and shall be cancelled by writing the date over the inscription printed on them.

15. In the case of leases prepared by the Court, the value of the stamps to be fixed shall be calculated after deduction of the fee specified in article (6).

16. This rule shall apply also to leases prepared by Government Offices.

17. (as amended). If a lessee desire to transfer his right for a portion of the term of the lease, a note shall be made at the foot of the lease, and shall be sealed, and a contract-stamp of the value of 5 piastres shall be affixed; provided that if the lessee sublet the property at a higher rent, contract-stamps of the value of one-quarter per cent. of the excess rent shall be affixed Upon the death of the lessor or of the lessee the contract shall continue to be binding without payment of additional fees.

18. (as amended). The lessor and lessee may alter any of the conditions of the lease by entry at the foot of the deed, provided that if the amount of the rent or the term of the lease be altered, there shall be affixed contract-stamps of the value of one-quarter per cent. of the increase.

19. If the Government acquire for a public purpose property held under a lease, the lessee shall vacate the property within the time fixed.

20. (as amended). For the enforcement of the conditions of a duly stamped lease either party may apply to the Peace Judge, or, if there be no Peace Judge, to the Court of First Instance, within whose jurisdiction the property is situated. The Peace Judge or the President of the Court, as the case may be, shall warn the recusant party that he must carry out the conditions of the lease within fifteen days, and if he fail to do so within the said period he shall be compelled by the police. On the termination of the period of the lease the property shall be vacated according to the Law of the Notary Public. If a suit be pending between the parties, the property shall nevertheless be delivered to the lessor without awaiting the result of the suit. If a lease not duly stamped be presented to the Peace Judge or the Court for enforcement, the parties shall not be entitled to benefit by the preceding provisions until the penalty prescribed by this law be paid to the Municipal Office.

Of the proceeds of stamps issued and cancelled by the Notary Public, five per cent. shall be paid to the vendor and the balance shall be paid to the Municipal Office.

21. No claim for the performance of a condition not stated in the deed of lease shall be heard.

22. (as amended). A lessor who fails to execute a written deed of lease shall be liable to pay a cash penalty equal to three per cent. of the rent of the property for one year. Further, stamps of the value of one-and-a-half per cent. of the total rent shall be purchased at his expense and cancelled in his presence.

23. (as amended). If a deed of lease which has not been duly stamped according to the provisions of this law, or which has been duly stamped but of which the stamps have not been cancelled as require by article (14), be presented at any Court or Office of Government, contract stamps to the value of one-quarter per cent. of the total rent shall be affixed thereon, and there shall also be recovered a cash penalty equal to one-and-a-half per cent. of the total rent. If the lease be insufficiently stamped, or if the rent or period of the lease have been subsequently altered, and a note of such alteration have been made at the foot of the deed, and the new rent be greater than the original rent, and stamps of value proportionate to the excess have not been affixed, then stamps for the excess due shall be affixed to the deed and there shall also be recovered a cash penalty equal to one-and-a-half per cent. of the excess

24. (as amended). The hearing of any case which requires the production of a deed of lease shall be suspended until the penalties mentioned in articles (22) and (23) have been paid, where such are due.

25. Cash penalties due to Municipalities will be paid to them according to the Municipal accounts rules.

26. (Penalties for forgery of stamps, etc., under the Penal Code).

27—29 (Sale of stamps, etc.).