[Pub. / 30]
20—19-7-97.

Case

Public (189) Department.

ORDINARY MS.

G.O., No. 660 - 661

DATED 16-6-99

Indexed

[Despatch Abstract.]

Jagga Rao Observatory Suit

Directing that the Govt of India be addressed on the subject of preferring an appeal against the judgment of the District Judge of Vizagapatam in the ——

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
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Issue on 19/4/99

Public Dep

D.O. 19. 4. 99.

My dear Arnold White

In connection with the "Jugga Rao Observatory" Suit, which has been decided against Govt. in the District Court Vizagapatam, the Govt. of India has asked this Govt. by wire, to obtain your opinion as to ~~whether~~ ~~there~~ ~~there are any~~ the prospects of a successful appeal, & also as to whether the costs of the litigation can be deducted by the official trustee from the trust moneys in his possession. Be anything further I should be glad ~~will you put~~ the matter with ~~as may~~ off

Co

GOVERNMENT OF MADRAS

Chief Secretariat,
OOTACAMUND,

19th April 1899.

My dear Arnold White,

In connection with the "Jugga Rao Observatory" suit, which has been decided against Government in the District Court, Vizagapatam, the Government of India has asked this Government, by wire, to obtain your opinion as to the prospects of a successful appeal, and also as to whether the costs of the litigation can be deducted by the official trustee from the trust monies in his possession. Before anything further is done, I should be glad to discuss the matter with you personally. Can you come and see me in office tomorrow, either between 12 & 1 or between 3 & 5?

Yours sincerely,

G. Stokes.

To Mr
The Hon'ble C. Arnold White

~~[illegible]~~
~~me~~ in office tomorrow, either
~~before~~ between 12 & 1
or between 3 & 5?
19.4.99

19/4/99

19/4/99

The Hon'ble Mr
To C. Arnold White
Advocate Genl.
Desp.
19/4

Judicial (1899) Department.

CURRENT No.

CHIEF SECRETARIAT
30 APR. 1899
GOVERNMENT OF MADRAS

From The Collector, Vizagapatam

rder

No. 1512

Dated 27 April 1899
Received 30 " "
Registered 1 May "
Enclosures 2.
Spare copies –

SUBJECT.

Submitting copies of decree and Judgment in the Jaggarao's observatory Suit O.S. No. 23 of 1895 on the file of the District Court of Vizagapatam

BACK PAPERS.

G.O.	No.	Department.	Date.
Do.	223 728	Pub: Revd.	
Do	479	Pub.	1.5.99.
—	458	—	22.4.99
Do.	120	Pub (Press)	19.4.99.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

True Copy No 23 of 1875 in the file of the

Particulars regarding Immoveable Property with reference to Para. V of Sec. 7 of Act VII of 1870

Vizagapatam District Court

	RS.	A.	P.		RS.	A.	P.
1. ZEMINDARY (permanently settled estate or part of an estate) … If separately assessed in Collector's register, the amount of revenue payable annually (Note *a.*) … If not separately assessed in Collr.'s register, the market value (Note *d.*)				2. RYOTWARY (temporarily settled estate or part of an estate … If separately assessed in Collector's register, the amount of revenue payable annually (Note *b.*) … If not separately assessed in Collr's. register, the market value (Note *d.*)			
3. INAM (land paying no revenue or partially exempted or charged with quit-rent .. The net profits accruing from the land for the Fasli preceding the date of presenting plaint … *or* If no net profits accrued, the market value with reference to the value of similar land in the neighbourhood (Note .) …				4. OTHER IMMOVEABLE PROPERTY. If Houses or Gardens, the market value (Note *e.*) … ..	60000		

Signed B. V. Jagannatha
Sheristadar 21-4

Vizagapatam District Court 4 April 1899

True Copy By order of the Court

(Signed.)

Maruthara

Superintendent

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INDIA TWO ANNAS

In the Court of the District Judge at Vizagapatam

Present M. D. Bell Esquire District Judge

Original Suit No 23 of 1895

Sri Rajah Ankitham Venkata
Jaggarow Garu Zemindar of Sher
Mohamed puram within the Jurisdiction
of this Court age 33 years son of late
Sri A. V. Narsinga Row garu Perikis
residing at Daba Gardens Vizagapatam } Plaintiff

Versus

1 The Secretary of state for India in
Council 2 Rani Ankitham Achayyamma
Garu widow of late Sri Ankitham
Venkata Narsinga Row Garu age 51 years
Periki Zemindarini residing at Daba
Gardens Vizagapatam now deceased
3 The Accountant General of Madras
Treasurer of the Charitable Endowment
[illegible] order on Miscellaneous Petition
No 109 of 1897 } Defts

Particulars of claim:- That the document of 15 May 1892 executed by the 2nd Defendant and Plaintiff in favor of 1st Defendant be declared not to be binding on Plaintiff:

145 [illegible] that

[illegible] 20-17.4.99

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INDIA TWO ANNAS

TWO ANNAS

that the transfer of the property mentioned in the plaint be declared void except for the life of Defendant No 2 that Defendants do pay the costs of the plaintiff and a prayer for the possession of the observatory and its endowment was added on Plaintiffs application vide amended plaint put in as per order dated 13th March 1899 on Miscellaneous Petition No 60 of 99

Decree This cause coming on 12th day of April 1899 for final disposal before M. D. Bell Esquire District Judge in the presence of Messrs Sundara Iyer & Suryanarayana Rao and D. V. Narasinga Rao Vakils for Plaintiff and of Ryan Esquire Counsel and T Seshiah Garu Vakil for 1st and 3rd Defendants the 2nd Defendant having died during the pendency of the suit this Court doth order and decree that the deed of ~~Trust~~ dated the 15th May 1892 transferring the trust in favour of the Government of India of the moveable and immoveable properties described in the schedules A and B hereto attached be declared null and void as against the

179w Plaintiffs.

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Plaintiff that the acceptance of the said Trust deed dated 15th May 1892 by the Government of India be also declared invalid as against Plaintiff and set aside excepting during the life time of the 2d Defendant now deceased; and that the 1st and 3d Defendants do deliver to Plaintiff the possession of the observatory buildings, Instruments and Government Promissory notes &c described in the said schedules A and B hereto annexed together with interest on the said Government Promissory notes from the 2d October 1898 to the date of delivery

This Court doth further order and decree that the 1st and 3d Defendants do pay the Plaintiff the costs of this suit

Memo

Suit for declaration that the document of 15 May 1892 is not binding on the Plaintiff after the death of 2d Defendant and for possession of the suit observatory and its endowment with costs

Value of the suit

Value

(3594 [illegible] 20-17.4.99

[illegible]

[illegible] 20 [illegible]

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	Rs A P
Value of the observatory buildings and instruments &c	60000 — . —
Endowment	300 000
	360 000

	Rs A P
Court fees levied under paras iii and V a of Section 7 of the Court fees act	2725-0-0
Do Do under Schedule II Article 17 Clause iii of the Court fees Act	10—0—0
	2735 —0—0

Costs of suit

Plaintiffs

	Rs A P	Rs A P
Stamp for Plaint	10-0-0 2725-0-0	2735-0-0
Do Vakalutnama		0 . 8 . 0
Do exhibits		6 . 8 . 0
Do Petition		6 . 0 . 0
Service of process		112 . 0 . 0
Subsistence for witnesses for attendance		126 . 0 . 0
Pleaders fee on Rs 460 000		1000-0-0
To be paid by Defts 1&3 Total		3986-0-0

1st and 3d Defendants

	Rs A P
Stamp for petition	1- 8-0
Do Vakalutnama	0 8-0

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	Rs A P
Service of process	8-0-0
Subsistence for witnesses for attendance	1-8-0
Pleader's fee on Rs 460000	1000-0-0
To be borne by themselves Total	1011-8-0

Levied under art 17 clause III Schedule II of the Court Fees act, to be entered in cases where the suit is incapable of valuation

Given under my hand and the seal of the Court this Twelfth day of April 1899

Sign'd M D. Bell

District Judge

O.S. 23 of 95 on the file of the District Court Vizagapatam Schedule A

The Government securities of endowment

Description of loan	Number Local	Bengal	Amount
% 1854-55	85-12	050 450	Rs 50 000
" "	85-10	050 437	65 000
" "	85-11	050 438	75 000
" "	65-8	050 435	50 000
4% 1842-43	85-65	145 437	10 000
Total	"	"	Rs 300 000 Three lacs

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Schedule B

All the pieces or parcels of land at Daba gardens door No 2166 Allipoor Division Vijagapatam Town upon which the Transit and equatorial observatories and the buildings appurtenant or belonging thereto are erected and all ways and paths roads upon the said land containing by admeasurement about (14693) fourteen thousand six hundred and ninety-three square yards and the following buildings now standing upon the said land valued in all Rs 60000

1 The observatory surmounted by revolving dome covering an equatorial Telescope having a wing running west in which has been placed the Transit instrument designed observations in the meridian

2 The Meteorological observatory and the upstair house with its upper and lower rooms for the residence of the Astronomer attached to the foregoing building

3 The building of the old Transit observatory

4 The

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TWO ANNAS

4 The building in which the Anemometer
is mounted

5 The Celestial Photographic new observatory
for which the instrument dome and every
thing necessary for it are in abeyance
until the site selected for it is approved
by the Astronomer

6 The flagstaff used for time signals in
front of the said old Transit observatory
and on the head of the foremost of which
there is a vane to indicate the direction
of the wind also the flag staff on the
Dolphins nose

Boundaries of the property

North Rock on which the new observatory
is proposed to be built

South Compound wall of the Daba Gardens
attached to the Anemometer building

East The partition wall of Kaliyana Mantapam

West Wall of Manchanamma Doddi and
other immoveable properties

True copy

By order of the Court Signed for D. Bell
District Judge

Superintendent

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21-4
21-4
26-4
26-4

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INDIA TWO ANNAS

TWO ANNAS

In the Court of the District Judge at Vizagapatam
Wednesday the Twelfth day of April one
thousand eight hundred and ninety nine
Present M. D. Bell Esquire District Judge
Original Suit No 23 of 1895

Plaintiff — Versus — Defendants

Sri Rajah Ankitham Venkata Jagga Rao garu Zemindar of Sher Mahomed puram within the jurisdiction of this Court age 33 years son of late Sri A. V. Narasinga Rao garu Penikis residing at Daba Gardens Vizagapatam

1 The Secretary of State for India in Council

2 Rani Ankitham Alethayamma garu widow of late Sri Ankitam Venkatanarasinga Rao garu age 51 years Peniki Zemindarni residing at Daba Gardens Vizagapatam now deceased

3 The Accountant General of Madras Treasurer of the Charitable Endowments vide order on Miscellaneous Petition No 409 of 1897

Judgment

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The

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[illegible]

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TWO ANNAS

The Plaintiff in this suit sues for a declaration that an instrument in which he was induced to join by means of false representations whereby the suit property was made over to the Government of India in trust is invalid as against him that the acceptance of the trust by the Government of India is invalid and that he is entitled to the suit property on the death of his mother the 2d Defendant. As the 2d Defendant died after the institution of the suit a prayer for possession has been added

2 The 1st Defendant is the Secretary of State for India. The Accountant General Madras has been added as 3d Defendant

3 The property sued for consists of an Observatory with its appurtenances and Rs 300 000 in Government Promissory notes

4 The facts of the case as stated in the plaint are as follows

The Plaintiff's maternal grandfather Sri G. V. Juggarow had built a small

180 [illegible]

Observatory

587 [illegible] 17-4-99

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INDIA TWO ANNAS

observatory for his own private use Juggarow died in 1856 leaving a widow and a daughter 2d Defendant and Plaintiffs mother The widow died and 2d Defendant succeeded to the estate. She being young and inexperienced induced her husband Narsingarow to give up the appointment of Deputy Collector which he was holding under Government and undertake the management of the estate. During all this time nothing had been spent on the observatory. This Narsingarow however (Plaintiffs father) built a new observatory and spent large sums of money on it providing it with new instruments &c With the view of defeating Plaintiffs reversionary interest in the property the 2d Defendant made a Will by which she devised the observatory with its appurtenances and Rs 30,000 in Government securities to the Government. She also attempted to create a trust in respect of the observatory endowing it with Rs 30000 naming

168 ws

herself

[illegible] 589 [illegible] 17 [illegible]

[illegible]

[illegible]

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TWO ANNAS

herself as first trustee and empowering the Government of Madras and the Vizagapatam District Court to appoint fresh trustees when necessary. The Government of Madras however refused to recognise the trust. A deed was then got up by the Plaintiff's parents transferring the "trust" to the Government of India - Plaintiff was induced to sign this deed by false representations that his grand father had left a nuncupative will in the shape of directions in his diaries to the effect that such a trust should be created. This deed is dated 15th May 1892 Subsequently however Plaintiff found out that these representations were false and on the 9th December 1892 he wrote to the Government of India repudiating the deed of transfer. Subsequently he sent the Government a copy of a registe deed of revocation dated 14th August 1893. The Government of India resolved notwithstanding to accept the trust in their order dated 31st October 1894

171 ws

Hence

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INDIA
TWO ANNAS

Hence the suit.

5 The 1st Defendant denies that Plaintiff was induced to sign the deed of 15th May 1892 by false representations. He contends that G V Jaggarow did leave directions in his diaries for the founding of the trust that the instrument of transfer is valid and that Plaintiff is estopped by his own actions from questioning. He further contended that the Rs 300000 with which the observatory was endowed were the 2nd Defendant's saving but this contention was given up at the hearing of the suit

6 The 2nd Defendant's answer is to the same effect. The 3rd Defendant does not appear

7 A question as to the stamp duty payable on the plaint was raised but abandoned

8 The following are the issues

(1) whether the deed of the 15th May 1892 constitutes a valid trust

(2) whether the deed is binding on Plaintiff

(3) Whether Plaintiff is estopped by his own conduct from denying the validity of the deed

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(4)

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INDIA TWO ANNAS

TWO ANNAS

(4) whether the late Venkata Jagga Rao left a nuncupative will and whether it is binding on Plaintiff

(5) Whether the Plaintiff revoked the deed prior to its acceptance by the Government and whether the revocation is valid

9 Plaintiff has examined 14 and 2nd Deft. 8 witnesses

10 I propose to deal with the 4th issue first i.e. as to whether Jagga Rao left a nuncupative will and whether it is binding on the Plaintiff

The so called will consists of three entries two in Jagga Rao's private diaries and one in a letter despatch Register They are marked as exhibits XXVII A XXVII B and XXVII C. The earliest is exhibit XXVII B and is dated 22nd June 1851. It is merely a statement to the effect that Jagga Rao has no desire for a son and would be quite content so long as his daughter prospered and looked after the observatory and other institutions founded by him

182 ms

Exhibit

(3592 [illegible]

3584 [illegible] 20-17.4.99

[illegible]

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INDIA TWO ANNAS

Exhibit XXVII A is dated 23d- January 1856 It states that he does not intend to adopt a son but that he is resolved to arrange for the permanent maintenance of the observatory and directs that this should be considered an authority to his heirs to set apart a portion of his income for its maintenance. Exhibit XXVII C is dated the day before Exhibit XXVII a and is to the same effect adding however that the observatory is to be maintained "through the ruling authority".

11 There can I think be no doubt that these entries are forgeries. These are in Telugu while the rest of the diaries is in English. Exhibit XXVII B is especially noticeable. A blank space headed June 22d- had been left in the diary the writer having evidently left it with the intention of making an entry subsequently which however he did not do. Into this space has been interpolated the Telugu entry which is written with a noticeably different kind

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INDIA
TWO ANNAS

kind of ink. All the other entries in exhibit XXVII C merely record the purport of letters despatched

12 If Jagga Rao wished to make a will leaving directions for the maintenance of the observatory he would surely have done so instead of trusting to odd entries in his diaries and letters book. The letter despatch book was kept by a gumastah. The entry relating to the observatory which is said to be in Jagga Rao's hand writing is the only one of the kind in the book. It is quite out of place in a letter register and it is incredible that it should have been made by Jagga Rao

13 Jagga Rao died in 1856. The entries in the diaries were not discovered until 1885 and that in the letter book not till 1891. After some correspondence with the Advocate General in Madras (exhibit YY series) the Plaintiff's father found that he had to produce some authority from Jagga Rao. In 1884 he asked the 12"

182 ws

orders

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TWO ANNAS

witness who had been in Jagga Row's service to look through the papers. This witness swears that he made a thorough search through all Jaggarow's papers but could not find anything. He examined exhibits XXVII a b & c. The entries relied on by 2d Defendant were not then in existence. If these entries were genuine it is incredible that they should not have been discovered before

14 The entries have not been proved. Exhibit XXVII B is neither signed nor initialled. The initials of exhibits XXVII A and C have not been proved. Considering the suspicious nature of their appearance and the manner in which they have come into existence. I do not think the Court would be justified in presuming the documents to be genuine under Section 90 of the Evidence Act

15 Even if the entries were genuine I do not think that they would amount to a Will which would be binding on the Plaintiffs. The conditions are much too vague. No

sum

182 ms

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[illegible]

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INDIA
TWO ANNAS

No sum is specified. The most that could be had would be that the expenditure justified under the will should be on the same scale as in Jaggarow's time. According to the evidence the amount which Jaggarow spent on the observatory was very small (See the evidence of Plff's 12th and 14th witnesses, Defendants 5th and 7th witnesses and exhibits W W O O P P and Q Q series) There is certainly nothing in the so called will which could justify the endowment of 3 ~~[illegible]~~ lakhs of Rupees Plaintiff as his 4th witness swears that he would not have signed the deed in favor of Government but for the false representations as to his grand father's will made to him by his father. He is borne out as to the pressure put on him by his 5th and 6th witnesses

16 I find on the 4th issue that Jaggarow left no will which is binding on Plff

17 I will now take the 1st and 2nd issues viz whether the deed of the 15th May 1892 constitutes a valid trust and whether it

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TWO ANNAS

it is binding on Plaintiff

Exhibit II is the deed in question I am unable to see how this document can be considered to be valid as against Plaintiff It purports to be a transfer of trust of the observatory to the Government of India In the first place the Plaintiff at the time of its execution had no vested interest in the property which it was competent to him to transfer. All he had was a reversionary interest which would not accrue to him until the death of his mother a mere spes successionis which is not alienable (I L R XXII Bombay 984) All that ~~the~~ could be said for it is that it might be considered to be a contract to transfer – but as in this case there was no valuable consideration the contract could not be enforced

8 Again the Plaintiffs mother by the document of the 26 May 1884 constituted herself trustee – I am not aware how a trustee can transfer a trust

185 ws

from

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from himself to another person. The Pltff had no concern in the original trust yet we find him joining in a deed which purports to transfer it from the original trustee to a third party.

19 I find on issues 1 and 2 that the deed does not constitute a valid trust which is binding on the Plaintiff.

20 Issue 3 There is no estoppel. The Pltff admittedly revoked the trust before it was accepted by the Government of India.

21 Issue 5 It is admitted that the Plaintiff telegraphed to the Government of India revoking the trust in 1892 and executed a deed of revocation in August 1894. It is argued that on the analogy of the English Law relating to gifts a trust once made can not be revoked. Under Section 3 of the Trusts Act in which a "trust" is defined the trust is not complete until it has been accepted. In this case the trust was not completed until November 1894 when the Government promissory notes to the amount

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amount of Rs 300000 were endorsed. Being negotiable instruments the notes could only be transferred by endorsement and delivery (section 48 Negotiable Instruments Act) It appears to me ridiculous to contend that it was not in the Plaintiff's power to revoke the proposed trust before it had been accepted by the Government of India. In fact the trust was never completed with the Plaintiff's consent at all. I find on this issue that the Plaintiff did revoke the trust prior to its acceptance by the Government of India and that the revocation is valid

22 All the issues having been found in Plaintiff's favour there will be a decree for Plaintiff as prayed for with costs

Signed Mr D Bell
District Judge

List of witnesses examined

For Plaintiff

1 Satyavada Suryanarayana Rao Pantulu Garu
2 C Moonisawmy Modaliar

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1

3 R Appalanarasimham

4 A V. Jagga Rao Esquire

5 Bangarappa Papiah

6 Vanka Venkataramayya

7 Gopisetty Appalaswamy

8 Dwaram Venkatanarasayya Naidu Garu

9 Majji Varaha Narasimham Patrudu

10 T. T. Sreeniva Iyengar Avergal

11 W A Brown Esq

12 A Bujangarao Pantulu

13 Yenimani Lingayya Pantulu

14 Setti Butchayya garu

For 2^d^ Defendant

1 W A Willock Esquire

2 J Elliot Esquire

3 Setti Janakiramayya Naidu

4 Velluturi Venkataramanayya Pantulu

5 Koppana Chinnayya

6 Veeramallu Sivayya

7 Konda Venkata Jaggarao

8 Sunkara Venkataswamy

True Copy
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Signed M D Bell
District Judge

75 words

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G.G.	9.12.91	Do	Do	Proceedings of the Madras Government Public Department No1024 to the 2d Deft	Do	Do	Do	Do	Do
H.H.	25.7.94	20.7.96	Do	Printed copy of letter from the offg Secretary to Govt of India to the Meteorological Reporter.	Do	1st Deft	Do	Do	Do.
J.J.	17.6.95	22.7.96	13.8.98	Certified copy of the Issues Indemnity bond executed 3.4. by 2d Deft in favor of the 6 & 7 Government of India	Pltff	Pltff	Admitted by both sides.		
K.K.	27.1.91	13.8.98	Do	Printed copy of letter from Pltff's father to J. D. Rees Esquire.	Do	Do	Do	Do	Do
L.L.	11.5.91	13.8.98	13.8.98	Printed copy of G.O. No. 375 (Public)	Do	Do	Do	Do	Do

7th Sheet
136 words

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TWO ANNAS

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[illegible]

M. M. 26.10.91	Do	Do	Copy of the order of the Madras Government No 903 Public	1st Do Deft	Do	Do	Do.
N. N. 21.3.92	Do	Do	Printed letter from the Chief Secretary to the Government of Madras to the Secretary to the Government of India, Revenue & Agricultural Dept.	Do Do	Do	Do	Do.
OO	Do	Do	2nd Deft's chittas 25 in number from June 1853 to 1864.	2nd Do Deft	Do		Admitted by Plff
PP	13.8.98	13.8.98	104 books of salary bills issued of the 2nd Deft's estate from 3.4.6 November 1853 to 1864 and except for the years 1862.	2nd Deft	Plff		Admitted by Plaintiff

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TWO ANNAS

INDIA

RR	Do	Do	2d Defts letters from January 1865 to March 1871		Do	Do	Do	Do	Do
RR (1) 2.8.79	Do	Do	Letter from Adithanna Beyanga Row to Pltff's father		Do	Do	Do	Admitted by both parties	
R.R (2) 14.4.84	Do	Do	Do	Do	Do	Do	Do	Do	Do
R.R (3) 9.7.79	Do	Do	Do	Do	Do	Do	Do	Do	Do
R.R (4) 9.7.79	Do	Do	Do	Do	Do	Do	Do	Do	Do
R.R (5) 26.7.79	Do	Do	Do	Do	Do	Do	Do	Do	Do
R.R (6) 8.3.84	Do	Do	Do	Do	Do	Do	Do	Do	Do
R.R (7) 4.11.85	Do	Do	Do	Do	Do	Do	Do	Do	Do
R.R (8) 10.11.85	Do	Do	Do	Do	Do	Do	Do	Do	Do
R.R (9) 24.9.85	13.8.96	13.8.96	Letter from Adithanna [illegible] Bhujinga Row to Pltff's father	2d 3.4.6 & 7		Deft	Pltff	Admitted by both parties	
R.R (10) 17.6.85	Do	Do	Do	Do	Do	Do	Do	Do	Do
R.R (11) 8.4.84	Do	Do	Do	Do	Do	Do	Do	Do	Do
R.R (12) 14.10.84	Do	Do	Do	Do	Do	Do	Do	Do	Do
R.R (13) 27.6.84	Do	Do	Do	Do	Do	Do	Do	Do	Do

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INDIA TWO ANNAS

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R.R.(14)	15.1.	Do	Do	"	Do	Do	Do	Do	Do	Do	Do
R.R.(15)	12.11.79	Do	Do	.	Do	Do	Do	Do	Do	Do	Do
R.R.(16)	7.8.79	Do	Do	"	Do	Do	Do	Do	Do	Do	Do
R.R.(17)	15.8.79	Do	Do	"	Do	Do	Do	Do	Do	Do	Do
R.R.(18)	26.3.84	Do	Do	"	Do	Do	Do	Do	Do	Do	Do
R.R.(19)	7.11.84	Do	Do	"	Do	Do	Do	Do	Do	Do	Do
R.R.(20)	25.2.84	Do	Do	"	Do	Do	Do	Do	Do	Do	Do
R.R.(21)	29.12.85	Do	Do	"	Do	Do	Do	Do	Do	Do	Do
R.R.(22)	10.8.79	Do	Do	"	Do	Do	Do	Do	Do	Do	Do
[illegible]	1889	20.7.96	13.8.98	o	Documents reprinted from the extra sections of the annual reports of A. V. Narasinga Row's observatory from 1885 to 1888		Do.	Plff	Do	Do	Do.
[illegible]	31.10.91	15.8.98	15.8.98	o	Letter from Rees Esquire Bowes to Plff's father and the reply thereto on its back	3.4.6 and 7	Plff	Plff		Proved by Plff's 6th witness.	

10th Sheet

[illegible] 17.4.99

[illegible] 17.4.99

[illegible]

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TWO ANNAS

INDIA

Exh. VV 12.7.56	20.7.96	15.12.98		In entry in the book containing Exhibit XXVII (x)	Do	2d Deft	Do	Disproved by P.W. 10
W.W.(1) 6 W.W.(5)	"	11.3.99	14.3.99	Cash Chitta of G. T. Jagga Row from 1840 to 1851 (5)	Do	Deft	Do	Proved by P.W. 12.
X X.	No date	Do	Do	Opinion of Pundits	Do	Do	Do	Do Do
Y Y	2.4.84 3.4.84 6.4.84 2.5.84 16.4.84 6.5.84 29.5.84	Do	Do	Copies of letters from Plaintiff's father to O'Sullivan Esquire	Do	Do	Do	Do. P.W. 5
Z Z.	1.7.90	Do	Do	Copy of letter from Plaintiff's father to Mr Willock	Do	Do	Do	Do Do
A.A.	26.5.84	Do	Do	Deed of declaration of trust executed by the 2d Defendant	Do	Do	Do	Do Do
I	17.11.91	20.7.96	29.11.97	Letter from 2d Defendant, Issues and Plaintiff to the Chief Secretary to the Govt of Madras	3.4.6	1st Deft	Deft to	admitted by Plaintiff

11th Sheet

(351/[illegible] 10. 17. 4. 99
(352/[illegible] 20-17.4.99

[illegible]

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TWO ANNAS
INDIA

II	15.5.92	Do	Do	Registered trust deed executed by Plaintiff and 2d Defendant in favor of the 1st Deft. (Government)	Do	Do	Do	Admitted by Plaintiff	
III (a)	No date	Do	Do	Printed copy of written statement in O.S. 2 of 1893 on the file of the Sub Court Vizagapatam filed by the Plaintiff in this suit.	Do	2d Deft	Do	Do	Do
III (b)	24.7.93	Do	Do	Do Judgment in Do	Do	Do	Do	Do	Do
III (c)	23.3.93	Do	Do	Do Plaint in Do	Do	Do	Do	Do	Do
III d	3.4.94 20.7.96 29.11.97			Public copy of Judgt. Decree of the High Court 3-4-6 Madras in A.S. 129 and 7 of 1893 on appeal from III (b)		2d Deft	Deft	Admitted by Plaintiff	

12th Sheet

(3522 [illegible] 17-4-97

[illegible]

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INDIA

TWO ANNAS

IV	1886	30.11.97	30.11.97	Observatory Report for 1885 containing extract from the late Mr G. V. Jagga Row's diary at page 6.	Do	Do	Do	Do	Do
V	1.1.77	Do	Do	Certificate given to Plaintiff's father by the Government of India	Do	Do	Do	Do	Do
VI(a)	7.3.92	30.11.97	30.11.97	Letter from Plaintiff to 2d. Defendant.	Do	Do	Do	Do	Do
VI(b)	2.2.89	Do	Do	Do Do to his father	Do	Do	Do	Do	Do
VI(c)	31.10.89	Do	Do	Do Do Do	Do	Do	Do	Do	Do
VI(d)	2.5.91	Do	Do	Do Do Do	Do	Do	Do	Do	Do
VII	18.12.91	20.7.96	Do	Do from Pltff's father to the Chief Secretary to the Govt. of Madras.	Do	1st Deft.	Do	Do	Do
VIII a	28.4.90	20.7.96	30.11.97	Trust deed executed by Issue 2d Deft in favour of Madras Govt.	1st 3.4.6 & 7 Defts.	Defts.	Defts.	Admitted by Pltff.	

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(3523 [illegible] 17.4.99

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INDIA TWO ANNAS

TWO ANNAS

VIIII	21·5·90	Do	Do	Letter from W. J. Willock Esquire to J. F. Price Esquire Chief Secretary to the Madras Govt.	Do	Do	Do	Do	Do	
IX	15·5·92	30·11·97	Do	Application by the Plaintiff to the Registrar, Vizagapatam.	Do	Registrar's clerk	Do	Do	Do	
X	8·5·92	Do	Do	Public copy of the Will left by Plaintiff's father.	Do	2d Deft	Do	Do	Do	
XI	16·5·92	20·7·96	Do	Letter from Plaintiff's father to the Secretary to the Government of India.	Do	1st Deft	Do	Do	Do	
XII	Do	Do	Do	Letter from Plaintiff to the Secretary to the Government of India.	Do	Do	Do	Do	Do	
XIII	11·4·92	20·7·96	30·11·97	Telegram from plaintiff to the Meteorological	Issues 3·4·84	1st Deft	Deft's	Admitted by Plaintiff.		14th Clerk 136

254 [illegible] 17.4.99

[illegible]

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INDIA

TWO ANNAS

				Reports to the Government of India.						
XIV	12-6-92	Do	Do	Do	Do	Do	Do	Do	Do	Do
XV	28-2-93	Do	Do	Letter from Do to Do		Do	Do	Do	Do	Do
XVI	23-?-93	30-11-97	Do	Telegram from Do to the Secretary to the Government of India Revenue Department		Do	Do	Do	Do	Do
XVII	29-7-93	Do	Do	Do	Do	Do	Do	Do	Do	Do
XVIII	28-7-93	Do	Do	Letter from Do to Do.		Do	Do	Do	Do	Do
XIX	29-10-94	20-7-96	Do	Telegram from Do to Do.		Do	Do	Do	Do	Do
XX	20-4-95	Do	Do	Preliminary notification of the Government of India regarding the [illegible] observatory.		Do	Do	Do	Do	Do
XXI	No date 20-?-?	30-11-97		Letter from plaintiff to the Government of India objecting to Exhibit XX	Issues 1st	20-4-99	Deft	Defts	Admitted by plaintiff	

16th Decr

131 w

[illegible] 2524 [illegible] -17.4.99

[illegible]

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TWO ANNAS

				Reporter to the Government of India.						
XIV	12-6-92	Do	Do	Do	Do	Do	Do	Do	Do	Do
XV	28-2-93	Do	Do	Letter from Do to Do		Do	Do	Do	Do	Do
XVI	23-?-93 30-11-97	Do		Telegram from Do to the Secretary to the Government of India Revenue Department		Do	Do	Do	Do	Do
XVII	27-7-93	Do	Do	Do	Do	Do	Do	Do	Do	Do
XVIII	28-7-93	Do	Do	Letter from Do to Do.		Do	Do	Do	Do	Do
XIX	27-10-94 20-7-96	Do		Telegram from Do to Do.		Do	Do	Do	Do	Do
XX	20-4-95	Do	Do	Preliminary notification of the Government of India regarding the [illegible] observatory.		Do	Do	Do	Do	Do
XXI	to date 20-?-9? 30-11-97			Letter from plaintiff to the Government of India objecting to Exhibit XX	Issues 1st 20-4-9?	Deft Depts		Admitted by plaintiff		

15th Decr
13/w

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TWO ANNAS
INDIA

16th Sheet
128 w

[illegible] 17.4.99
[illegible]

XXII	5-5-72 20-7-96	Do	"	Public copy of letter from the Secretary to the Government of India to the Plaintiff's father	Do	2d Deft	Do	Do	Do
XXIII	23-2-74	Do	Do	" Do of written statement in O.S. 100 of 1894 on the file of the District Munsiff's Court Vizagapatam by Mr W. P. Willock Defendant in that suit.	Do	Do	Do	Do	Do
XXIII	No date 2-12-97	2-12-97	"	Manuscript copy of the Introduction of G.V. Jagga Row observatory report.	Do	Do	Do	by P.W.5	Proved
XXIV	12-10-95 2-12-97	2-12-97	"	Receipt by G. Brahmanna to 2d Zamindar for having received Exhibit F7	3.4.6 Deft	Defts	P.W.8		Proved by

XXIV

[illegible]
[illegible] 17-4-99

[illegible]

XXV	25.1.92 20.7.96	Do		Letter from Plaintiff's father to the Meteorological Report to the Government of India with one enclosure.	Do	1st Deft	Do	Proved by D.W. 2.
XXVI	4.1.93	Do	Do	Telegram to Do from Government of India	Do	Do	Do	Do Do.
XXVII (a)	23.1.56	Do 13.12.97		An entry in G.T. Jagga Row's memorandum book from 1.1.56 to 26.1.56.	Do	2nd Deft	Do	
XXVII (b)	22.6.51	Do	Do	Do Do from 1st June to 2nd November	Do	Do	Do	
XXVII (c)	22.1.56	Do	Do	An entry in the Diary of letters received by G.T. Jaggarow garu from 1.1.56 to 31.1.56	Do	Do	Do	
XXVII (d)	Do Late 2.10.97 4.12.97			Cover containing Exhibit XXVII (a)	Do	Do	Do	Proved by P.W. 6

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[illegible]

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TWO ANNAS

INDIA

TWO ANNAS

57 (P) 22

18th Sheet
121 [illegible]

XXVII (C)	16.8.84 17.8.84 22.8.84	4.12.97	4.12.97	"	List of records handed over to the 2nd Defts Umnagi 4 & another	2d 3.4.6 &7	Deft	Deft	Proved by P.W. 1.	
XXVIII a	4.10.85	12.8.98	12.8.98	"	English letter from G.T. Jaggarow Esquire to the Collector, Vizagapatam,	Do	Collector	Defts	Admitted by Pltff	
XXVIII (b)	3.2.54	Do	Do	"	Telugu letter from Do to Do }	Do	Do	Do	Do	Do
XXVIII (C)	11.6.53	Do	Do	"	Do Do from Do to the then Maharajah of Vizianagram.	Do	D.W. 4	Do	Do	Do
XXVIII (d)	10.4.55	Do	Do	"	Do Do	Do	Do	Do	Do	Do
XXVIII (e)	14.8.54	Do	Do	"	English Do Do	Do	Do	Do	Do	Do
XXIX	6.7.95	13.9.98	13.8.98	"	Final notification by the Government of India regarding the said observatory.	Do	1st Deft	Do	Do	Do

160 [illegible] 17-4-99
[illegible]

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TWO ANNAS

T	15-1-79	22-11-97	3-12-97	Draft letter from the Board Collector Collector of Vizagapatam 2-4-6 of Vizagapatam to the Board of Revenue Madras.	Pltff			Admitted by Defts and Public doc.
U	3-8-79	Do	Do	Proceedings of the Government of Madras Public Department to the Collector Vizagapatam No 188.	Do	Do	Do	Public document admitted by Defendants.
V	17-2-90	Do	Do	Do Do Do No 204	Do	Do	Do	Do Do
W	8-1-90	Do	Do	Letter from Plaintiffs father to Mr Rees.	Do	Do	Do	Admitted by Defts.
X	2-12-85	4-12-97	4-12-97	Entry in a Third Code of Records of the 2d Deft for 1885	2d Deft		Do	Proved by D. W. 6.
Y(1)	1-2-91	4-2-97	Do	Entry in a book called Record charge list of the 2d Defendant.	Do	Do	Do	Do Do

5½ Sheets
141 words
136 words

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A. A. (1)	No date	12.8.98	12.8.98	G. V. Jaggarow observatory Reports from 1872 to 1879	Do	Pltffs 11th suit [illegible]	Do	Proved by P.W. 11.
A. A. (2)	No date	12.8.98	12.8.98	G. V. Jaggarow observatory Reports from 3 Feb 1881 to 84	[illegible] and 7	Pltffs 11th suit [illegible]	Pltff	Proved by P.W. 11
B. B. (1)	Do	Do	Do	Do Registers from 1870.77.	Do	Do	Do	Do Do
B. B. 2	Do	Do	Do	Do Do from 1878.1881	Do	Do	Do	Do Do
C. C.	22.5.96	12.8.98	12.8.98	Office copy of letter from the Collector Vizagapatam to the 2d Deft	Do	Collector Vizagapatam	Do	Do D.W. 3.
D. D.	28.5.96	Do	Do	Letter from the 2d Deft to the Collector Vizagapatam	Do	Do	Do	Admitted by 2d Deft.
E. E.	21.10.83	4.12.97	13.8.98	Registered will of Pltffs father.	Do	2d Deft.	Do	Admitted by both sides
F. F.	23.5.91	16.5.95	Do	Letter from the Collector Vizagapatam to Pltffs father	Do	Pltff	Pltff	Do Do

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[illegible]

(3528 [illegible] 17.4.99

[illegible]

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INDIA TWO ANNAS

TWO ANNAS

Statement showing the documents filed in Original Suit No 23 96 on the file of the District Court of Vizagapatam.

Mark of document	Date of document	Date of presentation	Date of filing	Name of witness	Particulars as to execution	Parties to which it relates	By whom produced	For whom filed	Admitted or proved	Remarks
A	28.9.93	29.11.97	29.11.97		Copy of the 2nd Defts will in the Registrar's office Register	3	Registrar's clerk	Pltff	Admitted by Defendants	
B(1)	23.1.1856	Do	Do		Photograph of an entry in the G. V. Jaggarow's Row's Diary.		Pltff's 2nd 3 & 6 witness	Do	Proved by P. W 2.	
B(2)	"	Do	Do		Photograph of G. V. Jaggarow's initials enlarged.	Do	Do	Do	Do	Do
B(3)	22.1.51	Do	Do		Photograph of the entry in the G. V. Jaggarow's Diary.	Do. Do	Do	Do	Do	Do

1st Sheet 136 words

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[illegible]

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INDIA TWO ANNAS

C(2)	22.1.56	Do	Do	Do	Do	Do Do	Do	Do Do
C	[illegible] 22.7.96 gone	Do		Draft letter from Plaintiff and 2nd Deft to the Chief Secretary and to the Government of Madras.	3.4.6 & 7	Pltff	Do	Proved by P.W. 5.
D	Do	Do	Do	Draft will of the 2nd Deft	Issue 3	Pltff	Do	Proved by P.W. 4 & 5.
E	27.12.92	20.7.96	29.11.97	Letter from Plaintiff to the Secretary to the Government of India	Issues 1st 3.4.6 & 7	Deft	Do	Proved by P.W. 4.5 & 10.
F	14.8.93	16.5.96	2.9.97	Registered deed of revocation executed by the Plaintiff.	Issues 3.4.6 & 7	Pltff	Pltff	Proved by P.W. 4 and 5.
H(1)	17.7.94	20.7.96	29.11.97	Letter from Plaintiff to the Secretary to the Government of India Land Revenue Department.	Do Do 1st	Deft	Do	Admitted by Pltff.
J	[illegible]	1.12.97	1.12.97	Draft will of the 2nd Defendant.	Do Do	Pltff	Pltff	Proved by P.W. 4.

2. Sheet

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INDIA

32 Sheets
140 words

1

H.	Do	15.5.96	Do.	Photograph of G. V. Jaggarow's old observatory.	Do	Do	Do	Do. Proved by P. W. 5
I	Do	Do	Do.	Do of old observatory of G. V. Jaggarow and the subsequent one of A. V. Narasingarao.	Do	Do	Do	Do
K	Do	Do	Do	Do of Narsingarow's observatory and terrace attached to it as it exists at present.	Do	Do	Do	Do.
L	16.5.92	22.7.96	Do.	Draft letter from Plaintiff to the Secretary to the Government of India	Do	Do	Do	Do Proved by P. W. 5
M	17.12.94	2.12.97	2.1.97	Public copy of decree issued in O.S. 100 of 94 on the file of the Vizagapatam District No 7 Munsiff's Court			Pltff.	Pltff Public copy

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N.	27.4.93	2.7.96	3.12.97	Report of the Meteorological Reporter to the Government of India.	Do Do	1st Deft	Do	Admitted by Pltff and proved by D.W. 2.
O	7.11.94	20.7.96	Do	List of instruments belonging to G. V. Juggarow's Observatory	Do Do	Do	Do	Do Do
P.	1868	16.3.95	Do	A printed pamphlet of the Solar and Lunar Eclipses published by the Plaintiff's father.	Do Do	Pltff	Do	Admitted by Defts.
Q	21.2.93	3.12.97	3.12.97	Printed copy of letter issued from John Elliot Esquire to the 2nd Defendant and	3. 4. 6	1st Deft	Pltff	Admitted by Pltff & also proved by D.W.
R	8.2.93	Do	Do	Letter from John Elliot Esquire to the Plaintiff.	Do	Pltff	Do	Admitted by Pltff & proved by
S.	28.12.88	29.11.97	3.12.97	Copy of letter from Mr. A. V. Narasingarao to Mr. Turner.	Do	Collector Vizagapatam	Do	Proved by D.W. 2 and admitted by Plaintiff.

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[illegible]

XXX 25.9.94 27.7.96 13.8.98

Printed letter from
the officiating Secre- Issues 1st
-tary to the Govern- 3, 4, 6 Deft. Defts admitted
-ment of India to recd by Plaintiff
the Chief Secretary
to the Government
of Madras.
(Signed) M. D. Bell.
District Judge.

(True copy)
By order of the Court.
Marsunhan
Superintendent.

with annex
stamps returned.

[illegible]

[illegible] 578 [illegible] 17. 4. 99

[illegible]

Application	14—4
Stamp [illegible]	21—4
Stamp [illegible]	21—4
Copy ready	26—4
[illegible] delivered	26—4

~~Re. O.~~ No. 1512
Dis.

VIZAGAPATAM COLLECTOR'S OFFICE,

Dated 27th April 1899.

FROM

F. C. Parsons Esqre

~~W. O. HORNE, ESQ.,~~

Ag. Collector,

Vizagapatam District.

To

The Honorable Mr. G. Stokes,

Chief SECRETARY TO GOVERNMENT,

Judicial DEPARTMENT,

Madras.

SIR,

I have the honor to forward herewith public copies of the decree and Judgment in O. S. No. 23 of 1895, the Jaggarao Observatory Suit. The copies were received only last evening. Other material documents have been applied for and will be forwarded on receipt.

I have the honor to be,
Sir,
Your Most obedient Servant,

H A B Vernon.
for Ag Collector.

27/4/99.

C.S.

CHIEF SECRETARIAT.

133

Dated: 2nd May 9

Issue
CN
2/5/99

[illegible] Dept.

D.O. 2.5.99

My dear Arnold White

I now forward for your perusal copies of the decree & judgment in the Jagga Rao Observatory suit, which have just been received.

CN
2.5.99

AV
2/5/99

2/5/99.

The Hon'ble Mr C. Arnold White
Advocate General –
Shoreham House

Despd
with 2 Encs
2/5/99.

GOVERNMENT OF MADRAS

Chief Secretariat,
Ootacamund,
2d May 1899.

y dear Arnold White,

I now forward for your perusal copies of the decree and judgment in the [illegible] Observatory suit, which have just been received.

Yours sincerely,

G. Stokes.

To

The Honourable Mr. C. Arnold White,
Advocate General.

CHIEF SECRETARIAT
13 JUN. 1899
GOVERNMENT OF

Ootacamund.
June 12th 1899.

My dear Stokes,

"Jagga Rao Observatory" Suit.

I am sending you herewith my Opinion with reference to the question of an appeal in this case. Before writing my Opinion I wanted to see the Memorandum on the case

Public (1899) Department.

CURRENT No.

Telegram

From

The Govt of India

No. 1929

Dated 12 June '99
Received
Registered } 13 " "
Enclosures –
Spare copies –

SUBJECT.

Requesting to expedite rep
to telegram of 17 April las
re Jiggra Rao Observatory &c

BACK PAPERS.

G.O.	No.	Department.	Date.
	743	Pub.	9.6.99 R (cly
DO	133	Des:	2.5.99
G.O.	458	Pub:	21.4.99
DO	120	"	19.4.99

FURTHER PAPERS.

G.O.	No.	Department.	Date.

1709

INDIAN TELEGRAPHS.

Code Class. D.S.

Monthly Number. 948

To (Office) Ootacamund

From (Office) Simla

Words.	Day.	Hour.	Minute.	Official Instructions.
19-4	12	16	56.	

To (Person) Madras.

From Revenue

Hurry

CHIEF SECRETARY'S 13 JUN. 1899 GOVERNMENT OF MADRAS

1929 Jugga rao observatory Suit please expedite reply to telegram of Seventeenth April last

Tr. G.O. 458 Pub 21.4.99

Reminder already sent

13/6/99

LNo. Sent to LN.

At Hrs. Mts. by At Hrs. Mts. by

Telegraph Master.

P.C. 1.

G.O. Pr. No.—201 T—17937—2000000.

OOTACAMUND 13-6-99.

Public (1899) Department

CURRENT No. 1

From

The Advocate Genl

No.

Dated 12 June 99
Received 14 " "
Registered 14 " "
Enclosures -
Spare copies -

SUBJECT.

Giving his opinion re Jigga Rao Okerato Cuiz.

BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

MEMORANDUM.

Original Suit No. 23 *of* 1895 *on the file of the District Court of Vizagapatam.*

1. In this suit, which has been generally called the Vizagapatam Observatory Suit, the plaintiff, A. V. Jugga Row, sued the Secretary of State in Council as the first defendant and his mother —generally spoken of either as the Rani or Mrs. Narsing Row —as the second defendant for a declaration that he was not bound and that his interests were not affected by a document (Exhibit II in the suit), which he and his mother had jointly executed on the 15th May 1892. This was the document under which, as the first and second defendants claimed, the plaintiff had given up in favour of the Government of India all his interests in the buildings known as the Vizagapatam Observatory and in the Government promissory notes —of the nominal value of Rs. 3,00,000—that had been set apart for carrying on astronomical and meteorological work in the observatory. And it was on the strength of this document that the Government of India vested the observatory and its endowment in the Treasurer of Charitable Endowments (who, at the instance of the first defendant, was added as a third defendant), and that the work of the observatory has since 1894 been carried on under the control or supervision of the Meteorological Department of the Government of India. There were other transactions whose object was to make the observatory a public institution, but this deed is the only transaction that can be relied on by the Government as authorising them to vest the property in the Treasurer of Charitable Endowments (see paragraph 27 below). No question has been raised as to whether the instrument in question conferred rights on the first defendant during the life of the second defendant: the question raised was whether that instrument would affect the interests of the plaintiff after her death.

2. At the time when the document was executed, the estate, of which the observatory and its endowments formed part, was in possession of Mrs. Narsing Row. She held it as the only child of the last male holder, and the heir apparent to the estate was her only son, the plaintiff. During the pendency of the suit Mrs. Narsing Row died, and the plaintiff as daughter's son of the last male holder succeeded to all the property which she held. The result was that if the plaintiff's case was well founded, he was entitled not only to the declaration for which he had prayed in his plaint, but also for possession of the observatory and its endowment. The suit was accordingly converted into one for possession of these properties.

3. The District Judge's judgment ignores one of the issues (see paragraph 4 below) but he says that he finds in favour of the plaintiff on all the issues, and passed a decree in plaintiff's favour. The question now is whether the Government should appeal to the High Court. The object of this memorandum is to assist the Government in deciding that question by laying before it the several points raised in the case and the gist of the evidence bearing on those points.

4. The main grounds upon which the plaintiff claimed that, though he had been a party to the deed of May 15, 1892, his interests were not affected thereby were three in number. In the first place he alleged that he had signed that document only because of the undue influence exercised upon him and the misrepresentations made to him by his father, Narsing Row. This was met by the defendants by a direct denial of the alleged undue influence and misrepresentation. Before the Government of India decided to take up the observatory this was regarded as the principal matter to be considered, and it was only because the Government of India thought that the plaintiff would be unable to establish the undue influence and misrepresentation that they decided, notwithstanding the threat of litigation, to take action under the deed of May 15, 1892. Strangely enough this, which at one time was considered the principal—if not the only—question at issue, has so far sunk into the back ground that the District Judge nowhere in his judgment alludes to it and even treats the issue (No. 3) that was intended to raise this point as relating to the question of estoppel—a wholly different matter covered by the fourth issue. Secondly, the plaintiff claimed that he was not bound by the deed of May 15, 1892, because before the Government of India had acted upon it he had revoked his consent to it. Though the issue raised on this

point (No. 7) makes it a question whether, as a fact, "the plaintiff revoked the deed prior to its acceptance by the Government," there can be no doubt that before the Government acted upon the deed the plaintiff did give the notice that he had withdrawn his consent to it, and the only question on this point is whether in law he was at liberty to change his mind. Thirdly, the plaintiff claimed that he could not be bound by the deed in question, because at the time he signed it he had only a *spes successionis*, a legal point on which the defendants joined issue with him.

5. Not only did the defendants, as stated in the foregoing paragraph, contest each of the grounds on which the plaintiff repudiated the deed of May 15, 1892, but they went further and contended that, even if the plaintiff was able to establish his three grounds, still there was a valid alienation of the observatory and its endowments as such an alienation was only the carrying into effect of a trust imposed on the estate by its last male holder by a nuncupative will contained in his diaries for the years 1851 and 1856. This was met by the plaintiff by an assertion that the diaries were forgeries, and by the contention that even if they were true, they did not justify the alienation that was actually made. It was also alleged that the Rs. 3,00,000 with which the observatory had been endowed was the accumulation of Mrs. Narsing Row's savings and therefore at her free disposal, but there was no evidence on this point and it had to be abandoned. Another contention of the defendants related only to the endowment of Rs. 3,00,000.

6. The matters then to be considered were five in number: (1) Whether the diaries were in fact made by the last male holder; (2) if so, whether they authorised the trust which has been created and the endowment that has been made. If these two questions are answered in the affirmative, the Government is entitled to succeed whether or not the plaintiff's contentions on the other points are well founded. If, however, these questions are answered in the negative, three further questions arise; (3) was the plaintiff at liberty to revoke his consent to the deed of May 15, 1892; (4) was the plaintiff induced to execute that deed by undue influence or by misrepresentation; (5) apart from questions as to right to revoke, undue influence and misrepresentation, how is the validity of plaintiff's disposition under that deed affected by the fact that at the time of its execution he had no vested interest, but only a *spes successionis*. As the Judge has not given any statement of the facts of the case, it is necessary, in order to simplify the discussion of the above matters and, indeed, to render it intelligible, to preface the discussion with such a statement.

7. In this statement of facts, the name that will be most prominent will be that of A. V. Narsing Row—the father of the plaintiff. Not only is he connected with every transaction leading up to the deed of May 15, 1892, but it is he that is charged by the plaintiff with the undue influence, the misrepresentation and the forgery that the latter attempted to establish. It is then but the barest justice to the defendants as well as to Narsing Row to remember that these charges were not brought against him until after his death, and that he has therefore had no opportunity of giving his version of the facts. Nor indeed has there been an opportunity of calling any witness who would be willing, if he could, to throw on the facts a light favourable to Narsing Row. His wife, the second defendant, might have thrown such a light, but she died before she could be examined. As for the other witnesses that might be expected to know something of Narsing Row's conduct, they are servants of the estate and have only been waiting for the long-expected death of Mrs. Narsing Row to pass over into the power of the plaintiff who, they would have reason to expect, would deal with them according to the evidence that they might give. And if we look for documentary evidence to throw light on Narsing Row's conduct, we find his son, who is his accuser, shortly after his death in possession of many, if not all, of the relevant documents and in a position, if he were so minded, to give us only a selection from the documentary evidence.

8. The observatory was originally the property of G. V. Jugga Row (whom, to distinguish him from the plaintiff, I shall call old Jugga Row) and was built by him in the year 1841. In 1856 old Jugga Row died, divided in interest from the other members of his family and leaving no male issue. He was succeeded by his widow, who held the estates till her death in July 1864. It is said that during the widow's time the observatory was closed. On the death of the widow, Mrs. Narsing Row (who had married Narsing Row six or seven years previously) succeeded to the estates of old Jugga Row—including the observatory—as his daughter. Her husband, who had been a Government servant, gave up his employment and devoted himself to the management of his wife's estates. He also took a great interest in the observatory and, from time to time—apparently with monies belonging to the estate that his wife had inherited—greatly enlarged it and improved its equipment. Neither in old Jugga Row's time nor in his daughter's time, up to 1883, does it appear that any special fund was set apart for, or that any specified sum of money was spent on, the upkeep and work of the observatory.

9. In the year 1883 a very serious quarrel occurred between A. V. Jugga Row, who was then the heir apparent to his grandfather's estate, and his parents. The cause of the quarrel was that the son insisted on marrying a girl to whom his parents strongly objected. The true reason for their objection is said to be founded in a scandal long since buried, but the reason that they assigned whether true or not was that according to Hindu ideas the marriage would be incestuous and would disqualify Jugga Row from succeeding to his grandfather's property (see Exhibit A, paragraph 5). The result of the quarrel was that Jugga Row left his parents' house and did not return to it again till some time in the first half of the year 1891.

10. In the meantime before Jugga Row's return home, attempts were made to convert the observatory into a public institution and to set aside money for its endowment. It was said that these attempts were made in consequence of the quarrel and ill-feeling between Jugga Rao and his parents, in order to deprive Jugga Row of a part at least of his grandfather's property, and of course Jugga Row endeavoured to make out that the ill-feeling between him and his parents was very bitter. But, though it may have been bitter at first and though Jugga Row may not have visited his parents till 1891, the fact that they made him an allowance of Rs. 100 a month as well as the tone of Jugga Row's letters in 1889 (Exhibits VI-B and VI-C) show that before the end of 1889 the ill-feeling had considerably abated. It will be necessary to relate the transactions that were intended to make the observatory a public institution, but before doing so, it is desirable to point out that, though the Government of India must for the purposes of its case contend that these transactions are justified by the directions contained in old Jugga Row's diaries, the first two transactions, those of 1883 and 1884, were made independently of the diaries. For the existence of two of the diaries was not known till the end of the year 1885 and of the third till February 1891, and the directions in them were not relied on as a nuncupative will till January 1891.

11. The first of these transactions was a will executed by Mrs. Narsing Row on September 28, 1883 (Exhibit A). By this will Mrs. Narsing Row bequeaths to the Government of India on her demise the observatory with certain specified Government promissory notes to the value of Rs. 3,00,000 as its endowment and makes the request that the observatory may be called the "G. V. Jugga Row Observatories." That this will was made with the concurrence, if not at the instance, of Narsing Row is clear. It refers to Narsing Row's will (Exhibit EE., October 23, 1883) and is—so to speak—supplemented by Narsing Row's will, and further the draft of it (Exhibit G) is in Narsing Row's handwriting. There can be no doubt that at the time this will was made there was ill-feeling between the son and his parents. But it would be going too far to say that in making the dispositions as to the observatory Mrs. Narsing Row was influenced solely by that ill-feeling. If ill-feeling alone caused this will, we should expect to find the same motive in Narsing Row's will; but we find that Narsing Row leaves his self-acquired property—which he might have dealt with in any way he pleased—to take the same course as it would if he had died intestate, *i.e.*, to descend to Jugga Row. And further, Mrs. Narsing Row in her will professes (Exhibit A, paragraph 6) to be influenced by a regard for the memory of her father old Jugga Row, and there is nothing to indicate that this profession is insincere, and that she did not really believe that if the observatory came into Jugga Row's hands he would not carry it on and that old Jugga Row's fame—and perhaps the family glory—would come to an end.

12. The will of 1883 is important, only because it was said to throw light on the motives that actuated Mr. and Mrs. Narsing Row in endeavouring to hand over to the Government the observatory and three lakhs of rupees, for it was, so far as the observatory is concerned, impliedly revoked by a deed of the following year. A letter

from Mr. O'Sullivan —the then Advocate-General of Madras —to Narsing Row (Exhibit YY, May 21, 1884) shows that the latter had consulted him as to the feasibility of Mrs. Narsing Row making—as against any reversioner—a permanent endowment for the observatory and for some charity. Mr. O'Sullivan in effect advised against Mrs. Narsing Row's power to make such a disposition as she then contemplated. But notwithstanding this advice, Mrs. Narsing Row did on 20th October 1884 execute a deed (printed in Exhibit SS) whereby she declared herself the first trustee of the observatory and of the same Government promissory notes (of the value of Rs. 3,00,000) as she had mentioned in her will of the previous year and directed that on her death and whenever a vacancy should occur the Government, or, failing the Government, the "Civil Court having jurisdiction" should appoint a new trustee. No doubt Mrs. Narsing Row had but a woman's estate in the observatory and in the Government promissory notes, and therefore the deed would not bind her successors. But I think there can be no doubt that it was good for her life, and did make her a trustee and did make the observatory and the promissory notes trust property as long as she should live. And further the trust having been thus validly made, I do not see how it could be extinguished during Mrs. Narsing Row's life-time.

13. Narsing Row's correspondence with Mr. O'Sullivan (Exhibit YY), as well as the deed of October 24, 1884, were relied on as showing a desire to deprive Jugga Row of a part at least of his grandfather's property. No doubt this was the effect of the deed, but it is also quite possible that Mr. and Mrs. Narsing Row were also influenced by what they believed to be the wishes of old Jugga Row and by what they thought would be to the glory of the family. A more important argument based on the correspondence with Mr. O'Sullivan relates to the genuineness of the diaries. In his letter (YY) Mr. O'Sullivan had said: "I apprehend it would be difficult to establish the fact (*i.e.*, that old Jugga Row wished to have the observatory permanently endowed) in the absence of writing, seeing that if he had any settled strong wish that an endowment in perpetuity should be created, it would be natural to expect that he would have made provision for the same or left some authentic record of his wishes." And it is only after Mr. O'Sullivan had thus pointed out the necessity for some writing by old Jugga Row to justify the permanent endowment of the observatory that the diaries were discovered, two (Exhibits XXVII*a* and XXVII*b*) in December 1885 and the third (Exhibit XXVII*c*) in February 1891 (see Exhibit L and L_1). It will be more convenient to consider the argument based on these facts when I deal with the genuineness of the diaries (paragraph 30 below). The two diaries Exhibits XXVII*a* and XXVII*b* were, with extracts from some other diaries of old Jugga Row, set out in an introduction to a report on the observatory for 1885 (Exhibits IV and XXIV) which was published in 1886.

14. In December 1888 Narsing Row applied through the Collector of Vizagapatam for the title of Rani for his wife (Exhibit S), a request that was not granted by the Madras Government (G.O., 13th August 1889), though it was supported by the Collector (Exhibit T). Mrs. Narsing Row's claim to the title is based on what she had done for the observatory including her execution of the trust deed of 1884. It is worth noting that apparently at this time it was not thought that the diaries constituted a nuncupative will containing directions binding on Mrs. Narsing Row, because Narsing Row says (Exhibit S) that though his wife's "worthy father mentioned in his diaries that the observatory should be maintained at the cost of the estate . . . . it is a great public spirit on her part to carry it out."

15. In January 1890 the request for the title was renewed, this time through the Private Secretary to the Governor (Exhibit Y). Both in the application of December 1888, and in that of 1890, the trust deed of 1884 is spoken of, not only as being still in force, but also as conferring on Government the right of taking charge of the observatory on Mrs. Narsing Row's death. In the Government Order of March 17, 1890 (Exhibit W), the Government ignores the request for a title and says that after consulting the Law officers it cannot accept what it calls the bequest.

16. Up to this time, it will have been noticed, Mrs. Narsing Row was regarded as the trustee under the deed of 1884 and the connection of Government with the observatory was considered to arise only on Mrs. Narsing Row's death. After this time a series of attempts were made to induce the Madras Government to take over the observatory *in præsenti*. In little more than a month after the Government order of the 17th March 1890, Mrs. Narsing Row, on the 28th April 1890, executed a deed (Exhibit VIII*b*) whereby she purported to transfer to the Government the trust she held. In this deed the trust deed of 1884 is, it is clear, treated as still subsisting, and the object of the deed is simply to substitute Government in the place of Mrs. Narsing Row. This deed was sent to the Government by the Collector of Vizagapatam with a covering letter (Exhibit VIII*a*) recommending the Government to act on it, but Government never acted on it.

17. In the next year 1891, three further attempts were made to induce the Madras Government to take over the observatory. The first of these is important as being the first occasion on which the diaries were put forward as a will. It was made on the 27th January by a letter written by Narsing Row to the Private Secretary to the Governor (Exhibit KK). In this letter Narsing Row in effect says that he has taken the opinion of the Advocate-General as to whether old Jugga Row's intentions as expressed in his diaries can be carried out and that his opinion was favourable. The diaries referred to cannot include Exhibit XXVII*c* which at this time had not been discovered and must be only Exhibits XXVII*a* and XXVII*b*. On the 11th May 1891, the Government passed an order (Exhibit LL) in which they declined "the bequest" and "Mrs. Narsing Row's proposed trust."

18. The third diary, Exhibit XXVII*c*, was discovered after the letter of January 27, 1891, was written and before the Government passed any order on that letter, *viz.*, on the 1st February 1891—about four days after the letter (see Exhibit L_1). Of the other two diaries Exhibit XXVII*b* is hardly material as it gives no directions, but merely showed that old Jugga Row entertained the idea of permanently maintaining the observatory. Exhibit XXVII*a* is however in terms a direction by old Jugga Row that his "heirs should continue their management (*i.e.*, the management of the observatory and of a certain charity) setting apart a portion of the income of my estate for the permanent maintenance of the same". In Exhibit XXVII*c* there is exactly the same direction, but with the all important addition that the permanent maintenance should be made "through the ruling authority," *i.e.*, the Government.

19. In the next attempt to induce the Madras Government to take over the observatory the diary discovered in February 1891 was distinctly relied on. The Government Order on the letter of the 27th January 1891 was passed on the 11th May and on the 14th July Mr. and Mrs. Narsing Row put in a petition (Exhibit MM) through a barrister in which Exhibit XXVII*c* is set out, without however mentioning that it was recently discovered. The petition prays the Government to exercise its powers under the Charitable Endowments Act: and it implies that a previous application—by which must be meant the letter of the 27th January 1891—was also made under that Act. In this application also the trust deed of 1884 is treated as still in force (section 2, clause *b*), and it is even said that it was made in pursuance of the directions in the diaries: but as I have pointed out, the diaries were not discovered till after the deed was executed. After a further reference to the Law officers, the Government rejected the petition on the 26th October 1891 (Exhibit MM).

20. In rejecting the applications that were made to it the Madras Government relied on the advice of its Law officers though it did not disclose the grounds of that advice. But it is clear that Narsing Row thought that the main, if not the only, ground for that advice was that the reversioners had not joined (see Exhibit YY, November 17, 1891). And we find that the next attempt that was made to induce the Government to take over the observatory was one in which Jugga Row joined. It was said that Jugga Row was induced to join in this attempt by the undue influence exercised upon him, and misrepresentations made to him, by his father. The misrepresentation was said to consist in this, that Narsing Row told Jugga Row that the latter's grandfather had left a will whereby he directed that not less than Rs. 1,000 a month (which is the income that would be produced by Rs. 3,00,000 of 4 per cent. Government Promissory notes) should be set apart for the maintenance of the observatory. This is the same misrepresentation that is said to have caused Jugga Row's consent to the deed of May 15, 1892. As to the undue influence the story is that Jugga Row, who had remained aloof from his parents since 1883, was in great distress in 1891 on account of the death of his wife, and that his father took advantage of this distress to show him kindness in order to win him over to the plan of handing over the observatory to the Government. However, whatever may have been the

means by which Jugga Row's consent was obtained, he did on the 17th November 1891 join with his mother in sending a letter (Exhibit I) to the Madras Government in the following terms:—

"We the mother and son offer our observatory to the charge of Government provided they hold it as trustees of the G. V. Jugga Row observatory and provided they admit us as members of the committee or the meeting as the case may be in regard to the management of the observatory." This offer was forwarded to the Government by Narsing Row with a covering letter (Exhibit TT); but was declined on the 9th December 1891 (Exhibit GG.)

21. Narsing Row now turned to the Government of India. In a letter to Sir E. Buck (Exhibit VII) on the 18th December 1891, purporting to act on behalf of Mrs. Narsing Row and Jugga Row, he offers "our observatory with its endowment of three lakhs made by Mrs. Narsing Row and all its belongings to the charge of Government under Act VI of 1890" (the Charitable Endowments Act) Here again the trust deed of 1884 is treated as being still in force, and the letter must be taken as an application under clause (*a*) of section 6 of the Charitable Endowments Act.

22. On communicating with the Government of Madras, the Government of India learnt—what Narsing Row had not told it—that the Government of Madras had more than once declined to have anything to do with the observatory (see Exhibits XXV and NN), and on the 5th May 1892 Sir E. Buck wrote to Narsing Row (Exhibit XXII) to say that under the circumstances the Government would take no further action unless the whole of the family concurred in the transfer and a clear title could be conveyed to the Government. The result was that Narsing Row drafted (see Exhibit D), and procured the signatures of Mrs Narsing Row and Jugga Row to the deed of the 15th May 1892 (Exhibit II). This deed recites that Mrs. Narsing Row and Jugga Row were "desirous to transfer the trust of the Observatory" and declares that they did thereby "assign and transfer the trust of the said observatory with its endowment and all its belongings to the care of the Government of India to ensure its continuance and work on a permanent footing for public benefit."

23. Before the Government of India decided to act on this deed, Narsing Row died on the 18th June 1892. Six months after his death and before the Government had taken any action in the matter, Jugga Row sent it a letter (Exhibit E, December 27, 1892) in which he withdrew his consent to the deed of May 15, 1892.

24. In the year 1893 Mrs. Narsing Row sued her son for a declaration that he was bound by the deed of May 15, 1892: but the suit was eventually decided against her on the ground that she had no *locus standi* (Exhibit III*d*).

25. Shortly after the failure of this suit, Jugga Row executed a formal deed (Exhibit F) declaring that he had withdrawn his consent to the deed of May 15, 1892. But he did not send this or a copy of it to the Government of India till the 7th July 1894 (Exhibit F_1).

26. On the 25th September 1894, the Government of India decided to "take action" on the deed of May 15, 1892, and to vest the observatory and its endowment in the Treasurer of Charitable Endowments (Exhibit XXX). In November 1894 (see Exhibit O) the Government took possession of the observatory and on the 11th May 1895, Jugga Row brought this suit.

27. This brings the statement of facts to a close, but there is one matter that must be considered before the various questions that have been put in issue can be dealt with, and that is the construction to be put on the deed of May 15, 1892. When the Government of India decided to take over the observatory, it appears to have been thought that this deed created the observatory and its endowment trust property. But, at the time the deed was executed, the observatory and the Rs. 3,00,000 of Government promissory notes had already been created trust property during the life of Mrs. Narsing Row by the deed of the 20th October 1884, and Mrs. Narsing Row was the trustee in possession of that property (see paragarph 12 above). And this fact neither Mrs. Narsing Row nor any one else could undo. All that she, or any one else, could do, would be to take steps under the Charitable Endowments Act, or under section 539 of the Civil Procedure Code to have her relieved from the trust. Now by the deed of May 15, 1892, what Mrs. Narsing Row purports to do is to transfer to the Government of India the trust she held and to assign to it the trust property. Obviously she could not do this, and if the terms of the deed are to receive a strict construction the deed is void as an attempt to do what is illegal. But (see paragraphs 21 and 22 above) the deed was the outcome of Narsing Row's letter of the 18th December 1891 (Exhibit VII) and, it may be argued, should be read with that letter. That letter was an application under the Charitable Endowments Act and so it is possible to treat the deed of May 15, 1892, as intended to be made in reference to that Act, that is to say, as a stamped and registered renewal of the letter of the 18th December 1891. I say it is possible to so treat it, though were I the Judge I should be disposed to hold that the deed of May 15, 1892, should be read by itself and must be treated as an attempt to transfer a trust and therefore void. It might be argued that supposing the deed of May 15, 1892, to be void, the Government might still justify their vesting the property in the Treasurer of Charitable Endowments by falling back on the letter of the 18th December 1891. But this it seems to me, it is not open to them to do as they have already declined to take action on that letter (paragraph 22 above). It seems to me that the case of the Government of India falls unless it relies on the deed of May 15, 1892, and relies on it as being, so far as Mrs. Narsing Row is concerned, an application under section 6, clause (*a*), of the Charitable Endowments Act. And in what follows I shall assume that this is the construction to be put on the deed. This being the construction to be put on the deed so far as Mrs. Narsing Row is concerned, what is the construction to be put on the deed so far as Jugga Row is concerned? The only words that can be applied to him are these:—"Assign and transfer . . . its [the observatory's] endowment and all its belongings to the care of the Government of India . . . ." The draftsmanship is no doubt extremely faulty; but I do not think it is an unfair construction that, inasmuch as Jugga Row had no vested interest to assign, he intended by these words to release any claim he might have in respect of the property so as to enable the Government of India to deal with it.

28. I now proceed to deal with the issues raised in the case. It was, I have said (paragraph 5), contended by the defendants that, quite apart from the question whether the deed of May 15, 1892, was binding on Jugga Row, a trust, valid against all old Jugga Row's successors, had been created in pursuance of directions left by him in his diaries. From what I have said it will appear that in my view the deed of May 15, 1892, cannot be treated as creating such a trust, for that deed must be taken to be an application under section 6, clause (*a*), of the Charitable Endowments Act. The only document that can be relied on as carrying out the directions contained in the diaries is the trust deed of October 20, 1884. But here there is another difficulty; how can the Government of India rely on the diaries as justifying the deed of 1884 when none of them were discovered till December 1885—more than a year after the deed? But supposing this difficulty overcome, it remains for the Government of India to establish that old Jugga Row left directions enjoining such a trust as that created in 1884. It is clear that to establish this the Government of India must establish three points:—(1) that old Jugga Row wrote or signed or initialled those entries in his diaries, (2) that he intended them to be binding on his successors, (3) that he contemplated a sum of Rs. 3,00,000 being set apart for the endowment of the observatory, or at all events that a sum equal to the interest on Rs. 3,00,000 of Government promissory notes should be annually spent on the observatory.

29. The second point I do not think admits of any doubt. A mere perusal of Exhibits XXVII-A and XXVII-C will show that if they are genuine old Jugga Row did intend them to be a binding direction. But as to the third point, all that old Jugga Row directs is that the observatory is to be maintained and that "a portion of the income of the estate is to be set apart for that purpose." It appears to me that, assuming that the diaries are genuine, the directions are too vague to be enforceable. At all events the most that they can amount to is, that the observatory is to be maintained, that is, kept up in the state in which it was at the time the diaries were written and that so much of the income as was necessary for that purpose should be spent on it. They do not justify an extension and improvement of the observatory and the setting apart a capital sum sufficient—or more than sufficient—to maintain it when extended and improved.

30. It remains to consider the genuineness of the diaries. It will be clear from the statement of facts that if they are not genuine it was by Narsing Row's hands or at his instance that they were forged. The evidence relied on as showing that he forged them or caused them to be forged was threefold. In the first place the

correspondence with Mr. O'Sullivan (paragraph 13 above) was relied on. It was said that this correspondence showed that at the time Narsing Row wrote to Mr. O'Sullivan the diaries were not in existence; but all that the correspondence shows is that at that time their existence was not known. Further it was said that it is clear that the diaries would never have been heard of but for Mr. O'Sullivan's suggestion that some writing was necessary to prove old Jugga Row's wishes. Supposing it to be so, nevertheless this is quite consistent with the genuineness of the diaries. It is not to be expected that at the time Mrs. Narsing Row came into possession of the estate all old Jugga Row's private papers were examined, and it may well be that Narsing Row, being told of the necessity of some writing, searched all the papers and found these diaries. Moreover, Mr. O'Sullivan's suggestion was made in 1884, and in the same year, notwithstanding his advice, Mrs. Narsing Row carried out the intentions about which his advice had been taken and executed the trust deed of October 20; but the diaries were not discovered till the end of the year 1885. Had the diaries been forged to support the deed of 1884 one would expect that they would have been forged prior to the execution of that deed. And if it was not to support that deed no other motive for their forgery can be assigned. No doubt there is much in connection with the discovery of the diaries about which questions could have been put to Narsing Row in cross-examination, and if he had failed to answer them satisfactorily or even if he had failed to go into the witness box and allow himself to be cross-examined—an inference could fairly have been drawn against the genuineness of the diaries. But as Narsing Row has never had an opportunity of explaining how he came to find the diaries I think it is going too far to draw a decided inference against their genuineness. But I think it would be idle to deny that the facts give rise to a suspicion: a suspicion that is considerably strengthened when we remember that the only diary that expresses old Jugga Row's wish that the observatory should be taken over by the Government (Exhibit XXVII-C), was discovered at a time when Narsing Row and his wife were endeavouring to induce the Government of Madras to take over the observatory (paragraph 18 above). In the second place it was contended that the whole course of the transactions showed that Narsing Row had a motive to forge the documents in that these transactions showed that Narsing Row and his wife were anxious to deprive Jugga Row of as much of his grandfather's estate as they could. But I cannot see much force in this. It is clear that Narsing Row was anxious to make the observatory a public institution, but whether this was to spite Jugga Row or for worthier reasons it would be impossible to say. Anyhow whether Narsing Row would be likely to forge to carry out his purpose is a question to which no certain answer can be given on the facts. Thirdly there was direct evidence of the forgery. The only evidence that I need refer to on this point is the evidence of the twelfth witness for the plaintiff. This man has been in the service of the estate since the days of old Jugga Row. He says that in 1884 (which is about the time of the correspondence with Mr. O'Sullivan) Narsinga Row asked him to search the papers of old Jugga Row for any writing about the observatory. Between the months of May and August 1884 he searched but found no such writing. Amongst other papers he examined the diaries in which Exhibits XXVII-A, B and C are contained, and these entries were not then in the diaries. I do not think that any reliance can be placed on the evidence of this witness. To be able to swear positively in 1898 that certain scattered entries were not in the diaries in 1884 denotes a considerable reliance both on the care and accuracy of one's search as well as on one's memory. And further this evidence was given only after Mrs. Narsing Row's death when the estate had passed into Jugga Row's possession and the witness had passed into Jugga Row's service, while the witness, although he had this important information during Mrs. Narsing Row's life-time, allowed her and the Government of India to go into court on the strength of these diaries.

31. Thus, so far as the evidence of the plaintiff goes, there is no proof that the diaries are forged. But, of course, it is for the Government of India to prove that they are genuine and if it fails to prove this, its case as based on the diaries must fail. As the diaries in question are more than thirty years old, it might be expected that the Government would rely on section 90 of the Indian Evidence Act as raising a presumption of their genuineness: but the court is not bound to make this presumption and, in the face of the facts as to the discovery of the diaries, the court would not be justified in making it and would be bound to call for further evidence. What further proof then is there of the genuineness of the diaries? It must be

admitted that there is none worth saying. Some five documents purporting to be in old Jugga Row's hand-writing were put in to show similarity of hand-writing (Exhibit XXVIII series), but even these are not satisfactorily proved. See the evidence of fifth, sixth, seventh and eighth witnesses for second defendant. And even if they were, this evidence would not be sufficient to justify the court in acting on the diaries.

32. It is necessary to mention the evidence of the twelfth witness for the plaintiff as to Exhibit XXVII-C. This it will be remembered is the entry that speaks of "the ruling authority," and if its genuineness were established, the proof of the other entries would become unnecessary. This twelfth witness swore that the entries were not in the diaries when he searched them in 1884, but he swears that the initials that are immediately below the entry (Exhibit XXVII-C) are old Jugga Row's and were in the book when he examined it in 1884. Now the entry and the initials are obviously in the same ink and that ink is entirely different from the ink used in writing every other entry in the book, and it is obvious, from a mere inspection of the book, that the entry and the initials were written at one and the same time. If then, the initials are, as the witness swears they are, old Jugga Row's, it is clear that old Jugga Row either wrote the entry himself, or, if it was written by some one else, appended his initials to it as soon as it was written. An advocate might fairly ask the Judge to accept the statement that the initials were old Jugga Row's and to draw the inference that the entry was also his. But I think the Judge would say "why should I not accept the statement that the entry was not there in 1884 and is not old Jugga Row's and draw the inference that the initials also are not his. The witness has made honestly or dishonestly two statements that cannot both be true, why should I accept one rather than the other."

33. What I have said is perhaps sufficient to shew that in my view the diaries are unproved and that therefore the case for the Government of India, so far as it is based on them, must fail. There is, however, one fact which was not mentioned at the trial but which, if it had been worked up, would, I think, have shown that the diaries are forged. Exhibit XXIV gives extracts from diaries, which were not proved, but which must have been found at the same time as Exhibits XXVII-A and XXVII-B. One of these extracts is as follows: "I have it in contemplation to set up an electric telegraph between my observatory and the fort with a view to afford the residents in Waltair and Vizagapatam the means of ascertaining any sudden changes in the weather which the meteorological instruments might indicate and also afford our towns-men as well as the shipping in the roads some facility." According to a pencil note in Exhibit XXIV (apparently made by Narsing Row), this entry was made in 1854 and, in any case, it must, if genuine, have been made before old Jugga Row's death which took place in January 1856. It seems to me wholly unlikely that any one living in Vizagapatam in 1856 should have conceived the idea of setting up a private telegraph. Moreover, it is difficult to see what facilities old Jugga Row intended to afford th shipping in the roads unless it was "approaching changes in the weather," *i.e.*, stor warnings, and though perhaps it is conceivable that old Jugga Row should in 185 have thought of affording such information to ships in the roads, few I think woul believe that he did. On the other hand such an idea might well occur to any ma when the diaries were first brought to light in 1884.

34. In any case it appears that the Government of India having failed to pro the diaries cannot contend that the trust deed of 1884 is binding on Jugga Row being the carrying into effect of the testamentary directions of old Jugga Row. A that they can claim is that the deed was good for the life of Mrs. Narsing Row. S being dead the only other deed that can be relied on as continuing the trust after h death is the deed of May 15, 1892, which (see paragraph 27 above) must be co strued so far as Mrs. Narsing Row is concerned as an application under the Charita Endowments Act and so far as Jugga Row is concerned as a release to the Governm to enable it to deal with the property. Jugga Row claims that he is not bound this deed, because (1) he revoked his consent to it before the Government acted o and (2) because he was induced to execute it by the undue influence and misre sentation of his father.

35. First as to the revocation. It is the fact (paragraph 23 above) that Jugga did revoke before the Government of India acted on the deed. And, therefore, if

and Jugga Row had been the only parties to the deed the revocation would have put an end to the deed. But Mrs. Narsing Row was also a party to the deed and she had acted on it to this extent: she had sent it to the Government of India and had thereby invited them to take from her the trusteeship she held during her life under the deed of 1884; and it may well be that unless Jugga Row had consented to give his release and so allow the observatory to be permanently made a public institution she would have preferred to remain trustee during her life. But this I apprehend would only disentitle Jugga Row to withdraw from the deed if by her so acting she had irrevocably altered her position: and I do not think that her position was irrevocably altered by her sending the deed to the Government because, before the Government had taken any action, it was open to her also to withdraw. In my opinion therefore Jugga Row was entitled to withdraw from the deed of May 15, 1892, before the Government of India acted on it.

36. Next as to Jugga Row's allegations of undue influence and misrepresentation. As to undue influence there is no evidence worthy of the name, for when Jugga Row was pressed in cross-examination as to what he meant by undue influence he said he meant that he was afraid his father might alter his will. There is no evidence that his father made any such threat and if there was, such a threat would not amount to undue influence. There was another allegation (see paragraph 20 above) that Narsing Row took advantage of Jugga Row's distress at the death of his wife to induce him to consent to the Government taking over the observatory. The fact that his father had shown him kindness in his distress may have led him to fall in with his father's wishes; but this is a very long way from the exercise of undue influence. Moreover Jugga Row's telegrams (Exhibits XIII-A and XIV), written at a time when his father was on his death-bed and could hardly have exercised any undue influence, show Jugga Row's anxiety that Government should act on the deed of May 15, 1892. Exhibit VI-A, written by Jugga Row to his mother after his father's death, would also show his desire for the perpetuation of his grandfather's name in connection with the observatory. Then as to the misrepresentation. The misrepresentation given in the evidence is that Mr. and Mrs. Narsing Row told Jugga Row that his grandfather had left a will directing that not less than Rs. 1,000 should be set apart for the upkeep of the observatory whereas, even if the diaries are true, there is no such direction. Now in his letter of revocation (Exhibit E. December 27, 1892) as well as in his letter to Mr. Eliot (Exhibit XV, February 28, 1893) no mention is made of any misrepresentation. It would, however, be said that at this time Jugga Row had not seen the diaries. But when he put in his written statement in the suit brought against him by his mother (paragraph 26 above) he not only knew of the existence of the diaries, but he believed that the diaries were forged and he had no difficulty in getting copies of them for they were relied on in the suit (Exhibit III-C, paragraph 2) and they had been published by Narsing Row in 1886 (see Exhibit IV). If then there had been any misrepresentation as to their contents he would have known of it and relied upon it in his defence to the suit; but his written statement though it alleges a misrepresentation alleges a very different one, viz., "that the observatory would continue to be in the management of the family, the Government simply supervising over it." Again on two other occasions when he mentions undue influence he does not refer to any misrepresentation (Exhibits XVI and XVIII). Again in the deed of revocation (Exhibit F) he speaks of misrepresentation, but does not say what it was. The inference from all this is that the misrepresentation he now relies on was never made.

37. The only remaining question is whether Jugga Row could make an assignment of a mere *spes successionis*. But if the deed of May 15, 1892, is treated, so far as Jugga Row is concerned, as a release to the Government of India, the question does not really arise.

38. In dealing with the case I have not said everything that might be said on the one side and the other. But I hope I have so dealt with the different questions as to assist even those who may be inclined to take a different view from mine. If before accepting my view any of the Government's advisers require further information or discussion I shall be glad to supply it as well as I can.

(Signed) J. H. M. RYAN,
Barrister-at-law.

OPINION.

1. I deferred writing my opinion in this matter until I had had an opportunity of considering the memorandum upon the case which was being prepared by Mr. J. M. Ryan, the counsel who appeared for the Government of India at the trial before the District Judge. I have now seen Mr. Ryan's memorandum and have also had the advantage of personal consultations with that gentleman.

2. The first question upon which I am asked to advise is as to "the prospects of a successful appeal." I regret to say that I am unable to advise an appeal to the High Court from the decision of the District Judge.

3. An exhaustive statement of the facts of the case will be found in paragraphs 7—26 of Mr. Ryan's memorandum. At the trial before the District Judge the Judge found all the issues in favour of the plaintiff and passed a decree declaring that the deed of May 15, 1892, was null and void as against the plaintiff, and ordering the first and third defendants (the second defendant having died during the pendency of the suit) to deliver to the plaintiff the possession of the observatory, &c., and the promissory notes in question. The Judge also ordered that the plaintiff's costs should be paid by the first and third defendants.

4. I do not think the evidence supports the plaintiff's allegation that his signature to the document of May 15, 1892, was obtained by fraud and undue influence. This question does not appear to be directly raised in any of the issues, and the District Judge does not deal with it in his judgment. I assume, however, for the purposes of this opinion, that, as regards the allegation of fraud and undue influence—upon which, in the first instance, the plaintiff mainly relied—the plaintiff's case fails.

5. It seems to me, however, that the plaintiff was entitled to succeed in his suit on the short ground that it was competent for him to revoke the so-called transfer of the trust contained in the document of May 15, 1892 (Exhibit II), before it was acted on by the Government of India, and that he did in fact so revoke it.

6. It appears to me that the deed of October 20, 1884 (see Exhibit S.S.), created a valid trust of the observatory and its endowments as against Mrs. Narsing Row and her interest therein. I think that, as against Mrs. Narsing Row, the trust was a valid and subsisting trust when she purported to assign it to the Government of India in May 1892. But I do not think it could be successfully contended that the document of May 15, 1892, constituted the property in question trust property as against the plaintiff and his interest therein. No suggestion that the plaintiff was in any sense a trustee of the property appears to have been made before the execution of the document of May 15, 1892. In fact, Mr. A. V. Narsing Row, in his letter to the Government of India, dated December 18, 1891 (Exhibit VII), describes Mrs. Narsing Row and the plaintiff as the "sole owners of the observatory." This letter, taken by itself, does not help the case of the Government of India because (apart from the fact that there was no evidence that the letter was written with the plaintiff's authority) the Government of India expressly declined to accept the offer contained therein (see Exhibit XXII). The true view seems to me to be that, so far as the plaintiff is concerned, the document of May 15, 1892, is, in law, merely a voluntary assignment by him of any beneficial interest he had in the property in question, and that he had a legal right to revoke this assignment at any time before it was acted on by the assignee. Even assuming that the document of May 15, 1892, could be regarded, either by itself or in connection with the letter of December 18, 1891, above referred to, as, in effect, an application by Mrs. Narsing Row under section 6 (*a*) of the Charitable Endowments Act, 1890, and by the plaintiff as an application under section 6 (*b*) of that Act, I see no reason why the plaintiff should not be entitled to withdraw his application at any time before it was accepted, or acted upon, by the Government.

7. It was urged at the trial on behalf of the defendants that the effect of the entries in the diaries, alleged to have been made by Jugga Row, was to create a trust which was binding on the property and on Jugga Row's successors. On the evidence,

it seems to me that it would be hopeless to attempt to persuade an Appellate Court that the finding of fact by the District Judge, that these entries were forgeries, was wrong. Moreover, assuming the entries to be genuine, it appears to me that the directions therein contained are too vague to be enforceable, and that they do not create any trust binding on Jugga Row's successors. They certainly do not create such a trust as Mrs. Narsing Row, in her deed of October 20, 1884, purported to carry into effect. As a matter of fact, moreover, the entries in the diaries were not "discovered" until some time after the deed of 1884 was executed.

8. For the reasons above stated I am of opinion that an appeal to the High Court from the decree passed by the District Judge would not be successful.

9. The second question upon which I am asked to advise is whether the costs of the litigation can be deducted by the Treasurer of Charitable Endowments from the "Trust" monies in his possession. No application for an order to this effect appears to have been made to the District Judge. It seems to me that the order of the District Judge as to costs, as it stands, was right, and I do not think that Government would be entitled to deduct the costs of the litigation from the monies in the hands of the official "Trustee." The only ground upon which it could be contended that the costs of the litigation should be defrayed out of the monies in his hands would be that a valid trust for Mrs. Narsing Row's life-time had been constituted, and that, at the time the suit was instituted, the monies in the hands of the Treasurer were trust monies. But the answer to this seems to me to be that, assuming the plaintiff entitled to succeed in his suit, the monies in the hands of the Treasurer were not trust monies as against the plaintiff and his interest in the property. The validity of the trust during Mrs. Narsing Row's life-time was not impeached by the plaintiff. He only sought for a declaration that the deed of May 1892 was not binding on him so as to affect his interests after his mother's death. The Government of India defended the suit upon the ground that the deed was binding upon the plaintiff and that it was not competent for him to revoke it. For these reasons I do not think the Government are entitled, either on general principles or by reason of section 14 of the Charitable Endowments Act, to have the costs of the litigation defrayed out of the estate.

10. The point does not appear to have been taken, in the District Court, that the Government or the Treasurer of Charitable Endowments are protected by section 14 of the Act. Consequently, it would not be open to the appellants, if an appeal were brought, to take this point before the Appellate Court. In my opinion, however, it is quite clear that section 14 affords no protection either to the Government, or to the Treasurer of Charitable Endowments, in the present case.

OOTACAMUND,
12*th June* 1899.

(Signed) C. ARNOLD WHITE,
Advocate-General, Madras.

Jaga Rao Observatory.

NOTE

In 1841 Godai Venkata Jaga Rao established an astronomical and Meteorological Observatory at Daba Gardens, Vizagapatam, and in a nuncupative will contained in his diary he directed his heirs that the observatory should be made a permanent institution at the cost of his estate.

2. G.V. Jaga Rao left only one daughter namely A. Achayamma Garu i.e. Mrs. A.V. Nursing Rao, the 2nd Defendant, and the mother of the plaintiff. By a deed of trust executed by this lady in Oct. 1884, she provided for vesting the management of the Observatory in Govt. after her demise subject to the acceptance of the trust by Govt.

3. On four different occasions Mr. and Mrs. A.V. Narsing Rao offered to Govt. the Observatory together with its appurtenances and endowments to the value of 3 lakhs of rupees, and on each occasion the Govt. after consulting its law officers distinctly refused to accept the trust.

4. Then in December 1891 Mr. V. Narsing Rao on behalf of his wife offered the institution and its belongings to the charge of the Govt. of India under Act VI of 1890. On reference being made to this Govt. it was intimated to the Govt. of India that

G.O. 187-188, d/21-3-92
(In a confidential cover)

Mr. Narsing Rao had already made representations on the subject, and the offer had been refused by this Govt. for fear that the acceptance of the trust ~~was likely to~~ might involve Govt. in a law suit.

5. The Govt. of India accordingly informed Mr. Narsing Rao of its inability to take up the management of the institution.

G.O. No. 378, d/1-6-92.

6. In July 1892 the Govt. of India forwarded a copy of letter from A.V. Narsing Rao and an anonymous letter on the subject of the proposed transfer of the institution to Govt., and enquired whether on consideration of the facts brought to notice in those letters the Madras Govt. would advise the acceptance of the trust. The Advocate General to whom the matter was again referred stated that the will of the late Jaga Rao created no endowment but merely directed the Testator's heirs, whoever they might be, to make the observatory a permament institution at the cost of his estate, and that therefore Mrs. Narsing Rao's alienation of the property was beyond her ~~restrictive~~ powers, and that it was open to A.V. Jaga Rao to dispute the right of his mother to make a free transfer of the property in trust. This Govt. accordingly advised India not to accept the offer.

G.O. 668-69, d/2 -9-92
(in confidential cover)

7. The deed of trust jointly executed by Mrs. A.V. Narsing Rao and her son the plaintiff is printed at pages [illegible] of G.O. [illegible], dated 7th June 1893 in which order is also embodied the correspondence on the subject since June 1892 up to June 1893.

8. In its letter of 25th Sept. 1894 the Govt. of India decided to accept the trust, and the reasons which induced them to take this step are set out in paras. 3, 4 and 5 of that letter.

G.O. 819, dated 31st Oct. 1894.

9. When the draft notification and scheme for the management of the Observatory forwarded by India was under the consideration of this Govt., A.V. Jaga Rao the plaintiff sent a notice under section 424 of Act XIV of 1882 announcing his intention of taking legal proceedings against Govt. for a declaration to the effect that the deed of transfer would not be binding on him, and that any action taken by Govt. under that deed would not bind him beyond the life time of his mother.

G.O. 197-98, d/16-3-95.

10. In July 1895 the Govt. of India after publishing a preliminary notification, issued a final one relating to the taking over of the management of the Observatory. The rules for the management of the Observatory will be found printed in G.O. 915, Pub., dated 7th Nov. 1895.

G.O. 637, d/30-7-95

11. A.V. Jaga Rao filed the present suit in August 1895 of which notice was given by him in March of the same year. In reply to an enquiry made of the Govt. of India whether it desired that the task of defending the suit should

G.O. No. 2590, Judl.,
d/14th Decr. 1895.

be

be undertaken by this Govt. the Supreme Govt. requested the Madras Govt. to do so.

G.O. 36WO-71, d/31-1-96 and
G.O. 462 d/ -6-96.

12. The written statement put in on behalf of Govt. is the paper flagged X in D.O. 191-92, dated 21st April 1896 which also contains the correspondence regarding the retention of Mr. Ryan as Counsel for Govt.

The paper flagged P in G.O. No. 1141, dated 9th July 1896 is a list of documents filed on behalf of Govt..

The issues framed by the Court will be found at / in G.O. 1433-1434, dated 3rd Sept. 1896.

13. Mrs. Narsing Rao deposited Rs. 3000 in all towards the expenses of defending the suit. She died on 2nd Oct. 1898, and as the money deposited by her had been expended, the Committee of the Observatory, under instructions from the Govt. of India, provided a further sum of Rs. 3000 from their cash balance to defray further expenses.

14. The suit was given against Govt. on the 12th instant.

1707

c 15/6/99
R 16/6/99

Public DEPARTMENT.

NOTE FOR THE ~~[illegible]~~

~~[illegible]~~

~~[illegible]~~

~~of 2.6.99, which was communicated to the G. of I.~~

Since by G.O. No 743 Public d/ 9.6.99, the G. of I. inquired when it might expect a reply to its Telegram of 17 April last, asking for the Adv. Genl's ~~opinion on the prospects of an appeal~~, ~~and now wires for an early reply to the telegram of 29.5.99.~~

~~The Adv. Genl. might [illegible]~~ D.O., when he ~~[illegible]~~ to submit his opinion, & on receipt of his reply ~~a telegram~~ can be ~~sent to the G. of I.~~ and ~~The following reply is submitted for approval.~~

D.O.

[illegible] Arnold White

The Govt. of India has now telegraphed for an early reply to its [illegible] your opinion on the prospects of an appeal in the Jaggarao Observatory suit – will you kindly say, approximately, by what date ~~[illegible]~~ the Govt. may expect to receive your opinion.

Cs
13.6.99.

Since writing the above, the Adv. Genl's opinion has come to hand. It might perhaps be sent on to the G. of I. without comment, stating that Mr Ryan's memorandum, referred to in the opinion, has been sent direct to the G. of I. (Mr Ryan has been acting under the orders of this Govt., & the propriety of his sending the memo. direct to India seems doubtful.)

The G. of I. might also be asked to say from what source the costs of .. are to be met.

C 15/6/99
R 14/6/99

Public DEPARTMENT.

Telegram
1707 From the Govt. of India, No. 1929, dated 12. 6. 1899.
„ 1708 „ „ Advocate Genl, „ —, „ 12. 6. 1899.
„ „ , „ , „ 189 .
„ „ , „ , „ 189 .

Order / mins No. 660 of 16 June 99.

H.E. the Govr.

[illegible]
15.6.99

The following letter will be despatched to the Govt. of India –

Cs
14.6.99 [illegible] 15/6/99 [illegible] 15/6/99

[illegible] 16/6/99

Letter No. 661.

To the Secy. to the G. of I.
Rev. ~~& Agri.~~ Depy.

Despd with [illegible]
16/6/99

Opinion a sent to S.G.P. to be printed
Cs
16/6/99

Issued
16/6/99
[illegible]

Sir,

With reference to your telegram of the 17 April last, I am directed to forward a copy of the opinion of the Hon. the Advocate General under, as to the prospects of a successful appeal against the judgment of the District Judge, Vizagapatam, in the Jagga Rao Observatory suit, and as to whether the costs of the litigation can be deducted by the Official Trustee from the trust monies in his possession.

2. Printed copies of the memorandum on the case by Mr J. H. M. Ryan, the Counsel employed by Govt. to defend the suit, which is referred to in the Adv. Genl's Opinion, as well as printed copies of the Opinion itself, will be forwarded as soon as possible.

3. In view of the adverse opinion of the Adv. Genl. on the second point referred to him, I am directed to request the orders of the Govt. of India as to how the costs of the suit should be met.

Ca 14.6.99.

15/6/99

15/6/99

A.S.A.
15.6.99

[illegible] No.

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A = Copy in full.
B = Not to be copied.
P = Copy abstract only.
Q = Copy heading only.