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OTTOMAN LAND LAWS

OTTOMAN LAND LAWS

CONTAINING THE

OTTOMAN LAND CODE

AND LATER LEGISLATION AFFECTING LAND

WITH NOTES

AND

AN APPENDIX OF CYPRUS LAWS AND RULES RELATING TO LAND

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PREFATORY NOTE.

THE version of the Ottoman Laws in this Volume is mainly based on the French translations in Mr. George Young's Corps de Droit Ottoman (Clarendon Press, Oxford, 1906), and on the Greek translations in the Othomanikoi Kodikes published at Constantinople in 1890.

Except in the case of the Law dated 25 Rebi'ul Akhir, 1300, I have checked the Text with the Turkish original in collaboration with Mustafa Midhat Effendi, of the staff of the Idadi School, Nicosia.

In all quotations I have left the transliteration of Turkish words unaltered.

S. F.

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NOTE.

Immovable property in Cyprus is regulated by Ottoman Law in force on the 13th July, 1878 (13th Rejeb, 1295), as altered or modified by Cyprus Statute Law.

C.L.R.=Cyprus Law Reports.

STATUTE LAWS II.=The Statute Laws of Cyprus, 1907–1913, etc.

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OTTOMAN LAND LAWS.

THE OTTOMAN LAND CODE.

(7 RAMAZAN 1274)[1]

INTRODUCTORY.

ART. 1.—Land in the Ottoman Empire is divided into classes as follows :—

(i.) " Mulk " land, that is land possessed in full ownership ;[2]

(ii.) " Mirié " land ;[3]

(iii.) " Mevqufé " land ;[4]

(iv.) " Metrouké " land ;[5]

(v.) " Mevat " land.[6]

[1] 21st April, 1858.
[2] See Art 2
[3] State land. See Art 3
[4] See Art 4
[5] See Art 5
[6] See Art 6

ART. 2.—Mulk land[1] 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.[2]

(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.[3] The tribute imposed on these lands is of two kinds :—

(*a.*) " Kharaj-i-moukassemé "[4] 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 "[5] which is fixed and appropriated to the land.

The owner of Mulk land has the legal ownership.[6]

It devolves by inheritance like movable property,[7] and all the provisions of the Law, such as those with regard to dedication pledge or mortgage, gift, pre-emption,[8] are applicable to it.

Both tithe-paying land and tribute-paying land become State land when the owner dies without issue, and the land becomes vested 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.

[1] Mulk land, *arazi memlouké*, is land which is the subject of complete ownership in the same way as are chattels See Mejelle, Arts. 125 1192 and *Houloussi v Apostolides* (1888) C.L R., I , p 51.

Its owner has both the *raqabé* and the *huquq-i-tessaruf* (the legal ownership and the right of possession) which "taken together constitute the full *dominium* or *proprietas* as understood in the Roman Law" See *Tsinki v The King's Advocate* (1914) C L.R , X., p. 61. "En un mot la terre memlouké est celle sur laquelle le propriétaire exerce un droit de propriété absolue, comprenant le domaine eminent (rakabé) et le domaine utile (tessaruf)" Chiha's De la Propriété Immobilière en Droit Ottoman, pp 9, 10

It is at the free disposition of its owner during his lifetime subject to certain rights, such as pre-emption, and the rights of co owners (Mejelle, Arts. 1045 *et sqq.*) and at his death passes to those who inherit his movable property

It would seem that the rights of the owner extend *usque ad coelum* (Mejelle, Arts 1194, 1196) and, subject to mining legislation, *usque ad inferos* (Mejelle, Art 1194), qualified by certain restrictions designed to safeguard the interests of neighbours See Mejelle, Arts 1192-1212

Mulk land was subjected to compulsory registration by the Law of 28 Rejeb, 1291. See p 63 *infra*

As to different kinds of mulk, see *Gavrielides v Haji Kyriaco* (1898) C L R , IV., p 87

[2] See Art 121 *infra* As to mevat land being granted as mulk, see Mejelle, Art 1272 and *Haji Kyriaco v The Principal Forest Officer* C L R , III at pp. 97, 99

[3] "Cependant dans d' autres provinces les terres conquises furent maintenues en la propriété absolue . . des habitants non-musulmans, comme dans les îles de Chio, de Metelin, et de Chypre" Chiha's De la Propriété Immobilière en Droit Ottoman, p 9

[4] *Kharaj-i-moukassemé*, proportional tribute

[5] *Kharaj-i-mouvazzef*, fixed tribute

[6] The words legal ownership represent the word *raqabé*, رقبه. This word is sometimes translated 'servitude' See, *e g* , *Haji Kyriaco v The Principal Forest Officer*, C L R , III , pp 95, 99

Savvas Pasha in Theorie de Droit Mussulman, p 15, says "Reqabé is the chain or ring which a slave wears round his neck, which makes his social condition known As regards acquisition of immovable property the word has been converted into a terme de droit and denotes abstract ownership, *la nue propriété*"

It might perhaps be rendered in English by the word 'lordship,' or by 'legal estate In any case it appears that, as the result of having the *raqabé* vested in him, an owner of mulk land has the most complete form of ownership of land known to Ottoman Law

[7] See Wills and Succession Law, 1895, which however does not apply to the property of deceased Mahomedans (Sec 63)

[8] See Mejelle, Arts 950, 1008-1044

ART. 3—State land,[1] the legal ownership[2] of which is vested in the Treasury,[3] 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"[4] as lords of the soil, and later through the "multezims" and "muhassils."[5]

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.[6]

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[7] fee.

[1] State land (*lit* lands), *arazi mirié*, "in the opinion of the commentators on the Law, is land which at the time of the Ottoman conquest of a country, was assigned to the Beit-ul-Mal, or land which has been granted out since by the Sultan for purposes of cultivation, on condition that the 'servitude' (raqabé) vests in the Beit-ul-Mal They also lay down that lands which, whether by becoming mahlul, or *in any other way*, are left to the Beit ul-Mal are arazie mirié, meaning by 'left to the Beit-ul-Mal,' we suppose, lands of which the Beit-ul-Mal has in any way acquired the servitude" See *Haji Kyriako v The Principal Forest Officer* (1894) C L R , III , p 95

It may be described as a heritable leasehold "The mutessarif (usufructary) of arazie mirié is not of course a proprietor but a sort of lessee" Per BERTRAM, J in *Tzapa v Tzolaki* (C L R , IX , p 81)

The subject matter of the lease is the surface of the land, and, speaking generally, the object of the grant is that the land may be cultivated (See Art 9) and cultivated 'exclusively that the State may derive a tithe from the land' *Raghib v Gerasimo* (1894) C L R , III , p 139 It is a personal tenure and therefore it seems that it cannot be granted to a Monastery "The right to possession of State lands is throughout the Law treated of as a personal right, and as we have in effect already stated, the law speaks always of the State as owner of the land, and does not recognise the possibility of the existence of any right in or over it save a right of possession, which may be assigned by permission of the proper representative of the State and may pass by inheritance, but which becomes vested in the State on failure of heirs" See *Sophronios v The Principal Forest Officer* (1890) C L R , I , p 117.

Buildings may not be erected on it without leave (Art 31), the subsoil must not be dug up in order to make bricks or tiles (Art 12) or wells. See *Raghib v Gerasimo* (1894) C L R , III , p 105 and *Tsinki v The King's Advocate* (1914) C L R , X , p 54 Nor must the character of the land be changed (Art 107) For a history and analysis of *arazi mirié* see the judgment of Tyser, C J in *Tsinki v The King's Advocate*

[2] See note (6) to Art 2

[3] The Beit-ul-Mal

[4] A timar was a fief with an annual revenue of less than 10,000 piastres, a ziamet was a fief with a larger annual revenue

[5] Multezims, revenue farmers, muhassils, collectors of taxes

[6] See the Tapou Law, p 43 *infra*

[7] Tapou. See Behn, De la Propriété en Pays Musulman, p 172 note 2

ART. 4.—Mevqufé, 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. This Code therefore does not apply to this kind of mevqufé 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. Mevqufé land of this kind is not true vaqf. Most of the mevqufé 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 mevqufé land such fees shall be paid to the vaqf concerned.

The provisions hereinafter contained with regard to State land are also applicable to mevqufé land, therefore whenever in this Code reference is made to mevqufé land this land which has been so dedicated is to be understood as being referred to.[1]

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.

[1] *i e* to land of the takhsisat category *Takhsisat*=special appropriations of revenue.

ART. 5.—Land left for the use of the public (metrouke)[1] is of two kinds :—

(i.) That which is left for the general use of the public, like a public highway[2] 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 example pastures (meras).

[1] See Art. 91 *et sqq infra* and see also Mejelle, Art. 1271, and *Haji Kyriako v The Principal Forest Officer* (1894) C L R III , p 94. As to there being no prescription in respect of actions concerning public roads, etc , see Mejelle, Art 1675

[2] As to rights over a public way see Mejelle, Art 926 *et sqq* and see the Ottoman Penal Code, Art 264, which makes it an offence, punishable by fine and imprisonment, to spoil or encroach upon public roads and places assigned for the use of the public

ART. 6.—Dead land (mevat)[1] is land which is occupied by no one[2] and has not been left for the use of the public. 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 half an hour's distance from such.[3]

[1] See Art. 103 *et sqq. infra* and Mejelle, Arts 1270-1280.

[2] Khali land.

[3] "This is no doubt a primitive definition meaning a considerable distance." See *Anastassi v. Haji Georghi* (1892) C.L R. II, p. 67.

ART. 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 Metrouké," and "Arazi Mevat." In this Book jebali moubaha[1] will also be dealt with.

Book III.—Miscellaneous kinds of land not classified in the preceding categories.[2]

[1] *Jebali moubaha*—mountains which have not passed into the possession of any one. See Mejelle, Art. 1243.

[2] As to treatment of land of no recognised category, see *Haji Kyriaco v. The Principal Forest Officer* (1894) C.L.R III, p. 97

BOOK I.

STATE LAND.

CHAPTER I.

CONCERNING THE NATURE OF POSSESSION.

ART. 8.[1]—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.

[1] See Art 130

ART. 9.—State land may be sown with all kinds of crops, such as wheat, barley, rice,[1] madder (boia), and other cereals. It may be let on lease[2] 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.[3]

[1] See Art 128 *infra*

[2] It was held in *Koukoulli v Hamid Bey* (1907) C L R VII , 85, a case of State land, that "A lease of immovable property must be in writing, if not in writing it is invalid and cannot be enforced either specifically or by damages" The Law of 10 Rebi'ul Evvel, 1291, which was repealed by Art 30 of the Law of 28 Jemazi'ul Evvel, 1299, was explained in that case See also *Tritafides v Nicola* (1900) C L R V , 31 As to letting immovable property, see Mejelle, Book II , particularly Arts 484-494, 522 *et sqq*

[3] See Art 68 *infra*

ART. 10.—Meadow land[1] the crop of which is harvested by *ab 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[2] 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.

[1] See Art. 85

[2] See Mejelle, Art 1242

ART. 11.—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 any one wishing to pasture cattle there.[1]

[1] Compare Art. 125, and see Ottoman Penal Code, Art. 261

ART. 12.—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 mevqufé land, the offender shall pay the price of the soil thus used by him, according to its local value, into the Treasury.

ART. 13.—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.[1]

[1] See Mejelle, Arts 6, 1224, 1225 and Chiha's De la Propriété Immobilière en Droit Ottoman (1906) pp. 178, 179

ART. 14.—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.

ART. 15.—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.[1] The partition shall be made in the presence of the interested parties or their representatives by the Official[2] 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 (mouhaia) that is possession by the co-possessors in turn cannot be resorted to.

[1] See Art 15 of 7 Shaban, 1276, p 50 *infra*, also Civil Procedure Law, 1885, s 92, p 98 *infra*, and the Immovable Property Registration and Valuation Law 1907, ss 30, 31, p 130 *infra* and Mejelle Art 1114 *et sqq*

[2] "An official of the Land Registry Office executing a writ of partition is for the time being an Officer of the Court and any person obstructing him is liable to be punished summarily" *Ayshe Ali Agha v Salih Ali Agha* (1910) C L R IX, 45

ART. 16.—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 has fallen to him none of them can annul the partition which has taken place and demand the making of another.

ART. 17.—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.[1]

[1] Where a partition has taken place without the leave and knowledge of the Official and each party has had undisturbed possession for ten years of the land taken by each, in accordance with that division, each has a right to be registered as the sole possessor of the land each took under such division. See *Kyriaki v. Kyriaki* (1895) C.L.R. III, 145

ART. 18.—If one or several 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 lunatics or imbeciles of either sex partition must be effected through their guardians.[1]

[1] As to infants see Mejelle, Arts 943, 966 As to lunatics and imbeciles see Mejelle, Arts. 944 945

ART. 19.—Anyone who has sole possession by title-deed of woodland or "pernallik"[1] 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 land so cleared.

[1] Land on which the holm oak (*quercus ilex*) grows. See note in Young's Corps de Droit Ottoman, Vol. VI, p. 50 "A region grown with holly bushes and the like used as pasturage for goats" Redhouse's Turkish-English Lexicon

ART. 20.[1]—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-sefer)[2] 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[3] 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.

[1] See Art 78 Compare Mejelle, Art 1660 *et sqq* This Article was exhaustively considered in *Mehmet v Kosmo* (1884) C L R. I, 12 and the above version of the Article aims at being in accordance with the decision in that case. The defendants had had uninterrupted possession for ten years of land registered in the name of the plaintiff It was held that "the defendants had acquired a valid title to the land by prescription" under this Article The Court negatived the contention that this Article required occupation *and* registration It may be deduced from the judgment that the word *tapoulé* (طابولى) is adjectival qualifying the word "land" and that it must be distinguished from the expression *ba tapou* (با طابو). That decision was endorsed by the same judges, after consideration, in *Hassan v Sava* (1892) C L R II, p 58. Compare the wording of s. 29 of the Immovable Property Registration and Valuation Law, 1907 In *Haji Ahmet v. Hassan* (1906) C L R. VII, p 46. the effect of the Immovable Property Limitation Law, 1886 (p. 111 *infra*) on this Article was considered and it was suggested that that Law may have been ignored by the Court in *Hassan v Sava*, but the observations of the Court, composed of the same judges, in *Sophronios v The Principal Forest Officer* (1890) C L.R. I, pp 120, 121 on that Law seem to point to the likelihood of their not having lost sight of it. In *Pieri v. Philippou* (1903) C L R. VI, 67 the Court held that a defendant who sets up a prescriptive title in answer to an action by a registered Plaintiff must bring a cross action But see now Rules of Court 1886 (as amended) O. VIII, r 23*a* (Cyprus Statute Laws Vol II, p 692)

As to form of judgment where an unregistered possessor proves a title by prescription to property which is subject to compulsory registration see *The Bishop of Kyrenia v Haji Paraskeva* (1897) C L R IV, p 57

Undisputed possession for ten years of a share of land which has been partitioned without the assent of the Land Registry Office gives a prescriptive title to such share notwithstanding Art 17. See *Kyriaki v Kyriaki* (1895) C L R III, p 145.

An agreement to buy land, even if paid for, without occupation, is not sufficient to found a title by prescription. *Juma v Halil Imam* (1899) C.L.R. V, 16

As to nature of possession and abandonment see *Mourmouri v. Haji Yanni* (1907) C L R. VII, 94, a case under Art 1660 of the Mejelle in which case the Court said (p. 96) "Possession for the period of prescription under a grant or sale not perfected by registration may no doubt operate to supply the defect of want of registration in the same way as *usucapio* operated to cure defective titles in Roman Law, but such possession, in order to be effective, must be maintained adversely to the person entitled to dispute it, and be of such a nature as to exclude the donor or vendor, continuously and substantially, from the enjoyment of his property," and "It is, we think, an undoubted proposition that, if a person, who is entitled to set up a prescriptive right against another person, expressly renounces his prescription, or does an act which is by implication equivalent to renunciation, he cannot afterwards reassert the prescription against the person in whose favour he has renounced it." Neglect of a person who has acquired a prescriptive claim to registration to obtain registration may estop him from setting up his claim against a *bonâ fide* purchaser for value, see *dictum* in *Haji Petri v Haji Gligori* (1892) C L.R. II, p 113, *Sava v. Paraskeva* (1898) C L R IV, 71 and *Mehmed v Nikoli* (1909) C L R VIII, 113 As to interruption of period of prescription see *Mehmed v Nikoli supra* As to prescription running against the State see *Haji Kyriaco v The Principal Forest Officer* (1894) C L R III, p. 99.

[2] Absence—Muddet-i-sefer "A distance from place to place of three days at a moderate rate of travelling, that is to say, eighteen hours." See Mejelle (Translation by Tyser, Demetriades, and Hakki) Art 1664. "In a country separated by a journey of eighteen hours" See *Francoudi v Heirs of Michaelides* (1895) C L R. III, p 229 Absence of the plaintiff is alone material, see *Muzaffer v. Collet* (1904) C.L R VI, 108 and *Chaoush v Lapierre* (1907) C L R. VI, 72. In the former case Hutchinson, C J., expressed the opinion (p. 110) that The Immovable Property Limitation Law, 1886, governs the question of excuses in Cyprus See s 2 (p 111 *infra*) As to beginning of period against an absent person see *Francoudi v Heirs of Michaelides* (1895) C L R III, 221

[3] "Whatever originally may have been the meaning assigned by the laws of the Ottoman Empire to the term "Year" the term by universal custom in Cyprus means a year containing 365 days" See *Yemeniji v Andoniou* (1893) C L R II, 140 Compare Omer Hilmi's "Law relating to Vakf Properties," translation by C. G Stavrides and S Dahdah (1895), paragraph 451 "Dans la prescription on considère l' année lunaire et non l' année solaire"

ART. 21.[1]—When land which has been taken and cultivated unlawfully or by violence and on which the taxes have been paid[2] has after trial been restored to the possession of the rightful occupier by the Official neither the 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*)[3] or an equivalent rent (*ejr misl*).[4] The same provisions apply to land belonging to minors, lunatics, and imbeciles of either sex.

[1] *Cf* Art. 79 *infra* and Mejelle, Arts 596, 881, 906 (which does not repeal this Art see *Tzapa v. Tsolaki infra*) and 907, and see next Article. For criticism of this

Article see Chiha's De la Propriété Immobilière en Droit Ottoman (1906) p. 139 *et sqq.* See *Gavrielides v. Hajı Kyriaco* (1898) C L R IV., p. 97 as to the encouragement of agriculture being the basis of this Article.

[2] It seems that the payment of taxes is not an essential condition See *Tzapa v Tsolakı* (1910) C L R IX , p 81, in which this Article is discussed. The following comment on this reference to taxes by Khalis Eshref (paragraph 206) is there set out. " This is not an essential condition Even in the case of lands on which no taxes have been recovered, no *noksan arz* or *ejr misl* is payable, but the taxes are recovered from the usurper by the proper Official of the Treasury Even therefore where the unlawful cultivator has not paid the lawful dues, *e g* tithes, he cannot be ordered to pay any *noksan arz* or *ejr misl* The Court cannot investigate as to whether the dues of the land have been recovered or not "

[3] *Noksan arz* See Mejelle, Arts. 886, 907 and *Hajı Loizo v. Nailé* (1894) C.L R. III., p 49

[4] The wording of this Article up to this point is taken from the judgment of Bertram, J , in *Tzapa v Tsolakı* (1910) C.L R. IX , p. 81.

ART. 22.—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,[1] he has no right to take them for himself.[2]

Addition. 15 Jemazı'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.[3]

[1] " By the 'competent Official' it seems probable that the Law intends an Official of the Land Registry Office " See *Hajı Loizo v Nailé* (1894) C L R III , p 51

[2] In the last mentioned case it was held (p 46) that the measure of damages to which a trespasser is entitled should the owner without the intervention of the Official uproot crops sown by him is " the lowest value the crop would have had when standing in the field ripe for cutting, and not the value the grain might have when harvested and brought to market." In that case the Court said (p 51) " when they (the Plaintiffs) were ploughing the land they were warned to desist, but in spite of the warning they persisted in their action and wrongfully kept possession and sowed the land " and expressed the opinion that the defendant should have brought an action against them, and that, not having done so, " the crop remained, in the eye of the law, the property of the plaintiffs and they would have been entitled to reap it " (p. 52) " The Land Code is largely founded on the principles of the Sher' Law, and the principle of the Sher' Law is that it is not lawful to cause an injury in order to repair an existing wrong " (p 51) See Mejelle, Art. 19, and compare Art 908

[3] This addition was enacted subsequently to the British occupation of Cyprus and according to *Hajı Loizo v Naile* (1894) C L R III , p 51 is not in force in Cyprus But see *contra* per Bertram, J. " As it is really declaratory of the principles laid down in the books of the Fiqh it may be considered as part of the law of this Island." *Tzapa v Tsolakı* (1910) C L.R. IX., p. 82.

ART. 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.[1] 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.

[1] His possession is not "adverse possession" as defined by s 1 of the Immovable Property Limitation Law, 1886, See p. 111 *infra*

ART. 24.[1]—Places which have been used as winter (kishlak) and summer (yaylak) pasturing 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[2] 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 "kishlakié" in proportion to the yield.

[1] See Art 101

[2] "Yaylaks and Kishlaks may be metrouké or may be held by tapou" *Haji Constanti v The Principal Forest Officer* (1895) C L R III, p. 157 and see note to Art 97. As to non-user of those possessed by title-deed see Art 84 *infra*

ART. 25.—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 three 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 three years, are not considered as subject to the land but belong in full ownership to the possessor of the land.[1] But tithe is taken of the produce annually. Fixed rent (*moukataà*) shall not be charged on the site of such vineyards and orchards on the produce of which tithe is taken.

[1] According to the judgment in *Gavrielides v Haji Kyriaco* (1898) C L R IV, 84, where vines, though not planted by proper leave, have been left for three years (p 88) the title to the State land on which they are is extinguished, so long as the land remains covered with vines, by the "mulk" ownership of the vines conferred by this Article "From Articles 25 and 44 it may be gathered, I think, that the converse of the English and Roman rules of law '*solo cedit quod solo inaedificatur*' prevails under the Turkish Land Code, and that where vines and buildings (mulk) are lawfully planted or put upon arazi mirié then the arazi mirié becomes subject to the mulk" See last paragraph on p. 87 of that report. In *Englezakis v. Loizou* (1909) C L R IX, 26, it was held that "the doctrine of *Gavrielides v Haji Kyriaco* that an arazi mirié site on which mulk property is situate has no separate existence, being for the time being merged in the mulk, has no application to mulk in respect of which the occupier is neither registered nor entitled to be registered." Compare Art. 28 as to trees growing naturally on State land

ART. 26.[1]—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[2] nor a joint possessor can interfere with the ownership of such trees. But tithe shall be taken on their annual produce.

[1] Compare Mejelle, Art 1244

[2] See note 1 to Article 22 *supra*

ART. 27.[1]—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[2] to have the trees cut down from the place where they have been grafted.

[1] Compare Mejelle, Art 1245.

[2] See note 1 to Article 22 *supra*

ART. 28.—All trees without exception, whether fruit-bearing or not, such as "*palamud*"[1] 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[2] of the tree.[3]

[1] Valonia, the large acorn-cup of a species of oak which grows round the Levant, used in tanning See Chambers's Twentieth Century Dictionary

[2] See note 1 to next Article

[3] The last two sentences of this Article were repealed by an Irade dated 18 Rebi' ul Evvel, 1293, which expressly gives the right to a possessor of State land to cut fruit-bearing and non fruit bearing trees growing naturally on the land See Young's Corps de Droit Ottoman, Vol VI., p 53.

ART. 29.—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.[1] On this kind of woodland a ground-rent (*ijare-i-zemin*) is charged, equivalent to tithe, taking into consideration the value of the site according to its situation.

[1] Standing value, *qa' imeten qimet.* See Mejelle, Art 882.

ART. 30.—Woodland, not being woodland on the mountains (*jebali moubaha*)[1] 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[2] of the trees cut shall be paid to the State.[3] 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.

[1] See note 1 to Art. 7

[2] See note 1 to last Article.

[3] The rights of the State were abolished by an Irade dated 16 Sheval, 1286 See Young's Corps de Droit Ottoman, Vol. VI., p. 54.

ART. 31.[1]—No one can erect a new building[2] on State land without previously obtaining the leave[3] of the Official. Buildings erected without such leave may be pulled down by direction of the State.

[1] This enactment appears to be no longer enforced in the Ottoman Empire. By a decree published in the *Ikâan* of 23rd December, 1900, in the absence of special reasons, as for instance military requirements, buildings erected on State land without leave are to be left as they are, a tax being levied on them in place of the tithe, and by a circular of the Defter Khané dated 19 Muharrem, 1308, it is ordered that the amount of the tax is to be written on the title deed See Young's Corps de Droit Ottoman, Vol VI, note on p 54 See also a note on recent legislation p 79 *infra*

[2] It was held in *The King's Advocate v Heirs of Petrides* (1904) C L R VI, 94, in which the question of what constituted a building within the meaning of this Article was discussed, that the Article applies to a building which is not "attached to the soil," and is capable of "being removed whole"

[3] As to inferring leave see *Haji Nicola v Mozera* (1900) C L R V, p 38 Fresh leave is required for erecting additions to a building erected with leave See *King's Advocate v Loizo* (1905) C L R VII, 15 For a notice as to building on State and mevqufé land, see Cyprus Gazette, 13th February, 1914

ART. 32.—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;[1] in such a case the leave of the Official alone is not sufficient.

[1] For instances of exercise of this power by the High Commissioner see Cyprus Gazettes, 14th October, 1910, and 22nd October, 1915

ART. 33.—Neither the possessor, nor a stranger, can bury a corpse on land held by title-deed (*ba tapou*).[1] 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.[2]

[1] "Presumably because, if allowed, the ground would become a sacred place" See *Sophronios v The Principal Forest Officer* (1890) C.L R 1, p 117

[2] By an addition to Art 264 of the Ottoman Penal Code burying in a prohibited place is made an offence, punishable by imprisonment for from one month to one year, and a fine of from one to ten Turkish pounds

ART. 34.—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.[1]

[1] In the Othomanikoi Kodikes (1890 Edition) Vol. II, p. 1015, is the following note to the last sentence of this Article, "Since salt is now subject to the monopoly system the paragraph relating to it in Art 34 is repealed"

ART. 35.—(i.) If anyone 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.[1]

(ii.) If anyone 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-possessors, the latter can proceed in the manner pointed out in the preceding paragraph so far as their share is concerned.

(iii.)[2] If anyone erects buildings or plants trees on land which he possesses by a lawful title which he has obtained by one of 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,[3] 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[4] 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-possessors, the land shall be partitioned in conformity with the provisions of Article 15, and if the site of the buildings or trees falls to the share of one of the other co-possessors the said procedure[5] shall be likewise applied.

[1] Compare Mejelle, Art 906 and see *Haji Ali v Elia* (1900) C L R V, p 68

[2] This paragraph seems to apply to those who have acted in good faith "Such a person cannot have built under the belief that he had a right to the land, and consequently the protection of Art 35 of the Land Code does not apply to him" Per Bertram, J, in *Englezakis v Loizou* (1909) C L R IX, p 28, and see Chiha's De la Propriété Immobilière en Droit Ottoman, p 149 As to adjustment of the rights of the parties compare Mejelle, Art 882 *et sqq* Bentham (Theory of Legislation, Part II, Chapter I, vii Possession in good faith with amelioration of another's property) says "Which of the two, in losing what belonged to him, would lose most? Let him have the possession and let the other have an indemnity"

[3] See note to Art 54.

[4] See note to Art. 29

[5] "The said procedure" means that in paragraph (ii) according to Young's Corps de Droit Ottoman, Vol VI, p. 55, that in paragraph (iii) according to Ongley's Ottoman Land Code, p. 19.

CHAPTER II.

TRANSFER OF STATE LAND.[1]

ART. 36.—A possessor by title-deed of State land can, with the leave of the Official,[2] 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 possession 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[3] they inherit it. If there are no such heirs it becomes subject to the right of tapou (mustehiki tapou) and the transferee (mefroughunleh) shall have recourse to the estate of the original vendor to recover the purchase money.[4] 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.[5]

[1] Transfer, ﺗﻔﻮﻳﺾ=cession See Redhouse's Turkish-English Lexicon See Othomanikoi Kodikes (1890) Vol II, p. 1017 for a note as to the legislator avoiding the use of the words sale, vendor, and purchaser in view of the possession, and not the *dominium*, being dealt with.

[2] " The object of Art 36 of the Land Code is unquestionably to lay down the rule that in all cases of alienation of arazi mirié property, whether by way of sale, or gift, or exchange, the consent of the State, which is evidenced by registration, is necessary to a transfer of the legal right of possession To such an extent is this the case that although a man may have paid his purchase money, if the consent of the State has not been obtained, the property remains legally in possession of the vendor, or if he die, passes to his heirs, or if he die without heirs reverts to the State. The Article no doubt states, that in either of the two latter cases, the would-be purchaser has the right to recover the money he has paid from the estate of the deceased. We consider that the meaning of this provision is that, where, during the negotiations for the purchase of property, the vendor dies, then the would-be purchaser has a right to recover from the estate of the deceased the moneys he has paid " See *Zenobio v Osman* (1893) C L R II, pp 174, 175 The question of leave being subject to payment of taxes was considered in *Michaelides v Thompson* (1890) C L R I, 108, see now s 2 of the Land Transfer Amendment Law, 1890, p 118 *infra*

As to leave being no longer necessary in Turkey see note on recent legislation, p. 79 *infra*.

It seems that State land cannot be granted to a Monastery notwithstanding, Art 122 See *Sophronios v Principal Forest Officer* (1890) C L R I, p. 117

As to specific performance see the Sale of Land (Specific Performance) Law, 1885, p 108 *infra*

[3] See Art 54 *infra*.

[4] In *Lissandri v. Lissandri* (1899) C L R V, 1, it was held that in order to recover money paid as purchase money for State land from the estate of a deceased person who dies without transferring the property there must be a *bonâ fide* intention to legally transfer the land

[5] See Art 3 of the Tapou Law, 1275, p 43 *infra*, and the Land Transfer Amendment Law, 1890, p 118 *infra*

ART. 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.

ART. 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.

ART. 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.[1]

[1] *Cf* Mejelle, Art 100 See the Sale of Land (Specific Performance) Law, 1885, p 108 *infra*. As to an action for damages for breach of contract, see, *Chakalli v Kallourena* (1895) C.L R. III., 246

ART. 40.—If anyone, having transferred his land with leave of the Official, transfers it to another without the leave of the first transferee this second transaction is void.

ART. 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 five years, 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 recognized by law, namely, 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 five 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 his death, and 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.[1]

[1] Compare Mejelle, Art. 1008, *et sqq.* and see Chiha's De la Propriété Immobilière en Droit Ottoman pp. 298-311.

ART. 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[1] are also applicable in this case.

[1] *i e* presumably the provisions as to the period of five years, possibly also the provisions in the Addition

ART. 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 in consequence of the arbitrary act.[1]

[1] "By Art 43 of the Land Law it would seem that the principle is that unauthorized alienation of the land of another will not confer a good title and that it can be cancelled" *Ibrahim v Haji Nicola* (1901) C L R V, p 91

ART. 44.[1]—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).[2]

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-misl). The excuses of minority, unsoundness of mind, and absence on a journey are not applicable to this case.

[1] See *Garoudides v Haji Kyriaco* (1898) C L R IV, 84 and note to Art 25 *supra* and *cf* Art 66 *infra*

[2] See Art 59 *infra*

ART. 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 (zarouret)[1] land have, for one year, the right to have the land adjudged to them at the price at which it has been sold.

[1] *Zarouret*, ضرورت is a word indicating strong necessity See Chiha's De la Propriété Immobilière au Droit Ottoman, p 301, *et sqq*, and compare Art 59 (iii) *infra* See Art 127 *infra* the principle of which may be the origin of this right of pre-emption See note in Bury's Gibbon (1898 Edition) Vol V, p 530

ART. 46.—The right of pre-emption (shoufa)[1] which is applicable to mulk land, is not applicable to State or mevqufé land, that is to say if anyone has alienated land which belongs to him for a fixed price, his immediate neighbour[2] cannot claim it by saying "I will take it at the same price."

[1] See Mejelle, Arts. 1008 *et sqq.*
[2] *Lit* " the man having the same boundary "

ART. 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 donums 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 contain twenty-five donums, is found to be thirty-two donums, such owner cannot claim from the purchaser either the separation and return of seven 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 eighteen donums the transferee cannot claim the refund of a sum of money equal to the value of the seven donums.[1]

[1] Compare Mejelle, Arts. 224-226. As to fraud in a contract of sale, see Mejelle, Arts. 357 *et sqq.*

ART. 48.—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.

ART. 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.

ART. 50.—Persons who have not attained the age of puberty, lunatics and imbeciles of either sex cannot transfer their land.[1] 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.

[1] Compare Mejelle, Art. 361.

ART. 51.—Persons of either sex who are minors, lunatics, or imbeciles cannot buy land.[1] 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.[2]

[1] Compare Mejelle, Art. 361.
[2] Compare Art. 65 *infra.*

ART. 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 their 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[1] 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 Sher' 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 Sher' 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.[2] The same provisions apply to the land of lunatics and imbeciles.

[1] See Art. 131 *infra*.

[2] See Arts. 31-33 of the Tapou Law, 1275, p. 49 *infra*

ART. 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 Sher' musaveghat conditions[1] and they can also sell the land on which they are as being subordinate to them.

[1] 'Musaveghat conditions are of eight kinds :—

(*i*) When there is a candidate to buy at double value.

(*ii*) When the minor needs maintenance and has nothing except immovable property, and when it is necessary to sell it for his maintenance

(*iii*) When the deceased leaves debts and there is nothing to pay them except the immovable property.

(*iv*) If one-third or one-fourth 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

(*v*) If the income of the property is insufficient to pay the dues on it.

(*vi*) If the property is a house or shop or similar building and the minor has no funds to repair it with

(*vii*) If the property is possessed in partnership and the share of the minor will not bring in a profit when separated.

(*viii*) If there is a fear of unavoidable interference by someone by duress." Khalis Eshref, (1315 Ed) p 334, (paragraph 374).

CHAPTER III.

DEVOLUTION OF STATE LAND BY INHERITANCE.

ART. 54.[1]—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.

[1] Amended by the Law of 17 Muharrem, 1284, see p 56 *infra* As to succession in Cyprus it was held in *Della v Hajı Michaeli* (1902) C L.R VI., p 25, that the Wills and Succession Law, 1895, does not apply to State land

ART. 55.[1]—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.

[1] Replaced by Art. 1 of the Law of 17 Muharrem, 1284, see p 56 *infra*.

ART. 56.—If some of the children of the deceased are present and some absent under conditions called ghaibet-i-munqata (absolute disappearance)[1] 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.

[1] See *Francoudi v. Heirs of Michaelides* (1895) C L R. III , p 229

ART. 57.—The land of a person who is not known to be alive or dead and who has disappeared under the aforesaid conditions[1] 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.[2] If there be no such heirs it will be put up to auction and adjudged to the highest bidder.

[1] See note to preceding Article.
[2] See Art. 59.

ART. 58.—A soldier in the Army actually serving in another country whether he is known to be alive or has disappeared under ghaibet-i-munqata conditions,[1] succeeds to the land left by his father, mother, grandfather, grandmother, sister, wife or child.[2] It cannot be granted to another without proof of his death in

accordance with the Sher' 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.

[1] See Art. 56.

[2] As amended by 17 Muharrem, 1284.

CHAPTER IV.

Escheat of State Land.

Art. 59.[1]—When a possessor (of either sex) of State land dies without leaving heirs qualified to succeed under the Law of 17 Muharrem, 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[2] any mulk trees or buildings which are on the land. Their right to claim lasts for ten years.[3]

(ii.) To co-possessors, or those having a joint interest. Their right to claim lasts for five years.[3]

(iii.) To such inhabitants of the locality where the land is[4] as are in need and want of it (zarouret vé ihtiyaj). Their right to claim lasts for one year.[3] 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 would 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.

[1] As amended by 17 Muharrem 1284 Prior to that Law there were nine classes of persons having the rights conferred by this Article See Arts. 66 and 81, and Art. 18 of the Tapou Law p. 46 *infra*

[2] *i e.* from the deceased.

[3] See Art. 61.

[4] See Art. 18 of the Tapou Law, p. 46 *infra.*

ART. 60.[1]—If a possessor of land, of either sex, dies without direct heirs, that is to say without leaving heirs as designated by Article 1 of the Law of 17 Muharrem, 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,[2] the land becomes purely and simply vacant (mahlul),[3] 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[2] are minors, or of unsound mind, forfeiture of the right cannot be alleged against them or their guardians.

[1] As amended by 17 Muharrem, 1284.

[2] See Art. 59 *supra*.

[3] Reverting to the State as Mahloul does not "make the Government liable for the payment of the debts" of the deceased. *Yanni v. The Queen's Advocate* (1888) C.L.R. I., 46.

ART. 61.—The above mentioned periods of time for making 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[1] at the time when the claim is made. After the expiration of the said periods, or if those who had such rights have forfeited them no claim concerning such rights shall be any longer maintainable. Excuses such as minority, unsoundness of mind, or absence[2] 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.[3]

[1] See Art. 59.

[2] See note 2 to Art 20

[3] And see Art 74.

ART. 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.[1]

[1] See Art. 59

ART. 63.—If minors, persons of unsound mind,[1] or persons who are absent[2] 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,[3] 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.

[1] See Art 65
[2] See note 2 to Art. 20.
[3] See Art. 59.

ART. 64.—If persons having rights of tapou in the first of the three degrees enumerated above[1] lose their rights by refusal to take the land over which they have the right on payment of the tapou 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 a right of tapou dies before having exercised it the right does not pass to his children or other heirs.

[1] See note 1 to Art. 59.

ART. 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.[1]

[1] Compare Art. 51.

ART. 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.[1] 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.[2]

[1] See Art 59.
[2] See Art 44

ART. 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 Muharrem, 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.

ART. 68.[1]—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,[2] whether the possessor be in the locality or absent.[3] 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.

[1] Articles 68 to 75 inclusive were repealed by the Confiscation of Public Lands Law, 1885, see p 111 *infra*.

[2] See Art. 57 *supra* and Art. 13 of the Tapou Law p 45 *infra*.

[3] *Muddet-i-sefer*. See note 2 to Article 20

ART. 69.[1]—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,[2] the former possessor keeps it in his possession and under his control as before. If the former possessor is dead his heirs[2] 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.

[1] See note 1 to Art 68

[2] See Art 57

[3] As designated in Article 1 of the Law of 17 Muharrem, 1284, see p 56 *infra*

ART. 70.[1]—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,[2] 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.[3]

[1] See note 1 to Art. 68

[2] See note 3 to Art. 69

[3] See Art 57.

ART. 71.[1]—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,[2]

they cannot inherit the land gratuitously, but it shall be offered to them on payment of the tapou value.[3] 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.

[1] See note 1 to Art. 68
[2] See note 3 to Art. 69
[3] See Art. 59

ART. 72.[1]—If all, or a portion of, the inhabitants of a village or town leave their country (*ratan*) 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.[2]

[1] See note 1 to Art 68.
[2] See Arts 57 and 130.

ART. 73.[1]—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[2] 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.

[1] See note 1 to Art 68
[2] See Art. 57

ART. 74.[1]—If a person who is known to be alive and who is absent[2] inherits land from his father, mother, brother, sister, or spouse,[3] 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.[4]

[1] See note 1 to Art 68
[2] See note 2 to Art. 20.
[3] As amended by 17 Muharrem, 1284, see p 56 *infra*.
[4] See Art. 57

ART. 75.[1]—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)[2] is dead or alive the land shall become subject to the right of tapou.[3] 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.

[1] See note 1 to Art. 68.
[2] See Art. 56.
[3] See Art. 57

ART. 76.—Land possessed by persons, of either sex, who are minors, lunatics or imbeciles can never become subject to the right of tapou[1] 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.

[1] See Art. 57.

ART. 77.—If it is shown that a person having a right of tapou of the highest degree[1] over vacant land has secretly and arbitrarily occupied it,[2] 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 arbitrarily 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.[3]

[1] The effect of Art. 1 of 17 Muharrem, 1284, must be borne in mind in considering this Article. See note 1 to Art. 59.
[2] See Art. 4 of 7 Shaban, 1276, p. 51 *infra*.
[3] See Art. 18 of the Tapou Law, 1275, p. 46 *infra*.

ART. 78.[1]—Everyone 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.

[1] *Cf.* Art. 20 and see Art. 8 of the Law of 7 Sha'ban, 1276, p. 53 *infra.* This Article gives a right against the State. See Chiha's De la Propriété Immobilière en Droit Ottoman, p 598 Possession and cultivation are necessary. "It enables a person by possession and cultivation to defeat the right of the Beit-ul-Mal to the Tapu value of the land." *Hajı Kyriaco v The Principal Forest Officer* (1894) C L.R. III., p. 103, and see idem, p. 99, and as to there being no acquisitive prescription under this Article in the case of arazi mevat cultivated without permission see idem, p. 101, and see p. 100 as to there being no such prescription in the case of arazi mevat under the Mejelle A translation of this Article will be found on p. 88 of the same case.

ART. 79.—Nothing shall be recovered in respect of diminution in value (noksan arz)[1] or by way of rent (ejri misl) from a person who has arbitrarily occupied and cultivated vacant State or mevqufé land, as stated in the two preceding Articles, and regularly paid the imposts on it.

[1] See note 3 to Art. 21.

ART. 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.

ART. 81.[1]—Vineyards and gardens made on 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[2] 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.[3]

[1] *Cf.* Art. 66

[2] *i.e* presumably "without the payment of Muajelle" See *Gavrielides v Hajı Kyriaco* (1898) C.L R. IV., pp 88; 89

[3] Amended by Art. 3 of the Instructions dated 7 Sha'ban, 1276. See p. 51 *infra.*

ART. 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[1] 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 into the possession of the owner of the structures by inheritance, from his father, mother, grandfather, grandmother, children of his brothers or sisters or from his spouse,[2] 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.

[1] See Art. 57.

[2] As amended by 17 Muharrem, 1284, see p 56 *infra.*

ART. 83.[1]—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[2] 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, mother, grandfather, grandmother, children of his brothers or sisters or from his spouse[2] or in any other way, he cannot be dispossessed of it nor can his possession of it be contested.

[1] " If we look at Art. 83 we find that when the vines are dried up and disappear, the land on which they stand becomes liable to Tapu with a preferential right to the late owner of the vines to purchase it for its Tapu value That is to say it reverts to the Beit-ul-Mal which takes it again into the category of simple arazi-mirié The only exception is that if the land has come to and been held originally by the owner of the vines as arazi-mirié, either by inheritance or by other means, then it is left in his hands without any interference from the Beit-ul-Mal It is pretty clear from the first part of this article, that under the circumstances mentioned, there is no separate property or interest capable of disposal by sale The reversion to the arazi-mirié devolves upon the Beit-ul-Mal " See *Gavrielides v Hajı Kyriaco* (1898) C L R. IV , p. 89.

[2] See Art 57

[3] See note 2 to last Article.

ART. 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 been paid, become subject to the right of tapou.[1]

[1] See Art. 57

ART. 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 unproductive, becomes subject to the right of tapou.[1]

[1] See Art. 57.

ART. 86.—If when a person having a right of tapou over land desires to acquire it on payment of the tapou value,[1] and a stranger to the family comes forward and seeks to take it for a sum in excess of the tapou value,[1] his offer is not taken into consideration.

[1] See Art. 59

ART. 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 that the title-deed has not yet been 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,[1] 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 interfered 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.[1]

[1] See Art. 59

ART. 88.—A tapou official in a Qaza cannot acquire vacant land or land which has become subject to the right of tapou in the Qaza 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.[1] 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.

[1] See Art 1 of 17 Muharrem, 1284, p 56 *infra*.

ART. 89.—If a building, standing on State land dedicated to a certain object falls into ruin leaving no traces and if the trustee (mutevelli) 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.

ART. 90.—If a vineyard or orchard on State land, the vines and trees of which are dedicated to a certain object, is ruined and no trace of the trees 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 land becomes subject to the right of tapou.[1] The same provisions apply to places where the site is mevqufé, and the trees or vines dedicated to another object.

[1] See Art. 57.

BOOK II.

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

CHAPTER I.

LAND LEFT FOR THE USE OF THE PUBLIC.

ART. 91.—The trees of woods and forests called "baltalik"[1] 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 Rebi'ul Evvel, 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[2] 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.[1]

[1] *Lit.* fit for the axe, from *balta*, an axe

[2] See Mejelle, Art. 882.

ART. 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.[1]

[1] The fact that the extent of the wood is greater than is necessary for the needs of the village does not prevent the application of this provision. Circular of Defter Khané 22 January, 1309. See Young's Corps de Droit Ottoman, VI., 71

ART. 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.

[1] See Mejelle, Arts. 926, 927, and Ottoman Penal Code, Art. 264. See note 2 to Art. 5.

ART. 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.[1]

[1] See Ottoman Penal Code, Art. 264.

ART. 95.—Places registered at the Defter Khané 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.

ART. 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 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.

ART. 97.[1]—In a pasturing ground (mera)[2] assigned *ab antiquo* to a village, the inhabitants of such village only can pasture their animals. Inhabitants 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 vineyards 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 anyone cultivates it he shall be ejected, and the land shall be kept as a pasturing ground for all time.

[1] *Cf.* Art. 105

[2] " We understand the meaning of the words 'mera,' 'ialak, and 'kishlak' to be that the particular land forming the mera or ialak or kishlak is assigned, and not merely the rights of pasturage over such land.' See *Hajı Constanti v The Principal Forest Officer* (1895) C L.R. III., p. 158.

ART. 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.[1]

[1] See note in Young's Corps de Droit Ottoman, VI, p 72 "Par conséquent les habitants des communes ne peuvent acquèrir par l'usucapion au nom de leur commune aucune droit de pâturage sur les terres domniales non inscrites au Defter Khané commes destinées à l'usage de communes."

ART. 99.—Whatever number of animals of a chiftlik situated within a town or village have grazed *ab antiquo* in the common pasture of the 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 chiftliks 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.

ART. 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.

ART. 101.[1]—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 cannot 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.

[1] See Art 24.

ART. 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.[1]

[1] *Cf* Mejelle, Art 1675 and see Arts. 1644-1646

CHAPTER II.

DEAD LAND.[1]

ART. 103.—The expression dead land (mevat) means vacant (khali) land, such as mountains, rocky places, stony fields, pernallik[2] and grazing ground which is not in the possession of anyone by title-deed nor assigned *ab antiquo* to the use of inhabitants of a town or village, 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[3] and cultivate it on condition that the legal ownership (raqabé)[4] shall belong to the Treasury. The provisions of the law relating to other cultivated land shall be applicable to this kind of land also. Provided that if anyone 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[5] of the piece of land which he has cultivated and it shall be granted to him by the issue of a title-deed.

[1] See Mejelle, Arts 1270-1280, 1289, and see *Hajı Kyriaco v. The Principal Forest Officer* (1894) C L R III., 87 as to arazı mevat being the property of the Sultan and "granted by him generally on condition that the servitude belongs to the Beit-ul-Mal or public Treasury," p. 99 See the note 1 to Art 78

[2] Pernallık. See note 1 to Art 19

[3] See Art 12 of Tapou Law, 1275, p 45 *infra* and Art 5 of 7 Sha'ban, 1276, p. 52 *infra*.

[4] See note 6 to Art 2

[5] See Art 59

ART. 104.—Anyone can cut wood for fuel and for building on mountains which are "moubah,"[1] 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.

[1] See note 1 to Art. 7

ART. 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[1] 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.

[1] *Cf.* Mejelle, Art 1234

BOOK III.

UNCLASSED LAND.

ART. 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 land are possessed as being appurtenant to the land, as stated in the chapter dealing with possession.[1]

[1] *Cf.* Arts. 26—29

ART. 107.[1]—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[2] belong also to the Treasury ; neither the occupier of the land nor the vakf 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 vakf land the minerals belong to the vakf. Minerals found in mulk land in towns and villages belong entirely to the owner of the soil. Fusible minerals found in tithe paying (uchrie) and tribute paying (kharajie) land[3] belong as to one-fifth to the Treasury, and the rest to the owner of the soil. All unfusible minerals belong to the owner of the soil. As regards ancient 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).[4]

[1] See Young's Corps de Droit Ottoman VI , p 17 for Law of 14 Safer, 1324, as to Mines and p. 38 for Law published 2nd July, 1901, as to Quarries And see the Mines Regulations Amendment Laws, 1882 and 1916

[2] See Art 4

[3] See Art 2

[4] See Young's Corps de Droit Ottoman II , p 389 for Law of 23 Rebi'ul Akhir 1301, as to antiquities, and Antiquities Law, 1905. And see *Haji Lambro v King's Advocate* (1905) C L R. VI , 116

ART. 108.—One who slays another cannot inherit land from his victim nor can he have any right of tapou over his land.

Addition. 28 Rebi'ul Akhir, 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[1] over the land.[2]

[1] See Art 57.

[2] Compare s. 13 of the Wills and Succession Law, 1895.

ART. 109.[1]—The land of a 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 a right of tapou over the land of a Moslem, nor can a Moslem have a right of tapou over the land of one who is not a Moslem.[2]

[1] As amended by 17 Muharrem, 1284 See p. 56 *infra.*

[2] See 7 Muharrem, 1293, p 71 *infra*

ART. 110.—The land of an Ottoman subject cannot devolve by inheritance on any heir[1] of his who is a foreign subject, nor can a foreign subject have a right of tapou over land of an Ottoman subject.[2]

[1] See 17 Muharrem, 1284, p 56 *infra.*

[2] See 7 Safer, 1284, p 57 *infra*, and *Francoudi v. The Heirs of Michaelides* (1895) C.L R III , 221, and compare s. 12 of the Wills and Succession Law, 1895 See note 1 to Art. 54

ART. 111.[1]—The land of a person who has abandoned his Ottoman nationality without obtaining official permission from the Ottoman Government does not devolve by inheritance on his children, grandchildren, father, mother, brothers, sisters, or spouse who are foreign subjects, but immediately become mahloul and, without enquiry as to whether there is anyone with a right of tapou over it, it is put up for 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 mahloul 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.

[1] As amended by 17 Muharrem, 1284, (see p 56 *infra*) 7 Safer, 1284 (see p. 57 *infra*) and 25 Rebi'ul Akhir, 1300, p. 77 *infra.* See Khalis Eshref's Commentary on the Land Code, p 624, and p. 626 paragraph 841

ART. 112.[1]—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 with 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, dies 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.[2]

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.

[1] As to abolition of slavery in Cyprus see Involuntary Servitude Declaration Law, 1879, and see Padel and Steeg's De la Legislation Foucière Ottomane, p 48 paragraph 39.

[2] As designated by 17 Muharrem, 1284.

ART. 113.—Transfer of State and mevqufé land brought about through duress,[1] exercised by one who is in a 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,[2] or if on his death without leaving heirs it becomes mahloul, 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[3] the land shall not be treated as mahloul, and it remains in the hands of the actual possessor.

[1] See Mejelle, Arts 948, 949.

[2] See note 2 to Art. 112

[3] *i.e.* heirs with right to succeed to his State land.

ART. 114.[1]—Transfer of State or mevqufé land on conditions regarded as unlawful (mufsid) by the Sher' 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 anyone transfers land to another on an unlawful condition, or if on the death of the latter it has devolved by inheritance upon his heirs,[2] 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 Safer, 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 transferee 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 cannot 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, his 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 transferor 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 anyone else but shall be returned to the transferor as before. So long as the transferor lives neither the transferee nor his heirs 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-deeds. Actions based on such conditions which are not so recorded shall not be heard.

[1] *Cf* Mejelle, Art. 855

[2] See note 2 to Art 112

ART. 115.[1]—Although a creditor cannot seize land in possession of his debtor against the debt ; he can force the latter by taking the appropriate steps to sell it to another and discharge the debt out of the purchase money ;[1] 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 ;[2] 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.

[1] As amended by Law of 15 Sheval, 1288, see p 61 *infra* See *Joannidi v Stefani* (1892) C L R. II , 55. See The Civil Procedure Law, 1885. ss 12, 20 51 And as to payment of his debts after his decease see pp. 49, 59 *infra*

[1] See note 2 to Art. 112.

ART. 116.[1]—State and mevqufé land cannot be pledged ; provided always that if a debtor, against his 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-vefa, 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.

[1] See Tapou Law Arts 25 *et sqq*, p 48 *infra*, Law of 15 Sheval 1288, Art 1, p 61 *infra*, and 28 Rejeb, 1291, Art. 16, p 67 *infra*, and see Land Transfer Amendment Law, 1890, p. 118 *infra*.

ART. 117.[1]—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-vefa) finds himself unable to discharge the debt at the time agreed upon, and if he gives the creditor a power of attorney (vekialet-i-devrié)[2] 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 cause 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 lifetime 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 period, and in virtue of his power of attorney, sell the land and pay the creditor the debt due by the debtor, his principal.

[1] See the Sale of Mortgaged Property Law, 1890, p 114 *infra*, the Law of 23 Ramazan, 1286, p. 59 *infra*, and Art 27 of the Tapou Law, 1275, p. 49 *infra*.

[2] See Mejelle, Art. 760

ART. 118.[1]—If a debtor who has transferred his land to his creditor, whether upon the above-named condition 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 entitled to succeed, or to a right of tapou, or not.

[1] As amended by Art. 2 of the Law of 23 Ramazan, 1286, see p 59 *infra*, and see Art. 28 of the Tapou Law, 1275, p. 49 *infra*

ART. 119.[1]—Actions for deceit (tagrir) or excessive deception (gabr-i-fahish)[2] 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[3] shall not have the right to institute an action and the land cannot be treated as mahloul.

[1] See Tapou Law, Art. 24, p. 48 *infra*.

[2] See Mejelle, Arts. 164, 165, and 356-360

[3] See note 2 to Art. 112

ART. 120.[1]—Transfer of State and mevqufé land effected in mortal sickness[2] is valid.[3] 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 (mustehiki tapou).

[1] Compare Wills and Succession Law, 1895, s 28 and see note 1 to Art 54
[2] See Mejelle, Art 1595, and compare Mejelle, Arts 393 *et sqq.*, and 877 *et sqq.*
[3] See *Pieri v. Hajı Pieri* (1895) C L.R. III., 149.

ART. 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.[1]

[1] See *Houloussi v Apostolides* (1888 C.L.R. I , pp. 50, 51

ART. 122.—Land attached *ab antiquo* to a monastery registered as such in the Imperial archives (Defter Khané) 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 monastery the procedure as to State land shall be applied to it, and possession of it shall be given by title-deed as previously.[1]

[1] This Article was considered in *Sophronios v. The Principal Forest Officer* (1890) C L R. I., 111 As to ecclesiastical property in Cyprus see the Titles Registration Law, 1885, ss. 11-13, p. 81 *infra*, the Immovable Property Limitation Law, 1886, s. 5, p 112 *infra*, and the Ecclesiastical Properties Law, 1893. p 122 *infra*

ART. 123.—If pieces of land fit for cultivation come into existence by the receding of the water from an ancient 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.[1]

[1] See *Hajı Kyriaco v The Principal Forest Officer* (1894) C.L.R. III , pp. 102, 103.

ART. 124.—In disputes as to rights of watering crops and animals (haq-i-shurb) of irrigation, and over water channels[1] only *ab antiquo* usage is taken into account.[2]

[1] See Mejelle, Arts 1262-1269.
[2] See *Houloussi v Fiori* (1892) C L R. II , 60; *Louka v Nicola* (1901) C L R. V., 82 , *Hajı Polycarpou v Hajı Solomo* (1902) C L R. VI., 20 (and see p. 45 same volume); *Hajı Michael v. Georgiades* (1905) C L R. VII., 1.

ART. 125.—The taking of animals through vineyards, orchards, and fields called geiuktereké[1] is not allowed. Even if there has been a practice of so taking them *ab antiquo*, as damage cannot be of time immemorial.[2] 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.[3] After the crop is removed animals can pass over places over which it has been the practice *ab antiquo* to take animals.

[1] *Geiuktereké* means unripe and green products and cereals. See Khalis Eshref's Commentary on the Land Code paragraph 944, p. 691.
[2] See Mejelle, Art 7
[3] See Ottoman Penal Code, Art. 261 and the Field Watchmen Law, 1896, ss. 22, 23, 29 32, 35.

ART. 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 the mediation of the religious authority the four sides of the ancient boundaries shall be fixed and new marks shall be put where necessary.[1]

[1] See Ottoman Penal Code, Art 246 as to destroying boundaries of property; and see the Immovable Property Registration and Valuation Law, 1907, s. 42, p. 134 *infra*.

ART. 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.[1]

[1] See note 1 to Art. 45.

ART. 128.—If the water supply of any rice field registered at the Defter Khané as such deteriorates, it must be repaired by the person who sows the rice field. Possession of rice fields, as in the 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.

ART. 129.—Possession of land called "khassé,"[1] assigned before the organization (tanzimat)[2] to sipahis[3] and others, and of bachtene land[4] assigned to voinghs,[5] 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.

[1] *Khassé*, feudal estates granted to sipahis
[2] Proclaimed by Reshid Pasha in Sultan Mejid's reign, 1255.
[3] *Sipahis*, mounted soldiers living in provinces on land assigned to them.
[4] *Bachtene*, estate (Bulgarian)
[5] *Voinghs*, Bulgarians serving as grooms and reapers under Turkish feudal lords.

ART. 130.[1]—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,[2] and the land has become subject to the right of tapou,[3] 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.[4]

[1] Compare Art. 8.
[2] See Art. 72.
[3] See Art. 57.
[4] See next Article

ART. 131.—Chiftlik,[1] 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 donums; in the case of land of the second quality from 100 donums, and in the case of land of the third quality from 130 donums. The donum is 40 ordinary paces in length and breadth, that is 1,600 square pics. Every portion of land less than a donum 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.[2] If they decline to take it the land by itself, apart from such property and goods as devolve upon them, shall be put up to auction and adjudged to the highest bidder.[3]

[1] "The Supreme Court decided that as the grant of a chiftlik might include both arable land and pasture ." *Loizo v. The Principal Forest Officer* (1892), C L.R. II, p 107, and see *re* the Malicious Injury to Property Law, 1894 (1910) C L.R. IX., 124

[2] See Art 66

[3] As to right of pre-emption in the case of a chiftlik see Law of 7 Muharrem, 1293 p. 72 *infra*, and see Art 4 of 17 Muharrem, 1284, p. 57 *infra*

ART. 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 State 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, heretofore 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 mevqufé land shall not be observed in the Imperial Divan Office, the Defter Khané or elsewhere.

TAPOU LAW.

LAW AS TO THE GRANTING OF TITLE-DEEDS 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.[1]—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.

[1] Arts 2-5 were amplified and partly amended by the Instructions dated 7 Sha ban, 1276 See p. 50 *infra*

ART. 3.[1]—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.[2] 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.

[1] See 7 Sha'ban, 1276 Art 2 p. 51 *infra*

[2] See Land Code, Art 47 p. 18 *supra*.

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.[1]

[1] See note 1 to Art 2.

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.[1]

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.[2]

[1] This must be read in the light of 17 Muharrem, 1284, see p 56 *infra*
[2] See note 1 to Art. 2

ART. 6.—A transferee of land shall pay a fee of five per centum on the purchase money.[1] 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 the 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.

[1] The amount of the fees imposed by this Article was afterwards altered. See Young's Corps de Droit Ottoman VI , pp. 95, 110.

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 quarter respectively and on the necessary enquiries being made a report shall be drawn up and they[1] shall be sent to the Defter Kkané 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.[2] (*b*) To persons who are shown by the official registers to have lost their title-deeds.[3]

[1] *i.e.* the certificate and report.
[2] See Art. 9 of 7 Sha'ban, 1276, p. 53 *infra*
[3] See Art. 10 of above, p 53 *infra.*

ART. 12.—The grant of khali and kirach (stony) land[1] 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.

[1] See *Hajı Kyriaco v The Principal Forest Officer* (1894) C L.R. III. p. 93, and Art. 5 of the Regulations dated 7 Sha'ban, 1276, p. 52 *infra.*

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).[1]

[1] See Land Code, Art 68

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.[1]—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.[2] 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[3] 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 Articles 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.

[1] This Article is as amended by the Law of 7 Rebi'ul Akhir, 1304 (22nd December) The original Article was as follows —" As to chiftliks possessed by Imperial documents of title (muiknamés) the conditions contained in the said documents shall be enforced with regard to them " See Art 4 of 17 Muharrem, 1284, p 57 *infra*

[2] See Art. 15 of 7 Sha'ban, 1276, p. 55 *infra*.

[3] See *Michaelides v. Thompson* (1890) C.L.R. I, 108

ART. 16.[1]—If land becomes subject to the right of tapou (mustehiki tapou) when there are persons entitled to a right of tapou[2] an enquiry shall be held at the place where the land is, through 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.

[1] See Art. 15 of 7 Sha'ban, 1276, p. 55 *infra*

[2] See Law of 17 Muharrem, 1284, p 56 *infra*

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.[1]—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.[2] 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[3] or is appurtenant to a chiftlik[4] 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 buildings 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.

[1] As amended by an Article dated 27 Sheval, 1303
[2] See Art. 15 of 7 Sha'ban, 1276, p 55 *infra*
[3] See Art. 15 of the Land Code, p. 7 *supra.*
[4] See Art 3 of the Law of 7 Muharrem, 1293, p. 72 *infra*

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.[1]

[1] See Art 5 of the Regulations of 7 Sha'ban, 1276, p. 52 *infra*

ART. 20.[1]—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.

[1] As amended by 24 Jemazi'ul Akhir, 1292 (14th July, 1291).

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.[1]

[1] This system was altered. See preamble to Regulations dated 7 Sha'ban, 1276, p. 50 *infra*

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.[1]—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[2] in the presence of financial officials appointed for the purpose, or their delegates, who represent the owner of the land.[3]

[1] See Land Code, Art. 119, p. 39 *supra*

[2] In the Nizam Courts See a Circular of the Ministry of Justice dated 20 Ramazan, 1296, in Othomanikoi Kodikes II , p. 1054.

[3] See Vezirial Decree dated 26 Zilhije, 1290, in Othomanikoi Kodikes II , p 1056. But they are not to be present when the Court is considering its judgment See a Vezirial Decree dated 21 Jemazi'ul Akhir, 1296. O K. II , p 1057 See also Circulars of the Ministry of Justice dated 15 Muharrem, 1291 and 11 Rebi'ul Akhir, 1301. O.K. II., pp. 1064, 1065.

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 ;[1] 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,[2] 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.[3]

[1] See Law of 23 Ramazan, 1286, p 59 *infra.*

[2] See Art 118, p 39 *supra.*

[3] As to mortgages in Cyprus see the Land Transfer Amendment Law, 1890, p. 114 *infra*

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 Qaza, 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.[1] 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.

[1] See Art. 1 of the Law of 23 Ramazan, 1286, p. 59 *infra.*

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 Article 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 the 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 the 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.[1]

[1] The remainder of this Art and Art 29 were replaced by the Law as to Forced Sale of 23 Ramazan, 1286, see p. 59 *infra*

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 with regard to a mortgage are within the jurisdiction of the local Council, who will determine them, in the presence of the fiscal authority (malmemour) 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,[1] that is to say property comprising buildings, cattle, pairs of 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 2½ 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.

[1] See Land Code, Art. 131. p. 42 *supra*.

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 the 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 vé mazbata*) which is received by the Defter Khané. Similarly, if proved as above mentioned, land which is used as 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 mevqufé 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.[1] 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.

[1] "Where a plaintiff who seeks to recover possession of Arazi Mirié is not registered as possessor of the land in dispute judgment in his favour should provide for his obtaining registration as required by the Regulations regarding Tapu Seneds (7 Sha'ban, 1276) before he takes possession" *Haji Joannou v Haji Georghiou* (1897) C L R. IV, 62

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 the 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.[1]

[1] See Conclusion, p. 55 *infra*.

ART. 5.—Khali and kirach (stony) land far from inhabited places will be granted gratuitously[1] 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 piastre 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.

[1] See *Hajı Kyriaco v. The Principal Forest Officer* (1894) C L R. III., pp 88, 96.

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.[1] 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 (kharj mutal).

[1] Art. 88, and see Art. 83 of the Ottoman Penal Code.

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 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[1] and if he declines to take it a declaration in writing must be taken from him.[2]

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 partition being made equitably, and the title-deeds in their hands[3] shall be changed.

[1] See Land Code, Art. 41, p 16 *supra*

[2] Presumably to prove the fact

[3] *i.e.* of the partitioners.

ART. 12.—When a portion of a piece of land possessed by one or several title-deeds is divided off and sold separately a certificate will be 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.[1]

[1] *i.e.* exchanged for new ones.

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 succession 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 the 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[1] 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.

[1] Until the arrival of the other 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 enquiry 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[1] 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.

[1] 15 Sha'ban, 1276, which is in the nature of departmental instructions.

LAW EXTENDING THE RIGHT OF INHERITANCE TO STATE AND MEVQUFE LAND.[1]

17 Muharrem, 1284.—21 May, 1867.

His Majesty the Sultan, desiring to facilitate transactions (*i.e.* relating to landed property) and to further extend 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[2] 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[3] as follows:—

2nd. Grandchildren, that is to say sons and daughters of children of both sexes.
3rd. Father and mother.
4th. Brothers, 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.[4]

[1] The title does not indicate the whole scope of the Law See Land Code, Art. 109, p 36 *supra*, as to succession in case of difference of religion

[2] In *Della v Haji Michaeli* (1902) C L R. VI, 23 it was held that "Under the Law of 17 Muharrem, 1284, children born out of wedlock have, when their mother is dead, a right to take the place of their mother for the purposes of succession (intiqal) to Arazi Mirié on the death of their mother's father The right of children to inherit under the Sher' Law does not depend upon their being born in lawful wedlock but on the fact of their paternity or maternity, as the case may be, being established."

[3] *Muajele*, a payment in advance in the nature of a premium

[4] See last paragraph of Art. 2.

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.

ART. 3.—The system of *feragh bil vefa*[1] 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.[2]

[1] *Feragh bil vefa*, transfer with right of redemption See Land Code, Art 116 p. 38 *supra*.

[2] See Law of 23 Ramazan, 1286, p. 59 *infra*, and Law of 15 Sheval, 1288, p. 61 *infra*.

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 mevqufé land shall remain in full force as before.[1]

[1] See Land Code, Arts. 26, 35, 44, 48, 49, 66

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 marriage but before its consummation, the survivor has a right of inheritance over the land[1] if such right is duly proved according to the Sher' Law, and when a man divorces his wife irrevocably[2] 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 Sher' Law.

[1] *i.e.* State and mevqufé land

[2] *i.e.* he cannot revoke it without the wife's consent

LAW GIVING FOREIGNERS THE RIGHT TO POSSESS IMMOVABLE PROPERTY IN THE OTTOMAN EMPIRE.

7 Safer, 1284.[1]

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.[2]

[1] In Ongley's Ottoman Land Code, p 171, the date of this Law is given as "the end of" Jemazi'ul Evvel, 1284.

[2] See p. 77 *infra*.

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.[1] 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. For executing such a judgment on the 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.

[1] See Ottoman Commercial Code, Arts 241, 277.

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[1] PROPERTY.

23 Ramazan, 1286.—26 December, 1869.

As promised in Article 3 of the Law extending the right of inheritance to land,[2] 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,[3] 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 mevqufé land possessed by title-deed to a creditor the provisions of Article 26[4] of the Tapou Law must be complied with.

[1] *Moussaqafat* is " the name given to places on which there are buildings or which are appropriated and prepared for erecting buildings "

Mousteghilat is " the name given to lands which are possessed for purposes such as agriculture and tree-planting " See Vaqf Land Laws by Tyser, Demetriades and Izzet, p 52

[2] See p. 57 *supra*.

[3] This Law was repealed. See Art 13 on p. 70 *infra*.

[4] See p. 48 *supra*

ART. 2.—If a mortgagor having mortgaged 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. But 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 auction whether the deceased left heirs with right of succession 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,[1] and the annual rent (ijare muejele) whereof has been increased to *ejr misl*.[2]

[1] See note to Art. 5 of this Law.

[2] Equivalent rent. See Land Code, Art 21.

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[1] the other lands and moussaqafat and mousteghilat vakfs of the deceased which he did not mortgage.

[1] Lit. interfere with But see Art. 6 as to debts due to the State.

ART. 5.—These provisions being an addition to the Laws of 17 Muharrem, 1284[1] and 13 Safer, 1284,[2] shall come into force from the date of their publication.

[1] See p. 56 *supra*.

[2] Or 17 Muharrem, 1284, for which 13 (or 7) Safer, 1284, appears to be an alternative date, which was repealed by Art. 13 of 4 Rejeb, 1292 See p 70 *infra*

ART. 6.—The State and mevqufé land as well as *idjaretein* (double rent)[1] 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.

[1] A sum paid on taking possession and a sum payable periodically.

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,[1] 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.[2]

[1] See Civil Procedure Law, 1885, s. 21, p. 85 *infra*.

[2] See Civil Procedure Amendment Law, 1919, s. 3, p. 99 *infra*.

SALE OF IMMOVABLE PROPERTY FOR PAYMENT OF DEBTS.

15 Sheval, 1288.[1]—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,[2] 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*,[3] 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.[4]

[1] The date of this Law is given in Legislation Ottomane and Othomanikoi Kodikes as 27 Shaban, 1286

[2] It was held in *Joannidi v Stefani* (1892) C L R II, 55 (see also *Hussein v. Dilaver* (1904) C.L R VI., 100) that this Law rendered State land liable to be sold in order to pay the debts of a possessor after his death, and that such land descends to heirs subject to this liability It has been said that this view is not in harmony with that generally held by Ottoman Courts and commentators As to this criticism see Youngs Corps du Droit Ottoman II, pp, 84, 85 and Chiha's De la Propriété Immobilière en Droit Ottomane, pp 335, 336

[3] See Land Code, Art 117, p 39 *supra.*

[4] See notes to Art 7, p 60 *supra*

ART. 2.[1]—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.

[1] *Cf* Civil Procedure Law, 1885, s. 48, p. 92 *infra*

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 which can be appealed against ; so also it cannot be sold under a judgment given in absence[1] before the period for taking objection has expired.

[1] *i.e.* in default of appearance.

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 put up for sale ; he must send the notice to the debtor personally or to his residence together with a copy of the judgment.[1]

[1] *Cf.* Civil Procedure Law, 1885, s. 22, p. 85 *infra.*

ART. 6.[1]—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[2] a second notice must be sent, and a further thirty-one days must elapse.[3]

[1] *Cf.* Civil Procedure Law, 1885, s. 33 (3), p 88 *infra*

[2] Without any demand for sale being made

[3] And demand then be made for the sale in order that the demand may be valid.

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 on the door and the nature of the adjoining immovable property (aqar).[1] 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.

[1] See Mejelle, Art. 129.

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.[1]—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.

[1] It was held in *Themistocles v Christophi* (1905) C L.R VI., 121, that this Article was repealed by s. 63 (now 35) of the Civil Procedure Law, 1885 See p. 88 *infra*

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.[1]

[1] *Cf.* Civil Procedure Law, 1885, ss. 37, 38, p. 89 *infra*

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 Article 218 of the Penal Code.[1]

[1] The penalty is imprisonment for from fifteen days to three months and a fine of from one to one hundred gold medjidiés

ART. 13.[1]—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.[2]

[1] It has been held that this Article is not applicable to a sale under the Sale of Mortgaged Property Law, 1890, (p 114 *infra*) See *Haji Nicola v Fieros* (1917) C.L R X , p 102

[2] In *Koumi v Haji Christophi* (1894) C L R III , 59, it was held, (1) that this Article was not repealed by the Civil Procedure Law, 1885, and (2) that it had " reference only to cases in which some person has acquired a right to be registered as against a registered possessor " *Cf.* Civil Procedure Law, 1885, s 31 p. 88 *infra.*

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.[1]

[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].

[1] *Cf.* Civil Procedure Law, 1885, s. 25, p. 86 *infra.*

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[1] and buildings, vines and trees situated on moukata'ali mevqufé[2] and State land subject to bedel-i-ushr.[3]

[1] See Mejelle, Art. 129.
[2] See note to Art. 2.
[3] A fixed sum paid in lieu of tithe.

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[1] without a title-deed is forbidden.

[1] As defined in the preamble. "It is not every kind of mulk property that requires registration." *Hajı Stassi v Vehim* (1890) C L R. I, p 103. And see *Gavrilides v. Hajı Kyriaco* (1898) C L.R IV., p 92.

ART. 2.—These new title-deeds will be of two kinds: (1) For pure mulk, and (2) For moukata'a land[1] with mulk trees and buildings thereon.

[1] Vakf land subject to a fixed rent.

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 who 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'ah 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, an 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[1] 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.[2]

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.[3]

[1] Mukhtars and Imams must give notice to the officials of the Defter Khané of every sale of immovable property of which they have notice. Circular of Defter Khané 17 August, 1304. See Young's Corps de Droit Ottoman VI, p. 102.

[2] Notaries are forbidden to legalise contracts of sale of immovable property Circular of Defter Khané 18 Sha'ban, 1307 See Young's Corps de Droit Ottoman VI., p. 101.

[3] The formalities prescribed by this Article have been superseded in Cyprus. See *Christofides v Tofaridi* (1885) C L R 1, p. 23 and the Land Transfer Amendment Law, 1890, p 118 *infra*

ART. 12.—The purchaser shall pay for the benefit of the Treasury a proportional fee of ten piastres for every 1,000 according to the price of the property sold,[1] 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.

[1] Raised in 1892 to 15 per 100 See Young's Corps de Droit Ottoman VI., pp 102, 110

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 Sher' authorities based on the certificate of the Imam and Mukhtars 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 it has been approved by being sealed at the foot of the page succession duty of five piastres per 1,000,[1] 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.

[1] Raised to 7½ per 1,000 in 1892 See Young's Corps de Droit Ottoman VI., pp. 102, 110.

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.[1] There shall be taken a mortgage fee of one piastre per 1,000[2] 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[3] 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 monthly receipt book to be drawn up where it will be entered in the Summary Book and sent to the Defter Khané. The procedure in the case of mortgages by *bei-bil-vefa* and *bei-bil-istighal* shall be the same as above.

[1] The declaration shall state that the immovable property is free from charge or sequestration See Art 1 of Law of 21 Rebi'ul Akhir, 1287, Destour Vol I, p 237. Young's Corps de Droit Ottoman VI, p 102

[2] Raised to 2½ per 1,000 in 1892 Young VI, pp 103, 110

[3] Read "no fee shall be charged on redemption" See Young VI, p 103

ART. 17.—Transfer of mulk immovable property by way of gift or under a will cannot be effected without an ilam of a Sher' 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 asserting 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.[1]

[1] For a case in which the Court gave effect to the admitted intention of the parties to mortgage a house, evidenced also by a written agreement, although there had been transfer and registration as on sale, see *Hussein v Fardo* (1916) C L R X, 91

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[1] in so far as they are not repugnant to this Law.

[1] See p. 43 *supra*.

LAW AS TO MOUSSAQAFAT AND MOUSTEGHILAT VAKFS POSSESSED IN IJARETEIN.[1]

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 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.

[1] By a Vizerial Decree dated 15 Zi'l Qa'de, 1292, the application of this Law was made optional on the part of owners See *Chacalli v Houloussi* (1892) C L R II, 29. It was held in *Khanim v Dianello* (1903) C L R VI, 52, that this decree "does not authorise an application for the extension of inheritance of a part of a property without the consent of the Mutevelli"

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 mahloul.

ART. 3—The system of *feragh bil vefa*[1] 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.

[1] Transfer with right of redemption.

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*[1] 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.

[1] "The necessary implements which have been placed in immovable property to be kept there permanently and to be used in a trade or art" Vaqf Land Laws by Tyser, Ongley, and Izzet, p. 75. "On appelle ainsi les outils nécessaires à l'exercise d'une industrie qui se trouvent dans un immeuble d'une façon permanente" See Art. 40 of Omer Hilmi's "Laws regulating Vakf Properties" Translation into French (1895) by Stavridès and Dahdah And see Chiha's De la Propriété Immobilière en Droit Ottoman, pp 76-87.

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 experts 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 the 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 *bâtal* (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 extension of the right of inheritance to *moussaqafat* amd *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 Evcaf ; and title-deeds for *moussaqafat* and *mousteghilat* attached to exceptional vakfs (*mustessna*) will be issued by the *mutevellis*[1] 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.

[1] By the Law of 9 Rebi'ul Evvel, 1293, it was enacted that title-deeds for moussaqafat and mousteghilat vakfs should be issued by the Defter Khané See p 72 *infra*

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.[1]

[1] This Article as here given is syncopated and follows the version in Young's Corps de Droit Ottoman VI , p 104. There are eight more Articles to these Instructions dealing with fees, and departmental duties and obligations The full text of the Law will be found in Ongley's Ottoman Land Code, pp. 249-256 and in Othomanikoi Kodikes II., pp 1220-1224.

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[1] sold by auction or transferred by private persons.

[1] Presumably land of the chiftlik

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*[1] vakfs, both at Constantinople and in the provinces, shall henceforward be issued by the Defter Khané the following instructions showing the procedure to be followed with regard thereto shall have effect.

[1] See note on p 59 *supra*

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 (*istiglal*), 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 right 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 *moussaqafat* property 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*.[1] 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.

[1] List or inventory.

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 Evkaf. 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 Evkaf 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 be restored to the owners after having been stamped, as in Constantinople.[1]

[1] *i.e.* with the words "A new title-deed has been issued." (Art 2)

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 Evcaf, 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 Evcaf 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 vahide*) 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 made, and the necessary transactions 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 Evcaf 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 Evcaf a table showing the transfers, successions and all other transactions and dealings in order that they may collect regularly the annual *ijare* 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 correct 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 PROPERLY DRAWING UP CERTIFICATES TO BE SENT TO THE EMLAK OFFICE.

10 Rebi'ul Akhir 1293.[1]

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.

[1] These Instructions are sometimes labelled as undated, but this is the date in Destour Vol III., 467.

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*[1] 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.

[1] See note on p. 70 *supra*.

ART. 5.—Certificates as to transfer, successions, or construction, issued by Imams of 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.[1]

[1] *Cf.* Immovable Property Registration and Valuation Law, 1907, s. 32. p. 131 *infra.*

ART. 7.—The owner will present to the Emlak Office any title-deeds (*kemessouk*) 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.

NOTE.—Specimens of forms are annexed to the Law

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[1] 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[2] 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.

[1] 6 Sheval, 1285 See Young's Corps de Droit Ottoman II., p. 226.
[2] See p. 57 *supra.*

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 Finance are charged with the carrying out of this Law.

NOTE ON RECENT LEGISLATION.

The following provisional Laws affecting land were published in 1331 (1913).

1.—A Law, dated 11 Rebi'ul Evvel, providing for the delimitation, registration, and valuation of all immovable property in the Empire.

2.—A Law, dated 22 Rebi'ul Evvel, dealing with the possession of immovable property by juridical persons.

3.—A Law, dated 22 Sheval, giving Ottoman and philanthropic companies and societies an extension of six months for complying with the above-mentioned Law.

4.—A Law, dated 22 Rebi'ul Evvel, abolishing *guèdiks* (see p. 70 *supra*) in Constantinople.

5.—A Law, dated 27 Rebi'ul Evvel and gazetted on 3 Rebi' ul Akhir, amending the Law of Inheritance.

Under this Law the right of succession to the State and mevqufé land of a deceased person devolves, subject to the rights of a surviving spouse hereinafter mentioned, upon :—

(i.) His children, grandchildren, and great grandchildren ; those of the two latter classes taking by representation the share which their deceased parent would have taken had he survived the deceased ;

(ii.) His parents and their descendants. If both parents survive they take equally, if either of them die before the deceased their descendants have a right of representation.

(iii.) His grandparents on both sides and their descendants.

Rights acquired through more than one source are cumulative.

Heirs of a prior degree exclude all of a subsequent degree, except that if the deceased leaves children or grandchildren and parents or a parent, the parents, or parent, take one-sixth. A surviving spouse takes one-fourth if there are heirs of the first degree, one-half if the heirs are of the second or third degree. If descendants of a grandparent would succeed were there no spouse the share to which they would succeed in such a case goes to the surviving spouse.

If there are no heirs of the first and second degrees and no grandparent surviving, the spouse takes all.

The above provisions apply also to moussaqafat, musteghilat, and muqata'ali vakf property, and adjustments of the amount of rent, to meet the extension of the right of inheritance, are made ; but it is provided that where the limits of the right to inheritance have been extended in accordance with conditions laid down by the dedicator the conditions and rents so fixed are to continue.

6.—A Law, dated 27 Rebi'ul Evvel, concerning the collection of rents of vakf properties.

7.—A Law, dated 7 Ramazan, amending the above.

8.—A Law, dated 1 Rebi'ul Akhir, dealing with mortgages. It provides that immovable property of every kind, whether held in severalty or in common, may be mortgaged, and may be subjected to second and subsequent mortgages. Provision is made for protecting lease-holders of property sought to be mortgaged. Buildings, trees, and vines, on the property at the time of the mortgage, or erected or planted subsequently, are to be considered as part of the mortgaged property. The Law also deals with assignment, redemption, and sale.

9.—A Law, dated 5 Jemazi'ul Evvel and gazetted 11 Jemazi' ul Evvel, dealing with possession of immovable property. It tends to put possessors of State and mevqufé land into the position of absolute owners, preserving, however, the *raqabé* (see p. 2 *supra*) for the State. It confirms the necessity for holding by title-deed, and seeks to put an end to fictitious transactions and to registration in the name of nominees.

The following powers may be exercised by possessors of State and mevqufé land without official leave :—

(i.) They may alienate or mortgage it. (See Land Code, Art. 36).

(ii.) They may cut down timber, or vines (See Land Code, Art. 28).

(iii.) They may make gardens by planting trees, or vines (See Land Code, Art. 25).

(iv.) They may erect buildings for industrial or agricultural use (See Land Code, Art. 31), provided that a new village or quarter cannot be formed thereby (See Land Code, Art. 32).

(v.) They may use the soil for making bricks and tiles (See Land Code, Art. 12), and sell the sand and stone, subject to the special laws on the subject.

Trees, vines, and buildings planted and erected on State or mevqufé land become subject, as regards disposal and transfer, to the laws which are applicable to the land on which they stand.

Art. 8 confirms Art. 121 of the Land Code ; Art. 9 confirms Art. 35 (iii.) ; Art. 10 confirms Arts. 13, 14, 27, and 29 ; Art. 11 confirms Art. 35 (i.) ; Art. 12 confirms that part of Art. 19 of the Land Code which relates to co-possessors ; Art. 13 confirms Art. 35 (ii.) and (iv.).

Art. 14 appears to repeal Art. 21 of the Land Code in so far as it denies a right to *ejr misl.*

By Art. 15 thirty-six years is laid down as the period of prescription in actions concerning the *raqabé.*

Art. 16 enacts that State and mevqufé land, and moussaqafat and mousteghilat vakf property, shall be liable for the debts of the possessor during his lifetime and after his death, even if they become *mahloul.*

Land sufficient for the support of a debtor who is a cultivator, and house accommodation sufficient for a debtor, or for his family after his death, is exempted from being sold in execution, unless already subject to a mortgage or conditional sale, or unless the debt represents the price paid for the property.

Art. 17 confirms Art. 13 of the Law as to Forced Sale (see p. 63 *supra*).

Two provisional Laws affecting land appear to have been published in 1332. Of these one, dated 18 Rebi'ul Evvel, amends the Law as to leasing immovable property dated 28 Jemazi'ul Evvel, 1299 (see Young's Corps de Droit Ottoman VI., 132) ; the other, dated 14 Muharrem, deals with partition.

APPENDIX OF CYPRUS LAWS AND RULES.

CONTENTS.

THE TITLES REGISTRATION LAW, 1885.[1]

[The remainder of this Law was repealed by the Immovable Property Registration and Valuation Law, 1907, s. 46.]

Church property held ab antiquo.

11. All immovable property shown by evidence to belong *ab antiquo* to any Church or Monastery shall be registered in the Central Office of Land Registration at Nicosia.[2]

No qochans shall be issued in respect of such lands, nor fees taken in respect of such registration.

[1] See also the Ecclesiastical Properties Law, 1893, p. 122 *infra*

[2] See *Sophronios v The Principal Forest Officer* (1890) C L R I, p. 118 and *Gavezian Pandeli* (1895) C L R. III, p. 259

Other Church Property.

12. All immovable property, other than that belonging *a antiquo* to any Church or Monastery, which shall have passed by any lawful means into the possession of any Church or Monastery shall be registered in the name of some person as trustee for the Church or Monastery.[1]

The trustee shall be appointed by the manager of the Church or Monastery, and upon his death the property shall not devolve upon his heirs but shall be registered in the name of a new trustee to be appointed as hereinbefore mentioned.

No property so registered shall revert to the State by reason of the death of any trustee without heirs.

[1] See note 2 to s. 11.

Reduction of fees.

13. The amount of fees to be taken in respect of the transfer of any Arazie Mirié property by inheritance or by registration under Section 12[1] hereof shall be an amount equal to two-and-a-half per cent. upon the value of the property as registered in the books of the Land Registry Office for the payment of Verghi, instead of five per cent. on such value as heretofore.

And no unregistered owner shall be liable to pay fees in respect of any devolution of such property by inheritance prior to the immediate devolution thereof on him.

[1] See note 2 to s. 11.

CIVIL PROCEDURE LAW, 1885.

1. This Law may be cited as the Civil Procedure Law, 1885.

2. In this Law the following expressions have the following meanings :—

"Judgment creditor" means a person in whose favour a judgment ordering the payment of money is made ;

"Judgment debtor" means a person against whom a judgment ordering the payment of money is made ;

"Judgment debt" means money ordered by a judgment to be paid ;

"The Court" means the Court before which the action in which any application or order is made, or any writ is issued, has been instituted, or the Supreme Court, or any judge thereof respectively.

Interim orders for sequestration, etc.

4.—(1) The Court may at any time during the pendency of any action therein make in the action an order for the sequestration, preservation, custody, sale, detention, or inspection of any property, being the subject of the action, or an order for preventing any loss, damage, or prejudice which but for the making of the order might be occasioned to any person or property, pending a final judgment on some question affecting such person or property or pending the execution of the judgment.

(2.) The order for sequestration referred to means an order appointing some person or persons to enter upon any immovable property, specified in the order, which is in the occupation of the person against whom the order is made, and to collect, take, and get into his or their hands the rents and profits thereof, and also the goods and movable property of such person, and to keep them for a time specified in the order or until the further order of the Court.

(3.) The order confers upon the person or persons thereby appointed full power to do everything which by the order is directed to be done, and all acts and things subsidiary thereto ; and, from the time when notice of the order is given to the person against whom it is made, it deprives him of every such power, subject only to his right to occupy the immovable property sequestrated and to carry on his business thereon and to use the movable property which may be thereon for the purposes of such occupation and the carrying on of his business.

Interim order restraining dealing with land.

5.—(1) Any Court in which an action for debt or damages is pending, may, at any time after the institution of the action, by its order direct that the defendant be restrained from parting with so much of the immovable property standing registered in his name or of which he has by law a right to be registered as the owner, as in the opinion of the Court shall be sufficient to satisfy the plaintiff's claim together with his costs of action.

(2) No such order shall be made unless it appears to the Court that the plaintiff has a good cause of action, and that by the sale or transfer of the property to any third person it is probable that the plaintiff may be hindered in obtaining satisfaction of the judgment of the Court if given in his favour.

(3) Every order made under this section shall specify so far as practicable the situation, boundaries, extent, and nature of the property affected by it.

(4) Where an order has been made under this section, the person on whose application it is made may deposit at the Land Registry Office of the District within which any property affected by the order is situate an office copy of the order, together with a memorandum in writing addressed to the Principal Land Registry Officer of the District, requesting that the property may not be transferred into the name of any person other than the person against whom the order is made.

(5) The order and memorandum shall be open to inspection in the office where they are deposited, and any subsequent transfer of the property made while the order continues in effect shall be null and void, and the remedy of any person into whose name the property may be so transferred shall be in damages only against the person by whom the property was granted or assigned

to him, whether by way of sale, gift, mortgage, or otherwise. And the Principal Land Registry Officer shall make an entry in a book kept for the purpose showing that the documents have been duly deposited, and shall communicate in writing the number of the entry to the person depositing the documents.

6. Any order under the two last preceding sections shall be subject to the provisions of Clause 36 of the Cyprus Courts of Justice Order, 1882.[1]

[1] Which provides for compensation where an order has been wrongfully obtained.

EXECUTION.

Against joint property.

9. Where a judgment is against any persons jointly, execution may issue either against any property belonging to them jointly or against any property belonging to any of them separately.[1]

[1] "The effect of a judgment against two debtors jointly is that each of them is liable to pay the whole amount, and execution can be issued against either accordingly." *Hayi Hussein v. Bessim* (1907) C L R VII, 69.

Costs.

10. The party enforcing a judgment shall be entitled to recover his costs of execution[1] unless the Court shall otherwise order; and the sheriff or other officer executing any writ shall be entitled to retain in his hands the expenses incurred by him or any agent on his behalf in executing it.

[1] See s 6 of the Civil Procedure (Amendment) Law, 1919, p 99 *infra* and Court Costs Rules, 1911, p. 102 *infra*.

Disposal of proceeds.

11. All money payable under a judgment and raised by execution or otherwise, under the process of the Court, shall be paid into Court, unless the Court shall otherwise direct.

Payment into Court shall be effected by payment into the Treasury, or into any bank, or to some person or persons, as may be directed by Rules of Court,[1] the moneys so paid in being placed to the credit of and subject to the order of the Court.

[1] See O. xi of the Rules of Court, 1886. Statute Laws II. p 698

Methods of execution.

12. Any judgment or order of a Court directing payment of money may, subject to the provisions of this Law, be carried into execution by all or any of the following means:

(*a*) By seizure and sale of movable property;
(*b*) By sale of or making the judgment a charge on immovable property;
(*c*) By sequestration of immovable property;
(*d*) By attachment of property under Part VII. of this Law; or
(*e*) By imprisonment of the debtor under Part VIII. of this Law.

13. No judgment or order for the payment of money shall be executed except under the provisions of this Law.[1]

[1] See s. 97 *infra.*

EXECUTION AGAINST IMMOVABLE PROPERTY.

Sale.[1]

20. No writ of execution by sale of immovable property shall issue, except by the consent of the judgment debtor, unless a writ of sale of the movable property of the debtor, issued out of the Court and addressed to the Sheriff of the District within which the Court is situate, has been returned into the Court unsatisfied, or unless it appears that the debtor has no movable property actually in his possession.[1]

[1] See the Civil Procedure (Amendment) Law, 1919, s 2, p. 99 *infra.*

What liable to be sold.

21. The immovable property of a judgment debtor which may be sold in execution shall include only the property standing registered[1] in his name in the books of the Land Registry Office. Provided[2] that where the property consists in whole or in part of a house or houses there shall be left to or provided for the debtor such house accommodation as shall in the opinion of the Court be absolutely necessary for him and his family.[2]

[1] "Rightly registered." See *Yemeniji v Andoniou* (1893) C L R. II, p. 144, and *Koumi v. Haji Christofi* (1894) C L R. III., p 64

[2] This proviso held not to apply to a sale under the Sale of Mortgaged Property Law, 1890 (p. 114 *infra*) See *Themistocles v Changari* (1918) C.L.R X, 124 For further proviso see s 3 on p 99 *infra.*

[3] See O xviii, r. 19, p. 101 *infra.* For a case of a house belonging to joint debtors, see *Kakoyani v. Selim* (1897) C L R IV., 51 In *Triantaphyllides v Solomo* (1904) C L R. VI, 90, it was held that in case of an application under s. 53 (now 27) that section and this must be read together

Issue of writ.

22. No writ of sale of immovable property shall be issued except on an application to the Court, notice of the application having been first given to the debtor;[1] and every such writ shall be signed by the judge, or one of the judges, directing its issue.

[1] See O xviii., r. 8 p 100 *infra* and see s 4 on p. 99 *infra* in case of judgment being registered.

Duration of writ.

23. Subject to the provisions of the next section, where a writ of sale of immovable property has remained unexecuted for one year from the date of its issue by reason only of the non-payment of the expenses to be incurred in carrying out the sale, the Principal Land Registry Officer of the District may endorse on the writ that it has not been executed by reason of the non-payment

of the expenses ; and the writ shall then be returned to the Court by which it was issued and shall cease to have any legal force and effect.

Extension.

24. The Court may at any time before the expiration of one year from the date of the issuing of the writ, order that it shall remain in force for such further period as the Court thinks fit.

Order for sale of part first.

25. If a judgment debtor whose immovable property is sought to be sold, claims that it will be to his interest or to the interest of his creditors that any part of it should be sold before any other part, he shall bring the claim to the notice of the Court before the auction is concluded ; and if the Court thinks that any part of the property should be sold before any other part, it may so order accordingly.

Writ directing sale generally.

26. A writ of sale of immovable property, directing the sale of the debtor's immovable property generally, without other or further directions, shall be sufficient authority to the Sheriff and to the officers of the Land Registry Office to sell so much of the immovable property registered in the name of the debtor as may be deemed sufficient to raise the amount due under the judgment, with all expenses of execution.[1]

[1] See s 69 *infra* "*Semble* The order of the Court for the issue of a writ of sale of immovable property effects a charge upon the property from the moment of the issue of the writ." See *Markou v Haji Christodoulou* (1908) C L R VIII.. 62.

Property subject to a mortgage.

27.[1] Where the property is subject to a mortgage :—

(*a*) The judgment creditor may at any time after the mortgage debt has become payable, pay to the mortgagee on behalf of the judgment debtor all money secured by the mortgage, and may add the money so paid to the amount of his judgment debt ; and the Court, upon being satisfied that the money secured by the mortgage has been paid, may direct a sale of the property.

(*b*) If upon tender by the judgment creditor to the mortgagee of the money secured by the mortgage, the mortgagee refuses to accept it, the Court may, on the application of the judgment creditor, direct the property to be sold upon such terms as to the payment into Court by the judgment creditor, or as to his otherwise securing the payment of the mortgage debt as the Court thinks fit.

(*c*) The judgment creditor may, instead of paying or tendering to the mortgagee the money secured by the mortgage, give notice to the mortgagee of his intention to apply to the

Court for a writ of sale ; and upon such application, and upon the judgment creditor furnishing security to the satisfaction of the Court for the expenses to be incurred in and in connection with the sale, a writ may be issued directing the property to be sold, subject to a reserved bidding to be fixed by the Court, for securing the money due and to become due under the mortgage ; and if there is no bidding of as high a value as the amount fixed by the reserved bidding, the property shall not be sold.

(*d*) The money realized by any sale under sub-section (*c*) shall, so far as it extends, be applied ; first, in payment of the money due under the mortgage ; secondly, in payment of the expenses of the sale ; thirdly, in payment of the judgment debt ; and the balance, if any, shall belong to the judgment debtor.

(*e*) If the money so realized is not sufficient for the payment in full of the money due under the mortgage and the expenses of the sale, the judgment creditor shall be answerable for the deficiency, but may, where the Court thinks fit so to order, add the amount of the deficiency to the amount of his judgment debt as costs of execution.[2]

[1] See note 3 to s 21

[2] See *Pierides v. Petrides* (1897) C L.R. IV 33

Land registered in deceased debtor's name.

28. Where a writ has been issued for the sale of immovable property in satisfaction of a judgment debt owing by a deceased person, and the property stands registered in the books of the Land Registry Office in the name of the deceased, the Land Registry Department shall sell the property in satisfaction of the debt without first requiring its registration to be effected in the name of the heirs.

Subsequent writ.

29. Where a writ has been issued for the sale of immovable property, the Court may, on the application of any other judgment creditor, issue a writ for the sale of so much of the property as has not been sold under the first writ ; and may, upon the like application, order that the balance, if any, after payment of what is due under the first writ, shall be applied in satisfaction of the debt of the creditor by whom application is made.

Application by Sheriff for directions.

30. The Sheriff or any person executing a writ of sale of immovable property may apply to the Court for directions for disposing of any question arising or likely to arise in the course of the sale, and the Court may thereupon give such directions as it thinks advisable.[1]

[1] See O. xviii., r. 20, p 101 *infra.*

Stay of sale.

31. Any person who claims to be interested in any immovable property for the sale of which a writ has been issued, may apply to the Court to stay the sale, and the Court may, after hearing all necessary parties, make such order thereon as seems just.[1]

[1] Compare Art 13 of the Law of Forced Sale, p 63 *supra*, and see *Koumi v. Hayi Christofi* (1894) C L R. III., 59

Auction.

32. Every sale of immovable property in satisfaction of a judgment shall be made by public auction at a time and place of which public notice has been given.

Notice of sale.

33.—(1) The notice shall be posted at the town or village within which the property is situate ; at the town or village at which the sale is to be held ; at the court-house of the Court out of which the writ of sale is issued ; and at such other place or places as may be directed by the Court or by Rules of Sale[1] made under this Law.

(2) The notice shall specify the name and place of business of the person appointed to conduct the sale and of the person, if any, to whom biddings may be made pending the time appointed for the sale.

(3) The notice shall be a notice of at least fifteen days, but need not in any case exceed ninety days ; and shall be issued for such time prior to the sale and shall be given in such manner as shall be provided by any Rules of Sale[1] made under this Law or, in default of any such rules, in such manner as the Court may direct.

[1] See p. 102 *infra.*

Written bids.

34. After the publication of the notice and until the time appointed for the sale, biddings in writing may be made to any person named in that behalf in the notice of sale, provided that they are made in conformity with Rules of Sale or, in default thereof, that they are signed by the person bidding in the presence of some person named to receive written biddings.

Close of sale.

35. At the time and place appointed for the sale the person appointed to conduct it, or his substitute, shall receive all biddings then made orally to him, and shall close the sale in conformity with the provisions of the Rules of Sale or, in default thereof, when he considers, from the time which has elapsed since the last previous bidding, that no further biddings are forthcoming.

Highest bidder.

36. After the close of the sale the person having the conduct of it shall declare the name of the highest bidder.

Liability of highest bidder.

37.—(1) Every person who makes a bidding, whether in writing or orally, shall, unless or until a higher bidding is made, thereby render himself responsible for the amount bid by him and that he will complete the purchase and pay all fees necessary for duly transferring the property into his name in the books of the Land Registry Office ; and if the highest bidder shall, on the demand of the person having the conduct of the sale, neglect or refuse to pay the money bid by him, or such portion thereof as may be prescribed by Rules of Sale, and also the above-mentioned fees, the biddings shall be reopened and the property shall again be put up for sale. And the highest bidder at the former sale shall be responsible for all losses, if any, occasioned by his neglect or refusal to pay the said sums.[1]

(2) If the amount realised at the subsequent sale is not sufficient to satisfy the amount due under the judgment in execution of which the sale is made, the amount, if any, for which the highest bidder at the former sale rendered himself responsible shall be recoverable in an action instituted by the judgment creditor, or, by leave of the Court, by the judgment debtor. In the contrary case the amount shall be recoverable in an action instituted by the judgment debtor.

[1] See *Peristiani v. Jassonides* (1905) C.L.R VI., 83.

Penalty for failure to pay amount of bid.

38. When the person declared to be the highest bidder is not required by the person having the conduct of the sale immediately after the close of the sale to pay the whole of the money bid by him, then if he fails to complete the payment of the money bid by him within the time fixed by the conditions of sale, the judgment creditor may serve on him a notice in writing calling upon him to complete the payment within ten days after service of the notice ; and if he neglects or refuses without reasonable cause, proof whereof shall lie upon him, to complete the payment within the said ten days he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding fifty pounds.

Court may fix reserve.

39. The Court on issuing the writ may direct that the property shall not be sold unless the amount bid for it is equal to or exceeds a reserve price fixed by the Court. Any such direction may be given by the Court on the application of the person whose property is ordered to be sold and on his securing, in such manner as the Court may approve of, the payment of any additional expenses which may be occasioned by the giving of the

direction ; and if any such direction is given, the reserve price shall in all cases be specified in the writ of sale, and no bidding or offer for the property shall be accepted unless it is equal to or exceeds the reserve price. Provided that this section shall not apply to property legally mortgaged or hypothecated for the payment of a debt.

Resale when reserve not reached.

40. When the property is not sold owing to the amount bid not having been equal to the reserve price, if, after the expiration of six months from the conclusion of the biddings, the property still remains unsold and the creditor applies to the Court to order it to be again put up for sale, the Court shall, unless it is shown that the debt is satisfied, make the order accordingly, and the property shall then be sold for the best price that can be obtained.

Power to hold sale with closed doors.

41. The doors of any room in which the sale takes place may, in the discretion of the person appointed to conduct the sale, or his substitute, be closed so that any person present at the commencement of the sale may not leave until the person conducting the sale has closed the sale and called upon the highest bidder to pay the purchase money or so much thereof as may then be payable.

Irregularity in sale.

42. If it is made to appear to any Court that there has been any omission or irregularity at the sale whereby any person has been actually damaged or prejudiced, the Court may set aside the sale and order a new sale upon such terms as it thinks just.

Inadequate bid. Suspension of sale. Setting aside writ.

43.—(1) Where the highest amount bid is inadequate, then, if the debtor applies to the Court within seven days from the time when the bidding was made for a stay of proceedings, and proves to the satisfaction of the Court that the highest amount bid is inadequate[1] as aforesaid, and if, when the application is made to the Court and when the Court is prepared to deal with it, it is possible to make an order on it without affecting the rights of or in any way prejudicing any person other than the debtor and his creditor, the Court may by its order direct that the proceedings under the writ be suspended or that the writ be set aside, as far as regards the property for which the highest bid is inadequate, either unconditionally or subject to such terms as the Court may think fit to impose.

(2) The Court shall not make the order if it appears that the debtor or any person with his knowledge and on his behalf, or in furtherance of any common purpose formed by him and others to prejudice, hinder, or prevent the sale of immovable property,

has in any manner acted so as to prejudice the sale of the property or hinder or prevent biddings being made for it.

(3) If, after the expiration of six months from the time when the Court ordered the proceedings under the writ to be suspended or the writ to be set aside, the property comprised in the writ still remains unsold, and the creditor applies to the Court to order it to be again put up for sale, the Court shall, unless it is shown that the debt is satisfied, make the order accordingly, without charging any further Court fees ; and the property shall then be sold for the best price that can be obtained.

(4) This section and sections 44 to 49 inclusive shall not apply to any property legally mortgaged or hypothecated for the payment of a debt.

[1] See *Dianello v Ahmed* (1904) C.L R. VI., 80

"*Inadequate.*"

44. A bid shall ordinarily be deemed to be inadequate within the meaning of this Law if it is less than one-third of the value of the property as shown in the verghi registers. But the creditor may submit evidence to the Court that the value so shown exceeds the true actual value of the property, and the Court may, on hearing the evidence and any evidence submitted by the debtor in opposition, and after hearing the parties or such of them as attend the Court, determine what is the true value of the property ; and in that case the bid shall be deemed to be inadequate within the meaning of this Law, if it is less than one-third of the value determined by the Court.

Time for application.

45. Any debtor desiring to obtain an order of a Court suspending proceedings under or setting aside a writ for the sale of any of his immovable property, shall make application to the Court for that purpose within seven days from the date when the bidding has closed ; and no such application shall in any case be received after the expiration of seven days.

Re-sale.

46. When the proceedings under a writ have been suspended or a writ has been set aside under the provisions of this Law, any property which was ordered to be sold may, on the application of any person interested therein at any time afterwards, be sold, if the Court thinks fit so to direct.

Saving rights of creditor.

47. The suspension of proceedings under a writ or the setting aside of a writ shall not postpone the claim of the creditor on whose application the writ was issued to the claim of any other creditor, but all rights as against the debtor and all other persons claiming through or against the debtor which on the issuing of

the writ accrued to the creditor in respect of the property therein mentioned shall remain in full force until his debt is satisfied, with interest and costs.

Putting creditor in possession.

48. When the Court suspends the proceedings under or sets aside a writ, or if the highest bid is less than the reserve price fixed by the Court, the creditor may, if he so requires and if the Court thinks fit, be put into possession of the property for any period not being more than three years, at a yearly rent fixed by the Court.

Provided that if any person other than the creditor offers to rent the property and to enter into security for the payment of the rent, the creditor shall not be entitled to be put into possession at a smaller rent than that so offered.

Sale notwithstanding.

49. Notwithstanding that a creditor has been put into possession under the last preceding section, the property may at any time, by leave of the Court, be sold to any person who will give an adequate price for it.

Except as hereinbefore provided the Court shall not necessarily direct the property to be sold, but shall direct it either to be sold or to continue in the possession of the creditor, as may in the opinion of the Court be most conducive to the interests of all parties concerned.

Property not sold on day fixed.

50. If for any reason any of the property is not sold on the day fixed for the sale, the Court may give such directions as it thinks right for the sale thereof and for advertisements and notices.

Transfer after fifteen days from sale.

51. No transfer of immovable property sold in execution shall be made at the Land Registry Office until the expiration of fifteen days after the date when the biddings closed.

MAKING JUDGMENT A CHARGE ON LAND.

Registering judgment.

52. A judgment creditor may, for the time and to the extent hereinafter specified, render any immovable property in which his judgment debtor is beneficially interested, and which is registered in the books of the Land Registry Office in the debtor's name, security for the payment of his judgment debt by registering his judgment[1] at the Land Registry Office.

[1] Does not include an ilam of a Cadi. *Gavrilides v. Ibrahim* (1898) C.L.R IV., 81.

How effected.

53. The registration shall be effected by depositing at the Land Registry Office of the District in which the property sought to be charged is situate, an office copy of the judgment, together with a memorandum, dated and signed by the judgment creditor or his agent appointed for that purpose, describing the property and claiming that the debtor's interest in it may remain answerable for the payment of the money due under the judgment.

The memorandum shall state the name, place of residence and occupation of the judgment debtor, the nature of the property, the town or village within the lands of which the property is situate, and a reference to the place in the registers where the registration of the property is to be found.

Duration.

54. Registration of a judgment shall ordinarily remain in force for two years only from the date when the judgment was first registered.

Extension of time.

55.—(1) The registration may, from time to time, be prolonged by an order of the Court for any further period or periods not exceeding one year at any one time.

(2) No order shall be made prolonging the registration unless :—

(*a*) the application for it is made at least one month before the expiration of the existing period for which it is registered ; and

(*b*) the Court is able, after hearing and considering the application and all evidence adduced in support of it, to make its order before the expiration of the existing period ; and

(*c*) notice of the application and of the time fixed for its hearing has been given to the Principal Land Registry Officer of the District within which the property is situate ; and

(*d*) the Court is satisfied that the judgment was not a collusive judgment, or obtained with a view to defeat other creditors, and also that a prolongation of the period of registration will not prejudicially affect the judgment debtor or any other judgment creditor or creditors.

(3) Notice of the order shall be given to the Land Registry Office by or on behalf of the judgment creditor and at his expense, by leaving at the office where the judgment is registered a notice in writing of the making of the order, or an office copy thereof, not later than the day on which, but for the making of the order, the registration of the judgment would cease to have effect, and, where notice only is left, by further leaving an office copy of the order at the Land Registry Office within fourteen days from the day last aforesaid ; and if the office copy or notice and office copy as aforesaid be not so left at the office, the creditor shall forfeit the benefit conferred on him by the order.

Effect.

56. During the time that the registration remains in force, the interest of the debtor in the property shall be charged with the payment of the debt due under the judgment in priority to all debts or obligations of the debtor not specifically charged upon the property before the deposit of the memorandum ;[1] and notwithstanding any transfer or mortgage made after the registration of the judgment, the property, or so much of it as shall be necessary to be sold to satisfy the judgment, shall, at any time while the registration remains in force, be ordered by the Court to be sold in execution of the judgment.[2] The remedy of any person into whose name it may have been transferred, or to whom it may have been mortgaged, shall be in damages only against the person by whom the property was transferred or mortgaged to him.

[1] In *Markou v Christodoulou* (1908) C L.R. VIII , 62, it was held that a previously issued writ of sale took priority to a memorandum.

[2] Notwithstanding subsequent bankruptcy *Constantinides v. Boyadji* (1912) C.L.R X., 45; and see the Civil Procedure Amendment Law, 1919, s 4 *et sqq*, p. 99 *infra*.

Previous declaration for sale or mortgage.

57. Where a declaration for sale or for mortgage has been made, no memorandum deposited after the date of the declaration shall have any effect upon the property affected by the declaration until the expiration of twenty days from the date of the declaration.

Notice by creditor when judgment satisfied.

58. Whenever any judgment that has been registered is satisfied while the registration remains in force it shall be the duty of the creditor to give notice in writing thereof at the office where the judgment is registered.

The creditor shall be answerable to his debtor, and to any creditor of the debtor, for any damages they or either of them may incur by reason of a judgment remaining registered after it has been satisfied, unless he proves that the damage has been incurred in consequence of the judgment remaining registered after he has given notice at the Land Registry Office of its satisfaction.

Entries at Land Registry Office, inspection of.

59. The proper Officer of Land Registry shall enter in a book to be kept for that purpose a note of the date of the registration at the Land Registry Office of every judgment, and of the names, places of residence and ordinary occupations of all persons against whose immovable property or any part thereof, any judgment has been registered, and of the date of any order prolonging the registration, and of the period for which the registration is thereby prolonged.

The book shall also show the name of the village where the properties are situate.

The book, together with the office copies of judgments and memoranda deposited at the Land Registry Office under this Law, shall be open to inspection.

Delay.

60. Where there are two or more judgments against the same debtor in favour of separate creditors, and two or more of the creditors give notice to the same Land Registry Office of their judgments, the Court may direct that any creditor whose notice is prior in date to that of any other creditor shall be postponed to all or any creditors whose notices are subsequent in date to his and who may seek to execute their judgments, unless he proceeds to execute his judgment within a time to be named by the Court.

Right to surplus balance.

61. Where two or more creditors, by registering their judgments, have charged the same immovable property with the payment of their debts, and one of them has sold the property in satisfaction of his debt, if upon the sale there remains a balance after satisfaction of the debt and costs of execution, it shall be applied, in priority to the claims of any other creditor, in satisfaction of the debt of any other creditor who has registered his judgment, or, if there be more than one such creditor, in satisfaction of their debts in the order of priority of the registration of their judgments.

REGISTRATION IN DEBTOR'S NAME WITH A VIEW TO EXECUTION.

Judgment creditor may apply.

62. A judgment creditor who wishes to enforce his judgment debt by sale of the interest of his debtor in immovable property not registered in the name of the debtor or to render any immovable property not registered in the name of the debtor a security for his judgment debt, may apply to the Land Registry Office for the registration of the property in the name of his debtor; and whether the debtor is living or dead, registration may be effected in his name in the manner hereinafter provided.

Filing. Right of inspection.

63. The application shall be filed in the Land Registry Office, and the proper officer shall enter a note of it in a book to be kept for the purpose, and also in the book directed to be kept by section 59. The books, together with the application, shall be open to inspection by any person during office hours.

Effect.

64. Where such application has been made, the interest of the debtor in the property shall, during the period hereinafter appointed, be charged with the payment of the debt due under the judgment in priority to all debts or obligations of the debtor not specifically charged upon the property before the making of the application.

The property shall so remain charged until the expiration of six months from the date when notice is received by the judgment creditor, under section 66 of this Law, that the Principal Land Registry Officer has effected or has refused to effect registration in the name of the judgment debtor.

Land Registry Office may register.

65. Upon the application being made, and subject to the following conditions :—

(1) that a local inspection of the property be made ;

(2) that sufficient evidence be adduced of the right of the judgment debtor to be so registered ; and

(3) that all fees and charges (including the payment in advance of the cost of the local inspection) which would have been payable by the judgment debtor, if the application had been made by him, be paid by the judgment creditor,[1]

it shall be lawful for the Principal Land Registry Officer of the District in which the property is situate, notwithstanding that it is registered in the name of some other person, to cause it to be registered in the name of the judgment debtor.

[1] *Economou v Constanti* (1905) C.L.R, VI., 123

Notice to creditor.

66. The officer shall forthwith give notice to the judgment creditor that he has effected or refused to effect the registration.

Refusal to register. Procedure.

67. If the officer refuses to cause the registration to be effected, the judgment creditor may apply to the District Court[1], or to a Judge thereof, for an order directing the registration, and shall in every such case give the Principal Land Registry Officer reasonable notice of the date fixed for the hearing of the application.

At the hearing of the application, the Principal Land Registry Officer may attend and adduce any evidence which he may consider material or proper to be known by the Court.

[1] Presumably of the District in which the property is situated. See *Economou v. Constanti* (1905) C.L.R. VI, p. 125.

Order on application.

68.—(1) If on the hearing of the application, the Court is of opinion that the property in question ought to be registered in the name of the judgment debtor, it shall order it to be registered accordingly.

Local inspection.

(2) Except where the Principal Land Registry Officer declares that a local inspection is unnecessary, no order shall be made for the registration of any property under the provisions of this part[1] of this Law, until a local inspection has been made.

[1] Ss 62-70.

Fee, etc., to be deemed costs of execution.

69. All fees and charges (including the cost of local inspection) paid by the creditor for obtaining registration of the property in the name of his debtor, shall be deemed to be costs of execution.[1]

[1] See Court Costs Rules, 1911, p. 102 *infra.*

Application to set aside.

70. Any interested party may apply to the Court to set aside any registration effected under this part[1] of this Law.

[1] Ss. 62-70

EXECUTION BY SEQUESTRATION OF LAND.

71. When a writ of sale of immovable property has been issued, the Court, on the application of the Debtor, and on his proving to the satisfaction of the Court that he is possessed of immovable property, and that the amount due under the judgment with all interests and costs payable and to become payable thereunder can be satisfied by sequestration of the property for a period not exceeding three years, may direct a sequestration of the property, and may thereupon stay execution by way of sale.[1]

[1] See *Koutsoudi v. Ioanni* (1910) C L.R. X , 18

MISCELLANEOUS.

Land Registry Officers may act on judgments.

91. Where a judgment settles any question of title to immovable property, service of a copy of the judgment at the Land Registry Office shall be sufficient authority for the proper officer of that Office to make all necessary registrations consequent on the judgment.[1]

[1] And see the Registration and Valuation Law, 1907, s. 34, p. 131 *infra.*

Writ of partition.

92. Where a judgment directs partition of immovable property, a writ of partition may issue directing that a partition of the property may be made by a Land Registry Officer or any other person whom the Court may think fit to appoint for that purpose.[1]

The Court before issuing the writ, may require the person applying for it to deposit such sum as the Court considers necessary for the costs of making the partition.

The writ shall be sufficient authority for the officer or person to whom it is addressed to make the partition ordered at any time after the receipt thereof by him, whether the persons amongst whom the property is to be partitioned are present at the time of making the partition or not.[2]

[1] Such person is an officer of the Court for the time being, *Agha v. Agha* (1910) C.L.R. IX., 45.

[2] And see the Registration and Valuation Law, 1907, s. 30, 31, p. 130 *infra*

Judgments of Village Judges.

94. Where the judgment of a Village Judge remains wholly or in part unsatisfied, and no movable property of the judgment debtor sufficient to satisfy the judgment is found within the judicial division of the Judge, the judgment creditor may apply to a District Court for execution of the judgment, and that Court may issue the same writs and orders as though the judgment had been actually given by it,[1] and may stay execution in the same manner as it may stay execution of its own judgment, and shall have all such powers in relation to the judgment as are specified in Part IX. of this Law.[2]

[1] See s 2 on p 99 *infra*

[2] Ss. 85-90, relating to examination of judgment debtors, and orders for payment by instalments.

Saving Clause.

97. Nothing in this Law shall be held to annul or abridge the right of any Court to enforce obedience to any judgment or order by the means provided in the Cyprus Courts of Justice Order, 1882.

Power to make Rules of Sale.[1]

98—(1) The High Commissioner, with the advice and assistance of the Chief Justice and of the Registrar General may from time to time make Rules, (in this Law referred to as Rules of Sale), for regulating :—

(1) the conduct of sales of immovable property under this Law ;

(2) the appointment of persons to conduct the sales ;

(3) the fee to be paid to the Land Registry Office or to any person on such sales ;

(4) the conditions under which the property is to be sold ; and

(5) the form of notice authorised by section 38, and the manner of serving it.

(2) The Rules shall be consistent with this Law, and may empower the Principal Land Registry Officer to give any special directions as to the manner and condition of sale where he thinks it advisable, but so that he shall not be authorised to direct any sale to be carried out in a manner inconsistent with this Law.

(3) The Rules may repeal or alter any former Rules.

(4) The Rules shall be published in the *Cyprus Gazette*, and shall come into force at any time specified in the Rules or by order of the High Commissioner published in the *Cyprus Gazette*.

[1] See p. 102 *infra*.

CIVIL PROCEDURE AMENDMENT LAW, 1919.

1. This Law may be cited as the Civil Procedure (Amendment) Law, 1919, and shall be read as one with the Civil Procedure Law, 1885, (hereinafter called the Principal Law) and the Principal Law and this Law may be together cited as the Civil Procedure Laws, 1885 and 1919.

2. Notwithstanding anything contained in the Principal Law, Sections 20 and 94, writs for sale of immovables may be issued at any time by the order of a Judge of a District Court.

3. The Principal Law, Section 21, shall be amended by the addition thereto of the following proviso :—

Provided also that when the debtor is a farmer there shall be exempted from the sale so much land as shall in the opinion of the Court be absolutely necessary for the support of himself and his family. This proviso shall not apply in respect of debts incurred before this law comes into force.

4. Notwithstanding anything contained in the Principal Law, immovable property may be sold in execution without the consent of the debtor or an order of the Judge after one year has elapsed from the time when the judgment has been made a charge on the land by registration.

5. On the expiration of the year in the last section mentioned the judgment creditor may, on notice being given to the judgment debtor, apply to the proper Land Registry Officer for sale of the property in execution of the amount remaining due on the judgment debt, and the Land Registry Officer shall thereupon proceed with the sale unless the debtor disputes the amount of the debt owing in which case the matter shall be referred to a Judge of the District Court.

6. The Land Registry Officer may also sell so much property as is necessary to recover the charges incurred in such office and pay them to the judgment creditor; Provided that when the debt does not exceed £10 the creditor shall not recover a greater amount of costs than the amount of his debt.

7. The High Commissioner, with the advice and assistance of the Chief Justice, may make Rules for the carrying out of the objects of this Law.

RULES OF COURT, 1886.

Sale of Immovable Property in Execution.

Order XVIII.

Application for writ.

8. Where a judgment of a District Court ordering the recovery by or payment to any person of money is sought to be enforced by a writ of sale of immovable property, the person seeking to enforce execution shall apply to the Court or a Judge for the issue of such writ.

No such writ shall be issued until the debtor has had notice of such application.[1]

[1] See ss. 2, 4 on p 99 *supra*

Particulars to be given.

9. Any person applying for the issue of a writ of sale of immovable property shall furnish the Court or Judge with all such information as may be required so that the writ may set forth all the particulars required by Rule 10 of this Order. The President of the Court or the Judge shall make a note of all necessary information furnished, and in disposing of the application shall also note any special directions as to the carrying out of the sale which the Court or Judge may think fit to give.

Contents of writ.

10. Every writ of sale of immovable property shall contain a description of the property, and a statement whether the property is registered in the books of the Land Registry Office in the name of the debtor or of any other person, or whether it is unregistered.[1] If the property be registered in the name of the debtor the writ shall contain a reference to the registration, and if not registered in the name of the debtor or if unregistered, the writ shall state what interest the debtor claims in the property. If the Court or Judge shall think fit to give any special directions as to the carrying out of the sale, all such directions shall be set forth in the writ.

[1] See the Civil Procedure Law, 1885, s 21, p 85 *supra*.

Duration and renewal.

18.[1] Every writ of execution if unexecuted shall remain in force for one year only from its issue, unless renewed in the manner hereinafter provided ; but it may, at any time before its expiration, by leave of the Court or a Judge, be renewed by the party issuing it for one year from the date of renewal, and so on from time to time during the continuance of the renewed writ ; and a writ of execution so renewed shall have effect, and be entitled to priority, according to the time of its original delivery.[1]

[1] This Rule is dated 20th May, 1899

19.[1] Before a writ of sale of immovable property is issued under which any house of the judgment debtor might be sold in execution, the Court must be satisfied that such house accommodation is left or provided for the debtor as is absolutely necessary for the debtor and his family ; the creditor must specify the house to be left or provided, and shew that it is an existing house and not a ruin, and that it is in fact available for occupation by the debtor and his family. The writ must not be in such a form as to leave to the Sheriff or to the Land Registry Office the duty or power of deciding which house is to be excepted from the sale ; but every writ which directs the sale of the debtor's immovable property generally shall either state that all houses are excepted or shall specify the house which is to be excepted from the sale.

[1] This Rule is dated 16th February, 1901 As to the necessity for this Rule being strictly observed, see *Koutsoudi v. Yanni* (1910) C L.R X., 18.

20.[1] When the Sheriff or any person executing a writ of sale of any property wishes to apply to the Court for directions for disposing of any question arising or likely to arise in the course of the sale, he may forward to the Registrar a written application, which may be in the Form P in the Schedule hereto. The Registrar shall thereupon bring the application before the Court, and the decision of the Court (1) dealing with the matter, or (2) requiring further explanation or the appearance of the applicant or of any other person, shall be endorsed thereon, together with the date fixed for such appearance ; and the application so endorsed and signed by a Judge shall be returned by the Registrar to the applicant. Where the attendance of any person other than the applicant is required, the applicant may inform the judgment creditor at whose suit the writ has issued, and it shall then be the duty of the judgment creditor to give such notice to all persons concerned as may be required by the Court or by any Rule of Court. No fee shall be payable on the application,

[1] This Rule is dated 12th June, 1901.

FORM P.

Form of application for directions.

In the District Court of

(Title of action) No.

The applies for directions with regard to Writ of Sale No. issued by this Court in this action on under the following circumstances : (*here state the point on which directions are required*).

(*Signed*)

COURT COSTS RULES, 1911.

PART I.

Costs of execution.

13. Subject to the provisions contained in these Rules the party enforcing a judgment shall be entitled to recover his costs of execution unless the Court shall otherwise order.

In execution by sale of immovable property all fees and charges (including the cost of local inspection) paid by the execution creditor for obtaining registration of the property in the name of his debtor shall be deemed to be costs of execution.

Limit.

14. In execution against immovable property no costs of execution shall be recovered which are in excess of the amount realised at the sale unless for good cause shown the Court or a Judge shall otherwise order.[1]

[1] And see s 6 on p 99 *supra*

RULES OF SALE, 1901.

[As amended by Rules of 20th November, 1902 and 22nd April, 1907.]

1. Unless otherwise provided for by the order of the Court every sale of immovable property shall be conducted by or under the direction of, and every Notice of Sale shall be prepared and issued by, the Land Registry Office of the District in which the property to be sold is situate.

2. Notice of Sale shall be given :—

(*a*) By posting a notice in the form contained in Schedule A. hereto or to the like effect at the town, village or quarter at which the sale is appointed to be held ; and

(*b*) By posting a notice in the form contained in Schedule B. or to the like effect—

(i.) At the town, village or quarter in which the property to be sold is situate ;

(ii.) At the Court House of the Court out of which the writ of sale has issued ;

(iii.) At such other place, if any, as may be directed by the Court or a Judge or by the Principal Land Registry Officer of the District.

Provided that where the sale is appointed to be held at the town, village or quarter in which the property is situate the notice referred to in (*b*) i. need not be posted.

3.—(1) The time to be appointed for the sale to be held shall be—

(*a*) Where the gross value of the property to be sold does not exceed £10, not less than 30 days after the publication of the notice of sale ;

(*b*) Where the gross value of the property exceeds £10 but does not exceed £50, not less than 60 days after the publication of the notice of sale ;

(*c*) Where the gross value of the property exceeds £50, not less than 90 days after the publication of the notice of sale.

Where the property to be sold is registered in the books of the Land Registry Office, the registered value shall be taken to be the value of the property for the purposes of this Rule.

Where it is not so registered, the Land Registry Officer shall assess the value upon such information as he may be able to obtain from the judgment creditor or otherwise.

(2) The Principal Land Registry Officer of the District when fixing the date and place of sale shall have regard to the time and locality at which the property may be sold to the best advantage ; provided that at least the 15 days' notice required by Law be duly given. The notice may be for a longer period than 90 days ; but if the Judgment Creditor considers himself aggrieved where any such notice is for a longer period than 90 days he may apply to the Court for instructions to the Land Registry Officer on the subject.

4. The notices of sale to be posted shall be sent to the person appointed to conduct the sale, who shall enter on every notice the time and place of sale, such time being fixed by him as will allow of each notice being posted the required number of days prior to the time appointed for the sale. He shall cause all notices to be duly posted at their appointed places except that required by Rule 2, sub-section (*b*) ii. which shall be returned by him duly completed to the Land Registry Officer of the District, to be posted at the Court House.

5. If it shall appear to the Court or a Judge or to the Principal Land Registry Officer of the District that any notice of the sale other than the posting of the printed notices hereinbefore mentioned ought to be given, or if the creditor, debtor or other person interested in the property to be sold shall desire that any such

other notice be given, such other notice may be given at any time either before or after the posting of the printed notices hereinbefore mentioned.

6. Where the creditor, debtor or other person interested in the property shall require any such other notice as is mentioned in Rule 5 to be given, he shall be at liberty to do all things necessary for the giving of such notice, subject to the approval of the Principal Land Registry Officer of the District.

7. The Land Registry Officer may defer issuing the printed notices of sale until the expenses to be incurred in carrying out the sale according to the order of the Court or according to the directions of the Principal Land Registry Officer of the District have been paid.

8. At the time of the sale the person appointed to conduct it or his substitute, shall, before receiving any oral bid, declare the amount of the highest bid that has been made in writing, together with the name of the bidder; and, unless any higher bid shall thereupon be made, such bidder shall be declared to be the highest bidder. If further oral bids be made he shall continue to receive them until he shall consider, from the time which has elapsed since the last previous bidding, that no further biddings are forthcoming, when he shall close the sale and declare the name of the highest bidder.

9. Biddings by an Agent shall be supported by :—

(1) The written authority of the Principal for the Agent to act in his behalf; or

(2) The written statement of the Agent declaring that the bidding was made on behalf of the Principal named in the statement,

to be furnished to the person appointed to conduct the sale at the close of the sale, when transfer of the property sold may be made direct to the Principal.

Provided, however, that if the Principal fails to comply with the conditions of Rule 10, the Agent shall be held to be the highest bidder.

10. Except when otherwise specified in the printed notices of sale or by special notice of the Principal Land Registry Officer of the District at the time of sale all properties shall be offered for sale on the following conditions :—

(1) That the person declared to be the highest bidder shall immediately after the biddings have closed pay to the person appointed to conduct the sale—

(*a*) In respect of every lot the bid for which does not exceed £10, the full amount bid;

(*b*) In respect of every lot the bid for which exceeds £10 but does not exceed £30, half the amount bid, but in no case less than £10;

(*c*) In respect of every lot the bid for which exceeds £30 twenty per cent. of the amount bid, but in no case less than £15 ;

(*d*) In the case where no such payment is required by the notice of sale, the amount due to the person appointed to conduct the sale, in respect of his fees, according to the scale in Rule 15,

together with the amount of the fees payable in respect of the registration of the property in the name of the highest bidder.

(2) That if the highest bidder shall fail to comply with the provisions of condition (1), the bidding shall thereupon be re-opened, and any loss which may result by reason of any subsequent highest bid falling short of the value of such original highest bid shall be made good by the original highest bidder, together with all expenses incurred in compelling him to make good the same.

(3) That the highest bidder will attend at the Land Registry Office of the District not less than fifteen and not more than twenty-five days after the day of sale and will pay the balance of the purchase money, if any, or so much thereof as he may be required to pay.

(4) That if the highest bidder shall fail to comply with the provisions of condition (3), any sum that has been paid by way of deposit shall be wholly forfeited and applied in liquidation of the claim in satisfaction of which the sale has been ordered ; that the property may again be put up for sale in the same way as though no previous sale had taken place, and that any loss which may result by reason of the amount of the highest bid at any such subsequent sale falling short of the amount bid by the highest bidder at the previous sale shall be made good by him, together with all expenses incurred in compelling him to make good the same.

(5) That the liability of the highest bidder under the foregoing conditions shall not be in any way affected by reason of any proceedings that may be taken against him under the provisions of the Civil Procedure Law, 1885, s. 38.

11. At the time appointed for the sale the doors of any room in which the sale takes place may, in the discretion of the person appointed to conduct the sale or his substitute, be closed so that any person present at the commencement of the sale may not leave the room until the person conducting the sale shall have closed the sale and called upon the highest bidder to pay the sum payable under Rule 10.

12. On the conclusion of the sale, the person appointed to conduct it shall inscribe on a copy of the printed notices of sale the name and place of residence of the highest bidder, together

with a statement of the amount of his bidding and of the sum or sums paid by him.

13. Persons authorised to conduct sales shall be appointed by the Principal Land Registry Officer of the District, and a list of the names of such persons shall be kept at the Land Registry Office and may be inspected on application.

14. The Principal Land Registry Officer in any District is empowered to give any special directions as to the manner and conditions of sale of any property where in his opinion it shall be advisable so to do ; provided that he shall not, in the exercise of such power, direct any sale to be carried out in a manner inconsistent with any Law or Rule of Sale for the time being in force and regulating the sale of immovable properties.

15. The fees stated in this Rule are appointed to be taken in respect of the matters hereinafter specified, that is to say :—

	£	s.
(1) For issue of printed Notices of Sale		3
(2) For posting the same, each notice (except notices posted at the Court House)		1
(3) As Auctioneer's fees :—		
On the amount bid, in respect of each lot sold—		
Where the highest bid does not exceed £2		1
(Provided that in no case shall the Auctioneer receive more than half of the amount bid).		

Where the highest bid exceeds	£2	& does not exceed		£5		2
	£5	,,	,,	,,	£10		4
	£10	,,	,,	,,	£20		7
	£20	,,	,,	,,	£50		10
	£50	,,	,,	,,	£100		15
	£100	,,	,,	,,	£300	1	0
	£300	,,	,,	,,	£500	1	10
	£500	,,	,,	,,	£1000	2	0
	£1000	,,	,,	,,	..	3	0

16. A certified statement of account showing the result of the sale may be furnished by the Land Registry Office to any interested person on payment of the following fee for each certified copy :—

	s.	cp.
Where the person applying for the statement is the judgment debtor and the gross amount of the sale is under £25		4½
In all other cases	1	0

These Rules shall come into force on and from the date of their publication in the *Cyprus Gazette.*

SCHEDULE A.

Notice is hereby given that under an Order of the District Court of dated the day of 19 , the interest of of in the under-mentioned properties as registered in his name in the books of the Land Registry Office, will be sold by Public Auction in lots by of who has been appointed to conduct the sale, at at o'clock on the day of , 19 . Biddings in writing may be made pending sale to the above-named Auctioneer.

Lot.	Village	Locality	Particulars of the property				Boundaries.	Registered Interest offered for Sale.	Remarks
			Nature.	Extent.					
				Don.	Ev.	No			

The above interest in the properties stated is offered for sale without further warranty as to the nature or extent of the property or of the title of the judgment debtor. Unless otherwise specified the sale will be subject to the Rules of Sale, 1901.

19 . *Principal Land Registry Officer.*

SCHEDULE B.

Notice is hereby given that under an Order of the District Court of dated the day of , 19 , the interest of of in the under-mentioned properties as registered in his name in the books of the Land Registry Office will be sold by Public Auction in lots by of who has been appointed to conduct the sale, at at o'clock on the day of , 19 . Biddings in writing may be made pending sale to the above-named Auctioneer.

Village in which situate.	Lands		Trees.		Buildings, &c.
	No. of lots.	Extent	No. of lots.	No and Class of Trees	

Full details of the properties to be sold and of the conditions of sale may be obtained from the Notice of Sale posted at or from the Auctioneer or at the Land Registry Office of the District.

19 *Principal Land Registry Officer.*

SALE OF LAND (SPECIFIC PERFORMANCE) LAW, 1885.

Formalities.

1. Subject to the provisions hereinafter contained, every contract for the sale of immovable property shall be capable of being specifically enforced under the order of a District Court or the Supreme Court, if it is a valid contract according to law and if the following conditions have been complied with in relation thereto, viz.:—

(*a*) If it is in writing ;

(*b*) If the purchaser shall within twenty-one days of the date of the contract deposit or cause to be deposited at the Land Registry Office of the District within which the property is situate a copy of the contract ;

(*c*) If the purchaser has before the institution of an action to compel specific performance of the contract, called upon the vendor to appear before a Land Registry Official and declare that he has agreed to sell the property mentioned in the contract ;

(*d*) If an action has been instituted within two months from the date when the contract was made to compel the specific performance thereof.

Enforcement.

2. Any law to the contrary notwithstanding, any Court may by its order direct that any contract for the sale of immovable property in respect of which the formalities prescribed by section 1 have been complied with shall be specifically enforced.

Provided that the immovable property described in the contract shall at the time of the deposit of the copy of the contract at the Land Registry Office have stood registered in the name of the vendor under the contract.

Order to be enforced within three months.

3. If any person in whose favour an order directing specific performance of a contract for the sale of immovable property has been made, shall within three months of the date of the order apply at the office of Land Registry for the District within which the property is situate for the transfer thereof into his name, and do all acts and things necessary to enable the transfer to be made, the proper Officer of Land Registry, on production to him of the order or of an office copy thereof, may cause all such registrations to be made in the books of the Land Registry Office as shall be necessary for giving effect to the order.

Right lapses after three months.

4. If any person in whose favour an order directing specific performance of a contract for the sale of immovable property

has been made, shall neglect or fail to apply for the transfer thereof into his name, and to do all acts and things necessary to enable the transfer to be made, within three months from the date of the order, his right to claim a specific performance of the contract shall absolutely cease and determine, and no transfer of the property into the name of the purchaser in the books of the Land Registry Office shall be made under the authority of the order.

Effect of transfer.

5. Where any purchaser under a contract for the sale of immovable property shall obtain an order for the specific performance of the contract and shall duly cause the property to be transferred into his name in the books of the Land Registry Office, the property shall on the transfer thereof become vested in him for all the estate and interest therein of the vendor under the contract ; and the Court by whose order specific performance of the contract has been directed, may make all such orders directing the vendor to deliver up possession of the property or otherwise for securing the purchaser in the possession thereof, as to the Court shall seem fit.

Effect of deposit of Contract.

6. Where a copy of any contract has been deposited at the Land Registry Office under the provisions of this Law, it shall from the date when it is deposited be open to inspection at the office where it is deposited ; and notwithstanding any voluntary transfer that may subsequently be made of the property therein described to any person other than the purchaser under the contract, the property shall at any time thereafter, upon the order of a Court, be transferred into the name of the purchaser, and the remedy of any other person into whose name the property may (subsequently to the deposit) have been transferred, whether by way of gift, sale, inheritance, mortgage or otherwise, shall be in damages only against the vendor under the contract.

The deposit of a copy of a contract of sale of immovable property at the Land Registry Office shall not operate to defeat or delay any sale which may prior to the date of the deposit have been directed by any Court or Judge.

Saving power of Court.

7. Nothing in this Law contained shall be construed as depriving any Court of the right to award damages for breach of a contract for the sale of immovable property, where the Court shall so think fit, in lieu of ordering specific performance of the contract.

Liability of heirs of vendor.

8. If any vendor under a contract for the sale of immovable property in respect to which the formalities prescribed by section 1 have been complied with, shall have died subsequently to the

execution of the contract, the purchaser shall be entitled to claim against the heirs of the vendor all such relief as he is by this Law entitled to against the vendor.

Remedies of vendor.

9. Where any purchaser of immovable property under a contract in respect to which the formalities prescribed by section 1 have been complied with, shall refuse to pay the purchase money and accept the property, the remedy of the vendor under the contract shall lie in damages only.

10. This Law may be cited as the Sale of Land (Specific Performance) Law, 1885.

CONFISCATION OF PUBLIC LANDS LAW, 1885.

1. The word Land in this Law means all cultivable land.

Confiscation.

2. Public land (arazi-mirie) which has been left uncultivated for ten years, unless under the provisions of Section 5 of this Law, shall be confiscated by the Government.[1]

[1] See *Loizo v. The Principal Forest Officer* (1892) C L.R II., pp. 106, 107 and *Juma v. Halil* (1899) C L.R. V., 16.

Offer to former owner.

3. The Government on confiscating the land shall offer it to the former owner at the equivalent value, and, if he refuse it, shall put it up to auction for one month and adjudge it to the highest bidder.

Decision as to equivalent value.

4. The equivalent value shall be decided by two experts, one chosen by the Government and one by the party interested. Before considering the price the two experts shall appoint a third party, who shall decide the price in case of difference between the other two.

Exceptions.

5. There shall be excepted from such confiscation any lands which have remained uncultivated either,

(1) From the inundation of water ; or

(2) Because the land, having formerly been vineyard, requires to remain for a longer time uncultivated in order that it may become fit for replanting; provided that no such land shall be so exempted if it remains uncultivated on the whole for more than twenty years ; or

(3) Because the land belongs to a chiftlik by right of title, or to a monastery as being its property *ab antiquo*, and has been always used as pasture-land (*mera*), or as forest.

Repeals.

6. The relative Articles of the Law on land of the 7th Ramazan 1274, *i.e.*, Articles 68, 69, 70, 71, 72, 73, 74 and 75, and all previous orders inconsistent with this Law are repealed.

7. This Law may be cited as the Confiscation of Public Lands Law, 1885.

IMMOVABLE PROPERTY LIMITATION LAW, 1886.[1]

TO AMEND THE LAW AS TO THE ACQUISITION OF TITLE TO IMMOVABLE PROPERTY BY ADVERSE POSSESSION.

1. In this Law :—

"Adverse possession" means possession by some person not entitled to possession, where the express consent or permission of the person so entitled has not been given or obtained for such possession ;

"Undisputed adverse possession" means adverse possession as hereinbefore defined which is had without dispute on the part of any person entitled to bring an action for the recovery of the property adversely possessed ;

"Registered" means registered in the books of the Land Registry Office ;

"The period of prescription" means the period of undisputed adverse possession of any immovable property which by Law constitutes a valid defence to an action for the recovery of such property.

[1] See note to Art 20 of the Land Code, p 8 *supra*

Computing period of prescription.

2. The period of prescription shall be computed to commence from the time when the right to bring an action for the recovery of property adversely possessed first arose ; and where the person having the right to maintain an action for the recovery of any immovable property is under any of the disabilities hereafter mentioned, that is to say, infancy, idiocy, lunacy, unsoundness of mind or absence[1] from Cyprus, then the period of prescription shall not be deemed to have expired until the expiration of five years from the time when he first ceased to be under disability or died.

[1] See *Muzaffer v. Collet* (1904) C.L.R. VI., 108.

Adverse possession by unregistered person.

3. An action for the recovery of immovable property of which some person in whose name the same has not been registered has had undisputed adverse possession for the period of prescription shall not be maintainable unless the person instituting the action has, during some part of the time of such adverse possession, prior to the expiration of the period of prescription, been lawfully

entitled to be and has been actually registered as the owner thereof ; but such action shall be maintainable where the person instituting it has during some part of the time aforesaid been lawfully entitled to be and has been actually so registered.

Adverse possession by registered person.

4. If any person shall have undisputed adverse possession of any property for the period of prescription, and shall during the whole of that period have been registered as the owner thereof, no action for the recovery of the property shall be maintainable against him after the expiration of that period.

Religious foundations.

5. Until the passing of a special law on the subject of the immovable property of Religious foundations, the managers of such foundations shall have the right, even without a title[1] or registration, to bring an action, before the expiration of the period of prescription, against persons adversely occupying the property.

[1] See *Sophronios v. The Principal Forest Officer* (1890) C L.R. I , 120, 121.

Absence.

6. Save in the case of absence from Cyprus, the time within which an action may be brought for the recovery of immovable property shall not in any case after this Law shall come into force be extended or enlarged by reason of the absence, during all or any part of that time from the town or village in or in the neighbourhood of which the property is situate, of the person having the right to bring the action, or of any person through whom he claims.

7. This Law may be cited as the Immovable Property Limitation Law, 1886.

FRAUDULENT TRANSFERS AVOIDANCE LAW, 1886.

TO PROVIDE FOR THE SETTING ASIDE OF TRANSFERS OF PROPERTY MADE TO HINDER CREDITORS.

1. In this Law—The expression "Creditors of a Debtor" means not only the persons to whom he is actually indebted, but also every sheriff, and every person acting for a sheriff, who shall lawfully put into execution any judgment given against the debtor, and also every person (if any) in whom the property of the debtor or the right to sell and dispose of it shall either by his own act or by operation of law become vested for the common benefit of all the persons to whom he is indebted ; and the expression "Judgment Debt" means not only a debt for the payment of which a judgment has been given by a competent Court, but also every debt in respect of which the person to whom it is due has duly established his right to rank as a creditor of the person

from whom it is due on the distribution of the property of the last-mentioned person under any law providing for the distribution of the property of bankrupts or insolvent persons among their creditors.

2.—(1) Every gift,[1] sale, pledge, mortgage or other transfer or disposal of any movable or immovable property made by any person with intent to hinder or delay his creditors or any of them in recovering from him, his or their debts shall be deemed to be fraudulent, and shall be invalid as against such creditor or creditors ; and, notwithstanding any such gift, sale, pledge, mortgage or other transfer or disposal, the property purported to be transferred or otherwise dealt with may be seized and sold in satisfaction of any judgment debt due from the person making such gift, sale, pledge, mortgage or other transfer or disposal.

(2) Every transfer or assignment of any property made otherwise than in exchange for money or other property of equivalent value shall be deemed to be fraudulent for the purposes of this Law if it is made to any parent, spouse, child, brother, or sister of the transferor or assignor.

(3) No sale, mortgage, transfer or assignment made in exchange for money or other property of equivalent value shall be voidable under the provisions of this Law, unless the purchaser, mortgagee, transferee. or assignee shall be shown to have accepted it with knowledge that such sale, mortgage, transfer, or assignment was made by the vendor, mortgagor, transferor, or assignor with intent to delay or defraud his creditors.

[1] See *Christodoulides v Mehmet* (1915) C L.R X., 82.

3.—(1) Any gift, sale, pledge, mortgage or other transfer or disposal of any movable or immovable property deemed to be fraudulent under the provisions of section 2 of this Law may be set aside by an order of a Court, to be obtained on the application of any judgment creditor made in the action or other proceeding wherein the right to recover the debt has been established, and to the Court before which such action or other proceeding has been heard or is pending.

(2) No gift, sale, mortgage, or other transfer of any property shall be set aside under the provisions of this Law, except it shall have been made within a period of one year next before the commencement of the action or proceeding in which the application to set it aside is made.

4. It shall be lawful for the proper officer of Land Registry on delivery to him of an office copy of any order made under the provisions of the last preceding section to make or cause to be made all such registrations in the books of the Land Registry Office as may be necessary consequent on the order.

5. This Law may be cited as the Fraudulent Transfers Avoidance Law, 1886.

SALE OF MORTGAGED PROPERTY LAW, 1890.

TO AMEND THE LAW RELATING TO THE POWERS OF MORTGAGEES AND ATTORNEYS TO SELL MORTGAGED PROPERTY.

Sale when attorney named by mortgagor.

1. Where immovable property is mortgaged for the payment of a debt, whether before or after the passing of this Law, and the person mortgaging it shall have named any person his attorney to sell it if the debt be not paid to the person to whom it is due at the time when it becomes payable, the property may be sold on application to be made either by the person so named attorney as aforesaid or by the person to whom the money is due to the Principal Officer of Land Registration of the District within which the property is situate (hereinafter called the Principal Officer of Land Registration), and on evidence to the satisfaction of the officer being forwarded to him,—

(*a*) That the debt for the payment of which the property is mortgaged has actually become payable;

(*b*) That the person named attorney for the sale of the property, or the person to whom the debt is due, or some person representing them or one of them has, two months at least prior to the time when the application for the sale of the property is made, served upon the person mortgaging the property a notice in writing calling upon him to pay the money for which the property is mortgaged and informing him that if default shall be made in payment thereof for the space of two months from the time when the notice is served the property mortgaged may thereupon be put up for sale;

(*c*) That the debt for the payment of which the property is mortgaged, or some part thereof, remains unpaid at the date when the application is made.

Sale when no attorney named.

2. Where immovable property is at any time after the time when this Law shall come into operation mortgaged for the payment of a debt, then, whether or not any person has been named attorney as aforesaid, the property may be sold on such application and the furnishing of such evidence as is prescribed by the last preceding section, such application to be made and such evidence to be furnished by the person to whom the debt is due.

Evidence.

3. Evidence of the several matters mentioned in sub-sections (*a*), (*b*), and (*c*) of section 1 shall be furnished by affidavit, unless the person testifying shall object to be sworn, in which case the evidence shall be furnished by affirmation, the several facts to which the person affirming can testify being stated in writing and

the statement so prepared being affirmed by him to be true. Every affirmation shall state that the person affirming objects to be sworn and the grounds on which he so objects.

Form of affidavit or affirmation.

4. Affidavits under this Law shall be made in the same manner and form as affidavits are required to be made under any Rules of Court for the time being in force for regulating the procedure of the Courts in civil actions, except that they shall be entitled with a statement showing in relation to what matter they are made, and for that purpose shall set forth the name of the person for the sale of whose property application is made and his surname, if any, or, if none, the name of his father; also his place of residence; and in other respects they may be in the Form A in the Schedule.

Affirmations under this Law shall be made as nearly as possible in the same manner and form as affidavits.

How made.

5. Affidavits and affirmations under this Law shall be sworn and affirmed before the Registrar of any District Court, and no fee shall be chargeable in respect of the swearing or affirming thereof.

Form of notice and mode of service.

6. The notice mentioned in section 1 may be in the Form B in the Schedule.

Service of any such notice shall be effected by delivering it into the hands of the person to be served therewith or by tendering it to him personally or by leaving it at his usual or last known place of abode in Cyprus, or, if he is not an inhabitant of Cyprus and cannot be found therein, by posting it on some conspicuous place on the property charged with the payment of the debt which is sought to be recovered or, if the property consists of several separate parcels, on each of the separate parcels.

If the person to be served is an infant, lunatic, or person of unsound mind, service of the notice shall be effected in the same manner as service of a writ of summons is required to be effected under the Rules of Court for the time being in force for regulating the procedure of the Courts in civil actions.[1]

[1] See Order IV., rr. 8, 9. Statute Laws, II. 682.

Penalty for false statement.

7. Any person who shall knowingly make any false statement in any affidavit or affirmation made under this Law shall be liable to the same penalty as if he had given false evidence in a judicial proceeding.[1]

[1] See Cyprus Courts of Justice Order, 1882, Cl. 193. Statute Laws, II., 285.

Discretion of Principal Officer of Land Registration as to sales.

8. If the Principal Officer of Land Registration on the statements contained in any affidavit or affirmation shall consider that the notice to pay the money sought to be recovered has not come to the knowledge of the person whose property is mortgaged for the payment thereof, or that owing to his absence from Cyprus or otherwise he has not had sufficient time to comply with the demand made by the notice, he may refuse to put the property up for sale and may defer the sale either generally or for some specified time as he may think good, and he may require the person applying for the sale of the property to furnish further evidence of any of the matters mentioned in sub-sections (*a*), (*b*), and (*c*) of section 1 ; but whether he shall defer the sale or not, or whether he shall or shall not require the production of further evidence, or whatever course he may in the *bona fide* discharge of his duty as an Officer of Land Registration pursue in relation to the sale, he shall not be responsible either to the person for the sale of whose property application is made or to the person applying for the sale for any damage or loss that may occur to them or either of them in consequence of his acts in relation to the sale.

Sales in accordance with Rules of Sale.

9. Every sale made on any such application as is mentioned in section 1 shall be by public auction in accordance with the Rules of Sale for the time being in force under the Civil Procedure Law, 1885.[1]

[1] See p. 102 *supra*

Effect of sale.

10. Where any property is sold on application under this Law, the registration thereof in the name of the purchaser shall indefeasibly transfer to him all the estate and title of the person by whom the property was mortgaged[1] for the payment of the debt in satisfaction whereof the property is sold, notwithstanding any false statement made without the knowledge of the purchaser of any informality contained in any affidavit or affirmation presented to the Land Registry Office in conformity with the provisions of this Law ; and if the person whose estate and title in the property is transferred as aforesaid shall be in any way prejudiced by any such false statement or informality as aforesaid his remedy shall be in damages only against the person on whose application the property was sold.

[1] See *Haji Nicola v. Fieros* (1917) C L.R. X., 102.

Saving of right to bring civil action.

11. Nothing in this Law contained shall operate to prevent any person claiming a right to have mortgaged property sold in satisfaction of a debt charged thereon from enforcing his right

by a civil action,[1] and any such action may be instituted at any time, either before or after application to the Principal Officer of Land Registration under the provisions of this Law. Provided always that where the Court shall be of opinion that the institution and prosecution of the action was not reasonably necessary for enforcing the plaintiff's right it shall have power to direct that the whole of the costs of the action, including the costs of the defendant, be paid by the plaintiff.

[1] See *Kenan v Skordi* (1914) C.L.R. X., 69.

12. [Commencement.]

13. This Law may be cited as the Sale of Mortgaged Property Law, 1890.

SCHEDULE

FORM A. (S. 4.)

In the matter of the mortgage of A. B.
of

To the Principal Officer of Land Registration for the District of

I, L. M., of hereby make oath and say as follows :—

1. On the day of , 19 , A. B., of mortgaged his property situate at

[*Here describe the property.*]

for the payment to me of the sum of £ with interest thereon at the rate of per cent. per annum and the said A. B. agreed to pay the said principal sum of £ on the day of , 19 , and he named of attorney for the sale of the said property if he the said A. B. should make default in payment of the said sum of £ and interest on the said day of 19 .

2. On the day of , 19 , I served upon the said A. B. a notice in writing whereof the document produced to me at the time of my swearing this affidavit and marked is a true copy. The said notice was served upon the said A. B. by

[*Here state what was done with the document in order to bring it to the knowledge of debtor.*]

3. There is now due to me on the security of the above-mentioned mortgage a sum of £

(Signed.) L. M.

Sworn before me,

FORM B. (S. 6.)

To A. B. of

Take notice that there is now due to me the sum of £ on the security of a mortgage made by you on the day of , 19 , whereby you secured to me the repayment of a sum of £ with interest thereon at the rate of per cent. per annum and nominated your attorney to sell the property hereinafter described, that is to say,

[*Here describe the property according to registered description.*]

if you should fail to pay the said sum of £ on the day of

And take notice that you are hereby required to pay the sum of £ now due as aforesaid ; and that if you shall not within calendar months hereof pay the said sum in full together with such further interest as may accrue due on the said principal sum up to the day of payment, the said property may be sold without further notice to you.

(Signed) L. M.,
Mortgagee.

LAND TRANSFER AMENDMENT LAW, 1890.

1. No sale or mortgage of any immovable property in pursuance of any contract shall be registered at the Land Registry Office until the proceedings and formalities specified in sections 2, 3, and 4 have been complied with.[1]

[1] "The Law here clearly implies a contract of sale pre-existing." *Gavrilidi v. Georghi* (1895) C.L.R. III., p. 141.

Proceedings in sale and mortgage.

2. Any person desiring to sell or mortgage any immovable property shall produce to the proper Land Registry official,[1] (*a*) the qochan for the property ; (*b*) a receipt from the tax collector of the division in which the property is situate showing that all verghi due on it has been paid ;[2] and (*c*) in the case of a mortgage, the contract of mortgage duly stamped, (*d*) a statement in writing setting forth that he is the owner of the property and the person in whose name it is registered in the books of the Land Registry Office, the nature and extent of the property and its boundaries (if any) and that he has agreed to sell or mortgage it for a specified consideration, and requesting, in the case of a sale, that the property may be registered in the name of the intending purchaser, and in the case of a mortgage that the mortgage may be registered.

[1] See s. 2 of the Land Transfer Amendment Law, 1913, p. 122 *infra*.

[2] See s. 35 of the Immovable Property Registration and Valuation Law, 1907, p. 132 *infra*.

3. The person desiring to purchase the property or to advance money on the security thereof shall, together with the vendor or mortgagor, appear before the proper Land Registry official[1] and produce a statement in writing setting forth that he has agreed to purchase the property for the specified consideration or to advance money on the security of the property and requesting, in the case of a sale, that the property may be registered in his name and, in the case of a mortgage, that the mortgage in his favour be registered.

[1] See note 1 to s. 2.

Declarations by parties.

4. The written statement or statements so produced to the Land Registry official shall be read over to the parties by whom they were produced and the contents thereof be declared by them to be true in the presence of the Land Registry official.[1]

The parties producing the statement or statements shall thereupon, if they are able to do so, sign the same, or, if illiterate, affix their marks thereto, and they shall then be signed by the Land Registry official before whom the declarations were made.

[1] See note 1 to s. 2.

5. The written statements hereinbefore mentioned may in the case of a sale be in the Form No. 1 in the Schedule, and in the case of a mortgage in the Form No. 2 in the Schedule.

Issue of qochans.

6.—(1) When the declarations of the parties to the sale or mortgage have been signed as hereinbefore mentioned, the proper Land Registry official may, notwithstanding that any further or other formalities are prescribed by any law, order, or regulation, on payment of the fees, effect the necessary registrations and issue the proper qochans.[1]

(2) The proper Land Registry official may decline to issue the qochans unless they are applied for and the prescribed fee paid within twenty days of the date of the signing of the declarations ; and if the qochans are not so applied for and the fees paid within the said period of twenty days may require the proceedings and formalities required by sections 2, 3, and 4 to be again complied with.

(3) The Principal Officer of Land Registry of the District within which the property is situate may for reasonable cause direct that the sale or mortgage be not registered unless and until the person desiring to sell or mortgage the property shall furnish him with such further evidence as to the ownership of the property or nature, extent, and boundaries thereof and the price for which

it has been agreed to be sold as to the officer shall seem fit, or until such local inquiry shall have been held as he shall consider necessary.

[1] See *Constanti v. Theodosn* (1897) C.L.R IV., 58

Penalty for false declaration.

7. Any person who knowingly and with fraudulent intent makes or causes to be made a false statement in any declaration made under Section 4 of this Law shall be guilty of an offence and shall be punishable in the same way as though he had given false evidence in any judicial proceeding.[1]

[1] See Clause 193 of the Cyprus Courts of Justice Order, 1882. Statute Laws II., 285.

Declarations to be made personally or by authorized person.

8.—(1) Any declaration under section 4 may be made either personally or by any person who shall prove to the satisfaction of the Land Registry official[1] before whom the declaration is made that the person in whose behalf it is made has authorized him by a document in writing duly certified by a competent authority to appear and consent to the transfer or to the registration of the mortgage.

(2) Where a declaration is made by such representative, the representative shall produce to the Land Registry official[1] before whom the declaration is made the document in writing authorizing him to make it and shall deposit it in the Land Registry Office ; and no transfer or registration of a mortgage shall be made in pursuance of such declaration until the document has been so deposited.

[1] See note 1 to s 2.

Fee on mortgaging Arazi Mirie.

9. The fee to be taken on the mortgaging of Arazi Mirie lands shall be one per cent. on the amount secured by the mortgage.

10. This Law may be cited as the Land Transfer Amendment Law, 1890.

SCHEDULE. (S. 5.)

FORM NO. 1.

I, A. B., of [*or* X. Y. the duly authorized agent of A. B. of] for myself declare that I am [*or* that A. B. is] the person in whose name the property described in qochan [No. and dated] is registered in the books of the Land Registry Office, that I am

on that A. B. is] the owner of the said property, and that the said property consists of
bounded by
and that I have agreed [*or* the said A. B. has agreed] to sell the same for the sum of £ to C. D. of
and I hereby request that the said property be registered in his name. And I, the said C. D. of
[*or* W. Z. the duly authorized agent of C. D. of]
for myself hereby declare that I have agreed [*or* that C. D. has agreed] to purchase the property hereinbefore described for the sum above mentioned and I hereby request that the said property may be registered in my name [*or* the name of the said C. D.]

(Signed) A. B.
C. D.
[*or* X. Y. agent for A. B.]
[W. Z. agent for C. D.]

Read over to and signed by the said A. B. [*or* X. Y.] and C. D. [*or* W. Z.] in my presence this day of 19 .

P. Q.
Tapou Clerk.

FORM NO. 2.

I, A. B., of [*or* X. Y. the duly authorized agent of A. B. of] for myself declare that I am [*or* that A. B. is] the person in whose name the property described in qochan No. and dated is registered in the books of the Land Registry Office, that I am [*or* that A. B. is] the owner of the said property, and that the said property consists of
bounded by
and that I have agreed [*or* the said A. B. has agreed] to mortgage the same for the sum of £ to C. D. and I hereby request that the said mortgage be registered in favour of the said C. D. and I, the said C. D. [*or* W. Z. the duly authorized agent of C. D. of] for myself hereby declare that I have agreed [*or* that C. D. has agreed] to advance the said sum of £ upon the security of the said property and I request that the mortgage in my favour [*or* the mortgage in favour of C. D.] be registered.

(Signed) A. B.
C. D.
[*or* X. Y. agent of A. B.]
[*or* W. Z. agent of C. D.]

Read over to and signed by the said A. B. [*or* X. Y.] and C. D. [*or* W. Z.] in my presence this day of 19 .

P. Q.
Tapou Clerk.

LAND TRANSFER AMENDMENT LAW, 1913.

2.—(1) All or any of the proceedings or declarations prescribed in the Principal Law,[1] Sections 2, 3, 4, or 8 may be taken and made before the Land Registry official in charge of a District other than that in which the immovable property the subject of such proceedings or declarations is situate upon payment of the fee of one shilling.

(2) The Land Registry official before whom any such proceeding or declaration is taken or made shall forward the documents to the proper Land Registry official in charge of the District in which the said immovable property is situate and such Land Registry official may thereupon act as if such proceeding or declaration had been taken or made in his presence.

[1] The Land Transfer Amendment Law, 1890.

ECCLESIASTICAL PROPERTIES LAW, 1893.

TO MAKE TEMPORARY PROVISION TO PROTECT THE CLAIMS OF ECCLESIASTICAL CORPORATIONS TO CERTAIN PROPERTIES.

Whereas questions have arisen as to the rights of Ecclesiastical Corporations with regard to the tenure of land in the Island of Cyprus ;

And whereas it is expedient that, pending the settlement of such questions, Ecclesiastical Corporations in Cyprus should not be disturbed in the enjoyment of any immovable property of which they are now actually in possession :

Be it therefore enacted :—

1. This Law shall remain in force until the 31st of May, 1920. (See Law IX. of 1919.)

2. Nothing in this Law contained shall be deemed to apply to any land of the category known as Mulk.

Evidence of title to cultivated land.

3.—(1) In any action brought by an Ecclesiastical Corporation in respect of any interference with or trespass upon any cultivated lands in the possession of the corporation, it shall not be necessary for the plaintiff to produce evidence of his title to such cultivated lands, but evidence of ten years' possession[1] alone shall be sufficient to enable the corporation to maintain the action against any person interfering with the lands, even if he is the registered owner in the books of the Land Registry Office.

(2) The privileges conferred by this section shall not apply to any lands of which any such corporation has taken possession after the 22nd May, 1891.

[1] See *Gavezian v. Pandeli* (1895) C.L.R. III., 256.

Waste land.

4.—(1) It shall not be lawful for any person to break up or pasture upon or cultivate or cut wood upon any waste land over which any Ecclesiastical Corporation has exercised during the last fifteen years an exclusive right of pasturage and with respect to which it has either lodged before the passing of this Law or shall lodge within six months from the passing thereof in the Land Registry Office of the District within which the land is situate, a statement setting forth the boundaries, situation and approximate extent thereof.

(2) Nothing in this section shall interfere with or affect any rights or claims of the Government in respect of any forest land.

Definition.

5. In this Law, the words " Ecclesiastical Corporation " mean every archbishop or bishop acting on behalf of his see, every abbot or other chief ecclesiastical functionary or governing body of any monastery acting on behalf of the monastery, and every church committee or other body of persons for the time being exercising the superintendence over and management of the affairs of any church.

6. [Repeals Law 19 of 1891.]

7. This Law may be cited as the Ecclesiastical Properties Law, 1893.

EDUCATION LAW, 1905.

58. All property, whether movable or immovable, acquired by or for any school under this Law or any Law heretofore in force and regulating the acquisition of such property, or otherwise, shall be vested in the President of the Village Committee for the time being or the Chairman for the time being of the Committee constituted under section 20, as the case may be, and the following provisions shall have effect :—

(1) All such immovable property of every category shall be registered in the books of the Land Registry Office in the name of the President or Chairman aforesaid as trustee for the Committee, unless it has been acquired by gift or dedication, in which case the property shall be held and registered in accordance with the terms of the deed of gift or dedication, if any.

(2) No disposition of the property shall hereafter be made without the authority of the District Committee of Education signified under the hand of its Chairman and subsequently approved by the Board of Education.

(3) No Government, Municipal, or other tax, rate, or due shall be leviable in respect of the property, unless it shall appear that the school derives income therefrom.

SECURITIES FOR DEBT (OFFENCES AND PROTECTION) LAW, 1905.

FOR THE BETTER PROTECTION OF MORTGAGEES AND JUDGMENT CREDITORS AGAINST FRAUD AND DAMAGE.

1. This Law may be cited as the Securities for Debt (Offences and Protection) Law, 1905.

2. In this Law the word " mortgagor " includes also any person who has an interest in immovable property which is subject to a mortgage as an heir or devisee of the mortgagor thereof.

3. Whoever, being a mortgagor of immovable property, or having an interest, as owner, heir, or devisee, in immovable property which is charged with the repayment of a judgment debt, shall do any act, or shall order or wilfully permit any act to be done, whereby the property is destroyed or materially damaged shall, unless he establishes to the satisfaction of a Court that he acted without any fraudulent intent, be guilty of an offence and shall be liable to a fine not exceeding twenty pounds, or to imprisonment for any term not exceeding one year.

4. During the existence of any mortgage of immovable property, or of any charge of a judgment debt on any immovable property, the person entitled to the benefit of the mortgage or charge shall be deemed to have concurrent and equal rights with the owner of the property for the purpose of taking any action, whether by civil or criminal process, against any third person for the protection of the property against destruction or damage.

IMMOVABLE PROPERTY REGISTRATION AND VALUATION LAW, 1907.[1]

1. This Law may be cited as the Immovable Property Registration and Valuation Law, 1907.

[1] As amended by the Immovable Property Registration and Valuation Law, 1909

2. In this Law unless the context otherwise requires—

The expression " immovable property " means and includes lands, trees, vines, houses and other buildings and constructions of all descriptions and of any category and any share or interest (not being a leasehold interest) therein, but does not include any lands, trees, vines, houses or other buildings or constructions whereof the ownership is by any law or custom not required to be registered in the books of the Land Registry Office.

The expression " unregistered owner "[1] means any person whether in the occupation or not of any immovable property, who is entitled to be registered in the books of the Land Registry Office as the owner or possessor of such immovable property.

The expression "Principal Land Registry Officer" means with reference to the District of Nicosia, the Registrar General, and, with reference to any other District, the Commissioner of the District, unless the High Commissioner shall otherwise direct.

[1] See the Immovable Property Registration and Valuation Law, 1913, s. 9, p. 136 *infra*.

PART I.—REGISTRATION.

Compulsory Registration.

3. When any immovable property is not registered in the books of the Land Registry Office in the name of the person by Law entitled thereto, the Principal Land Registry Officer may compel the same to be so registered in accordance with the following provisions.

Notice to unregistered owner.

4.—(1) For the purpose aforesaid the Principal Land Registry Officer may serve or cause to be served upon any person whom he may believe to be an unregistered owner a notice in writing, in English, Turkish, or Greek, as the case may require, calling upon him within sixty days from the date of the service of such notice to cause such property to be registered in his name or to shew cause why such registration should not be made, and a notice to the like effect shall be posted for general information at the place where public notices are usually posted in the village within the boundaries of which the property is situate.

(2) Every such notice shall contain a description of the immovable property, its extent, boundaries and situation, and the grounds on which the right to be registered has accrued, together with a statement of the fees payable in respect of the registration.

(3) Service of a notice upon an unregistered owner shall be effected :—

(i.) By handing it to the person to be served therewith, or

(ii.) On refusal by him to accept the same by tendering it to him and informing him that it is a notice from the Land Registry Office under the provisions of this Law, or

(iii.) By leaving it at his usual place of residence.

Plan.

5. Where a general registration and valuation has been directed to be made of all the immovable property in any village and a plan of the village lands and of the various holdings as surveyed, together with a statement of particulars of the areas, boundaries and names of the owners of the several holdings, has been furnished to the Mukhtar the following provisions shall have effect :—

(1) The notice required by section 4 to be served upon the unregistered owner shall be a good and sufficient notice for the purposes of the law if it specifies the nature and extent

of the property and the fees payable in respect of the registration of it with a reference to the number of the plot and plan in which the property appears.

(2) In lieu of the notice referred to in the concluding portion of section 4, sub-section (1), there shall be posted for general information at the place where public notices are usually posted in the village a notice to the effect that the plan and particulars aforesaid have been so furnished to the Mukhtar.

(3) Every owner of property in the village is empowered on application to the Mukhtar to obtain access to and to make any extract from or copy of the plan and statement of particulars aforesaid, and any Mukhtar who fails on demand to give access to or to allow extracts or copies to be made of such plan or particulars shall be liable to a fine not exceeding £2.

Notice on infants, persons of unsound mind and absentees.

6.—(1) In the case where the unregistered owner is an infant or of unsound mind, or resident abroad, the notice may be served upon the guardian or duly authorised agent of such person, as the case may require, or, where such guardian or agent cannot be found, by affixing the notice to some conspicuous part of the property or to the church or mosque of the village in which the property is situate.

(2) If, in the case of an infant, no guardian has been appointed the notice may be served upon the living parent, if any, or upon the person with whom the infant resides or under whose care he is ; but where the Mukhtar of the village in which the parent or person having care of the infant resides gives notice in writing to the Principal Land Registry Officer that such parent or person is incompetent to represent the infant for the purposes of this Law, the Principal Land Registry Officer shall apply to the District Court or a Judge thereof for the appointment of a person to represent the infant in manner provided by the next sub-section of this section.

(3) Where no guardian of a person of unsound mind or agent of an absentee has been appointed, or where such guardian or agent is unknown, the Principal Land Registry Officer may apply to the District Court or a Judge thereof to appoint a person to represent the unregistered owner for the purposes of this Law, and service of notice on the person so appointed shall be deemed to be good service for the purposes of this Law.

Failure to comply with notice.

7. If the unregistered owner on whom notice is served fails to cause the immovable property specified in the notice to be registered in accordance with the terms of the notice, or does not, within the time specified, show good cause why the registration

should not be made, the Principal Land Registry Officer may proceed to register such property in the name of the unregistered owner.

Provided however that the Principal Land Registry Officer shall not register any share or interest in any immovable property under the provisions of this section other than the share or interest to which such unregistered owner is entitled.

Fee on registration.

8.—(1) Upon the registration under the foregoing provisions of any immovable property of the categories of Arazi-Mirié or Arazi-Mevcoufé the fee which is by Law chargeable upon such registration (hereinafter referred to as the transfer fee) shall be payable in three equal instalments of which the first shall be due on the first day of October next following the date of registration and the remaining two upon the first day of October in each of the succeeding two years.

(2) Upon such registration of immovable property of any category other than Arazi-Mirié or Arazi-Mevcoufé the whole of the transfer fee shall be payable on the first day of October next following the date of registration.

(3) The fees to be levied in respect of any registration effected under this Law shall be in accordance with the amendments hereinafter set out in section 29.

Fee a charge on the property.

9. The payment of the transfer fee due in respect of any immovable property registered under the foregoing provisions shall be a charge upon such property having priority over all charges and incumbrances whatsoever and whether accruing before or after the date of registration, and no subsequent transfer of the property shall be registered in the Land Registry Office until the transfer fee due in respect of the registration effected under the provisions of section 7 has been paid in full.

Enforcement of payment by sale.

10.—(1) Where any sum or instalment by way of transfer fee remains unpaid after the date on which the same has become payable, the Principal Land Registry Officer may by notice in writing call upon the person by whom the fee is due to pay the same by a date to be fixed, and, if payment be not duly made in accordance with the terms of the notice, it shall be lawful for the Principal Land Registry Officer without further process to sell so much of the immovable property in the possession of such person as may be deemed sufficient to realize on sale—

(i.) The transfer fee or instalment then due ;

(ii.) All other instalments remaining to be paid to complete the payment of the transfer fee in full.

Provided however that if such person prior to the date appointed for the sale pays to the Principal Land Registry Officer or, on the day of the sale, to the person appointed to conduct the sale the transfer fee or instalment so due, together with the charge for posting the notices of sale, the sale shall forthwith be stayed.

(2) Every sale of property under the provisions of the preceding sub-section shall be conducted in conformity with the Rules of Sale for the time being in force with regard to the sale of immovable property in execution of a judgment,[1] but no fee shall be charged for preparation of the notices of sale in the Land Registry Office. Upon any such sale it shall be lawful for the Principal Land Registry Officer to fix a reserve price and to direct that the property ordered to be sold shall not be sold unless the amount bid therefor and to be paid by the purchaser shall be equal to or shall exceed such reserve price.

(3) On the completion of any such sale it shall be lawful for the Principal Land Registry Officer to apply the proceeds of such sale in payment of the expenses of the sale, the transfer fee or instalment then due or all other instalments remaining to be paid as aforesaid, as the case may be ; and, if the sum realized at the sale is more than sufficient to meet these payments, the surplus shall be paid to the unregistered owner, or, where he cannot be found, into the public treasury, to remain there until claimed by him or by his lawful heirs.

(4) Where any unregistered owner or other person is aggrieved by any decision of a Principal Land Registry Officer to cause his property to be sold under the provisions of this section he may apply to the District Court of the District in which the property offered for sale is situate for an order to stay such sale and to restrain such Principal Land Registry Officer from taking further action in the matter, and, at the hearing of such application, it shall be lawful for the District Court to make such order as the justice of the case may seem to it to require.

[1] See p. 102 *supra*

No compulsory registration until after valuation.

11. No registration shall be enforced under the provisions of Part I. of this Law unless and until the immovable property the subject of such registration has been valued under the provisions of sections 13 to 24 ; and where the fee leviable in respect of such registration is proportional to the value of the property it shall be calculated upon the value so determined.

Ecclesiastical properties.

12. No registration of immovable property in the occupation of any Ecclesiastical Corporation as defined by the Ecclesiastical Properties Law, 1893, shall be enforced under the provisions of this Law.

PART II.—DEALS WITH VALUATION.

PART III.—MISCELLANEOUS.

Commutation of Succession Dues.

28.—(1) Where immovable property is, at the time of the coming into operation of this Law, duly registered in the books of the Land Registry Office in the name of the person entitled thereto, then, upon the devolution thereafter of such property by inheritance, no fee shall be levied or taken in respect of such devolution or of any subsequent devolution thereof by inheritance, but from the date of the first devolution aforesaid the property shall be liable to an annual charge equal to one-fortieth of the fee which but for the provisions of this section would have been payable in respect of such devolution.

(2) Where immovable property is not so registered the unregistered owner shall be required to make good his title thereto and shall pay the fees due in respect of the registration of the property in his name in the books of the Land Registry Office, and thereafter upon devolution of the property by inheritance the provisions of the preceding sub-section shall come into operation.

(3) Where such property devolves upon two or more persons the said charge shall not be levied until the property has been duly divided among such persons in accordance with their respective interests, or, where they hold the property in undivided shares, unless it be apportioned in the ratio of the respective shares.

(4) The charge aforesaid shall continue to be levied on the property into the hands of whomsoever it may pass and shall be levied and taken in like manner and at the same time as the Verghi Kimat on the property is levied and taken.

Reduction in fees.

29. In lieu of the fees heretofore levied and taken there shall be levied and taken—

(1) Upon effecting an original registration of title to Arazi-Mirié or Arazi-Mevcoufé acquired by ten years undisputed possession, a fee at the rate of two and a half per centum of the value of the property so registered.

(2) Upon registering a title acquired by inheritance, whether from an unregistered owner or not, and subject to the provisions of section 28—

(i.) In the case of Arazi Mirié and Arazi Mevcoufé, two and a half per centum of the value of the property ;

(ii.) In the case of Mulk and Idjaretein Mevcoufé, one-half per centum of the value of the property ;

and no unregistered owner shall be liable to pay fees in respect of any devolution of such property prior to the immediate devolution thereof upon him.

(3) Upon registering a sale or gift by parents to children of the following classes of immovable property—

(i.) Mulk and Idjaretein Mevcoufé, one-half per centum of the value of the same ;

(ii.) Arazi Mirié and Arazi Mevcoufé, two and a half per centum of the value of the same.

(4) Where, in the case of an original registration of title, the value of the immovable property so registered is less than one hundred piastres the fee of six piastres commonly known as "clerks' and paper fee" levied in respect of the qochan issued shall cease to be taken.

Partition.

30.—(1) Where immovable property is held in undivided shares by two or more persons or where two or more persons have become entitled thereto it shall be lawful for the Principal Land Registry Officer on the application of one or more of such persons and subject to the provisions of the next section to make a partition of the property amongst the several persons entitled thereto in accordance with their respective shares and to register the portions into which the property is divided upon such partition in the names of the persons to whom the same are respectively allotted.

(2) No partition shall be made under the provisions of this section until due notice of the application for and of the time appointed for making the same has been served by the applicant for partition in manner provided by sections 5 and 6 of this Law upon the other person or persons co-interested.

(3) In making such partition the Land Registry Officer shall, as far as possible, apportion the property in accordance with the wishes of the persons co-interested, having regard to the Ottoman Law concerning partition.[1]

(4) Any person who is dissatisfied with the share allotted to him on any such partition may, within 30 days of the making of the partition, apply to the District Court to have the partition varied or set aside, and upon such application the District Court may vary the same as justice may require or may set aside the partition and remit the matter to the Principal Land Registry Officer in order that a new partition may be made.

(5) Nothing in this section contained shall be construed as depriving any person co-interested in immovable property from obtaining a partition of the same by proceedings in a Court of Law.

[1] See Land Code, Art. 15 *et sqq*, p 7 *supra*

Partition not obligatory in certain cases.

31.—(1) Where the shares of the persons entitled to any immovable property are so small that, in the judgment of the Principal Land Registry Officer they cannot be held and enjoyed

in severalty without prejudice to one or more of the persons entitled thereto, the Principal Land Registry Officer shall not be obliged to make a partition of the property.[1]

(2) Where the Principal Land Registry Officer has declined to make a partition of any property for the reason aforesaid, any person entitled to a share in the property may apply to the District Court of the District in which the property is situate and the Court may—

(i.) Order that the property shall be sold by public auction and the proceeds of the sale, after deducting the expenses of the same, disposed of among the persons entitled thereto in accordance with their respective interests, or

(ii.) Make such other order as in the circumstances may seem just.

[1] See the Immovable Property Registration and Valuation Law, 1913 s. 7, p 135 *infra.*

Mukhtar to report death of owner.

32. Upon the death of any person possessed of or beneficially interested in any immovable property it shall be the duty of the Mukhtar of the village in which the deceased person last resided to report such death forthwith to the Principal Land Registry Officer, and, if, without reasonable cause, such report be not made within one month of the date of such death, such Mukhtar shall be liable to a fine not exceeding £2.

Rewards to Mukhtars.

33. It shall be lawful for the Principal Land Registry Officer to grant to any Mukhtar reporting a death as required by the preceding section a reward not exceeding two shillings.

Decisions of Court affecting title.

34.—(1) Whenever the judgment or order of a District Court or of the Supreme Court, in any proceedings in which the title to any immovable property is in question, in the opinion of the Court necessitates any new registration in the books of the Land Registry Office or any change in any existing registration, the Court shall direct the Registrar to furnish the Principal Land Registry Officer with certified copies of the judgment or order and of the writ of summons or application by which the claim was made.

(2) Every such certified copy shall be sufficient authority to the Principal Land Registry Officer to make in the books of the Land Registry Office the registrations or alterations required by the judgment or order to be made and to recover in the manner provided by Part I. of this Law the fees, if any, payable in respect of such registration or alteration.

Collection of Verghi and charges.

35.—(1) Where upon any proceedings in the Land Registry Office under the Land Transfer Amendment Law, 1890, for the sale or mortgage of property the vendor or mortgagor fails to produce the receipt of a Revenue Collector or other evidence, to the satisfaction of the Principal Land Registry Officer, of the payment up to date of all Verghi and other charges incidental to the tenure of the property dealt with, the intending purchaser or mortgagee may deduct from the purchase money or the amount to be secured by the mortgage such sum as shall be sufficient to cover the Verghi and other charges aforesaid upon the said property for the three years next preceding the date of the intended transfer or mortgage.

(2) The sum so deducted shall be deposited in the District Treasury and the balance thereof, after satisfaction of all Verghi and other charges due in respect of the property in question, shall be refunded to the vendor or mortgagor.

Procedure.

36.—(1) Every proceeding in a District Court had or taken under the provisions of this Law shall be by way of application ; and the procedure thereon subject to any Rules of Court which may be made under this Law shall be regulated by the Rules of Court for the time being in force with regard to applications in civil actions.

(2) The procedure upon appeals, subject as aforesaid, shall be governed by the Rules of Court for the time being regulating appeals to the Supreme Court from interlocutory orders.

(3) No fees of Court other than copying fees shall be taken in respect of any proceedings in applications to the District Court under Parts I. and II. of this Law nor by the Supreme Court in respect of any proceedings in an appeal against the decision of a District Court in respect of any such application.

Appeals.

37. Except where specified to the contrary the Principal Land Registry Officer or any person affected by an order of the District Court disposing of any application made under the provisions of this Law may appeal against the same to the Supreme Court, and the Supreme Court shall have power to hear and determine such appeal.

Costs.

38. Every District Court and the Supreme Court are empowered to make such orders as appear to them just in regard to the payment of the costs of proceedings had under the provisions of this Law.

Village certificates and Mukhtars' fees.

39.—(1) Every Village Certificate required by any law or custom to be produced to the Land Registry Office in evidence of any fact relating to the tenure or partition of immovable property or any interest therein or as to persons in occupation of immovable property or entitled thereto and the heirs left by them or for any other purpose in connection with immovable property or dealings therewith shall be signed and sealed by the Mukhtar and signed by two Azas of the village or quarter in which the property is situate or the person respecting whom the information is given resides or last had his abode, and every Mukhtar upon issuing such certificate is entitled to charge the fees set out in Schedule II. hereto.

(2) Any Mukhtar exacting payment of a fee in excess of the rates hereby prescribed shall upon conviction be liable to a fine not exceeding £2.

Penalty for false certificates.

40. Any Mukhtar and any Member of a Village Commission who issues or signs or seals, or allows to be issued, or signed or sealed on his behalf, any certificate required by Law to be issued or signed or sealed or which for purposes of registration is customarily received as evidence, knowing that such certificate is false in any material particular shall be guilty of an offence and shall be punished on conviction thereof with imprisonment for a term not exceeding two years, and any Mukhtar, where the facts set out or to be set out in the certificate are not within his personal knowledge, may so endorse or word the certificate as to make it apparent that the facts are accurately stated to the best of his knowledge and belief on information furnished to him by reliable persons to be named. The grounds of refusal to issue or sign or seal any certificate on application shall be stated in writing by the Mukhtar, and any Mukhtar so refusing to issue, sign or seal a certificate without good and sufficient cause shall be liable to a fine not exceeding £2.

Certification of seals and signatures.

41.—(1) The signature, seal or mark of any person to any document required to be furnished under the provisions of this Law or under any law respecting the registration of title to immovable property or connected with dealings with immovable property which require to be registered in the books of the Land Registry Office may be certified by the Mukhtar and one Aza of the village or quarter in which the person executing the document resides.

(2) No Mukhtar nor Aza shall certify any signature, seal or mark unless—

(i.) Such signature, seal or mark is affixed to the document in his presence, or is declared to the Mukhtar and Aza by the person affixing it to be his signature, seal or mark ;

(ii.) The person signing, sealing or marking the document is personally known to him, or his identity is attested by two persons personally known to him which persons shall sign the document as witnesses to the signature, seal or mark of the principal party.

(3) Such certification shall be effected by inscribing upon the document a certificate to the following effect and by affixing thereto the signature and seal of the Mukhtar and the signature of the Aza.

"Signed (or sealed or marked) this day in our presence by A. B. who is personally known to us (or Declared to us this day by A. B. who is personally known to us to be his signature (seal or mark)). In testimony whereof we hereto set our hands and seal this day of

L.S. *Signature of Mukhtar.* *Signature of Aza.*

"Signed (or sealed or marked) this day by A. B. in our presence and in the presence of C. D. and E. F. who are respectively known to us and who have declared to us that the person signing (sealing or marking) is A. B. and that the said A. B. is personally known to them (or Declared to us this day by A. B., in the presence of C. D. and E. F. who are respectively known to us and who have declared that he is A. B. and is personally known to them, that the signature (seal or mark) is his signature (seal or mark)). In testimony whereof we hereto set our hands and seal this day of

Signatures of C. D. and E. F.

L.S. *Signature of Mukhtar.* *Signature of Aza.*

(4) Every Mukhtar and every Aza upon his election as such shall furnish a copy of his signature to the Land Registry Office of the District in which his village is situate.

(5) Upon certifying any signature, seal or mark there shall be paid to the Mukhtar and Aza certifying the same the sum of 4½ piastres.

(6) Any Mukhtar or Aza acting in contravention of the provisions of sub-section 2 of this section shall be liable to a fine not exceeding £2, and any person who shall before any Mukhtar or Aza make a false declaration as to the identity of any person or personate any other person or subscribe to any document any false or fictitious name shall be liable to imprisonment for a term not exceeding five years.

Erection and destruction of land marks.

42. The Principal Land Registry Officer may cause any land mark to be erected for purposes connected with any survey undertaken by him or with the registration of title to or the valuation of immovable property, and any person who wilfully destroys,

moves or defaces any land mark fixed under the authority aforesaid or does any act which renders such land mark less useful as such shall be guilty of an offence and shall be punished upon conviction thereof with a fine not exceeding £3, and may also be ordered to pay such compensation as the Court adjudges proper.

Obstruction.

43. Any person really obstructing an officer or person in the execution of the duties imposed upon him by this Law shall be guilty of an offence and shall be liable on conviction to a penalty not exceeding £1.

Agent may represent owner.

44. Wherever in this Law it is provided that the owner of immovable property shall receive or give notice or make any application or do any act the same may be received, given, made or done by his duly appointed representative or agent unless the context shall otherwise specifically require.

Rules.

45. It shall be lawful for the High Commissioner, with the advice and assistance of the Chief Justice and of the Registrar General, to make Rules[1] for all or any of the following purposes, and from time to time to repeal, alter or amend the provisions of any Rule so made, that is to say :—

(i.) For regulating the practice in the District Courts and in the Supreme Court in any proceedings under this Law ;

(ii.) For regulating the proceedings in the Land Registry Offices and of Principal Land Registry Officers and Valuers ;

(iii.) For prescribing the forms to be used in connection with the registration and assessment of immovable property and in proceedings had or taken under this Law.

[1] See p 136 *infra*

46. The enactments named in Schedule III. hereto are repealed to the extent specified therein.

SCHEDULE III.

ENACTMENTS REPEALED.

Enactment.	Extent of repeal.
The Titles Registration Law, 1885.	The whole, except sections 11, 12 and 13.
The Nufous and Emlak Registration Law of 17 Djemazi-ul Evvel, 1277.	So much as is repugnant to the provisions of this Law.

IMMOVABLE PROPERTY REGISTRATION AND VALUATION LAW, 1913.

1. This Law may be cited as the Immovable Property Registration and Valuation Law, 1913, and shall be read as one with the Immovable Property Registration and Valuation Law, 1907 (hereinafter called the Principal Law) and the Immovable Property Registration and Valuation Law, 1909, and this Law and the said Laws may together be cited as the Immovable Property Registration and Valuation Laws, 1907 to 1913.

7. Notwithstanding anything contained in the Principal Law, when property is held in undivided shares and the estimated value of such property does not exceed £2 the Registrar General may, unless the co-owners agree to transfer their shares to one owner or the property is capable of being divided and the co-owners agree to divide it, cause the property to be sold by public auction and the proceeds of sale, after deducting the expenses of such sale, shall be paid to the shareholders in proportion to their shares.

9. In the Principal Law the words "owner or occupier" and in this Law the word "owner" mean the person registered or entitled to be registered in the books of the Land Registry Office as the owner of the property.

RULES OF COURT, 1909.[1]

1. Subject to the provisions contained in the said Law, every application to a District Court and every appeal to the Supreme Court shall be made in the same way and shall be subject to the same rules as interlocutory applications in a civil action, provided that any application other than an application in a pending matter shall be in writing and shall be filed in the Court.

[1] See s. 45, p. 135 *supra*

2. The application shall be entitled :—

In the matter of Law 12 of 1907, sec.

and

In the matter of the [Insert sale, partition, valuation, or otherwise as the case may be.]
of [Set out particulars of property.]

3. [Relates to valuation under Section 23.]

4. The Court shall in any case have full power to extend or abridge any time prescribed by any of the Rules of Court referred to in Rule 1.

CORPORATE BODIES (IMMOVABLE PROPERTY REGISTRATION) LAW, 1908.

TO ENABLE IMMOVABLE PROPERTY TO BE ACQUIRED BY AND REGISTERED IN THE NAMES OF CORPORATE BODIES.

1. This Law may be cited as the Corporate Bodies (Immovable Property Registration) Law, 1908.

2. For the purposes of this Law, unless the context otherwise requires :

The term " Immovable Property " means and includes lands, trees, vines, water, houses and other buildings and constructions of all descriptions and of any category, and any share or interest therein (not being a leasehold interest) but does not include any lands, trees, vines, water, houses or other buildings or constructions whereof the ownership is by any law or custom not required to be registered in the books of the Land Registry Office.

The term " Corporate Body " means and includes :

(*a*) Any Company, Association or Society already incorporated or which may hereafter be incorporated under any Act of Parliament in the United Kingdom, or under any Law, Ordinance, or other Enactment of any British Colony or Possession.

(*b*) Any Company, Association, Society or other body the corporate existence of which is recognized by the Laws of the State within which it has its principal place of business.

(*c*) Any Collectif, Commandite or Anonyme partnership or Company formed under the Ottoman Commercial Code and qualified to pursue its business within the Island.

(*d*) Any Agricultural Bank established in Cyprus under the provisions of the Agricultural Bank Law, 1890.

(*e*) Any Charitable, Philanthropic, Social or Athletic Institution or Association not established or conducted for commercial gain.

Registration in name of corporate body.

3. Immovable property may be acquired by and registered in the books of the Land Registry Office in the name of a corporate body and when so registered the following provisions shall have effect :

(*a*) The Laws and Regulations for the time being in force with regard to the tenure of such property shall apply in as full and the like manner as to the same property held and enjoyed by private individuals.

(*b*) A corporate body in whose name immovable property is registered shall have, with reference to the sale, mortgage or other disposition of such property, the same rights as are by Law conferred upon individuals in whose names immovable property is registered.

Evidence required on registration.

4. On application to register immovable property in the name of a corporate body there shall be produced to the Registrar General, and recorded by him if registration is effected :

(1) In the case where incorporated in the United Kingdom or any British Colony or Possession :

(*a*) A certificate of incorporation under the hand of the Registrar of Joint Stock Companies or of an Assistant Registrar.

(*b*) A copy of any Act, Ordinance, Statute or other Enactment under the provisions of which such corporate body was created, and purporting to have been printed by the Government Printing Office of such Colony or Possession.

(2) In the case where incorporated otherwise than in the United Kingdom or a British Colony or Possession copies of the Law, Order, or Enactment, and of any act or deed made thereunder by virtue of which, the corporate body was incorporated its corporate existence recognized, every such copy being oved to be true and correct by the oath or solemn declaration of some officer of the corporation made before a Notary Public or Justice of the Peace in Great Britain or Ireland, or before a British Consul, or before the President of a District Court in Cyprus.

(3)—(*a*) In the case of a Collectif or Commandite partnership or Company, a copy of the articles of partnership certified by the Registrar of a District Court to be a true copy of the articles of partnership produced to him at the time of the certification of such copy.

(*b*) In the case of an Anonyme Company a copy of the Order of the High Commissioner authorising the incorporation of such company pursuant to the provisions of the Ottoman Commercial Code.

(4) In the case of an Agricultural Bank, a certificate under the hand of the Chief Secretary to Government or any officer authorised to act on his behalf testifying that such Bank has been duly established in Cyprus.

(5) In the case of a Charitable, Philanthropic, Social or Athletic Institution or Association an affidavit by the President or Chairman of the Committee or Managing Body thereof to the effect that such Institution or Association is established solely for Charitable, Philanthropic, Social or Athletic purposes and not for purposes of commercial gain.

Local business address must be lodged.

5. On application for registration under this Law there shall be deposited with the Registrar General a writing under the hand

of the Secretary or other officer or member of the corporate body giving some address in the Island as the business address of the corporate body in Cyprus. Service of any notices or documents at such address shall be a good service of the same on the corporate body.

Registration to be in name of corporate body.

6. No registration effected under the provisions of this Law shall take cognisance of the relative shares or interests of the respective partners, shareholders or other persons constituting or interested in a corporate body, and all immovable property acquired by and registered in the name of a corporate body shall be deemed to be held collectively by and on behalf of such body.

Evidence of authority of attorney.

7. A person shall be entitled to act generally or in respect of any specified matter as the attorney of a corporate body :

(*a*) If he is empowered in that behalf by an instrument under the common seal of the corporate body, or

(*b*) In the case of a corporate body whose corporate action is lawfully expressed otherwise than by means of a common seal, if he is empowered to act as aforesaid by an instrument executed in the manner in which instruments are lawfully executed by such corporate body.

(*c*) In the case of a Charitable, Philanthropic, Social or Athletic Institution or Association if he is empowered in that behalf by a document signed by the President or Chairman and one or more members of the Committee or Managing Body thereof.

Registrar General not compelled to test validity of proceedings.

8. It shall not be incumbent on the Registrar General to test or determine in any case the validity of the transactions by or on behalf of a corporate body, and any registration may be effected by him and any disposition allowed by him of immovable property registered in the name of a corporate body if the documents and instruments tendered in respect thereof appear to him to be properly executed in accordance with the provisions of this Law.

Application to Court for directions.

9. The Registrar General or any person beneficially interested in or any officer of a corporate body may apply to the District Court for directions on any of the following matters, namely :

(1) As to the right of any body of persons to be registered or to continue to be registered as a corporate body, or

(2) As to the authenticity or sufficiency of any document which may be produced in support of the claim of any body of persons to be so registered, or

(3) As to the right of any person to act as attorney on behalf of any corporate body generally or in respect of any specific act.

Upon the hearing of such application the Court after hearing all interested parties and the Registrar General, or such of them as shall attend, shall make such order as may appear just. There shall be an appeal from every such order in like manner as though it were an order in a civil action.

Payment in lieu of fees on devolution.

10. In addition to the fee leviable upon effecting an original registration or a registration by prescription, sale, gift or exchange there shall be paid in respect of all immovable property while registered in the name of a corporate body an annual payment equal to one-fortieth of the fee which would be payable on the devolution by inheritance of such property, the first of such payments being due on the first day of April next following the date of registration; and such payment shall be recovered with and in the same manner as the Verghi Kimat due upon the property in question.

Law not applicable to Ecclesiastical properties.

11. Nothing in this Law shall apply to immovable property in the occupation of any Archbishop or Bishop acting on behalf of his See, or of any Abbot, Governing Body or Committee of Management of any Monastery or Church or to the registration of any property under the Titles Registration Law, 1885, in the name of any person as trustee for a Church or Monastery.

Power to make Rules of Court.

12. The High Commissioner, with the advice and assistance of the Chief Justice, may from time to time make Rules of Court[1] for regulating the course of procedure to be observed upon any application to the Court under this Law and for prescribing the fees of Court to be charged in respect of such proceedings.

[1] No Rules have hitherto been made under this Section

INDEX.

NOTE.—*Pages* 81 *and upwards refer to the Appendix.*