M.R.O. 1—30,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial **DEPARTMENT.**

G.O. No. 851 Press Mis.

319-320

Dated 31 - 8 - 19 - 1936

41/40

Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department,
31*st May* 1866.

Read the following:—

No. 319. To the Right Honorable Lord NAPIER, K. T.,
Governor in Council, Fort Saint George.

The humble Petition of MOOTTOOSAMY CHETTY, late Sheristadar of the Civil Court of Madura,

My Lord,

Dissatisfied with the Orders of the Government, dated 20th November 1865, on his Petition of Appeal, No. 2417 of 1865, your petitioner submits, herewith (in Triplicate), a Memorial to the address of the Right Honorable the Secretary of State for India, which it is respectfully solicited may be ordered to be despatched to that Noble power.

2. It is further requested that your petitioner may be informed of its having been forwarded to the destination.

Shall ever pray.

Madras, 15*th May* 1866. (Signed) T. MOOTTOOSAMY CHETTY.

No. 320. Order thereon, 31st May 1866, No. 851.

Ordered that the Memorial received with the foregoing letter be forwarded to the Right Honorable the Secretary of State for India.

(True Extract).

Chief Secretary.

Exd. J. H. Burns.

TO

THE RIGHT HONORABLE THE SECRETARY OF STATE FOR INDIA.

The humble Petition of T. MOOTTOOSAWMY CHETTY, *late Sheristadar of the Civil Court of Madura under the Presidency of Madras.*

MOST HUMBLY SHEWETH,

1. This is an Appeal against the orders No. I., passed by the Local Government of Madras on his Petition No. 2417 of 1865 declining interference with the Proceedings No. II., of the High Court dated 1st April 1865 virtually confirming those No. III., of the Civil Court of Madura dated 22nd December 1864.

2. Your Lordship's Petitioner's is a case calling for more deliberate consideration than falls to the lots of the generality of Petitioners, and which therefore deserves to be disposed of with justice which he failed to obtain from the reason of the none-interference of the Local Government; A general assurance or confidence being spreaded over the Native land that the justice which may have not been done by the Indian Authorities floats in a lively state by the Home Authorities by going through all papers connected with the case, weighing their intrensic and external bearings, hence this Appeal.

3. The particular cause which gave rise to your Petitioner's being brought to a deplorable state, *i. e.*, loss of the Office of Sheristadar which he held in the Madura Civil Court, is as hereunder mentioned.

4. The High Court at Madras in their Proceedings dated 23rd January 1864 directed the Madura Civil Court to execute the Decree of the Privy Council in which Kattama Nachiar was winning, and Rajah of Shevagungah, loosing, parties.

5. The Civil Judge Mr. Cotton appointed your Petitioner, Sheristadar of the Court, on the 8th February 1864 to be Receiver and Commissioner of Shevagungah Estate with orders to prepare the Account of, and report on, the Mesne profits of the Estate in executing the same Decree.

6. Your Petitioner has accordingly entered upon the duties by preparing the Accounts, and levying from the Ex-Zemindar and paying to the winning party a large sum as 5 lacs of Rupees in specie and property. The quantom of works performed by your Petitioner is detailed in Document No. VIII.

7. As your Petitioner was preparing the accounts of the Mesue profits the Civil Court directed your Petitioner to see the large amount refunded by the Ranee, the High Court having in their Proceedings of the 12th August ordered to forthwith collect the amount.

8. Upon your Petitioner's communicating the circumstance to the Ranee and her accredited Agent Mr. G. F. Fischer, this Agent after consulting with his Master pleaded his unwillingness to refund the amount on the ground that while the whole Zemindary was made over to him under the Decree of the Privy Council he has no occasion to refund but your Petitioner with reference to the High Court's Order pressed him for the

refund, and on his appealing to the Civil Court, it rejected his prayer, and at the same time directed your Petitioner to attach the Zemindaree and carry on its business until the refund is made in full. Vide Proceedings H.

9. Kattama Nachiar the Decree holder and her Agent Mr. G. F. Fischer entertaining displeasure against your Petitioner for having perimptorily demanded the refund and particularly in consequence of your Petitioner having set the actual value for several articles which Mr. Fischer had disposed of and for which he attempted to set less value, has at last refunded the amount with difficulty and got the Zemindary released on the 8th November 1864.

10. Your petitioner as Receiver and Commissioner having had to prepare the accounts of the mesue profits, and to conduct the affairs of the Zemindary during the period it was under his management which devolved upon him by Civil Court's order, as also the preparation having been impeded by some other causes mentioned in his explanation B. Mr. Fischer and another Agent Soobramania Iyen in consideration of that heart burning which they felt by your petitioner's press demand of the refund alluded to, have jointly presented a petition No. 412 (A) to the Civil Court on the 14th November 1864 charging your petitioner with having neglected the speedy preparation of the accounts of the mesue profits, and to submit his final report to the Court, all this with improper motives.

11. Upon the said complaint being sent to your petitioner for explanation he has on the 26th November, submitted his explanation B.

12. On the 13th December 1864 the Acting Civil Judge Mr. Pelly heard the case and examined 13 witnesses for complainant, and 7 for your petitioner, and then finally disposed of the case in his proceedings No. III., of the 22nd December 1864 being of opinion that the evidence proves Moottoosawmy Chetty (your petitioner) to have endeavoured to obtain a gratification, and that your petitioner is accordingly dismissed from the office of commissioner, and dismissal from this office on the above ground of necessity carries with it dismissal from the office of Receiver and Sheristadar of the Court.

13. Although your petitioner has more than sufficiently explained in his Appeal Petitions both to the High Court and to the Government so that the Acting Civil Judge's conclusion might be quashed off, yet the former authorities inconsideration of the origin of the matter being connected with the Decree of the Privy Council have, it is hoped, consciously been unwilling to weigh the grounds and set aside the Civil Judge's unjust decision, and the latter authorities too the same. Your petitioner being loser of justice from the hands of couple Indian authorities he has no other alternative to have the same justice floated than the patient and impartial authorities of the Home Government which are the next to the providence in every respect. Hence your petitioner takes leave to put them in possession of the succinct nature of the charges imputed to him and the nature of the proofs relied on by the Acting Civil Judge in ordering his dismissal from the office.

14. If among a mass of papers accompanying this memorial, a consideration be given to the proceedings No. III., of the Acting Civil Judge dated 22nd December 1864 it would appear that Ranee Kattamanachiar charged your petitioner with having neglected the preparation of the accounts of mesue profits with some improper motives, that to bring the charge to home against your petitioner, the Civil Judge has (in para. 7) taken 4 out of 13 witnesses for complainant. It is therefore quite enough for your petitioner to comment on the evidence of those 4, and it is also quite just for the Home Authorities to reject or respect their evidence on the reasons and arguments at length setforth in the Document No. IV., as well as the brief reasons hereunder stated.

Proofs of the Witnesses.

1st Witness Mr. G. F. Fischer among other things goes on to say.

"The Commissioner said on the 1st 2nd and 17th September put me down for 20,000 Rs. and give me a bond and that he would show him how to enter it in the account at the end."

Further goes on to say "on breaking up the Meeting he followed me out and muttered I would release the Zemindary for half of what you are going to give Messrs. Benny and Co."

"He muttered while out."

Vide his Deposition No. V.

3rd witness Mr. J. Fischer the nephew of the 1st witness goes on to say.

"Mootoosawmy Chetty said to me if a strong promise were made to him he would expedite the settlement of the question. The promise, my belief is Mr. Fischer paying Moottoosawmy Chetty 2½ per Cent. on the mesue profits."

"As for Mr. Pelly, I would blow him off as the dust from my hand suiting the action to the word."

Vide his Deposition. No. VI.

2nd Witness Choudapier, 4th Witness Yellier, go on to say among others.

"Commissioner told them that if 2½ per cent, were paid to me I would release the attachment, &c."

Witnesses on your Petitioner's behalf.

1. Appasawmy 5th witness.
1. Soobramany Ien 6th witness.

Who disprove the evidence of the 2nd and 4th witnesses for complainant.

Arguments of the Memorialist.

If this were the fact the witness who caused the complaint to be presented on the 14th November (A) must have stated this in detail in the place of "improper motives." Not doing so it is the mark of the displeasure he had against your Petitioner in demanding the refund strictly, and that the witness disclosed in his Deposition this impeachment as a portion of the improper motives."

If this were the fact why would the witness be silent in the complaint of the 14th November (A) without stating so large a demand.

A muttering half expressed and half understood and therefore indistinct expressions are tantamount to no expression, is therefore no evidence; and therefore what your Petitioner may have muttered is not conclusive of what the witness chooses to infer.

The witness being the 1st witness' nephew and Agent to Ranee it is no more surprize to support his Uncle's statement, and view. Believing the promise to be for 2½ per cent. is very rare evidence under any Law to be admitted in evidence even this speech is said to have taken in the Ranees' Palace. How good and convenient place was this to speak a man's wishes publicly.

This is very great uncalled for topic which a man, as your Petitioner is, can legally utter. The witness says that he does not know why your Petitioner said so. How funny is this evidence, must be considered by the Ruling power.

These witnesses are in service under the Ranee and Mr. Fischer, 1st witness it is no great surprize to uphold the impeachment which their employers attach to your Petitioner. In a Cutcherry can a man, as your Petitioner is, ask the remuneration.

The Acting Civil Judge does not rely on the evidence of these witnesses who disprove the statements of the 2nd and 4th witnesses on the ground that they are Gomastah and Amin under the Commissioner (your Petitioner) such disbelief on the evidence of the 1st 2nd 3rd and 4th witnesses for Prosecution

the Acting Civil Judge does not apply, but on the contrary satisfies himself with their proofs whilst those 4 are also under the service of the Ranee and Mr. Fischer.

15. The weight of the evidence of 4 witnesses for complainant is in this such inadmissible shape under any law of evidence however they swore before the Court to speak the truth. The binding and fear of swearing will no doubt stand unbreached if their evidence were for an uninterested 3rd party, but will be considered in the light of a dust when they as is the case in this matter, apt to establish their views for self interest. Hence any reliance whatever which the Acting Civil Judge places upon their evidence is under all laws untenable. For instance your Petitioner must show that the Acting Civil Judge Mr. Pelly who relied on the evidence of Mr. G. F. Fischer and J. Fischer in this case has 10 days before the Proceedings No. III. legally discredited their evidence in other matter as recorded in the Document No. IX.

16. Having stated the nature of the charges imputed to your petitioner, the looseness of the only 4 witnesses proofs in bringing them to home against him. Your petitioner respectfully begs to sum up his arguments as hereunder stated.

1st. Because out of two charges, 1st undue delay in preparing the Mesue profits account, and 2nd improper motives, *i. e.* demanding 2½ per cent. The first point having been already decided in your petitioner's favor in the Civil Court's Proceedings (C) dated 24th October 1864, the Acting Judges re-opening the same point and alluding it in his proceedings under appeal is opposed to the sacred maxims of law, for, no person shall be called upon twice for the same offence; but the 2nd is not established by any evidence except that of the interested parties alluded to, above.

2nd. Because your petitioner is impeached to have endeavoured to obtain gratification; but not as actual obtainer; even for the former, the evidence is as having muttered. Hence in both ways your petitioner deserves not to suffer the total depravation of his long standing Sheristah Office. Your petioner needs not to lengthen at this place for general character, honesty integrity and upwrightness in the faithful discharge of his various responsible duties during a long period of 24 years than respectfully referring your Lordships to the Document I which contains 13 testimonials granted by 9 gentlemen.

3rd. Because the criminal conversation is stated to have taken place on the 1st or 2nd and 17th September 1864 respectively, and yet in 3 petitions (D. E. F.) filed on the 17th, 21st, and 28th October, exactly one and half month after the alleged speech, by the Ranee's agents no attempt was made to allude to this criminal language. Mr. G. F. Fischer himself presented a petition on the 12th October then even no attempt was whatever made to allude to the above language, though he therein complained about the undue delay. The Document G will show that that agent made no other than undue delay.

There was no undue delay on your petitioner's part for the sources of income in the account were more than 500, which your petitioner reduced to 118 items and those of the disbursement were similarly numerous. Besides this your petitioner had to draw a distinction between the private income of the Ex-Zemindar and that of his public ones and find the amount due to 3 broken periods between 1850 and 1862 to 1864 which require to be solved by an exercise of sound and deliberate judgments never to be concluded as hastily as Mr. Fischer desired while he himself admits in his petition is No. VII that the Zemindary accounts are in a confused state, and the commissioner will be occupied 3 or 4 months in taking Mesue profit accounts. Hence it is most true that th

To

C. R. PELLY, ESQUIRE,
Civil Judge of Madura.

THE RESPECTFUL PETITION OF STREEMATOO MOOTTOO VEJIA RAGUNADA RANEE KATHAMA NATCHIAR, BY HER VAKEELS MR. ROBERT FISCHER, AND SOOBROMANIAH IYER.

SHEWETH,

1. That the Proceedings of this Court of the 8th February 1864, appointing its Sheristadar Tho Moottoosawmy Chettiar its Receiver and Commissioner for executing the Decree of the Queen in Council of the 8th December 1863 in favor of Petitioner concludes with the following words.

"It will be open to the Appellant to bring to notice any delay on the part of the said Sheristadar in the performance of his duties which it is not expected will extend beyond two months at the utmost."

2. That Petitioner availing herself of the permission thus accorded her begs to charge Tho Moottoosawmy Chettiar with negligence and undue and unnecessary delay in the execution of the duties assigned to him both in his capacity of Receiver and of Commissioner and believes him to have been actuated therein by improper motives.

3. That in addition to other servants whom the Receiver and Commissioner appointed and Petitioner's Agent paid for (but the particulars of which appointments Petitioner does not know and which she begs may be called for by this Court) Moottoosawmy Chettiar had appointed 14 Ameens each on 20 Rupees a month and 20 peons each on 10 Rupees a month as his Establishment as Receiver and drew about 900 Rupees a month for them and himself as per statement appended marked **A** and drafted a very large number of Petitioner's best Ain and Manovurthy Servants as Commissioner as per list appended marked **B**.

4. That as Receiver Moottoosawmy Chettiar has done little or nothing beyond receiving what money jewels and other valuables the Ex-Zemindar and his manager and two Chetties voluntarily delivered up to him and making them over to Petitioner's Agent and taking possession of the live stock and other property found in the Palace and selling them and paying proceeds to Petitioner's Agent and that he has taken no measures to recover money and property which the Manovurthy and other accounts shew to have been made away with and that he has not pressed the payment of the balances due by the Oriental Bank and by Chethumbrum Chetty by Mr. Fischer, by certain Chetties to the Devustanum and by the Ex-Zemindar to the same and that he has paid no attention whatever to the several Petitions to zuft property made to him by Petitioner's Vakeel Soobromaniah Iyer or by Petitioner's Agent both verbally and by letters.

5. That Petitioner is prepared to prove that as Commissioner undue and unnecessary delay has taken place in the preparation of the accounts as also in the submission of the report. That the Commissioner put the accounts into several forms though any one of them alone would have been sufficient for the making out of his Report and that even the preparation of these forms was very much neglected and unnecessarily delayed.

6. That the Commissioner instead of remaining in Shevagunga the Head quarters of the Zemindary and doing his duty there kept constantly moving to and from Madura taking the establishment with him and that he lived a great deal at Madura and for a month went roving to Pagodas and visiting Trichinopoly and Tanjore and Combaconum.

7. That after great delay in their preparation all the accounts required were made out by the 31st August and the establishment entertained for the purpose was dismissed.

8. That the work left after that date for the Commissioner to do was merely to report thereon to the Court submitting his opinion regarding the amount of mesne profits due from the death of Ungamoottoo Natchiar to the 16th April 1862 and from the latter date to the date of the delivery of the Zemindary. That this was the work of only a few hours as Commissioner often told Petitioner's Agent himself and as can be proved to this Court but nevertheless the Commissioner has still withheld the Report required of him.

9. That the above delay subsequent to the 31st August extends over a period longer than the time originally allowed for the whole work to have been done in and that Petitioner believes the delay has been made from improper motives.

Petitioner therefore prays for an enquiry and that Moottoosawmy Chettiar may be required by this Court to submit his report upon mesne profits within a date to be determined by this Court and that the Court will notice his conduct in such a manner as it shall deem proper.

With Salams,

(Signed) R. FISCHER, *Vakeel.*

(Sd.) VAKEEL SOOBBRAMANIA IYER, *In Tamil.*

14th November 1864.

Filed 18th November 1864.

(Signed) C. R. PELLY,
Acting Civil Judge.

(True Copy.)

C. R. PELLY,
Acting Civil Judge.

To

C. R. PELLY, ESQUIRE,

Acting Civil Judge, Madura.

SIR,

In acknowledging the receipt of your Proceedings under date the 18th Instant, with its enclosure* forwarded for my explanation, I beg to submit that I am quite innocent of any of the charges preferred by the Petitioner, and that the following will fully meet them.

* M. P. No. 412 of 1864.

Reply to Paras. 1 *and* 2.

2. I beg most respectfully to state that it is true the late Civil Judge Mr. Cotton, at the very commencement expected that the performance of my duties will not extend beyond two months at the utmost. To this limit I took no exception at the time, as I was quite ignorant of the nature of the duties then assigned to me. Since the departure of Mr. Cotton, some other important duties were further assigned to me by the subsequent Proceedings of the Civil and High Courts; a fact well known to Petitioner's Agent and her Vakeel who have particularly admitted before the Civil Court in April last, that a portion of one of the duties assigned will occupy me 3 or 4 months for the reasons given. Hence the Petitioner's assertion that she availed herself of the permission accorded to her by Mr. Cotton several months after the expiration of the time originally allowed, will at once convince the Court that the complaints in Para. 2 will not at all stand.

Reply to Para. 3.

3. I am fully authorized by the Commission issued to me by the (Court) on the 11th February to employ as many Ameens and Peons as were required to carry out the duties assigned to me thereby, on the salaries specified which, together with my pay* and travelling expenses, should be paid by Petitioner's Agent who will be allowed the amount so paid as other costs of the Suit. Before starting to Shevagungah I engaged 3 Ameens and 12 Peons, also a Gomastah sanctioned by Mr. Goldingham, the late Acting Civil Judge, on the salary and travelling expences of 65 Rupees per mensem; and as the work at Shevagungah increased, I was obliged to entertain there 11 extra Ameens and 8 Peons, but employed no more as stated by the Petitioner. The statement A which accompanied the Petition under reply is correct. I would however bring to your notice that 7 Ameens and 2 Peons were dispensed with in September as their services were not required. Under the Proceedings of the Civil Court dated the 18th February last, I was at liberty to attach to my office such of the Shevagungah servants as I required to aid me in carrying out the work assigned to me. Accordingly I have, with concurrence of Mr. Fischer, selected one Deetchamier, a servant of long standing of upwards of 40 years in that Cutcherry, to aid me in the performance of the important, difficult, and tedious work, (namely, making out accounts for mesne profits) as he was strongly recommended by Rama Row, the late Head Sheristadar of the District who had charge of the management of the Shevagungah estate under Mr. Parker, the late Collector for upwards of 10 years. As I knew nothing of other servants, I desired the said Deetchamier to take those whom he considered fit to assist him.

* 250 Rupees.

4. The other Manovirthy servants enumerated in the Statement B. were attached to my office by Mr. Fischer to find out the way in which several lacs of Rupees were spent by the ex-Zemindar during the last 5 years, and to render me any assistance that I may legally require of them as Receiver and Commissioner. The whole of the servants specified in B have been paid by Mr. Fischer.

Reply to Para. 4.

5. The quantum of the work performed by me as Receiver and by my Subordinates is shewn in the accompany Memo. marked I. A perusal thereof will, I trust, meet with the approbation of the Court.

6. With respect to Petitioner's remarks as to the voluntary delivery of jewels and valuables by the ex-Zemindar and his manager, I would beg to state that 2 days after I was furnished with my Commission, I was attacked with severe illness at Madura; and was quite unable to move about. I had received an authentic information that the Zemindar had with him at the time about 3 lacs of rupees worth of Sovereigns, Currency notes,

Petition of the Civil Court
by Rama Rao
14th Nov 1864.
Complaining inordinately
Ruinous Mortgage on
the part of the Zemindar
Relations

Bonds and jewels, and was advised to take steps not to allow them to be made away with. Thereupon being myself unable to set out forthwith, I sent message to the Zemindar's manager to call his master's attention to the Sections 206 and 207 of the Indian Penal Code, and caused his (manager's) uncle, the Nazir of the Civil Court to warn his nephew against getting himself into trouble. So soon as I reached the palace at Shevagungah, I did not fail to give due publicity to the Commission; to take necessary steps for ensuring the attendance of the ex-Zemindar, who was in a jungle, and explain to him the expediency of giving up the valuables under the terms of the Commission; a circumstance which, I humbly beg to submit, tended more to the delivery of the valuables than anything else.

7. In regard to the 2nd part of this Para. (4), I am obliged to give my explanation in great length. The only course open to me as Receiver to recover money and property that were out of the premises of the Zemindar and in possession of persons not parties to the Suit, is on their being pointed out to me by the Petitioner's Agent. On the 9th February last, a Tamil Warrant was issued to me in accordance with the orders passed on a Petition presented by Petitioner's Agent, to attach the property specified therein whenever it may be on its being pointed out by him on his own responsibility. Soon after I zufted, the Sovereigns, Currency notes, jewels and Bonds, &c., at the palace, and after getting some valuables from parties who gave them up on my demands, I reminded Mr. Fischer to pay attention to this Warrant, but as he was then inclined to be on good terms with the ex-Zemindar and his manager for what object I was not fully aware of, he refrained from pointing out, as desired, any property for the Petitioner's benefit, though the manager verbally admitted having got some jewels as present, and I left this affair to his option, as I could do nothing in the matter without his aid.

8. The Proceedings* of the Civil Court of the 26th February last empowered me with regard to the personal property such as the Regalia jewels, &c., entered in the Collector's list of 1859 to seize them wherever they may be found or pointed out by the Agent, and provided measures to be adopted in case of their non-discovery. Thereupon, I recollect having required two or three parties then known to have received some of the old jewels to give them up, although the Agent failed to point them out. My demand was, however, unsuccessful. As regards the new jewels not forthcoming, I can take no steps under the said Proceedings, as they were dissipated before the promulgation of the Decree in India. I have urged on the Agent the necessity of property being pointed out to me, whereupon he furnished his son Mr. R. Fischer with a general power of attorney to point out the places where all the property may be. Mr. Robert Fischer through fear or some cause or other totally failed, and even did not attempt to act up to his vakalutnamah, but he, in company with others only once suddenly took me to a house, and after long consultation with his people and Sub-Magistrate of Shevagungah, entirely felt backward to shew me at least the premises where any of the Zemindar's property was secured.

* Cancelled by the High Court on the 12th August.

9. On my communicating this to the Agent Mr. Fischer, he desired me to put my demands and the answers of the recipients of the old jewels on record, and in case of refusal he will proceed against them under Section 207 of the Indian Penal Code. Considering however I was not justified to adopt this course, I informed him of their refusal to give up jewels and promised to render him such assistance as lies in my power to enable him to proceed against the recipients under the Section quoted and furnished him with the accounts required. In the meantime I was able on the Agent's information to get some valuable horses, dogs, tents, and some other things which were in the premises of the ex-Zemindar near the jungle.

10. I have written to the Agent of the Oriental Bank about the money invested by the Zemindar, and the reply dated 12th April was, that he will pay any cheque (not exceeding 1,200 Rupees since known) within the amount of balance due to Zemindar which he may draw in my favor. As I was absent at some other places, I asked the Zemindar's manager in May last to get me a cheque, he then told me that he will do so after adjusting the accounts and getting a form of the cheque, but before doing so he started to Madras with his master and did not return till after the 25th August. However I met the Zemindar once in the *interim* in a Chuttrum and asked him for the cheque, he replied, he cannot give it in the absence of his manager as he was not aware of the balance due.

11. Chidembaram Chetty is not a party to the suit nor is he indebted to the estate, he had stated that he has applied the sum of 2,100 Rupees (the balance of the amount of a cheque drawn by the ex-Zemindar on the Bank at Madras) towards liquidation of the debts due to him, and that he might repay the same if such payment were not entered in the Zemindar's accounts. Mr. Fischer desired me some days after to get this money. As I

learnt that this individual is not a resident within the limits of Shevagungah. I asked his Agent at Madura to get this money from his master, and he replied, that his master refused to pay it.

12. In July last, the Ranee's and her Agent's Vakeel applied to me to get 7,000 and odd Rupees from Mr. Fletcher who had sailed Home in the beginning of March. Still I am at loss to find out the way to trace him to England; and refrained from adopting any measures under an impression that the same may be charged to the mesne profits and communicated the same to the Vakeel.

13. I see that no authority is given to me as Receiver to collect the money due by Chetties and others to the Devastanum, but if Petitioner means that I should have done so while manager of the Zemindary, I beg to state that I have not omitted to collect nearly 50,000 Rupees from Mr. Fischer with much difficulty, as he had taken the same without leaving any voucher in the Devestanum Office contrary to the custom prevailed. One of the debtors to that institution has satisfied the claim against him, while two others, whose Bonds are secured have promised to pay off in a limited time, but I did not fix any time considering that my management will last but shortly.

14. It only remains with me now to answer two more points raised in this para. (4) viz., about the money and zufting property mentioned in the Petitions and letters referred to. As regards the money I had no means to collect from the persons not parties to the Suit, in case of refusal, and on my suggesting this to Mr. Fischer, he had made an application to the Court in April last, requesting to authorize me to collect such mesne profits as are brought to my notice. This prayer was granted by an order* dated the 15th idem. Only two cases were particularly brought to my notice, viz., the ex-Zemindar and his manager Dasicka Iyengar; on my asking them, the former stated that he has given up what he had, while the latter said that the money was presented to him by his master long before the Decree was passed in England and refused repayment.

* Cancelled by H. C. 12th August.

15. As regards the 3 Petitions presented to me while at Madura for zufting the property, two refer to some "Biroodoos," and a gun not given up by the ex-Zemindar. I beg to state that some "Biroodoos" have been already zufted, and that I was quite prepared to attach the rest if any, on their being pointed out. The other Petition refers to 3 chairs and two couches in the possession of the Zemindar's mother and his Carbar. A portion of these was attached and sold, and the remainder were not pointed out to me. As regards letters about zufting property, I have to state that I have received none further than those about the old jewels and money to be collected from Chedambaram Chetty and Ex-Zemindar and his manager already noticed. From the above explanations and the memo. showing the quantum of work performed, I respectfully beg to state that the charges imputed to me in this para. (4) viz:—

1. "That as Receiver Mootoosawmy Chettiar has done little or nothing."
2. "That he has taken no measures."
3. "That he has paid no attention whatever" are unfounded.

Replies to Paras. 5, 7, 8 *and* 9.

16. I can briefly and easily answer these paras. The Petitioner admits that the preparation of the accounts in the several forms given by me was made out by the 31st August last, and that the establishment entertained for the purpose was dismissed. As regards the latter part of para. 5, I beg to state that I consider that there was no neglect or delay in the preparation of the accounts. Should Petitioner consider that there was any, she has to blame her own servants. The rough statement prepared by Petitioner's own servants is not still completed, as they cannot trace 10,000 Rupees still wanting, and the Jamabundy for Fusly 1273 has not yet been finished. To satisfy myself with the correctness of this rough statement, I have to go through the accounts so far back as 850 which are contained in about 200 Dufters or bundles including those of Court of Wards. This I am unable to do, as all of the servants who were engaged in the preparation of the statement have been dismissed by Mr. Fischer, and as no substitutes are as yet supplied, although I have applied to the Petitioner's Vakeel, but as I have had no reply on the subject, I did not bring the same to the Court's notice.

17. The several forms given by me, are in my opinion, absolutely necessary, to enable me to find out what are the rents and profits of the Zemindary, and what deductions can justly be made therefrom, in order to ascertain the amount of mesne profits due.

18. As the Court has already in its Proceedings of 24th Ultimo given its opinion in favor of the delay after the 31st August now complained of, I consider any further explanation on the subject is unnecessary. I would however deny having ever told the Petitioner's Agent, as asserted in the latter part of para. 8, that the work was of only a few hours. All what I have told him is, that in the event of every thing being made ready for preparing my Report, I could complete it with my opinion in a week or two. The above will convince the Court that the charge set up at the concluding part of para. 9 is groundless.

19. In my letter of the 25th October last to the Court, I have set forth the impossibility of giving any decided opinion from the state of circumstances then I was placed, as to how long I may be occupied in preparing the Report relative to the mesne profits. I am now in a worse condition to fix a date by which my Report may be ready, because the chief servant Deetchamier who caused the rough statement to be prepared has been lately dismissed by Mr. Fischer for false and treacherous conduct. If his conduct were such and particularly so prior to his preparing the statement, it would, I consider, be very unsafe to rely on it. Hence I will have to go very minutely through the whole of the accounts, &c. by which the rough statement has been made out.

Reply to Para. 6.

20. Mr. Goldingham, the late Acting Civil Judge, has in the concluding part of his Proceedings dated the 17th March last, directed me to hold my Cutcherry in the late Moofty's Court at Madura, and hence I took it as my Head Quarters.

21. Prior to my departure to Shevagungah a 2nd or 3rd time, I verbally asked Mr. Goldingham, the late Acting Civil Judge to allow me 15 day's leave of absence when I require it; he granted my request. I was on duty until the 13th April last within the limits of Shevagungah, after which I was under the necessity of availing myself of the said leave without repeating my application to you, as I was then far from Madura, and as the day on which my presence at Tiroovady was required was drawing close; I started from thence with the consent (previously obtained) of Mr. Fischer, who directed his confidential servant Deetchamier to accompany me for his benefit. Having learnt at Teroovady that the Silver Car which I entrusted to Mr. Fischer's care at Shevagunga on written condition of returning it to me on demand, had been presented to the Pagoda at Madura without my knowledge, I was very anxious to go to Combaconum to ascertain the actual cost thereof, as its manufacturer was there. After we reached Trichinopoly, the said Deetchamier told me that the cattle of the ex-Zemindar had come there to graze, and that they should be searched for and attached. On this duty I was engaged there for 4 days, but having learnt that the cattle had gone further off, I returned to Madura on the 4th May. I was thus absent only for 19 days, but deducting therefrom the 4 days on which I was thus engaged, I should be considered to have availed myself of the 15 days leave only, but not a month as stated by the Petitioner.

I have the honor to be,

Sir,

Your most obedient Servant,

MADURA,
26th November 1864.

(Signed) T. MOOTOOSAMY CHETTY,
Receiver.

(True Copy.)

C. R. PELLY,
Acting Civil Judge.

Present Petitioner's Explanation dtd 26th Novr 64

B (1st copy)

EXTRACT FROM THE PROCEEDINGS OF THE CIVIL COURT OF MADURA, UNDER DATE THE 24th OCTOBER 1864.

Read M. P. No. 355 of 1864 presented on the 17th October 1864 by Soobramania Iyer Vakeel on behalf of Streemattoo Moottoo Vijia Ragoonada Ranee Kathama Natchiar Zemindarinee of Shevagunga.

Read also Proceedings of this Court held on the same on the 21st October 1864, and the report made by the Commissioner on the 22nd idem.

ORDER.

1. The following are the points raised in the Petition.
   I. That the Court has erroneously read the Proceedings of the High Court, dated 12th August.
   II. That the Petitioners Agent made written application to the Receiver on the 23rd and 26th August for Statement of refund demanded and that this has not as yet been furnished and
   III. That there has been delay on the part of the Receiver in furnishing his report on the mesne profits.

2. If dissatisfied with the interpretation put by the Court on the Proceedings of the High Court referred to above and subsequent steps taken to enforce the same, Petitioner has her remedy by Appeal.

3. As regards the 2nd point the manager has been called on to state what has occurred and reports. That on being directed to carry out the orders of the High Court of the 12th August be allowed the Ranee's Agent Mr. Fischer a plain copy of the statement of the money, &c. to be refunded; whereupon a Government Security for 50,000 and a large portion of the jewels were handed over to him, and that the demand referred to as having been made on the 23rd of August, has reference to a statement of refund minus certain deductions which he was not authorized to make, and that proceedings of the Court were passed on the following day on the same which were verbally communicated to the Agent, the written communications referred to should have been met by written replies, but if Petitioner as she now urges had been inconvenienced by non-receipt of the same she had the easy and obvious course open to her of making application direct to the Court as she has now done when the Receiver would have been directed to furnish forthwith whatever information was required.

Prior to the presentation of any Petition on the subject, viz.; on the 7th October 1864 the Court called on the Receiver to state what progress he had made in the preparation of his report relative to rent and profits from the death of Ungamoothoo, the task is both a difficult and tedious one, and the Court has no reason for concluding that there has been undue delay in the matter—the work has however without doubt been considerably retarded by the Receiver having had to be placed in charge of the attached Zemindary and this affords an additional reason for releasing him of that duty as soon as suitable arrangements can be effected.

(True Extract.)

(Signed) C. R. PELLY,
Acting Civil Judge.

(True Copy.)

C. R. PELLY,
Acting Civil Judge.

26th October 1864.

C (1877)

Boundaries of the Civil Court Dated 24 March 64

To

C. R. PELLY, Esq.,
CIVIL JUDGE OF MADURA.

THE RESPECTFUL PETITION OF STREE-MATHU MUTHU VYJAYA RAGOONATHA RANEE KATHAMA NATCHIAR, ZEMINDARNEE OF SHEVAGUNGAH, BY HER VAKEEL SOOBBRAMANIA IYER.

IN O. S. No. 2 OF 1845, AND IN O. S., No. 10 OF 1856.

SHEWETH,

I. That Petitioner, on the 4th February 1864, submitted to this Honorable Court her M.P. No. 31, of 1864, wherein, among other things, she offered to produce evidence establishing certain facts, and prayed that this Honorable Court would therein declare Petitioner to be solely entitled to the benefit of Her Majesty's decree of the 8th December 1863, and also that this Honorable Court would, in execution of said decree itself, under the order of the High Court of the 23rd January 1864, put the said Ranee into immediate possession of the Zemindary of Shevagungah and of the property thereto belonging, having reference to the property handed over to the Respondent in 7 of 1849 by the Collector of Madura, while Defendant in O. S. No. 10 of 1856; and that upon said petition, this Honorable Court, in its Proceedings of the 8th February last still in force, passed order that, in execution of said decree itself, apart from claims under said decree, "The entire Shevagungah Estate with everything appertaining thereto, be made over by Court process to Petitioner."

II. That this Honorable Court, in passing its order for the delivery to Petitioner of the Shevagungah Zemindary and all that appertains thereto, had special reference to the property delivered over in 1859 by the Collector of Madura to Respondent, and that such reference is apparent, not only from the terms of the petition upon which the said order was passed, but also from another order of this Honorable Court of the 8th February 1864, rejecting M. P. by Respondent No. 44 of 1864, and which said order now in force Petitioner submits as between the same parties and on the same subject matter is binding, the said order being in the words following—"The Petitioner, at hearing, admits that the jewels which he claims to retain belonged to the Zemindary, and did so before 1850, prior to Unganuthu's death, and there cannot be a question that, as such, they were given to Petitioner (Respondent) when the Estate was made over. In executing the decree, that is, in directing the Zemindary to be made over to Kathama Natchiar, the same property that Petitioner received as Zemindary property he must deliver up as Zemindary property."

III. That apart from the property, movable and immovable, for the immediate possession of which as the Shevagungah Estate Petitioner asked, and the delivery up of which this Honorable Court ordered. Petitioner, in said petition, further prayed that property therein designated as the Estate of the Respondent be placed under attachment in satisfaction of other claims under Her Majesty's aforesaid decree, upon which prayer this Honorable Court was pleased also to order, in said Proceedings of the 8th February, that the Respondent do give the entire movable property, consisting of cash, jewels, bonds and such like valuables in his possession, to a duly authorized Receiver, who will be authorized to execute so much of the decree as refers to

such movable property, and to produce the same before the "Court, not as this Honorable Court will be pleased to note in execution of said decree, but in satisfaction of claims under the said decree," Petitioner's claim for cost being declared in said order to have precedence next to kist over all other claims.

IV. That this Honorable Court, being thereto moved by Petitioner's petition of the 8th February, No. 46 of 1864, praying in modification of her aforesaid request respecting the Respondent's Estate, did, in the latter part of its Proceedings of the 9th February, since appealed against and cancelled by High Court's order of the 12th August, order, respecting such property, "That it be given over to Mr. Fischer, Agent of Petitioner, on his receipts for the same, Petitioner and her Agent, Mr. Fischer, having pledged the Zemindary, &c., as security for the same."

V. That the declaration contained in Her Majesty's said decree, to the effect that the Respondent was *ab initio* in wrongful possession of the Shevagungah Estate, was in its nature final, and was also binding on every lower Court, and that as such it did effectually bar the reception, by the High Court, of any petition or prayer from Respondent relating to the Shevagungah Estate, and that the said order of the High Court, which in appeal cancelled the orders of this Honorable Court dated 9th February 1864, 15th April 1864, 17th March 1864, and 26th February 1864, could only be passed and were only passed upon petitions relating to the Estate of the Respondent, and not on petitions relating to the Shevagungah Estate; and further, that no demand could have been ordered or was ordered by the High Court, and no demand can be made or was made by this Honorable Court, under the orders of the High Court of the 12th August, for the refund of property which had been either received by the Respondent himself, as part of the Shevagungah Estate, or which was afterwards delivered up by Respondent to Judgment Creditor as such or as the proceeds of the sale of such in execution of Her Majesty's said decree.

VI. That this Honorable Court, under its Warrant of 11th February 1864, appointed a Receiver to carry out that part of its said order of the 8th February 1864, still in force, respecting the Shevagungah Estate, and also its said order of the 9th February 1864, on M. P. 46 of 1864, since cancelled, respecting the Estate of the Respondent; and that this Honorable Court did distinguish, by separate order in said Warrant, as also in its said orders of the 8th and 9th February, the property of the two Estates, and that, notwithstanding such distinction made by this Honorable Court, and although this Court's Receiver did receive the property from the Respondent, and his Manager admitted by and specifically as belonging to one or other of these Estates; this Court's Receiver, in giving over the said property to Petitioner's Agent, did not distinguish in some of the receipts he drew up for the same and obtained from Petitioner's Agent, to which of these Estates the property by him received and delivered over did belong, and that, in consequence, Petitioner is unable to ascertain of what property this Honorable Court, in its Proceedings of the 24th August, under the orders of the High Court of 12th, demanded of Petitioner or her Agent a refund.

VII. That of the property received by Petitioner's Agent, a very large portion, even without the formal demand ordered by this Court's Warrant of the 11th February to Receiver and Commissioner, was voluntarily given up by Respondent and by his Manager to Receiver and Commissioner, as property and proceeds of property contained in the list of 1859, and that such property was, therefore, received by this Honorable Court's Receiver and Commissioner, and from him by Petitioner's Agent, as belonging to the Shevagungah Estate, and not as belonging to the Estate of the Respondent.

VIII. That the Zemindary of Shevagungah was not given in security by Petitioner and by her Agent the lesse for any property belonging to the said Shevagungah Estate, since that Estate was ordered to be delivered over by Court process absolutely to Petitioner or her Agent in execution of the decree itself, but that the Zemindary was given in security only for property from the Estate of the Respondent attached in satisfaction of other claims such as costs of suit, costs of commission, mesne profits, &c., and that, therefore, the present attachment of the Zemindary is only pending a refund of such property from the Respondent's Estate, if any has been so de-

ivered to the extent only of the total excess over the claims upon the property received by Court process as part of the Shevagungah Estate, which excess Petitioner believes does not exist, and which, if it does exist, should have shewn to Petitioner prior to the attachment, by this Honorable Court's Commissioner, of the Zemindary, under color of this Court's order of the 24th August.

IX. That your Petitioner's Agent being informed of the High Court order of the 12th August to demand a refund of property, and of this Court's order to its Receiver and Commissioner of the 20th August to execute the said order, your Petitioner did, on the 23rd August, address a letter through her Agent to the said Receiver and Commissioner, requesting him to furnish Petitioner with a statement shewing the amount asked to be refunded by Petitioner under the said orders of the 12th and 20th August, and that, without furnishing Petitioner the said statement or in any way noticing Petitioner's request, the Receiver and Commissioner, under the Court's order of the 12th August passed upon Petitioner's Agent's said letter of the 23rd August, did attach the said Zemindary and all appertaining thereto.

X. That Petitioner's Agent, in another letter of the 26th August 1864, drew the attention of this Court's Receiver and Commissioner to the said request contained in Petitioner's said letter of the 23rd August, and therein again repeated the request already made, to be furnished with the statement of the refund demanded, and that though Petitioner's Agent did frequently, since the former of his two requests in writing, also verbally asked the said Receiver and Commissioner for the said statement, it has never yet been furnished, and the entire Zemindary of Shevagungah and all that appertains thereto has, to the serious inconvenience and great loss of Petitioner, been attached, and is now retained under attachment, without Petitioner knowing or having the means of otherwise satisfactorily ascertaining what is the definite amount, for the non-refund of which the said Zemindary has been attached, and upon payment of which the said Zemindary will be released from the said attachment.

XI. That Petitioner, in said M. P. No. 31 of 1864, put in on the 4th February, also prayed this Honorable Court, that an account of mesne profits of the said Zemindary may be taken from the 16th day of April 1862 to the transfer and delivery of the said Zemindary to Petitioner, upon which this Honorable Court resolved, in its said Proceedings of 8th February, under Sections 180 and 181, to appoint a Commissioner to call for the accounts of the rents and profits of the Zemindary since the death of Ungamuthu, with directions to report thereon to the Court and to submit his opinion regarding the amount of mesne profits found to be due from the death of Ungamuthu to the 16th April 1862, and from the latter date to the present, and that this Court did so appoint a Commissioner under its Warrant of the 11th February 1864 to take such account.

XII. That your Petitioner hoped that the amount of mesne profits from 16th April 1862 to 21st February 1864, awarded to her under this Court's proceedings of the 8th February 1864, would at least cover any excess of receipts from the Respondent's Estate on the part of Petitioner, and that, therefore, Petitioner strongly urged on this Court's Commissioner, through her Agent, the importance of his reporting to this Honorable Court, without any delay, on the amount of mesne profits due to Petitioner, but this Court's Receiver and Commissioner, though all the accounts were placed at his disposal so far back as February last, and though the services of such of the Zemindary servants as he required were also placed promptly and exclusively at his disposal, and though so far back as the 3rd September those accounts had all been thrown into the forms which the said Commissioner required, this Court's Receiver and Commissioner has not yet submitted his report to this Honorable Court.

Petitioner therefore prays that this Honorable Court will be pleased to receive this Petition.

And that this Honorable Court will be pleased to take Petitioner's Agent's receipts, furnished to this Honorable Court's Receiver and Commissioner, and also its own orders and the High Court's orders aforesaid, into consideration, and will, thereupon, furnish Petitioner with a memo. or statement of the refund to be demanded of Petitioner or of her Agent, Mr. G. F. Fischer.

And further, that this Honorable Court will call upon its Receiver and Commissioner for his report on the amount of mesne profits due to Petitioner.

And also, that this Honorable Court will afford Petitioner such other relief from the acts herein complained of as to it shall seem fit.

(Signed) Vakeel SOOBBRAMANIA IYER, in Tamil.

17*th October*, 1864.

Filed 19th October 1864.

(Signed) C. R. PELLY,
Acting Civil Judge.

(True Copy.)

C. R. PELLY,
Acting Civil Judge.

GANTZ BROTHERS; ADELPHI PRESS.

Petition Filed 19th Oct 64

In O.S. 2 of 1845 &
In O.S. No. 10 of 1856.

To

C. R. Pelly Esquire
Civil Judge of Madura

The respectful Petition of Ranee Streemathu Inukhu Vejiah Ragoonada Ranee Kalkana Talechiar Zemindarnee of Shevagunga by her Vakeel Soobroomaniah Iyer.

Sheweth,

1 That this Honorable Court's Receiver and Commissioner under the Order to him of this Court dated 19th October 1864 on the Evening of the 20th October furnished Petitioner with a Statement Marked A of money to be remitted by Petitioner under the Order of the High Court of the 5th August 1864, said Statement shewing receipts by Petitioner to the amount of Rs. 435708–3–6, and a repayment to the extent of Rs. 50,000 leaving a balance of demand against Petitioner of Rs. 385708–3–6.

2 That it appears to Petitioner that said order of the High Court was passed exclusively respecting property recovered from the Estate of the Respondent and received by Petitioner towards mesne profits and not respecting property received either as a portion of the Shevagunga Estate or in execution of the Decree itself. The High Court being

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to receipts towards mesne profits, the payment of which to Petitioner prior to a settlement of the mesne profits account, said Order cancells and the refund of payments of which kind only, said order directs.

3ª That it further appears to Petitioner that this Court's Receiver and Commissioner has misinterpreted and misapplied said order of the High Court and the Orders of this Court thereon and that he has not paid due regard to the Order of this Court of the 8th February still in force and that he has made a demand of refund of property for which the Zemindary of Thevagungah was never given in security but which was delivered over to Petitioner in execution of Her Majesty's Decree unconditionally and absolutely, and that his demand of refund is therefore in excess of that contemplated in said order of the High Court in the following among other particulars. One Promissary Note 50,000 Rs. contained in the list of 1859 Currency Notes 85490 Rs. proceeds as per letter of Oriental Bank of the sale of other Promissary Notes specified in list of 1859, Debt bonds Rs. 65,000, Sovereigns 6,170, money paid by Chedembara Chetty 10,000, investments of funds received as Zemindary property contained in the list of 1859, the above property, to the extent of 2,91560 having never been attached and carried to account as mesne profits but ex

PRIVY COUNCIL PREPARATIVE
9 DEC 1863
LIBRARY

to receipts towards mesne profits, the payment of which to petitioner prior to a settlement of the mesne profits account, said Order cancells and the refund of payments of which kind only, said order directs.

3rd That it further appears to Petitioner that this Courts Receiver and Commissioner has misinterpreted and misapplied said order of the High Court and the Orders of this Court thereon and that he has not paid due regard to the Order of this Court of the 8th February still in force and that he has made a demand of refund of property for which the Zemindary of Tevagungah was never given in security but which was delivered over to Petitioner in execution of Her Majesty's Decree unconditionally and absolutely, and that his demand of refund is therefore in excess of that contemplated in said order of the High Court in the following among other particulars. One Promissary Note 50,000 Rs. contained in the list of 1859, Currency Notes 85490 Rs. proceeds as per letter of Oriental Bank of the sale of other Promissary Notes specified in list of 1859, Debt bonds Rs 65,000, Sovereigns 6,170, money paid by Chedambara Chetty 10,000, investments of funds received as Zemindary property contained in the list of 1859, the above property, to the extent of 2,91560 having never been attached and carried to account as mesne profits but having been voluntarily made over to Petitioner by Respondent under the order of this Court of the 8th February 1864 subsequently appealed against

Correction none
Interlineation none
WW

2d Sheet of 4

No. 8 Bundle
Enquiry
Wednesday
19
Brief

Petition & Answer
Affidavits &c. on the part of Petitioner
Affidavits &c. on the part of
Exhibits
Depositions
Proceedings in Supreme Court
Decree
Appeal
Proceedings in Privy Council
Judgment of Privy Council
Bill of Costs
Certificate
Miscellaneous papers
Index
Memorandum

STAMP DEPARTMENT
1 DEC
1864
MADRAS

against by Respondent and confirmed by the High Court in Appeal.

4 That apart from the aforesaid very large excess of demand in said refund statement the balance of demand claimed by this Court's Receiver and Commissioner is further incorrect in that credit is not given to Petitioner for certain legitimate payments by Petitioner and for other certain sums received from the Estate by Commissioner and which are as follows, amount of costs of Appeal to Privy Council as per Bill delivered to Receiver and Commissioner Rs 21,500; amount of arrears of pay due by Respondent and paid by Petitioner according to Respondent's Manabeurthy Account Rs 7000-5-11, amount of pay of Servants of the Appu and Manoorthy employed exclusively by the Receiver and Commissioner to make revenue profits account Rs 2,040-13-3 Amount of pay of Receiver and Commissioner and his establishment as per account Rs 6300-0-0; amount of admitted deficich in Estimate and Court of Wards lists of jewels as per Commissioner's account Rs 31,182-4-3; Amount of Revenue collected by Receiver and Commissioner as Manager during present attachment towards refund including sum received on the 20th October Rs 40,000; making a total of Rupees 1,08,023-7-5 which Petitioner claims as aseth off against the balance of refund demanded.

Petitioner

Correction none
Entertained none /W

Petitioner therefore prays that as he is prepared to prove the aforesaid Statements in support of the incorrectness of the refunded demand Statement, this Court will be pleased to take the said refund Statement into consideration and determine the amount that ought to be refunded by Petitioner and pass such other orders on the subject as shall give relief from the matters in this Petition brought to this Honorable Court's notice.

And your Petitioner shall as in duty bound ever pray

4th Sheet.

21st October 1864

Correction noted
Interlineation

Signed C. R. Selby
Acting Civil Judge

C. Arunachalam
Copyist

Filed 24th October 1864
(Signed) C. R. Selby
Acting Civil Judge
(True Copy)
C. R. Selby
Acting Civil Judge

Evd: Thomas Johnson
Alex Wilson

To

C. R. Pelly Esquire
Civil Judge of Madura

The Respectful Petition of Sremathu Marathoo Vejia Ragoonada Ranee Kattama Nachear Zemindarnee of Sheagmegah Periyer Vaheek Soobramoniah Iyer

Sheweth,

That the High Courts order of the 12th August contains a provision for the delivery up to Petitioner of such property as is proved to be inseparable from the Zemindary and to pass to each successive Zemindar they here & any right

That on the death of Petitioners father the Sivaganga Zemindar Periya Odia Tever on the 17th July 1829 certain property consisting of Jewels arms &c. his own Estate was wrongfully taken possession of by Chooltoo Tabaganatha Tever Respondents paternal Grandfather and from him descended from Zemindar to Zemindar to Respondent who was put in possession of the same on or about the 12th November 1859 and that your Petitioner is entitled to immediate possession of the same or of the value thereof in execution of Her Majesty's Decree of the 8th December 1863.

That of said property in jewels there was a deficit of Jewels appropriated by Resp. to his own use to the extent of 31/28 Rs 4 As 8 3/4 ps

as

Correction owing
Interlineation made WW

1st sheet of 2

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Exhibit E
Petition of Plaintiff to Zemindar Ranee Nachear Zemindarnee of Sivaganga
Exs - Exhibits
1864
1871

Suit No 1545 of 1864
Petition of Plaintiff praying Decree as prayed
Copy supplied on 21st Dec 1864
Copy ready for delivery 21st Dec
Delivered 21st Dec

Examd
Acting Civil Judge

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1864
MADRAS

as per account made out by Receiver and Commissioner and Copy of which he gave Petitioner's Agent and that the rest of the said property in jewels was delivered up as were also certain Arms &c. by Respondent to this Courts Receiver and Commissioner and by him to Petitioner's Agent as having belonged to Petitioner's father the Istimirar Zemindar.

That this Courts Receiver and Commissioner though he had as aforesaid received and delivered up said jewels did, on the 20th August 1864 as per his receipt of that date demand and receive in refund from Petitioner's Agent said jewels under color of this Courts order of that date on the High Courts order of the 12th August 1864.

Petitioner prays that this Honorable Court will be pleased according to the order of the High Court of the 12th August to take evidence on the facts asserted in this Petition and give Petitioner a hearing and that it will order in execution of the said Decree the restoration to Petitioner of the Istimirary jewels which are in the Receivers Commissioners possession and also the payment to Petitioner of the said Sum of Rs 31128-4-3 from the estate of the Respt and also the recovery and delivery up to Petitioners Agent of all property or the value thereof that did belong to the Istimirary Zemindar and was claimed in O.S No 2 of 1845 on the file of this Court and of which Respt or his ancestors became possessor through the said Vroottoo Vadaganadah Tayer.

28th October 1864. With Salams.

2 Pages & 1 word written on 1 sheet 6 lines.
Correction none
Interlineation none
Filed 31st October 1864.

C. Augustus
Copyist

(Signed) C. R. Pelly
Asst Civil Judge

(True copy)

Sd/- Thomas Johnson
Asst Civil Judge

C. R. Pelly
Asst Civil Judge

EXTRACT FROM THE PROCEEDINGS OF THE CIVIL COURT OF MADURA, UNDER DATE THE 14th OCTOBER 1864.

Read M. P. No. 346 of 1864 presented on the 12th October 1864, by G. F. Fischer, Esq., alleged Lessee of the Zemindary of Shevagunga from Ranee Kathama Natchiar Zemindaranee of the said estate and also her alleged credited Agent praying under the circumstances mentioned in the motion, that this Honorable Court will be pleased to receive this Petition among other reasons, on the ground, that Petitioner was in lawful possession of the Zemindary of Shevagunga under the terms of the said lease from the said Ranee, before and up to the 24th August and that Petitioner was deprived of possession thereof by the attachment of the said Zemindary on alleged failure of refund under this Honorable Court's order of the 24th August 1864.

And that this Honorable Court will be pleased to take Petitioner's receipts furnished to this Honorable Court's Receiver and Commissioner and also its own orders and the High Court's order alluded to into consideration and will thereupon furnish Petitioner with a memo : or statement of the refund to be demanded of Petitioner or of said Ranee Kathama Natchiar.

And further that this Honorable Court will call upon its Receiver and Commissioner for his report on amount of mesne profits, due to said Ranee Kathama Natchiar.

And also that this Honorable Court will afford Petitioner such other relief from the acts complained of in the above Petition as to it shall seem fit.

ORDER.

This Petitioner is merely signed G. F. Fischer. From the heading however it would appear to have been presented by Mr. Fischer on a twofold capacity ; 1st as alleged Lessee of the Zemindary of Shevagunga. 2nd ; as alleged cridited Agent of Kathama Natchiar Zemindaranee of the said estate, but so presented it is not admissable. An alleged Lessee cannot as such present a Petition on behalf of a Lessor, and as it is not alleged that the Principal is resident out of the Court's jurisdiction, application by Agent is barred by Section 17 Act VIII of 1859. Moreover where the alleged Lessee and Agent are one and the same person, it is not open to the latter when presenting a Petition on behalf of his principal to include matters affecting his interests as Lessee in the same.

Petition rejected for informality.

(True Extract.)

(Signed) C. R. PELLY,
Acting Civil Judge.

(True Copy.)

(Signed) C. R. PELLY,
Acting Civil Judge.

EXTRACT FROM THE PROCEEDINGS OF THE CIVIL COURT OF MADURA, DATED 24th AUGUST 1864.

Read letter dated 23rd August from the Receiver of the Shevagunga Zemindary forwarding a letter received from G. F. Fischer, Esquire, Agent to Ranee Kathama Natchiar of Shevagunga and requesting instructions for his guidance.

Read also the order of the High Court of Judicature at Madras, passed on the 12th August 1864.

Any application as regards limit for repayment should have been made to the High Court.

The above order leaves no descretion in the matter. It is imperative, and unless the property in specie on sale proceeds of the property sold specified in the order be forthwith returned to the Receiver, he has no alternative other than to fall back on the security on which they were made over to the Ranee or her Agent; viz., the entire Zemindary to attach it and retain it under attachment and management until such time as the amount for which it was tendered as security be recovered in full or the same be paid to him by the Ranee or her Agent on her behalf, and this course he will now in default of refund adopt and will at once irrespective of such refund reattach all other property which has been attached.

The mode of payment proposed in the P. S. to Mr. Fischer's letter cannot be accepted.

(True Copy.)

(Signed) C. R. PELLY,

Acting Civil Judge.

To the Receiver and Commissioner of the Shevagunga estate.

TESTIMONIALS OF T. MOOTOOSAWMY CHETTY.

T. Mootoosawmy Chetty, the Criminal Record Keeper, was first appointed to be Gomastah in the Zillah Court on the 21st September 1841. On the 13th February 1845 I appointed him to be Criminal Javabneviss, and again, on the 31st December 1847, to be Criminal Record Keeper. He is a most intelligent servant, well acquainted with the Criminal and Civil Duties, Regulations, &c., and very zealous, and I trust, when a suitable vacancy offers, he may obtain further promotion, which I would have bestowed on him had I continued Judge of this Zillah.

(Signed) J. G. S. BRUERE.
Late Judge of Salem.

26*th June* 1851.

From Mootoosawmy Chetty, the Criminal Record Keeper, the Court has received great assistance.

(Signed) E. STORY,
Acting Civil and Session Judge.

I do hereby certify that I have satisfied myself that the bearer of this certificate, T. Mootoosawmy Chetty, is a man fully fitted, by respectability and good character, to fill the office of Moonsiff, and from the enquiries I have made I have every reason to believe that he is qualified, from his just conduct and general information, to enjoy the privilege of examination for the office of Moonsiff.

(Signed) J. G. S. BRUERE,
Civil Judge.

Those who have the best claim to the Nazir's situation, are Mootoosawmy Chetty and the Government Vakeel, Goolam Hoossain Saib, both very deserving men; but, on the whole, I think that the former will fill the situation best, and, therefore, appoint him.

(Signed) T. W. GOODWYN,
Civil Judge.

Mootoosawmy Chetty, the Acting Nazir, is an able man with whom I have been well satisfied.

(Signed) T. W. GOODWYN,
Civil and Session Judge.

26*th February* 1855.

The Nazir of the Court is, in my opinion, a very deserving Officer, and has always conducted his duties to my entire satisfaction. It will give me pleasure to hear of Mootoosawmy Chetty's promotion.

(Signed) H. D. COOK,
Acting Civil Judge.

22*nd October* 1855.

As it is likely that the present Sheristadar of the Civil Court will either be removed to the office of Moonsiff or will find employment elsewhere, the Acting Civil Judge leaves it on record that it was his full intention to promote Mootoosawmy Chetty.

Received from the Civil Court 24 Aug 1864
11

the present Head Writer, to the superior office. Mootoosawmy Chetty has conducted the duties of Sheristadar for nearly an entire twelve months, during which he gave the Court every satisfaction; and looking to the length of the services and his experience in all the departments of the Court, (English and Vernacular,) he is pre-eminently qualified for the post as compared with any other public servant in either Court.

(Signed) C. W. Reade,
Acting Civil Judge.

26*th March* 1857.

I have much pleasure in bearing my testimony to the efficiency and ability of Mootoosawmy Chetty, the Head English Writer in the Salem Court, during the two months I have acted as Judge of the Court. I have found him most diligent and attentive to his duties, which have been performed to my entire satisfaction.

(Signed) R. G. Clarke,
Acting Civil and Session Judge.

5*th October* 1858.

To

T. Mootoosawmy Chetty.

In reply to your request of the 1st instant, I have the pleasure to state that during the time I presided over the Salem Court, I was very well satisfied with the way you discharged your duties as Head Writer, and that you did your best to deserve the favorable certificate of your conduct during that period.

(Signed) J. W. Cherry,
Acting Collector of Coimbatore.

T. Mootoosawmy Chetty has held the situation of Criminal Record Keeper, Nazir, Head Writer, and Acting Sheristadar under me in the Salem Court. He is a man of considerable talent and experience, whom I should have appointed Sheristadar, but that being possessed of considerable family property in the District which is burdened by some unsettled debts, I have not considered it expedient to confirm him in this situation at Salem, but the same objection would not exist to his promotion in any other District. The property is commonly reported to be of far greater value than the liens upon it. If the liens are cleared off, the objection would, of course, cease.

(Signed) T. W. Goodwyn,
Civil Judge.

31*st January* 1859.

Civil Court Diary Order, March 17*th*, 1860.

T. Mootoosawmy Chetty, Head Writer of the Civil Court of Salem, was, owing to the high testimonials of *character* which he held, in addition to those he possesses for ability, appointed by me to act Sheristadar of the Madura Civil Court during the absence of Soonder Row on sick certificate.

I have great pleasure in testifying my opinion of him—he is well at his work, and his conduct while under me has fully accorded with that which has gained him so many testimonials—quiet and unassuming, but hard working and with a character for strict *integrity*, I have never heard questioned, and I believe honestly earned.

T. Mootoosawmy Chetty, I feel assured, will not fail to obtain advancement in the service, which, though willing, it is not in my power now to give him.

(Signed) R. R. Cotton,
Civil Judge.

T. Mootoosawmy Chetty has maintained his high character. I consider him a very valuable public servant, and I have no doubt if he will only qualify himself by passing the required examinations, he will gain promotion. He is thoroughly up to his

work and specially qualified for his present post of Sheristadar; I could only wish the salary of the appointment were double what it is as in my opinion it should be.

(Signed) R. R. Cotton,
Civil Judge.

February 13*th*, 1864.

No. 418.

To

The Registrar to the Court of Sudder Udalut.

Sir,

With reference to the Proceedings of the Madras Government, dated 3rd December 1859, No. 1634, I beg to submit the names of 3 individuals who I feel I can with confidence introduce to the favorable consideration of Government, men who have the highest testimonials for industry, intelligence, and honesty, and who, since they have been under me, have given me, and, I believe, the public, general satisfaction.

* * *

My 3rd nominee is T. Mootoosawmy Chetty, at present Acting Sheristadar of my Court, but Head Writer of the Civil Court of Salem, he holds high testimonials, is well acquainted with his business, and, like the above two, has a high, and, I believe, well mental character for strict *integrity*, and I believe will never do discredit to my recommendation. I have had but 9 months' experience of him, but during that period he has maintained the characters he has received from numerous gentlemen.

All the above are thoroughly acquainted with English; the testimonials of the two first I shall be happy to submit to the Court if necessary, but I believe they will be found in the Court, having been forwarded with letters from this Court, 10th August 1852 and 3rd May 1859.

T. Mootoosawmy Chetty's testimonials I enclose.

I have, &c.,

(Signed) R. R. Cotton,
Civil Judge.

13*th December* 1859.

Gantz Brothers—Adelphi Press.

20

To

THE RIGHT HON'BLE THE GOVERNOR IN COUNCIL,

Fort Saint George,

MADRAS.

THE HUMBLE PETITION OF T. MOOTOOSAWMY CHETTY.

MOST HUMBLY SHEWETH,

That your Petitioner was Sheristadar of the Civil Court of Madura from 2nd April 1859 to 22nd December 1864, and was, by an Order, 11th February 1864, by Mr. Cotton, then Civil Judge of Madura, appointed Commissioner and Receiver of the Shevagungah Zemindary, and that your Petitioner conducted the said duties from 12th February to 22nd December 1864, and that after repeated failure by the Ranee of that Zemindary, made through her Agent, a Mr. G. F. Fischer, to facilitate the accounts of the mesne profits, contrived, arranged, and, alas ! effected the dismissal of your Petitioner from public employ, on statements most defective and unsupported, and on evidence discreditable and deficient, necessitating your humble Petitioner, a person of unexceptionable character, (as will be proved by the Testimonials marked *I* granted by numerous Judges) to represent the same to the High Court of Judicature for redress, and which Court apparently declined interfering, on the grounds that the evidence adduced had been carefully considered by the Civil Judge. This your Petitioner humbly and respectfully disputes, and submits the whole proceedings in an abstract form, for and against your Petitioner, placed in juxta-position, to enable your Lordship to form a correct estimation of each individual transaction, and graciously to extend to your Petitioner the indulgence of restoration to his deprived office, or of a pension equivalent to his service, viz., 24 years, and for which act of benevolence, your Petitioner, as in duty bound,

SHALL EVER PRAY.

MADRAS, MYLAPOOR,
26th *October* 1865.

T. Mootoosawmy Chetty

Proceedings of the High Court of Judicature at Madras.
Dated 1st April 1865.

Read Petition dated the 15th Ultimo from T. Muthusami Chetty, late Sheristadar of the Civil and Session Court of Madura, appealing against an order of the late Acting Civil Judge dated the 22d December last, and praying that orders may be issued to reinstate him in his permanent post of Sheristadar of the Civil and Session Court.

(Here enter No. 1646 of 1865.)

The High Court are not prepared to interfere in this case. The evidence in support of the charges against the Petitioner has been most carefully considered by the late Acting Civil Judge, and the High Court see no reason to question the justice of the order of which the Petitioner complains.

(True Extract.)

Thos Whitehead

Dy. Registrar,

No. II.

Petition of Appeal
to
The Sovereign.

No. 1 (Exhibit)

Filed 1st April 65

Case Settled

Filed

Exhibit

With 12 Exhibits

Proceedings of the Civil Court of Madura, dated 22nd December 1864.

Read M. P. No. 412, of 1864, presented on the 14th November 1864 by Mr. Robert Fischer and Soobromonia Iyer, Vakeels, on behalf of Ranee Kathama Natchiar, charging Mootoosawmy Chettiar, Sheristadar of the Civil Court, with neglect of duty and improper conduct in his capacity of Receiver and Commissioner, to which offices he was appointed under the arrangement made to execute the decree of the Privy Council passed upon the appeal of Kathama Natchiar *v.* the Rajah of Shevagungah.

Read also Court's Order, dated 18th November 1864, calling upon him for explanation.
Read also reply, dated 26th November 1864.

ORDER.

1. Consequent on the order contained in the Proceedings of the High Court, dated 23rd January 1864, issued to this Court, to execute the decree of the Privy Council passed upon the appeal of Kathama Natchiar *v.* the Rajah of Shevagungah, Mr. Cotton, the Civil Judge, by Proceedings dated 8th February, appointed Mootoosawmy Chettiar, Sheristadar of the Court, Receiver and also Commissioner, to prepare the account of, and to report on the mesne profits, and the order concludes as follows: "It will be open to Kathama Natchiar to bring to notice any delay on the part of the said Sheristadar in the performance of his duties, which it is not expected will extend beyond two months at the utmost." The report not having been submitted, the petition now under consideration was presented on the 14th November, it charges the Sheristadar, among other matters, with negligence and undue and unnecessary delay in the execution of the duties assigned to him in his two-fold capacity of Receiver and Commissioner, and sets forth that Petitioner believes him "to have been actuated therein by improper motives." This Petition was forwarded by Proceedings dated 18th November to the Commissioner for explanation, and his reply reached the Court on the 27th of the same month, receipt of this was intimated to Petitioner on the 30th November, whereupon application was made for an adjournment to the 3rd December to admit of a copy being procured and its contents considered, and on that date a further adjournment to the 13th instant was applied for, which was also accorded.

2. On the 13th December, the date fixed for hearing such evidence as Petitioner might have to adduce in support of her statements, one of her Vakeels, Mr. R. Fischer, in answer to a question on the part of the Court, represented that the charges he proposed confining himself to, were—1st, that there had been negligence and undue delay in closing the accounts of mesne profits, and 2nd, that the Commissioner had retarded submission of his report on the same from improper motives and waived the other points referred to in the Petition; my decision will consequently be confined to the above alone, and the evidence adduced in support of them.

3. That portion of the Commissioner's letter of the 26th November, which has reference to these two charges, is contained in the 2nd, 16th, 17th, 18th, and 19th paras. These are explanatory of the delay alleged, and as the object in part of the present enquiry is to test their accuracy, one portion here calls for remark, viz., the opening passage of the 18th para., in which it is set forth "as the Court has already in its Proceedings of the 24th ultimo given its opinion "in favor of the delay after the 30th August now complained of, I consider any further explana- "tion on the subject is unnecessary." The Proceedings of the 24th October were passed on perusal of the petition presented on behalf of Kathama Natchiar and the Commissioner's explanation; no enquiry was then held, nor had the Court anything before it to guide it in forming an opinion beyond the petition itself, and the Commissioner's explanatory letter, and the mere fact of its having thereupon observed that it had "no reason" for concluding that there had been undue delay, will not in any degree free the Commissioner from liability to meet the present charges.

4. Before proceeding further, it is necessary that I should very briefly advert to what has occurred relative to the mesne profits subsequent to receipt of the High Court's Order to exe-

cute the decree of the Privy Council in so far as the same bears immediately on the present enquiry. Under an order of the Civil Judge, Mr. Cotton, dated 9th February 1864, and subsequent ones based on it, large sums were paid over to 1st witness, for Petitioner, Mr. G. F. Fischer, her duly accredited Agent, under the head of mesne profits on the security of the Zemindary, &c., the above orders were reversed on appeal by the High Court by Proceedings dated 12th August, in which this Court was directed to "forthwith" recover all that had been paid over to the Petitioner, who thereupon, through her Agent, applied for two or three months time ; but the High Court's Order being peremptory and leaving no discretion in the matter, this Court rejected the application, and in default of refund fell back on the security and attached the Zemindary and placed it under the management of the Commissioner, who had also been originally appointed Receiver as a temporary measure ; this was on the 24th August—the demand in full having eventually been paid, the attachment was removed on the 8th November, and the evidence now before me goes to shew that the Petitioner was of opinion that an amount in excess of the refund called for must come to her under the head of mesne profits ; that on submission by the Commissioner of his report, accompanied by the accounts, this would be at once awarded by the Court, and all difficulty as regarded the refund thus removed ; whether or not matters could have been adjusted as rapidly as the Petitioner seems to suppose, even if the report and accounts had been laid before the Court, is not a question that it would be advisable for me to enter on at present, nor is it necessary that I should—it is sufficient, as regards this enquiry, to observe that the opinion was entertained, and a stronger motive then had previously existed thus afforded for urging on the completion of the accounts and report, and I have found it necessary to touch on this point as tending to throw light on what the evidence shews to have subsequently occurred.

5. The charges now under investigation (or rather the charge, for one is, in fact, so closely connected with the other as to be almost inseparable from it), have reference to Mootoosawmy Chettiar's course of procedure as Commissioner, appointed to prepare the accounts of and to report on mesne profits—the first imputes to him delay and negligence in closing the accounts relative thereto, and if the present charges rested merely on the petition and the Commissioner's explanation submitted in his letter of the 26th November, I should, taking into consideration that he has been much engaged on other duties, find it no easy matter to arrive at a satisfactory conclusion, for, in enquiries of this nature, it must, of necessity, always be more or less difficult to ascertain the precise amount of work executed and nature of the obstacles that have had to be surmounted, but which, when once overcome, appear, comparatively speaking, mere trifles, and considerable latitude must be allowed to a Commissioner, it being for him and not the parties interested to decide on the course to be adopted, the separate evidence adduced, however, in support of each charge when taken in connection, clears away the difficulty that would otherwise be found to exist. The statements of the witnesses cited by the Commissioner himself, no less than those examined by the Petitioner, shew that the accounts required by him were closed and delivered by the 30th August, or, including the manovartee accounts, in the course of September, and the services of the majority of the persons who had been engaged in their preparation dispensed with by himself about that time—two points then remaining to be settled—1st, the principle to be adopted in making the division of the mesne profits for the broken periods of the years 1862 and 1864, viz., up to the 15th of April of the former, and 21st February of the latter ; and 2nd, the course to be taken relative to a sum of Rupees 10,000, the source or sources of receipt, of which could not be ascertained ; the former was a question that ought to have been laid before the Court for determination, and the difficulty as regards the latter is shewn by the evidence of the Commissioner's 5th witness, one Deetchamien, the Petitioner's dismissed Sheristadar, and as such not likely to untruthfully depose in her favor, to have been known to exist from the very commencement, yet no attempt appears to have been made to solve it, and the Petitioner's plea is that the above doubtful points have been designedly kept in abeyance by the Commissioner to enable him to effect the object to which the second head of the charge has reference. The Commissioner, on the other hand, in his letter of the 26th November, para. 16, observes—"The rough statement prepared by Petitioner's own servants is not still com-
"pleted, as they cannot trace 10,000 Rupees still wanting, and the Zamabundy for Fusly 1273
"has not yet been finished—to satisfy myself with the correctness of the rough statement I shall
"have to go through the accounts as far back as 1850, which are contained in about 200 dufters,
"or bundles, including those of the Court of Wards. This I am unable to do, as all of the ser-

"vants who were engaged in the preparation of the statements have been dismissed by Mr.
"Fischer, and as no substitutes are as yet supplied, although I have applied to Petitioner's
"Vakeels." The evidence, however, shews the latter part of this to be incorrect ; one person, viz., Deetchamien, and one alone, has been dismissed by the Petitioner's Agent, Mr. Fischer, though a misapprehension appears to have existed relative to another, viz., one Vencata Row, the 8th witness cited by the Commissioner. The services of the majority of the others were dispensed with by the Commissioner himself, while those remaining in the office are, on their own shewing, doing little, if anything—it almost goes against common sense to suppose that the Petitioner, interested as she is in the rapid adjustment of the question of mesne profits, would throw difficulties in the way of the Commissioner, and if, as he urges in the above extract, it is necessary that he should personally go through the account as far back as 1850 to test the accuracy of the rough statement which has been prepared in his own office, under his own immediate superintendence, and by persons selected by himself, it is not easy to see what advantage has been derived from its preparation, while, as regards the remark that it has been prepared by Petitioner's servants, which I take to be made with a view to throw discredit on its trustworthiness, it is to be observed that these persons, though now in the service of the Petitioner, have been long attached to the Zemindary, the principal one, Deetchamien, for about 42 years, and it was in fact only through them that the required information could be obtained, all that remained to be done after September, at all events, was to decide on the principle on which the decision of the mesne profits for the broken periods was to be made, and to dispose of the difficultly as regards the Rupees 10,000, and no decisive step was subsequently taken relative to either, whether as regards submission of the same for the order of the Court, or adjustment by the Commissioner in conformity with his own views, which it was quite open to him to have carried into effect, leaving it to the Court to eventually decide on the merits of the course adopted.

6. Here it may be urged, and with much show of reason, that the Commissioner was engaged in the management of the attached Zemindary during the months of September and October ; this I take to be referred to in the 2nd para. of his letter of the 26th November : it has unquestionably been brought forward to a certain extent, though not very prominently, in the evidence adduced by him, and has been much dwelt on in his defence. Such, no doubt, was the case, but this duty was only assigned to him on his own assurance that he could undertake it without prejudice to his work as Commissioner and Receiver, and it could have proved no impediment to his submittting the points adverted to in the last para., if, in doubt for the decision of the Court, the re-attachment was effected on the 24th August, the accounts had been prepared by September, and, at most, all that was wanting to put him in a position to close them and submit his report, was the Court's decision as to the course to be adopted relative to the two difficulties set forth above—this, however, was not sought, and I now pass on to the 2nd charge and the evidence adduced in support of it, which, in my opinion, furnishes the key to the above, and removes the doubt that I would otherwise entertain as to the fact of the delay alleged having been undue and unnecessary.

7. The second charge imputes to the Commissioner an improper motive in the delay adverted to in the 1st, and the nature of the motive must be sought for in the evidence itself—that portion of it which bears on this is contained in the statements of Mr. G. F. Fischer, the Agent of Petitioner, Mr. J. Fischer, his Nephew, and alleged Agent at Shevagungah, one Yellier, and one Choudappier, who have been for some time in their service as Revenue servants, and are now employed in the Zemindary in this capacity—they appear respectively as 1st, 3rd, 2nd, and 4th witnesses—all have been subjected to cross-examination, and each, with the exception of the 3rd, has been re-examined by the Commissioner as a witness on his own behalf ; during the course of the examinations and cross-examinations on both sides I have taken down the evidence in full and closely watched the demeanour of these witnesses, as well as the manner in which each gave his evidence, and I have failed to discover ground for discrediting the statements of any of them—they are consistent throughout, free from contradictions, have remained unshaken on cross-examination, and, as it were, fit into each other in a manner that is at variance with the presumption of previous concert—either the representation of these four witnesses are a tissue of as deliberate perjury as perhaps ever came before a Court, and, as I have observed, I can detect no ground for calling in question the veracity of any of them, or the Commissioner is guilty of

all that is imputed to him. It was his manifest duty to have kept himself clear of both parties and to have acted independently—it is not, however, necessary that I should here enlarge on his disregard of this—under existing circumstances, it is uncalled for, and I shall confine myself to that portion of the evidence which, in my opinion, proves him to have been influenced by an improper motive; and that adduced by him to rebut it.

8. 1st witness deposes on this point, "after the Zemindary was zufted for refund I next saw the Commissioner at my house—this was 1st or 2nd of September—he told me all the accounts he had asked me for had been sent him, that the accounts were completed—the accounts asked for were those asked for when he came to communicate the refund order—he said there was a difference of Rupees 10,000, which could not be accounted for, but which did not signify as it was in our favor, that is, that it was surplus; and that the only difficulty was to divide the mesne profits into the two divisions ordered by the Court, viz., from the 23rd June 1850 to the 15th April 1862, and from that date to 20th February 1864—he had suggested various modes of raising money towards refund, and asked me to shew him the list of my expectations—he told me the amount I shewed him on that list, 4,50,000, was not enough, and again refused me the statement of refund I had asked for. Said I might put him down for 20,000, and asked me to give him a bond in the name of a relative whom he had introduced. I asked for the money, he said he would shew me how to enter it in the accounts at the end. Suspecting his object, I told him that would not do, when he wound up with the old whining story that I must give him a good present at any rate. The Chetty (viz., Mootoosawmy Chetty, the Commissioner) came to a nautch given at Shevagungah in honor of the Ranee taking possession of the Palace. I reproached him with not keeping his promise of making his report on mesne profits in the beginning of September, he harped on the difficulty in making the division, and said he would come and see me about it. He appointed the 17th, and did come to my house at Shevagungah, where I had asked my chief people to meet him. We discussed the division, the Chettiar proposed a mode utterly impracticable. Mr. Scott, my Assistant, proposed another mode, and my native servants another mode, the Chetty said he was inclined to adopt the modes proposed by my servants combined together, the Chetty's mode was to divide all the grain, cut and uncut, divided and undivided, stacked at every village, by each ryot throughout the Zemindary, up to the 15th April 1862. Mr. Scott's was to take the average of the whole income for the year, the native servants' proposal was division of crops and kists—while we were discussing, the post came, among other things, bringing a letter from Messrs. Binny and Co., it contained a Power of Attorney of my execution to convert Company's paper into Currency Notes, the Chetty read the Power of Attorney to me himself, and said that he had seen the Nattoo Cottai Chetties at Davacottah, and that they told him they were willing to give me the remainder of the money I wanted for the refund—on breaking up the meeting, he followed me out and muttered, I do all the work Binny & Co., and the Chetties get all the profit. I could (or would) release the Zemindary for half what you are going to give the Chetties and Binny & Co.,—he meant by release the Zemindary making his report to the Court of mesne profits due to Kathama Natchiar and half meant half of the premium I was going to give to Binny & Co., and the Chetties, which was 5 per cent., that is, 2½ per cent. on whatever he declared due to Kathama Natchiar, and on going away told me to send Yelliah, our head servant, and Choudappier, to him (viz., 2nd and 4th witnesses), two of the persons present at that interview to make the division of the mesne profits accounts." * * * 3rd witness states—"I recollect the 2nd October. I saw the Chetty on that date. I met him in the Kalliana Mahal of the Ranee's Palace at Shevagungah, he was in conversation with the Ranee when I came. I joined in the conversation; first we talked of the approaching installation, then of the question of mesne profits. The Ranee asked him to expedite it, the Chetty said to me that if a strong promise was made to him, he would expedite the settlement of the question. The conversation took place in Tamil, the promise, my belief is, had reference to Mr. G. F. Fischer paying the Chetty 2½ per cent. on the mesne profits. I laughed it off, when he observed, as for Mr. Pelly, I would blow him off as the dust from my hand. I said I would bring it to the notice of Mr. Fischer, which I did," while evidence of the 2nd and 4th witnesses may be taken in connection, the statement of one being in effect, a repetition of the evidence given by the other. They depose that they were present at the meeting at the house of the first witness at Shevagungah on the 17th September, to discuss the division of the mesne profits as set forth above, when the Commissioner required them to attend at the house in which he holds office to effect the division in the manner they proposed,

that they were ordered by 1st witness to go there which they did, when certain accounts were gone through, and a division made, after which the Commissioner said he could give the report on mesne profits and get the Zemindary released if paid 2½ per cent. for his trouble, in reply to which he was referred by deponents to 1st witness.

9. No attempt has been made to meet the above evidence of the 1st and 3rd witnesses; the Commissioner has, however, examined two persons, viz., one Appasawmy, and one Soobromoniah Iyen, who appear as his 5th and 6th witnesses, to disprove the statements made by the 2nd and 4th witnesses for the Petitioner. They are respectively a Gomastah and Ameen employed under him, they depose to having been present on the 17th September at work in the Commissioner's office, at a distance of about a yard and half from him, and they deny that any conversation of the nature deposed to by the 2nd and 4th witnesses did take place on that occasion—on their own shewing, however, they were then engaged in other work, and were not taking part in the adjustment of the accounts, an application of the above nature was not likely to have been made in a loud tone of voice, and might easily have escaped the ears of persons otherwise employed, especially if their attention was fixed on what they were doing, and in one respect I find a discrepancy in their evidence, the 5th witness deposing that the 6th says he was assisting him in copying, while the 6th says he was writing by himself, and in adjusting the balance between the conflicting statements of the above four witnesses, viz, 2nd and 4th for Petitioner, and 5th and 6th for the Commissioner, I must look to the evidence of the 1st and 3rd witnesses, which verifies that of the former, the 1st positively swearing that in the earlier part of that very day, viz., 17th September, the Commissioner made a proposition to him to the effect that he would cause the release of the Zemindary for half what was to be given to the Chetties and Messrs. Binny and Co., viz, 2½ per cent. on the mesne profits, which might be declared due to Petitioner and the 3rd witness, that on the 2nd of the following month he, in presence of the Ranee, said "that if a strong promise was made, he would expedite the matter," and taking the statements of the above witnesses, who have been examined on behalf of the Petitioner in support of the 2nd charge, or rather second part of the charge, one in connection with the other, I cannot but accept them as truthful.

10. The defence contains little calling for special remark, all the points raised in it are disposed off above, except the delay in preferring the complaint, viz., from 17th September to 12th November, and the attempt to throw discredit on the oral evidence on Petitioner's part, on the ground that the witnesses are in her service, or actuated by enmity, no doubt ill-will does now exist between the 1st witness and the Commissioner, but I find no ground for concluding that this has led to a false charge, it appears to be the result of the non-submission of the report, and I do not attach much weight either to the delay or to the witnesses being in Petitioner's service. A demand of the above description, from its very nature, would not be made to any one but a confidential servant, while, as regards the delay, it was not under the circumstances very extraordinary, nor will it materially affect the merits of the case.

11. On the grounds set forth above, the conclusion I come to is, that the evidence proves Mootoosawmy Chettiar to have taken advantage of his official position to endeavour to obtain a gratification to which he was not entitled, he is accordingly dismissed from his office of Commissioner, and dismissal from this office on the above ground of necessity carries with it dismissal from his office of Receiver and Sheristadar of the Court.

(True Extract.)

(Signed) C. R. PELLY,
Acting Civil Judge.

(True Copy.)

C. R. PELLY,
Acting Civil Judge.

GANTZ BROTHERS: ADELPHI PRESS.

Received in the Privy Council Office 22 Dec 1864
No. III.

ABSTRACT statement of Proceedings of the Civil Court of Madura, dated 22nd December 1864, in connection with a Petition dated 14th November 1864, presented on behalf of RANEE KATHAMA NATCHIAR *versus* MOOTOOSAWMY CHETTIAR, Receiver and Commissioner of the Shevagungah Zemindary.

The Zemindary consists of 2,000 villages, comprised in 8 Taluqs, and managed invariably by two or three men.

(*A.*) Petition presented 14th November 1864, delay questioned ; motives applied, and "other matters charged."

Petition forwarded 18th November 1864 to the Commissioner for explanation.

Day of hearing. Points recorded. Negligence, and "undue delay," and "improper motives." Vakeel for Complainant waived the "other matters."

By the Court "no reasons" to conclude there was "undue delay."—*Vide Proceedings, 24th October* 1864, C.

Order by Mr. Cotton, Civil Judge, dated 9th February 1864.

Large sums from the "mesne profits" on the security of the Zemindary were paid to 1st witness, viz., Mr. G. F. Fischer, the Ranee's Agent, and subsequent to receipt of High Court's orders for execution of Decree of Privy Council.

Order of Mr. Cotton, Civil Judge, dated 8th February 1864. Accounts on "mesne profits" expected not to exceed two months.

Accounts not rendered within the prescribed time, but delivered by the end of August.

Explanation B given by Commissioner, dated 26th November 1864, and which reached Court 27th November 1864—adjournment asked for on two occasions, and acceded to till 13th December 1864.

"Other matters" deliberately entered in the filed Petition now waived—why?

Explanation offered considered satisfactory. Court's decision in favor of "delay" had been already recorded in the Proceedings C dated 24th October 1864, therefore "further explanation" as to cause of delay, now stated in paragraph 18 of Commissioner's letter of explanation, was objected to by the Court, and the subject of "undue delay" again re-opened, thereby violating that sacred maxim of Law, that no person shall be called upon twice for the same offence.

To conclude thus it must virtually carry with it its own "no reasons" for presuming "improper motives," for it was a prerogative of the Court which none can deny. To arrive at it, every hypothesis must have been excluded, no doubts entertained, for all necessary acts are presumed to be correctly done. Where was then the necessity for further liability to meet the self-same charge already disposed of only 20 days ago? Why rip up a sore already healed by the Court's own unction? Why, indeed, militate against a sacred rule of Law?

Order reversed by the High Court 12th August 1864, and mesne profits advanced peremptorily ordered to be returned, guilty of default. Zemindary attached and continued under the same Commissioner, 24th August 1864.

Amount paid 8th November 1864, attachment released.

By Petitioner alleging "undue delay" in Petition dated 17th October 1864, D.

It was in connection with these fair, liberal, and impartial views, that the petition was disposed of, as there being "no reason" to assign any "undue delay."

Paragraph 4. The evidence now before me goes to show that the Petitioner was of opinion that an amount in excess of the refund called for must come to her under the head of "mesne profits."—*Vide Petition A. 14th November* 1864.

Petitioner's charge of "undue delay."

"Improper motives" in not submitting report on mesne profits.

The charge is "improper motives" and "undue delay" or, as the Court properly remarks, one is, "in fact, so closely connected with the other, as to be almost inseparable from it." That is to say, judgment in one will include judgment in the other; acquittal in one is acquittal in the other.

By Mr. Pelly, Acting Civil Judge, Proceedings C 24th October 1864, Court sees "no reasons" for attaching undue delay to the Commissioner. Again, in Proceedings 22nd December 1864, paragraph 5, says, "Taking into consideration that he has been much engaged on other duties, find it no easy matter to arrive at a satisfactory conclusion, for, in enquiries of this nature, it must, of necessity, always be more or less difficult to ascertain the precise amount of work executed and nature of the obstacles that have had to be surmounted"—and, again, "considerable latitude must be allowed to a Commissioner, it being for him, and not the parties interested, to decide on the course to be adopted." Again, paragraph 6, "and the Zemindary has unquestionably been brought forward to a certain extent."

Was not the opinion of "excess" clearly stated in the face of the Petition D, dated 17th October 1864, in paragraph 12, and which was disposed of on the 24th October 1864, only 20 days previously.

What there was in the "new evidence" for the Court to rip up a petition based on the same cause?

This charge having been explained away as above, it only remains to disprove the 2nd charge, since it is now separated.

Commissioner's letter of explanation B, dated 26th November 1864, says, "The rough statement prepared by Petitioner's own servants is not still completed, as they cannot trace 10,000 Rupees still wanting, and the Jummabundy for Fusly 1273 has not yet been finished. To satisfy myself with the correctness of the rough statement I shall have to go through

the accounts as far back as 1850, which are contained in about 200 dufters or bundles, including those of the Court of Wards. This I am unable to do, as all of the servants who were engaged in the preparation of the statements have been dismissed by Mr. Fischer, and as no substitutes are as yet supplied, although I have applied to Petitioner's Vakeel."

Here, it will be observed, the fact of a deficiency existing being known to the Petitioner, and the inability of the Commissioner to admit its truthfulness without examining the records was plainly and honestly set forth, and as remarked by the Court, "it is not for the Petitioner to dictate or decide."

Dismissal of witness Deetchminen is admitted by the Court as an *only* instance, while it peculiarly keeps to itself the benefit of a doubt in the dismissal of the 8th witness, which the law on these occasions gives the benefit to the prisoner.

If Deetchminen, a man of 42 years' service, be discharged, and the Commissioner denied the doubt of the 8th witness being also so dealt with, be admitted, is the Commissioner wrong when the Court itself says, and, in fact, lays such stress upon the discharge of the very identical and self-same individual, and who—the Commissioner may add—was the only source he could expect valuable assistance from. Was he wrong, or even incorrect, if the Commissioner entertained this act of Deetchminen's dismissal by the Petitioner as throwing an obstacle in his way? and is the Court's view correct when it finds the Commissioner's statement on record as "incorrect" and qualifies the discharge of Deetchminen as a nonentity, viz., "one alone;" and still, in the same paragraph, and almost in the same continued voice, attach a pre-eminent degree of importance to that self-same ONE as the source of acquiring information as the principal one and of 42 years' service." Is this consistent?

All employed in the Zemindary and under Mr. Fischer.

This criminal conversation is stated to have taken place on the 1st or 2nd and 17th September 1864, respectively, and yet, by three Petitions (D, E, F,) duly filed on the 17th, 21st, and 28th October, (exactly one month and a half *after* the alleged communication is said to have transpired) by Soobramanya Iyer, Vakeel

Court says, Commissioner's statement in regard to the dismissal of servants to be "incorrect," but also adds that Deetchminen is now in the service of the Petitioner.

Paragraph 5 further says, "It is to be observed that these persons have been (though now in the service of the Petitioner) long attached to the Zemindary: the *principal* one, Deetchminen, for about 42 years, and, in fact, *only* through them that the required information could be obtained."

In Commissioner's letter dated 26th November 1864, Deetchminen is represented as being Mr. Fischer's "confidential servant," and yet the Court says, "he is the Petitioner's discharged Sheristadar, and, as such, not likely to untruthfully depose in her favor;" and again, "he is now in the service of the Zemindary."

Witnesses for the Prosecution:

1. Mr. G. F. Fischer, Agent for Petitioner.
2. Yellier.
3. Mr. J. Fischer, alleged Agent and Nephew of 1st witness.
4. Chonduppier.

1st witness says that the Commissioner said that there was a difference of 10,000 Rupees which could not be ac-

counted for (vide letter 26th November 1864), because the 200 dufters or bundles could not be examined, but that "it does not signify since it was in our favor (surplus)," meaning, as may be supposed, as much in the Agent's favor to claim as it is in the Commissioner's favor to warrant its being brought on the record.

Here the possibility of its existing, even without examining the 200 dufters, is, in some measure, admitted, and the liability of its being claimed by Petitioner extended. Where, then, can the "improper motive" lie even to suspect, much less to make the imputation in the delaying of the division of the "mesne profits."

The 1st witness goes on to say—"The Commissioner said, on the 1st or 2nd "September, put me down for 20,000 "Rupees, and give me a Bond in the name "of a relative, and that the Commissioner "would shew him (witness) how to enter "it in the accounts at the end; suspecting "his object, I told him that won't do."

I met the Commissioner again at a nautch, and we arranged to meet again on the 17th September 1864. I had asked my chief people to meet him on that day, so we were present, and he came. My native servants proposed one thing, and Mr. Scott, another. While so engaged, post came and brought me Power of Attorney from Binny and Co. to convert into money. On the 1st or 2nd September Commissioner suggested various modes of raising money towards refund, and now said that he had seen the Nattoo Cottai Chetties at Davacottah, and that they told him they were willing to give me (witness) the remainder of the money I wanted for the refund.

On breaking up the meeting, he followed me *out* and *muttered*, "I could or would release the Zemindary for half what you are going to give Binny and Co.;" he meant half of the premium I was going to give Binny and Co. and Chetties. He left, desiring 2nd and 4th witnesses being sent to him.

He *muttered* while *out*.

for the Ranee, and, as a matter of course, for her Agent, Mr. G. F. Fischer, no attempt was made to allude to this criminal language. Can Mr. G. F. Fischer say that he was ignorant of the said petitions being filed, or that he did not see them before they were put in? It would be preposterous to suppose it. Mr. G. F. Fischer himself filed a petition on the 12th October, then even no attempt whatever was made to allude to the above language, though he therein complained about the report on mesne profit.—*Vide document G.*

Why were it not immediately made the cause of action, as the Petition D only shewed "undue delay?" If, therefore, Mr. G. F. Fischer failed to prosecute at the time, and ratified it by concealment and pursued a different course through another of his Counsel, he has virtually abetted the offence, inasmuch as he (Mr. Fischer) was bound, as the Agent of the Zemindary, to give immediate information against the Commissioner for his attempt to elicit a bribe in connection with the said Zemindary, of which he was the Agent. But what does he say? "suspecting his object," *i. e.*, perhaps to be of a dishonest nature, "I told him that would not do." But what legal measures did he adopt on that occasion against the Commissioner, knowing and suspecting as he did, a design on the part of the Commissioner to commit the alleged offence? Nothing—absolutely nothing.

Is this not a palpable dereliction of duty on the part of Mr. Fischer, and is it not an obligation he should have conscientiously discharged to the interest of the Zemindary?

The Commissioner came, as may be supposed, in accordance to the appointment and as all honorable men would do—but what necessity was there for "native servants" and others to meet him? Does it not shew a heart bent upon mischief?

A muttering is something half expressed and half understood, and, therefore, indistinct expressions are tantamount to no expression, and is, therefore, no evidence; and, therefore, what the Commissioner may have muttered is not conclusive of what Mr. Fischer chooses to infer.

The simple fact that the Commissioner endeavoured, by every possible means, to facilitate the Agent's (Mr.

Fischer's) desire in endeavouring to procure the necessary aid to effect a release of the attached Zemindary, only shews a degree of friendly and moral obligation which one man should evince or display towards another; not admitting the inference of any "improper motives," since the parties from whom the loan was expected were unconnected to the Commissioner. Again, the inference drawn, "I could or would release the Zemindary for half of what you are going to give Binny and Co.," is unjust in the extreme. Even supposing its admission, it can only shew that the Commissioner could get it done by the Chetties at Davacottah, for the witness himself further deposes that the Commissioner had seen them (Chetties), and that they promised to advance the desired loan.

Again, it was *out*, meaning outside, no one was present. What credibility could there be attached to one, and that, to use the words of the Court, "one* only" who himself was unremittingly zealous in endeavouring to gain the absolute agency of the Zemindary, and whose repeated attempts to secure a speedy closing of the accounts of the mesne profits were as often overruled and frustrated. With all this the Court can see "no ground" to discredit his testimony.

* Vide Deetchmunen when he was discharged.

It is here represented that the Commissioner was conversing with the Ranee, and, to a question put by her to expedite the settlement, the Commissioner, instead of answering her, is said to have deliberately turned round and answered Mr. J. Fischer, and to have asked him for the promise of a consideration.

This is opposed to human nature, for the essence of all crimes and their respective designs are contemplated and done in darkness, and, as the Court remarks, "words of this nature are not likely to be uttered in a loud tone of voice," and how palpably opposed is it to suppose that the Commissioner would, for one moment, so forget himself as to seek for a promise in so public a manner and that too on such commanding and positive terms, viz., a "strong promise," or otherwise, as the inference reads, if not made, no settlement of mesne profits will be rendered. What, cannot the Commissioner, a merely deputed temporary Agent, be authorized to vacate or render accounts by the Court at any moment? If

Deposition of 3rd witness, Mr. J. Fischer, Nephew of Mr. G. F. Fischer:—

"On the 2nd October 1864 I saw "Mootoosawmy Chetty. He was conversing "with the Ranee. I joined. We talked of the "approaching installation and of the ques-"tion of mesne profits. The Ranee asked "him to expedite it. The Chetty said to "me that if a strong promise was made to "him he would expedite the settlement. "It took place in *Tamil*. My belief is the "promise had reference to Mr. G. F. "Fischer's paying the Chetty 2½ per cent. "on the mesne profits. I laughed it off, "when he observed, 'as for Mr. Pelly I "would blow him off as the dust from my "hands.'"

Deposition of 2nd and 4th witnesses. These witnesses were present on the 17th September. Called, as desired, at the Commissioner's office, where he, Commissioner, said he could give the report on mesne profits and get the Zemindary released if paid 2½ per cent. for his trouble, in reply to which he was referred by deponents to 1st witness.

Court says, "One Appasawmy and one Soobramanya Iyen, who appear as the 5th and 6th witnesses to disprove the statements made by the 2nd and 4th witnesses for the Petitioner—they are respectively a Gomastah and Amin employed under him, Commissioner."

so, how then can it be believed that the Commissioner acted with such false independency and blind impetuosity, and again, up to the 2nd October 1864, and even after Mr. Pelly, the Acting Civil Judge uniformly supported the Commissioner and overruled all the innumerable petitions put into Court by Petitioner and this witness' Uncle from time to time. The Commissioner, therefore, as common sense would indicate, was manifestly indebted to Mr. Pelly for the just manner in which he met the fiery darts directed towards the Commissioner by the witness' Uncle on all and every occasion. Why, then, would the Commissioner speak so disparagingly of one to whom he must be infinitely obligated? Is this consistent with human nature? The Court, nevertheless, sees "no ground" for discrediting.

It is stated, in evidence by the 1st witness, that the Commissioner himself desired these two persons to be sent to him—why *two* persons if he intended making a dishonest proposal? Was the Commissioner a man of no sense, of no age, or of no experience, that he should thus call *two* competent persons to bear testimony to his palpably dishonest and criminative language. Again, had the Commissioner no private lodgings where he could have met these *two* men and facilitated his dishonest proposal? Why call for a meeting at his office in a public way and in a public manner? Does it not carry its own conviction, that it was done to discuss matters purely public? Again, what direct influence can common paid native servants have in the Zemindary, as to induce the Commissioner to make a direct suggestion or proposal to them. None whatever; for as they depose "he was referred to the 1st witness." If, then, the Court very justly infer that such proposals "are not made in a loud tone of voice," and thus reconcile the testimony of 2nd and 4th witnesses with the 1st, are the circumstances advanced above to have no weight in the matter as to see "no grounds" for discrediting.

True, Appasawmy and Soobramanya Iyen were employed under the Commissioner, and were in the office at the time; but is it not shewn that witnesses Nos. 2 and 4 were equally employed under the Petitioner and feeding upon the bounty directly extended to them by the 1st witness from the Zemindary estate? And again, is it not reasonable to suppose that servants will say

Paragraph 6. "But this duty was only assigned to him on his own assurance that he could undertake it without prejudice to his work, as Commissioner and Receiver." It must be on the 24th August 1864.

Paragraph 9. The Court looks to the evidence of the 1st and 3rd witnesses, the first positively swearing that in the early part of that very day, viz., 17th September 1864, the Commissioner made a proposition to him requiring 2½ per cent. on the mesne profits, and the 3rd witness that on the 2nd of the following month, he, in presence of the Ranee, said, "that if a strong promise was made he would expedite the matter," and taking one in connection with the other, I cannot but accept them as truthful.

what master says? Were these points considered by the Court? Apparently not, for it sees "no grounds" for discrediting them, while it *carefully observes* that the two advanced by the Commissioner are "under him," *i. e.*, there is no believing them, because they are "under him."

To this the Commissioner will refrain from offering any comments of his own, but will simply offer the following Extract Proceedings C, dated 24th October 1864:—"The work has, however, without doubt, been considerably retarded by the Receiver, having had to be *placed in charge* of the attached Zemindary, and this affords an additional reason for releasing him of that duty as soon as suitable arrangements can be effected." The proceedings of the 24th August (H) directed the Commissioner to attach and retain the entire Zemindary under attachment and management *until* the *amount* to be refunded *be recovered in full or paid by the Ranee,* but do not mention to do so until the amount is deducted from the mesne profits, nor the Proceedings shew that the Commissioner assured the Court us stated.

True, the 1st witness did "positively" swear in open Court that he would speak the truth, and it is as positively shewn in his deposition that the Commissioner did not "positively" make the posposal but simply "*muttered,*" which at the very utmost, may mean something half understood as it was only half expressed, and, therefore, could be no evidence; and if so, why was it not made the ground of action immediately, or when the three Petitions (D, E, F) were filed? Why put in a petition subsequently of a different nature? Why conceal the design of a person to commit an offence? Why lay it in abeyance for a month and a half, and pursue, at the same time, a contrary course of action? Again, it is said that the language took place "out" meaning outside, therefore there could be *no other witness* beyond his own statement. It may be asked what earthly object had this witness to make such an offensive imputation on the Commissioner, unless true? The following will illustrate—

1*st.*—Mr. G. F. Fischer was the Agent of the Zemindary, and was unable, from frequent attempts, to raise money to release it from attachment, or to pay the Commissioner the five lacs he had received.

2*nd.*—Petitions were frequently put in by Petitioner and Mr. G. F. Fischer complaining of the unusual delay of settling the mesne profits, and as often rejected by the Court as seeing "no grounds" for complaint.

3*rd*.—The Court itself says, " the Petitioner is too manifestly interested on the rapid completion of his report." *Vide Court's Proceedings, 3rd December* 1864.

4*th*.—His whole heart and soul were engaged to obtain absolute agency over the attached Zemindary, and, perhaps, to display unlimited powers over the profits of the same.

5*th*.—What, after the Commissioner repudiating his conduct for alienating a silver Car and of forcing its production, and likewise of payment of Rupees 90,000, the proceeds of a sale effected by him of the Zemindary estate in opposition to his entreaties, that it should be met by the mesne profits—and again, the Commissioner acting adverse to his proposals and wishes on repeated other occasions.

6*th*.—Again, Court admits, " no doubt ill-will does now exist between the 1st witness and the Commissioner." True, it does " now exist," and, the Commissioner may add, did exist, and which mainly influenced and actuated the charge " improper motives," for an "ill-will" cannot succeed a prosecution, but—precede it and yet the testimony of a person so directly, and, as the Court observe, " *manifestly interested*," (and the Commissioner may again add) and at variance with surrounding collateral circumstances, the Court sees " no grounds" for discrediting.

3rd witness, Mr. James Fischer. Who is witness No. 3 ? He is the Nephew of Mr. G. F. Fischer, the Agent of the Zemindary, and also the alleged Agent of Shevangungah, serving under the 1st witness, living in the same house, eating at the same table ; in fact, having one common interest in the Zemindary estate, his heart, therefore, was, in truth, blended with that of his Uncle. Again, was not the said Mr. James Fischer discharged by the Commissioner from the management of the Zemindary on the 25th August 1864 ?

Was the Ranee examined on commission, as she is represented to have been present when the Commissioner elicited, or rather demanded, the promise ?

Again, was her complaint of the 14th November 1864 at all verified ?

Were there no attendants on this dignified and aristocratic Ranee at the time Mr. James Fischer is said to have called on her and found the Commissioner conversing, and when it is said that he used the language imputed, strange, very strange, that a woman of her rank should lay aside all female modesty to receive the interview of the Commissioner alone, a proceeding so prejudicial to the usages and customs of the East ? Do the circumstances advanced afford any "grounds," even in the remotest manner, to discredit the testimony of this witness ? Again, the Commissioner would respectfully ask, Why was it not made the ground of action immediately, as it was said to be spoken on the 2nd October 1864(D) ? Why pursue a different course on the 17th October 1864, by permitting the filing of a petition simply complaining of "undue delay ?" Does not conjoint interest shew itself to be the operating agent ? Are not the failing attempts and disappointments of his dear Uncle, to gain a speedy termination of the accounts of the mesne profits, equally or in some measure felt by the obedient Nephew, and who is also the alleged Agent of Shevagungah ?

Withal, the Court sees " no reasons" to discredit his testimony.

In conclusion, it will be observed—

1*st*.—That the Commissioner has been put on his trial on simple " *muttering*" which was indistinct, and which the law unhesitatingly rejects as being *no evidence*, as it is, in fact, worse than false evidence.

2*nd*.—Advanced by parties, as the Court properly remarks, "too manifestly interested" and by simultaneously prejudicing the Court with personal remarks as used by the Commissioner, while at a time the latter was infinitely obligated.

3*rd*.—The evidence of the 3rd witness, influenced by blood connexion with the 1st witness and the attempted link of connexion, set forth to bear a consistency with the "muttering" is too palpable to escape observation.

4*th*.—The previous failing attempts of the "manifestly interested" parties to gain a speedy closing of the accounts of the mesne profits cannot but indicate, in a strong measure, to be the actuating principle for the advancement of the charge of "improper motives."

Lastly.—The Zemindary was an extensive one, and, as the Court remarks, "has been unquestionably brought forward" by the Commissioner's individual exertion. The Commissioner's time and energy have been unremittingly applied to achieve this object, and his general conduct as a public officer was scrupulously and zealously maintained, while the transactions of this multifarious duties connected with this important Zemindary were governed by rigid uprightness and undeviating honesty ; and alas ! a simple "*muttering*" (if muttered at all) to " obtain a gratification," has been the ground of action and on this imperfect evidence he was dismissed, not only from his office as Commissioner and Receiver of the said Zemindary, but also from the public service in which he was uninterruptedly engaged for a period of 24 years, and with which the office of Commissioner was totally distinct and unconnected.

GANTZ BROTHERS, ADELPHI PRESS.

M. P. Nos. 412 and 413.

George Fredrick Fischer duly sworn deposes. I am the accredited Agent of Kathama Natchiar. I have often very unfavourably noticed the conduct of Moottoosawmy Chettyar. I told the Ranee that he and his friends are drawing large pay and neglecting the accounts from interested motives, and when that the accounts were all prepared he delayed the same from improper motives. My grounds were that he did not commence with his business for more than a month after his appointment. 2nd that he proposed for pursuing course of account which was altogether unnecessary and unwarranted by the order of this Court and the Decree of the Privy Council. 3rd that he was dragging the establishment and accounts from Madura to Shevagungah and thereby losing time. 4th making Madura his Head Quarters instead of Shevagungah. 5th. That he absented himself for a month under false pretences taking away Head Servant Deetchamier with him and some others. And lastly for acting as auctioner for 2 or 3 months in order to draw Commission at 5 per cent. devoting his whole time to that work. I objected to the course of accounts because from my knowledge, as merchant and Zemindar—he ordered all the accounts for the period for which he was to ascertain the mesne profits such as Jamabundy and miscellaneous accounts to be sent in. Whereas the Decree of the Privy Council and order of this Court only directed that an account of rents and profits received by Respondent or by his orders or for his use this could have been done and ought to have been done by the annual accounts of the year called Sall Jamacaroosoo, this account contains all the income and disbursement for the year and the account current made thereupon—that account gave every information with regard to mesne profits can be deduced, and it is this account which has been mainly used by those entrusted to prepare the mesne profits accounts, the servants of the Zemindary selected by the Receiver himself according to a list which he produced. These accounts were all kept in our Cutcherry at Shevagunga. The accounts shew income and expenditure and deducting expenditure, the mesne profits. I mean by expenditure the bona fide charges incurrible on the estate which deducted the difference was mesne profits. The Manovurthy accounts show the Zemindar's private expenditure and there are other accounts which shew expenditure by his order which shew the expenditure of the mesne profits—the Commissioner was only ordered to ascertain the mesne profits. I protested against the Commissioner going into the Jamabundy accounts as a waste of time—he said he would shew how simple his mode of accounts was and prove it to my satisfaction which he never did, he would have had at Shevagungah every facility of information and assistance ready and the servants would have been more diligent and careful in our own Cutcherry. The Commissioner took leave of me on the 6th of April and reported his return on the 4th of May. (By the Court. By report I mean he sent a message to me to say he had returned and came to take leave of me before he left.) I was at Madura when he came to take leave of me—he told me he was going by order of Mr. Goldingham to enquire after some villages I had irregularly Zufted—when he did come to see me—he asked me to give my bearers whom I had lent him batta for 26 days and I did so—and at his entreaty I did so. I did not do it very willingly—they are only entitled to batta when they travel out of our Jurisdiction i. e. Shevagungah. I did not order Deetchamier to accompany him on that occasion as he was acting in capacity as Receiver. Whereas Deetchamier was Head of his department. I was present when Moottoosawmy Chettyar asked Mr. Goldingham for Commission for auctioner. (By Court) Mr. Goldingham said auctioner may have 5 per cent on live stocks and ½ or ⅓ per cent on the sale of proceed of Jewels. I consented to it because I heard Moottoosawmy Chettyar was to give the Job to Mr. Johnson or some one else—but instead of doing so employed himself and the chief part of his establishment on it and at the conclusion drew Commission at 5 per cent on the whole—he told me he had taken it at the conclusion of the sale but afterwards I heard that this had been objected to by the Court and he refunded it. I had always urged Deetchamier to expedite the preparation of mesne profit accounts and he told me that the chief portion had been done in July and the chief servants employed on it sent back to Shevagungah—a small portion of work remained to be done. viz., the accounts for Fusly 1273 up to 21st February, this he ordered them to do at Shevagungah and send him—when the refund order came I urged on these accounts and they were given to Chettyar on the 25th of August at Shevagungah. Chettyar was the first person who communicated to me the refund order. I think it was the 13th or 14th August. The accounts were finished and handed on the 25th. I was told so. The whole of the accounts were rendered by the end of August. Ramachandra Row told me that the whole of the accounts connected with the Iyen accounts prepared by Pursuram Row and Kristna Row had been rendered the servants employed under the Commissioner were sent back to Shevagungah. The monthly baravurty, batta and pay accounts shew that they were dispensed with. I did not dismiss any of the servants under the Commissioner except Deetchamier and that not until the Zemindary was last zareed to me—he had been employed as zuft manager. Some of the

No. IV.

servants remained under the Commissioner employed variously by him. After the Zemindary was zufted for refund I next saw the Commissioner at my house—this was— st or 2nd of September—he told me all the accounts he had asked me for had been sent him and that the accounts were completed. The accounts asked for, were those he had asked for at the interview when he came to communicate the refund order—he said there was a difference of 10,000 Rs. which could not be accounted for, but did not signify as it was in our favour, that is, that it was surplus—that the only difficulty was to divide the mesne profit accounts into the 2 divisions ordered by the Court, viz. from 23rd June 1850 to 15th April 1862 and from that date to 21st February 1864—he had suggested various mode of raising money towards refund and asked me to shew him the list of my expectations. He told me that the amount I showed him on the list 4,50,000 was not enough—again refused me the statement of refund I had asked for. Said that I might put him down for 20,000 and asked me to give him a bond in the name of a relation of his whom he had introduced to me a few days before I asked for the money and he said he would shew me how to enter it in the accounts at the end. Suspecting his object I told him that that would not do then he wound up with the old whining story that I must give him a good present at any rate. I was so over-whelmed with difficulties of all kinds and waited to see the Chetty's conduct to report it to the Court which we did as soon as I was at liberty the Petition is dated 14th November. My difficulties ended on the 8th—Moottoosawmy Chetty came to a nautch in honor of the Ranee taking her palace. I upbraided him for not keeping his promise in not making the report on mesne profits made at the beginning of September—he harped upon the difficulty of making the division and said he would come and see about it—he appointed the 17th and did come to my office at Shevagungah where I had asked my chief people to meet him—we discussed about the division—the Chettyar proposed a mode utterly impracticable. Mr. Scott, my assistant proposed another mode, and my native servants another mode—the Chettyar said he was inclined to adopt the mode proposed by my servants combined together. The Chettyar's mode was to divide all the grain cut and uncut stocked, divided and undivided at every village by every riot up to the 15th of April 1862. Mr. Scott's mode was to take the average of the whole income for the year—the native servants' mode were division of crops and kists. While we were discussing the post came in among other things bringing a letter from Messrs. Binny and Co. it contained a power of attorney for my execution to convert Company's paper into Currency notes to pay the Court—the Chettyar read the power of attorney to me himself and said that he had seen the Notoottay Chettys at Devicottah and they told him that they were willing to give me the remainder of the money I wanted for refund. On breaking up the meeting he followed me out and muttered. I do all the work Messrs. Binny and Co. and the Chettys get all the profit. I could or would release the Zemindary for half of what I was going to give the Chettys and Binny—by releasing the Zemindary he meant—making his report to the Court of the mesne profits due to Cathama Nachair and half meant half of the premium I was going to give to Binny and Co. and the chettys which was 5 per cent. i. e. 2½ per cent. on whatever he declared due to Kathama Natchiar and on going away told me to send Head Servants Yella Iyer and Choudapah Iyer to him two of the persons present at that meeting to make the division of mesne profits accounts. The next day he called and said that division had been made as we had suggested—but that it was unfavorable to us and therefore he required me to give a Karah agreeing to this mode of division on behalf of the Ranee. I drafted a Karah such as he required and had fairly written and I gave it to him signed. At the end of September he came to me and said he was going to Madura to make his report and get the Court's consent to the division thinking he had no authority to take such a Karah from me without the Court's permission returned the same to me on the 30th September the evening he left Shevagungah for Madura I last saw the Chetty on the subject of the mesne profits and the division on the 6th of October in the palace garden at Shevagunga—the Chettyar asked me to meet him there—he said Appasawmy Iyer the Head of his Department as receiver had a letter from Madura saying that the Court was going to put the Zemindary under the management of the Collector—that, that must not be that he would cause the release, of the Zemindary if I would act according to his wishes and hinting that he would not make his mesne profit report otherwise. I came away annoyed at this—I told the Ranee of all this and recommended the course for her to pursue. After I came to Madura I sent to the Chettyar asking him to make the report—he said he must see Yellier, disgusted with the Chetty's conduct I appealed on behalf of the Ranee to this Court by various Petitions first of all I asked for a written statement of what I had to refund. Some days elapsed before I got it from the Chettyar—but my evidence now has reference to the Petition of the 14th November which is under investigation, and is the one referring to the subject of my evidence—my other Petitions referred to have reference to the other acts of the Chettys.

By Commissioner. There was confusion in some of the Zemindary accounts but not in any to which the Commissioner had to say—some of the accounts which he acquired were unfinished and these I might have said were in confusion but the accounts I said were in confusion, were the accounts of the intermediate period of April 1862 and the accounts that I said were in confusion which he had to say to, were those of Fuslies 1270—1271 and 1272 they were unfisished but soon were finished by Pursurama Row and Kistna Row. I might have made use of the expression that general accounts were in confusion—but if so—it was on the information of the Chettyar himself. I don't remember making any remark to any one in April as to how long the preparation of the accounts of the mesne profits would occupy as I had agreed with Mr. Cotton that I thought both the preparation of the accounts and Receiver's business would be finished within 2 months—I gave a Petition to the Court in April at the Chettyar's request to serve some purposes of his own which Petition I believe the High Court has reversed. After he had joined with Deisyem Iyengar and Cathavaraya Shevagaren, servant of the Ex-Zemindar then I found out what the Chetty's object had been for many months before. I did not think there was any necessity to bring this to the Court's notice—now that I have heard the Petition read I find that it was upon his information that I wrote the whole Petition—the object of the latter part was those screened at the time to give him the power to collect the old balances. I wrote in September. I remember in a friendly bantering manner that if he could not do the work Mr. Ritchie would apply to the Court for more assistance—by this I meant would apply for some one to take his place—the letter does imply so. I did not like to tell you it in an offensive manner. I don't now care to offend—then I did—your own batta accounts will show how often you went backward and forward to Shevagunga with the servants and accounts and how long you kept them here. I paid batta on your bills though they are not signed by you, they state by your order you came to me and begged me to give those people batta and said Deechamier would send me the accounts—the Chetty would never give anything in writing—he said he is too old a fox to do that, until this Court compelled him to give me the statement in writing. I don't remember having paid for bandy hire for Deechamier to go with the Commissioner to other Districts if so it must have been smuggled into some accounts—it could not have been for my benefit as is leaving his office would be injurious to me as agent of the Ranee. You did not go to the villages I had sequestered your pretended you were going and went away to Poodoo Cottah, Trichinopoly, Tanjore, Combaconum and Trivyar. I did not hear from Deechamier that lands belonging to the Zemindary had been newly recovered at Trippattoor—I don't recollect claiming these lands. I don't recollect anything about them, I have looked at the accounts put in, one has no date only the month April,—the other is dated 12th April which means I suppose it was made out on that date at Trippattoor. I could not have signed them on that date—both of them bear my signature—the accounts were made out at the requisition of Vakeel Soobramonier. I don't know when I signed them—but it must have been at a subsequent date at the request of Soobramonier—but they don't show where they were prepared. I wrote to say I object to your leaving the District—this was when he sent some one to deceive me and to tell me he had gone to Salem on urgent private affairs. If I objected to your going away I must have hastened to your coming back—you and the other Head Servant going away left your Cutcherry to do as they please. I never said that you being here would have led to the completion of the accounts by the end of April. I did not think it was necessary to bring to the Court's notice your leaving the District as we were on friendly terms. One of the accounts shew 10,000 Rs. the particulars of which could not be found—he asked me to relinquish it and not to impede the closing of the accounts and it had been given up and the accounts closed as I understood from himself by 10,000 Rs. surplus in my favor. I mean more than it could be accounted for by giving this up. I meant it might be credited to the other party if the Chettyar chose so that the accounts should not be stopped for it. I knew that we could afford to give it up. Yes on the Chettyar coming and telling me of the difficulty of dividing the mesne profits up to April 1862 and subsequently. I instructed Vakeel Soobramonier to apply to the Court to relinquish the necessity of making a division as we were entitled to both parts and were prepared to prove the same. The Shevagungah District is a settled Zemindary —the Kist is chiefly paid in kind but in part in cash. It would be impossible for you to get the accounts of the grain due up to 15th April 1862 – there are no accounts to shew the grain to have been divided—a Decree was passed in favour of Ungamoottoo Natchier by the Sudder Udalut—the state was ordered to be made over to her and the same difficulty as regards mesne profits then occurred it was got over by taking the average. I mentioned this fact to the receiver when we discussed the question of division in September when he asked me to enter it in the Kara and I did so. I speak from memory—Choudapier did not tell me that there were Uttavanay accounts of the grain in the Talook Cutcherries which would take one or two months to examine—the Chettyar told me he had been to 2 or 3 Talooks to ascertain if his mode of division could be made and he found it impracticable and therefore he gave into our accounts. I told him your going into your mode of accounts would put it off for ever. You only were directed to take an account of rents and profits received—the rough statements of Iyan were prepared by the Zemindary Servants by the end of August—the Manovurthy accounts i e. the account of the ex-Zemindar's private expenditure with which he had nothing to say were neglected up to end of September when Vissoovanada Iyen completed it, took it to the Chettyar's nominer Rama Chandra Row and some entry was made by Rama Chandra Row in the Chettyars account and the whole account was closed by Chettyar's order. If the ex-Zemindar has spent any of his private funds on the estate—he should come forward and claim—besides any money so expended must appear in the Iyan accounts. The 4,000 sovereigns deficient out of 10,000 were asked to be recovered but not with reference to the Manovurthy accounts. I don't know that they are in these accounts—the Chettyar told me that they were deficiency in the manovurthy accounts and curiosity made me to write to him for a statement which he never sent me. From what you told me you must have gone to Deivacottah between the 12th August and 17th September 1864. Duplicate of the accounts in the Collector's office 1850.59 must be in our Cutcherry. Mr. Goldingham you told me allowed you to hold office in the late Moofty's Court. I dont recollect seeing the order of Mr. Goldingham. I did not tell you enter in the account and receipts—the money, sovereigns, jewels and other things which

you delivered to me on first going to Shevagungah under the orders of the 9th as appertaining to the estate. I could not have done so as the order of the 9th had no reference to your warrant.

(Signed) G. F. FISCHER.

Sworn before me in the open Court this 13th day of December 1864.

(Signed) C. R. PELLY,

Acting Civil Judge.

Whatever you might have been engaged in need not have interfered with the work of the Commissioner to the best of my recollection. You took leave on the 6th it might have been the 5th—a number of these invitations were sent to me from Shevagungah by Mr. James Fischer and I signed them here at Madura. I was not present at the opening of the Cutcherry on the 6th and did not make the speech I cannot recollect it. You never offered me anything in payment of the bearers I lent to you. You had a set from me from the very commencement except for a few days when I required them for myself. I did not on the 6th of April desire you to translate my speech into Tamil and then employ the sub-Magistrate to do this. I don't recollect putting sovereigns into my cash chest on that date (witness with the permission of the Court refreshes his memory from a diary) I might have gone on the above occasion but the invitation of the 6th was signed at Madura. The native you introduced to me, you said was your Summundee this was just before the sale of the Jewels that he was brought to my house and introduced—he said he was come to buy Jewels and the Chettyar tried to persuade me. I had no right to bid at the auction and buy Jewels and constantly saw the same man at the auction. I believe you brought him with you and introduced him to me. I don't recollect his name. I have said the time you asked me to put you down for 20,000 was in the beginning of September—the relative alluded to might have been at Madura about that time for all I know. I remember purchasing cloths of the person referred to, but don't remember how they were paid for—they were purchased at the Chetty's recommendation. I did not ask you to get cloths for me for Puttah Abashagum but you offered to do this. It is very easy to enter money in the account which was not been paid. I had communication with the Court subsequent to the commencement of September in connection with my difficulties. I am not certain whether I did not go to Shevagungah between the 14th and 24th August. I only said you had told me that you had seen the Deivacottah Chetties or the Chetties at Deivacottah and therefore my impression was that you might have been at Deivacottah (VII puts in Diary to shew that he was not at Deivacottah between 14th August and 17th September 1864) you requested me to give the Petition on the day it bears date or the day before or about that time. I cannot fix the exact date (admission of Diary objected to. Ordered to be received by the Court the objection reserved for after consideration. Exhibit VIII) Petitions are seldom presented the day they are prepared the Petition might have been written at Shevagungah you told me that the accounts were reliable because they were prepared by responsible servants. I gave the Karah to you and you returned it to me. I had no questions prepared nor did I ask you to put them to me nor did you refuse to do so without the permission of the Court. I did not in February last ask you to Zuft severel hundred villages in possession of 3rd parties and make them over to you as agent of the Ranee not that I recollect but in Mr. Goldingham's time I represented to him one day that I found I had irregularly zufted certain villages and asked him to be rezufted and given them to me giving the proceeding legality and he passed proceedings upon it the first was verbal. I don't recollect whether I afterwards gave Petition or not. Mr. Goldingham's proceedings would shew. I wrote the letter just put in (marked No. IX) after I wrote the letter just put in the Chettyar called on me and asked what it was that I wanted and after much discussion at his suggestion the note now written (marked X) was written by Vakeel Soobramonia Iyer but Chettyar gave me a different answer to this my object was merely to shew that the zuft had been open in good faith and was brought to the knowledge of the Court. The letter just read might be the copy of the letter actually written but the draft was to shew what was wanted. On the morning of the rezuft of the Zemindary I told you as a matter of course to zuft these villages with it and to relieve me of the responsibility of what I had done. I wrote to you on the subject afterwards the letter read is the one I wrote (marked XI) you told me at the Gragapragasem that I might invite public servants at the Putta Abaseigum—afterwards fearing he had committed himself on the 30th of September sent word to me to apply to the Court through the Vakeel Soobramonia Iyer, for leave for the public servants. Devastanum and Iyan to attend the Putta Abaseigum. I declined to do so then he sent me a draft of a letter for the Ranee to sign this also I declined. Late in the evening he came himself and entreated me to get that letter signed and said it is nothing but courtesy to the Court to make such application and that he would support it and get the Courts' favourable order especially as the days were feast days and were entitled to leave. You objected to pass the expenditure and told me to disburse and that it would be refunded at your entreaty I drafted an invitation to Mr. Pelly and he heartfully begged of me to add a clause asking for leave for himself. I did not send that invitation. I saw the impropriety of it.

(Signed) G. F. FISCHER.

Sworn before me in open Court this 14th day of December 1864.

(Signed) C. R. PELLY.

Acting Civil Judge.

Re-Examined on the 15th December 1864.

Kara C was an agreement to give up any loss that might accrue to the Ranee from the mode of division which the Commissioner proposed to adopt. It was 15 days due to Kathama Nachiar which I agreed to give up.

By Commissioner—No question.

(Signed) G. F. FISCHER.

(True Copy.)

C. R. PELLY.

Acting Civil Judge.

———o———

M. P. No. 412 and 413 of 1864.

Witness cited by the Commissioner. } George Fredrick Fischer duly sworn deposes as follows. I never asked you to get cheques on Madras cashed for me. You did not, after the refund order came, tell me that a Notcottay Chetty offered to buy my bills for 20,000 Rupees for discount. When the Court ordered you to collect the sale proceeds of the Jewels purchased at auction by me you told me you had tried to raise money for me but had failed. I said that there was no necessity as I had plenty of money hereat the Treasury and I paid his bill without any assistance from him. I paid in 2 portions. I had to get the balance from Shevagungah, I had 50,000 Rs. over.

By the Court.—Why should the Commissioner have interfered in the matter?

A. Speculation on his part.

I did not ask you to get a loan of 20,000 from Notcottay Chetty, nor did you refuse me. I had plenty of money. I gave no answer to the muttered request you made relative to the 2½ per cent. when going through the outer room of my house at Shevagungah on the 17th September—when you came and told me of the Zuft I replied that it would merely be nominal—that though the Court refused me the time I would get the cash spent from my agents and what I had invested I would get from the Notcottay Chettys' on jewels and lands—the things might remain as they were at Shevagungah, that he might not disarrange the system being carried out—my nephew and his establishment should act under him—he agreed to this and promised to get the Courts order upon this—afterwards told me the Court refused, took everything into his own hand appointed Deetchamier Zuft Ameen stopt the various improvement we were making neglected the whole business of the Zemindary, and instead of collecting a lac of rupees that month, only collected a few thousand. You stop the Pymash—neglected all the Tanks and maramuts was contemned and despised by the Public Servants did not command their respect or their good will Yellier has been in my service for 40 odd years. Choudapier has never been under me, but under Mr. James for 5 or 6 years or more. Yellier was my general Manager at Coimbatore—being a skilful revenue officer. I brought him to carry out the Pymash. Chondapier was the Head Gomastah under my nephew at Salem. I increased Deechamiers' pay as I did all the other servants considering that they were so miserably paid, to eake out a livelihood by some other means detrimental to me.

Q. Did I not refuse to give you some accounts from Manourthy which you said will shew money paid to Vencatasawmy Naick the Sheristadar of the Collector's Cutcherry without the permission of the Court?

A. The Chettyar out of some spite to Vencatasawmy Naick told me that there was a bribe of 5,000 in the Manovurthe accounts against him. I asked to see it—he said he could not shew all those accounts as many people would be ruined by it, and he was afraid he himself was implicated.

Q. Did you or did you not tell me that Vencatasawmy Naick was assisting one Sreenuvassiengar and Ponnoosamy Taver whom you said was trying to get the Ranee under your control and therefore you wanted these accounts to be placed before some authorities?

A. No, the intrigue referred to in your question was long after the conversation about the accounts. I pressed you to report about 5½ lacs due to Kathama Natchiar as mesne profits after you told me that this sum was due. I might have made the same request to Appasawmy under similar circumstances.

(Signed) G. F. FISCHER.

Sworn before me in open Court this 16th day of December 1864.

(True Copy.) C. R PELLY,

Acting Civil Judge.

M. P. No. 412 & 413 of 1864.

James Fischer duly sworn deposes as follows:—I recollect having seen the Chettyar in the Calyana Mahl in the Ranees Palace at Shevagunga, he was then in conversation with the Ranee when I came. I joined the converstation. We talked of the approaching installation and then of the question of the mesne profits; the Ranee asked him to expedite it. Moottoosawmy Chetty said to me if a strong promise were made to him, he would expediate the settlement of the question. The conversation took place in Tamil. The promise, my belief is Mr. G. F. Fischer paying Moottoosawmy Chetty $2\frac{1}{2}$ per cent; on the mesne profits. I laughed it off when he observed "as for Mr. Pelly I would blow him off as the dust from my hand" suiting the action to the word. I told him that I would bring it to the notice of Mr. Fischer which I did. I cannot say why you should speak as above of Mr. Pelly. I am in the service of Mr. G. F. Fischer as Agent and Manager. I am not one of the managers you removed during the late zuft—when the zuft took place I as a matter of course retired.

The Agent appointed you, points out to the Vakeel Mr. R. Fischer. I was Mr. G. F. Fischer's Agent at Shevagunga. I was not in the list of servants. I get no pay from the Agent, Mr. G. F. Fischer: (Commissioner proposed here to re-examine this witness which was objected to by the oppostie party when the Court ruled that he could not re-examine but might cite this witness again or on his own behalf.

(Signed) J. FISCHER,

Sworn before me in open Court this 14th day of December 1864.

(Signed) C. R. PELLY,
Acting Civil Judge.

(True Copy.)

C. R. PELLY,
Acting Civil Judge.

Depositions of Witnesses Examined by Mr. Fischer
No. V.

(Title)

No. I. 35

3

No 2617 of 1865.

The Government see no reason for their interference with the order against which the Petitioner appeals and which it is observed has been confirmed by the High Court.

Fort Saint George 20th Nov. 1865.

By Order

C. W. Walker

Undersecy to Govt

Copy

No. VI.

Declaration of Bailiff Sivier

he made undue delay in the execution of the duties assigned to him, although the charge has not been proved against him, that the High Court to which his appeal lies confirmed his dismissal.

Prays that on the perusal of the records copies of which are herewith submitted he may be restored to his Post or a pension be granted to him.

No. 2417 of 1865

From T. Muttoosawmy Esqr late Commissioner & Receiver of the Sheragunga Zemindary, Madura, now residing at Egmore Madras.

Dated 26th October 1865

Twelve Enclosures

States that he was Sheristadar of the Civil Court of Madura & Mr Cotton the late Civil Judge, appointed him as Commissioner & Receiver of Sheragunga Zemindary; that while he was conducting the said duties, he was dismissed from the service on the ground that he

TO

C. R. PELLY, ESQUIRE,

ACTING CIVIL JUDGE OF MADURA.

THE RESPECTFUL PETITION OF G. F. FISCHER, ESQ., AGENT TO THE RANEE KATHAMA NATCHIAR *ALIAS* COLUNTHAPOORY NATCHIAR BY HER VAKEEL SOOBRAMANIA IYER.

SHEWETH,

That your Petitioner believes that this Court's Receiver and Commissioner will, on account of the confused state of the Zemindary accounts, be occupied 3 or 4 months longer in taking an account of the mesne profits, and that he has reason to fear that while the Receiver and Commissioner is so occupied, parties in possession of portions of the mesne profits will be making away with the same.

Your Petitioner therefore prays that this Court will authorize its Receiver and Commissioner to collect such mesne profits as are brought to his notice in the course of his enquiry under this Court Warrant of the 11th February 1864.

With Salams,

Section 212 Act VIII of 1859.

(Signed) SUBRAMANIA IYER.

Vakeel.

Filed 15th April 1864.

(Signed) C. R. PELLY,

Acting Civil Judge.

Madura, 13*th April*, 1864.

A general Memo. shewing the quantum of work performed by the Receiver and his Subordinates for 6½ months from the 11th February to 25th August.

1st. We were engaged for a month in zufting different kinds of articles, of property above 11,000 in number after inspecting, counting, weighing, measuring and arranging them and preparing the necessary lists for them also in delivering them to the Agent except the new jewels. During the greater part of this month, we were occupied on the above duty from morning till late at night.

2nd. We were occupied about half a month in receiving the whole of the new articles as per list from Ranee's Agent on their being indentified, measured and counted, and new lists made out, we felt great difficulty in arranging the articles on this occasion as they were not brought at once but on about 10 different days; a portion of these articles was in a disarranged and confused state as the Agent's people used some of the articles.

3rd. We were fully engaged another half month in making the necessary lists, numbering each lot for sale and shewing them to the spectators, and removing them from the late Moofty's Court to the place where the sale had taken place.

4th. We were fully engaged for a month in selling 2,181 lots consisting of above 7,000 articles to several bidders.

5th. We were engaged about half a month in preparing auction bills and in collecting the sale proceeds to the extent of 120,000 Rupees.

6th. We have been travelling for about three-quarter of a month on duty.

7th. For a month we were engaged on sundry works of different sorts.

8th. Three-quarter of a month for holidays including Sundays.

9th. I was absent on leave for half a month.

10th. 9 of the 14 Ameens were deputed for the purpose of proclaiming throughout the Zemindary, consisting of 130 Mohonums (Divisions) the notices issued by me to the effect that the Zemindary was made over to the Ranee Kathama Natchiar and that the Paliagars, Merasidars, Inamdars, Ryots and Servants and others should act up to her orders. They were further deputed to search for and zuft the paddy throughout the Zemindary as directed by the commission originally issued to me and also to zuft the money in the Treasuries of 6 Talooks while the other 5 Ameens were assisting me in zufting the property shewn in Para 1. All of the Ameens were afterwards employed in performing other important duties until seven of them were dispensed with.

11th. I have not enjoyed the recess during the last closing of the Court.

(Signed) T. MOOTOOSAWMY CHETTY.
Receiver.

No. VII.

Extract from the Proceedings of the Civil Court of Madura under date the 12th December 1864.

Read M. P. No. 414 of 1864, presented on the 16th November 1864, by Mr. R. Fischer and Soobromoniah Iyer, Vakeels, on behalf of Kathama Natchiar Zemindarnee of Shevagungah, praying under the circumstances specified in the motion, that the Commissioner and Receiver's Proceedings demanding rent on certain buildings be revoked, the rent already collected be repaid and Karar executed by Petitioner and her Agent be given up and certain buildings be released from attachment.

Read also Court's order dated 18th November 1864 calling upon the Receiver and Commissioner to explain as to the above Petition.

Read also Receiver and Commissioner's Report dated 26th November 1864.

ORDER.

The following are the points raised in the Petition.

I. That the Karar executed by Petitioner, on the 14th September 1864, should be returned as having been obtained by undue means.

II. That the rent paid for the residence of the Zemindarnee at Shevagungah from 18th February to 25th August the date of reattachment of the Zemindary should be refunded.

III. That the rents on Do. from the 25th August the date of reattachment to the end of September should also be refunded.

IV. That the rents collected on three Bangalows known as that to the north of the Tappacoolum, Blackburne and Cherry's should also be refunded.

V. That the Zemindarnee's residence should be declared released from attachment.

VI. That the garden specified should be released from attachment.

2. The ground as gathered from the evidence of the 1st Witness, Petitioner's Agent on which she claims restoration of the Karar referred to is that it has been extorted in other words obtained by oppression and undue means. This rests on his statement, that of his Agent at Shevagungah and that of one Sunkarien who represents himself to have been at the time acting as Agent of the latter and I do not find in them any thing that would warrant the use of the term extortion. The evidence amounts to little more than this, that the Commissioner refused to allow the Zemindarnee to enter the residence referred to which was at the time *under attachment of the Court* and under his management on its behalf until furnished with the above agreement which he had drafted and which it is alleged, was delivered to him under protest. There was nothing in this that would constitute extortion. The Zemindarnee was under no obligation to enter the residence referred to, if dissatisfied with the Commissioner's proposal there was nothing to prevent her declining to occupy it and bringing the matter before the Court at the time, and the mere fact of the Commissioner having refused to allow her to occupy the attached palace which was under his management prior to furnishing him with the Karar in question even coupled with delivery under protest will not constitute ground for the surrender of the document as having been obtained by improper means and such portion of the petition as has reference to it is rejected.

3. Rent has been charged on the entire palace from the date of the original attachment viz. 18th February to that of the removal of the second attachment, it was subject to rent from the date of the Court's attachment on the 25th of August effected to enforce the refund ordered by the High Court in proceedings dated 12th August and rent for the previous period has been charged by the Commissioner on the ground that it is a portion of the property attached under Mr. Cotton's order of the 9th February. Subsequently cancelled on appeal it appears to me however that the palace as the hereditary residence of the Zemindars must be treated as a part of the Zemindary with the exception of the garden and buildings reserved in the Proclamation last issued relative to the exact position of which a doubt appears to exist, the rent realized on the palace has not been credited Cowards the refund for which the second attachment was made; but retained in deposit, it is accordingly ordered to be returned after deducting such rent as the Commissioner may fix on the garden and reserved buildings and it being at present questionable how far these constitute part of the Zemindary to

No. VIII.
Extract Proceedings of the Civil Court of Madura under date the 12th December 1864.

descend hereditarily with it they must be retained under attachment and the rent fixed held in deposit until Petitioner has proved that they are inseparable from the hereditary estate and the same cause must be adopted as regards the 3 Bangalows which are not situated within the limits of Zemindary; it being, as I read the order of the High Court of the 12th August, the intention that no property which has been attached and made over to Petitioner under Mr. Cotton's order of the 9th February is to be released unless manifestly part of the Zemindary to Descend hereditarily with or proved to be such.

5. With the exception of the buildings at Shevagungah which have been specially reserved in the Commissioner's Istyar of the 8th November 1864, the palace has been released from attachment with the Zemindary.

(True Extract)

(Signed) C. R. PELLY,
Acting Civil Judge.

(True Copy)

C. R. PELLY,
Acting Civil Judge.

No. IX.

Proceedings of the Civil Court dated 12th December

G 89

charges relied on by the Acting Civil Judge were the after thought sprung from the displeasure which had occurred in your petitioner's pressing the refund, &c.

4th. Because the Acting Civil Judge's inference in para. 6 of his proceedings No. III that the management of the attached Zemindary was only assigned to him on his own assurance that he could undertake without prejudice to his work as Commissioner and Receiver is not legal reason to suppose that your petitioner would not have been impeded to in the work as the Zemindary consists 2000 villages to manage the daily correspondences from 8 Taluqs, issuing necessary orders, &c. and as his duties of preparing the Masue profit accounts can reasonably be impeded, as that authority clearly admits in his proceedings C.

Under all these grounds and particularly to those explained in the Document No. IV, your petitioner prays that your Lordship will have clemancy upon him, and pass such relief as whereby the order No. III of the Civil Court might be cancelled, and your petitioner, restored to his post of Sheristadar, and for which Act of Benevolence.

Your Petitioner as in duty bound;
SHALL EVER PRAY.

15th MADRAS, } S. Mootoosawmy
May 1866. } Chetty

40

Memorial to the address of the Right Honorable the Secretary of State for India

From Ramathoosamy Chetty late Sheristadar of the Civil Court of Madura

Enclosures
9 A to I.
9 No I to IX
18

Recd 31st May 1866 L. L. 31st

R. J. No 1062/66.