M.R.O. 14—10,000—21-4-22.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue **DEPARTMENT.**

G.O. No. 2102 — Press / ~~Mis.~~

172-173

Dated 10 — 11 — 1860.

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department, 10th November 1860.

No. 172. Read the following Proceedings of the Board of Revenue, dated 25th October 1860, No. 4,890 :—

Board's No. 221 of 1860. Read the Endorsement of Government on Petition No. 2,776 of 1860, from the Darmakarta of the Dévarájaswámi Pagoda at Conjeveram, calling on the Board to report what has been done in the case.

Endorsement of Collector of Madras, dated 9th October 1860, on Petition No. 2,615 of 1860.
Do. of Board on do.
From Collector of Madras to Board, dated 9th, in Cons., 10th October 1860, No. 5,121.
Board's Proceedings, No. 4,671, dated 10th October 1860.

Ordered that the papers noted in the margin be submitted to Government as furnishing in full the information they require.

(A true Extract.)
(Signed) W. HUDLESTON, *Sub-Secretary.*

No 173. ORDER THEREON, 10th November 1860, No. 2,102.

Ordered to be recorded.

(Signed) J. D. BOURDILLON,
Secretary to Government.

DECISIONS

OF THE

SUDDER UDALUT.

No. IV.

OCTOBER 1849.

MADRAS:

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1850.



DECISIONS

OF THE

Sudder Adalut.

8TH OCTOBER, 1849.

PRESENT.

G. S. HOOPER, Esquire.
W. A. MOREHEAD, Esquire.

No. 83 OF 1844.

Special Appeal from the decision passed by E. B. GLASS, Esquire, *late Acting 2nd Judge of the late Northern Provincial Court, dated 16th June,* 1843.

VUTCHAVOY VENCATA JAGAPATY RAUZE—*Special Appellant, In person,*

versus

COTAGERRY BOOCHIAH..... .....*Special Respondent.*
T. APPIAH... .. ..*Vakeel for Special Respondent.*

1. The Original Suit was instituted for the recovery of 77 Vissums of land in the Kirlumpoody Mootah, with arrears of Revenue, on the ground of their being "Zeroytee" and liable to Assessment; whereas, as stated in the Plaint, they had been usurped and caused to be fraudulently entered as Enam, subsequent to the permanent settlement, by the Manager of the Peddapoor Zemindary, to which the said Mootah was formerly attached. Of the arrears alleged to be due from Fusly 1246, (1836) to Fusly 1249, (1839) amounting to Rupees 5,964, the Plaintiff relinquishing Rupees 5,855, sued for the balance, Rupees 109.

2. The Defendant, on the other hand, claimed to hold the said lands as Maunium or Enam, on the ground that they had been originally granted in gift as such, when waste, by the then Zemindar in the year 1777, and enjoyed as such ever since; having, finally, come into his (Defendant's) possession by purchase in 1837; the Mootah itself having been bought by Plaintiff's husband in 1819.

3. The Zillah Judge of Rajahmundry, who heard the Original Suit, rejected the Plaintiff's claim on the following grounds, viz. "These lands now disputed have been held uninterruptedly for the "last 36 years at least, free of Assessment. The claim of the "Plaintiff is untenable, because, if even it were proved that rent "were demandable from the land in dispute, the rent would not "go to Plaintiff, but to her predecessor, or indeed to the first person "(who seems to be "Vutchavoy Jugganadha Rauze,") on whose ac- "count the Kirlumpoody Mootah was sold, with the disputed land, "exempt from contributing to liquidate the demand against him. "The whole Mootah with these lands exempt from Assessment, as "expressly understood by the buyer, were bought by "Mersanametta "Camerauze," who certainly would have levied rent from these "lands, if he thought he had the power; he failed in his engagements, "and the Mootah was again sold to "Vencataneeladry Row, with "the same understanding on both sides. The entry of the Com- "mittee Accounts as "subsequent Enam" is conclusive of the fact "that the lands were not Zeroytee at any time."

4. In Appeal from the foregoing decision, the late Provincial Court in the Northern Division decreed according to the Plaint, reversing the Zillah Judge's Decree with all costs, observing, that it was not proved that the Defendant had held the lands, as stated, for 36 years rent free, but that if the point were admitted, it might be accounted for in the fact that the Estate, to which they belong, was in litigation for many years; that Appellant's Document marked B (a list of Maunium lands in 1786) shewed that the lands in dispute were not entered as Maunium in the accounts of the permanent settlement; and therefore, according to Section XII. Regulation XXV. of 1802, and the Decree of the Sudder Udalut in Special Appeal No. 5 of 1839, in a case exactly the same, but where Sunnuds were produced, the arguments of Defendant were groundless; that in this Suit no Sunnuds were produced, nor does Defendant even pretend that they ever existed, far less, that they were registered; that all the Documents produced by Plaintiff (Appellant) prove that both before and after the permanent settlement up to 1799, i. e. 13 years after that settlement, these lands were not Enam, and were never entered as such; and although they may have been entered, to the extent of 40 Vissums, in a "subsequent list of Enams," it no way proves them to be Enam, as such list would be worthless and invalid, under the section above quoted.

5. In his application for the admission of a Special Appeal, the Special Appellant alludes to the Order of the Magistrate dated 9th January 1840, forbidding the Plaintiff's interference with the said lands in any way, "as they were granted as Enam previously to the "permanent settlement of the Zemindary, and excluded from "the permanent accounts, and held and enjoyed as Enam without

"interruption, both during the management of the Proprietors of the "Zemindary, and during that of the Sircar, when the estate came "under attachment." He also relates the manner of the lands referred to being made over to "Permaul Rauze" and "Vencataputy Rauze"; that they were jungle and waste, and reclaimed by the two persons aforesaid, long anterior to the permanent settlement, at a heavy expence; that they have therefore been ever since held rent free; and as a consequence, were not entered in the Circuit Committee, or Permanent Settlement Accounts, either as Zeroytee or Enam. He also refers to a suit brought in 1819 by Plaintiff's husband against Vencataputy Rauze concerning part of the lands so made over, viz. in Jagaputy nagaram, which, on appeal to the Sudder Udalut and finally to the King in Council, were decided to be rent free. He argues that the Collector alone, and not the Plaintiff, is competent to raise objections under Regulation XXXI of 1802 regarding the non-registry; that, had the lands been liable to Assessment, the Collector and former Proprietors would long ere this have objected; but they have been held rent free during the past 66 years, and the "new Proprietor" cannot have a claim to what was not claimed by former Proprietors. He also says he is now ready to produce the Deed of Gift, which was in possession of one of his witnesses, who could not be found when the Original Suit was tried, but from whom he has now obtained it; and that the Committee Accounts shew the lands of Kirlumpoody to have consisted of 682½ Vissums; and that, if measured, the quantity will be found to be the same now, not less.

6. A Special Appeal was admitted by the Court of Sudder Udalut on the grounds that the Decree of the Provincial Court was "in "direct opposition to the facts admitted on both sides,"—and that "it "was equally clear that it was erroneous in other respects," it being "undoubted that the lands in dispute have been held for many years "rent free, and neither did the Collector, when he held them under "Aumany, demand Revenue from them, nor was revenue from them "received by the former Proprietors"; that "the Grant rent free, "by the former Zemindar seems clear, for in any otherwise revenue "would have been demanded at a former period; but supposing it "not proved, it was the duty of the lower Court, before passing an "adverse decision, to remand the case for full enquiry"; that "the "argument of the Provincial Court regarding the non-registry is "inapplicable, the grant being good against the Zemindar, with or "without the Registry, if it ever took place; as a question of Revenue "due to Government, the Court is not called upon to entertain the "subject." That another "point, on which a Special Appeal was ad- "missible, would seem to be involved in the question of whether the "Plaintiff, who has recently acquired the Mootah of which the lands "in question form a part, has any right, admitting the land to be "liable to a rent to the Original Proprietor, to sue for it, since it is

" evident such profit could not have been contemplated in the pur-
" chase of the Mootah."

7. The Special Respondent filed an answer, repeating her former arguments; she adds, that the Puttah or Deed of Gift, which Special Appellant now offers to produce, must be a forgery, because it is alleged to have been granted before the permanent Committee Accounts, which do not bear any entry of these lands as Maunium; but the lands are only entered as such in Mr. Hodgson's Accounts subsequently, as " subsequent enam," and the Board of Revenue, on 15th September 1810, issued an Order that all lands alienated as Maunium, subsequently to the permanent settlement, must be included in Zeroytee.

8. The Court of Sudder Udalut having deliberately considered the whole of the Proceedings held in this Case, are of opinion that the claim of the Plaintiff (Special Respondent) is wholly untenable, and that therefore the Decree of the Provincial Court in her favor should be set aside, and that that of the Zillah Judge dismissing the claim, should be affirmed.

9. It is an undoubted and undisputed fact, that the lands in question have been held for a long series of years, rent free; as well under former proprietors, as when the Estate was under attachment by the Collector; and that no Sist or Revenue has ever been demanded from them until this Suit was brought.

10. The present Proprietor's (Plaintiff's) husband, who purchased the Mootah in 1819, instituted a Suit, claiming revenue for lands, situated near those now in litigation, and under precisely similar circumstances; but he neither made mention of these lands therein, nor did he bring any other Suit concerning them, although they were at that time, held by the same person.

11. That claim, which was in all respects analogous to this, and was carried on by his widow (the present Plaintiff) after his decease, was dismissed in Original by the Provincial Court, in Appeal by the Court of Sudder Udalut, and lastly in Special Appeal by the King in Council; the very same pleas having been urged (and overruled in that Suit, as in this.

12. The Special Respondent admits that in Mr. Hodgson's accounts, prepared in 1804, 40 Vissums of the land in dispute were entered under the head of " Subsequent Enams," as having been granted by the Zemindar to Permaul Rauze in the year 1800. This is, of itself, sufficient proof that they were held as Enam before the permanent settlement was made, viz: in 1802.

13. The lands were not entered in the Circuit Committee Accounts, on which the permanent settlement was made, either as Zeroytee or Enam; because, as Special Appellant asserts, they were, at that time, waste and covered with jungle. And in the Special Appeal Decree* above mentioned, passed by the King in Council in 1834, it is laid down, that " Land which is not included " in the Accounts of the Circuit Committee, upon which the per-
" manent settlement of the Northern Circars is made, is not in-
" cluded in that Assessment."

* See Page 585, Part VI, of Morley's reported cases.

14. The Decree of the Provincial Court is therefore reversed, and that of the Zillah affirmed.

15. The Special Respondent to pay all costs of Suit.

13TH OCTOBER, 1849.

PRESENT.

E. P. THOMPSON, Esquire.
W. A. MOREHEAD, Esquire.

No. 42 OF 1848.

Special Appeal from the decision passed by H. D. COOK, Esquire, *Acting Subordinate Judge of Mangalore, 27th dated August*, 1847.

TOOLOOVIYA ALIAS UOOVIYA SHETTY—*Special Appellant,*

versus

CORAGA SHETTATY *and* SOOBBASETTY—*Special Respondents.*

T. RAMACHENDRIAH ....*Vakeel for Special Appellant.*
R. TEROOMALAROW..... .....*Vakeel for Special Respondent.*

1. The Original Suit was instituted against three Defendants for the recovery of certain lands producing Rupees 50-12-0 annually.

2. The District Moonsiff of Barcoor passed judgment in favour of the Plaintiffs, decreeing to them the land sued for with costs.

3. The Acting Subordinate Judge, Mr. Irvine, reversed this decree, being of opinion that the Plaintiff had not satisfactorily proved their adoption, and further that the institution of the Suit was in opposition to the statute of limitation, 12 years having expired since the execution of the Deed of Sale.

4. A Special Appeal was admitted on the part of the Plaintiffs (Respondents), because the Appellate Court had reversed the Original

award, without receiving an answer, and the case was remanded with instructions to re-admit the Appeal, and after receiving the Respondent's answer, to pass a fresh decree.

5. Mr. Cook, who, on the departure of Mr. Irvine, had been appointed Acting Subordinate Judge, took up the Appeal for disposal, and affirmed the Moonsiff's decision, assessing the Appellant with all costs.

6. On the application of the Appellant, a Special Appeal was admitted for the reconsideration of two points.

1st. Whether the peculiar mode of adoption upon which the Appeal Decree is based, and which Mr. Cook says, "is not met with "in the Hindoo Law of adoption, nor yet is generally found "sanctioned by the prescriptive right of immemorial usage", can be upheld, and

2nd. Whether the interpretation of the law of limitation, given by the Acting Subordinate Judge, that the Suit did not fall within that enactment, because "there is no proof to shew that the Plaintiffs did "not know of the sale, but through negligence or indifference or "doubts as to their rights, they failed to institute the Suit," is correct.

7. For the legal solution of the first point, the Court of Sudder Udalut required their Law officers to state, whether an adoption, such as is represented to have taken place with the parties in this case, viz. the adoption of a sister and a brother, to the prejudice of the legal heirs, was legal or not; and 2nd, whether such an adoption was recognized by the Hindoo Law. The Law Officers answered both the questions in the negative.

8. With regard to the 2nd point mentioned in the certificate admitting a Special Appeal, the Court of Sudder Udalut are clearly of opinion that the Acting Subordinate Judge's reason for considering that this Suit did not fall within the provision of the law of limitation, notwithstanding 17 years had elapsed since the sale was effected, is unsound, and cannot be upheld.

9. The Court of Sudder Udalut reverse the decrees of the lower Courts, and dismiss the Respondents (Plaintiffs) claim, assessing them with all costs.

18TH OCTOBER, 1849.

PRESENT.

G. S. HOOPER, Esquire.
E. P. THOMPSON, Esquire.

No. 2 OF 1847.

Special Appeal from the decision passed by A. TONDAVAROYA-MOODELYAR, *Principal Sudder Ameen of Chingleput, dated 18th April*, 1846.

RUNGAH RAJAH—*Special Appellant, in person,*

versus

RAGAVACHARY.....*Special Respondent.*
T. RAMACHENDRIAH .....*Vakeel for Special Respondent.*

1. The Original Suit was instituted for the recovery of $2\frac{5}{16}$ Pungoos or shares out of the 12 Pungoos, composing the entire Village of Paravaloor, on a Bond of Mortgage and conditional sale for 160 Rupees.

2. The circumstances of the case, as set forth in the Plaint, are these, viz.

3. The lands in question belonging to 2nd, 3rd and 4th Defendants and their father, were sold in 1824 at Public Auction under a Decree of Court, and purchased by the 1st Defendant, who allowed 2nd, 3rd and 4th Defendants to hold possession, under an agreement, that they should pay him the auction money and profits, within a certain period, viz. 31st March 1825. This however they failed to do, upon which the 2nd Defendant executed a Swamybogum Deed (dated 30th July 1828) for the Pungoos in question to the 1st Defendant, who afterwards, in 1835, conditionally sold them to the Plaintiff; the terms of the sale not having been fulfilled, the Plaintiff sued all the Defendants for possession of the lands.

4. The 1st Defendant admitted the Plaintiff's claim; but the 2nd Defendant put in an answer, alleging that the Auction money was duly paid according to the terms of the said agreement, and a receipt obtained, signed by the 1st Defendant and his nephew Linga Reddy. He further averred that the Swamybogum Deed referred to in the Plaint, was a forgery.

5. The District Moonsiff who first tried the case passed an exparte decision in favor of the Plaintiff, which was confirmed in appeal by the Moofty Sudr Ameen.

6. After which the case was repeatedly remanded by the higher Authorities to the Court of original jurisdiction for further enquiry and revision of judgment, in consequence of the defective investigations held by the District Moonsiff, and several Decrees were passed in Original and Appeal accordingly.

7. The District Moonsiff eventually passed a Decree confirming his former decisions in favor of the Plaintiff; and the 2nd Defendant having again Appealed therefrom, the Principal Sudr Ameen confirmed the same, stating among other reasons, that the 2nd Defendant (Appellant) had failed to prove that the Auction money was actually paid according to the agreement (No. 31), and receipt (No. 38) obtained ; that his (2nd Defendant's) pleadings on that and other points were contradictory, and the evidence of his witnesses conflicting and inconsistent; that, moreover, the signature affixed to the receipt as that of 1st Defendant, differed from that affixed to the agreement.

8. The 2nd Defendant (Appellant) presented a Special Appeal to the Court of Sudder Udalut, in which he urged that the payment of the purchase money, before the expiration of the term specified, had been satisfactorily proved ; that in consequence of a dispute between 1st Defendant and himself about the said Pungoos, the Collector instituted an enquiry under Regulation V of 1822, and passed a decision, declaring him (2nd Defendant) entitled to enjoy them to the exclusion of 1st Defendant, as proved by the Takeed dated 7th October 1826, which he had filed (No. 161) ; that he (Special Appellant) has ever since held possession of the Pungoos, as proprietor thereof, as proved by the Cowles and other Public Accounts filed by him in the Suit, and the evidence of the Curnum ; that he has proved by oral and documentary evidence the sale by him of certain portions of the said Pungoos, without any objection being made by the 1st Defendant ; that the contradictions remarked upon in the Appeal Decree, as existing in the pleadings and oral evidence, are to be attributed to the mistakes of his Vakeels, who wrote the various Petitions of Appeal, which he was obliged to present in the different Courts in order to obtain Justice, and to the unfair manner in which the witnesses were examined by the District Moonsiff; that, had the auction money &c. not been paid, 1st Defendant would never have permitted his (Special Appellant's) enjoyment of the lands, and sale of them to others without interruption, as he did, but would, at least, have Appealed against the Collector's decision, which he did not do; that there is no difference between the signatures in the two documents 31 and 38 ; and that the evidence brought forward by Special Respondent to prove the execution of the Swamybogum Deed, and payment of the same by him (Special Appellant) is (for reasons shown) unworthy of credit.

9. The Court of Sudder Udalut admitted a Special Appeal, observing that " the Special Appellant pleaded enjoyment held by him " of the land under litigation since the year 1825 ; and it appeared " his right of enjoyment was subsequently decided by an order of the " Collector, from which no Appeal had been preferred" ; and, " that " the Decrees of the lower Courts did not set forth any acts done " by the Special Appellant within the period of the Statute of limi- " tations, by which it could be proved that 1st Defendant in the " Original Suit was ever recognized by the Special Appellant, as his " land lord."

10. The answer filed by the Special Respondent contains nothing of importance.

11. Although the Pungoos in dispute were purchased at public auction by the 1st Defendant in 1824, it is a fact beyond all doubt that, with the exception of certain portions thereof subsequently, and at different times, alienated by sale or otherwise to other persons by the 2nd Defendant (Special Appellant,) to which no objections were made by the said 1st Defendant, they have never passed out of the actual possession of the 2nd Defendant, the original owner, but have been in his undisturbed enjoyment ever since.

12. And as the evidence adduced by the Plaintiff (Special Respondent) to prove the alleged execution of the Deed of " Swamybogum," and the payment of the same by the 2nd Defendant to the 1st, is of a most unsatisfactory nature, and altogether unworthy of credit; it is to be inferred that the stipulations contained in the agreement entered into between the 1st and 2nd Defendants, were acted up to by the latter, and that the receipt for the purchase money is genuine.

13. The Court of Sudder Udalut therefore resolve to reverse the Decrees of the lower Courts and to dismiss the claim of the Plaintiff (Special Respondent) with all costs of suit.

22ND OCTOBER, 1849.

PRESENT.

G. S. HOOPER, Esquire.

Special Appeal Petition, No. 156 *of* 1849.

1. This is an application for the admission of a Special Appeal from the Decree of the Civil Judge of Tellicherry in Appeal Suit, No. 112 of 1847, reversing the Decree of the Moofty Sudder Ameen of that Zillah in Original Suit No. 34 of 1846, which was instituted by the Special Appellants for the recovery from the Special Respondents of a Paramba, of the sum of Rupees 28-8-6 as arrears of rent of

Rupees 15 being the value of a cow shed thereon, alleged to have been pulled down by Special Respondents, of Rupees 33, being the amount of the dowry of the Special Appellants mother, and of Rupees 40 the amount of Kaipanum paid by her at her marriage.

2. The Special Appellants founded their claim on a Will, alleged to have been executed by their deceased father in their favour.

3. The Moofty Sudder Ameen passed a Decree in favor of the Special Appellants, disallowing Rupees 5 of the amount claimed no account of the cow shed, said to have been pulled down by the Special Respondents; but awarding to them the Paramba, and the remainder of the sums sued for.

4. This Decree has been reversed by the Civil Judge in Appeal, chiefly on the ground that the Will, upon which the Special Appellants founded their claim, was not produced by them.

5. It appears however to the Court of Sudder Udalut to be doubtful whether the Special Appellants are not entitled to the property under litigation under the Law of inheritance, and according to the usages of the caste to which they belong, irrespectively of any such document as that to which the Civil Judge refers.

6. The Court of Sudder Udalut accordingly resolve to admit a Special Appeal in this case, and to remand the Suit to the Appellate Court for review of Judgment, in order that it may be ascertained, how the provisions of the Law of Inheritance in force in the caste, to which the parties belong, bear upon the circumstances of the case.

25TH OCTOBER, 1849.

PRESENT.

W. A. MOREHEAD, Esquire.

No. 47 OF 1848.

Appeal from the decision passed by S. SCOTT, Esquire, *Civil Judge of Combaconum, dated 11th November*, 1847.

CUNDASAWMY VANDIAR....*Appellant.*

versus

1st, APPASAWMY VANDIAR, Son of APPAVOO, VANDIAN.
2nd, DURMALINGA VANDIAR Son of TOOLASEE, VANDIAN.
3rd, KISTNASWAMY VANDIAN, and
4th, IYAROO, VANDIAR. } *Respondent.*

Appellant.....*In person.*

STREENEWASA CHARRY.....*Vakeel for Respondents.*

1. This Suit was brought by the Appellant for the recovery o

property of the value of Rupees, 9,999-10-10, under the following circumstances.

2. The common ancestor of the family, Ramabudra Vandiar, had 3 sons, who died, undivided, 60 years ago; one of them without issue, the other two leaving each a son, who also lived undivided, and died 45 years ago, possessed of lands in Poondy, Tiroopavanum, Saleyamungalum, and Edavacoody, as well as Houses, Jewels and ready money.

3. Rajavanada Vandiar, the elder of the above two (first cousins) had 3 sons, of whom the elder was the father of the 1st, 2nd, and 3rd Defendants, the 2nd the father of the Plaintiff, and the 3rd the father of the 4th Defendant. These three and the son of the 2nd of the above cousins, named Iyacunnoo Vandiar, lived undivided; the lands being registered in the name of the father of the first 3 Defendants, who died 30 years ago; thereupon the Plaintiff's father got those lands, as well as others newly acquired, registered in his name, and lived undivided with the first 3 Defendants, the father of the 4th, and Iyacunnoo Vandiar, and died 20 years ago, as did Iyacunnoo, without issue. After this the father of the 4th Defendant succeeded to a similar enjoyment with that of his two brothers, and died 12 years ago. Then succeeded 1st Defendant, as eldest surviving co-heir, who, acquiring some new lands had them registered in the names of 2 Agents, while the former acquisitions were registered in his own, and up to March 1840 he, his two brothers, Plaintiff, and 4th Defendant, lived united, when Plaintiff, disagreeing with the remaining members of the family, brought forward a claim for his $\frac{1}{3}$ of the common estate, as per memorandum given.

4. The answer of the Defendants admitted so much of the plaint, as went to show that no division of the family property had taken place during the last 5 generations, and that the elder member of the family always succeeded to the management of the estate, but they then proceeded to state, that the estate, $\frac{1}{3}$ of which is claimed by the Plaintiff, was unfairly represented; a large portion of the produce of the lands, and some buildings devoted to charitable purposes, having been included in the divisible property, and the ornaments, &c. belonging to the estate, much over-estimated, while the debts due by the family, and for the $\frac{1}{3}$ of a moiety of which Plaintiff, they contended, was accountable, amounted to above 12,500 Rupees. They also alleged that Plaintiff had kept out of sight the fact of Iyacunnoo Vandiar having adopted the 3rd Defendant, who thus became entitled to half the family estate in right of his adoptive father, and the Plaintiff only to $\frac{1}{3}$ of the remaining moiety, after paying his corresponding share of the debts.

5. This Suit was originally tried and decided by the late Pro-

vincial Court in the Southern Division, and a Decree passed, dated 29th September, 1842.

6. The Plaintiff, being dissatisfied with the Decree, appealed to the Sudder Court. The Sudder Court in their proceedings of 30th June 1845, after reviewing the Record and considering the Appeal, finding that the Suit had been inadequately investigated by the Provincial Court, which Court had in the mean time been abolished, directed the Suit to be referred to the Civil Judge of Combaconum, with instructions to pass a Decree de novo, after taking further evidence, which they pointed out as requisite for the proper decision of the case.

7. The Judges of the Sudder Udalut remarked in the first place, that the Plaintiff claimed land to the extent of 196 Valees 7 Maws $1\frac{2}{3}\frac{1}{4}$ Goolies, producing annually Rupees 6,800-14-10 including the rent due to the Circar, and that the Decree of the Provincial Court awarded to him one-sixth share of what might remain out of the produce of the lands, after repaying the expenses of the charities supported by the family, so the Decree awarded to him what he did not claim. He asserted, they observed, his right to a certain share of land, and not to the produce of that land, and therefore whether or not he was entitled to a share of land, and if so, the precise extent of the share recoverable by him, was the point to be decided.

8. Then as to the Plaintiff's claim to a share of Gold and Silver jewels, brass and copper utensils, houses, choultries, cattle, and other items set forth in the Plaint, and of which the Provincial Court had adjudged one-sixth share, if they were found to exist, the Sudder Udalut observed that it was necessary to ascertain by evidence, whether they did exist, and if so, to specify in the Decree the articles and the share of them the Plaintiff was entitled to receive.

9. Regarding the adoption of the 3rd Defendant by Iyacunnoo Vandiar it was necessary, the Judges observed, to ascertain by evidence, whether the 3d Defendant joined in performing his father's funeral ceremonies, and if he did, to refer for the opinion of the Hindoo Law Officer as to whether that circumstance did not act as a bar to his being subsequently adopted by another.

10. It was also remarked that the whole statement of Tylummal, widow of the late Iyacunnoo Vandiar and 15th witness on the part of the Plaintiff, could not be true, and that it was for the lower Court to determine what was true, and what was false.

11. The Judges further pointed out that the right of the head of the family to alienate lands for objects of charity should be investigated and declared, as also should the question whether the members of the family are for ever debarred from all claim to property so alienated,

and finally they observed, that the debts of the family, said to amount, to 12,500 Rupees required further investigation.

12. In the rehearing, 18 witnesses were examined for the Plaintiff, and 38 for the Defendants, one witness was called by the Court.

13. The Civil Judge in his Decree observed that the first question, that presented itself in this Suit, was the share of the family property to which the Plaintiff was legally entitled; whether to $\frac{1}{3}$ as claimed by him, or to $\frac{1}{6}$th, to which the Defendants would restrict him, and that the decision rested entirely on the fact of the 3rd Defendant's adoption.

14. Both parties, the Civil Judge observed, have endeavoured to prove their respective positions by numerous witnesses, the one asserting that the adoption did not, and could not have taken place, because the 3rd Defendant took a part in the performance of his father's funeral cermonies; the other maintaining that the adoption was undoubtedly made, and that the 3rd Defendant was not a party to his Father's funeral rites. It is almost impossible, the Civil Judge remarked, for the Court to declare for either side a preference of credit for such evidence, relating, as it did, to events which occurred from 30 to 40 years ago; but he was of opinion that in numbers and respectability of the witnesses, the Defendants unquestionably had the advantage.

15. The adoption appeared to the Civil Judge undoubtedly to have taken place; and, as it was not proved to the satisfaction of the Court that the 3rd Defendant, who was variously stated to have been from $1\frac{1}{2}$ to 7, but who appeared to have been about 2 or 3 years old, when his father died, took a part in the funeral ceremonies of the latter, it was not considered necessary to put to the Law Officer the question propounded by the Sudder Court.

16. Regarding therefore the share of the Estate to which the Plaintiff was entitled, the Civil Court decreed to him $\frac{1}{6}$th of the whole estate; the next question for decision being of what that share was to consist, the Civil Judge went on to observe, that the Defendants contended that no member of the family could have any right to call for a division of that portion of the estate, which had been set aside by their ancestors for charitable purposes, and that, as before, both sides adduced evidence to prove, the one, that the head of the family had, the other, that he had not, the power to alienate the family property for this object.

17. It was however, in the opinion of the Civil Judge, no where shewn, nor indeed was it even pretended, that any particular lands had been expressly set aside for the support of the family charities, but only that such portion of the produce as could be spared from the wants of the family were annually appropriated to this purpose;

and therefore the Court decided that no part of the estate could with justice be withheld from the general division, on the score of alienation for charity.

18. It was to be understood that this decision was not to include any partition of the charitable buildings; as that would only tend to foment the ill feeling that might already be supposed to exist, and would endanger the continuance of the charities.

19. The buildings, it was adjudged, were to remain, as before, in charge of the head of the family; the Plaintiff being at liberty to contribute his quota to their support, if he thought fit.

20. With respect to the moveable property, the jewels, cattle, household utensils, &c. the Civil Judge finding it absolutely impracticable to come to any decision as to the amount or value, owing to the very different estimates taken by the Plaintiff's witnesses, many of whom from their station in life could have known nothing about the jewels and utensils, proposed to the parties that the 1st Defendant should give in a schedule of all goods and chattels, and affirm its correctness by solemn affirmation before the Court; which was accordingly done with mutual consent; and the Court therefore decreed to Plaintiff one-sixth share of the property contained in the said schedule, or the value thereof.

21. The next question was the quantity of land, to which the Plaintiff was entitled. He sued for his proper share of V. 587 M. 2 G. 55 situated in 47 Villages; there was no dispute about the land in 26 of these Villages, but exceptions were taken on various grounds to the quantity claimed in the remaining 21 Villages. The Civil Judge in his Decree disposed separately of the points at issue in regard to the said 21 Villages, allowing to the Plaintiff, where his right was established, his $\frac{1}{6}$th share.

22. With regard to the debts said to be owing by the estate, and which the 1st Defendant puts at 12,500 Rupees, the Civil Judge observed that the greater part of this seemed to have been paid off, as appeared from the evidence, particularly that of the 38th witness in the re-hearing on the part of Defendants, and secondly that it was quite clear, as admitted by the Defendants, and averred by the numerous witnesses on both sides, who deposed to the annual expenditure on account of the family charities, that the revenue of the estate was greatly in excess of the usual demands upon it, viz., the wants of the family and the rent payable to Government; under these circumstances the Civil Judge absolved the Plaintiff from all liability in respect to such debts.

23. The parties were adjudged to pay their respective costs.

24. Dissatisfied with the above Decree, the Original Plaintiff appealed, alleging

1st. That the estimate formed by the Civil Judge of the value of the evidence, adduced to prove the adoption of the 3rd Defendant by Iyacunnoo Vandiar, was not correct.

2nd. That the Civil Judge ought not to have omitted putting to the Hindoo Law Officer the question propounded by the higher Court.

3rd. That the Civil Judge had unjustly deprived him of his share in the charitable buildings forming a part of the estate.

4th. That the manner, in which the Civil Judge had arrived at the value of the Jewels, was most objectionable, and that his (Appellant's) assent thereto was obtained by force.

5th. That with the exception of the finding in respect to two of the Villages out of the 21 Villages, in which the quantity of land was disputed, the Civil Judge had failed to render him justice.

25. In the Appeal answer the general correctness of the Civil Judge's decision is contended for. And in regard to the adoption of the 3rd Defendant it is stated that the Appellant himself in the 6th para of his original reply admitted such to have taken place.

26. The Respondents however seek from the Appellate Court a reconsideration of the Civil Judge's award, where it declares that no lands can be considered as having been alienated from the family property on account of the charities founded by the family. The Respondents also object to the Civil Judge's decision in respect to the family debts, for which they maintain that the Appellant was legally answerable, and they state that the debts in question now amount to Rupees 5,500, a sixth part of which, they contend, should be defrayed by Appellant.

27. The Respondents further dispute in one or two instances the judgment pronounced by the Civil Judge on the points at issue, connected with the 21 Villages already noticed.

28. The Court of Sudder Udalut having taken into consideration the record of this case, with the revised Decree passed by the Civil Judge, confirms the same.

29. The fact of the 3rd Defendant having been adopted by Iyacunnoo Vaudiar has been pronounced by two Courts to have been established by evidence, which the Court of Sudder Udalut has also no hesitation in accepting as conclusive to that point.

30. The legality of the adoption had been declared by the Pundit of the late Southern Provincial Court. A further reference on

that subject by the Civil Judge was not therefore called for; more especially, as the doubt raised by this Court in their former proceedings in respect to the Hindoo law of the case has been found from the present record of the case, not to exist.

31. The important question in this case for the Court to determine was, to what share of the family property was Plaintiff now Appellant entitled. And this point, as already shown, has been most satisfactorily disposed of. The other questions arising in the case are involved in a good deal of difficulty, from the circumstance of so many points being brought before the Court for determination, each of which required a distinct investigation into, and decision on, its peculiar merits.

32. Hence the proceedings in Appeal show that both parties are dissatisfied, more or less, with the Civil Judge's decision in the respect to the charitable endowments of the family, to the liability for its debts, and with reference to the respective portions awarded to them of the family jewels and of the lands situated in several villages.

33. In all of the above instances a careful perusal of the record has failed to satisfy the Court of Sudder Udalut that the objections taken by the Appellant or Respondents to the judgment passed by the Civil Judge, are valid. The points involved, the Court of Sudder Udalut find from the record, have been fully discussed, and the rights of both parties carefully considered, and it is the deliberate opinion of the Court of Sudder Udalut that no part of the decision of the Lower Court is open to amendment.

34. The parties are adjudged to pay their respective costs in Appeal.

27TH OCTOBER, 1849.

PRESENT.

E. P. THOMPSON, Esquire.

No. 57 OF 1848.

Special Appeal from the decision passed by JOHN WALKER, Esquire, *Civil Judge of Nellore, dated 27th March* 1848.

1st, SAHUCAR ATIBALASING,
2nd, NARASINGABHAN,
3rd, RAMSING, *and*
4th, LUKSHMANSING, } *Special Appellant.*

versus

GANDARAM LINGAREDDY.....*Special Respondent.*
S. TEROOMALA CHARRY.....*Vakeel for Special Appellant.*
R. TEROOMALAROW.....*Vakeel for Special Respondent.*

1. The Original Suit was brought for the recovery of Rupees 500 being the amount of principal and interest due on a bond.

2. The Plaintiff stated in his plaint that he lent to one Daggapati Ramachendruppa, who was the Goomastah of the Udatavers, Bappanaiya Nayadu and Narasimha Nayadu, Rupees 250, which sum the 1st Defendant undertook to pay, provided the Udatavers in question, who were then in jail on a criminal charge, were released. The 1st Defendant executed a document to the above effect, and on this document the Plaintiff sued him and the three other Defendants, his sons and coparceners, for the money lent with equal interest.

3. The 2nd Defendant, who alone defended the suit, admitted that the document was executed to the Plaintiff, who undertook to get the Udatavers released from jail, but avers that no money was lent on the same.

4. The Principal Sudder Ameen being of opinion that the 2nd Defendant had proved his plea, dismissed the suit with costs.

5. In appeal from the Plaintiff the Civil Judge recorded his opinion that, "as there was good evidence adduced in the original suit "of the delivery of the money by Plaintiff to Ramachendruppa, and "the 2nd Defendant has acknowledged execution of the document by "his undivided father, by which he took the debt of Ramachendruppa "on himself, it appears to him that the money should be paid to the "Plaintiff by the Defendants. There is not the slightest ground "shown" the Civil Judge observed, "for thinking that the Plaintiff "had undertaken to procure the release of the Udatavers when Pri"soners, as pleaded by the 2nd Defendant"—and "there is nothing "adduced to shew that the Plaintiff either had, or could be supposed "to have, any influence of the kind hinted at."

6. On the above grounds the Civil Judge reversed the decree of the Principal Sudder Ameen, and awarded to the Plaintiff, (Appellant,) the sum sued for with interest and costs.

7. A Special Appeal was admitted on the part of the 2nd Defendant, that the two points involved in the suit, viz. 1st, the correctness of the construction put upon the document by the Civil Judge; and 2nd, its legality, might receive the consideration and decision of the Court of Sudder Udalut.

8. After a careful consideration of the case and the document in question, the Court of Sudder Udalut take the same view of the matter as the Civil Judge has done.

9. The document sets out that Duggapati Ramachendruppa being indebted to the Plaintiff in the sum of Rupees 250, the 1st Defendant undertook to pay the same by instalments, the first of which was to commence eight days after the return of the Udatavers to their village. The Udatavers, who are represented to be people of rank

and influence, required funds, possibly, when in jail, for their several necessities, and their servant "Ramachendruppa" in all probability obtained the same from the Plaintiff, upon the 1st Defendant executing the document produced in this suit.

10. There is nothing, however, in the document to shew that the Plaintiff undertook to obtain the release of the Udatavers, or to exert himself in their favor, and the condition in the document, that the Defendant was to discharge the amount, only in the event of the Udatavers returning to their village, was owing no doubt, as the Civil Judge supposes, "to the Defendant's fear that, if the Udatavers "were not released from jail, their Goomastah would have no means "of re-paying the money, or would be less ready to discharge the "debt."

11. The Court of Sudder Udalut dismiss the Special Appeal with costs.

29TH OCTOBER, 1849.

PRESENT.

E. P. THOMPSON, Esquire.

No. 29 OF 1849.

Regular Appeal from the decision, passed by W. A. D. INGLIS, Esquire, *Civil Judge of Chingleput, dated 1st November*, 1848.

APPOOROW..... *Appellant,*

versus

1st, SOODURSANA TATACHARRY,
2nd, V. VEERARAGAVA TATACHARRY, and
3rd, GOPALA CHARRY, } *Respondents.*

1. The Plaintiff instituted this action to recover from the Defendants the office of Dhurmakurtah of the Pagoda of Stree Davarazaswamy at Conjeveram, involving the management of an annual expenditure of Rupees 14,000, which office the Plaintiff claims as his hereditary right.

2. The case is thus stated by the Civil Judge: "The Plaint sets "forth that about 130 years ago, in time of war, the Idol had been "removed from the Pagoda and carried off to Woodearpolliem, "where it was detained by the Poligar of that country; that Plaintiff's ancestor Attanjeeyar went to Hydrabad, procured aid from "His Highness the Nawab, and with much risk and trouble obtained "the restoration of the Idol; that he moreover acquired for the

"Pagoda grants of Maunium lands and Merah, and obtained fresh "Zaree Sunnuds, for the Shrotriem Villages, and Merahs formerly "granted; that he enlarged and extended the Pagoda and purchased "expensive jewels for it; and that he, as Dhurmakartah or Church-"warden, managed the affairs of the Pagoda and enjoyed the emo-"luments; that after his death, as his son Ramanoojarow was young, "his daughter Paupummal held the office, and after her the said "Ramanoojarow, his son Pareya Vencatarow, and the latter's son "Chinna Vencatarow (Plaintiff's Father) continued lineally to hold "the Office; that their Highnesses the Nawaub's Sadatoolla Khan "Bahadoor, and Hoossain Dost Khan Bahadoor Moobarick Jung "and the Board of Revenue, granted Purwanahs in the favor of "Attanjeeyar Ramanoojarow, Pareya Vencatarow, and Chinna Ven-"catarow (Plaintiff's Father), as Dhurmakartahs; that, when Plain-"tiff's Father became old, his, Plaintiff's, Brothers, being too young "for the office, a distant cousin named Ramarow was put in to act; "that during the life of Plaintiff's Father, and with his consent, the "Collector, Mr. Balfour, removed Ramarow, and appointed one "Streenevassa Ragavacharry to manage the affairs of the Pagoda; "that this person was removed for mal-practices by Mr. Balfour's "successor, Mr. Place, who being of opinion that this and other "Pagodas in the District would be best under the Cirkar manage-"ment, retained charge of the affairs of the Pagoda from that time "under orders from the Board of Revenue; that after the death of the "Plaintiff's Father, his Elder Brothers, Streenevasarow and Condul-"row, when they came of age, applied to Government, requesting "that on the restoration of the management of the Pagodas in gene-"ral to the Dhurmakartahs, that of the Pagoda in question should "be given to them, and that in the mean time certain "Maula "Maryadas," attached to the office of Dhurmakartah, should at once "be restored to them: that on enquiry by the Collector, Mr. Hyde, "his Brother's claim was found to be just, and the Maryadas and "emoluments claimed were ordered to be given up to them; and "that thus, although the Government managed the affairs of the "Pagoda, yet all the Maryadas appertaining to the Office of "Dhurmakartah were enjoyed by Plaintiff's Brothers, and after their "death by himself; that the above assertions can be proved by the "various Orders issued and the reports made to Government; that, "as thus shown, it is quite clear that Plaintiff is the person law-"fully entitled to be nominated as Dhurmakartah of the Pagoda in "question."

3. The Defendants urged among other pleas, 1st, that the value of the thing claimed had not been stated in the plaint, as required by law; 2dly, that the Plaintiff's claim having been rejected, and 1st Defendant's Father appointed by Government, the matter at issue had been disposed of by competent authority, and could not be re-agitated; and 3rd, that the claim was barred by the statute of limi-

tation, inasmuch as the Meerassee in question was taken from the Defendant's ancestors more than 50 years ago, and retained by Government, who have now restored it to them.

4. The Civil Judge, after considering in detail all the arguments brought forward by the parties, summed up his decree, in which he dismissed the Plaintiff's claim as groundless, in these words. "On the "whole it appears, firstly, that the Plaintiff has no right or title to "the Office of Dhurmakartah, some of his ancestors having officiated "only as Goomastahs; 2d, that the Defendant's ancestor Tautacharry "having been in 1794 declared to be the rightful Merassidar by "competent authority, while also the Plaintiff, and his Father, failed "to institute proceedings within twelve years after the establishment "of the Zillah Courts, the Plaintiff's claim, even if he had shewn a "better one than he has done, would be barred by both sections X "and XVIII Regulation II of 1802."

5. From this decision the Plaintiff Appealed, recapitulating the averments made in the Plaint, and impugning the correctness of the Civil Judge's award.

6. In this action 66 exhibits were filed by the parties, and a long correspondence, extending over a period of more than 50 years, was called for by the Civil Judge to elucidate the subject matter in dispute, and on due consideration of the whole case the Court of Sudder Udalut are of opinion that the decision of the Civil Court is perfectly correct.

7. From 1792 up to the present time, the right and title of the Appellant to the privileges he now lays claim to, has never been recognized; whereas during the same period the members of the family of the Respondents have been considered the lawful wardens of the Pagoda in question. In 1792 a violent dispute arose between two sects of Brahmins, the Tengally and Vadagalay, fomented entirely by the misconduct of one Ramarow, the Goomastah of the original Meerassidars, which ended in the disgrace of Ramarow, who was declared by Government for ever disqualified for the office of Churchwarden, and prevented from any future interference with the church or any of its ceremonies. It is through the connection this person then had with the Pagoda, that the Appellant now chiefly rests his claim to the office of Dhurmakartah.

8. On the 7th May 1792 the Collector, Mr. Balfour, in writing to the Board of Revenue on the subject of the dispute says, "As far as "I am enabled to judge from the different conversations I have had "with Brahmins and others regarding the disputants' claims to the "Churchwardenship, I am led to believe that the ancestors of those "men whose names I now enclose, were the Original Churchwardens "and that the ancestors of Ramarow were put in by the former as

"their Goomastahs or manager." The names forwarded by the Collector were those of the ancestors of the Respondents.

9. In April of the same year, in requesting the Board to determine who should in future have the management of the temple, the Collector observed, "A Brahmin named Tautacharry, whose ancestors "for ages past had the management of the Pagoda of little Conje-"veram, and, until their dissensions with each other caused the Cir-"kar to interfere, who took charge of the Pagoda them-"selves, and which they enjoyed for some time. * * * Sic in Origine. "During the period the Cirkar had the management, the "Brahmins quarrelling with the Moors, found means to "secure the metal image belonging to the Pagoda which they "concealed at Odiarpollam for the term of twenty-five years, "after which period, the Brahmins at last agreed to appoint the "ancestors of Ramarow as their Goomastahs, and for some years "the rites and ceremonies of the Pagoda were peaceably carried on "under their management, until the time of the present Ram Row, "who totally forgetting that both his ancestors and himself were "merely put in by the Brahmins as their Goomastah, had the auda-"city to assume the entire management of the Pagoda, and attempt-"ed last year, not only to make cyphers of those who by right of "inheritance were the real Churchwardens, but also made a bold "effort to carry on the Grand Festival, in which he would have suc-"ceeded, had I not prevented him."

10. On a representation from the Tautacharry Brahmins, the Board of Revenue in 1794 authorized the Collector to appoint Streenevassa Ragavacharyar, the grandson of Tautacharry and the ancestor of the Respondents, as warden of the Pagoda at little Conjeveram.

11. From that year until 1842 the record does not show that the acknowledged position, which the Respondent's family held in respect to the Pagoda in question, was disputed. In that year however, when the Government resolved to give up all interference with the religious institutions of the country, various claims to the Wardenship of the Pagoda arose, and the Board of Revenue in disposing of the same remarked, "the Board are of opinion, that there are in "this case hereditary claims, which could not justly be set aside. "Though the result of Mr. Freese's researches into the ancient pri-"vileges of the Tauttacharriar family is not so clear as could be "wished; it is fully apparent that, if not the sole controllers of the "Pagoda, that family possessed at least the joint right of hereditary "supremacy in common with certain others. And the Board can-"not consider that the illegal act of power, which resulted in their "losing that position, can form a good ground for refusing to recog-"nize their title now. It is within the Board's knowledge that this "family is very numerous and much respected, and they are of opi-"nion that the best arrangement for the Davarajahswamy Pagoda

" will be to constitute Coomara Tautacharriar the head of the family " to be sole Dhurmakurtah ; the dignity to be hereditary.

12. All the authorities therefore, for the last 57 years, have had but one opinion of the claims of the Respondent's family to the office he now holds, and on what grounds the Appellant rests his hopes to dislodge them and obtain the appointment for himself, the Court fail to discover. The Appellant's exhibits, prove nothing in his favour, whereas those of the Respondents and the public records, show most distinctly that their ancestors have always been considered and acknowledged to be the original Meerassidars of the institution.

13. The Court of Sudder Udalut dismiss the Appeal with all costs.

30TH OCTOBER, 1849.

PRESENT.

W. A. MOREHEAD, Esquire.

No. 26, of 1848.

Special Appeal from the decision passed by P. B. SMOLLETT, Esquire *Agent to the Governor of Fort St. George in Vizagapatam, dated 18th September*, 1847.

SREEMUT TEROOMALA PEDDINTY.
SUMPUTCOOMARA ANUNTA.
VENCATACHARLOO IYAVARLOONGAROO. } *Special Appellants,*

versus

C. PEDDA VENCATA NURSIMHA CHARLOO,—*Special Respondent.*

EXPARTE.

This Suit was originally brought before the Agent to the Governo of Fort St. George in Vizagapatam by the Plaintiff (Respondent) fo the recovery of Rupees 1,595-1-3, the balance of principal and interes due on two Bonds, the first bearing date 7th June, 1840, for Rupee 641-2-0 agreeing to pay interest at $\frac{1}{4}$ per cent, and the second Bon bearing date the 8th June 1840, for Rupees 427-12-0 and interest a one per cent.

2. These Bonds were executed by Defendant's father, and ar represented to have been given for a balance of principal and interes found to have been due to Plaintiff, on a settlement of accounts.

3. Payments on account of interest to the amount of Rupee 106-15-5 are allowed ; for the balance, with interest at one per cent the suit is brought.

4. The Defendant in his answer admitted that the Bonds were genuine, but denied that for the second any consideration had been given. Its return, he alleged, had been frequently demanded and verbally promised by Plaintiff.

5. The Defendant in regard to the first Bond, stated that the original debt contracted by his father in 1837 was Rupees 325, and that by the addition of Rupees 316-2-0 of illegal interest it was in 1840 consolidated into Rupees 641-2-0; for the interest so charged the Defendant denied his responsibility, and further contends that Rupees (300) three hundred have been paid at various times in liquidation.

6. The statements made by the respective parties were generally supported by the evidence called by each.

7. The Agent in his decree observes " that the case in a great " measure depends on the credit and balance of probability of the " conflicting statements of the parties and their witnesses—and this " Court after a full consideration finds that the balance inclines to " the Plaintiff. It can hardly be supposed that the Defendant would " have continued to liquidate his father's debts by payments, in the " way he pleads, if he had intended, as he now does, to contest the " validity of the whole of one of the Bonds, and a moiety of the " other." The Agent decreed for the Plaintiff Rupees 1,595-1-3 and costs. Considering however that the demand originated in a consolidated amount of principal and interest upon a former transaction, the Agent did not allow further interest in his decree.

8. Dissatisfied with this award the Defendant, as Appellant, filed an Appeal, in which he denies that any transaction such as was set forth in the original plaint, ever took place between his (Appellant's) late father and the Plaintiff.

9. That in reality only the first Bond was given for the balance of an old account, and that the 2nd Bond for Rupees 427-12-0 was executed for money to be advanced by Plaintiff, but which he never did advance.

10. No answer was filed in Appeal.

11. The Court of Sudder Udalut on a careful consideration of the evidence recorded before the Lower Court, can find no reason for questioning the justice and propriety of the decision, at which that Court has arrived.

12. Two separate Bonds appear to have been granted, because the rates of interest charged in them differed.

13. The Decree of the Lower Court is affirmed with costs.

30TH OCTOBER, 1849.

PRESENT.

E. P. THOMPSON, Esquire.
W. A. MOREHEAD, Esquire.

No. 59 OF 1848.

Appeal from the decisions passed by a Military Court of Requests, assembled at Secunderabad, dated 10th December 1847, and 4th January, 1848.

RAM LALL..... .....*Appellant,*

versus

MUNEERAM LALL.....*Respondent.*
MUSTAPHA ALLY KHAN....*Vakeel for Appellant.*
T. RAMACHENDRIAH.....*Vakeel for Respondent.*

1. This is an Appeal brought under Section XVII Act XI of 1841, against an award passed by a Military Court of Requests assembled at Secunderabad.

2. The amount in dispute was Hyderabad Rupees 1,103-4-0 due as Principal and Interest on money lent.

3. The Defendant contended that he was not indebted to the Plaintiff in the sum claimed ; that no money had been given in loan to him ; but that he had been paid by Plaintiff on account of a balance of gram due to him (Defendant), the sum of Hyderabad Rupees 803, Annas 4.

4. The Plaintiff's accounts were filed and examined by three Soucars, duly sworn, who reported that an entry was found of Hyderabad Rupees 803-4-0 paid to one Pooramul Seereekistnen Doss, the master of Defendant. The above sum, the Defendant asserted, was paid on his own account, and not on that of his master's.

5. The Defendant's accounts were produced and examined by the same parties who had previously examined the Plaintiff's accounts ; when they declared that, on a due adjustment of the above accounts, there appeared a balance in Plaintiff's favor of Rupees 260-8 Annas.

6. The award of the Court was, that "in their opinion the Plaintiff "had established his claim to the amount of Hyderabad Rupees "Two hundered and sixty, Annas eight and Pice six, and award the "Defendant Ram Lall forthwith to pay the same to Munceram "Lall."

7. The above decision is dated 17th September 1847.

8. On the 10th of December 1847 this case was by the Officer Commanding the Hyderabad Subsidiary Force again referred to another Court for fresh enquiry.

9. Which Court decided in Plaintiff's favor to the full sum claimed, viz. in Hyderabad Rupees 1168-0-0.

10. No witnesses were examined on Defendant's behalf by this second Court, a third Court was therefore assembled on the 4th of January 1848, before which Court the Defendant having failed to attend, the decision passed on the 10th December 1847 was affirmed.

11. The Defendant in his Appeal to the Court of Sudder Udalut complains of the proceedings of the Courts held on the 10th December 1847, and on the 4th of January 1848, whereby he has been called upon to pay to Plaintiff the sum claimed.

12. The Court of Sudder Udalut, having considered all the proceedings connected with this Appeal, is of opinion that the decisions passed by the Courts on the 10th December 1847, and the 4th of January 1848, are illegal, and must be set aside.

13. The award passed by the Military Court of Requests on the 17th of September 1847 was not one which under Section XI of Act XI of 1841 it was "lawful for the Commanding Officer to return for "revision either by the same or another Military Court of Requests."

14. The Military Court of Requests of the 17th September 1847 sat in accordance with Section XVII of the same act, which provides that, if the amount of claim shall exceed 200 Rupees, an Appeal shall lie to the Court of Sudder Udalut. The party dissatisfied with the decision of the said Court, should therefore have appealed to the Court of Sudder Udalut, and not to the Officer Commanding the Station.

15. The Court of Sudder Udalut for the above reasons, annul the award passed on the 4th January 1848, leaving it still open to the parties, should they see fit so to do, to file a regular Appeal to the Higher Court against the decision passed by the Military Court of Requests under date the 17th September 1847.

16. The Court of Sudder Udalut under the circumstances of this case direct, in accordance with the provisions of Clause 2nd, Section XXV Regulation XIII of 1816, that the difference of the value between the stamp used for preferring a regular and summary Appeal be returned to the Appellant.

31ST OCTOBER, 1849.

PRESENT.

G. S. HOOPER, Esquire.
E. P. THOMPSON, Esquire.

No. 38 OF 1845.

Special Appeal from the decision passed by G. S. GREENWAY, Esquire, *Civil Judge, of Trichinopoly, dated 14th April* 1845.

VADAMALAY, CONAN.....*Special Appellant.*

versus

RAMASAMY PILLAY, alias VIKIL, } *Special Respondent,*

GOOLAM MOORTOOZAH..... *Vakeel for Special Appellant.*
D. STREENEVASA CHARRY...*Vakeel for Special Respondent.*

1. The Original Suit was brought by the Special Appellant, as Plaintiff, to recover from the Defendants,(Special Respondents) jointly, the sum of Rupees 300, being the amount received by them in part payment of an order drawn in Plaintiff's favor for Rupees 495, with Interest thereon Rupees 117, Total Rupees 417-0-0 under the following circumstances, viz.

2. The Plaintiff having transmitted the said Order to the 1st Defendant at Madras through the 2nd Defendant, who was his (1st Defendant's) partner in Trade, for the purpose of getting it cashed, he (1st Defendant), presenting it for payment, received the said amount of 300 Rupees and sent it in Bank Notes to 2d Defendant by Post, but the letter containing the same, having by some means or other miscarried, and never reached its destination, the Plaintiff never received the money.

3. The Assistant Judge of Combaconum, on consideration of the Pleadings alone, passed judgment in favor of Plaintiff for the sum of 300 Rupees to be recovered, with costs, from 1st Defendant; disallowing interest with proportionate costs, and relieving the 2nd Defendant from all liability, whose costs he adjudged to be borne by Plaintiff.

4. Against this decision, the 1st Defendant appealed to the Zillah Court of Combaconum, praying that Documents and witnesses might be received and examined on his part, which Appeal, on the abolition of the former Courts, was transferred to the Zillah Court of Trichinopoly. The Acting Civil Judge of which Court by proceedings, under date 14th February 1844, remanded the Suit to the Principal Sudder Ameen, with an injunction to include the 2nd Defendant as a Respondent, and after taking evidence in proof of, or opposed to, the Appellant's statement, that he had acted under and according to 2nd Defendant's instructions, to pass a decision de novo

5. The Principal Sudder Ameen having accordingly examined Documents and witnesses on the part of the 1st Defendant (Appellant,) was of opinion that the loss sustained was occasioned by circumstances, over which the parties had no control, and ought therefore to be borne equally by the Plaintiff and 1st and 2nd Defendants, and passed a Decree on 21st January 1845 accordingly; adjudging the costs also to be borne equally by the parties.

6. Against this Decree the parties concerned, viz. Plaintiff, 1st Defendant and 2nd Defendant, preferred three separate Appeals.

7. When the Acting Civil Judge, passing one Decree, embracing all three Appeals, annulled the Original and revised Decrees, and dismissed Plaintiff's claim, adjudging him to bear all costs of suit; on the grounds that there was no proof that 2d Defendant directed 1st Defendant to remit the amount by an order, as he asserts, nor that 1st Defendant ever remitted money to 2d Defendant in that way, but that the letters filed, shewed, that he was in the constant habit of sending Bank Notes to which 2d Defendant never objected, until after this loss occurred; that the enclosure of the Bank Notes for 300 Rupees, in a letter which was put into the Post Office, was proved by the witnesses; that it was clear that the 1st and 2d Defendants had both carried out the instructions of the Plaintiff, and that the loss, which ensued, was the consequence of those instructions, not of any misconduct on their part, who could only be considered as Plaintiff's Agents.

8. The Plaintiff preferred a Special Appeal, urging that in all probability 1st Defendant never sent the Bank Notes by Post at all, or that the two witnesses, in whose presence he avers he enclosed them in a letter, and to whom he entrusted it to put in the Post, may have purloined them; that the prevailing practice is to send half of a Bank Note first, and then, on receipt of the acknowledgment thereof, to send the other half; that the 2d Defendant in his letter to 1st Defendant of 8th May 1838, expressly directed him to remit the money by a Hoondee; and that, had he done so, it would not have been lost.

9. The Court of Sudder Udalut admitted a Special Appeal on the ground, that it was clear upon an inspection of the letter of instructions transmitted by 2d Defendant to 1st Defendant at Madras, that the latter was specially directed to forward the amount of the Bill drawn in Plaintiff's favor, by an order or Hoondee; and that, instead of acting up to those instructions, he transmitted the amount in Bank Notes, which never came to hand, by which act he had made himself responsible; and that the Decree passed in opposition to so important a Document, was contrary to the established practice of Courts.

10. The 1st Defendant in his Special Appeal answer, pleads nothing new.

11. The Court are of opinion, that as the 1st Defendant (1st Special Respondent) neglected to act in conformity with the special instructions transmitted in the letters addressed to him by the 2nd Defendant, to remit the amount in dispute by "an order on Hoondee," he, and he alone, must be held to be legally responsible to Plaintiff (Special Appellant) for the same.

12. The Court therefore adjudge the (1st Defendant, 1st Special Respondent) to pay to the Plaintiff (Special Appellant) the said sum of three hundred (300) Rupees with costs thereon, but without Interest, which, with the proportionate costs they see no reason to allow.

13. The costs of the 2nd Defendant (2nd Special Respondent) to be borne by the Special Appellant.

16

Chingleput Zillah Court.

Principal Sudder Ameen's Court, Original Suit N° 25 of 1852.

Plaintiffs.

1. Varadachary.
2. Ranga Chary.
Vakeels.
Soobharoya Moodely (dies)
and
Venkatasawara Sastry.

Defendants.

1. Ahobilum Vararaghava Iyer.
2. Vathamutha Chariar
3. Jagannatha Iyengar
4. Kistnum Bhutter
5. Ramasawamy Reddy
3d Defendant's Vakeel
Kistnarow.

L. S.

Decree of the Civil Court.

The Plaintiffs, as second Trustees Moorassadars of the Pagoda of Varaghavasawmy at Peroomalloor in the Poodoo Pallam Taluk, instituted this suit to recover from the 1st Defendant, who is the Dhurmakarta or Warden of the said Pagoda ready jewels, Ivory, and cloth, valued in the aggregate at 5000 Rupees, which the Plaintiffs allege the 1st Defendant with the assistance of the other Defendants, has misappropriated to his own use.

The 3d Defendant the Gumastah of 1st Defendant filed his answer setting forth that Plaintiffs has no power whatsoever to exercise any surveillance over the Pagoda, and denies the truth of the statement set forth in the Plaint, and further asserting that 1st Defendant has the power of dismissing the Pagoda Servants and superintending all necessary business connected with the according to his own discretion.

In this stage of proceedings before the Principal Sudr Ameen, this suit having been called up and retained on this Court's file, with reference to

1st Sheet.
W

7 1270 N. 21

V. Ruugasamy &c

F. &c

No. of Appl.	Date of Appl.	Names of Parties	Nature of Proceedings	Nature of Decree	Date of Decree
					25
21	2	Dadagapah Chetty		Fr. Decree	July 18

Taromycle
Atty for Plts

to the Proceedings of the Sudder Udalut, under date the 30th April 1852, the last Acting Civil Judge on consideration of the Pleadings struck off the suit & proceedings held under date the 21st August last.

From this order of the Acting Civil Judge the Plaintiffs appealed to the Court of Sudder Udalut, and the following Proceedings were held by them on the 20th November 1854.

"7 The Court of Sudder Udalut resolve therefore to direct the Civil Judge to readmit this suit upon his file, and to proceed thereon with the Judgment

"8 The question of the Plaintiffs "locus standi" the Civil Judge in observe has to be first disposed of, and this must be by decree, and it will rest on the Civil Judge's determining this point in Plaintiff's favor that he will be required to go into the full merits of the case".

The suit was accordingly readmitted on this Court's file on the 20th December 1854.

The Civil Judge having taken into consideration the whole of the Proceedings in this case together with the orders issued by the Judges of the Sudder Udalut calls upon the Plaintiffs Pleader to show the Court that the Plaintiffs are persons who have such vested rights as in the Pagoda or in the property belonging to the Pagoda as entitles them to bring this action against the Warden &c. To support this point it is asserted by the Plaintiffs and admitted by the Defendants that Plaintiffs are the 2 Seertumdirassidars (i.e. Persons to whom a mark of respect is shown by the Priest by giving some of the holy Water into their hands before it is distributed to the 3 Seertum dirassidars, and the publick who may attend the pagoda), and are therefore the proper persons to institute the suit &c

it

2 Sheet
W

7270 N 22

V. Ruegasamy &
22 Ors

No of Pp	Nos of Dfts	Nos of Pcs	Judge pronounced	Judge pronounced	Date of Decree
					25-
22			Vadagappa Chy M.	Decree	July 31

Attorney for Plts

Advocate

Ext & Mo

it is also admitted by all parties that the Immoveables enjoyed by the Plaintiffs have been interfered with, neither are they possessed of any other right in the Pagodas or property belonging to it. The Judge, having carefully perused Regulation VII of 1817, Regulation VI of 1831, together with the Extract of Minutes of Consultation dated 3d September 1852, N° 857 (2138), and the orders of the Board of Revenue dated 22d January 1852 N° 160 and 28th June 1852 N° 1253, is of opinion that the Plaintiff's have failed to show that they are the properly authorized, to bring a suit against the warden, and this suit is therefore struck off. Costs must be paid by Plaintiffs

Given under my hand and declared in Court at Chingleput this 8th day of February A.D. 1855

This decree is signed and sealed on the 31st March 1855 from which date the time of appeal extends to 31st June 1855.

Signed N. Dowdeswell
Civil Judge

(True Copy)
Signed N. Dowdeswell
Civil Judge

(True Copy)

Jno. Williams
Acting Deputy Registrar

3d and last Sheet
:: Nos

Ext & Ct

F1270 N-23

V. Ruugasamy &c
&c &c

No. of Petn	Year of Petn	Names of Petnrs	Petitioners	Defendants	Date of Decn
					25
23	2	—	V. Sadagopa Chetty & Co	Fr Lewis	July 1860

Ramony &c
Agt Letts
Chingleput &c

Court 2080/60
2
2
Rec'd 24 Aug 1860
2
Petn No.

No. 3,678.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 10th August 1860.

Read Petition No. 2,080 of 1860, on the Board's File, from Stri Kistna Tata Charry, Dhurmakurta of the Pagoda of Devaragaswami Zurat, Conjeveram.

1. Petitioner states that he is of the "Vadagala" sect, and hereditary Trustee of the Pagoda abovementioned, and that influenced by sectarian feelings of animosity, but without any real cause of complaint, a Tengala Brahmin, named Goomatum Runga Charry, has charged Petitioner before the Sub-Collector of Madras with malversation of the Temple property; that he has in vain requested the Sub-Collector and Collector to dismiss the charge, or to require the complainant to deposit a sum of money to be forfeited in case he fails to prove his charge, and that he therefore appeals to the Board on the following grounds, viz.:—

That the complainant as a servant of the Pagoda, and thus subordinate to Petitioner, is as such incompetent to prosecute a charge of malversation of the Pagoda property against his superior the Dhurmakurta, in support of which plea he cites the Decree of the Civil Judge of Chingleput in Original Suit No. 25 of 1852, confirmed in Appeal by the Sadr Adalat Court in Appeal Suit No. 37 of 1857 (page 292 of the printed Sadr Court Rulings), and also the Decree of the Sadr Adalat Court in Appeal Suit No. 49 of 1856 (page 258 of the same volume). He refers also to the decision of the Collector on the complaint preferred to him by the Plaintiffs in the Suit No. 25 of 1852, after the Courts ruled that *they* had no jurisdiction in such matters, and also to the Board's decision on the appeal to them from the Collector.

2. The Board find on perusal of the Decrees cited, that they in no way support Petitioner's plea, but merely declare that save for private injuries, such suits as were then under trial cannot be prosecuted before the Civil tribunals, but that the jurisdiction in them is vested in the Revenue authorities by Regulation VII of 1817; and in paragraph 7 of the Appeal Decree No. 49 of 1856 (page 259 of the Rulings), it is expressly ruled that the servants in a Pagoda are not by reason of their position as such, debarred from the exercise of the right common to them with all other members of the Hindu community, of bringing to the notice of the tribunals vested with jurisdiction in such cases, charges of misappropriation of Pagoda funds, &c.

Paragraph 11 of the same Decree which Petitioner cites, does not support his plea in any way whatever.

3. Moreover the decree of the Court of Sadr Adalat in Special Appeal No. 140 of 1857 (page 39 of the Decisions for March 1858), declares, "that *any* persons conceiving themselves entitled to complain of the mismanagement of such endowments as those in question, "may, *at their option*, report the circumstance to the Board of Revenue, praying the exercise of "its authority under Regulation VII of 1817, *or bring the matter before a Judicial tribunal*, "subject of course to the consequences of failing to prove themselves in a position to maintain "such actions."

4. As to the decision of the Collector of Chingleput on the complaint preferred to him regarding the affairs of the Virarajaswami Pagoda of Trivelur by the Plaintiffs in Original Suit No. 25 of 1852, which decision is contained in his Endorsement dated 25th January 1860 on Petitions Nos. 2,194, 3,236 and 3,480 of 1859, and 35 of 1860, and to the Board's confirmation of his decision, the Board on reconsideration of the papers find that they were misled by the language of paragraphs 2 and 3 of the Collector's Endorsement, which, not knowing of the Appeal Decree of the Sadr Adalat in No. 37 of 1857, they were not in a position to test by the actual decrees.

5. The Collector in his Endorsement stated that the matter of the Petitions then in question had been before the Courts, and "rejected under the requirements of the Sadr Adalat "that the Petitioners should first prove that they had a *locus standi* before they could be "entitled to prefer their charge of malversation against the Dhurmakurtas.

"Hence the charges having been already disposed of by a competent Court under "Section 14, Regulation VII of 1817, and Section 10, Regulation II of 1802, the Petitioners "would seem to have deprived themselves of the power of bringing them again before the "Collector and Board for fresh investigation."

6. The Board inferred from this language that the charges had been tried in that case on their merits, and rejected by a competent Court, and they therefore declined to interfere; but from the Appeal Decree in No. 37 of 1857, it is clear that the Court rejected that Suit merely on the ground that as not being for *personal* injuries, the Courts had no jurisdiction, and that the Revenue authorities were the proper tribunal.

Such being the case the late Collector was wrong in considering it no longer open to him to take up the Trivelur case, and the Board will therefore instruct the Collector of Madras, who now has jurisdiction in the locality in question, that he may at his discretion take up and decide on its merits the plaint of the Plaintiffs in Original Suit No. 25 of 1852 on the Chingleput Civil Court's file, should any one appear before him competent to prosecute it.

7. The second point on which the present Petitioner appeals to the Board is the refusal of the Sub-Collector and Collector to require the complainant to lodge a sum of money which shall be forfeited in the event of his failing to prove his charge.

It is sufficient on this to remark that the Revenue authorities are not competent to make any such requirement, and that they would not be justified in refusing to exercise the powers vested in them by the law, merely on the ground that such a requirement was not met by compliance.

8. At the same time the Board are of opinion that considering the position of the Petitioner in connection with the Pagoda, which has been upheld by Decrees of the highest Court and involves the administration of its income and expenditure, and also the notorious antagonism between the Vadagala and Tengala sects, it is necessary that very great discretion should be used in entertaining such charges as the present, and that the European Officer in charge of the locality, on whom the investigation will devolve, should satisfy himself by personal preliminary inquiries that there are reasonable grounds for believing that the charges, which the complainant should be called on to specify distinctly, may be true, before he subjects the Dhurmakurta to any requirements that may be viewed by his adversaries in the light of indignities, to which they have succeeded in exposing him, though they may fail to prove their charge. It is particularly necessary that any examination that may be needed of the assets in the Pagoda Treasury, should be made by an Officer above the rank of a Tahsildar. The Board consider that the above precautions are more especially called for by the present position of the Regulation VII of 1817, a Bill for its repeal being now before the Legislative Council, and as moreover the Sadr Adalat Decree in No. 140 of 1857 above quoted, shows that the Civil Courts are open for the adjudication of all such matters, while the Local and Home Governments have expressed their desire that the Revenue authorities should interfere in such cases as little as possible.

See Appeal Suit No. 29 of 1849, on the file of the Sadr Adalat.

9. The last plea of the Petitioner is, that it is doubtful whether a Sub-Collector can exercise the powers granted by Regulation VII of 1817.

On this the Board have no doubt whatever. By Regulation VII of 1817 the Collector is constituted the local agent of the Board of Revenue in their capacity of guardians of religious and charitable endowments, and by Regulation VII of 1828 a Subordinate Collector has *ex-officio* authority to exercise within his particular charge all the powers vested in a Collector by any Regulation, unless the contrary shall be expressly declared in such Regulation, which is not the case with Regulation VII of 1817.

10. The Board of Revenue therefore decline to give the orders sought by Petitioner, and leave it to the discretion of the local authorities to proceed with the inquiry or to dismiss the charge, as may be deemed proper under all the circumstances.

11. Copy of these Proceedings will be furnished to the Collector for his information and guidance.

Copy will also be delivered to Petitioner.

(A true Extract.)

Sub-Secretary.

To B. Cunliffe, Esq., Collector of Madras.

Copy to Petitioner.

Exd. J. Wright.

Endorsement on Board's Petition No. 2615 of 1860.

1 The Board's Proceedings of the 10th August last were sent to the Sub Collector for information, and he decided that the case before him was of such importance as to demand investigation at his hands under Regulation VII of 1817.

Para 2 2. As an appeal lies from the proceedings of the Sub Collector, the Collector would not interfere with the course of work of that Officer, especially of one of the Standing and experience of Mr. Ellis.

Para 3. 3. The Jengalays having declared that their opponents would avail themselves of their position of Dharmakartaks to tamper with the seals affixed to the rooms containing the accounts, it was to obviate this objection, that the Sub Collector permitted the Jengalays to affix their seals also. Their apprehensions were not unnatural, looking to former experience in these matters, and in the

the opinion of the Collector, it was right to remove them. The Tahsildar, was expressly directed to prevent all disturbance in the Pagoda, or the entry into it of those who were not entitled to the privilege.—

4. If the Tengalays behaved in the manner represented, it was owing to the supineness and inefficiency of the ex Tahsildar, whose Conduct, throughout the case, the Sub Collector has found reason to Condemn in the Strongest terms.—

5 The Sub Collector refused to call Para 4
for private accounts. The papers seized by the Tengalays are under Seal and have not yet been Examined. If they are only private Accounts and not those of Pagoda expenditure, they will not be received in evidence.—

6. The Tengalays have been Con: Para 5
victed of the affray and assault, and have been punished by fine.—

7. The Tengalays declare that the papers seized by them and those by which

which they intend to prove their Charge of malversation. As the Trustees have declined to state that they have lost any papers private or public, or that the seized papers belong to them either as private individuals or as Trustees, the Sub Collector has declined to part with them.—

Para 6 8. If in the Course of enquiry other accounts were declared to be necessary by the Complainants, the Collector sees no objection to the Sub Collector having called for them.

Para 7 9. An Officer of higher rank than the Tahsildar was not available at the time. No impediments have been thrown in the way of the due performance of the ex Festival.—

Para 9 10 Venkatasamayulu Chetti has to the best of the Sub Collector's recollection been 3 times to the Office, and that to obtain information regarding the new Police. The Sub Collector denies the truth of the Statement respecting

the

the credibility which would be attached by him to the assertions of the respective parties. He stated that he could not, even on oath, believe the Petitioner's statement that accounts known to be in his possession were not forthcoming, and therefore would not admit this excuse as a reason for delaying enquiry into the case but the Sub Collector never entertained the idea that the oath of one party was more entitled to credit than that of the other.

Para 10

11 The documents seized, and now in the Sub Collector's custody are said to contain numerous items of expenditure made by the Dharmakartahs of trust money for illegal purposes. He will not however, admit any which, after perusal, he does not consider to have a direct bearing on the charge of malversation. Of this intention which should relieve Petitioner of

of all fear of the result apprehended in this Para, he has been more than once informed. His excessive anxiety therefore, to prevent inspection of these documents has an unfavorable appearance.

Para 12

12. In an enquiry into the alleged mismanagement of Pagoda trusts, the Collector holds that it would be a farce to call upon the Trustees to render their accounts, and to suspend further proceedings until they were so rendered. The only plans likely to expose the true state of affairs, are either to seize the accounts at once, or to seal the rooms in which they are deposited, until they can be delivered in the presence of all the parties interested.

Para 13

13. Mr Ellis has passed no order in the case of the Pagoda to which reference is made. He submitted the petition to the Collector with an Endorsement to the effect that as the Complainants themselves

themselves proposed seeking a remedy by Civil action, certain papers as required by them and on the Collectors records should be furnished to them on requisition. The Deputy Collector moreover who had almost completed the enquiry into the case, had declared that the testimony before him was conflicting and unsatisfactory.—

14. The allegations regarding the Sub Collectors partiality are not in the opinion of the Collector worthy of further notice.—

Madras District
Collectors Kachcherri
Saidapet 9th October 1860

/Signed/ B. Cunliffe
Collector.—

Boards Endorsement on Pet.n No. 2615 of 1860

The Board have received no report from the Collector on this Petition and see no reason to question the

propriety
the propriety of all the Sub Collectors proceedings in the matter.—

Revenue Board Office
Fort St. George
16th October 1860.

/Signed/ W. Hudleston
Sub Secretary.—

/True Copies/

W Hudleston
Sub Secretary

Coupd C. Beadon
C.P. by Chinniah

To

The Honorable the Governor in Council

Fort Saint George

The humble Petition of Steekusi
tata Charry Durmacurta of the
Temple of Shree Davarajaswamiar
at Conjeveram.

Humbly Sheweth.

That your Petitioner is of the
Vadagalay Sect and heriditory trustee of the
said Pagoda. A Tengalay braminy named
Gomatum Rungacharry a servant of the Pagoda
has charged your Petitioner before the Sub
Collector of Madras with malversation of temple
property.

That upon the bare unsupported
statement of the complainant the Sub Collector
without any notice to your Petitioner ordered the
Tahsildar to seal several of the rooms of the
pagoda in which the jewelry, cloths accounts
Cash &c. are kept. This was accordingly done
in the absence of your Petitioner or of his Co-trustee
not only has the Tahsildar placed the Circar
Seal to those rooms but the Complainant was
also allowed to place his seals thereto.

The act of sealing being the only
intimation

Enclosure in Proceedings
of the Board of Revenue
to the Secretary to Govt.
Rev. Department dated 25th
October 1860 - No. 1890.

1860 Oct. 25

P 24/9 58

Endorsement from
the Collector of Madras
and Board of Revenue
on Petition No. 2615 of
1860.

intimation to your Petitioner that a Complaint had been preferred against him. He forthwith appeared before the Sub Collector and prayed that the complaint may be dismissed because the complainant had no locus standi or that security may be taken from him to be forfeited on failure to prove the charge. The Sub Collector as also the Collector declined to comply with your Petitioner's such prayers. He thereupon appealed to the Board of Revenue who held proceedings under date the 10th Ultimo. Copy of those was furnished to your Petitioner on the 18th during probably to delay occasioned by printing. From such order of the Board of Revenue your Petitioner begs to prefer this appeal to Government.

1st The first point which your Petitioner submits for the consideration and decision of Government is whether the complainant as a servant of the Pagoda and liable as such to dismissal can call the latter to account. Your Petitioner by your Petitioner submits that he cannot do so for obvious reasons. Every dissatisfied servant will then be eternally annoying the trustee and thus setting himself up above his master and render the position of a trustee most irksome (see decree of the Civil Court of Chingleput in Original Suit No 25 of 1852 herein enclosed. Decree of the Sudr Udalut in Appeal Suit No 37 of 1857 at page 29 of the Rulings; also para 11 of the Sudr Decree in Appeal Suit No 49 of 1856 page 258 of the same book) your Petitioner submits that the power of calling Durmakarthas to account rests

rests on the independent members of the community not being Pagoda servants.

2d Your Petitioner is the hereditary trustee and therefore assumed the trust by right. He is not elected by any body to whom he is necessarily and as a matter of course accountable. Such being his acknowledged position some foundation in the shape of a prima facie case must be laid before he could be called to answer the charge. In the present instance it is confessedly vague unspecific and general and unsupported by any evidence beyond the bare statement of the Complainant, whose hostility to your Petitioner is admitted on all hands.

3d As to the Jurisdiction of the Sub Collector to receive the present charge your Petitioner submits that he has none. Reg: 7 of 1817 is a special enactment and specially appoints the Collector as the Boards ex officio local agent: his assistants are not thereby empowered to exercise his authority under it. If so a Deputy Collector must necessarily exercise the same powers. But your Petitioner doubts if this can be so.

4th Regulation 7 of 1817 is in a retrospective telltale state. A Bill to rescind it is pending to become law. One of the reasons for transferring the powers of that Regulation to the special tribunals is the popular want of confidence in the proceedings of Collectors which must necessarily be ministerial. The repeated Orders of Government prohibit

prohibit the Revenue authorities from interfering in pagoda cases as much as possible. Cases of malversation can be fairly tried before Courts of Justice. Under these circumstances the present complaint ought not to be entertained. Accordingly the Collector and the Sub Collector have invariably refused to receive complaints of malversations against pagoda trustees preferred about the same time and under similar circumstances, while they have singled out your Petitioner as the unfortunate victim of sectarian animosity, and have subjected him to the annoyances of a trial.

5E. Tho' there is no express provision in any of the Regulations sanctioning the requisition of security from the complainant, yet they do not forbid such a course, and when the circumstances of a case like the present originating as it does in animosity and malice require it the presiding officer is fully authorised and would be as fully justified in calling for it. This course was adopted by the Sudr Court in the matter of a complaint of bribery preferred against the late Shenstadar of the Civil Court of Chittoor.

6E. Consequent upon this trial your Petitioner was called to produce certain of the accounts of the Pagoda and when he was delivering them to the Tasildar the prosecutor with a crowd of 30 or 40 people of the Tengalay sect forcibly violently and tumultuously rushed into the Pagoda assaulted your Petitioner his Co-trustee and some of the Pagoda Servants and turned them out and the Tasildar out. For 3 hours they ransacked the rooms and committed a most serious breach of the peace in defiance of all authority. This has led to the sealing of the rooms and to the stoppage of several festivals including the "Pavithra Vottchavum" an important annual festival usually celebrated for 7 days. The Tengalay party riotously collect themselves in mobs and defy your Petitioners authority in the management of the Pagoda so that he is absolutely denuded of his control and responsibility. Some time after the affray the prosecutor brought certain papers to the Tasildar and declared that he had taken them from the Pagoda and that they would serve to substantiate the charge. If his statements are true, he prefers an unfounded charge and to support it takes off papers by violence and asks to use them as evidence against your Petitioner. In the first instance the complainant called for the production of certain specific accounts which was complied

Complied with by the Sub Collector; while
these accounts were being delivered up he
insisted on the production of certain private
papers and Memorandums which the Sub Collector
refused to call for. after the affray he requested
that the papers which he admitted that he
illegally abstracted from the pagoda might
be used as evidence against your Petitioner - But
both the Collector and Sub Collector decided
once for all that they would not look into
them as they form no part of the Original
Requisitions and Ordered that these may be
taken off his hands and delivered to your
Petitioner. Yet scarcely a week has expired since
and now
such decision was given, the Sub Collector wants
to make use of these papers and has further
required the production of other accounts
which he originally refused to call for. Your
Petitioner submits that but for the hasty
unsettled and irregular proceedings
of the Sub Collector this serious breach
of the peace would not have occurred nor
the Journals stopped.

For all these reasons your Petitioner
prays that the Complaint may
be dismissed or such other relief
granted to your Petitioner as your
Excellency in Council may deem
fit -

N°. 2776 of 1860

The Board of Revenue
are requested to report what the Collector
or Subcollector has done in this case.—

For Saint Georges,
15th October 1860.

By Order
C Ellaste
Dy: Secy: to Govt.

Memo:

I have above briefly noticed the Statements contained in the Petition N° 2615 to the Board of Revenue.

I have further in connection with the subject of this petition to call your attention to the manner in which the Bundle of Papers of which the Petitioners demand possession came into my hands—

On the occasion of a petty affray taking place in the Pagoda at Conjeveram, certain Members of the Tengalay sect, who were the aggressors seized these papers from the hands of one of the Pagoda servants, and after causing the Tahsildar to seal these papers, kept them in their own possession; but in the Taluq

This alludes to some previous remarks, the main points of which I have entered in my Endorst.

H.

*The Tengalays who committed the affray and assault have been fined by the Joint Magistrate in sums varying from 30 to 5 Rs.

N°. 2776 of 1860.
Rec'd 18 Octr 1860
Read 3 enclosures
Appealing from the decision of the Collector of the 15th Sept. 1860 P.P. Conjeveram, whereby his decision of 13th Sept. with the Tahsildar's Report, Proceedings, Petitions, Receipts &c. returned to Petitioners, Dropped, Drops
Received Petitioners Appeal &c.

Salay Cutcherry until they came upon Summons, before me to answer the charge of affray, when they delivered these papers into my hands.

My reasons for not giving these papers into the hands of the Pagoda Dhurmakurtahs, from whose custody, (from the Defendants depositions) they would appear to have been taken are fully shewn in the accompanying Endorsement.

My reason was, briefly, that during the trial of the case of affray, the Dhurmakurtahs the Prosecutors would not state that they had lost, from the Pagoda, this bundle or any other property, and I declined to give over the bundle, unless they made an application to the effect that it belonged to them, either as Trustees of the Pagoda or as private Individuals.

On the other hand the Tengalay party who charge the Dhurmakurtahs with Malversation

Enclosure I

Malversation have deposed on oath that the papers contained in this bundle are essential to the substantiation of these charges as containing entries of items of the malversation, such as bribes to Government servants, to witnesses, &c. & sums appropriated by the Dhurmakurtahs themselves

The Dhurmakurtahs have entered a Protest against the Papers contained in this bundle being admitted in evidence in any enquiry held regarding Malversation under Regn VII 1817, & Regn IX - 1822 -

The Grounds of Protest are noted marginally

It is upon the 3rd Ground of objection that I request a legal opinion, as to whether the fact, that the papers were illegally obtained (and this is fully acknowledged by the Tengalai dependants in the case of affray) is a bar to

1st That such papers proposing to be Memoranda of Accounts were never rendered to any one.

2nd That the simple keeping or possession of accounts without the same having been rendered can be no evidence of any thing & can form the bases of no Criminal or other proceeding whatever may be the nature of such papers and whether correct or incorrect, perfect or imperfect.

3rd That such papers were taken possession of by

4th That such papers have & can have no binding effect or operation upon or against any one

that may be obtained thro' the Bd of Revenue

to their reception by me as Evidence in a Case tried under Regn IX. 1822

The other grounds of objection fall within the ordinary rules of Evidence, and can be disposed of when the papers have been admitted, & after their contents are examined.

I would wish to take this opportunity of laying the exact nature of the charges of Malversation before the Board of Revenue with a view to eliciting an authoritative opinion, now that a more detailed account of the subject is before them, as to whether this case is one which should have been taken cognizance of, by the Revenue authorities or referred to a Civil Court

The decision as to the course to be pursued, must I submit be determined by the nature of the charges as the truth of these charges can only be ascertained after the investigation has been held.

The charges brought by Gomatum Rungacharry and Sheroovengada charry Meerasidars of Davaraja-swamy Pagoda of the Tengalai sect against the Dhurmakur-tas of the said Pagoda, Kristna Jatacharry & Kristnaswamy Jatacharry of the Vadagalai sect are five, as stated in the Margin.

The accusers name certain documents & Witnesses by which they propose to prove these charges, reserving to themselves to furnish a further list of witnesses, as soon as the investigation has formally commenced.

A deposition on oath has been taken from the prosecutor, but no answer has been taken from the Defendants. Except in endeavouring to obtain from the Dhurmakurtas the accounts, by which the accusers propose to substantiate their charges, no progress has

X
1st That they have made away with 3000 Rs out of the sum of 5500 Rs allotted for the celebration of the annual festival of the Pagoda for the year 1860.
2d That out of 10000 Rs saving from Monies allotted for festivals at the Pagoda, they have paid 4000 Rs to T Ritchie Esqr Barrister at Law and appropriated the remainder for their own use and benefit.
3d That they have made away with certain Silver obtained by melting Silver Cloths belonging to the Pagoda.
4th That they have made away with certain Pagoda Jewels not in ordinary use for the God.
5th That Monies which ought to be in the Cash Chest of the Pagoda according to the accounts are missing

has been made in the investigation of these charges

A greater portion of the accounts are now in my custody, and under seal, but it has been most difficult to obtain from the Dhurmakurtahs the papers required; and the Taluq Officials, have created as much delay in carrying out my orders for the production of these accounts as the Defendants themselves.

The case is therefore now ready for hearing, and can either be investigated by me, or be referred to a Civil Court, at the option of the Board; but in the latter case I would suggest that the papers & accounts should remain in official custody until ~ called for by the Civil Court

I regret the length of this Memorandum, but the case is one which, as you are aware, creates an intense interest not only in

in Conjeveram itself, but throughout the Madras District and in Madras itself. I am therefore most anxious that the Board should have all the circumstances connected with the case and with my proceedings therein, fairly before them, and I have therefore annexed for your information the depositions taken from the informants, and all the more important orders passed by me.

M Ellis
Jr.

Vol. A. 1860.

Enclosure - No I.

Endorsement on the Petition of Stree Kristna Tata Charry Churchwarden of the Temple of Stree Davarajaswamy at Conjeveram.

A certain bundle said to contain documents, is claimed by Stree Kristna Tatacharry Church-warden of the Temple of Stree Davarajaswamy at Conjeveram.

This bundle is in the custody of the Joint Magistrate, having been delivered to him by the Defendants in a case of affray and assault.

The Defendants allege that papers, contained in this bundle, form part of the Pagoda Accounts, and that by these papers, acts of malversation, are clearly proved, against the Trustees of the Pagoda, which acts of malversation have been brought to the notice of the Renenue authorities, and are the subject of an investigation already commenced.

They further state that the seizure of these papers, was to prevent these accounts which are a public record being made away with.

On the other hand, the present applicant, who was Prosecutor in the case of

affray

affray and assault, during the investigation of the said case, made no claim to the bundle, nor did he, in answer to the question of the Joint Magistrate, acknowledge that any property had been removed from the Pagoda or from his Custody-

If the applicant will come forward and depose on oath that the bundle contains Pagoda accounts, or private papers and accounts, such claim is susceptible of proof, and will receive due consideration. It would be unsafe in a Magistrate to dispose of property solely on the admission of a party who has illegally obtained possession thereof. He might be giving possession of such property to parties who have no claim thereto-

The simple & natural course for the applicant to follow, is to state that the bundle in the Custody of the Joint Magistrate, is his property either as a Trustee of the Pagoda or as a private individual and in the absence of such declaration, the Joint Magistrate declines to comply with the application.

29th Sept. 1860.

H. Maclehose

1 Pagoda receipts and disbursement Accounts known as Davustanam Jamakhurch Chitta Modalana from Fusly 1260 to 1269 both an paper & Cadjan-

2 Accounts of receipts of Jewels and Cloths, and the receipts given by Dhurmakurtahs to Government (when the Pagoda was given over)

3 Receipts and disbursements on account of annual Grand Festival of Fusly 1269- Chitta Ugranatil Shelavana Kurupu Kanakkugul (Memoranda)

4 Davustana List of expenditure- Jusdik Zabita-

These are the accounts that the Prosecutor Gomatum Rungacharry requires to prove his case and which the Tahsildar was ordered to send sealed as explained in Said dated On receipt of this Said, the Tahsildar will summon the Dhurmakurtahs and Gomatam Rungacharry and call upon the Dhurmakurtahs to produce the public accounts four in number as described above-

If the Dhurmakurtahs refuse to comply at

at once with this requisition, the Tahsildar will transfer all the Accounts now in the Treasure room into the Jewel room, which will be sealed by both parties and report the same at once.

If the Dhurmakurtahs produce some of these Accounts and declare the others not to have been prepared or to have been lost, the Tahsildar will record the same and send such Accounts as the Dhurmakurtahs do produce sending the answer of the Dhurmakurtahs regarding the necessary Accounts. The Tahsildar will seal the Accounts

and allow the Dhurmakurtahs to clear the Treasure room if they wish it The only room which will remain to be guarded will be the Jewel room into which the Dhurmakurtahs, may remove their Cashchest if they wish it. The Guard will remain night & day over the Jewel room. 1 Government Peon & 2 Men selected by Gomatum Rungacharry being in Guard & the peon being relieved every two hours.

The Dhurmakurtahs are warned that if they say that certain Accounts are lost or do not exist, this will be taken into Account, at the investigation of the Charges brought against them.

R Ellis. Sr

The Tahsildar is informed that on Monday next one or more of the Dhurmakurtahs of the Pagoda will be present to deliver over to the Tahsildar the Accounts named in the Sub Collector's Tahkid dated The Tahsildar will in the presence of the Dhurmakarta and of Gomatum Rungacharry and Therumala Charry the petitioners, who have brought the Charges of Malversation against the Dhurmakurtahs carefully count over these Accounts and enclose a list thereof with them. They will then be carefully packed in paper & Cloth, & sealed 1st by the Tahsildar. 2d by the Dhurmakurtah & 3d by Gomatum Rungacharry & Therumala charry, and sent in the custody of two peons to the Sub Collector at Saidapet. The Dhurmakurtah and Gomatum Rungacharry may if they please accompany the Accounts.

The Dhurmakarta will point out to the Tahsildar the room in which the Pagoda Jewels are kept, and this room will be locked, and the Tahsildar will affix his seal on a band placed across the

the lock, the Dhurmakurtah will also affix his seal, and Gomatum — Rungacharry.

All the Jewels not absolutely necessary for the use of the God will be placed in this room and a list of the Jewels for the use of the God left out of the room, will be made by the Tahsildar, and signed by the Dhurmakurta, and this list will be countersigned by Gomatum Rungacharry. The Dhurmakurta will also deliver his list of the Jewels contained in the Jewel Room to be placed among the accounts described in Para 1.-

R.S. Ms

From the report of the Tahsildar it would appear that received several persons belonging to the Tenkalai sect at Conjeveram, made a riot in the Stri Davarajaswamiar Pagoda, while the Tahsildar was carrying out the orders contained in Takid dated

They were, as the Tahsildar reports, guilty of an assault and obstructed him in the performance of his duty

They availed themselves of the confusion caused by their riotous proceedings, to seize certain papers belonging to the Pagoda which they afterwards brought to the Tahsildar, and made him affix his seal thereto, and keep these papers in the Cutcherry.

Summons are hereby sent summoning these parties. Warrants are also sent to be used by the Tahsildar in case the parties refuse to obey the summons. The Witnesses mentioned must also be forwarded without delay.

The Tahsildar will in no account keep in his Cutcherry papers so improperly obtained, he will at once return these papers to the Dhurmakurtahs of the Pagoda, from whose custody they were removed.

If

If the parties refuse to return these papers, they will be severely punished for their Trespass, but they are no account to remain under pretence of Guarding these papers in the Tahsildar's Cutcherry, and if they refuse to deliver the papers, the parties so refusing should be arrested, and sent to the Joint Magistrate with the records that they have taken from the Pagoda.

The orders contained in Takid dated will be fully carried out, and the Treasure room, made vacant for the approaching festival, and an additional force of Police is herewith sent to enable the Tahsildar to carry out these orders.

Upon any rioting or attempt at rioting taking place, the Tahsildar will at once arrest those disturbing the public peace, & send them in custody to the Joint Magistrate.

Further, the Tahsildar will, with the aid of the Police, prevent any violation of the usual customs as regards the above Pagoda No one not a Dhurmakartah or their servant is to remain in the Pagoda at any unusual time, nor is any one, not a Dhurmakartah, or one of the servants employed by him to enter any part of the Pagoda, not usually entered by Worshippers at the Pagoda.

Saidapet
Aug 31 - 1860

R Ellis
"

To
Boojung Rao
Tahsildar of Karungooly.

Ramaswamy Iyer the Tahsildar of Conjeveram, has most grossly delayed executing the Sub Collector's orders in connection with a dispute, which has arisen between the Vadakalai and Tengalai sects at Conjeveram. The orders of the Sub Collector, were simple and easy of execution, and the delay of the Tahsildar has caused what might have proved a serious riot.

You are therefore directed on the receipt of this order to proceed forthwith to Conjeveram, and assume charge of that Taluq from Ramaswamy Iyer, who will at once come into Saidapet when his evidence is required. Upon arriving at Conjeveram and after you have received charge you will direct the Tahsildar to come at once to Saidapet.

You will give charge of your Taluq temporarily to your Sheristadar. Immediately upon your arrival at Conjeveram, you will proceed to execute the orders which have already

already been sent to the Tahsildar of Conjeveram regarding the Accounts connected with the Stri Davarajaswamy Pagoda, which he was ordered to send to the Huzur. The Tahsildar has made no report on the subject. It is therefore uncertain whether a portion of these Accounts have been received by the Tahsildar, and are in his Cutcherry or not; but it is believed that they are under seal in the Pagoda but in the Dhurmakurtah's Custody. These Accounts, are to be transmitted to me forthwith under your seal, and you will obtain from Kristnasawmy Tatacharry who has been left in charge of the Pagoda, such of the Accounts called for as have not yet been delivered to the Tahsildar. Should the party in charge of the Pagoda, refuse to give the Accounts required by you or should he wilfully absent himself from the Pagoda, you will at once execute the accompanying Warrant of Search for these Accounts. A detailed list of these Accounts is subjoined.

Should these Accounts be given up by Kistnasawmy Tatacharry, it will not be necessary to give effect to this Warrant of Search, and you will after affixing your

seal transmit the Accounts to me.

You will report every day by post the progress you have made in the execution of these orders.

The previous orders sent to Ramaswamy Iyer are dated 14th July, 19th July, 27th July, 31st July, 6th August, 16th August, 23rd August, 31st August & the 6th September.

The Accounts required are as follows.

Accounts of Davarajaswami Pagoda at Conjeveram.

1 The Accounts known as The Davustana Jamakhurch Chitta modalana, from Fusly 1260 - 1269

2 Accounts of Receipts of Jewels & Cloths and the receipts regarding these given by the Dhurmakurtas to Government when the Pagoda was given over.

3 Receipts and disbursements on account of annual Grand Festival of Fusly 1269 "Chitta Ugranatil Shelavana Kurupu Kanakugul"

4 Davustanum List of expenditure - "Tasdik Zabita"

5 Tatacharry Jamakhurch for 10 Faslies 1260 - 1269.

6 Davustana Shrotria Gramungal Jamakhurch Chittagul 1260 - 1269

This work is to be performed by you without any delay, and with the strictest impartiality - Any partiality shewn by you to either of the contending sects, will be most seriously punished

M Ellis
Pr

13 July 1860

Before the Sub Collector of Madura

Deposition given on Solemn Affirmation as authorized by the Act, by Rangachari, son of Rangavaria Mannaru, of Brahmin Caste, Vishnu sect, aged 50 years, a Cultivator by profession & living in Chinna Conjeveram

Q. You have preferred a Complaint before me against the Sum of Rs 550 - 8 - 0 for the celebration of the festival of Devarajaswamy in Chinna Conjeveram for the year 1860, the Church Wardens are Krishna Tata Chari & Venkatarama Tata Chari assisted Rs 3000 - Pleader are the Pattavalars And what have you to say to this?

A. I cannot give details before an inspection of the Accounts. As the Servants employed in the Pagoda, namely Raganatha Rao, Ramu Rao, Anantharaya Pillai and Devada Pillai, Accountants and two other Karnams whom I do not know, say that the Dharma Kartas did embezzle, I will be prosecuted for it

Thus

they should be sent for at once and examined together with the Accounts of the Festival ~~was~~ lying in the Pagoda. I can prove the Case by several others than those (above named).

2. How do you know that Rs 5500 were set apart for the celebration of the Festival?

A. In the Dittams of Mr Love and of Mr. McLean, the sum appointed for the Festival is Rs 4,500. Besides this, the Raja of Venkatagiri Continues paying 1000 Rs for the Ganesa Festival. I say the total was Rs 5,500.

2. You say that of the sum of Rs 10,000 taken from the Money set apart for the Festivals since the time the Pagoda was transferred to Dharma Kartas, 4000 Rs were given to Mr A. M. Ritchie, Barrister, and the rest appropriated to their own benefit. What are the particulars

4

Connected with this, and how can you establish it?

A. I know of this as I heard the Pagoda servants aforesaid say that in the monthly Chitta amount the balance came (to this sum), as the Dharma Kartas had now instituted for the amount of Rs 4000, against Mr Ritchie in the Supreme Court. I was as I was an eye witness of the disputes respecting this money between the said Dharma Kartas and their Counsels and their Counsels Mr Ritchie.

2. You say that the Dharma Kartas melted certain silver laced Cloths or silver plates used for the idol and carried away the same along with some more silver melted and stamped in the Pagoda. How do you know this and in what manner can you prove it?

A. I know this because the Amin, Rajamanha Rao told me and

and because I have seen the disputes respecting this between the Dharmakartas & their Cousins. I can prove them by the Accounts mentioned to me by the Amin, and by persons who were present when the matter took place in the Pagoda.

2. Particularize the Accounts mentioned by you by the Amin?

A. 1. The receipt book taken by the Government for the Plate and Clothes & 2. an Annual Account with Numbers regarding the Receipts & Purchase of Cloths.

2. Who are the witnesses that would speak about the said fact & what are their names?

A. I will not now give their names openly. I will myself cite them at the time of the Examination.

2. You have said that certain broken Jewels gold and those set with stones not fit for use and secured in a box were usurped by the said Dharmakartas. How do you know this and how can you prove it?

A. I learned this from the Archaka Gee Rangarajia Patter & the Pooja Doing Poojaries & the Head Sirdar Ramaiya Ayangar, the Custodian of Jewels. I can prove this also by the receipt taken by the Government.

2. You have said further that the balances which should be in the box as per the Credit & Debit Accounts of the Pagoda is not there. How do you know this & how can you prove it?

A. I knew this from Annie Raghunadha Rao and as the Salaries of the Servants were not regularly paid. I can prove it from the Pagoda Accounts relating to this. Moreover it will be evident by

the rooms containing Plates
Jewels and Cash be sealed &
then Examined -

The Amounts by which the
5 Panik in this case can be
mulct are separately kept in
the Entrance room in the Pradat=
Chaudie of Vadantal Chavar, the
the room where the Katcheri is held,
in the room of Vasacaren & in the
Stone room - If there places
shall at once be sealed and
the Amounts aforesaid sent
for & Examined, the Case which
would be established, besides
I can prove it by Witnesses.

2. Particularize the Accounts
aforesaid -

A. Accounts in Paper and Cadjans
shewing the Credits & Debits of the
Pagoda from Fasli 1260 to 69 -
Accounts shewing the receipt of
Jewels and Cloths & the receipt

obtained by the
of Government when delivering
them to the Dharma Kartas.
Chitta shewing the Expenditure
of the Festivals in Fasli 1269.
Corelpin Amount for what was
spent from the Store room -
Loaded by the Tandrik Sapita of
the Pagoda -
(Signed) Ranga Chari

Salem 4th Aug 16 Aug 1869
(Sgd) A. J. Ellis
A.C.

(True Translation)
Arbuthnot
M.

1st Augt 1860

Before the Sub Collector of Madras -

Deposition given on Solemn Affirmation as authorized in the Act, by Kovatan Ranga Chari son of Ranga Iramanujam of Vishnu Chari Cast, aged 52 years & living in Conjeveram Cast, aged 52 years & living in Conjeveram

2. You have preferred a Complaint against the Church wardens of the Pagoda of Devaraja Perumal in Conjeveram to say that they embezzled certain items of property, and you have produced in Court Katcheri a Bundle containing certain Accounts. The Court for this Shareholders Curtas request that this Bundle may be put in possession of the said Accounts. Have you any objection to the delivery accordingly of the said Bundle to them?

A. The said Accounts alone are the main proofs of my Complaint and by those Accounts only can the Embezzlement by them of Rs 90000 be

established Therefore those Accounts must not be given to them — Those Amounts contain particulars as to the items given as bribes to (Government) Servants & witnesses and as to those appropriated to their own benefits. If those Amounts should be given to the Dhoomas Carters, they will conceal them with a view the case against them may not be moved — Hence they should not be given away —

(Signed) K. Rangachari

Salem 4th Dec

(Signed) R. P. Ellis.

J. M.

Two Travancore Cochin Motteahs. Vt.

10th September 1864

Before the Sub Collector of Madras.

Deposition given on Solemn Affirmation as authorized in the Act, by Komatam Ranga Chari son of Ranga Iyanna, of Vishnu sect, aged 50 years and residing at Conjeeveram.

2. In connection with your Complaint against the Church wardens of the Pagoda of Devaraja Swami of Chennia Conjeeveram, Are there any Accounts Concealed in the said Pagoda? If so Particularize them?

I know that Account relating to the Incomes & Expenditure of Tatachari and certain Chittas shewing the debit & credits for 10 Fullies of the Pagoda Shotriam Villages as well as some other Amounts of which I cannot give any particular Amount are kept in an "Iruppa" box and Concealed in the Pagoda.

3. Have the Amounts referred to in your former deposition, namely a Chittas &c relating to the Income & Expenditure

Deposition of
V. Ranga Chari
Complainant &c.

Sub Mo 3
Sub Collector's Office

of the Pagoda from Fusly 1260 to
1269; the remits granted by the Pagoda
Dannakaritas; the amount showing
the Ornaments delivered, the
Amount showing the disbursement of
the Fusli 1269, the receipt given by the
that of Insects (surplus funds), been
delivered to the Trustees?

A. The Amounts for the Fusly
10 Fusli and those of Ornaments
were delivered to the Trustees the
last mentioned. Q. The Amount of in-
come & disbursement on account of the
Festival for Fusly 1269, were also
delivered.-

(signed) Ranjit Kuruvi

Solemnly affirmed

(by) R. G. Ellis.

J.C.

True Translation
Ellis
Int.

In Con. 10th October 1860, No. 5,121.

From B. CUNLIFFE, Esq., Collector of MADRAS,
dated Saidapet, 9th October 1860, No. 407.

As directed by the Board, I have noticed by endorsement the Petition No. 2,615 of 1860, presented by Srikrushna Tata Chari.

2. On the same subject, I beg to forward a Memorandum and its enclosures drawn up by the Sub-Collector, and a consideration of these papers will give the Board a fair idea of the enquiry as far as it has proceeded, and more especially with respect to the bundle of papers now in the custody of the Sub-Collector, the restoration of which petitioner so greatly desires, and against the use of which in evidence he so strongly protests.

3. As the petitioner against whom the charge of malversation has been brought is the high priest of the sect of the Vadahalays, among whom are to be found many influential public servants both at the presidency itself and in this district, the pending enquiry excites, as Mr. Ellis observes, "intense interest" among the native community.

4. The Sub-Collector is well aware of the laborious nature of the enquiry, which should in his opinion be instituted in justice to the parties complaining, and of the various motives which will be ascribed to him by the followers of the two principals, whose conduct as trustees is to come under examination; but he will not shrink for these reasons from the performance of that which he conceives to be his duty, though he would be glad to receive and be guided by the opinion of the Board on the justice and necessity, as supposed by him, of the case being enquired into by the revenue authorities who are at present the constituted guardians of the interests of these native religious institutions.

5. The packet of papers was, strictly speaking, illegally obtained, that is, it was snatched by the complainants when they saw that there was no chance of its being regularly delivered up, and they refused to part with it, except into the hands of the Sub-Collector, knowing well that it would not be re-produced if given up in any other quarter.

6. I am afraid that if, in enquiries into alleged pagoda frauds, we call upon the trustees to render accounts and receive in evidence only such papers as may be said to have come from legal custody, and declare that the parties on their trial can be responsible only for accounts tendered by themselves, such enquiries will be useless and an object of ridicule with all concerned.

7. It would much assist us if the Board (if of opinion that the case should proceed), would declare if papers thus obtained could be used on the trial, even should it be intended to put aside all documents which are not accounts of expenditure. That they could have been obtained in any other manner, I do not believe, and it is certain from the strenuous efforts made to suppress them that they contain information of the last importance to the pagoda managers.

8. I will only add a word upon the statement in the petition, that I declined to interfere in Mr. Ellis' proceedings.

9. As an appeal, which I have invariably received and disposed of, lies to me from the covenanted and other officers associated with me in the administration of this district, I never interfere with the discharge of their current duties, and I should be the less inclined to do so in the instance of an officer of Mr. Ellis' standing and experience in a matter occurring in a portion of the district under his own immediate charge, and in which he had equal jurisdiction with myself. He thought it right to take up the case under the discretion vested in him by the Board, and it was not, I think, for me to prohibit his doing so, though I should have been prepared on appeal to have supervised his proceedings.

Enc. 1.—Memorandum of the Sub-Collector of Madras.

Exd. J. Tulloch.

No. 4,671.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 10th October 1860.

Read letter from the Collector of Madras, dated 9th October 1860, No. 407, submitting for the Board's consideration and orders a Memorandum with enclosures from the Sub-Collector on the subject of an inquiry commenced before him under Regulation VII of 1817, relating to the conduct of the Dhurmakurta of one of the Pagodas at Conjeveram.

(In Cons., 10th October 1860, No. 5,121.)

1. The Board of Revenue are of opinion that under the circumstances shown by the above papers no further inquiry should be held in this case under Regulation VII of 1817, but that the parties preferring the complaint should be referred to the Civil Courts.

2. The orders of Government circulated with the Board's Proceedings of 14th August 1848, direct that the local Revenue authorities should refrain from interference under that Regulation, "unless where it is urgently and obviously demanded," and no such pressing necessity appears from the inquiry which has been held to exist in this case.

3. The charges laid by the Plaintiffs are very vague, and that they are in possession of but little evidence to support them is manifest from the violent course they adopted on the recent occasion on which, according to their own account, they obtained the bundle of papers which are now under the seal of the Sub-Collector, and which they state will furnish the principal proof of malversation.

4. It is very undesirable that the indulgence of party animosity should be facilitated by the prolongation of the investigation contemplated by Regulation VII of 1817, especially as by the decision of the Sudder Udalut in Special Appeal No. 140 of 1857, the Courts are no longer closed to such suits.

5. The bundle of papers now under the seal of the Sub-Collector will be retained by the Collector in safe custody, until he is required by a competent authority to deliver it up.

(A true Extract.)

(Signed) W. HUDLESTON,
Sub-Secretary.

To B. Cunliffe, Esq., Collector of Madras.

Exd. J. Wright.

No. 4,890.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 25th October 1860.

Board's No. 221 of 1860.

Read the Endorsement of Government on Petition No. 2,776 of 1860, from the Durmakurta of the Devarajaswami Pagoda at Conjeveram, calling on the Board to report what has been done in the case.

Endorsement of Collector of Madras, dated 9th October 1860, on Petition No. 2,615 of 1860.
No. of Board on do.
From Collector of Madras to Board, dated 9th, in Cons., 10th October 1860, No. 5,121.
Board's Proceedings, No. 4,671, dated 10th October 1860.

Ordered that the papers noted in the margin be submitted to Government as furnishing in full the information they require.

(A true Extract.)

Sub-Secretary.

To J. D. Bourdillon, Esq., Secretary to Government, R. D.

Durmakarta

Exd. J. Wright.

No 2469

Proceedings of the
Board of Revenue

Dated 25th October 1860.
Dept. 1st November
Rec'd.

Subject Report on the petition of the Dharmakarta of the Devarajaswami Pagoda at Conjeveram praying for the grant of certain lands.

No 4890

Submitting certain papers as furnishing in full the information required by Government on Petn. No. 2776 of 1860 from the Dharmakarta of the Devarajaswami Pagoda at Conjeveram.

No 172 & 173.

No 2102.

Recorded

Taken out of Record

To Stamp Office