

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	812	Press
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Dated	12-7-1918	1857

Not to be folded or roughly handled

Fort St. George, Judicial Consultation, 14th July 1857.

No. 46. Read the following Petition from Stree Vyreecherla Jagunnada Rauze, Bahadoor Gauroo; to the Right Honorable the Governor in Council, Fort Saint George.

The humble petition of Stree Vyreecherla Jagunnada Rauze, Bahadoor Gauroo, who appealed from the Decree passed in re-investigation in Suit No. 41 of 1856, on the file of the Governor Agent's Court of Vizagapatam.

1. That your Lordship in Council, pronounced a Decree, confirming the original Decree appealed against; which being contrary to law and usage, petitioner is dissatisfied thereat.

2. That Mr. Smollett, (the Agent) has some time back, sent for the petitioner, and told him that he would cause to allow Rupees 1500 per annum, for the maintenance of his sons, and that he must keep and protect them at Vijayanagarum, and Paulacondah. Having thus informed him, Mr. Smollett forwarded a letter, under date the 30th April, to your Lordship in Council, wishing to know your opinion on the subject. Your Lordship granted accordingly on the 13th May.

3. That this allowance of maintenance appears to be only to keep and protect his sons in foreign villages; but it was not allowed after removing petitioner from their right of inheriting the Zemindary. That Mr. Smollett told with petitioner to relinquish his right to the Zemindary; but he did neither agree in so doing nor did he file a Razeenamah relinquishing his claim. The maintenance may not be granted unless petitioner relinquish his claim. Petitioner never wished to have maintenance, nor would he relinquish his right whether maintenance is allowed or not.

4. That as the petitioner prepared and filed herewith a Special Appeal Petition to the Honorable the Court of Directors, (praying to do justice to his case,) together with two copies of the same, he prays that your Lordship in Council will be pleased to forward the same to the Honorable the Court of Directors.

5. That the petitioner further prays that your Lordship in Council will be pleased to keep in the care of the Government alone, the balance sum of Rupees 70,000 (which is in the General Treasury, being the income of the Zemindary in question) without paying it to the defendants, until a final decision is passed in this suit by the Honorable the Court of Directors. If this sum be paid to the defendants, they will immediately expend it, and it will not therefore be recovered again from them, and further it will not be judicious to pay it to them, while the suit of the appellant is still pending.

And your petitioner, as in duty bound, will ever humbly pray.

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(Signed) STREE VYREECHERLA JAGUNNADA RAUZEE,
Bahadoor Gauroo.

12th June 1857.

To the Honorable the Court of Directors of the East India Company.

Special Appellant and Plaintiff.

Stree Vyreecherla Jagunnada Rauz, Garoo Bahadar, of Coorooppam, attached to the Zillah of Vizagapatam, in the Madras Presidency.

Respondent and Defendant:

Silavumsem Soorianarraina Rauz who assumed the family name of Vyreecherla and who is the minor Zemindar that has been nominated as the present heir; he being a minor, his protectors the mother Silavumsem Seethumamah, and his father Yarakiah, alias Sunnasee Rauz, inhabitants of Vizagapatam.

The Special Appeal Petition.

That the Original and Appeal Suits were instituted in the Civil by the appellant against the defendants for establishing his right to the Coorooppam Zemindary.

The Original Suit was decided in the Agent's Court of Vizagapatam and the Appeal Suit was decreed by the Governor in Council in accordance with the 20th para. of the Rules of Agency enacted in the year 1839.

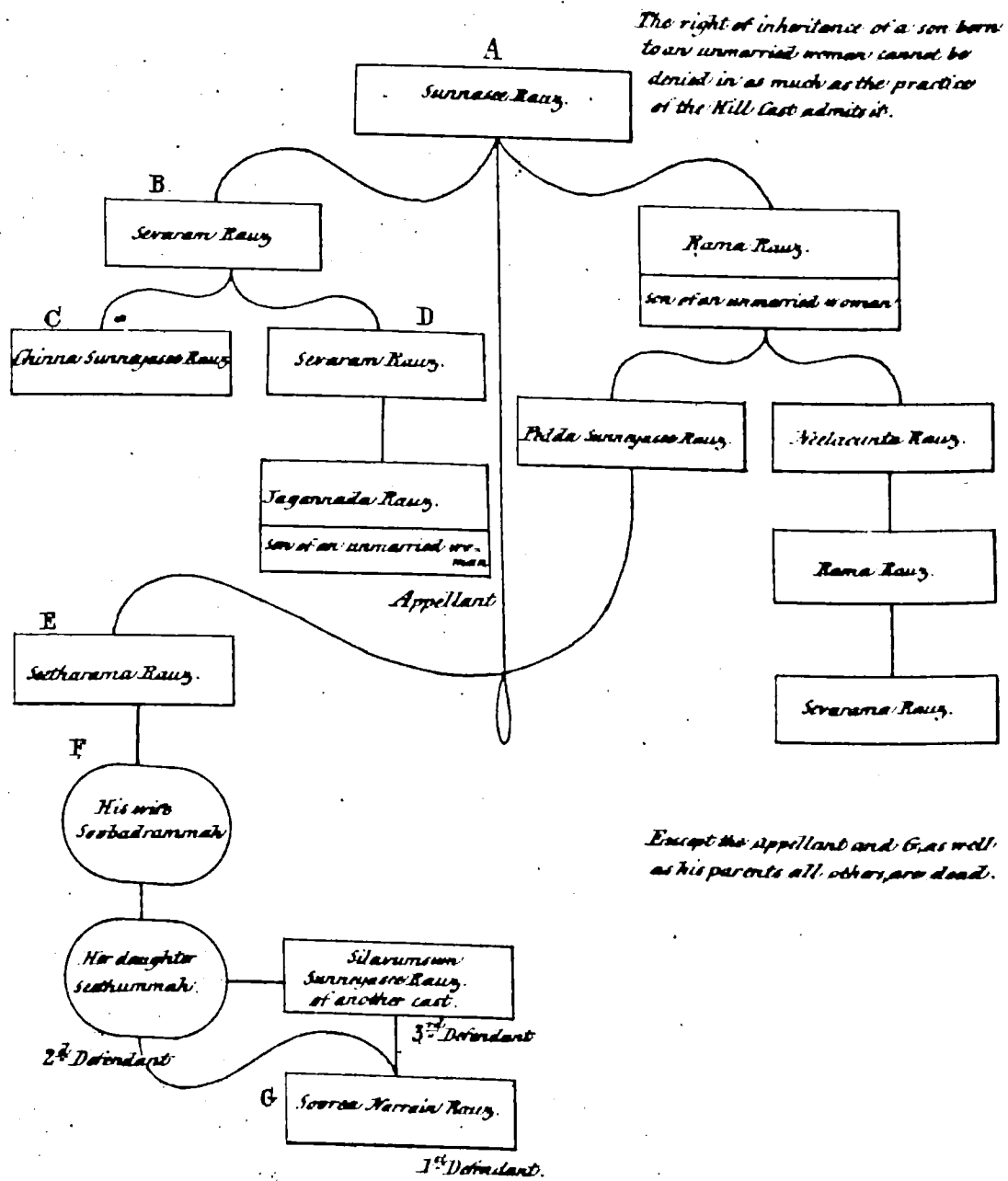
likely to lead to the peace of the country.

That both of the Decrees being at variance with the Hindoo law and practice, the appellant prefers this his Special Appeal Petition in the hope of obtaining justice from your Honorable Court.

This appeal may, under Act the III of 1843, be taken into your honor's consideration, and do justice.

2. The particulars of the suits are as follows:—

Geneological Table of the Zemindars of Coorooppam



That the Coorooppam Zemindary was long ago granted by the Zemindars of Jayapooram to the ancestors of the Coorooppam Zemindars, Sunnasee Rauz, marked A, has succeeded to the Zemindary, which was subsequently put in possession of his elder son Sevaram Rauz, marked B, who had two sons marked C and D, among whom Chinna Sunnasee Rauz, marked C, being the elder, succeeded his father. In his name alone the Istemerar Sunnud issued. He has no issue whatever. Sevarama Rauz marked D, had been placed under the protection of his father, and departed this life, leaving after him two sons, the appellant, and another, the appellant's mother had died previous to the death of her husband.

That since the D is dead, his elder son the appellant has become his representative, and stood as the next and immediate heir of C, who, and his wives continued to protect the appellant and his late brother like their own sons.

3. That C on the 30th March 1820 died suddenly, leaving three widows, viz., Soondrammah, Chellammah and Gungummah, who were suffering grief in consequence of their husband's death. The appellant then was a minor, and there was no male member who could claim on their behalf.

4. Poddah Sunnasee Rauz, the father of E, (Seetaram Rauz) being at that time a bold and reckless person, all the servants of the Zemindary were in subjection of his authority: He having expended a large sum of money in exerting himself towards getting the Zemindary to be put in possession of his son, threatened the widows of C, that he would cause the Zemindary to be destroyed by fire, in the event of their not submitting to the usurpation of the property by his son. The widows being afraid, remained quiet, and E then found the opportunity of fulfilling his wish.

5. That E was then a married young man, aged 19 years, and was the only son of his father. He then with an intention of usurping the Zemindary attempted to show that he was the son of C, and submitted a petition to Mr. Smith, the then Collector, under date the 1st April 1820, stating therein that as the C his father departed this life, the Zemindary should be put in his possession. This was the 1st petition; a certified copy of which was filed in the original suit by the appellant, and it was marked A.

6. No sooner was the said petition sent, than the Ameen of the Talook communicated to Mr. Smith all the facts in a report, dated 3d April 1820, which report was afterwards altered by the inferior officers at the instigation of the defendants. That report is therefore valueless.

7. On perusing the above report, Mr. Smith greatly suspected the right of E, and issued a Hookoom to the Ameen, directing him to examine it clearly, and give him a full account of the matter at issue. The Ameen immediately started for the Zemindary, where he drew up a genealogical tree, so as to ascertain the heir to the property, which genealogical tree he forwarded together with his report, dated 5th May 1820. These documents were filed by the appellant in the original suit, and were marked J and K. A copy of the genealogical tree marked J is herewith annexed with mark A. On perusing it your Honorable Court will see who is the heir.

8. Finding the genealogical tree sent by the Ameen to be adverse to his right, E was afraid that the Zemindary would not be granted to him, and as he had pretended to be a son of C, he forged a petition as if it had been drawn by C three days before his death, (dated the 27th March 1820) to the Collector, stating that he was named by C as his heir, and obtained thereto the signatures of some mean persons viz., a peon Thotacoonda Coormunna and a half-caste man Ayethum Appennah. The petition was on the 11th May 1820 sent to Mr. Smith, the then Collector, and it contains a statement that the C had named E as his heir. A certified copy of this was marked A and filed by the defendants in the original suit.

9. That Mr. Smith recommended E to the Board of Revenue on the 7th June 1820, as the heir, but the Board with that recommendation forwarded a letter dated 19th June 1820 to the Collector, directing him to report clearly upon the matter, after a full enquiry, and remarking at the same time that it is astonishing to find that the petition (about the heirship of E, dated 27th March) was not filed until the 11th of May. Mr. Smith thereupon insisted pertinaciously on his recommendation.

10. An order dated 1st July 1890, was sent by Mr. Smith, to E, directing him to appear and explain the cause of the delay which had occurred in forwarding the petition of the 27th

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March, and also to prove it. E, together with the false witnesses (who attested the petition at issue,) appeared and submitted a petition stating that it was delayed by Gootteemookala Ramachendra Rauz, in whose hands it was given for presenting to the Collector. Mr. Smith admitted this plea without enquiring into its truth, even by taking a deposition from the said Ramachendra Rauz, but he took the depositions of the false witnesses who attested the said Urzee without causing them to be sworn, which, and in the absence of the opposite party. Their depositions are therefore unworthy of credence. They were marked F and G, and filed by the defendants.

11. The whole of the record was forwarded to the Board by Mr. Smith, but it did not satisfy the Board as to the right of E. The Board having pointed out many suspicious passages into the right of D, as a younger brother of C, ordered him to keep the Zemindary under attachment until they declared and pointed out a heir, but Mr. Smith never did so.

12. Mr. Smith neither held proper enquiry regarding the right of D nor did he take into his consideration the report of Neilacunta Rauz, (uncle of E) and that of his son Rama Rauz, to the effect that E is not the heir of C, and that he had committed forgeries to make himself appear the heir; but he again in his letter dated the 24th November 1820, recommended E to the Board of Revenue as a heir, maintaining the evidence given by the false witnesses to the effect that the D was dead and that his sons born to an unmarried woman cannot become heirs, the Board having thereupon comprehended that Mr. Smith, favorably supports the cause of E, issued an order dated 22nd January 1821 resolving that if there be rightful heirs they may bring a Civil suit to establish their right, and that E alone should pay the kists, since the Zemindary was at the time under the usurpation of E. The exertions of Mr. Smith alone was the cause of this order. In fact E being the grandson of an unmarried man, possesses no rank of a greater degree than that of the sons of D, and there was no necessity for C to nominate E (who had attained his majority) as his heir, while the sons of D were under his protection. If the petition dated 27th March 1820, (which pretends to declare the heirship of E) had been written on the same date, it would have been sent to the Collector while C was alive, or it would have been enclosed in the first petition of E, dated the 1st April or some mention would have been made at least, in that first petition, and further if it be true he need not have stated in his first petition that he was the son of C, nor would there have been any necessity to delay its presentation about 45 days, though it was given into the hands of others. These circumstances show, it is respectfully submitted to your Honorable Court, that there was no evidence to support the claim of E to the property in dispute.

13. That E having thus possessed the Zemindary under the influence of his father, inflicted several annoyances on the wife of C and also on the appellant. Chellammah the wife of C being unable to suffer such annoyances, went into the forest and caused the father E to be killed, and the E caused her to be killed.

14. The appellant and his younger brother were helpless in the forest for some time after the death of Chellammah. E afterwards being unable to suffer the disgrace of dispossessing them from their rights, brought and kept them under his protection. Since E has carefully and obediently treated the appellant without giving him room to institute a suit; he remained quiet in peace with him.

15. That E died in the year 1830, leaving behind him two unmarried daughters and a widow Soobadrammah, marked E, who exercised a great stratagem and took possession of the Zemindary.

16. That as the appellant attained his majority at the death of E, he attempted to bring a suit for the recovery of the Zemindary; which being brought to the notice of F (Soobadrammah) she consulted about it with the Zemindary officers, and sent for the appellant, and stated to him that she would write to the Collector, requesting to deliver the Zemindary over to him, that he may not try for it, and that he must protect her and her daughter in so doing; promising thus she caused a petition to be drawn by one of the servants there present, with the above contents, and gave it to the hands of one Achyah, her Sowcar, and sent him away to his country (which is 20 miles distance from that place) saying that he will present it to the Collector.

17. That the correspondence between Achyah and E was unknown to the appellant. Achyah prepared a petition for putting the Zemindary in possession of F alone, and forwarded it to the Collector and tried for it with all his best efforts, which was unknown to the appellant; but shortly afterwards an order was issued nominating F as a heir. Neelacunta Rauz, (the uncle of F) and his son Rama Rauz sought for the recovery of the Zemindary; but their claim was dismissed.

18. That the appellant thereupon had a dispute with F regarding the trix played by her, who immediately went to the Ameen and caused him by bribe to forward a false report communicating that the appellant had attempted to do some mischief. The Collector believing that report ordered the body of the appellant to be seized wherever it was found, and in the event of their being unable to seize him alive, to shoot him at once. The appellant who heard this, and who had been sometime in hiding, managed after a great trouble to see the Collector, and revealed to him the truth. The Collector having thereupon held an enquiry, reversed the former Hookoom, and issued another Hookoom to the Ameen, under date the 19th September 1832, cautioning him not to write again such false report and that he would be punished if he does so again. The appellant was then exonerated from blame and lived unmolestedly.

19. Mr. Russell was then appointed as a Commissioner to suppress the mischiefs of this part of the country. The appellant frequently went to his place, and explained all the particulars of his case. This gentleman promised him to examine into his case, but he never did so. The appellant was at last ordered to bring a Civil Suit and the said gentleman left that place.

20. That F continued to prevent the appellant from instituting a suit by persuading the Sowcars not to assist him with money and by threatening the inhabitants of Zemindary not to give their evidence on his behalf; but the appellant strongly persisted in his endeavours. That F thereupon came to the appellant while he was at Chicacole and told him to enjoy the Zemindary promising that she would soon get it to be put in his possession and so she discharged at the same time all the debts involved by the appellant and kept him in her protection. The appellant then remained quiet inasmuch as his endeavours proved ineffectual, and he was then unable to sue E and F during their enjoyments.

21. That E and F had two daughters the younger of whom was married to a man of her own caste, but the elder possessing no good character was married to a man of mean caste and thereby she was not permitted to have any intercourse with her own caste. She had a son marked G (Sooreanarraina Rauz) who being the son of another caste-man should of course be considered as out-caste.

22. That F departed this life in the year 1841. Her son was then aged 4 years. The G then applied to Mr. Arbuthnot to appoint him as the next heir, and the appellant also applied praying to put in his possession the Zemindary belonging to his ancestors. That gentleman named G as a heir to the property in dispute and forwarded to that effect a report dated 18th June 1841 to the Board of Revenue, who accordingly sanctioned by their order dated 6th August 1841. This was effected by the exertions of Mr. Arbuthnot.

23. That the appellant thereupon presented petitions to the Board of Revenue and to the Governor in Council, explaining clearly the reasons of his cause. These pleadings continued to last up to the end of the year 1843. Mr. Arbuthnot and Mr. P. B. Smollett who held the service of Governor's Agency during that period, sought many stratagems to injure the appellant, since they were the guardians of G. The difficulties that happened then to the appellant cannot be expressed, if they were explained they would be an accusation against the Agents.

24. The Governor in Council in the Minutes of Consultation, directed the appellant to institute a civil suit for the recovery of the Zemindary, since the sanction to G cannot be reversed unless a Decree in the Civil Court be obtained. Mr. Arbuthnot, the then Collector, informed the same to the appellant by his letter dated 30th January 1844, which was filed in the original suit by the appellant, and was marked G.

25. That the appellant requested the Board as well as the Government to point out a Court wherein he may jointly sue Mr. Arbuthnot and Mr. Smollett together with the other defendants. They never did it; but ordered him to prefer a plaint in the Agent's Court, against the defendants, exempting the above gentlemen, whose malice was increased by such request.

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26. That the appellant was at last obliged to institute a suit in the Agent's Court of Vizagapatam, in forma pauperis. Mr. Arbuthnot then, the Agent passed proceedings dismissing the suit and directing to bring a suit by paying the prescribed institution fee. This was in the year 1844. Mr. Arbuthnot subsequently resigned his service and went away.

27. That in the year 1845, Mr. Smollett was again appointed to that post. Since he is badly disposed towards the appellant, he waited until 3 years, with an intention of prosecuting a suit after he is appointed to any other Zillah, as it had not happened so, the appellant instituted a suit before Mr. Smollett in No. 78 of 1848. That gentleman held a deep consultation for reversing the suit, but finding no ground to bring his desire into operation, kept the suit in the file until the year 1850, without holding any enquiry into it, and subsequently proceeded to England.

28. That Mr. Robertson was immediately appointed to that place, who, with a pure heart, held an impartial examination into the matter; but he has at last erroneously resolved under the answers of the Pundits that he cannot admit the custom of hill caste, viz., to award the property to a son born to an unmarried woman, and reversed the suit by a decree dated the 1st October 1853.

29. That an appeal from such decree was made on the 14th March 1854 to the Governor in Council under the 20th para. of the Agency rules which was written on plain papers. The Governor in Council having received it, held the Minutes of Consultation on the 17th February 1855, and recorded therein that the heirship of a son born to an unmarried woman cannot be denied among the people of the hill caste, that this custom is manifest on the face of the report of Mr. Russel, written in the year 1834 regarding the Keemeedy and Paulcondah Zemindaries, that some Zemindaries were accordingly granted to the sons of unmarried women, that such custom could not therefore now be struck off, that the Pundits answer given in this must be cancelled in as much it is necessary in a matter of this nature, and that as the plaintiff is admitted to have been born in the family of Coorooppam, the Acting Agent should examine the aged people about the custom of the country, and pronounce a decree after a due examination. Mr. Robertson retired from his service, and Mr. Smollett was again appointed to Vizagapatam.

30. That when Mr. Smollett again put this suit into the Court file in No. 41 of 1855, the appellant presented petitions under date the 3rd and 19th April and 5th October to the Governor in Council, praying to transfer the suit to any other Judges, since the said gentleman from the very commencement of the suit is enviously disposed towards him, and will therefore as an able writer as he is, create injury to him; stating also that he cannot obtain justice to his case, if it once be decided against him, but the Governor in Council never complying with his request, ordered to go on according to the above Minutes of Consultation.

31. That Mr. Smollett without holding any examination into the matter sent for the appellant and advised him to enter into compromise agreeing to allow an half portion of the said Zemindary to the defendants, but he refused to do so considering himself that it will be improper to divide the Zemindary into portion, inasmuch as it has hitherto been enjoyed in succession by one particular individual of the family, and now in dividing it the appellant himself will be the cause of losing his own ancestral property.

32. That Mr. Smollett passed a decree under date the 11th July 1856, dismissing the appellant's claim, and quoting the rules that are applicable to the common Zemindaries, and awarded the permanent Zemindary to the opponents, recording his reasons that inasmuch as the Zemindary was put in possession of E in the year 1821 and was in succession enjoyed by F in 1830, on the unanimous consent of all members of the family, and that as the appellant never raised then any objections, it cannot at present be taken from their enjoyment. That the time for appeal from such decree was only allowed a month, which should under practice be granted for 3 months.

33. That there being no sufficient time to come and prefer an appeal in the Government, an Appeal Petition was prepared there alone and was put in the Agent's Court. Mr. Smollett with an intention to subject the appellant to loss, forwarded a letter to the Governor in Council asking their opinion whether he may receive an Appeal Petition written on plain papers or not. The Government in reply, ordered him not to receive such petitions, and therefore the appellant is obliged to pay 1,000 and odd Rupees. It is not mentioned in the 20th para. of the Agency Rules, enacted for preferring appeals, that an appeal to Government must be written on stamps, as such, it is

improper to receive from the appellant the fee of stamps which is contrary to practice and further the Appeal Petition which was lately preferred to the Government, was written on plain papers. The Government not being a Judicial Court, it is unjust to receive the stamp duty. The Governor in Council never took this into their consideration, but after all the enviousness of Mr. Smollett was alone the cause of this loss.

34. That the said appeal being forwarded to the Government, they passed a decree confirming the decree of the Agent under date the 13th January 1857. These two decrees are contrary to Hindoo law, regulations, and to the practice, gentlemen. The appellant was not only subjected to a great loss by E and F, and by the Agent, but also he is totally injured by the Government. That as the appellant is greatly aggrieved thereat, and expects now for your impartial decree, it is submitted that your honor should patiently peruse all the foregoing particulars of the suit, and also the grounds explained hereunder, and do justice.

35. That there are 7 or 8 kinds of hill castes in the Zillah of Vizagapatam. All these were of one and the same caste in the beginning. The Bagavata Pooranam teaches that this caste had been connected with the Chatreyas (the 2nd class of Hindoos.) Though the appellant quoted that part of the said pooran in his reply, yet Mr. Smollett observed that there is no proof of its being an ancient caste, which observation is baseless.

36. That in this caste there is no distinction whatever between a son born to an unmarried woman and a son born to married woman. They both may unobjectionably inherit an ancestral property. This custom is observed from the beginning, as such, it cannot be now changed. If the authorities attempt to abolish such custom, it will be contrary to justice.

37. That these people served as Surdars under the Rajahs of Ilayapooram, who formerly governed the whole of this forest country, when this Rajah raised an expedition against the eastern countries, these people assisted him in conquering many countries, and so obtained from him as a reward, the undermentioned Zemindaries, viz., Marungee, Coorooppam, Saloor, Sungum, Valasa, Pauchepenta, Palacondah, and other Zemindaries, which were granted them to enjoy for ever and ever, and as such, this property should not be transferred or divided in any respect.

38. That the Zemindaries, being thus granted long ago, had not hitherto on any occasion been divided into portions, but they are governed and enjoyed successively, by the elder heirs of the families.

39. That the practice of nominating a cousin as a Zemindar in the event of their being no male issue to the Zemindars and his brothers, has been observed by the Hyderabad Government in some of the other Zemindaries of this district; but in the hill Zemindaries, not even this custom is observed; still such practice is agreeable to the Hindoo law.

40. That after this district was assumed by the English Government, they have enquired the particulars of the hill Zemindars, and thereby understanding that they were permanent Zemindaries issued Istemerar Sunnuds under Regulation 25 of 1802. Under such permanent settlements, the Zemindaries have been by hereditary right succeeded by the Zemindars. The rules that are applicable to the common Zemindaries, cannot be deemed applicable to these hill Zemindaries.

41. That Mr. Smollett has erred in observing in this suit that Sir T. Munro, and some other gentlemen resolved to apply to these Zemindaries, the rules laid down for the common Zemindaries, inasmuch as the 13th para. of the Agency rules enacted in the year 1839 for Vizagapatam and Ganjam Zillah, provides that the rules under which the Government nominate heirs to the common Zemindaries cannot be applied to the Zemindaries that possess the Istemerar Sunnuds. Had Sir T. Munro and other gentlemen resolved as aforesaid how would it be possible to laid down in contrary to this the rules recently enacted.

42. That Mr. Smollett also objects that the 13th para. of the Agency rules is erroneously enacted inasmuch as the whole of the Zemindaries in the Zillahs of Vizagapatam and Ganjam, are permanent Zemindaries, but the appellant submits that Istemerar Sunnuds were at first only prepared to whole of the Zemindaries; but they were not granted to 12 or 13 Zemindaries, viz. Paloor, Boodarsing, Beredy, Parthapageerco, Saroogada, Soorungee and Bramahnorachee and other Zemins. The Sunnuds written for those Zemins are still in the Agent's office at Ganjam, and therefore they are called common Zemindaries. All the other Zemindaries except them have been granted with Sunnuds, and as such, they are called permanent Zemindaries

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There being thus two kinds of Zemindaries, the 13th para. of the Agency rules was purposely framed to explain their distinction. This para. therefore is not an erroneous one, without enquiry into this, the Governor in Council observed in their Decree that this para. may now be altered. Your appellant submits, that it will not be judicious in so doing, and the Government in that case will become the usurpers of the right of Zemindars. On perusing the certified copy marked B (submitted herewith) of a letter of the Governor's Agent forwarded to the Court of Sudr Udalt, under date the 5th December 1856, it will be apparent that there are common Zemindaries in the Zillah of Ganjam. If a reference be made to that Agent, he will explain about the Zemindaries that bears no Sunnuds.

43. That these hill Zemindaries being permanent estates, the rules enacted for common Zemindaries cannot be deemed applicable to them, unless the Regulation 25 of 1802 and Istemerar Sunnuds be cancelled.

44. That the permanent Zemindaries are under practice enjoyed in succession by the elder members of the families, and as such, they possess only the power of enjoying them, but not of surrendering them as they wish, any of their cousins setting aside the right of their legal heirs, and even the Governor in Council may not nominate any one as he pleases.

45. That if the legal heirs be deprived of their right of enjoying the Zemindary, it will be quite contrary to Hindoo law and practice. The C never nominated E as his heir, but E himself usurped the Zemindary, by committing forgery, and even if it be granted that C has nominated E as his heir; yet such nomination may not, under Hindoo law, fall on a cousin's son, who is married, and aged about 19 years, and who is the only son of his father.

46. That although the authorities found that the appellant, the elder son of D, is the next heir of C, yet they have set it aside on the plea of his being the son of an unmarried woman, but it is astonishing to find that they did not consider the right of E, being himself the grandson of an unmarried woman. The authorities having thus erred in their irregular examination, it cannot at all confirm the right of E.

47. That although the appellant, who was a minor at that time, never preferred a claim, yet one Neelacunta Rauz (the uncle of E) and his son Rama Rauz, objected to its (Zemindary) being put in possession of E, and pleaded that all the members of the family would not agree to it, suppose they had agreed in so doing, it would not present a bar to the appellant's right.

48. That under these grounds, it is manifest that E and in his succession F were unjustly nominated to hold and enjoy the Zemindary in question. That by such mere enjoyment, the right of the appellant, as a next heir of C, cannot be barred, inasmuch as his right by birth is depending on him alone. The E and F possessed only the Zemindary, and not the right of inheritance, a fact of which will be made apparent by an impartial view of this petition.

49. That E having usurped the Zemindary in the year 1821, kept the appellant in his protection until the year 1830, and subsequently in the year 1831, F having usurped it, exercised her trix until 1840 in preventing the appellant from his attempts of instituting a suit, and therefore the attempts of the appellant had not come to operation until the death of both the above parties. The pleadings of the appellant commenced in the year 1841. It is improper to resolve that the Zemindary may not again be taken from the appellant's possession on the plea of its being enjoyed successively by two of them, when the truth is found, it is improper to leave it without being considered.

50. That it is said in the Durmasastras that if the Dayaboga property had been usurped and enjoyed by strangers even for a long period of 100 years, the same may be taken again from their enjoyment, and may be surrendered to the legal heir, provided his right be proved. This is more clear in the 21st and 22nd pages of the 2nd Volume of Sir Thomas Strange's Hindoo law. The appellant submitted a Review Petition to the Governor in Council, under date the 20th March 1857, praying to decide the suit under the provisions of the above law; but they endorsed it stating that they would not interfere with it. A copy of that petition is herewith submitted, and is marked C.

51. That next heir must succeed the permanent Zemindaries like a daily account book in which if a wrong date be entered in the centre, it would not be creditable, unless it is altered or

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corrected, in like manner, the Zemindary may be released from its usurpers the E and F and may at the same time be surrendered to the appellant, who is the next and immediate heir of C.

52. That the long enjoyment of the opponents cannot present a bar to the right of the appellant, inasmuch as the property of this nature cannot be bound by the statute of limitation; which rules being only enacted for the documentary suit. This fact will be made apparent on reference to the Sudder Court's decrees and the decree dated 3rd February 1836, of the Parliament.

53. That the appellant was aged about 12 years when E usurped the Zemindary, and there being six years more to meet the majority of the appellant, they have elapsed during its enjoyment by E and F the claim of the appellant being commenced in the year 1841, it is clear, that only 14 years were delayed by the appellant. By such delay alone, the claim of the appellant to his paternal estate cannot be rejected.

54. That the female heirs are not entitled to hold and enjoy the permanent Zemindaries until male heirs exhausted in a family. This is more clearly maintained under Section VI and VII Act XXX of 1839, and also under an answer of the Pundits marked C, and filed by the appellant in the original suit. It is therefore improper to put the Zemindary in possession of F while male heirs were alive to inherit the same. The Zemindary was thus usurped by F in the year 1831, and the appellant within 10 years from that date instituted a suit viz., in the year 1841. If your Honorable Court do not like to set aside the enjoyment of E, the enjoyment by F (a woman) may under Hindoo law, be set aside. This was not at all considered by the Agent and by the Governor in Council.

55. On the ground of the Zemindary being enjoyed by E and F, it was put in possession of G, who is not connected either with the family or with the caste of Coorooppam Zemindars, but he assumed their family name, though he is a daughter's son of F. If this Zemindary be not surrendered to the appellant, it would soon lose the family name of the former Zemindars of Coorooppam, and therefore it is improper to leave it in possession of a man not connected with the family and caste of the Coorooppam Zemindars, such unjust had not hitherto been done by any of the former Governments. No sooner was the Zemindary put in possession of G then the whole of the hill people of Vizagapatam and Ganjam Zillahs, forwarded petitions to the authorities praying to release the Zemindary from its present usurpation, and grant it to the appellant, which the Governor in Council never took into his consideration.

56. It is therefore prayed that the records in the Original and Appeal Suits may be patiently perused, and the decree of the Governor in Council passed under date the 13th January 1857, may be reversed, thereby pronouncing a decree awarding to the appellant the Zemindary in question, together with all the costs incurred by him. That the Privy Council in their decree quoted above in para. 52, resolved that the statute of limitation cannot be applicable to the Zemindaries, and that the Zemindary, which was about 30 years in the enjoyment of strangers, must be released from their enjoyment and surrendered to the rightful heir. Appellant therefore prays that, that decree must be perused and that a final decree might be passed.

And the appellant, as in duty bound, will ever humbly pray.

శ్రీ వ్యరీచెర్లా జగన్నాద రావు.

STREE VYREECHERLA JAGUNNADA RAUZ, Bahadar Gauroo.

12th June 1857.

likely to lead to the peace of the country.

SIR,

2. The sale of the estate will not be completed till an answer to this reference is received.

(True Copy.)

Stamped by the Governor's Agent.

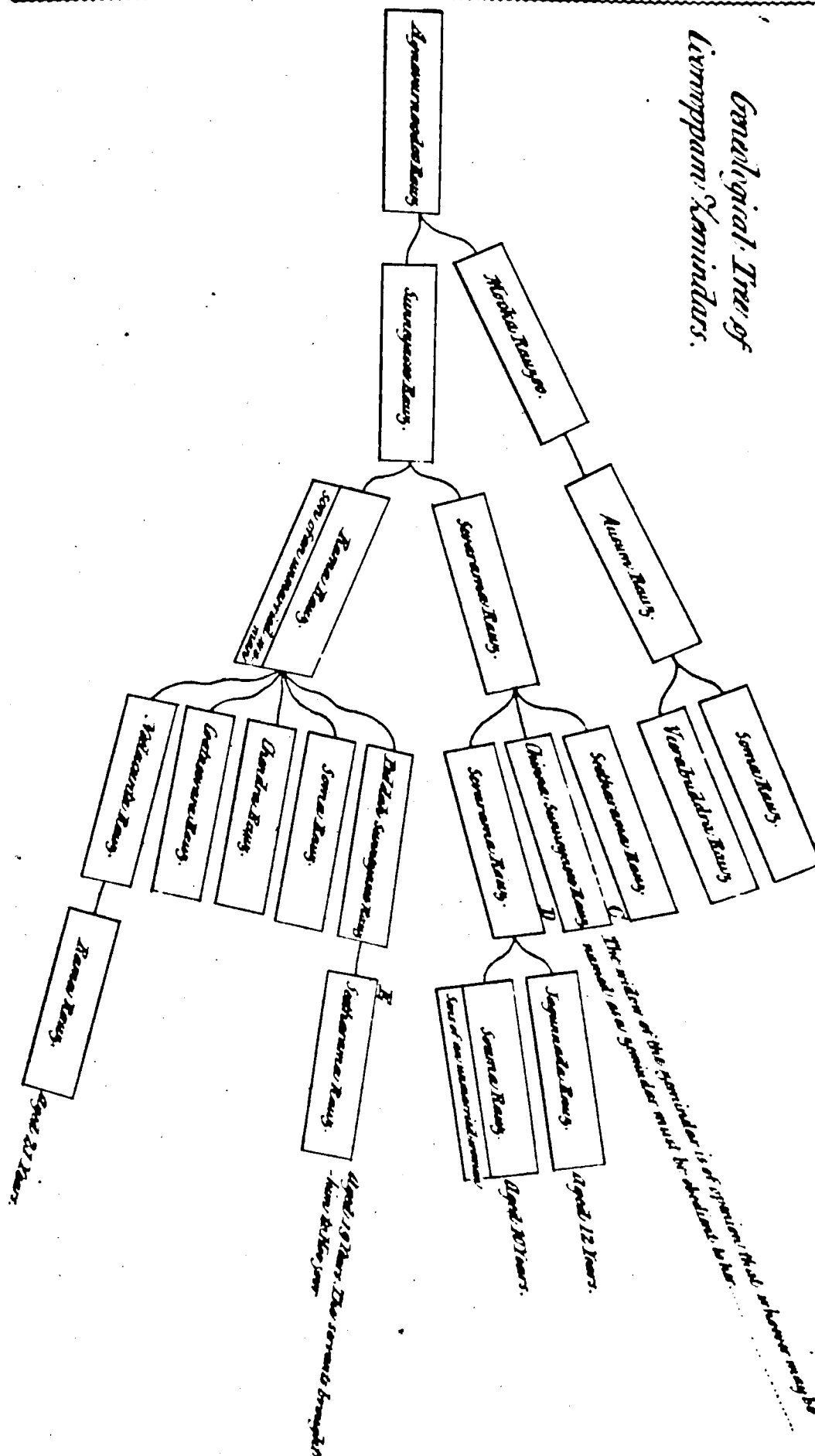
C.

The humble Petition of Stree Vericherla Jag-nadaraux, Bahadar, appellant in the Decree passed on re-trial of Suit No. 41 of 1855, by the Governor's Agent's Court at Vizagapatam. .

That petitioner earnestly solicits for a re-consideration of the Decree passed in this case by your Lordship in Council on the 13th January last, because the reason alleged that his just and legal right to the Zemindary is invalidated, in consequence of its having been enjoyed by two persons in succession, is not equitable or in point of sastry, nor is it consistent to the existing usage; it is mere plea newly invented to pervert law. Nevertheless did Government take into consideration whether such a procedure is in accordance to Hindu Sastra or not, thereby petitioner is causelessly ruined. It occurs that within 10 years, 4 or 5 heirships terminates, and sometime each heirship continues till 50 or 60 years, for which there exist no reasonable limit of time, consequently the disposal of suits appertaining to lands on the ground of such heirship, cannot, petitioner begs to submit, be considered justifiable.

That the Hindu sastra is the basis by which suits in connection with all sorts of rights of Hindoos, are to be adjudged, but the authorities are under no other circumstances to dispose them irrespective to that sastra. In the above sastra, it is clearly prescribed that though the rights of paternal estate of land, which should justly inherit to one who is in an infant state, had been deprived by any other person and enjoyed by himself and his successors for any length of time, yet the right of the minor to such estate of land is not ceased, and that after the attainment of his

likely to lead to the peace of the country.



proper age should he prefer no suit within the space of 20 years, he loses only the produce derived during the above 20 years, which circumstance is duly recognized by Sir Thomas Strange, in paras. 21 and 22, volume 2 of the Hindoo law, and by Mr. Mcknoughton, in Chapter 11 and 12, of the Mahomedan law, a reference to those volumes on being called for from the Court of Sudr Audalut, petitioner confides that the reason in connection with these points will be apparent to your Lordship in Council, while the stipulations of the Hindu sastras in development of the important reasons and circumstances are so glaring, petitioner regrets to state that your Lordship in Council have screened his just right, persisting in the cause newly invented by the Agent, that two heirships had passed in succession.

Petitioner further begs to state, that a material defect is involving in the above alleged cause, that two heirships had been passed in succession, viz. in the year 1821 when petitioner was a minor, the late Seetharamarazoo obtaining possession of the Zemindary, continued to hold it until 1830, and his widow Soobadramah, from 1831 to 1840, the period of their enjoyment if reckoned, amount to about 20 years and from 1841 petitioner's suit being in progress, this period which elapsed since is by no means to add with the above. During the interim of the said 20 years, petitioner did not attain his proper age until the end of Seetharamarazoo's enjoyment, and in Soobadramah's management, though petitioner had attained his proper age, but by her intrigues his suit was not publicly brought forward, the question issue as to the period in which his suit was not brought forth is no more than that, at which Soobadramah held the Zemindary, the period of her enjoyment is only 10 years, hence it rests your Lordship alone to consider how far the allusion made that his claim to the paternal estate of land which being right of birth, should unhesitatingly inherit to him, had ceased under a mere plea that his suit was not brought forth within the said 10 years, would be justifiable.

Petitioner begs to submit that there is another circumstance to be deliberately weighed by your Lordship in Council, that the Sunnid Milkiet Istemerar were only prepared to certain Zemindarees in No. 12 or 13, viz., Paloor Boodarasing, Berady, Prethapagerry, Sarroogedda, Soorungee and Beamanorachee &c. in Ganjam Zillah, and which were filed in the records of the Agent's office, but they were neither delivered, Cabolyits were taken from the holders of these Zemindarees, consequently these Zemindarees were exempted from the provision contained in Regulation 25 of 1802, the exercise of power over these estates, is vested in Government. The holders of all other Zemindarees in Ganjam and Vizagapatam Zillahs for which Sunnid Milkiet Istemerar were issued, possess right themselves. As there exists these two distinct descriptions of Zemindary, Ganjam Zillah, Government at the time of introducing Agency Rules for Ganjam and Vizagapatam Zillahs, have taken in their deep consideration of the circumstances connected with the above Zemindary, stipulated in Clause 3, para. 13th of the Agency Rules that the power of nominating heirs to such Zemindaries for which no Milkiet Istemerar were issued out should be vested in Government and that this stipulation is inapplicable in the cases of other Zemindaries for which Milkiet Istemerar were granted. Mr. Smollett having raised objection to the above Clause, without considering the original circumstances on which it is founded, your Lordship in Council expressed an opinion that this clause can be reversed, at present such a procedure petitioner regrets to submit cannot be proper, for it would be that Government alone are depriving the right which the Zemindars possess to the estate for which permanent cows are granted, a transaction of such a nature cannot be considered equitable. If Government will be pleased to call upon the Agent at Ganjam for information regarding such Zemindars for which no cows are issued, the truth of which will be apparent to your Lordship in Council in proof of which petitioner beg to submit an authenticated copy of a letter addressed by the Agent at Ganjam to the Court of Sudr Adalut in the 6th December 1856, regarding Berady Zemindaree.

Thus a contrary Decree is produced in this case in breach of the Hindoo sastra and usage. On petitioner expressing his unwillingness to receive a portion of Zemindary and its estates, the Agent is prejudiced against him and evaded regarding justice to him, this circumstances Government did not properly take into consideration, the Decree now passed in this case is originated from an erroneous course, while petitioner's right is by sastras and usage a valid one, he feels reluctant to state that the act of giving away the right of his family to one who is of a different family without means for petitioner's subsistence cannot be justifiable. Were your petitioner to appeal to the Home authorities, it is apprehensive that much time would elapse before he could obtain due redress. An exposure of petitioner to such an inconvenience and difficulty

will not be virtual to Government. A Pedigree is herein respectfully enclosed with particulars in elucidation of the nature of this case, petitioner confides that your Lordship in Council will in kind consideration of the reasons which the Court's Pundits may afford in virtue of the Sastris on your Lordship's referring to them either the Pedigree or a question on this head as may seem proper to Government be graciously pleased to pass correct decision and until which time to order the retention of the estate without delivering to the defendant.

Petitioner further begs to solicit the attention of your Lordship to the temporary sanction which the Government passed under date 22nd January 1821 of the estate in the name of the late Seetharamarajoo and the provision contained in Section 7th of the Act No. 30 of 1839.

In the year 1820 the Board of Revenue and Government not having approved of the adoption of the late Seetharamarajoo, which circumstances is not entered in the enclosed Pedigree. 20th March 1857.

(Signed) S. V. JAGANNADAROO.

No. 47. ORDER THEREON, No. 812; dated 13th July 1857.

The Petitioner, who brought an action of ejectment for the recovery of the possession of the *Coopam* Zemindary in Vizagapatam, and carried the same unsuccessfully, in appeal* before Government, now forwards a memorial or petition of special appeal for submission to the Honorable Court, and prays that the balance of money to the credit of the Estate, now lying in the General Treasury, may, pending the Honorable Court's decision, be kept in deposit.

2. The Government decline to comply with Petitioner's request; nor are they able to forward his special appeal, there being no legal provision for the further litigation of his alleged rights.

3. In Extract Minutes Consultation dated 13th May, No. 557, it is observed that an arrangement suggested by the Agent for the maintenance of Petitioner out of the funds of the Zemindary (the young Proprietor being the Agent's ward) was approved of, as likely to tend to the peace of the country. The Government understood from the Agent that all differences would thus be terminated: Petitioner however now states that he never wished to have maintenance assigned to him, and that he will not relinquish his claim to the Zemindary in any case.

4. The Agent will inform the Petitioner, that, as the question of proprietary right has been finally settled, they recommend him to accept in a proper spirit the proffered bounty, and desire at the same time to warn him that any turbulent and factious interference in the affairs of his young kinsman will serve only to bring him, the Petitioner, into ruin and disgrace.

(Signed) E. MALTBY,
Acting Chief Secretary.

Enc. F. Cartridge.

your ward was approved of as likely to tend to the peace of the country.

Read the following Petition from
Theravayala Jagannadraswamy
 appellant in the suit decided
 by Gt. under date 13th Jan 57.

The Petitioner, who brought an action
 for the recovery of the post-
 office of the Coopamun Jagannadraswamy
 in Vijayapattanam, and carried the same,
 & since the Court of Justice, in a speech before Gt.,
 the Court of Justice, now forwards a Memorial on Petition
 dated 13th Jan 57.
 of Special Appeal for submission to the
 Honble C^t, and prays that the balance
 of money to the credit of the Estate, now
 lying in the General Treasury, may,
 pending the Honble C^t's decision, be kept
 in deposit.

1. The Gt. declines to comply with Petitioner's
 request; and as being able to forward his
 Special Appeal, here being no legal pro-
 vision for the further litigation of his
 alleged rights.

2. The Gt. M. Co. dated 13th May 1857.
 it is shown that an arrangement was
 made by the Agent for the maintenance
 of Petitioner out of the funds of the Jagannadraswamy
 (the young Proprietor being the
 Agent's ward) was approved of, as
 likely to tend to the peace of the country.

Rule XX. Rules
 framed under act
 No. XXIV of 1839.
 vide C.O. B^t Rev.
 Vol I. P. 563.

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4. The Agent will inform the Pat^r, that,
as the question of proprietary right
has been finally settled ~~it is~~
~~his intention he would his father~~

4-5-7

Sept 18th

[illegible]

