

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No.	457	~~Press~~ Mis.
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Not to be folded or roughly handled

N^o 142

From Clement Dale Esquire Government Pleader in the Court of Sudder Adalat
To The Right Honorable The Secretary of State for India in Council.

Madras 7 August 1861

Sir

Para 1 I do myself the honor of informing you that the Registrar of the Court of Sudder Adalat at this Presidency has forwarded to the Registrar of Her Majesty's Privy Council Whitehall the papers relating to an appeal preferred to Her Majesty in Council on behalf of The Collector of Maissour against a further Decree pronounced by the Court of Sudder Adalat in the cross appeal Suits N^{os} 103 and 136 of 1857.

2

Letter from Govt. Madras to the
Secretary of State for India in Council
24th Decem^r 1859 N^o 1574.

A Decree in these Suits was formerly pronounced by the Sudder on the 8th of May 1858, which was appealed against; and regarding which I have the honor to address you in my letter marginally noted.

3

On the hearing of that appeal, The Lords of the Judicial Committee of the Privy Council were of opinion that the Decree of the Sudder Adalat could not stand; but as the manner in which it ought to be varied depended on the decision of the questions raised, on none of which had the Sudder adjudicated, and on some of which their Lordships intimated further evidence should be taken, their Lordships did not feel they could safely do more than remit the Appeal to the Sudder for further hearing, with a declaration that the general right of Government

by

by Echeat (Subject or not Subject to a trial) had been
Established.

4 Immediately after the Order of Her Majesty in
Council reached the Sudder the Cases were posted for
hearing and Saturday the 20th of October 1860 was fixed for
the purpose.

5 After so decided an Expression of opinion as
that given by the Lords of the Judicial Committee, I
inclined to the opinion that the Judges of the Sudder would
probably remand the Suit to the Civil Court for the
purpose of that Court taking the further evidence indicated
and with the view of having the record (which had been
pronounced by the highest Judicial authority in the Realm
to be in a defective and unsatisfactory state) put into
a complete shape, but as it is not possible to form any
idea of the course which the Sudder will take, I deemed
it right to prepare myself for the argument; and on
the case coming on, the Judges, referring to the judgment
of the Lords of the Judicial Committee, intimated that
they did not experience any such difficulty as their Lordships
had expressed, but that in their opinion the case was in
a sufficiently complete shape to enable them to deal with
it on its merits and from what fell during a conversation
that ensued it was very evident that the feeling of the
Judges was favorable to the Defendant and adverse to
Government; I submitted that the case could ^{not} be satisfactorily
disposed of as the record then stood; while the Counsel
for the Defendant vehemently protested against any
further

further evidence being called for, submitting that the record
was complete as it stood, that the Lords of the Judicial
Committee had taken an erroneous view of the record, and
prayed the Court to proceed at once.

6 In reply to a question from the Court, I explained
that in deference to the suggestion made by the Lords of
the Judicial Committee, in the last part of their order,
this Government had lost no time in referring the matter
to the Board of Revenue and Collector of Musulipatam for
the purpose of the latter ascertaining and reporting to Government
what was due to the Respondent (the Defendant in C. S.) for
the advances actually made. I read to the Judges the order of
Government and shewed their Honors, that inasmuch as
your Despatch covering the papers, had not been received
by this Government until the beginning of that month
(October 1860) there had not been time to make the enquiry,
and on that ground and as an additional reason I submitted
the case should not be then brought in; the more so as I
could state, that Government were quite disposed to
comply with the suggestion made by their Lordships
in the most liberal spirit; the Defendants Counsel however
interrupted me by saying their client had petitioned
Government, but had not received a reply, that he
would not entertain any further correspondence or
communication with Government on the subject,
neither would he accept of any compromise or of any
sum of money, he was entitled to the Zemindary,
and the Zemindary he would have - and he wished
the case to be then proceeded with, and to have their Honors Deem

The

7 The Court decided on complying with the Defendants request, and to proceed to a Hearing of the Case at once.

8 I have entered into the explanation contained in the 5th and 6th paras with reference to the 10th para of the sudder Decree. In passing that Decree (which was not issued till more than a month after the argument) it must have escaped the recollection of their Honours the Judges what I had stated; The Defendant undoubtedly wished that the Suit should proceed and on his wish they proceeded.

9 The Court then called upon me to proceed, whereupon the Counsel for the Defendant claimed the right to begin with the right of reply, because their Appeal was preferred first; - I opposed this, and claimed the right to commence because the Collector had the most to complain of in the Decree appealed against; also because the issue was "Escheat or no Escheat" the affirmative of which was on the Collector and because the Collector was the Plaintiff in the original Suit; The Court however took the same view as Defendants Counsel and directed them to begin.

10 By their Decree dated the 22nd of October 1860 the Court of Sudder Adalat reversed the Decree of the Civil Court and dismissed the Suit with Costs.

11 On this Case I reported to this Government in my letter dated the 12th of March 1861 N. 49, in which I had the honor to advise that an appeal from this Decree, on behalf of the Collector of Masulipatam should be

Order of the Madras Government
5th April 1861 N. 759
Revenue Department

be preferred to Her Majesty in Council - The appeal has been preferred under the order of this Government as notified in the proceedings of the Madras Government of the date and number noted in the margin.

12. \ Arr. Reasons which influenced me in advising an appeal was the decided expression of opinion by the Lords of the Judicial Committee that the present record did not afford the materials requisite for the satisfactory decision of some of the various questions raised in the Suit; As I have previously stated their Honours the Judges of the Sudder Adalat have not felt any of the difficulties entertained by the Lords of the Judicial Committee; but have undertaken to decide this very important case; - Enlarging questions of great public interest and a record which the highest Judicial authority has pronounced imperfect on points of (as it appears to me) vital importance to a due consideration of the true merits of the Case. - Other reasons have however also influenced me in arriving at the conclusion that an appeal to Her Majesty should be preferred; one of which is, that, (quite independent of any questions as regards the justice or injustice of the amount claimed by the Defendant to be due to him) questions of law were raised by the judgment of the sudder Court which are of great public importance, and if this judgment be permitted to stand unimpugned, our great fundamental principle of Hindu Law, as hitherto acknowledged by all Courts, and acted upon by Hindoos as clear and unquestionable Law, will be placed in doubt, and a door may be thereby be opened; whereby great frauds may be practised, through the ignorance and weakness of Hindu Widows, to the prejudice

13 prejudice of the Heirs of their deceased Husbands. -
In my former communication to you, I did not
enter into the merits of the case, on the present occasion
however I consider it will be convenient to submit
for the consideration of yourself in council and your
Law advisers, a short précis of the case; the more especially
as it is evident that an erroneous and, as far as I can
judge, an unfavorable impression of its merits had arisen
in the minds of the Lords of the Judicial Committee.

14 The object of the suit was to recover from the
Defendant the Zemindary of Visumnapetta in the Collecto-
rate of Masulipatam; The facts are as follows; The
Zemindary formerly belonged to Varegonola Ramanapa;
He died so far back as 1810 without leaving any son,
natural or adopted, or any collateral Heirs - He
had one wife named Sitchmedavamah, who
survived him and for want of lineal Heirs of her husband
became entitled under Hindu Law, to the Zemindary
for her life - From the death of the Husband therefore
the widow retained possession of the Zemindary - The
Father of the Defendant was a near relative of hers -
As is customary with Hindu Females of rank she
necessarily led a secluded life, not appearing in
public, and on her becoming a Widow the Defendant's
Father as her near relative acted as her Manager or
Agent until his death - so far as has been proved, or has
transpired, nothing arose which brought the Zemindary
to the notice of Government, or its officers until 1830;
The Rent having been in the meantime paid to Government

At

It does not appear by the proceedings in this suit, what ~~the~~
the clear net annual Revenue of the Zemindary is, after
deducting the Rent, ~~but during the~~ but during the
hearing in the Sudder in October last it was stated
by the Defendant's Counsel to be considerable; I think between
7 and 8,000 Rupees. In 1830 application was made by the Widow
to the Collector of Masulipatam to register a Deed of Transfer
from herself to the grandson of her Brother (the Defendant's
Father I believe). The Collector declined to doing this,
conceiving a transfer of her late Husband's Estate by a
Hindu Widow to her Refugnant to Hindu Law, and
Especially in the case presented to him as by the Document
which he was asked to register the Widow proposed to
transfer her late Husband's property into her own family,
to the prejudice of the next heirs of her Husband, who
under Hindu Law would be entitled on her death
to succeed to the Estate. The question whether a Widow
could so transfer was referred to the Sudder Court. The
Judges whereof as then constituted, had no hesitation
in deciding the question in the negative - It is to be
here particularly noticed as an important fact, that
no mention was made in that Deed of any alleged
Debt being then owing from the Widow or her late
Husband to the proposed Grantee; This is a fact,
which ought to be prominently borne in mind, when
considering the real merits of the case - So far as
Government or its officers are informed, nothing more
was done till 1838 April 20, when, the Defendant
alleges, accounts were adjusted between his Father
and

and this Widow, and the latter acknowledged herself
as indebted to the Defendants Father in the large sum
of Rupees 48614-13-6; For seeing this with interest,
she was then, as is alleged, induced to execute to the
Defendants Father a bond, and to mortgage to him 12
out of the 14 Villages constituting the Geminclary; The alleged
debt was to be paid by instalments, and in default of
any one instalment, the whole was to be recoverable.
A transaction of this nature would be viewed by
an English Court of Equity with very grave suspicion.
But to proceed; The Defendants Father continued to act
as the Widow's agent; and default was made in
payment of the first instalment; whereupon, and in
the same year, the Defendants Father instituted a suit
against the Widow which was No. 18 of 1838; To this
suit, this Widow (included as Hindu Females are
and the client of the Plaintiff) did not (as under
such circumstances might be surmised) appear, the
suit as a matter of course being tried in her absence
Ex parte, and on the 20th of March 1839 a Decree was
pronounced against her. An execution being issued
in the suit, the Collector appears to have become acquainted
for the first time with the course adopted by this
Agent towards the Widow; he thereupon by a
letter dated the 29th of March 1841, which he addressed
to the Widow, urged her to endeavor to effect an
arrangement to save her interest in the Geminclary
from being lost to her; I allude to this, because
reference is made to the acts of the Collector in
the

the Order of the Lords of the Judicial Committee; as
one of the points on which their Lordships required
further information, and a decision by the Court of
Sudder Adalat, and I shall have occasion to comment
on it hereafter. On the 5th of April 1841 a Razeenama
was obtained by the Defendant (His Father had, previous
died) from the Widow; The Defendant then acting as her
Manager or Agent in the room of his Father. This Razeenama
was much to the same effect as the previous bond and
Mortgage, so far as providing that the 12 Villages were to
continue as security for the Debt; which (increased by interest
then amounted to the large sum of Rupees 67,444-12-0) was
made payable by 8 instalments which were to commence
on the 15th of December 1841, and to continue till the 15th of
October 1848, in default of any one instalment, the whole
debt with subsequent interest at 12 per Cent per annum
was to be recoverable; not however as in ordinary cases
by a sale of the property, for it was provided that the Court
might issue a precept to the Collector to make over at
Once the 12 Villages to the Defendant; it was moreover
stipulated that the other 2 Villages were to be retained
by the Widow during her life for her maintenance; but the
Razeenama went on to provide that after her death the
2 Villages might be assumed by the Defendant and that
the whole Geminclary should be continued to him as
long as his posterity should remain as an ancient
Geminclary Estate. I suppose that in the annals of
legal History, a case more pregnant with the appearance
of fraud has scarcely ever presented itself, and the
curious provisions made in the Razeenama, which I
have

have quoted, certainly do not tend to remove the
suspicious appearance presented by the previous
alleged dealings by the Defendant's Father and
himself with the Widow. This Razeemama was filed
in Court on the 12th of April 1841. The Defendant continued
to be the agent and manager for the Widow, and default
was made in payment of the first instalment. The
Defendant in his answer avers, that the Execution of
the Decree in O.S. N^o 18 of 1838 was suspended by the
Sudder in consequence of litigation by other Parties,
who preferred claims against the Widow; I believe
such was the fact, and if true it operates prejudicially
to the bona fides of the Defendant; for the Sudder
did not interfere with the possession of the Zemindary
by the Widow, which it would have done if the Defendant
had applied for the appointment of a Receiver of the
12 Villages on which his Debt was secured; and which
any really honest Creditor, having no other object than
the payment of his Debt would have pursued; looking
however at the terms of the Razeemama, it is evident
such a course would not be the one which would suit
the Defendant's purpose, at any rate and without
considering his motives, there is the broad fact that
he did not apply for a Receiver, but preferred that
the Widow should ostensibly continue in the possession
of the Zemindary under his own Agency and Management.
The instalment became due on the 15th of October 1848, the
Widow did not die till the 1st of September 1849, and the
Zemindary yielding a clear annual net rental of
Seven

Seven or eight thousand Rupees, did not in 11 years and a
half pay off one single pie of the debt or even of the
accruing interest. On the 8th of September 1849, the Collector
attached and sequestered the Zemindary as an Escheat,
whereupon the Defendant interposed, and after some
proceedings on Miscellaneous Petitions the Sudder by
Orders dated the 13th of February and 21st of October 1854
directed the Civil Judge to make over the Zemindary
to the Defendant pursuant to the terms of the Razeemama,
the effect of which was to reverse the position of the
Litigants; The Government were in possession and
ought to have been made Defendants in any litigation,
whereas by these orders the possession was taken from
the Government who was thereby compelled to sue as
Plaintiffs.

15 Such are the facts of the Case which may
be shortly recapitulated as follows. The last Male
Zemindar died in 1810, his Widow succeeded, a near
Relative acting as her Manager and Agent, 20 years
after the death of her Husband an attempt was made
to get this Zemindary transferred to that Relative
and Agent in which no mention is made of any Debt
owing by the Widow or her late Husband to the effect.
That attempt failing, 8 years afterwards and 28 years after
the death of her Husband, it is alleged that a settlement
of accounts, between this Widow and her agent takes
place; upon which it is alleged that notwithstanding
the Zemindary netted a clear Annual Income of 7
or 8000 Rupees (and it is shown that the Revenue of 2
of

of the 14 Villages was considered sufficient for the maintenance of the Widow) yet the Widow is brought into debt Rupees 48614-13-6 to her Agent. The Defendant continues as her Agent, and in 3 years the alleged Debt is increased to Rupees 67,444-12-0. He then in 1841 obtains the Razzinama, and from 1841 to 1849 the Defendant (who continued as her agent) alleges that the Debt was not diminished one pie, not even the accruing interest kept down, and as he was her agent, he must have known the true state of the case, and yet he does not attempt to take the course open to him of getting a Receiver appointed. The case put forward by the Defendant is of such a character, that the most ordinary Country Jury in England could not, I believe, be induced to credit it.

16 It may be convenient that your Law Advisers should be apprised of the line of argument used by the Counsel on behalf of the Defendant, and the cases they referred to, I will therefore proceed to give you a sketch of such arguments.

17 After the Court had decided that the Defendant's Counsel had the right to open, and of reply as mentioned in para 9, Mr. Branson / the Junior Counsel / addressed the Court, after stating that only one point had been decided by the Privy Council, He submitted that on its general merits the suit must be dismissed; that in considering the case, the dates were essential, and stated that in May 1838, the Defendant's Father demanded of the Widow payment of his debt, which not being

Mr. Mayne in reply admitted there were no heirs of the Zemindar. / 1849 C.D.

Complied with, on the 15th June 1838 the Original Suit N^o 18 of 1838 was instituted, In this suit a Decree was obtained in favor of the Defendant's Father against the Widow, and on which a precept was subsequently issued and sent to the Collector to execute; on the 29th March 1841 the Collector addressed a letter to the Widow, requiring her to settle with the Defendant's Father on any terms. In consequence of which, on the 5th April 1841, the Widow executed the Razzinama and on the 26th of the same month the Widow wrote to the Collector giving "express notice" of the transaction. That on the 19th April 1841 an injunction was issued from the Sudder whereby that Court stood the execution in O.S. N^o 18. He then urged that the Government had taken no action during the lifetime of the Widow, who died on the 1st September 1849 (Exhibit N^o 9) Mr. Branson then proceeded to argue that the Plaintiff had not alleged any case which would give him a locus standi; had not alleged that the Widow or the Zemindar (her Husband) had died without Heirs. That strikes at ground of action they may have left Dayadies while Defendant in the 18th para of his answer claims that the Zemindary vested in her Heirs; The Plaintiff's Exhibit A represented these were Heirs as did the Exhibit B, and Mr. Branson contended these were Heirs of both the Widow and the Zemindar; As also that the Government took possession, not as an Escheat, but on behalf of those entitled and referred to Exhibit N^o 9. He urged that the Original suit was an action of Ejectment and that therefore the Plaintiff could only succeed on the strength of his own title Mr. Branson then referred to some of the

the points taken by the Defendant in appeal; but the first
ground in his petition of Appeal; and para 1 of the Defendant's
answer to the Collector's Petition of Appeal; and contended
that if there were no heirs of the Zemindar and his Widow,
the onus probandi was on the Government. Mr. Bracon
further contended that even if a prima facie case were
made by Plaintiff the Government were estopped by the
Decree in D.S. No. 18 of 1838. Also that the Defendant's
claim was founded on a Mortgage executed by the
Widow, followed by a Decree against her, and the Government
claimed as Heir to the Widow they were estopped by
that Decree (Taylor vs Evidence 79) Mr. Bracon then
laid great stress on the fact that the Rajenamah
was set out by Plaintiff in his plaint, and that it
was not alleged by the Plaintiff that the Rajenamah
was collusive; that the Plaintiff had not denied that
the money borrowed from the Defendant's Father was
necessary; nor had the Plaintiff denied that the money
so borrowed had been paid to Government. Mr. Bracon
then contended that the Court could not go into a construe-
tion of the Rajenamah, but if they could have done so,
they would have treated it most liberally; strange if I
should like to hear it argued whether the Crown is on the
same footing as other heirs) Mr. Bracon stated that
that the Rajenamah is an alienation; an absolute
alienation, and whatever might be the effect, if it
was an improper alienation the Government cannot
step in, although it might be void as against the heir;
special

should have been
"Burgess & Wheat" 1 W.B. 123.
page C.D.

Special Appeal Suit No. 149 of 1855, Sudder Decisions for
1856. page 47. He further contended the Zemindary was the
Widow's Stridhanam, because property possessed by a
Woman "Coming any way" formed her Stridhanam - as
Mairal page 26. The widow had absolute Dominion
and the Government was not heir. The Rajenamah was
an Assignment. The Title by Escheat was not by Heirship
by English law - Wheat & Burgess 1 W.B. 123. The Court
taking up by Escheat always takes to his own prejudice -
Mr. Bracon then contended if the Rajenamah were
a mere voluntary conveyance it is operative against the
Crown and the Crown cannot claim a Reconveyance,
nor if the Defendant were a mere Trustee - 2 Spence 266.
Taylor v. Haygarth - 14 Sim. 8. But in this case it was
a conveyance for valuable consideration, that was not disputed.
He contended that the Widow had power to alienate
Special Appeal Suit No. 48 of 1852, Sudder Decisions for 1852
page 41; and Special Appeal Suit No. 31 of 1852, Sudder Decisions
for 1853. page 45. He then contended this alienation had
been perfected by the Decree and Rajenamah, and that
the Collector who represented Government had made an
attempt to disturb these, although he had notice. Mr.
Bracon then submitted that if the Decree and Rajenamah
operated only as a Mortgage, that no Escheat could
occur; contended broadly that the same applied to
Equitable Mortgages created by parties who had the
legal power to create them, and that in such case it
would operate as though legally conveyed. He mentioned
as an authority Giles v. Grosvenor & Blighs H.L. 292, but
did not read the case; also referred to 2 Spence 774 & 780
and

and Jeremy 132. In the case of forfeiture for treason the Crown does not take absolutely; *Reene vs Attorney General* 2 Atk 223; Mr Branson then asserted the Defendant had the legal Estate; and that of an equitable interest no Escheat could occur - *Prescott v Taylor* 1 Jur 470; 2 Speer 237. *Middleton v Spicer* 1 Bro 201 and *Heckman v Attorney General* 3 Myl and K 490/1. Mr Branson further contended that the Crown was bound in the same manner as an Heir and that notice had been given to the Collector (Exhibit A-7) that the Collector by his conduct had changed the position of the parties. When the Collector so acted the widow was living, and the Government could not have set aside the sale; then was express notice to the Collector and Government, who took no step until 1849 when they were estopped by acquiescence. Special Appeal Suit A-156 of 1857 Sudder Decisions for 1858 page 5. Mr Branson also referred the Court to the Sudder Decisions for 1859 pages 28, 29, 30; to Appeal Suit A-41 of 1848 and A-20 of 1849 Sudder Decisions for 1849 page 128. Also to Special Appeal Suit A-116 of 1858 Sudder Decisions for 1858 page 244; and to the Sudder Decisions for 1858 page 221. Mr Branson then submitted the Plaintiff was precluded from pursuing his suit being barred by the Statute of Limitation, he had notice in 1841 of the absolute alienation - *Attorney General v Payne* 27 Bea 168.

18. I have given the foregoing from my Notes and in the order in which the points were brought forward in argument.

At

19. At the conclusion of Mr Branson's argument the Court rose for 10 minutes. The Sudder Court is distant from our Chambers 4 miles, and had not any library worthy of being so called. It is therefore customary for Court to hand to each other the books to which reference has been made, should the opponent not have the Book with him in Court. On coming into Court after a few minutes absence I found Mr Branson has left, and taken all his Books with him, many of which I had not in Court and could not procure there. In my address therefore I had not the opportunity of referring to the Books, but in commenting on the cases, and the authorities cited or mentioned was in many instances, compelled to do so from my Notes taken from what Mr Branson read, from my recollection of the Cases, and upon general principles. It was only in one or two instances that I really felt any doubt or difficulty, and in those cases I asked the Judges to look at the authorities themselves.

20. I will briefly recapitulate the line of argument I used, ^{but} do not propose commenting on the cases cited as the arguments to be used will naturally suggest themselves to the minds of your legal Advisers. I drew to the attention of the Court that to the Original Suit A-18 of 1838 the Widow had not appeared that the Decree was Ex parte, and was against a Hindu female, around whom the Courts ought to throw their protection. That the letter of the Collector to the Widow is the ordinary form in which such Instruments are issued. Replication

Page

page 13 of joint appendix - I pointed out the letter was not in the terms stated by Counsel - See Exhibit A 26 page 30 - I would here remark that in his answer (page 9) the Defendant has set out a translation of this letter, in very different terms ^{from that filed by the Defendant} as his Exhibit A 6; The latter is by the Court Interpreter and must be taken as the correct translation - I then pointed out that the Widow had nothing more than a life Estate in the Zamindary and it was only her interest that she could incumber; - That the injunction from the Sudder to which Mr. Braunsen had alluded was not in evidence in this suit, and there was nothing to show their nature, or what had become of the proceedings; but that Government could not be prejudiced by them as it was no Party to the proceedings Replication para 8) I also pointed out, that assuming the facts to be as stated by Defendants Counsel, the course which the Defendant ought to have pursued was very evident, and would have been very easy of attainment had he adopted it, for he ought to have applied for a Receiver; that sufficient had been averred in the Plaint to show that the Plaintiff claimed for want of Heirs of the last Zamindar, and that it was not necessary there to aver that the Widow had not left Heirs as they would not have been entitled to succeed had she had any; but that the Defendant had not in his answer raised the issue by averring she had Heirs; That the Exhibit A did not represent there were Heirs of the Zamindar; It was merely a letter from the Board of Revenue to Government soliciting that

a question which had arisen might be referred to the Sudder; whether there were Heirs of the Husband or not no inquiry had been made; nor was it necessary that the statement in that letter was in the nature of a general proposition of Hindu Law, as understood by the Board, and not as a statement of facts which could be treated as an admission; by which the Government were to be bound to their prejudice, but if it was to be construed strictly and as binding on Government then the only construction that could be put upon it was that the transfers would operate to the prejudice of the Crown, who for want of blood relations came in as ultimate heirs and as such the late Zamindars next Heirs; but moreover this letter was written 30 years ago, and 19 years before the Widow's death, and it would be the Heirs of her Husband in existence at her death that would take - Similar observations applied to the Exhibit B - As regarded the Magistrate taking possession on the terms mentioned in the Exhibit A 9 I submitted that he was correct in his proceeding, he says the party last in possession had died leaving no Heirs apparent, and the succession was disputed, He was right therefore to take possession for the time, and in analogy to a Lord of a Manor, until an heir should appear, but that the question was set at rest by the Plaintiffs Exhibit D - As regards the argument that it had not been averred that the Rajgumrah was collusive, I submitted such an averment was not necessary inasmuch as the Rajgumrah could only affect the Widow's life

Estate, and it mattered not to the Crown, whether an instrument affecting the Widow's life Estate, which the Crown did not claim, was obtained collusively or not as regards the assertion that the Plaintiff had not denied that the money, alleged to have been borrowed from the Defendants Father, was necessary, or that it had been paid to Government, I referred the Court to the Replication paras 1, 2, 3 - and pointed out that not a title of proof had been tendered by the Defendants. When I was proceeding to argue that this Geminclary did not constitute part of the Widow's Stridhana, I was stopped by the Court, as on that point their Honors differed with the Defendants Counsel. I then submitted the Court must put a construction on the Rajesammah and that the Rajesammah did not constitute an alienation or a Mortgage; or an assignment, or a conveyance, either voluntary or for valuable consideration; neither was the Defendant a Trustee, and that by the Rajesammah the interest of the Widow in the Geminclary was not conveyed; that the legal Estate remained vested in her for life, that the Rajesammah followed the Decree instead of being followed by it, as stated by Mr. Brauseu that it was something in the Character of a Cognovit or Writ of Attorney under which the Defendant might be enabled in certain events to obtain execution, but that the Rajesammah of itself did not divest the Widow of the Geminclary, nor did it vest the Geminclary in the Defendant. It might probably be considered that the Rajesammah creates a lien on the Geminclary, but that

that it was not strictly even an equitable mortgage. I commented on the Cases cited on behalf of the Defendant (some of which had been overruled, and the reason for citing some others I did not see) and shewed (although not reach up Mr. Brauseu) that the authorities cited established the principle that the Crown cannot avoid the incumbrances properly created, because they are "Created when the Debtor has legal power to create them," and they all act upon the property before the interest of the Crown accrues, and the Crown can only take "the property subject to such liabilities as the Debtor has legally created," and proceeded to shew that in the Case under discussion, even if the Widow had legally created any liability which would affect the Geminclary, it could only be for the Estate and interest which she herself possessed, i.e. only a life Estate, Ergo the charge on the Geminclary (if any had been created) ceased with her life and the Geminclary would descend free from that incumbrance to the next Heir which in this Case was the Crown. I admitted the Crown would be bound in a way similar to what an Heir would be bound, but denied that notice had been given to the Collector such as would preclude the Crown from now asserting its rights, that the Exhibit A-7 had not that effect, for so long as the Widow lived she might deal with her interest (an interest for life only) and that the Collector on behalf of the Crown could not during her life institute any proceedings against the parties, that the Defendant was bound to ascertain what title the Widow had to the

the Estate she professed to deal with, that a Purchaser is bound to ascertain the facts on the Heriwill Reversion-Elberling 160, and that it was not competent for the Defendant to ask a Court to assist him to an Estate in which the interest of his alleged Debtor ceased with her life; that the Crown was not stopped; I contended the Collector had not by his conduct changed the position of the parties; and that if the Defendant had endeavored to sell the Estate during the Widow's life, her life Estate only could have been sold. In support of the Plaintiffs' Case I mentioned the decision of *Hindu Females* - 1 Strange 244/5 that they can be considered as *liti Juris* - 2 Madras Cases 6 Appeal Suit A of 1835 reported in *Civilian's Review* 205/6 - Manual. 24 - A Widow inherits a limited Estate in Husband's immovable property if he dies before and separated. It is not her *Stridhan* - (On this point the Court was with me) that a Widow takes only an Estate for life; and it was only under special circumstances that an alienation for her life had been in one case upheld, but that, except for special circumstances a Widow cannot encumber her Husband's Estate; she cannot alienate it; If for special circumstances she incumber she must obtain the assent, not of her Relations but her Husband; not only immediate but the whole, manifested in writing - A Deed and *seizin* being requisite. In the present Case there was no proof of any of these circumstances, but on the contrary the acts of the Defendants' Father in 1831 (see Exhibit A page 21) raised

raised a presumption against the existence of any debt at all - I do not trouble you with a reference to the authorities cited by me as they all (except the Decisions of this Sudder Court and to those to which I refer hereafter) will be readily found in *Macnaghten's* *Strange*, *The Manual* *Elberling* *Morley's* *Digest* - and *East's* *Cases*. I then submitted, that those succeeding to a Widow are not liable for Debts or incumbrances created by her - 35 That a Widow cannot during her life constitute by Deed any person than the legal Heir to her husband - 1 Sudder Decisions 455 to 457; Special Appeal Suit A-5 of 1849 (Sudder Decisions for 1849 page 115) On death of Widow property goes to Husband's Heirs not hers - That without knowing Heirs she may convey as against all, but the Crown 1 Morley 283 - 2 Morley 130. 21 Mr. Mayne replied, but I do not consider it necessary to trouble you with any detail of his argument, further than that he said the Defendant did not claim as Heir of the Widow. He admitted her Husband left no Heirs, but argued that was immaterial, as the property had vested in the Widow, and having so vested it takes a new line and goes to her Heirs contrary to the law prevailing in Bengal - As regards the acts of the Collector Mr. Mayne argued that by Regulation every Decree affecting a *Jimindar* must be served on Collector (The must have referred to Regulation III of 1802 Section XI) There was also notice to the Collector by the precept issued to him by the subordinate Court; and if Government choose to employ one agent in 2 capacities they must take the consequence; In writing to the Defendant the Collector was not acting ministerially, The Sheriff would have no power to act as

the Collector had done, his letter to the Widow was a recommendation such as would arise from his being the Protector of Gemindaries; moreover the Collector had no time from the Widow's answer; probably the Collector could not then have brought on action; but he could have written back to the Widow and have said "I will not sanction because you are giving the whole Gemindary, but he did nothing." Strange for Betraying the Defendant) the terms of the Rajeemamah are opposed to conveying to the Defendant a life Estate, and if the Gemindary had been sold during the Widow's life under that Rajeemamah, the Government could not have got the Gemindary from the Purchaser; it would have been the Gemindary which would have been sold, not a life interest (Here I go with you there) The Collector betrayed of his argument. Mr. Mayne cites from 6 Moores Indian Appeal Cases 393, 418/19 and 420.

22 The foregoing is only a ^{very} short notice of the points of the argument, the Cases having occupied the Court 2 full days from 10½ a.m. to between 5 and 6 p.m.

23 I now propose to pass in review the Decrees appealed against, offering for your consideration a few observations thereon.

24 The first 7 paras purport to recapitulate the facts of the Case. I do not consider it necessary to offer any comment on them, it appears to me the Judges have in many instances arrived at erroneous conclusions regarding those facts, but they are important, and your law advisers will from the record be able to satisfy themselves on those facts. The

13.
25 The language used in the 12th para, would lead to the conclusion that the Judges considered this Gemindary as having vested in the Widow, not merely for life, but absolutely; - It is true that in the 14th para the Judges admit that the power to alienate in her (the Widow) was placed by the law under certain special restrictions; for this expression it might be presumed perhaps that the language used in the 12th para conveys a rather broader meaning than the Judges intended and that the 12th para is to be controlled by the language used in the 14th but even then and reading the 2 paras together, it is difficult, if not impossible, to arrive at any satisfactory conclusion as to the nature and extent of the Estate and interest which their Honors intended to define that a Hindu Female takes in the landed property of her deceased Husband who has died without male issue, or as to the nature and extent of the Estate and interest which the Widow in this Case took in the Gemindary in question; - in their arguments the Counsel for the Defendant were equally indefinite, and as it appeared to me studiously so, contenting themselves by using vague generalities, although from the authorities they cited, it might be supposed (by Lawyers) that the Defendants' Counsel wished it to be inferred that the Widow was seized of this Gemindary in fee; and not merely that it was vested in her for a limited Estate. It appeared to me as important that the Estate which the Widow took in the Gemindary should be clearly understood; although till I heard the Cases cited by the Defendants' Counsel I had not supposed that any doubt existed on the point; but after hearing those Cases, I endeavored to keep the point that a Widow takes only a life Estate prominently in the minds of the Judges.

the Judges, together with the limited power which the
Re Widow possessed over the landed property of her deceased
Husband. The law is clearly laid down in 1st Strange's Hindu
Law pages 137 and 246/7; also in the 2^d Volume pages 251
where grounds, according to Hindu reasoning, are shown
for the Husband's Heirs inheriting on her decease in pre-
ference to hers) 253, 407, 408, 410; Colvering 5164. The
position as also been clearly recognised on several
occasions in the Sudder at this Presidency, as the
Law prevailing in this part of India; In Special
Appeal Suit No 5 of 1824, 1st Sudder Decisions page 453;
the principle is recognised although there is no express
ruling on the point. Again in Special Appeal Suit No 5
of 1849/ reported in the Sudder Decisions for 1849 page
115. In S. Ad. No 62 of 1847/ reported in the Sudder
Decisions for 1850 page 74. In S. Ad. No 31 of 1852/ reported
in the Sudder Decisions for 1853 page 45. and in S. Ad. No
124 of 1856/ reported in the Sudder Decisions for 1857 page 1.
In S. Ad. No 98 of 1856/ reported in the Sudder Decisions for
1857 page 100. and in S. Ad. No 161 of 1858/ reported in the
Sudder Decisions for 1858 page 220. the point is expressly
ruled, in some of the Cases more strongly than in others
- None of these Decisions have (I believe) been appealed
against, and so far as I know, the propriety of them
has never been questioned. - Special Appeal Suit
No 124 of 1856/ Sudder Decisions for 1857 page 1) may
also be referred to although not very satisfactorily reported.
26 On the same para (14) the Judges state that
under Hindu Law the Widow though destitute of direct
"lineage"

"lineage could not alienate to the prejudice of her remotest
Heirs, save under their consent, or under strict necessity."
- I apprehend the Judges are in Error in stating to the
prejudice of her Heirs, and save under their consent; It is
true that in 1st Strange 248, it is said according to the
Mitacshara, and its followers, property which the Widow
may have acquired by inheritance is transmissible to her
own Heirs, clapping, with this school, as part of her Stridhana.
This position is certainly borne out by the Mitacshara to
which reference is made and 1st Strange (one of our
present ^{Judges}) in his Manual of Hindu Law, § 343 says
"property, vesting in a female however obtained" descends to
her Heirs; from which it may be inferred that both Sir
Thomas Strange and 1st Strange, when writing this work
considered that landed property which belonged to a
deceased Husband, and which on his demise without
male issue devolved on his Widow, comes under the
category of "property which she has acquired by inher-
itance as specified in the Mitacshara as also that
such property would according to the Benares school
be transmissible to her own Heirs" and that therefore it
was her Heirs, and not the Heirs of her Husband, whose
interests were to be protected, and whose consent was required
to enable her to alienate it. It would appear that the
Judges of the Sudder (1st Strange being one) have
founded the portion of their Decree now under consideration
upon that hypothesis; but the authorities to which I
have referred in the preceding para are not variance
with that position; It is true the Mitacshara is quoted
as

as the authority by Sir Thomas Strange, but, as I shall
endeavour to show, that learned author has put too broad a
Construction on the passage quoted.

27 Property which a Woman "has acquired by
inheritance," is not included by Menon when enumerating
what constitutes the "separate property of a married
Woman" nor in the Smṛiti Chāndrīka; indeed so far
as I can ascertain property acquired by inheritance is
not mentioned as forming part of a Married Woman's
separate property in any other Work treating of Hindu
Law as observed in Southern India than the
Mataśhara nor is it so classed by the writers
of the Eastern School; moreover I do not find
any decision supporting the claim laid down
by Sir Thomas Strange that under Hindu Law,
as recognised by the Benares School, landed
property belonging to a Husband devolving on
his Widow on his death without male issue is
classed as part of her Stridhana; while the opinions
set out in the 2 Volumes of Strange pages 408 & 410
are founded on the Mādhyama or Works of
very great authority although now in a great
measure supplanted by the Mataśhara - and
in Special Appeal Suit No 116 of 1858 (reported in
the Sadler decisions for 1858 page 244) the Judges
of this Sadler would appear to have held that
it was not the Consent of a Widow's Heirs or
that was required to render alienation by
her of her late Husband's landed property
valid

valid, but the consent of her deceased Husband's
Heirs.

28 As regards the passage from the Mataśhara
I do not find that in putting a construction upon that
passage it has ever been treated in the way in
which it strikes me it should be considered.

29 Referring to the Section in the Mataśhara
from which the passage referred to has been quoted,
it will be observed that the Author is treating "An
the separate property of a Woman" - her Stridhana -
and in that Section is defined the nature of such separate
property; and the sources from whence it is derived,
among these it is that the Author adds "and also property
which she may have acquired by inheritance, purchase,
partition, seizure, or finding, are denominated by
Menon and the rest Women's property" In support
of his Enumeration of the modes of acquiring property,
he refers to his own Work Ch 1 Section 188; which
however has no special reference to "Woman's property,"
but is a general "disquisition on property," defining
the Law of inheritance generally, and of partition -
and although he refers in general terms to Menon and the
rest as authorities he does not name the particular
portion of their Works where the texts on which he
rests his position are to be found.

30 Vijayaneswara as a general rule speaks of
the Stridhana as "Woman's property;" he does not define
the status of the Woman; I apprehend however it will
not

not be seriously contested that to constitute the property
Stridhana or separate property the Woman must be
in the position of a betrothed or Wife: the very name
and nature of the property, the times at, or occasions
on, which the gifts must be made, all indicate
that such must be the case and in the event of a woman
having become a Widow the necessity for the property
which she really inherits or possesses being separate
(that is separate from her Husband's) ceases it no longer
exists; Menu Chapter IX § 194 after enumerating what
is separate property concludes with these words:
"are considered as the dead old separate property of
a married Woman". Property belonging to the Husband
at the time of his death, and then devolving on the Widow
for want of Male Heirs, does not devolve on her as
a Wife, but as a Widow, and at a time when
the necessity for the distinction of separate property
has ceased. In the 3^d Digest page 577 it is laid
down that "after the death of her Husband no person
has dominion over a Widow; her Spiritual Parent,
that is her Father-in-law or other Guardian, merely
support her; hence she has absolute power over that
which she then acquires". But does a Widow
acquire the immovable property left by her
Husband at his death and which for want of
Male issue devolves on her? I find not in
the sense in which the word is here used. An
interest in such property certainly devolves on ~~the~~
~~the~~

the Widow but as it appears to me, it is not such an
interest as would be comprised within the terms
used in the Metashara "acquired by inheritance";
I apprehend she has a mere usufructory interest
in the produce, for the purpose of providing main-
-tenance for herself, and performing ceremonies for the
Welfare of her Husband's Soul & that she is scarcely
a Servant for life, if taken in analogy with a
Servant for life under English Law, but that she
is more truly a Trustee for those purposes, and for the
Heirs of her Husband; such view of the Widow's interest
is borne out by many Considerations which entered
into the reasoning of Hindu Law givers; The Ceremony
of Suttie, which was formerly very prevalent, did not
allow (when practiced) of the Widow inheriting the
property more than in name in fact for only the few
hours intervening between the death of her Husband
and his cremation; and Reason points out that under
such circumstances it was not likely property would
be allowed to pass out of the Family of the
Husband to that of the Wife. Then if she do not
like to burn, the alternative for her is a life of austerity
and privation - and (somewhat in contradiction of
the text from the 3^d Digest quoted above) most, if
not all, of the authorities depict a state of depen-
-dence, in which a Widow continues during the remain-
-der of her life, "On the near Kinsmen of her Husband
if she have no sons" and who have the right of
Controlling the Widow's Expenditure and alienation,
the reason for which is, that it is her Husband's
relations

Relations who are bound to provide for her in case
of need, consequently, they had a claim to the means
of preventing her by her improvidence from falling
into distress and so requiring their assistance. Reason
again points out that the persons having the
Control over expenditure and alienation should be
not only those who are bound to provide for her in
Case of need; but also entitled to the inheritance
and it is the Heirs of the Husband and not her Heirs
who the Books say have that control. Another
Consideration is that an injustice would take place,
if the Widow should become dependant for main-
tenance upon the distant relatives of her Husband,
and not have preference over them in the distribution
of his wealth for the performance of Ceremonies
for his spiritual benefit in which she is a Partaker
Elberling § 164. The portion of the Metashava to
which the author refers as an authority does not
bear out the text, but if the reason given can be
supported it is an additional ground in support
of the position. that the immovable property of
the Husband dying without male issue reverts
after the death of his Widow to his Heirs and not
hers as strange would seem to imply inasmuch
as it is clear that if the Widow did not survive
and the Husband had no Daughters his immovable
property would go to his distant relatives and as
it only devolves on the Widow for the purpose
of securing her maintenance, which is only a charge
for

for her life, it may be fairly inferred that the property
thus devolving, does not vest in her as part of her inheri-
tance, but that the Estate she takes in the property,
is only for a term commensurate with the interest
which such devolvement is to secure, and that her
Estate intervening only postpones the rights to the
inheritance if the Heirs of her Husband from whom
she derives her right of maintenance. Another
Consideration & probably what would have more
weight with Hindu Lawgivers I have already adverted
to vizt. That in the Veda, in the written codes of law, &
by the immemorial usage of Men, the wife is
declared by the Veda to be half of her Husband's
body; sharing equally with him, the fruit of good
or bad conduct as long as the wife lives, half his
body is alive, though the other moiety may have
perished, and while half of his body subsists, who
Else can inherit his wealth? Even though his Kinsmen
exist, his Father, Mother, and Brother by both parents,
yet if he die without male issue by males in the
third Degree, his widow shall inherit his Estate.
The passage does not go on to say what is to become of
the Husband's Estate when his surviving moiety perishes.
- To render the passage consistent throughout it must
necessarily be read, that on his death no transaction
of Estate takes place and the enjoyment of the property
by the Widow is only a continuation of its enjoyment
by

Re by himself although in a mutilated shape and that
of Consequently the Estate is never divested from him
of until he is totally dead and his entire body has
perished by the demise of his wife, Moreover the
Words "his Widow shall inherit his Estate" are in
Contradictory to the former part of the passage, if
read literally, to make the whole consistent they
must be treated as surplusage, or be rendered
as "continuing to enjoy the Estate during her life".
If such be the meaning of the passage it is
clear that so long as the Widow lives the Estate
remains vested in the Husband, she being nothing
more than a portion of him, that consequently
the Estate never does vest in the Widow from
which it would follow that the inheritance must
be traced from him in whom the Estate was
so last vested, and not from her in whom it vests
vested.

31 Without therefore questioning the
correctness of the Metaschara, although unsup-
ported by other authors I am of opinion that
immovable property which belonged to a
Husband the use of which on his dying without
male issue devolved on the Widow she never
"acquired by inheritance" and that in the passage
quoted, Vignaneswara referred to property
which she might inherit irrespective of the
immovable property left by her Husband.
If

32 If the passage in Strangé (I. 248) be carefully studied
it will be seen the learned Author has expressed himself
very confusedly and I think from want of care he has
expressed ^{himself} in a manner he did not intend. He says "of that
(i.e. property) which devolves on her from him (i.e. her
Husband) he dying leaving no son of any description, the
"landed part, or whatever comes under that description,
"devolves on her death to his Heirs, not to hers, the principle
"being, that it vests in those who would have taken it upon
"his death, had she at the time not existed. For this position
Sir Thomas quotes a Decision passed at Bombay where
the Metaschara is an authority equally with Madras.
Sir Thomas then proceeds to show that the Husband's
Heirs would be his Daughters; and they are the Heirs
of the Husband according to the Doctrine of the Benares
School. He then adds "so say the Writers of the Eastern
School" and proceeds "But according to the Metaschara and
its followers, property which the Widow may have acquired
"by inheritance is transmissible to her own Heirs, clashing
"with this School as part of her Stridhana". Doubtless
the passage I have first quoted in this para is a correct
Exposition of the law as acknowledged by the Writers
of the Eastern School. But is it not equally so with the
Writers of the Southern Benares School? I have shown
that in my opinion it is; and that in the passage
last quoted Sir Thomas has erroneously included in
property which the Widow had acquired by inheritance
the immovable property of her Husband which had
devolved on her on his death without male issue.

33 In the case now under consideration, practically it makes no difference, for Lutchmeelavumamah not having had any Daughter her Heir would be her Husband's Son but it is important that the law on the point should be settled by the highest judicial authority.

34 Continuing my observations on the same para (14) I would remark that although the Judges have admitted that a Female cannot alienate property save under Consent of her nearest Heirs or under strict necessity, (this phrase is again used in the 15 para) yet, that they have not made any enquiry as to whether any necessity existed in the case under consideration; and they justify such course by broadly declaring that in regard to the ruling power the female is absolutely free, being at liberty to alienate without seeking its Consent, and irrespective of its ulterior rights. An observation further than to remark that the Judges are in error when they state "In the present suit the Crown claim to proceed the restrictive power belonging to an heir of the female"; It is not as ultimate heirs of the Female that the Crown claim but of that Females Husband.

35 In that para the Judges refer to some opinion which they obtained from their Pundits; It was obtained after the arguments were closed, and the Judges had declared their intention to dismiss the Case; neither have I seen it. It will however doubtless be sent home with the Appeal. It does not occur to me that the opinion (even if it be the full extent stated in the Decree and supported by Hindu Law) can affect the present case.

his the Husband's Heirs and not hers that had to be protected & whose consent had to be obtained?
36. I submit the following as a summary of the Hindu Law so far as it applies to this case: a widow is only entitled to enjoy during her life an Estate which belonged to her Husband and which on his death without male Issue devolved on her; that such property is not Stridhana. That except for special circumstances a widow cannot encumber the estate, nor alienate it; that those succeeding to the Estate on the death of the widow are not liable for Debts contracted by her; and on the death of the widow the estate does not descend to her Heirs, but reverts back to her Husband's in default of which it escheats to the Crown.

37 Proceeding to the 15 para I feel assured that in the Privy Council the reasoning of the Judges on the passage quoted will not for a moment be upheld; all Treatises of the English Law of property and inheritance use the terms "Heirs" and "next of Kin" who are "relations of the owner" and the term "heritage" might receive a similar definition with regard to English property, as is quoted from the Mitachshara.

38 In their reasoning as set out in the 16 para, the Judges assume as a matter of fact, that no fraud was practised by the Defendant's Father and himself upon this widow; and that the widow had an absolute interest in this Zemindary and not a limited interest a mere Tenancy for life at the very

very utmost; They also treat the Razemamah as an Assignment by an absolute owner, and upon that hypothesis treat the act as one that would defeat the rights of the Crown. I need not, I apprehend, detain you with any lengthened observations on that point.

39. It appears to me that the Judges of the Court of Sudder Adalat neither in their orders of 1854, or in the Decree now under consideration, have been able to realize what constitutes a life estate and its incidents, indeed such clearly manifested itself by what fell from the Court, during the reply of the Defendant's Counsel on the 22^d of October, from which it appeared that in their Honors' opinion, if a Tenant for life incumbered an Estate, the Creditor might seize the whole fee simple and completely oust the remainder Man; But on all questions of real Property Law the Judges of the Sudder possess so little knowledge (and I do not know how it should be otherwise) that it has appeared to me to be an impossibility to argue before them a case involving such questions with the slightest hope of their arriving at a satisfactory Conclusion.

40. I apprehended that it was from this cause that their Honors failed to perceive that the cases cited by the Counsel for the Defendant did not apply to the question under consideration.

I endeavoured to shew this, but as it appears unsuccessfully.

41. I now come to the observations regarding the acts of the Collector (paras 17 and 18 of the Decree) I have slightly touched upon that part of the subject in paras 14, 17, 20 & 21. The Counsel given by the Collector to which the Court appears to take exception was not given to the Defendant; and if it had, it could not have been argued that he could have been misled or unduly influenced by it, he had at that time and has ever since shown too much acuteness in the furtherance of his own interests for it to be supposed that he could have been induced to accede to my terms not advantageous to himself, indeed this very Razemamah shews that he availed himself of the opportunity afforded by the Collector's letter to induce the widow to place herself and the Reminary still more firmly (as he thought) within his grasp. The Judges as it would appear, seem to think that the execution was dropped by the Collector, they twice allude to it in this para; This is evidently a great error, the Collector as the officer of the Court could not of his own motion drop the execution of process lodged in his hand he could not do so any more than the Sheriff can do it; he might certainly, as the Sheriff often does, omit to execute the process but I opine he would do so at his peril, if the execution Creditor chose to enforce his rights, but that was not the course pursued in the case now under consideration.

21
The Collector so far from refusing to act, or even
showing any desire to shrink from his duty, merely
intimated to the widow that if she did not arrange
with the Defendant within 5 days he in the performance
of his duty must attach her Villages and carry out
the precept of the Court. In law the Razee-namah
rendered the execution inoperative, and after
having received an intimation of the Razee-namah
he could not ^{have} put the execution in force; This the
Judges appear to have entirely overlooked. A Sheriff
frequently (at his own risk certainly) allows time
to a party against whose property an execution is placed
in his hands; and the Collector as Razee did nothing
more. He knew the Zemindary could not be made
away within those five days questions of priority
of executions are never raised in the Mofussil, and
altogether a very lax practice prevails, and I
entertain a little doubt but that in the
replication the Plaintiff has only stated the
fact when he said the letter, Exhibit VII, is
in the ordinary form, but moreover I am assured
it is according to the usual and accustomed mode
of doing business in the Mofussil. Doubtless in
addressing that letter to the widow the Collector
was acting in a manner strictly speaking "beyond
the functions devolving on him as executive officer
of the Court," I do not however agree with their
Honors the Judges in thinking that in writing
that letter he intended to, or in fact, did act in
the

the capacity of adviser to the widow and as the
Agent of the Government. At that time it was
doubtless the policy of Government to save
Zemindaries from sale and it is possible that to
some extent the Collector might have been in-
fluenced by that policy but it appears to me looking
at all the circumstances and the letter itself as most
probable that he was chiefly actuated to that course
by the fact of the Zemindar being a Hindu female
in the hands of a male relative who was acting as
her Agent, and whose agency caused the effects
I have before desired and if the Collector had been
so actuated he would have been acting fully in
accordance with the principle recognised in
the 2^d principle Courts of this Presidency that a
"native woman is, under the special protection of
"the Court, entitled to the benefit of that principle,
"which in Equity subjects to be regarded with
"peculiar jealousy, all transactions with persons
"whom the policy of the law considers to be at the
"time, incompetent to maintain their own right,
"and to exact for themselves justice. A native woman
"can never be deemed sufficiently sui juris to be
"held bound by her personal acts, if there exists the
"slightest reason to apprehend that advantage may
"have been taken of her, a Court administering
"Hindu Law must, to do justice often interpose
"between a native woman and her acts, as Courts
"of equity do at Home, in all cases between persons
standing

standing together in certain specified relations,
"giving to one, a presumed advantage over the other."
Imagine the Collector would have done no more
than his duty (morally) if he had as collector
endeavored to screen this ^{from the} widow (apparently) disastrous
effects of her acts in favor of her agent, and performed
under his influence; but a critical consideration
of the Collector's letter shows, as it appears to me
that he did nothing more, ^{and did not intend or attempt to do anything more,} than as a ^{varior} to warn
her of the proceedings which had been issued and
to urge upon her the advisability of her making
an effort to save herself, or he must do his duty as
an officer of the Court. By the terms into which the
widow entered with the Defendant, she left herself
entirely at the mercy of the Defendant, so far as her
life interest was concerned, but whether the estate
would eventually rest in him is a question, and in
deciding which in the affirmative I consider
their Honors are in error. I readily admit that
I do not understand what valid objection the
Collector could have offered, nor how their Honors
have ^{arrived} at the Conclusion that the Collector gave
effect to the arrangement and "endorsed it" by
dropping the execution I am not aware what effect
the Collector gave to the arrangement, he certainly
remained passive and for the best of all reasons,
he could not have effectually interfered, and
therefore

22
therefore showed his wisdom by not attempting what
he could not carry out and as to his dropping the
execution I have already commented on that. If the
Condition of lapse to the Creditor had become effectual
and the Collector had lain by "betraying the Defendant"
as Mr. J. — strange intimated, then the dictum of
the Judges in the latter part of this para might have
been supportable, but I submit that even if it were
admitted that the acts of the Collector amounted to
a Consent, the utmost that such Consent would
amount to, would be a Consent that the widow might
deal with the whole that she possessed, i.e. her
life estate, and no more.

42. I need not trouble you with any observation
on para 19, the point will be before your Law
Advisers, and they may surmise on what grounds
the Sudder have arrived at the Conclusion there
enunciated; nothing fell during the argument
to throw any light on this para.

43. In the 20th para of their Decree the Judges
state that the Defendant held "a Decree in which
"it was found upon evidence taken, that the debt
"was one actually incurred by Lakshmidhanima,
"and of a nature to be fairly and legally chargeable
"upon the estate." By the Decree in the O. S. No 18
of 1838 it certainly appears that evidence was
taken, and that the amount decreed to be due
from the widow was directed to be raised by
sale

Sole of the Estate; but it is to be borne in mind that the Defendant was a Hindu Female; that the Plaintiff was a Relative; that he was acting as her sole Agent; that he had been doing so for years; and ^{that} the Cause was tried ⁱⁿ Ex parte ^{consequently} there was no Vakil to cross examine the Witnesses or afford any information or assistance to the Court, nor to submit to the Court that the Widow's only interest in the property was a life Estate, and that such interest could only be sold, and I imagine any person acquainted with the State of Hindu Society, and how perfectly dependent in their Male Relations Hindu Females are, especially those of the higher classes; also with the facilities with which witnesses can be procured in this Country; how utterly regardless a large mass of the Natives are of the obligation of an Oath; and how clearly false evidence is concocted by them, would not place much reliance on a Deeree so obtained; But as it appears to me it is a Subject which does not properly arise in or affect this Case; it matters not so far as the Crown is concerned whether the Defendant had or had not a Deeree, or whether it was one that could or could not ~~and~~ be supported, nor whether it had been obtained fraudulently or collusively; nor whether the Debt was a bona fide one, for if it were the best Deeree that was ever pronounced it could only be operative against such Estate or property as the Widow possessed, and that was, so far as the Geminolasi was concerned,

only a life Estate. The Judges take Exception to the Plaintiff, they say none of those grounds were taken and that the Plaintiff is in fact founded upon a wrong view of the law. The Plaintiff was prepared by my predecessor Mr. J. B. Norton, but since the promulgation of this Deeree I have given the objection my consideration, and I consider the Plaintiff as drawn by Mr. Norton was properly framed, so far as regards that part of the Case I think he might properly have raised that issue, but it was not necessary for settling the question of law whether a Hindu Widow having only a life Estate could or could not defeat an Escheat by encumbering the Geminolasi; probably Mr. Norton might have safely added an averment that if the debt had really and in fact been contracted as alleged, it was not contracted to meet any case of necessity, or under the special circumstances allowed by Hindu Law - but that is not the position taken up by the Defendant it was not only disputed but denied at the hearing that any such necessity as Hindu Law recognizes existed in the present Case; and it was shown that the Defendant had not proved his averment; but, to the best of my recollection, the Court intimated as their opinion that the point had not been sufficiently raised in the Plaintiff's Pleadings; and on my referring these to the Replication the Judges remarked that was not the proper mode of raising the question it must be done by Plaintiff. I need hardly observe, that any
remark

Remarks made by the Civil Judge, in a very badly prepared Decree, could, prove of use, as the Judges of the Sudder appear to hold in this para...

44 By the 21st para. I gather their Honors have misunderstood my argument as to the extent to which I submitted the burden of proof rested upon the Defendant; what I submitted was, that if the Defendant contended that the act of this Widow came within the exception to the general principles of the Hindu law, he was bound to prove it, and the facts on which the assumption was founded. I also observe that the Judges speak of the Rajeeannah as an "assignment". I apprehend I need not trouble you with further observations on that para, it appears to me the whole of the Judges reasoning is founded on the hypothesis that the Widow was beneficially interested in the Geminclari in fee, and had entire and absolute control over it.

45 Now do I consider it necessary to comment on the 23rd para. In my previous remarks I have already anticipated much that might be said on this para.

46 As regards the law of Escheat, I am of opinion their Honors are in Error, I do not however purpose entering into any discussion on the subject, for I feel that, so far as the law of England is concerned, I could not render any assistance to your law advisors, and as
Regards

Regards the Hindu law on the subject I have already ventured to state my views for their Consideration..

I have the honor to be

Sir,

Your Most Obedient Servant.
(Signed) Cherut Dale.

Government Pleader
Sudder Adalat.

(A True Copy)
Cherut Dale
Govt Pleader Sudder Adalat.

N^o 147
From Clement Dale Esquire Government Pleader Sudder Ahdalat
To S. D. Sim Esquire Secretary to Government.

Machras 3 September 1861

Sir,

I have the honor to acknowledge the receipt of your Official Memorandum of the date and number 14th August 1861 N^o 302. and to enclose a copy of my notes in the Margin and to enclose a copy of my report to the Right Honorable the Secretary of State for India in Council under date the 7th August 1861 N^o 142 as therein requested.

I have the honor to be

Sir,
Your Most Obedient Servant.

Clement Dale

Government Pleader
Sudder Ahdalat

1861

From (To) Sudder Ahdalat

To the Right Honorable

The Secy of State for India.

Dated 7th August 1861

Recd
Per 2123/61

N^o 142

(sent in duplicate)

(Reporting on the effect
to Her Majesty's Council
against the views of the
Board of Directors of the
East India Company
as well as the 11th and 13th of 1857
(Regarding the Revenue of the
Jumindang)

Received of the Hon^{ble} Secy
of the War Dept. \$100.00
for the purchase of
the Secretary to Govt.
Dated 3rd September 1873
Recd. 3rd 1873

No 147
with an enclosure

Transmitting a copy of
the Hon^{ble} Secy's Report to the
Hon^{ble} Secy of the War Dept.
for the purchase of the
Secretary to Govt. 1873

Recd
Lockport

Nov 1873