M.R.O. 14—10,000—21-4-22.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 81 — Press / ~~Mis.~~

162-163

Dated 20. 1. 1862.

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department, 20th January 1862.

No. 162. Read the following letter from CLEMENT DALE, Esq., Government Pleader, Sudder Adálat, to J. D. SIM, Esq., Secretary to Government, Revenue Department, Fort Saint George, dated Madras, 14th January 1862, No. 8 :—

SIR,

Proceedings of Government, 25th January 1861, No. 181, Revenue Department.
Letter from Government Pleader to Secretary to Government, 1st March 1861, No. 39.

With reference to the Proceedings of Government, and my letter, under the dates and numbers noted in the margin, the former authorizing an Appeal to Her Majesty in Council against the Decree passed by the Court of Sudder Ádálat in A. S. No. 140 of 1859, I now do myself the honor of enclosing for transmission to England a letter, I have addressed to the Right Honorable the Secretary of State for India in Council, under date the 14th instant, No. 7, as directed by the Despatch of the late Court of Directors of the East India Company, dated the 28th March 1855, No. 3.

No. 163. ORDER THEREON, 20th January 1862, No. 81.

1. Ordered to be forwarded to the Secretary of State.

2. Paragraph 12 of Mr. Dale's letter to the Secretary of State, in the latter part of which that gentleman urges the advisability of obtaining a properly qualified class of men as Government Vakíls in the Mofussil Courts, will be referred to the Judicial Department for consideration.

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

To

The Civil Court of Madura

From

Vaideyanadaien Vakeel of Virakamu
ammal the Yemindarni of Erasaka=
naikum, Plaintiff in the O.S. No. 1 of 1856.

A letter has been sent to the
Collector in Compliance with my request
for the grant of a precept for the recovery
to the Plaintiff according to the
original appeal decision, the amount
entered in the plaint, the Jamabandy
amount of the Yemindary from Fusly
1265 to 69 deducting the Peishcush Vea=
the Cost of the original and appeal
Suits with Interest, as also for the
restoration of the Yemindary. Notwith=
=standing one Month had elapsed
neither the Yemindary was restored nor
the amount recovered. The Plaintiff
supposes that the delay is occasioned by
being required to pay larger Amount
from the Huzur Treasury than that
realized from the Yemindary. The

Plaintiff

Plaintiff is now willing to receive the amount realized from the Zemindary and deposited in the Huzur Treasury and make arrangements with the Collector personally for the remaining amount entered in the precipt. Petitioner consequently prays that a letter may be sent to the Collector for the restoration of the Zemindary and to remit to the Court the amount realized from the Zemindary and deposited in the Huzur Treasury for its disbursement to the Plaintiff—

21st November 1860 } /signed/ Vaidiyanadam Vakeel

Filed on 23d November 1860.

/True Copy/

/signed/ R. R. Cotton

No 7

From Clement Dale Esqre Govt Pleader in the Court of Sudder Adalat at Madras

To The Right Honorable The Secretary of State for India in Council

Madras 14th January 1862

Sir,

Para 1. I do myself the honor of informing you that the Registrar of the Court of Sudder Audalat at this Presidency has forwarded to the Registrar of Her Majestys Privy Council, Whitehall, Certified Copies of the transcript of the record in the Appeal Suit No 140 of 1859.

2. The Appeal to Her Majesty in Council, has been made under orders from this Government, as notified in their Proceedings noted in the Margin.

Pro. of Govt 25th January 1861 No 181 Revenue Department

3 On this subject, I had the honor to address this Govt in my letter dated the 19th of July 1860 No 110; Also the Board of Revenue in my letter dated the 10th of January 1861 No 11 and this Govt in my letter dated the 28th of January 1861 No 14.

4 The Suit No 140 of 1859, was an Appeal to the Sudder Adalat from an Original Suit No 1 of 1856, instituted in the Civil Court of Madura.

The

5 The Plaintiff in such Original Suit is the Daughter of one Chinna Obala Naick, now deceased, by his 2d wife Pauparnaul.

6. The Original Suit was instituted against the Collector of Madura, and four other Defendants.

7. The object of that suit was to recover the possession of the Polliem or Zemindary of Errachoctta Naickanoor in the Zillah of Madura, with mesne profits.

8. The Plaintiff rested her Title to the Zemindary on the fact of her being a Daughter of Chinna Obala Naick, who was the last Male Possessor, and on a judgment passed in A.S. No. 20 of 1838 by the late Zillah Court of Madura. It will however be observed by her plaint she did not claim any mesne profits from the Collector, and in the 4th para averred that the Collector had permitted the 2d Defendants Father to hold the Zemindary, as if it had been rented by him from Chinnamaul (The 1st wife of Chinna Obala Naick and who will be again mentioned) and had also permitted the 3d Defendant and the 4th Defendants' Father to enjoy a share as

as Sub renters, and that ever since their death (I do not understand what is meant by "their") the Defendants 2 to 4 had continued to enjoy it.

9. The Answer of the Collector was prepared by Mr. Parker, the then Collector, without professional assistance, he thereby traverses the whole of the Plaintiff's case as averred in her plaint. He then avers that the Plaintiff belongs to the Cumbala Toliar Caste, and that according to the Custom of that caste Females cannot succeed to a Polliem, and that, in accordance with that Custom, on a failure of Male Heirs the Zemindary in question had escheated to Government. He admits that after the death of Chinna Obala Naick, his two wives Chinnamall and Pauparnaul had been suffered to enjoy the Estate without opposition by Govt.; but states that such permission had been allowed, owing to the Custom of the Caste, and certain precedents to which he refers, not having been properly brought to the notice of Government. He also avers that to the former suits and Appeals to which the Plaintiff refers, Government was not a

a party.

10. The facts of the case are comprised in a very small compass. The Zemindary is an ancient Zemindary held by the Ancestors of Chinna Obala Naick prior to 1802 and in respect of which no Istimrar Sunnud was ever issued. Chinna Obala Naick was the last Male Possessor of the Zemindary. He died on the 31st of August 1835, leaving 2 Widows, Chinnamaul and Papamaul & one daughter the Plaintiff who is about 15 years old by his second wife Pappamaul. He left no Male Issue, but one Ruckama Naick of Timmarasa Naickanoor claimed to a "Cohoir and blood relation." On the death of Chinna Obala Naick his two widows were permitted by the Revenue Authorities to remain in possession of the Zemindary. In 1836 Pampamaul instituted the O.S. No. 265 of 1836 to which Chinnamaul and 5 others were Defendants, but neither the Government nor any of its Officers were included as such Defendants; by this suit the Plaintiff sought to recover Rupees 275 as her share of

of the produce of the Zamindary respectively the Defendants; and by Supplemental plaint, the Plaintiff claimed half the Zamindary. The Decree in that suit was dated the 16th January 1838 (The Plaintiff's Exhibit I) Against which the Widow Chinnamaul appealed in A.S. No. 20 of 1838. On the 30th of March 1839 Pampamaul died; and on the 31st of March 1840, a Decree was passed in A.S. No. 20 of 1838. This Decree is the Plaintiff's Exhibit A, and is the Decree referred to in para 8. After the death of Pampamaul, the 1st Widow Chinnamaul retained possession of the whole Zamindary until her death. In 1841, Ruckama Naick instituted an Original Suit, which was No. 55 of 1843, against Chinnamaul, claiming the Zamindary as an undivided Succession & nearest male heir of Chinna Obala Naick against the Decree in that Suit the A.S. No. 18 of 1841 was instituted, the Decree in which is the Plaintiff's Exhibit B but to these Suits neither the Government nor any of its officers were

Parties

Parties; neither was the Plaintiffs title the subject of dispute. On the 18th December 1848, Chinnamanal executed an Agreement to the 2nd Defendants Father Chockalingum Pillay, presenting to him the Zamindary for 9 years, at an Annual rent of Rupees 3401-15-8. The 2nd Defendant alleges that this Agreement became the subject of litigation in D.C. No. 1510 of 1849, and in the Special Appeal Suits, and was confirmed; but to these Suits Government was not a party. On the 12th of July 1853 Chinnamanal died. Whether the Collr thereupon entered into actual possession of the Zamindary is not explained in any of the instructions Hence received, but in the 2nd Defendants Answer it is stated that under Orders from the Bd of Rev. the Collector put the 2d Defendants Father into possession of the Zamindary, confirming the Agreement by Chinnamanal, and taking from 2d Defendants Father

Father a Kararnamah - From the Plaintiffs Exhibit C it appears that on the Motion of the present Plaintiff, The Subordinate Judge directed the issuing of a precept in Execution of the Decree in A.S. No. 20 of 1838, requiring the Collector in virtue of that Decree to place the present Plaintiff in possession of the Zemindary - The Exhibit C is an Order by the Civil Judge on Appeal confirming the directions of the Sub-Judge - Subsequently however, in answer to the precept, the Collector returned to the Court the fact of Chockalingum being in possession, and the Civil Court, on the 24th March 1854, passed an Order, Exhibit D referring the present Plaintiff to a suit to

recover

recover possession Against that Order an Appeal was preferred to the Sudder Adalut, who by proceedings dated the 26th February 1855 (not in evidence) ruled that Government was in possession of the Zemindary, and that the Plaintiff must sue by O.S. for its recovery. In 1855 This Government declared that the Zemindary had Escheated.

11 The original Suit No. 1 of 1856 (the present litigation) was thereupon instituted.

12 In paras 4 to 7 of the Petition to Her Majesty, reference is made to an Order passed by the Civil Judge on the 14th of February 1859, declining to take evidence which the then Collector was prepared to tender. It may therefore be convenient here to detail the circumstances relating to the conduct of the suit; the Plaint was filed on the 25th January 1856 the answers on the 14th and 26th March, the replication on the 26th April, and the Rejoinders on the

the 12th June 1856, At those dates Mr. Parker was the Collector and he prepared the Answer of the Collector and Rejoinder, He had been many years in the District, and in addition to being an active energetic Man, was extremely intelligent, was thoroughly acquainted with the District, the Customs prevailing in that part of India, and with the records of his Office, It will be observed that issue was joined on the 12th June 1856, The points however were not given till the 13th July 1857 This very great delay has not been accounted for, but doubtless to such delay may be attributed the miscarriage of the suit so far as the non production of evidence is concerned, for Mr. Parker remained in the District till October 1856, and if the points had been given in the 4 months which intervened between the joining of issue and Mr. Parker's departure, I feel confident the

the evidence which ~~which~~ would have been adduced on behalf of Govern=ment would have been of a very different character from that which was adduced - In October 1856 how=ever the late Mr. R. I Sullivan was appointed to act as Collector of the District during Mr. Parker's absence, Mr. Sullivan was then suffering from indisposition of so severe a character as must have greatly weakened his powers, and would have been likely to interfere prejudicially, with his entering upon a laborious Examination of this case, and the records of his Office bearing on the points in issue, even had he been naturally of an active energetic turn of mind, and had possessed an aptitude for business of this nature; However the fact is that points were given on the 13th of July 1857; that on the 25th of the same month Mr. Sullivan filed the 2 Eschibits Nos. 1 and 2; but failed to tender any other evidence, Thus

matters

matters stood, as far as the Suit was concerned, until February 1858; in the interval however the following changes in the office of Collector occurred, Mr. Sullivan's state of health rendered his removal from India necessary, and on the 17th October 1857 he obtained leave of absence, delivering over charge of the District on the 21st of that month; on the 30th Mr. Hathaway was appointed Collector, and assumed charge on the 11th November thereafter, on the 10th of December Mr. Sullivan obtained leave to proceed to England, where he died on the 6th of February 1858 - About the latter date Mr. Parker returned to the District, but was there only about a month. Mr. Hathaway having been re-appointed to act in the 30th of March 1858. He however only remained in the District a few months for, on the 22nd of October 1858 Mr. Clarke took charge of the District from him - I believe Mr. Sullivan, as also Mr. Hathaway were both strangers to the District, and consequently could not be familiar with the peculiar customs of that part of India, nor with the records of their office. They therefore doubtless were placed in a

a disadvantageous position so far as this suit was concerned, and as far as relates to Mr. Hathaway it was scarcely to be expected that he would enter into a minute Examination of a suit in which he found issue had been joined 17 months previously, and in which the Evidence that his Predecessor (it must be assumed) considered sufficient had been adduced. The omission was however discovered by Mr. Clarke previous to the final Hearing of the suit, and such omission was promptly brought to the notice of the Civil Judge. I apprehend therefore there can be no doubt, that it was the Judge's duty to have received the Evidence, a very slight knowledge of first principles would have led him to apprehend his duty on this point which however had he any doubt he would have found clearly laid down in the Civil

procedure

procedure by Macpherson 247, 305, (3d Edition) The circumstances I have above alluded to must have been within the Judge's own knowledge and if he had entertained any doubt as to the course to be pursued in an ordinary case in which the omission might fairly be attributed to lackes by the Suitor himself & to it might fairly be assumed had full and perfect knowledge of the existence of the documents and evidence sought to be put in Evidence. I submit such doubt should have been subjected to a favorable consideration in the case of a suit defended by a public officer who could not be so minutely acquainted with the

details

details, and as it appears to me, it could not fairly be argued that although the Collectors had been so constantly shifted, yet that the Establishment, whose peculiar duty it was to be acquainted with the records of the office, had not been changed; or that the Defendant was represented by a Vakeel, for to those acquainted with such Sanctionaries it is well known, that unless under energetic supervision, much dependence cannot be placed on the Establishments of the Collectors for getting up Evidence in suits of this nature, probably not so much as a general rule, from want of Zeal, or natural accuteness as from lack of knowledge

of the quality of the information which should be sought for, and of proper direction in that respect: This doubtless ought to be to a considerable Extent supplied by the Vakeel, but unfortunately the acquirements of the general run of Vakeels who practice in Mofussil Courts is not of a quality to enable them to afford much assistance in that respect, and it is owing to this that many of the Government suits miscarry, as in point of fact the Conduct of the suits devolves on the Collectors, who can scarcely be expected to be very au fait at the work, and before quitting this part of the subject I consider it my duty to remark, that I firmly believe the Government would be gainers if they could obtain a properly qualified class of men as their Vakeels in the Mofussil Courts, even though they paid higher for the Services with the new System, which it is understood will be introduced into

into the Judicial branch of the
Services, this might probably be
thought worthy of Consideration; I
entertain no doubt if inducements
were held out to qualified men to
accept the office of Government Va:
:keel in the Mofussil, most benefi:
:cial effects would shortly accrue not
only by getting the work of Govern:
ment better performed, but by giving
Government a large class of Efficient
Advocates from which to select for
the Bench.—

13 It will be remarked
that the Civil Judge did ultimately
permit many Documents to be filed,
but from declining to Examine
witnesses he shut out the Collector
from proving such Documents I
shall have occasion to draw attention
to the manner in which he treats
those

12

those Documents hereafter

For the reason why the
14 Succession should not go in the
Female line; and why the ruling
power should have the right of no:
:mination, Mr. Clarke offers the
following observations- "It is of
"importance that the Law governing
"the Succession to these Zemindaries
"should be clearly and unmistakenably
"laid down and enforced There is
"no question with any one who is
"versed in Indian History that all
"these Zemindaries were Baronial
"Fiefs, situated at the entrance of the
"passages into the Madura Country,
"and were bestowed on trusty and
"well tried Lords and Barons,
"who had come down with the Madura
"Kings, and were considered able
"to defend and keep the passages,
"and afford such other military —
"duties as pertained to such feuda:
:tory Lords- It is clear a woman
Could

"could not render the Service required,
"and was naturally and then legally
"incompetent to succeed to the Estates;
"In fact on the principle of its creation
"it always rested with the ruling
"power to nominate the Successor,
"and the most fit for the duty re-
"quired was selected. but if the
"Government prerogative is to be
"invaded by the Courts, the whole
"character of the Estate is altered
"Entirely."-

15 On the 30th of March 1859
the Civil Judge passed his Decree
in the Original Suit, whereby he
decreed that the Collector should
make over to the Plaintiff as sole
surviving Heiress of her deceased
Father, the Estate, and should
also pay her the mesne profits
sued for, and all her costs in
the Suit.-

16 It is unnecessary to offer
any remark on the observations in
the

in the 13th Paragraph of the
Decree where treating of
the Matters of the Plain-
tiff under the Decree in
the former suits, as the
Judge did not have held
that those Decrees do not
bind the Govt. to whether the
Defendants Exhibits
would have been receivable
as evidence in such a
case is not decided
by the Civil Judge
he rejected them as
evidence, because
they have not been
proved,

proved; he himself having refused to receive evidence to prove them — I do not consider it necessary to occupy your time by following the Civil Judge through the arguments used by him in his Decree as the answer to them will readily occur to your professional Advisers in England —

Against

~~used by him in his Decree, as the answer to them will readily occur to your professional Advisers in England~~

Against that Decree
17 this Government appealed to the Sudder Adalut; at the time I prepared the petition of appeal — I had not all the papers before me and the reasons there introduced — were taken from the letters of the Collector and the statements made in the Decree of the Civil Judge; in para 10 of which it is stated that the Collector" at the final hearing pleaded further" I am now inclined to think that the Civil Judge here alludes to oral arguments put — forward at the Hearing, and not to any formal pleading filed by the Collector in the Suit —

18 From a perusal of the plaint

plaint and the answer put in by
Mr. Parker it will be seen that —
although the Collector by his general
denial in the first para of that answer
put the Plaintiff to the proof of her
whole case, yet that he (the Collector)
really rested his defence on Two issues
Viz.
1st. The custom in the Cumbala
Jotian Caste - and 2nd. That Chinna =
mail (not Chinna Obala Naick)
having died without Male Heirs
the Estate escheated. My impression
is that Mr. Parker meant to over
in his answer, that Chinnamail
and Pamparmal were suffered
to enjoy the Estate without oppo =
=sition by Government, from igno =
=rance of the Customs of the Caste
and oversight of Government rights;
and that on the death of Chinna =
mail, there being no male Heirs
of

of Chinna Obala Naick, the Estate
was taken possession of by Government
&c. The defence is otherwise senseless,
but from the language used in the —
answer, a person unacquainted with
the defence which was really intended
to be set up, would not suppose such
a defence was contemplated

The appeal suit came on
19 for hearing before the Sudder Adalut
on the 16th of July 1860; and it may
be considered convenient that I should
explain shortly what passed on that —
hearing, to enable your Counsel to meet
objections should any be offered, that
any points were not urged in that —
Court on behalf of the Collector

When the Appeal suit was
20 Called on I was proceeding to shew
to the Court the facts of the case,
when the Judges remarked that —
no evidence had been given by the

Collector

Collector to prove the alleged custom
in the Cumbala Totiar caste;
and asked me for explanation;
In giving this I drew the attention
of the Court to the Exhibits put in
by the Collector, and explained
that although further evidence had
been tendered by that officer to the
Court Judge the latter had refused
to admit it.-

21 The Court then intimated that instead

of going into the whole case they
wished me to confine my argu-
ment in the first instance to
3 points Viz.t-
1st The effect on the succession
consequent on no mil treat =
Istimrar Sunnads, having been
issued (The 2d of my grounds
in the Appeal Petition)
2d The effect of the acquiescence
of Government in allowing
Chinnamaul and Punpamma
to enjoy the Estate after the
death of the Plaintiffs father.
Chinna Obala Naick- And
3rd That under the circum-
-stances of this case as shewn
by the record, the Plaintiff was
not entitled on the death of
Chinnamaul (her Father's senior
widow

lordon and her own step Mother) to
succeed to the Zemindary

22 On my coming to the 3d of
these grounds an objection was taken
by the Vakeel for the Plaintiff,
that it was not competent for me
to go into that ground, the decree
in D.S. N° 20 of 1838 being "a
judgment in rem." The Court how-
-ever decided that such decree
was not binding on the Govern
-ment and intimated that I might
proceed to argue such of the other
points of the case, as I thought
it was open to me to urge. I there-
-upon was proceeding to argue that
Females cannot succeed, but the Court
stopped me observing - It was not
open to me to shew this, the Go-
-vernment themselves having put in

in Eliminaments and Pauparmaut.
That such act precluded the Govt.
from putting forward that ground.
I however urged upon the Court
that on the strength of the judg
-ments of the Sudder Adalat
reported in the 1st Volume of
the Sudder decisions it was clear
the succession to Zemmindaries, not
held under Istimrar summud
was not governed exclusively
by the laws of inheritance; but
that the ruling power created,
tolerated, abolished, or disposed
of those tenures as might be con-
-sidered most expedient. That
so soon as Government had
put in Eliminaments, it was
not competent to Government,
or were the Courts, to divest her

of

of that right which extended however merely for her life, and on her death the power of Govt. revived. The Court avoided giving any decision on the point by observing the point had not been raised by the Collector in the Court below. It was not therefore competent for me to review it for the first time in a Court of appeal. I then proposed to go into the other points raised in my appeal petition, but the Court would not allow me to do so, observing it is admitted who the Plaintiff is, It has not been shown that Chinnamani has any Heirs, it was therefore to be presumed she had none indeed the Collector had so averred in his answer; They (the Judges would therefore ask the Pundits whether the

Plaintiff

Plaintiff is the lawful Heir, and if they answered in the affirmative they would decide the case. I urged that the Collector had never intended to admit that Chinnamani had died without Male Heirs; and submitted for the consideration of their Honors that the defence intended to be set up was that to which I have referred in para 18 and that by reading the 2d and 3d paras together such might be inferred. Their Honors however (and I think rightly) decided that by their fair construction which should be put upon the answer the defence was, that Chinnamani had died without Male Heir

25 The question was then put to the Pundits. They did answer in

in this affirmation, and of course I was precluded from carrying the case further -

24 In my letter of the 19 July 1860 N° 110, I had the honor to report to this Government on the case; and I then advised that no appeal to Her Majesty should be preferred; as I considered that the proper grounds of defence had not been raised in the Original suit -

25 I perused that letter, previously to receiving a copy of the Decree passed by the Sudder; such decree was not in fact signed and sealed till the first of September 1860.

26 On receiving a copy of the Decree in September 1860, I observed the amount entered at the foot of the Decree to be as follows, "Pleaders fee on Rs. 27,803-15-2."

That sum indicated the amount adjudged by the Sudder to the Plaintiff. The sum for which the Plaintiff sued was only Rs. 7113-13-7 by the Decree in the C.S. the Collector was ordered to pay to the Plaintiff "the "mesne profits sued for" which Decree the Sudder Court confirmed. I therefore drew the attention of the present Collector Mr. Levinge to the discrepancy, because so far as I ever instructed, no evidence had been given to shew the amount of such mesne profits, moreover it had been alleged in the 8th reason in the petition appealing to the Sudder, that the mesne profits had not been received by the Collector.

27 On my forwarding a copy

copy of the decree to the Board of Revenue the discrepancy also struck Mr. Clarke (the former Collector of Madura now a Member of the Board) and after he had communicated with me I addressed the Board under date the 30th October 1860. in which I stated, that inasmuch as the Plaintiff had failed to prove the receipt of mesne profits by any body, and as the Civil Court had decreed that the Collector should pay to her the mesne profits sued for" when

when she herself sought to recover them from the other Defendants, I was of opinion an appeal to the Privy Council would succeed to that extent, and that probably the Lords of the Judicial Committee might set aside the Civil Judge's order of the 16th Feby 1859 refusing to admit the further evidence, tendered by Mr. Clarke, and remand the case -

28. Government however thought that if the Sudder Adalat had committed an error in the matter of mesne profits, the proper course was to apply on that ground for a review of their Judgement -

&c

29 In accordance with the order of Government to that effect a Petition for review of their Judgment was presented to the Court of Sudder Adalat.

30 The Petition was posted for hearing on the 5th January 1803 when their Honors the Judges were pleased to dismiss the Petition.

31. The Judges, before hearing me, took objection to the Petition on several grounds, 1st That the objection had

not been taken in the Civil Court, 2dly that the manner in which the objection had been taken in the Petition of appeal was too irregular and 3rdly that in my address to the Court on the hearing of the appeal, I had not gone into the objection with sufficient fullness, in fact I had not shewn all the circumstances which I went into in preparing the Petition for review, setting out the amount of rent reserved by the lease granted by Chinnamanal and other similar particulars in detail.

32. With regard to the first ground, I submitted that the answer as prepared by Mr Porter was sufficient so far as that point was concerned because by her plaint the Plaintiff had not averred that the Collector had ever received any portion of the mesne profits, but on the contrary she averred that "the Collector had permitted the 2d Defendant's Father to hold the Zemindary, which had been rented to him by Chinnamanal and the 3d Defendant and 4th Defendants father to enjoy as Sub renters, under which permission the Defendants 2 & 4 continue to enjoy it". Moreover the Plaintiff did not pray that the Collector should pay her the mesne profits, but states (in addition to what I have just mentioned) that she included in her suit the 4 defendants and prays in general terms "the recovery of the Zemindary with mesne profits".

profits". I contended that the Collector was not charged with the receipt of profits, but on the contrary the Plaintiff herself stated to the Court that the Defendants 2 to 4 (the Collector being the 1st Defendant) had been & still continued in possession under the lease, and therefore must necessarily be the parties who had received the profits which had accrued, beyond the rent reserved by that lease; that therefore it would have been improper for the Collector in his answer to have traversed the averment (beyond his general traverse) which, although couched ambiguously still as I submitted did convey a truthful statement of the facts viz. That the Defendants, other than the Collector had been and still were in possession of the property and therefore in receipt of the profits, beyond the rent reserved by the lease, and consequently there was no specific averment for the Collector to traverse, and that it was not until the Decree of the final Judge, which released the other defendants from paying the mesne profits which they had received, and ordering the Collector to pay the whole of the profits (which he had not received) that the Collector was aggrieved, or had occasion

occasion to raise the question, and this he did by his petition of appeal

33 I can readily understand that Your Lordship looking at this plaint with no other light than common sense appended, might very fairly conclude it was not incumbent or necessary for him to deny the averment in the plaint regarding the mesne profits couched as it is in the terms I have mentioned. It is a pre-vailing practice in the Mofussil Courts of this Presidency to prepare pleadings in a very verbose and ambiguous style; I believe that frequently this is purposely done with the view of misleading the opponent, and preventing him from detecting the real object by artfully enveloping the averments in a large map of words, without any sense or meaning, and it frequently happens that not till after a case is gone into in Court, and the real object of an opponent is discovered, a party may thus be easily entrapped into not answering so fully as he would have done had the averment been couched in plain unambiguous language, or had he in time detected his opponents aim, in the case now under consideration. It might have been desirable (looking at the present constitution of the Courts) that the fact of the Collector not having received any of the mesne profits beyond the rent should

should have been positively denied in
the answer. It is however obvious that
the plaint was understood in the
lower Court as Mr Parker understood
it, for the 2d defendant in his answer
objects to the amount of profits charged;
the points also are evidently given on
that view of the Plaintiffs case; and
the present Civil Judge in his decree
refers to it, in the same light; but
even if the Plaintiff had intended
to charge the Collector with the re
ceipt of the profits, as the Sudder
Court now hold, she had not done
it clearly, and without ambiguity,
and if there be any error in the
pleading, the Plaintiff as the party
who committed the first error by her
vicious pleading should have been
the sufferer, Moreover a point was
given whether, to prove that if en-
titled to the Zemindary. "The
lease to 2d Defendant expired
with the life (ie Chinnamaul)
so that the defendants either or
both are accountable to her for
the mesne profits", and that "her
claims on that account are pro-
perly aspired at 3500 Rs per an-
num", a point was likewise given
to the 2d defendant "to prove that
he paid to Government since the
death of Chinnamaul the sum
stipulated by his lease, and
might

ought not to be called upon on any
case to pay at a higher rate, or
for the difference, or if he be, that
the claim as laid by Plaintiff
is excessive" to which no point
was given to the Collector on
the subject, and no evidence was
adduced or tendered in those
points by the Plaintiff.

34 In the regard to the 2d ground
taken by the pratyes I feel it
quite unnecessary to occupy
your time by offering any
observation. The rule as re-
cognised by Courts having
appellate jurisdiction being
perfectly understood, that a
party appealing should
state his objections with as
much conciseness as is practi-
cable with giving fair
notice to the opponent of
the grounds on which the party
intends to support his case.

The

the 3d ground in the Petition of appeal gave ample notice to the Plaintiff, and the Vakeel for the Plaintiff perfectly understood it.

With regard to the 3d ground taken by the Judges their Honors it appeared had destroyed their notes taken on the hearing, they therefore only spoke from memory; Mr Strange was under the impression that I had not alluded to that point at all; whole my remarks I shall not go into the point with the same particularity that I had done in the Petition

for

for review, and on the other hand the Vakeel for the Plaintiff who was present in Court, asserted that the point had been fully discussed, and that he had at the Hearing objected to my being allowed to go into the subject, on the ground that the objection had not been raised in the Court below. Mr Frere is doubtless correct in his remark that I did not go into the point at any length, and certainly not with the same particularity that I had in the Petition for review, was much as the dates on which the Statements in that petition are founded was not furnished to me until I was instructed to Petition for a review, but in addition to my having been prevented by the Court from going into the case in the Order, or so fully as I had proposed (as stated in paras 21 and 22) I should naturally not have labored that point, it was not one of the material points in the case, neither would the Sudder Court (if they adhered to their ordinary practice) have

settled

settled the amount of mesne profits or the proportion in which they should be borne, even if they had evidence before them, which they had not, and I advisedly contented myself with referring to the point as one raised, stating that no evidence had been taken as against the Collector, and that if the Court were against me on the merits of the case on that point, the case would have to be remanded. Otherwise nothing fell from the opposite side, or the Judges I naturally concluded such a reference was sufficient.

36 It may be desirable that I should here mention that Minutes or drafts of Decrees are not seen by Pleaders or Suitors and it is not until after a Decree is signed and sealed that Pleaders or Suitors have the opportunity of knowing in what terms, or in what manner the Decree is framed. So

37 So soon however as I saw the Decree in this case I drew the particular attention of the Coll^r to the amount of mesne profits referred to in the Decree (as mentioned in para 26) and I must confess I am at a loss to understand on what principle a Court can refuse to rectify an error of this nature, and the more particularly in a case circumstanced as this is where the Plaintiff had not sought the recovery from the Collector or if she had, (as it must be assumed she now held by the Sudder) she had done it in such a manner, that she had misled her opponents and the lower Court into a position by misrepresenting, and where, even supposing for the sake of argument that a very casual reference had been made to the point on the hearing of the Appeal, the overlooking it in the Decree was the error of the Court and certainly not of the Suitor as she had no opportunity

opportunity of knowing how the Decree was framed until after it was signed and sealed.—

38.— There is however another point to which I ought to direct attention to the order refusing to review their judgment, the Court of Sudder Adalut has ordered Rs. 15 4 a-1 to be collected from the Coll.r and paid to the Plaintiff as the costs incurred by the "latter in opposing the Review Petition in question".—

39.— The practice regarding a review of Judgment is governed by Act I. VIII of 1859, Sections 376 to 380; and with reference to Section 378 a petition for review is posted for hearing as soon after its presentation as is convenient, and if on looking at the Petition or hearing the Petitioner's Counsel, the Judge who passed the order in respect of which the review is prayed, thinks a sufficient

prima facie

prima facie case is made notice is given by the Court to the opposite party but no notice is given until after such preliminary hearing— On such preliminary hearing the Court may if it thinks fit hear Counsel for the opposite party if invited to appear, but if the opposite party does instruct Counsel no costs are given to him.—

40.— In the case now under consideration it was the preliminary hearing that took place on the 5th January 1861, no notice had been given to Vera Kamma Amma. The Vakeel who had appeared for her at the hearing of the appeal on the 16th of July 1860, was in Court when the Petition for review was called on, and did not hear the observation to which I have alluded in para 35; but was not regularly heard on the Petition. The Judges taking the initiative and stating the objections I have referred to in para 31. I certainly ventured to submit the few observations to which I referred but the Court expressed their opinion against reviewing their judgment, and there the matter ended.

ended so far as I was aware until I received a copy of the order which had been passed; most assuredly the Vakeel for the Plaintiff did not in my presence make any application for his costs nor was I aware that any order for such costs had been made until I saw the copy procured from the Sudder.—

41.— Under the course as now pursued in the Sudder I did not feel myself justified in advising Govt. to present a petition for review of that Order, but I have referred to the Order in the Petition appealing to Her Majesty.—

42.— In preparing the Petition appealing to Her Majesty I have repeated the several grounds which were inserted in the Petition appealing to the Sudder Adalat, from the record (as now furnished to me) I have however reason to fear, that the question regarding the Zamindary being an unsettled Zamindary has not been properly raised in the Civil Court and if I be correct in that surmise the 2d ground cannot in my opinion be maintained, and the 5th ground must also fall, for that would depend on the question of the right of the ruling power to nominate a successor; if that principle were

were established, the nomination of Chinnamaul by Government in 1836 would have had the effect of constituting the Zemindary as self acquired property by Chinnamaul for life, with power to the State to nominate again or her devisee, at any rate to her property the Plaintiff would have no right by inheritance. The 6th ground also in my opinion cannot now be maintained. I however considered it more prudent to insert the whole of the grounds, being aware that this Petition will not be acted upon, but that your Counsel in England will have the full record before them and can abandon any of these objections they may deem unsustainable.

43. It was decided by the Court of Sudder Adalut on the 26th of February 1855 (see para 5 of plaint) that the Collector was in possession; the Plaintiffs suit is therefore in the nature of an Ejectment, has she proved her Title? By the evidence she has adduced certainly not, none of the Exhibits filed by her are proved and very few should have been received as evidence, but if proved and admissable they would not have advanced the

Plaintiff's

Plaintiffs Title.

I. said A do not bind Government;
nor does D.

C. has been overruled by the Sudder.

D. Merely refers Plaintiff to a new Suit.

E. is a Case at Tinnevelly the circumstances of the Case are not shewn; nor the Caste of the Parties. The reasons which actuated the Collector are not stated; but this paper tends to prove that the Government in that instance Exercised their right of nominating the Successor.

F. Relates also to a Tinnevelly Case. The Caste of the parties is not stated, and the Case turned on a totally different point. The Government was not a Party to the Suit.

G In a similar Document to E, and respecting which similar observations apply.

H Has not been proved Evidence should have been adduced, to shew the net receipts of the Zemindary. Moreover this paper applies only to the years 1854 and 1855.

I J and K These have been improperly admitted as evidence I do not understand for what purpose they were tendered.

The Oral evidence is of a most unsatisfactory Character

44. It must however be borne in mind that the Plaintiff is the Daughter of Chinna Obalacharick.

45 Should your Counsel consider it open to them to argue the point of the Zemindary being an unsettled Zemindary I would refer them to the Decrees on Act XIII of 1843, Act II of 1816, and Act II of 1817 reported in the 1st Volume of Decisions in the Sudder Adalut at Madras pages 78, 141 and 172, I am not aware that any of these Decisions were appeald against, or that the point has ever been argued before the Privy Council.

I have the honor to be
Sir
Your most Obedient servant.
(Signed) Clemt Dale
Government Pleader in the
Court of Sudder Adalut at Madras

DS With reference to the Amount of mesne profits received I think it right to send a Certified Copy (with translation) of a Petition presented on behalf of the Plaintiff to the Civil Court in which she virtually admits that the Collector has received a

a smaller sum than that decreed and was willing to receive the smaller sum; This was brought to the notice of the Sudder Adalut.

/Signed/ C. D.

/A true Copy/
/Signed/ Clemt Dale.
Govt Pleader in the Court
of Sudder Adalut at
Madras.

20th January 62

20th January 62

No 81

No 162-165

Encd

No 8

From Clement Dale Esquire Government Pleader Sudder Adalat
To J. D. Sim Esquire Secretary to Government.

Madras 14th January 1862.

Sir

With reference to the Proceedings of Government and my letter under the dates and numbers noted in the margin, the former authorising an appeal to Her Majesty in Council against the Decree passed by the Court of Sudder Adalat in A. S. No 140 of 1859. I now do myself the honor of enclosing for transmission to England a letter I have addressed to the Right Honorable the Secretary of State for India in Council under date the 14th Instant No 7 as directed by the Despatch of the late Court of Directors of the East India Company dated the 28th March 1855 No 3.

Proceedings of Government 25th January 1861 No 181 Revenue Department
Letter from Govt Pleader to Secy to Govt 1st March 1861 No 39.

I have the honor to be
Sir
Your most obedient Servant
Clem. Dale
Govt Pleader S. A.

Revenue Hobart

Pro: of Gold for Year 1861/62

From Govt. Pleader & A.

To Secretary to Government

Dated 14th January 1862

Rec'd 18th

No 8

(With 2 Enclosures)

Enclosing a letter for transmission to England addressed to the Right Honorable the Secretary of State for India in Council respecting the Appeal from Decree in A. Suit No 140 of 1859.

No 162 & 163.

No 8/ 20 January

William Archer

19th January 1862

Copy in a Letter to England

D/ 20th Jany 62 No 2

Encl: in Govt. Order No 8 to the Govt. Pleader dated 20th Jany 62

No 8/ 20 January

William Archer

Ordered to be forwarded to the Secretary of State —

Para 12 of Mr. Sale's letter to the Secy. of State, in the latter part of which that gentleman urges the advisability of obtaining a properly qualified class of men as Govt Vakeels in the Mofussil Courts, will be referred to the Judicial Department for consideration —

J D S

To The Govt Pleader Dept 21st

" Board of Revenue " 22nd

" Judicial Dept. " in the Para 12 Dept