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Public (1899) Department.

ORDINARY M.S.

G.O., No. 683

Dated 20-6-99

INDEXED.

[Despatch Abstract.]

Forwarding to the for
printed copies of the opinion of the
Hon'ble the Advocate Genl. Madras, in con-
nection with the Jaffa Ras Obstructor
Suit, and of the Counsel's memorandum
therein referred to.

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

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Cuo 1864/99 (207)
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Original Suit No. 23 of 1895 on the file of the District Court of Vizagapatam.

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 *specie 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 *specie 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 1811. 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 1861. 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 that they assigned whether true or not was that according 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 Row 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 1855 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—as 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 XXVIIa and XXVIIb) in December 1885 and the third (Exhibit XXVIIc) in February 1891 (see Exhibit L and L₁). 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 XXVIIa and XXVIIb 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 present*. 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 VIIIb) 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 VIIIa) 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 XXVIIc which at this time had not been discovered and must be only Exhibits XXVIIa and XXVIIb. 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 XXVIIc, 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 L₁). Of the other two diaries Exhibit XXVIIb is hardly material as it gives no directions, but merely showed that old Jugga Row entertained the idea of permanently maintaining the observatory. Exhibit XXVIIa 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 XXVIIc 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 XXVIIc 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 TT, 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 XXN), and on the 5th May 1892 Sir E. Buck wrote to Narsing Row (Exhibit XII) 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 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 said observatory 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).

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 F₁).

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 paragraph 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 paragraph 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 fails 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 draftsman'ship 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.

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 forgo 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) Narsing 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 having. 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 show 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 the shipping in the roads unless it is conceivable that old Jugga Row should in 1856 have thought of affording such information to ships in the roads, few I think would believe that he did. On the other hand such an idea might well occur to any man when the diaries were first brought to light in 1884.

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

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

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 7-21 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,
12th June 1899.

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

Memorandum

Oct. 23 of 1895 on the file of
The District Court of Vijayapattanam.

1. In this suit, which has been generally called the Vijayapattanam Oratory suit, the plaintiff, A. V. Jugga Row sued the Secretary of State in Council as the 1st Defendant & his mother - generally spoken of either as the Rani or Mrs. Narsing Row - as the 2nd Defendant for a declaration ^{that} he was not bound & that his interests were not affected by a document (Int II in the suit) which he & his mother had jointly executed on the 15th May 1892. This was the document under which, as the 1st & 2nd Defendants claimed, the Plaintiff had given up in

There were other transactions when Jugga Row gave up the Oratory buildings known as the Vijayapattanam Oratory & in the Government Promissory notes - of the nominal value of Rs 3,00,000 - that had been set apart for carrying on Astronomical & Meteorological work in the Oratory. And it was on the strength of this document that the Government of India vested the Oratory title endowment in the Treasurer of Charitable Endowments (who at the instance of the 1st Defendant was acting as a trustee) that the work of the Oratory has since 1894 been carried on under the control, or supervision, of

the Meteorological Department of the Government of India. The question has been raised as to whether the instrument in question conferred rights on the 1st Defendant during the life of the 2nd Defendant: the question raised was whether that instrument would affect the interests of the Plaintiff after he was born & his appointment after his death.

Had Jugga Row been the only transaction that can be pointed to as authorising the Govt of India to take up the Oratory in any way during Mrs. Narsing Row's life time.

At the time when the suit was entered the estate of Mr. the Oratory title endowment formed part was in possession of Mrs. Narsing Row. She held it as the only child & heir of the last male holder & the heir apparent to the estate was his only son the Plaintiff - the defendant's son of the last male holder.

During the pendency of the suit Mrs. Narsing Row died & the Plaintiff descended to all the property which she held. The result was if the Plaintiff's claim 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 Oratory title endowment. The suit was accordingly consolidated into one for possession of these properties.

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main
4. The grounds upon which the Plaintiff claimed that, though he had been a party to the deed of May 15th 1892, his interests were not affected thereby were then in number. In the first place he alleged that he had been ~~unduly influenced~~ ^{unduly influenced} ~~by~~ ^{by} ~~the~~ ^{by} ~~defendants~~ ^{by} ~~and~~ ^{by} ~~that~~ ^{by} ~~only~~ ^{by} ~~through~~ ^{by} ~~the~~ ^{by} ~~undue~~ ^{by} ~~influence~~ ^{by} ~~exercised~~ ^{by} ~~upon~~ ^{by} ~~him~~ ^{by} ~~&~~ ^{by} ~~the~~ ^{by} ~~misrepresentation~~ ^{by} ~~made~~ ^{by} ~~to~~ ^{by} ~~him~~ ^{by} ~~by~~ ^{by} ~~his~~ ^{by} ~~father~~ ^{by} ~~Nar-~~ ^{by} ~~sing~~ ^{by} ~~Row.~~ ^{by} This was denied by the defendants by a direct denial of the alleged undue influence & misrepresentation.

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The J. of India decided to take up the Revocatory. This was regarded as the principal matter to be considered, & it was only because the J. of India thought that the Plaintiff was unable to establish the undue influence, misrepresentation that they decided otherwise. The Plaintiff's contention was that the deed of May 15th 1892 was a valid alienation of the Revocatory. 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 & never treats the issue (as it) that was intended to raise this point as relating to the question quashed - a wholly different matter covered by the 4th issue.

Secondly the Plaintiff claimed that he was not bound by the deed of May 15th 1892 because before the forswearing 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 forswearing, there can be no question that ~~the plaintiff did not~~ ^{the plaintiff did} ~~not~~ ^{not} ~~revoked~~ ^{revoked} ~~his~~ ^{his} ~~consent~~ ^{consent} ~~to~~ ^{to} ~~the~~ ^{to} ~~deed~~ ^{deed} ~~before~~ ^{before} ~~the~~ ^{the} ~~forswearing~~ ^{forswearing} ~~acted~~ ^{acted} ~~upon~~ ^{upon} ~~it~~ ^{it} ~~and~~ ^{and} ~~the~~ ^{the} ~~only~~ ^{the} ~~question~~ ^{question} ~~is~~ ^{is} ~~whether~~ ^{whether} ~~in~~ ⁱⁿ ~~law~~ ^{law} ~~he~~ ^{he} ~~was~~ ^{was} ~~bound~~ ^{bound} ~~by~~ ^{by} ~~the~~ ^{by} ~~deed~~ ^{deed} ~~before~~ ^{before} ~~it~~ ^{it} ~~whether~~ ^{whether} ~~at~~ ^{at} ~~liberty~~ ^{liberty} ~~to~~ ^{to} ~~change~~ ^{change} ~~his~~ ^{his} ~~mind.~~ ^{mind.} Thirdly the Plaintiff claimed that he could not be bound by the deed in question because at the time he signed, he had only a ^{light} ~~specie~~ ^{specie} ~~lucrum~~ ^{lucrum} ~~concordia~~ ^{concordia}, a point on which the defendants joined issue with him.

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He was also alleged to have Rs 3,00,000 with 5. which the Revocatory had been executed was the result of accumulation of his savings. This was a point on which the Plaintiff did not insist, but the defendants insisted on this point till he had the abandoned.

Not only did the defendants contest each of the grounds on which the Plaintiff repudiated the deed of May 15th 1892, but they went further & contended that if even if the Plaintiff was able to establish his three grounds, still ~~there was~~ ^{there was} ~~not~~ ^{not} ~~any~~ ^{any} ~~valid~~ ^{valid} ~~alienation~~ ^{alienation} ~~of~~ ^{of} ~~the~~ ^{the} ~~Revocatory~~ ^{Revocatory} ~~into~~ ^{into} ~~his~~ ^{his} ~~reductions~~ ^{reductions} ~~as~~ ^{as} ~~it~~ ^{it} ~~was~~ ^{was} ~~only~~ ^{only} ~~the~~ ^{the} ~~carrying~~ ^{carrying} ~~into~~ ^{into} ~~effect~~ ^{effect} ~~of~~ ^{of} ~~a~~ ^a ~~trust~~ ^{trust} ~~imposed~~ ^{imposed} ~~on~~ ^{on} ~~the~~ ^{the} ~~estate~~ ^{estate} ~~by~~ ^{by} ~~its~~ ^{its} ~~last~~ ^{last} ~~male~~ ^{male} ~~holder~~ ^{holder} ~~as~~ ^{as} ~~a~~ ^a ~~trust~~ ^{trust} ~~imposed~~ ^{imposed} ~~on~~ ^{on} ~~the~~ ^{the} ~~estate~~ ^{estate} ~~by~~ ^{by} ~~its~~ ^{its} ~~last~~ ^{last} ~~male~~ ^{male} ~~holder~~ ^{holder} ~~as~~ ^{as} ~~a~~ ^a 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The matters then to be considered are ^{five} in number—
(1) whether the devise was in fact made by the testator
holder (2) if so whether they authorized the trust which has
been created & the instrument that has been made.
If these two questions are answered in the affirmative the
Government is entitled to succeed ~~unquestionably~~ whether or
not the plaintiff's contentions on the other points are well
founded. If, however, these questions are answered in the
negative ^{then} further questions arise (3) was the plaintiff
bound by the deed of May 15th 1892 ~~unquestionably~~ ^{at least, it is enough to say that}
revocation (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 ^{the} ~~his~~
execution he had no vested interest but only a life
succession. As the judge has not given any statement
of the facts of the case it is necessary, ^{in order to} ~~in order to~~
amplify the discussion ^{of the above matter} ~~on the above matter~~, 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. Harrington Row— the father of the plaintiff.
Not only is he connected with every transaction leading up to
the deed of May 15th 1892, but it is he that is charged by the
plaintiff with the undue influence, the misrepresentation &
the forgery that the latter attempted to establish. It is true
but the barest justice to the Defendants as well as to Harrington
Row, ^{to remember} that these charges were not brought against him until
after his death & that he has therefore had no opportunity
giving his version of the facts. Nor indeed has there been
an opportunity of calling any witnesses who would be able
if he could, to throw on the facts a light favorable to
Harrington Row. His wife, the 2nd 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 Haring Row's conduct, they are deceased of the estate & have only ^{been} waiting for the long expected death of Mr. Haring 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 Haring Row's conduct we find his son, who is his account shortly after his death in possession of many, if ^{not} all, of the relevant documents in a position, if he were so minded, to give us only a selection from the documentary evidence.

5. The Ornatary was originally the property of A. V. Dugga Rao (whom to distinguish him from the plaintiff, I shall call old Dugga Rao) was built by him in the year 1841. In 1856 old Dugga Rao died, divided in interest from the other members of his family leaving no male issue. He was succeeded by his widow who held the estate ^{for her life in} till July 1864. It is said that during the widow's time the Ornatary was closed. On the death of the widow Mr. Naray Rao (who had married Naray Rao 37 years previously) succeeded ^{at} to the estate of old Dugga Rao - making the Ornatary - as his daughter. Her husband, who had been a government servant - gave up his employment & devoted himself to the management of his wife's estate. He also took a great interest in the Ornatary & from time to time apparently with monies belonging to the estate that his wife had inherited - greatly enlarged it & improved its equipment. Neither in old Dugga Rao's time, nor in his daughter's time, up to 1882, does it appear that any specific fund was set apart for, or ^{that} any specified sum of money was spent on, the upkeep and work of the Ornatary.

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9. In the year 1883 a ^{disputatious} quarrel occurred between A. K. Jugga Rao, who was then the heir apparent to his ^{and his parents} grandfather's estate. The cause of the quarrel was that he was inclined 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 & would disqualify Jugga Rao from descending to his grandfather's property. (See Vol A 35) The result of the quarrel was that Jugga Rao left his parents house & did not return to it again ^{some time in} till the first half of the year 1891.

10. In the meantime before Jugga Rao's return some attempts were made to convert the Oraswari into a public institution & to set aside money for its endowment. ~~and it was said~~ It was said that these attempts were made, & in consequence of the quarrel & ill feeling between Jugga Rao & his parents, in order to deprive Jugga Rao of a part at least of his grandfather's property. of course Jugga Rao endeavoured to make out that the ill feeling between him & his parents was very bitter. But though it may have ^{been} bitter at first, & though Jugga Rao ^{may} not ~~have~~ have visited his parents till 1891, but the fact that they made him an allowance of Rs 100 a month as well as the tone of Jugga Rao's letters in 1889 (Exhibit VI & VII) show that before the end of 1889 the ill feeling ~~was~~ had considerably abated. It will be necessary to relate the transactions that were intended to make the Oraswari 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 ^{and} that ^{these transactions} are justified by the directions contained in A. K. Rao's diaries, the first two, ^{these transactions} those made in 1883 & 1884 were made independently of the diaries. ^{For} the ^{two of the diaries} ~~the~~ ^{of the first till the} ~~mistaken~~ ¹⁸⁹¹ was ~~apparent~~ ^{not known} till the end of the year 1885. The directions in ^{them} were not relied on as a main part

will till January 1904

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11. The first of Mrs. Farnsworth's was a will executed by Mr. Farnsworth on Sept 28th 1902, by this will Mr. Farnsworth bequeathed to the Government of India on his demise the Observatory with certain specified Government Permitting Notes to the value then of Rs 2.00.000 as its redemption makes the request that the Observatory may be called the "G. V. Jaggas Row Observatory". This will was made with the concurrence, if not at the instigation of Mrs. Farnsworth. It refers to Mr. Farnsworth's will (Vol 22, 23rd 1902) & is so to speak supplemented by Mr. Farnsworth's will & further the draft of it (Vol 4) is in Mr. Farnsworth's handwriting. There can be no doubt that at the time this will was made there was illfeeling between the son & his parents. But it would be going too far to say that it was influenced solely by that illfeeling. If illfeeling alone caused this will one should expect to find the same motives in Mr. Farnsworth's will; but we find that Mr. Farnsworth 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 Jaggas Row. And further, Mr. Farnsworth in his will professes (Vol 22 26) to be influenced by a regard for the memory of his father old Jaggas Row, & there is nothing to indicate that this proposition is insincere & that he did not ^{really} believe that if the Observatory came into Jaggas Row's hands he would not carry it on & that old Jaggas Row's frame - perhaps the family flag - would come to an end.

12. The will of 1902 is important only ^{because} it was said to throw light on the motives that actuated Mr. & Mrs. Farnsworth in handing over to the Government the Observatory & then loss of Rufus, for it was, so far as the Observatory is concerned, superseded by a deed of the following year. A letter from Mr. O'Sullivan - the then Advocate General of Madras - to Mr. Farnsworth (Vol 44, May 21st 1904) shows that the latter had embelted him as to the feasibility of Mr. Farnsworth making

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as against any Reversioner. a permanent endowment for
the Observatory for some clarity. Mr. O'Sullivan in effect advised
against Mr. Haring Ross's power to make such a disposition in con-
sistency with the contemplated. But without standing this advice, I
think Haring Ross did on Oct 25th 1884 execute a deed whereby the de-
ceased himself the first trustee of the Observatory & of the cause the
Government Promissory Notes (of the value of Rs 200,000) as the
had mentioned in his will of the previous year & directed that
on his death no vacancy should occur the Government,
or failing the Government, the "Court of Wards & Guardians" should
appoint a new trustee. No doubt Mr. Haring Ross had but a woman
estate in the Observatory & in the Government Promissory Notes
and therefore the deed would not bind his successors. But I
think there can be no doubt that it was good for his life, & did
make him a trustee of the Observatory & the Promissory Notes trust
property, as long as he should live. And further the trust
having been thus validly made I do not see how it could
be extinguished during Mr. Haring Ross's life time.

18. Haring Ross's correspondence with Mr. O'Sullivan (Vol 74) as
well as the deed of Oct 25th 1884 were relied on as showing a
desire to deprive Jagga Rao 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. & Mrs. Haring Ross were also
influenced by what they believed to be the wishes of old Jagga
Rao & 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 dearest. In his
letter (74) Mr. O'Sullivan had said "I apprehend it would be
difficult to establish the fact [i.e. that old Jagga Rao
wished to have the Observatory permanently endowed] by the
absence of writing, seeing that if he had any settled wish
that an endowment in perpetuity should be created
would be natural to expect that he would have made
provision for the same or left some authentic record of it."

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mistake." And it is only after Mr. O'Brien has thus pointed out the necessity for some writing by old Jagga Rao to justify the provisional endorsement of the Observatory that the diaries were discovered, two (Vol. XXV & XXVI) in December 1890 & the third (Vol. XXVII) in Feb. 1891. (See Exhibit 1 & 2, p. 30). I will be more convenient to consider the argument based on these facts than to deal with the genuineness of the diaries. The two diaries Exhibits XXV & XXVI, were, with extracts from some other diaries old Jagga Rao, set out in an introduction to a report on the Observatory for 1890 (Vol. II & XXV) which was published in 1896.

14. In December 1888 Narayana Rao applied through the Collector of Vijayapattanam for the title of Rani for his wife, a request that was not granted by the Madras Government (A. O. 13th Aug 1889) though it was supported by the Collector (Vol. 7). Mr. Narayana Rao'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 munscripture will containing directions binding on Mr. Narayana Rao because Narayana Rao says (Vol. 3) that through his wife's "worthy father mentioned in his diaries that the Observatory should be maintained at the end of the estate... it is a great public spirit on his part to carry it out."

15. In January 1890 the request for the title was renewed, this time through the private Secretary to the Government. Next is 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 empowering the Government the right of taking charge of the Observatory on Mr. Narayana Rao's death. In the Government Order of March 17th 1890, the Government ignores the request for a title saying that after consulting the law officers it cannot accept what it can.

The bequest.

16. Up to this time, it will have been noticed, that Mr. Narasing Rao was not regarded as the trustee under the deed of 1884 and the connection of government with the Arawatty ^{was} considered to arise only on Mr. Narasing Rao's death. After this time a series of attempts were made to induce the Madras Government to take over the Arawatty in its possession. In little more than a month after the Government Order of the 17th March 1890 Mr. Narasing Rao, on the 28th April 1890, executed a deed (No 5816) whereby he proposed to transfer to the Government the trust then held. In this deed the trust deed of 1884 is, it is clear, treated as still subsisting & the object of the deed is simply to substitute Government in the place of Mr. Narasing Rao. This deed was sent to the Government by the Collector of Vizagapatam with a covering letter (No 5816 a) recommending the Government to take action on it, but Government never acted on it.

17. In the next year 1891 there further attempts were made to induce the Madras Government to take over the Arawatty. 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 Narasing Rao to the private secretary to the Governor (No 44). In this letter Narasing Rao in effect says that he has taken the opinion of the Advocate-General as to whether the Arawatty can be carried out & that his opinion was favorable. The diaries referred to, cannot include No 44, which at this time had not been discovered & must be one of the other diaries. On the 11th May 1891 the Government passed an order (No 44) in which they decline "the bequest" & Mr. Narasing Rao's proposed trust."

18. The third diary, Vol XXIII, was discovered after the letter of January 27th 1891 was written before the Government passed any order on it. It is that letter, ~~showing the discovery~~ on the 1st Feb 1891 - about four days after the letter. (See Vol XX,). Of the other two diaries Vol XXII, is hardly material as it gives no directions but merely shows that old Jagga Rao entertained the idea of permanently maintaining the Observatory. Exhibit XXIII, is however in ~~accordance~~ ^{in line} with the direction by old Jagga Rao that his "line should continue ^{his} this management [i.e. the management of the Observatory & of a certain charity] letting apart a portion of the income of my estate for the permanent maintenance of the same". In Vol XXIII, 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 last attempt to induce the Madras Government to take over the Observatory the diary discovered in Feb 9 1891 was distinctly relied on. The Government Order on the letter of 27th January 1891 was passed on the 11th May & on the 14th July Mr. & Mrs. Haring Rao put in a petition, ^(Exhibit III) through a barrister in which XXIII, is set out, and as however mentioning that it was recently discovered. The petition prays the Government to exercise its powers under the charitable Endowments Act & it implies that a previous application - by which must be meant the letter of the 27th January 1891 - was also made under that act. ~~It was however not made under that act.~~ In this application also the first deed of 1804 is referred to as still in force (S 2 cl. 6) but it is said that it was made in pursuance of the directions of 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 Oct 1891.

In reporting the applications that were made to the Madras Government which on the advice of its law officers ^{they} did not disclose the grounds of that advice. And it is clear that ^{Mr} Manning thought that the main, if not the only, ground for that advice was that the Revenue had not joined (see Vol TT. 17th Nov 1891). And we find that the real attempt that was made first to induce the Government to take over the Observatory was in the which Jugga Rao joined. It was said that Jugga Rao was induced to join in this attempt by the undue influence exercised upon him, & misrepresentations made to him, by his father. The misrepresentation was said to consist in this, that Mr Manning Rao told Jugga Rao that the latter's grandfather had bequeathed a will whereby he directed that not less than Rs 1000 a month (which is the income that would be produced by Rs 200,000 of 4% 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 Rao's consent to the deed of the 15th May 1892. ^{It will} ~~would be difficult to say what~~ the undue influence ~~was~~ ^{was} the story is that Jugga Rao, who had remained aloof from his parents since 1884, 1883, was in great distress in 1891 on account of the death of his wife, & that his father took advantage of this distress to show him kindness in order to induce him over to the plan of handing over the Observatory to the Government. However, whatever may have been the means by which Jugga Rao's consent was obtained, he did on the 17th Nov 1891 join with his mother in sending a letter [Vol 3] to the Madras Government in the following terms:—
 "We the mother show offer our Observatory to the charge of Government provided they hold it as trustees of the G. V. & other Jugga Rao Observatory & 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 Manning Rao with a covering letter (Vol TT); but was declined on the 18th Nov 1891 (Vol 3).

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Mr. Harring Row was turned to the Government of India, & a letter to Sir P. P. (Vol. 11) on the 10th Sept 1891, in which it is stated that Mr. Harring Row & Dugga Row, he offers "our Oratory with its endowment of three lacs made by Mr. Harring Row and all its belongings to the charge of Government under the Act of 1890" [the Charitable Endowments Act.] This again the Government of 1891 is treated as being still in force, & 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, what Harring Row had not told it, that the Government of Madras had more than once declined to have anything to do with the Oratory (see Vol. XXV + XXVI, p. 16) & on the 6th May 1892 Sir P. P. wrote to Harring Row (Vol. 11) to say that under the circumstances the Government would take no further action unless the whole of the family concerned in the transfer & the shares till could be conveyed to the Government. The result was that Harring Row drafted (see Vol. D), & procured the signature of Mr. Harring Row & Dugga Row to the deed of the 18th May 1892. This deed states that Mr. Harring Row & Dugga Row were "desirous to try the trust of the Oratory" & declare that they did "assign & transfer the trust of the said Oratory with its endowment & all its belongings to the care of the Government of India to secure its continuance & for on a permanent footing for public benefit."

23. Before the Government of India decided to act on this deed Mr. Harring Row died, on the 18th June 1892. Six months after his death before the Government had taken any action in the matter Dugga Row sent a letter (Vol. 9: 27th Dec 1892) in which he withdrew his consent to the deed of May 18th 1892.

24. In the year 1892 Mr. Narasing Row sued for a declaration that he was bound by the deed of May 15th 1892, but the suit was eventually decided against him on the ground that he had no bono claudii (¶ 12 d).

25. Shortly after the failure of this suit Jagga Row executed a formal deed (¶ 1 F) declaring that he had withdrawn his consent to the deed of May 15th 1892. That he did not send this or a copy of it to the Government, India till the 7th July 1894 (¶ 1 F).

26. On the 25th Sept 1894 the Government of India decided to "take action" on the deed of May 15th 1892. The vest in the Oriswary title endowment in the Treasury of Charitable Endowments (¶ 1 XXX) is in November 1894 (see ¶ 1 O) the Government took possession of the Oriswary from the 11th May 1895, Jagga Row brought this suit.

27. This brings the statement of facts to a close but there is one matter that brings the statement of facts must be considered before the various questions that have been put in issue can be dealt with, that is the construction to be put on the deed of May 15th 1892. When the Government of India decided to take over the Oriswary it appears to have been thought that this deed created the Oriswary title endowment trust property. But, at the time the deed was executed the Oriswary title No 200,000 of Government Promissory Notes had already been created trust property during the life of Mr. Narasing Row by the deed of the 20th October 1884. Mr. Narasing Row was the trustee in possession of that property (see § 12 above). And this fact neither Mr. Narasing Row nor any one else could undo. All that he, or any one else, could do would be to take steps under the Charitable Endowment Act or under § 539 of the Civil Procedure Act.

to have been released from the trust. Now by the deed of May 15th 1892 what Mr. Narsing Rao purports to do is to transfer to the Government of India the trust the held to assign to it the trust property. Obviously she could not do this & 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 §§ 1122 above) the deed was the outcome of Narsing Rao's letter of the 18th December 1891 (Ind. L.R.) & it may be argued, should be read with that letter. That letter was an application under the Charitable Endowments Act & so it is possible to treat the deed of May 15th 1892 as intended to be made in reference to that Act, that is to say, as a stamped & registered renewal of the letter of the 18th Dec 1891. I say it is possible to treat it, though even I the Judge I should be disposed to hold that the deed of May 15th 1892 should be read by itself & must be treated as an attempt to transfer a trust & therefore void. ~~If this view is correct it appears to me to follow that the Government of India must pay for the deed of May 15th 1892 & it can enforce its rights on the Government.~~ If this view is correct it follows that the Government is a party to the deed of May 15th 1892 & they can supply the property in the Treasures of Charitable Endowments by falling back on the letter of the 18th Dec 1891. But this it seems to me ^{it is not open to them to} they cannot do as they have already declined to take action on that letter (§ 1122 above). ~~It seems to me that the Government of India fails if it relies on the deed of May 15th 1892 & relies on it as being so far as Mr. Narsing Rao is concerned an application under section 6 clause (a) of the Charitable Endowments Act. And in what follows I shall assume that is the construction to be put on the deed. This being the construction to be put on the deed so far as Mr. Narsing Rao is concerned, what is the construction to be put on the deed so far as Dugga Rao is concerned? The only construction~~

argues
It might be thought that supposing the deed of May 15th 1892 is void, the fact might still justify their holding

that can be applied to him are these:- "assign and transfer... its [the donor's] endowment and all its belongings to the care of the Government of India...." The draftsman has slip 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} interest he might have ⁱⁿ the property to as to enable the Government of India to deal with it. ~~with it~~ by working.

28. I now proceed to deal with the issues raised in the case. It was, I have said (85) contended by the Defendants that, quite apart from the question whether the deed of May 15th 1892 was binding on Jugga Row's valid trust, valid against ^{all} old Jugga Row's successors had been created in pursuance of directions left by him in his diaries. Now what I have said it will appear that in my view the deed of May 15th 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 Oct 20th 1894. But here there is another difficulty; how can the Government of India rely on the diaries as justifying the deed of 1894 when they were not 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 1894. It is clear that to establish this the Government of India must establish three points:- (1) That 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 Shewatary, or at all events that a sum equal to the interest on Rs. 3,00,000 of Government Revenue should be annually spent on the Shewatary.

29. The second point I do not think admits of any doubt. A mere perusal of Exhibits XXVII, & XXVIII will show that if they are genuine old Begga does did intend them to be a binding directions. But as to the third point, all that old Begga does directs is that the dower is to be maintained & 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 devisions are genuine the directions are too vague to be enforceable. At all events the most that they can amount to is, that the dower is to be maintained, that is kept up in the stateⁱⁿ which it was at the time of the divisions were written & that so much of the income as was necessary for that purpose should be spent on it. They do not justify an extension or improvement of the dower & the setting apart a capital sum sufficient - or ^{more} than sufficient - to maintain it ^{when} ~~it is~~ needed 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 Nassing Rowe'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~~^{his}
correspondence with Mr. O' Sullivan (§ 13 above) was relied on. It
was said that this correspondence showed that at the time ~~he~~^{she}
Nassing Rowe wrote to ^{Mr.}O' Sullivan the diaries were not in existence
but all that the correspondence shows is that at that time
~~their~~^{these} 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 Ingha Rowe'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 Mr. Nassing Rowe ^{then}
took possession of the estate all old Ingha Rowe's private
papers were examined. &c. It may well be that Nassing Rowe being
of the necessity of some writing searched all the papers ^{here diaries} & found them.

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Moreover Mr. O'Sullivan's ^{suggestion} ~~advice~~ was given made in 1894, the
the same year, notwithstanding his advice, Mr. Hanning ^{Row} carried in in
out the instructions about which his advice had been ~~followed~~
executed the trust deed of October 20th; but the diaries were ^{not} ~~have~~
not discovered till the end of the year 1895. Had the diaries then
been forged to support the deed of 1894 one would expect that
they would have been forged prior to the execution of that trust
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 ~~about~~
connection with the discovery of the diaries ^{about} ~~the~~ which questions ~~a~~
could have been put to Hanning Row in cross-examination if
he had failed to answer them satisfactorily or even if he had ^{at}
failed to go into the witness box & allow himself to be cross-examined
an inference could fairly have been drawn against the genuineness
ness of the diaries. But as Hanning Row has been had an
opportunity of explaining how he came to find the diaries I ~~can~~
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 ~~was~~
ad Jugga Row's wish that the Annuatory should be ~~given~~ ^{was} by
the Government (Inhibit 2204) was discovered ~~by~~
Hanning Row & his wife were endeavouring to ~~obtain~~
Government of Madras to take over the Annuatory.
In the second place it was concluded that ~~the~~
of the transactions showed that Hanning Row had
to forge the documents in that these transactions
Hanning Row & his wife were anxious to deprive
as much of his grandfather's estate as they could.
cannot be much ~~more~~ force in this. It is clear that Hanning Row
was anxious to make the Annuatory a public institution, but
whether this was to spite Jugga Row or for worthy reasons
would be impossible to say. Anyhow whether Hanning Row ^{be} ~~was~~
forge to carry out his purpose is a question to which no
answer can be given on the facts. Thirdly, there was no

residence of the forgery. The only residence that I have seen
 on this point is the residence of the 12th witness for the plaintiff.
 This man has been in the service of the estate since the days of
 old Junga Rao. He says that in 1884 (which is about the time of
 the correspondence with Mr. O'Sullivan) Haring Rao asked him
 to search the papers of old Junga Rao ^{for any writing}
 about the Marwari. Between the months of ^{that is, the time of the} May ^{deposition of the witness} August 1884,
 he searched but found no such writing. Amongst other papers he
~~examined~~ examined the diaries in which ~~entries~~ ^{entries} a. b. c. are
 contained, & these entries were not there in the diaries. I do
 not think that any reliance can be placed on the residence of
 this witness. To be able to swear positively in ^{that} ~~that~~ ^{that} ~~that~~
~~that~~ entries were not ^{in the diaries} ~~there~~ in 1884 denotes a considerable
 reliance both on the care & accuracy of one's search as well
 as on one's memory. And further this evidence was given
 only after Mr. Haring Rao's death when the estate had passed
 into Junga Rao's possession & the witness had passed into
 Junga Rao's service, while the ~~and~~ entries, although he had this
 important information during Mr. Haring Rao's lifetime, allows
 the Government of India to go into such 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. That, of course, it is for the Government of India to prove that they are genuine & if it fails to prove this, its case as based on the diaries must fail. As the diaries in question are now ~~there~~ so old it might be expected that the Government would not ~~ask~~ go 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 ~~above~~ to the discovery of the diaries the Court would not be justified in making it & would be bound to call for further evidence. What further proof there is there of the genuineness of the diaries? It must be admitted that there is none worth

Some five documents ^{purporting} to be in old Jagga Ravi's handwriting were put in to show similarity of handwriting (but ^{in the witness of P. P. 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000)} but even these are not satisfactorily proved. 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 12th witness ^{for the plaintiff}, as to the entry. This it will be remembered is the entry that speaks of "the ruling authority", & if its genuineness were established, the proof of the other entries would become unnecessary. This 12th witness swears 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 in P. P. 92, are old Jagga Ravi's name in the book when he examined it in 1884. Now the entry & the initials are clearly in the same ink & that ink is entirely different from the ink used in writing ^{any} other entry in the book, & it is clear, from a mere inspection of the book, that the entry & the initials were written at one & the same time. If then, the initials are as the witness swears they are, old Jagga Ravi's, it is clear that old Jagga Ravi either wrote the entry himself, or, if it was written by some one else, appended his initials to it as soon as he saw that it was written. And advocate might fairly ask the Judge to accept the statement that the initials were old Jagga Ravi's & to draw the inference that the entry was also his. And I think the Judge would say "Why should I not accept the statement that the entry was not there in 1884 & that old Jagga Ravi & draw the inference that the initials also are not his. The witness has ^{honestly or dishonestly} made two statements that cannot be true, why should I accept one rather than the other?"

Right

32. What I have said is perhaps sufficient to show that in my
view the diaries are supposed that therefore the case for the
Government of India, so far as it is based on them, must fail. in case
There is however one fact which was not mentioned at the trial have
but which, if it had been ^{worked up} ~~shown~~, would I think have shown
that the diaries are forged. Exhibit xxv gives extracts from
diaries, which were not proved but which must have been
found at the same time as Exhibit xxvi a & xxvi b. One ^{link}
of these extracts is as follows:— "I have it in contemplation
to set up an electric telegraph between my Observatory & the
Fort, with a view to afford the residents in Waltari &
Vizagapatam the means of ascertaining any sudden
changes in the weather which the Meteorological instru-
ments might indicate and also afford our business, as
well as the shipping in the roads some facility." Ac-
cording to a pencil sketch ^{note} in Exhibit xxv, this entry was
made in 1854, & 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
anyone living in Vizagapatam in 1856, should have conceived
the idea of setting up a private telegraph. Moreover it is
^{difficult} ~~difficult~~ to see what ^{facilities} telegraphic information old Jugga ^{Row} intended
to afford the shipping in the roads unless it was "afford-
ing changes in the weather," i.e. storm warnings. ~~It is~~
~~admitted that this entry implies that the Jugga Row~~
~~was of some importance in the view of the shipping~~
~~business, but that does not appear to be the intention~~
~~of the Jugga Row's entry for it does not in fact~~
~~depend on it.~~ And, though perhaps it is conceivable that
old Jugga ^{Row} ^{in 1856} should have thought of such affording such information
to ships in the roads, few I think would believe that he did.
On the other hand such an idea might well occur to ^{the} ~~an~~
man in 1894, when the diaries were first brought to light.
1894.

24. In any case, it appears that the Government of India having failed to permit the ^{trust} ~~deed~~ ^{cannot} ~~be~~ ^{intend} that the deed of 1901 is binding on Jugga Rao as being the carrying into effect the testamentary directions of old Jugga Rao. All that they can claim is that the deed was good for the life of Mr. Naray Rao. The being dead dead the only other deed that can be relied on as ~~constituting~~ continuing the trust after his death is the deed of May 15th 1902, which (see § 27 above) must be construed so far as Mr. Naray Rao is concerned as an application under the charitable endowments Act & so far as Jugga Rao is concerned as a release to the Government to enable it to deal with the property. Jugga Rao claims that he is not bound by this deed because (1) he revoked his consent to it before the Government acted on it & (2) because he was induced to execute it by the undue influence & misrepresentation of his father.

35. First as to the revocation. It is the fact (§ 22 above) that Jugga Rao did revoke before the Government of India acted on the deed. And, therefore, if Ray & Jugga Rao had been the only parties to the deed the revocation would have put an end to the deed. But Mr. Naray Rao was also a party to the deed & she had acted on it to this extent:- she had sent to the Government of India that she had invited them to take from the trusteeship she had held during her life under the deed of 1901, & that under Jugga Rao had given her his release & so allow the trustees to be permanent made a private institution she would have preferred to remain trustee during her life. But this I apprehend an only ^{disentitled} Jugga Rao to withdraw from the deed if he ~~is~~ ^{is} asking she had irrevocably attended her part by her sending the deed to the Government and I do not think that her position was irrevocably altered because, before the Government had taken any action, it was open for her also to withdraw. In my opinion therefore Ray was entitled to withdraw from the deed of May 15th 1902 before the Government of India acted on it.

1740
Though it alleges a misrepresentation alleges a very different
one viz "that the chancery should would continue to be in
the management of the family, the government simply super-
vising over it." Again on two other occasions when he mentions his
undue influence he does not refer to any misrepresentation
(Vol. I & II). Again in the deed of Revocation, ⁽¹⁸¹⁵⁾ he states
that 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. Think
he.

37. The only remaining question is whether Supp Row could
make an assignment of a new life insurance. But
if the deed of May 18th 1892 is treated. So far as, Supp Row
is concerned as to the government of India the question
does not really arise.

38. I have stated in dealing with the case that I have
~~not dealt with the various questions raised, though~~ I have not
said everything that might be said on the one side & the other.
But I thought I hope I have to deal with the different
questions that ~~arise in the case~~ ^{arise} as to the
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. Have

(sd) J. H. M. Ryan
Barrister at law. His

Opinion.

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1. I regretted writing my Opinion in this matter until I have been afforded the opportunity of considering the Memorandum upon the case which was being prepared by Mr. J. L. 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 the advantage of personal consultation 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. The second question is as to

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facts of the case will be found in

Produced by the Bani

then ~~small~~ ^{at} the ~~in~~ ^{the} line before

the first stage the large form

and the signs in front of the

Paint House for home

acknowledging that the above is true

7492. ~~unpublished~~ ~~pen~~ ~~and~~ ~~was~~ ~~a~~ ~~document~~
the ~~plaintiff~~ ~~at~~ ~~the~~ ~~the~~

The 1st of July, 1864, at 10:00 AM

... during the

Contents of the said) 15 deliver

to the Plaintiff the possession of the

Observing, the ~~one~~ ^{and} the form is very

not in question. The judge also

whereas that the Plaintiff's costs

place to have by the 1st and

3rd *by* *agents* *and* *the* *state*

4. I do not think the evidence

supports the Plaintiff's allegation that

his signature to the document 7.

May 15, 1892, was a very fine day
for an and under influence. The

question nos met devant la

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 ~~trust~~ document of May 15th, 1892, (Ex. II) before it was acted on by the Government of India, and that he did in fact so ~~if~~ ^{revoke} it.

b. It appears to me that the
 deed of Oct. 20, 1884 (see Lt. S. S.)
 created a valid trust of the
 observing ...

as against the ^{Tharing Row and} ~~Tharing Row~~ and
his interest therein. ^{I think that, against} ~~Tharing Row~~
Row, the trust was a valid
and subsisting trust when
the purport 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 15th, 1892, constituted the
property in question trust property
as against the Plaintiff and
his interest therein. The 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 15th, 1892. In fact, the A.C.
Tharing Row, in his letter to
the Government of India, dated
Dec. 12th, 1891. (Ex. 111) describes the
Tharing Row and the Plaintiff
as the "sole owners of the Observatory".
This letter, taken by itself, does
not raise the question.

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 Ex. 111.) The
true view seems to me to be
that, so far as the Plaintiff is
concerned, the document of May 15th,
1892, is, in law, merely a
voluntary assignment by him of
any beneficial interest he has
in the property in question, and
that he has 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 15th, 1892,
could be regarded, either by
itself or in connection with the
letter of Dec. 12th, 1891, as
a declaration of trust,

application by Mrs. Jaising Rao under s. 6 (a) of the Charitable Endowments Act, 1890, and by the Plaintiff as an application under s. 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 time on behalf of the Defendants that the effect of the entries in the diaries, alleged to have been made by Jagga Rao, was to create a trust which was binding on the property and on Jagga Rao'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. But, however, assuming the entries to be genuine, it appears to me that the ~~provisions~~ ^{directions} therein contained are too vague to be enforceable, and that they do not create any trust binding on Jagga Rao's successors. They certainly do not create such a trust as Mrs. Jaising Rao, in her deed of Oct. 20th, 1884, purports to carry into effect. As a matter of fact, however, 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 pronounce

is whether the costs of the litigation can be recovered from the Treasury of charitable Endowments from the "trust" moneys in his possession. The application for an order to this effect, ^{appears} ~~seems~~ 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 recover the costs of the litigation from the moneys in the hands of the official "trustee". The only ground upon which it could be contended that the costs of the litigation should be repaid out of the moneys in his hands would be that a valid trust for Mr. Haring & Row's life-time has been constituted, and that, at the time the suit was instituted,

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the moneys in the hands of the Treasury were trust moneys. But the answer to this seems to me to be that, assuming the Plaintiff entitled to succeed in his suit, the moneys in the hands of the Treasury were not trust moneys ~~in the hands~~ as against the Plaintiff and his interest in the property. The validity of the trust during Mr. Haring 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 brother'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 contest it.

For these reasons I do not
think the Government are
(either on general principles or by virtue of s. 14 of the Charitable Endowments Act,
entitled to have the costs
of the litigation defrayed out
of the estate.

10. The point now in issue
to have been taken in the District
Court, that the Government, or
the Treasurer of Charitable Endow-
ments are protected by s. 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
s. 14 affords no protection either
to the Government, or to the
Treasurer of Charitable Endowments,
in the present case.

J. Amos White
Advocate General, New Zealand

Dated at Auckland
June 12th 1895.

"Jagga Rao Obsewatalay
suit."

Opinion.

NOTE FOR THE A.C. Under.

A memorandum
by Mr. Ryan, Mr. at law,
on the Jagga Rao Obsewatalay
Suit, has been sent to
the Supr. Govt. Press to
be printed urgently -
He has been instructed
to send you a proof
with the orig. as soon
as possible - The Under
Secy. desires that, on receipt
of the proof, Subba Rao
& yourself will examine
it carefully, & return it
to the Press without delay.

The Supr. Govt. Press
has been asked to send
5 printed copies of the
memo. direct to the
Under Secy. after you have
passed the proof. If
you return the original
to Press, with the proof,
please ask the Supr.
to forward it with the
printed copies to the Secy.

and be treated as urgent,
and with care -

Che
14.6.58.

NOTE FOR THE H.C. Bureau

With regard to
my note of 12.6.58
last, I write to say that
there has been delay in
sending the Press memo.
to Press, which is
going only today.

The Supr. G. Bureau
has been asked to send
you a proof, which I have
been examining as before
requested - after you have
the proof, the Supr.
will send you ten
limited copies.

We are also sending
to the Press, the opinion
of the Adv. Secy on the
Sargodha obs. sent.
A proof of this too will
be sent to you for
information, subject to
further remarks in the
Adv. Secy's office.

to you this evening or
tomorrow. When the
printed copies are ready,
5 copies ^{of the opinion & memo.} each, should
be despatched to India
(India) with the letter.
You can wire to the ^{here} ~~last~~
Chas., for a number for ~~the~~
the letter after you have
the proofs. We will then
receive the number in good
time for the despatch of
the letter.

The remaining 5
copies each of the memo.
& opinion, with both the
originals, should be
sent to Dept under cover
to me.

Please hand the
papers with care -

Ch
16/6/29
The proofs were read
& examined yesterday &
the letter to India
with 5 copies each of the
Adv. Genl's opinion &
Mr. Ryan's memo are
desp. today. The
originals of the letter
to India, the ~~opinion~~
^{enclao.} ~~and~~ 5 copies
each of the letter
are put up. ~~The~~

Ch
The memorandum is
lengthy, & it will save
time to have it printed
rather than typed.
A.
15/6/29

H.C.
20/6/29

Is issued when
printed copies
are ready

Public Dept
Letter No. 661 d/20/6/29
Vancouver to the G. O.
Re. 4 copies sent

The continuation
of my letter by 661
Public, dated 16th June
1929. Four directed
to forward printed
copies of the opinion
in connection
with the Jagger Row
Observatory Site, and
to the Council's memo.
and in these ~~are~~
referred to.

C.S.
14.6.29 A.
15/6/29

5 copies of his
memo desp. to me

NOTE FOR THE *Head Clerk, ...*

Office copy of letter
to India in 683 Public of
20.6.22, 5 copies each of
memo. by Mr. Ryan & opinion
of Mr. G. S. with original,
were all received correctly
last evening -

Please obtain from
the Press 5 copies more of
Mr. Ryan's memorandum
(not of the Opinion) and
despatch them by post
to "J. H. M. Ryan Esq.,
Minister, at home,
Kodakkanal - You
might put a wrapper
on the 5 copies, superscribed
"From Chief Secretaries -"

After this has been
done, please ask the S. P. O.
to break up the type of
both the memos & opinion.

C. S.

5 copies of his
memo despatched

dest. d
21-6-11

76/6/11

Ryan and the Press
has been told that
type of may be
broken up

E. J. M.
267 6799

S

Miss Street receipt
ending with the d.c.

In Reply

Wm.
2/2/55

When given for copying _____
When copied _____ } 189
When examined _____
When signed _____

P2

READ AGAIN G.O., No. _____, DATED
189 .

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STATEMENT WITH DETAIL.

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14-7-1951 ✓

100

Press _____ 190
Miscellaneous No. 74, dated _____
Routine _____

[illegible]