Present: Wood Renton A.C.J. and Ennis J. 1913.

SPENCER *v.* RAJARATNAM *et al.*

167—D. C. Colombo, 32,139.

Tesawalamai—*Persons to whom the law applies—Inhabitants of Jaffna—Domicil—Jaffna Tamils resident in Colombo.*

The *Tesawalamai* is not a personal law in Ceylon as the Hindu or the Muhammadan law is in British India.

The *Tesawalamai* is not a personal law attaching itself by reason of descent and religion to the whole Tamil population of Ceylon, but an exceptional custom in force in the Province of Jaffna—now the Northern Province—and in force there, primarily, and mainly at any rate, only among Tamils who can be said to be "inhabitants" of that Province; as the *Tesawalamai* is a custom in derogation of the common law, any person who alleges that it is applicable to him must affirmatively establish the fact.

The mere fact that a man is a Jaffna Tamil by birth or by descent, while it is a circumstance of which account must be taken in considering his real position, will not bring him within the scope of the statutory definition of the class of persons to whom the *Tesawalamai* applies.

Nothing but a Ceylon domicil can be acquired in Ceylon.

THE facts are set out in the judgment of Wood Renton A.C.J.

Elliott (with him *Wadsworth* and *Arulanandam*), for the plaintiff, appellant.—The *Tesawalamai* is a personal law. A person who is subject to the *Tesawalamai* cannot lose his rights under that law by ceasing to reside in Jaffna. Once a Jaffna Tamil, always a Jaffna Tamil. The *Tesawalamai* is part of the Hindu law (see *Mayne's Hindoo Law, chapter I.*). It has been held in India that a Hindu family migrating from one part of the country to another does not lose their rights under their laws, as the laws applicable to them are personal laws. *Debi v. Dhabal;*[1] see also *Anni v. Subbaraya.*[2] Hindu families are presumed to have retained the law of their origin until it is clearly shown that they have adopted a different domicil. (See *Soorendronath Roy v. Burmoneah,*[3] *Debea v. Dobay* [4]).

At the time Ordinance No. 15 of 1876 was proclaimed the parents of Naganathan were Tamils, who were subject to the *Tesawalamai.* Section 2 of the Ordinance specially excludes from its operation "Tamils of the Northern Province who are or may become subject to the *Tesawalamai.*" After the proclamation of the Ordinance it is not possible for Tamils of Jaffna to acquire rights under that Ordinance.

[1] *(1902) 29 Cal. 433.*
[2] *(1901) 24 Mad. 650.*
[3] *(1868) 12 M. I. A. 81.*
[4] *(1864) Suth. W. R. 56.*

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Regulation No. 18 of 1806 did not in any manner introduce any new provision regarding the *Tesawalamai*. It only declared that the existing laws of the conquered people should be continued. The term " Malabar inhabitants of the Province of Jaffna " should not be restricted to refer to persons who are actually residing in Jaffna. The expression is used as equivalent to Tamils of Jaffna. Ordinance No. 15 of 1876 indicates that the *Tesawalamai* is a personal law, just as much as the Muhammadan law or the Kandyan law. Ordinance No. 1 of 1911 and Ordinance No. 15 of 1876 do not use the term " inhabitant." Section 3 of Ordinance No. 1 of 1911 says that the Ordinance applies to " those Tamils to whom the *Tesawalamai* applies." The Regulation of 1806 was not intended to make actual residence in Jaffna a condition for the enjoyment of the rights.

It was held in *Velupillai v. Sivakamipillai* [1] that both under the general law and in view of the special provisions of section 6 of Ordinance No. 21 of 1844 the rights of the parties have to be determined by the law of domicil of the husband at the time of the marriage. It was further held there that the law of the matrimonial domicil and not the *lex loci rei sitæ* is the criterion by which the rights and powers of the spouses in regard to common property situated in any part of the Colony is to be determined.

[Wood Renton A.C.J. referred counsel to *Wellapullav. Sitambelem.*[2]]

That case is not a decision against me. It merely holds that the *Tesawalamai* is not applicable to the Tamils of Trincomalee. It does not hold that a Tamil of Jaffna residing in Trincomalee would not be governed by the *Tesawalamai*.

The conduct of Arumogan and Sinnatangam was that of persons who considered themselves Jaffna Tamils in every sense. Arumogan bought property in Jaffna and visited Jaffna. He sent his wife to Jaffna for confinement. When his sister died he dealt with the whole property as sole heir, as under the *Tesawalamai* a dowried sister has no right to succeed to the property of an unmarried sister (*Anthony v. Nathalie* [3]). Naganathan must be presumed to have retained the domicil of his parents. He was born in Jaffna. He died when about 29 years of age. As long as he was a minor he could not have changed his domicil. He did not live sufficiently long after he became a major to enable us to say that he had made up his mind to throw off his Jaffna domicil. On the other hand, all his acts show that he retained his Jaffna domicil. He visited Jaffna; he had not cut himself off from his Jaffna relations.

Arumogan and Sinnatangam were married before Ordinance No. 15 of 1876 was proclaimed. All parties appear to have treated Sinnatangam's dowry property as her separate property, and not included in the property dealt with by the joint will. If parties were

[1] *(1910) 13 N. L. R. 74.* [2] *(1875) Ram. 1872-76, 114.*

[3] *(1843) Muttukisna 167.*

considered to be governed by the Roman-Dutch law, all property would be treated as common property.

Counsel argued on the facts.

Kanagasabai (with him *Joseph*), for the heirs of fifth defendant, respondent, and the sixth to eighth defendants, respondents.—The fact that Arumogan and Sinnatangam executed a joint will proves nothing. It is not correct to say that joint wills are executed by those subject to the Roman-Dutch law only. Even persons subject to the *Tesawalamai* do execute joint wills.

The expression " Malabar inhabitant of the Province of Jaffna " means Jaffna Tamils as distinguished from Tamils of Batticaloa, &c., who were governed by other laws. Counsel cited *The Lauderdale Peerage case.*[1]

H. A. Jayewardene (with him *Allan Drieberg*), for the first defendant, respondent.

Van Langenberg, K.C., Acting Attorney-General (with him *E. W. Jayewardene*), for second and third defendants, respondents.—Mr. Kanagasabai's clients cannot claim any relief as they had not appealed. The District Judge held that they were not entitled to any portion of Naganathan's estate. It is not open to them to claim relief without having filed an appeal. A cross appeal under section 772 is not open to a party in the position of these respondents.

The *Tesawalamai* is not a purely personal law. It is a personal law plus a territorial law. It affects only immovable property within the district. No case has been cited to show that in the case of intestacy any property situated in Colombo or elsewhere out of Jaffna was governed by the *Tesawalamai*. Nor has it been shown that property owned by a Kandyan in Colombo was ever in the case of intestacy governed by the Kandyan law. Counsel referred to *Mudiyanse v. Appuhamy et al.*,[2] *Wijesinghe v. Wijesinghe.*[3] There is the right of pre-emption in Jaffna. This cannot be introduced into Colombo. This is a purely local law.

The word " *Tesawalamai* " means customs of the country. Customs refer to a particular locality. See *Halsbury's Laws of England, tit. Customs.*

Regulation of 1806 shows clearly that the *Tesawalamai* is a local law, and that it refers to land tenure mainly. *Wellapulla v. Sitambelem* [4] is an authority to that effect. The term " inhabitant " can refer only to a person having a permanent home in Jaffna.

In *The King v. Perumal* [5] it was held that the *Tesawalamai* did not apply to Indian Tamils resident in the Central Province.

The preamble of Ordinance No. 4 of 1895 makes it clear that the *Tesawalamai* is a territorial law and not a personal law. If the

[1] *10 A. C. 692; 2 Burge 63.*

[2] *(1913) 16 N. L. R. 117.*

[3] *(1891) 9 S. C. C. 199.*

[4] *(1875) Ram. 1872-76, 114.*

[5] *(1911) 14 N. L. R. 496.*

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Tesawalamai is to be applied to Jaffna Tamils living in Colombo, it would not be possible to say what portion of the law is to be applied. A good part is obsolete (*Umatavipillai v. Murugasar* [1]), and it is impossible to say what portion of the living law is applicable.

Fernando v. Proctor [2] is opposed to the doctrine, once a Jaffna Tamil always a Jaffna Tamil.

There is only one domicil in Ceylon, viz., a Ceylon domicil. There is no Jaffna domicil in Ceylon as opposed to a Ceylon domicil. The only question which we have to decide is whether Naganathan was a Malabar inhabitant of the Province of Jaffna. It cannot be said that Naganathan had a permanent home in Jaffna, or that he was a permanent inhabitant of Jaffna. We are here concerned with Naganathan's estate, and not with Arumogan's estate. Counsel referred to *Velupillai v. Sivakamipillai*,[3] *Robertson's case*.[4]

Even Arumogan conducted himself as if the *Tesawalamai* did not apply to him. When his sister died he disposes of his sister's property. Under the *Tesawalamai* he would not have been heir to his sister. The rule of the *Tesawalamai* is that property of males devolves on males, and the property of females on females. There is no law which excludes a dowried sister from succession to her sister. A dowried daughter is no doubt excluded from succession to her father's estate, but not from her sister's estate. See *Thiagarajah v. Paranchotipillai et al.*; [5] *Thambar v. Chinnatamby*; [6] *Muttukisna, p. 728 (sec. 10); 61, 625.*

The facts proved in this case do not show that Naganathan ever intended to make Jaffna his home. There is nothing to show that even Arumogan had an intention of returning to Jaffna. Even those who have made Colombo their permanent home and have divided their properties according to the Roman-Dutch law have gone to Jaffna occasionally and have owned some properties there. In determining the question of a man's domicil, it is material to consider where his wife and family have their permanent residence. (*Platt v. The Attorney-General of New South Wales*;[7] see also *Bullen Smith v. Bullen Smith*,[8] *Chalmers v. Wingfield* [9]). Section 6 of Ordinance No. 21 of 1844 refers only to the rights of spouses *inter se*.

H. J. C. Pereira (with him *Sansoni* and *Retnam*), for the fourth defendant, respondent.

Elliott, in reply.—The *Tesawalamai* may be divided into two heads. One part deals with personal relations, &c., which Jaffna Tamils carry with them wherever they go. The other part deals

[1] (*1899*) *3 Bal. 119.*
[2] (*1909*) *12 N. L. R. 309, page 312.*
[3] (*1910*) *13 N. L. R. 74.*
[4] (*1886*) *8 S. C. C. 36.*
[5] (*1908*) *11 N. L. R. 345.*
[6] (*1903*) *4 Tamb. 60.*
[7] (*1878*) *38 L. T. 74.*
[8] (*1888*) *58 L. T. 578.*
[9] (*1887*) *57 L. T. 898.*

with land tenure and other matters, which are purely local. This second part governs even persons other than Jaffna Tamils. A foreigner buying lands in Jaffna will be governed by the law of pre-emption. See *Suppiah v. Thambiah.*[1] The law as to *otti* mortgages would apply to all persons resident in Jaffna. There are some portions of the *Tesawalamai* which are applicable to lands in particular villages only.

The portions of the *Tesawalamai* which deal with the matrimonial rights of the parties and with inheritance are not local. They attach to the person, and are applicable to Jaffna Tamils wherever they be resident.

No argument can be based on the fact that a joint will was executed by Aromugan and his wife. Such a form of will is executed even by Jaffna Tamils resident in Jaffna. But it is noteworthy that the joint will makes provisions which Tamils subject to the *Tesawalamai* would make. The separate property of the wife was not brought into community. It was not inventorized when the will was proved on Arumogan's death.

Kanagasabai, in reply.

Cur. adv. vult.

June 17, 1913. Wood Renton A.C.J.—

The question for decision in the present case is whether the distribution of the estate of a deceased intestate, Arumogan Naganathan, is governed by the *Tesawalamai* or by the general law of inheritance. The properties of which the estate consists are described in three schedules to the plaint, and comprise various lands, shares, insurance policies, and other movables. Neither the immovable nor the movable property with which we are here concerned is situated within the Northern Province. The intestate Naganathan was the son of a Tamil gentleman, Naganathan Arumogan, and his wife Sinnatangam, and derived his title to the properties described in the first and second schedules from their joint will. The first defendant-respondent is Naganathan's widow, who has been found lunatic, and appears by her guardian *ad litem*, her father. The second, third, and fourth defendants-respondents are the joint executors of Sinnatangam. The plaintiff-appellant and the fifth and seventh defendants-respondents, whose interests are identical with those of the plaintiff, are the heirs of Manicam, Arumogan's sister. The sixth and eighth defendants-respondents are respectively the husbands of the fifth and seventh. The plaintiff's case is that Naganathan was a "Malabar inhabitant of the Province of Jaffna," within the meaning of Regulation No. 18 of 1806, and that his estate, therefore, must be distributed under the *Tesawalamai*. The representatives of the fifth and the sixth, seventh, and eighth defendants associate themselves with this

[1] *(1904) 7 N. L. R. 151.*

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contention. The remaining defendants maintain that Naganathan was not a "Malabar inhabitant of the Province of Jaffna," and that his estate must, therefore, be distributed under the general law. The learned District Judge has adopted the defendants' view of the law and the evidence, and has dismissed the plaintiff's action, directing him to pay the costs of the fifth, sixth, seventh, and eighth defendants, who, at the close of the trial in the District Court, were made co-plaintiffs with the original plaintiff by an order under section 18 of the Civil Procedure Code, and also the costs of the other defendants. The original plaintiff appeals, and the added plaintiffs seek to obtain special relief by a notice of objections under section 772 of the Civil Procedure Code. The argument in support of the appeal ranged over a wide field, and raised many problems of great interest and difficulty. But the only question that has to be directly decided in the present case is whether or not Naganathan was a "Malabar inhabitant of the Province of Jaffna" in the sense in which these words are used in Regulation No. 18 of 1806. In answering this question we must exclude the idea of domicil, properly so called. The term "domicil" is used in the statute law, and at least in the older case law, of the Colony, sometimes in its legal and sometimes in its loose and popular acceptation. But it is well settled (*Wijesinghe v. Wijesinghe* [1]) that nothing but a Ceylon domicil can be acquired in this Colony. Moreover, it is, in my opinion, clear both upon, and apart from, the authorities, that the *Tesawalamai* is not a personal law in Ceylon as the Hindu or the Muhammadan law is in British India. The case of *Wellapulla v. Sitambelem* [2] is a decision—and a decision, as we have ascertained by reference to the Supreme Court Minutes of June 1, 1875, of the Full Court—to that effect. The question involved in the case was whether the *Tesawalamai* was applicable to the Tamil inhabitants of Trincomalee. Morgan C.J., in delivering the judgment, adopted the following passage from a report prepared for the Supreme Court by Mr. Grenier, Secretary of the District Court of Jaffna: "So far it is beyond the possibility of a doubt that the country law or *Tesawalamai* was designed to have effect only in the Province of Jaffna, of which ..... Trincomalee never formed a part or parcel"; and said that "an exceptional custom, in derogation of the common law of the land, is not lightly to be presumed."

A similar decision was given with reference to Batticaloa in D. C. Batticaloa, No. 13,925.[3] It results from these authorities that the *Tesawalamai* is not a personal law attaching itself by reason of descent and religion to the whole Tamil population of Ceylon, but an exceptional custom in force in the Province of Jaffna—now the Northern Province—and in force there, primarily, and mainly at any rate, only among Tamils who can be said to be

[1] *(1891) 9 S. C. C. 199.* [2] *(1875) Ram. 1872-76, 114.*

[3] *(1875) Ram. 1872-76, 116.*

"inhabitants" of that Province, and further that, as the *Tesawalamai* is a custom in derogation of the common law, any person who alleges that it is applicable to him must affirmatively establish the fact. The principle of these decisions has been adopted by the Supreme Court in determining the scope of Kandyan law also (*Wijesinghe v. Wijesinghe, ubi supra, Mudiyanse v. Appuhamy* [1]), and is clearly deducible from the various enactments on which the authority of the *Tesawalamai* depends. The English text of the *Tesawalamai* published in Volume I. of the Revised Ordinances has been held by the Supreme Court to be the sole recognized official repository and declaration of the laws and custom of the Tamils of Jaffna (*Sabapathi v. Sivaprakasam* [2]). In that translation the *Tesawalamai* is described as " the laws and customs of the Malabars of Jaffna," and also as the " Jaffnapatam ancient customs and rules." In the letter (Revised Ordinances, Vol. I., p. 30) dated June 4, 1709, by which the Dutch Government promulgated the *Tesawalamai*, authenticated copies of the collection are directed to be sent " to the Court of Justice and the Civil Landraad for their guidance," and not, as might have been expected, to the Courts generally throughout the Island, if it had been intended that the *Tesawalamai* should have an extra-provincial application. Regulation No. 18 of 1806, which kept the *Tesawalamai* on foot under British rule, assigns as the reason for its promulgation the necessity of re-establishing the security of property within the Province of Jaffna and the prevention of " enormities, which for the last years have disgraced " that Province. Sections 1 to 13, which have now been repealed, have a practically exclusive provincial application, while Ordinance No. 4 of 1895, which modified the law of the *Tesawalamai* as to the publication of sales or other alienations of immovable property, expressly states in its preamble that it is dealing with " immovable property situated in those parts of the Northern Province to which the *Tesawalamai* applies." It is in the light of these provisions that the words in sections 14 and 15 of Regulation No. 18 of 1806, "the Malabar inhabitants of the Province of Jaffna," have to be interpreted. We are not here concerned with the question which came before the Supreme Court in *Velupillai v. Sivakamipillai*,[3] whether section 6 of Ordinance No. 21 of 1844 had not made the rights and powers of spouses to whom the *Tesawalamai* applies depend on that enactment even as regards immovable property situated outside the limits of the Northern Province. But I adhere to the opinion which I expressed in that case that the term " inhabitant " in Regulation No. 18 of 1806 must be interpreted in the sense of a person who at the critical period had acquired a permanent residence in the nature of domicil in that Province. It is not desirable or possible to lay down any general rules as to the

[1] *(1913) 16 N. L. R. 117.*

[2] *(1905) 8 N. L. R. 26.*

[3] *(1910) 13 N. L. R. 74.*

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circumstances which will suffice to establish the existence of such a residence. Each case must depend on its own facts. There may be, on the one hand, a residence in Jaffna which will not suffice to make a Tamil an "inhabitant" of that Province within the meaning of the Regulation of 1806, and, on the other hand, a residence elsewhere, even for protracted periods, which will not deprive him of that character. An advocate practising before the Supreme Court in Colombo or a Government servant permanently attached to the kachcheri at Galle or Matara might well, if he were a Jaffna Tamil, retain such a connection with his native Province as to entitle him to the benefit of its customary law. But the mere fact that a man is a Jaffna Tamil by birth or by descent, while it is a circumstance of which account must be taken in considering his real position, will not bring him within the scope of the statutory definition of the class of persons to whom the *Tesawalamai* applies. These conclusions, I think, necessarily arise on a fair construction of the statutory provisions with which we have to deal in the present case. They are justified also by the well-known conditions of social and public life in this Colony. The evidence shows, and the fact is notorious apart from it, that there are many Jaffna Tamils who, while retaining all their natural affection for the Province in which they were born, have severed their personal and family and professional or business connections with it to an extent which makes it impossible that they can fairly be described as being any longer "inhabitants" of that Province. To subject persons of this description to a customary law so complicated, confused, and uncertain in many of its provisions, as is the *Tesawalamai*, would be a grave step.

The learned District Judge has traced the history of Naganathan and his family, and it is unnecessary to repeat what he has said. I agree with the conclusion at which he has arrived. The plaintiff has not, in my opinion, shown that Naganathan was a "Malabar inhabitant of the Province of Jaffna." If the plaintiff had been obliged to rely on evidence directly applicable to Naganathan, her case would have been hopeless from the outset. He left Jaffna when he was a few months old, and lived and died in Colombo. He married in Colombo a lady—the first defendant—whom the District Judge has found to have been a Colombo, and not a Jaffna Tamil, and the plaintiff's counsel themselves elicited from the first defendant's father in cross-examination the fact that when the marriage was proposed Naganathan told him "that he was a Colombo man and domiciled in Colombo." The only circumstances that can be said in any way to counterbalance this evidence are the alleged visits of Naganathan to Jaffna in 1888, again in 1895, and twice between 1895 and 1898. This evidence, most of which the learned District Judge describes as "extremely vague," is, however, quite insufficient, even if accepted in its entirety, to show

that Naganathan was an " inhabitant of the Province of Jaffna," or had any intention of becoming one.

But the plaintiff's case does not rest exclusively on the evidence specially applicable to Naganathan. She depends also, as she is entitled to do, on the evidence as to Arumogan and his wife Sinnatangam, and Arumogan's parents before him. The fact that Naganathan's parents and grandparents were " Malabar inhabitants of the Province of Jaffna " would not, of course, necessarily show that Naganathan was one. But it might create a presumption in favour of that conclusion. The learned District Judge holds—and his finding on the point is not challenged—that Arumogan's father Tilliyan Naganathar, and mother Kadiresu, lived and died in Jaffna, and were " inhabitants " of that Province. The evidence relied upon to prove that Arumogan preserved the local status which he thus acquired at birth may be summed up as follows. He preserved the family name and religion. He married a Jaffna lady. He visited Jaffna in 1874, 1875, and 1888 for business and ceremonial purposes. Although he sold one of his lands in Jaffna, he took care that the purchaser was a relation. He bought another land in the Province for over Rs. 800—a high price for a comparatively poor man, as he is then said to have been. When his sister Theyvanai died in 1870, he dealt with her property as sole heir—on the basis of the provisions of the *Tesawalamai*, which, it is alleged, would exclude his other sister Manicam, who had been dowried, from the succession. The provisions of his joint will recognized Sinnatangam's separate rights under the *Tesawalamai* to her dowry property. Sinnatangam too evinced an intention to remain an " inhabitant " of the Province of Jaffna. Although she was married in the district of Chilaw, she returned to Jaffna for her first confinement. Her dowry property was not inventorized on the administration of the estate of either Arumogan or Naganathan. Whatever might be said as to the conduct of her husband in this respect, she at least appointed Tamil executors. She spoke in her will of " my house at Anacotta," directed that her personal property should be taken and kept there, and left a bequest to a local temple for the purpose of securing the perpetual observance of a religious ceremony in memory of her.

But there are very serious considerations that have to be reckoned with on the other side. Although Arumogan might cease to be an " inhabitant " of the Province of Jaffna, he did not cease to be a Tamil and a Hindu. There is, therefore, nothing surprising in the fact that he retained the family name and religion, and kept himself in occasional touch with his friends in Jaffna. Moreover, the evidence shows that it is not unusual even for members of the Colombo Tamil community to retain portions of their ancestral property in the Province of their birth. Although Arumogan married a Jaffna lady, the marriage itself was not celebrated in

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Jaffna, and the home was undoubtedly in the district of Colombo. It was in that district that most of his immovable and, with the exception of some shares in the Jaffna Trading Company, his movable estate was locally situated. His sister Theyvanai, in whose house he was brought up, had severed her connection with Jaffna. I am by no means certain that the case of *Anthony v. Nathalie*,[1] on which the plaintiff's counsel relied as proving that a dowried sister in the position of Manicam would, under the *Tesawalamai*, take no interest in a deceased sister's estate, does in fact support that proposition. The general rule enacted by the *Tesawalamai* is that the property of males devolves on males and that of females on females, and the case of *Thamber v. Chinnatamby* [2] seems to me to indicate that Manicam's rights of succession would not, in a case like the present, be excluded. The appointment by Arumogan in his joint will of European executors—an appointment of a kind admittedly unusual among Tamils—is a circumstance to which considerable weight must be given, and which is by no means explained away by the fact that the executors in question were his own employers. The inventory of Arumogan's property was not adduced in evidence by the plaintiff, and there is, therefore, nothing to show that it did not include Sinnatangam's separate property. Sir Stanley Bois, one of Arumogan's joint executors, was asked no question—as he ought to have been if the plaintiff relied on the fact—as to whether or not Sinnatangam's separate property had been included in the inventory of Arumogan's estate, or as to why it was not included in that of Naganathan, of whom he saw a great deal after Arumogan's death. That Sinnatangam should have gone back to her parents' house for her first confinement is a consideration of almost no importance. It was the natural and usual course for a lady in her position to adopt. But she subsequently gave birth to two other children, and on neither of these occasions did she return to Jaffna. The removal of some of her personal property to her house at Anacotta and the foundation of a religious ceremony in a temple there in memory of her are circumstances open to the same observations that I have already made in dealing with Arumogan. She remained a Tamil, although her matrimonial home had been in the district of Colombo. It was quite natural that she should retain her house in Jaffna, although it is worthy of notice that she did not continue to live in it after Naganathan's death. Sinnatangam was a Hindu as well as a Tamil, and might reasonably desire that her memory should be preserved in a temple situated in the district where she had been born and brought up.

I agree with the learned District Judge that the evidence does not show that either Arumogan or Sinnatangam was a Malabar inhabitant of the Province of Jaffna, and can, therefore, add little strength to the plaintiff's case as regards Naganathan himself.

[1] (1848) *Muttukisna 167.*

[2] (1903) *4 Tamb. 60.*

The appeal must be dismissed. But I would materially vary the order of the District Judge as to costs. The fifth, sixth, seventh, and eighth defendants-respondents should not, in my opinion, have been made, as they were made, added plaintiffs against their consent. On the other hand, they had no right, as their counsel Mr. Kangasabai admitted in his reply, to prefer a cross notice of objections under section 772 of the Civil Procedure Code, inasmuch as that section contemplates cases in which the notice of objections is to be pressed against the appellant. Here the interests of the original plaintiff and the added plaintiffs are the same. The plaintiff's counsel strongly urged that the denial by the contesting defendants of those portions of the family history which the District Judge has held to have been conclusively proved was vexatious, and should be taken account of in his favour in the apportionment of costs. There would seem, however, to have been some degree of uncertainty as to some of the points which have now been clearly established. Mr. Spencer, the plaintiff's son, for instance, stated that he was not aware of the existence of Arumogan till 1888. But the order which I propose to make as to costs will give whatever weight is due to the arguments, on behalf of the added plaintiffs and the original plaintiff, which I have just mentioned. The interests of all the contesting defendants were identical. They have elected to support their position by an army of separate proctors and counsel, both in the District Court and for the purposes of the appeal. They must bear the expenses of this luxury themselves. It is wholly unreasonable that the joint executors of Sinnatangam should have severed their defences or that the first defendant-respondent should not have associated herself in a single defence with them. I would direct, while dismissing the appeal, that the original plaintiff and the added plaintiffs should pay the costs of action and of appeal of one set of respondents only.

ENNIS J.—

The question for decision in this appeal is whether succession to the property of one Arumogan Naganathan, a Tamil gentleman, who died intestate on October 8, 1904, is governed by the *Tesawalamai* or by Roman-Dutch law.

On the death of Naganathan his estate was distributed according to the rules of Roman-Dutch law, and the appellant bases his claim on the ground that Naganathan was an inhabitant of the Northern Province, to whom the *Tesawalamai* applied, and that the estate should have been distributed according to the rules of the *Thesawalamai*. It is admitted that the whole of the property, with the exception of a few shares in the Jaffna Trading Company, consists in lands and personal property in Ceylon outside the limits of the Northern Province.

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ENNIS J.

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Regulation No. 18 of 1806 prescribed that " the *Tesawalamai*, or customs of the Malabar inhabitants of the Province of Jaffna, as collected by order of Governor Simons in 1706, shall be considered to be in full force," and that " all questions between Malabar inhabitants of the said Province, or wherein a Malabar inhabitant is a defendant, shall be decided according to the said customs." The collection of customs above referred to, now generally known as the *Tesawalamai*, included customs relating to status and customs relating to land. So far as these customs relate to land as distinct from persons, they have been held not to apply outside the limits of the Northern Province (*Wellapulla v. Sitambelem*[1]), and legislation has been enacted, *e.g.*, Ordinance No. 4 of 1895, on the assumption that they do not apply beyond those limits. It is contended, however, that, so far as the customs relate to status including therein the rules for the distribution of estates on intestacy, the *Tesawalamai* is a personal law, similar to the Hindu law in British India, which could be shaken off only by acquiring a new domicil. The statute law of Ceylon has more than once used the word " domicil " as though more than one domicil could be acquired in Ceylon. The word is found in section 6 of Ordinance No. 21 of 1844 and in section 25 of No. 15 of 1876. In the latter Ordinance reference is made to a person having a domicil in a " part of this Island " as distinct from the Maritime Provinces, but as the Ordinance does not apply to Kandyans, or to Tamils of the Northern Province subject to the *Tesawalamai*, I do not understand the reference. Only one domicil can be acquired in Ceylon (*Wijesinghe's case* [2]); and the common law of the land is the Roman-Dutch law, which would apply unless it can be proved by the party asserting it that a special custom applies in any particular case.

The *Tesawalamai* are not the customs of a race or a religion common to all persons of that race or religion in the Island; they are the customs of a locality, and apply only to Tamils of Ceylon who are inhabitants of a particular Province. The customs constitute a local rather than a personal law, and this case turns on whether Naganathan was or was not in fact an inhabitant of Jaffna at the date of his death.

In questions relating to domicil there is a presumption of law that the domicil of origin is retained until a change is proved, but it seems to me that when the question is one of inhabitancy, for the purpose of the application of a local custom, the presumption is not in favour of the original inhabitancy, but of the actual residence at a particular time; that there is a presumption that a change of residence to a place outside the limits of local custom indicates an intention to depart from local custom. In my opinion, the present case must be approached from this point of view.

[1] *(1875) Ram. 1872-76, 114.*

[2] *(1891) 9 S. C. C. 199.*

As to the facts, it is admitted that Naganathan was a Jaffna Tamil by descent, and it is now conceded that he was born in Jaffna. He however lived, carried on business, married, and died in Colombo; and, except for a few months after his birth and occasional visits, he was never in the Northern Province. The learned District Judge has found that Naganathan's wife was a Tamil of Colombo, and her father gave evidence saying that he arranged the marriage of his daughter with Naganathan on the footing that Naganathan was permanently settled in Colombo and not subject to the *Tesawalamai*. The evidence as to whether Naganathan's father and mother could be considered inhabitants of the Northern Province is of little weight, if any, against the evidence relating directly to Naganathan, which leaves no doubt in my mind that Naganathan was an inhabitant of Colombo and not of the Northern Province. The distribution of his estate would, therefore, be governed by Roman-Dutch law.

I would dismiss the appeal, but as the interests of the defendants seem to be the same, I would allow them one set of costs only both in the original action and on the appeal.

Appeal dismissed.