M.R.O. 14—10,000—21-4-32

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 834 Press Mis.

285. 291

Dated 17 .4. 1862.

Not to be folded or roughly handled

PROCEEDINGS OF THE MADRAS GOVERNMENT.

Read the following Petition from CAVELLY VENCATA NARAINAPAH, Jághírdár of Tinnanore and Zamíndár of Vissennapet, to the Honorable Sir WILLIAM DENISON, K. C. B., Governor in Council, Fort Saint George, dated Madras, 13th February 1862, No. 447 :—

RESPECTFULLY SHEWETH,

1. That by a Decree passed by the Judicial Committee of the Privy Council on the 21st of December last, in a Suit in which the Government were Appellants, and your Petitioner, Respondent, the right of a Hindu childless widow to alienate her husband's real Estate as against the Government has been definitively negatived, and the Suit remitted to the Court of Sudder Adálat to take further evidence, if necessary, as to the circumstances under which the debt of the widow to your Petitioner arose.

2. The important principle to ascertain and determine which, your Petitioner is informed, was the object of the Government in originally instituting the present Suit, has thus been determined by the highest judicial tribunal, and the Government right of eschent declared to be valid by Law.

3. This object being gained, your Petitioner respectfully submits, that the case is now ripe for such compromise and arrangement as the Lords of the Privy Council suggested in their Decree of July 30th of 1860. They say, "Their Lordships desire, again to suggest, for the consideration of the parties, that some arrangement for the surrender of the Zamíndári to Government, upon payment of what is due to the Respondent for the advances actually made, would probably meet the real justice of the case, and save both parties from protracted litigation."

4. They had already at the onset of the case, and before the argument commenced, as your Petitioner is informed by one who was present and saw the paper handed to Council by the Lord Justice Knight Bruce, suggested to the Counsel on both sides, that the case was one for amicable settlement, but the Counsel of the Government declined to accede to the proposition (to which your Petitioner's Counsel expressed their readiness on his behalf to conform), probably from a desire to obtain a legal decision on the point, to settle which the Suit was instituted.

5. Their Lordships in their present Decree again express their regret that they are not in a position to satisfactorily determine the long litigation between the parties.

6. Acting upon their Lordships suggestions contained in their Decree of 30th July 1860, herein before quoted, your Petitioner on the receipt of that Decree, at once on the 21st September 1860, presented his Petition to the then Governor in Council (copy of which accompanies marked A) praying for some such arrangement of the case as was suggested by the Lords of the Privy Council.

7. Not having been favored with any answer to this application, your Petitioner was compelled reluctantly to proceed with his case before the Sudder, when he obtained a second Decree in his favor, against which the Government preferred this present appeal.

8. The act of the Collector in 1841 has been declared by the Privy Council (overruling the Sudder in that respect) not to be binding upon the Government in Law. But your Petitioner respectfully submits that morally and equitably, the Government ought to accept that act and its consequences as binding upon them; and that the reasons of the Sudder in a moral point of view are most cogent; upon this point although their opinion as to the *legal* effect of the Collector's acts, as binding the Government, has been pronounced erroneous by the Appellate Court. They say as follows; "Another bar to the Suit, it appears to the Court, is created by "the Collector's act in 1841 to which their Lordships of the Privy Council advert. The "Defendant was in process of putting in execution the Decree held by him, and was about to "have his claim satisfied by the sale of the Zamíndári as provided for in the Decree. The "execution was entrusted by the Court to the Collector to enforce, when he gave that counsel "to the Debtor Lutchmeedavamah which led to the execution of the Razeenamah on which the "Defendant founds his title. The terms of the Razeenamah were immediately communicated

"to the Collector and the execution dropped. The Collector held office in more capacities than "one. As respected the enforcement of the Decree he was acting as the Nazir or Executive "Officer of the Court. Otherwise, in his ordinary position, he was the agent or representative "of the Government in his District. It appears clear to the Court that in advising Lutchmee- "davamah to 'come to some terms, settling upon any conditions with the creditor' so as to save "the Estate from sale, the Collector was dealing with the matter in a manner beyond the functions "devolving on him as Executive Officer of the Court, and was acting in the capacity proper to him "as agent of the Government. It is the policy of the Government to save from peremptory sale "the possessions of landlords, and especially those important Estates known as Zamíndáris, and "there can be little doubt that it was owing to the interest thus felt in Lutchmeedavamah as a "Zamíndár that the advice in any way to save her property from being brought to auction was "given, together with the respite necessary for the purpose. The terms into which Lutchmee- "davamah entered with her creditor in pursuance of the above advice were such as to allow of "the Estate eventually vesting in him. The Collector, after being made aware of these terms, "offered no objection thereto. On the contrary, he gave effect to the arrangement and so "endorsed it by dropping the execution. It would be altogether inadmissible that the Collector "individually after the condition of lapse to the creditor had become effectual, should appear "and protest against the arrangement and seek to defeat it, on the plea that it was made with- "out his consent and against his interest, and it is equally inadmissible that his principal, the "Government should do so."

9. But for Mr. Grant's then bringing about a Razeenamah in his capacity of Collector, your Petitioner would at that very moment have obtained the full amount of his Decree for principal and interest, Mr. Grant as the Judicial Executive Officer of the Masulipatam Court having been officially directed by the Court to sell the estate forthwith in execution of your Petitioner's Decree.

10. Default was made in the first payment under the Razeenamah on the 15th December 1841, but your Petitioner, as has been proved in this Suit, was prevented from obtaining possession of the Estate, under the Razeenamah, by the *ex parte* order of the Court of Sudder Adálat forbidding the execution of the Decree, which order had been obtained previously to such default on the 19th April 1841, and he has by other subsequent litigations been prevented from obtaining the execution of the Razeenamah down to the year 1854, when he was put in possession of the Estate by order of the Sudder Court.

11. All these circumstances, your petitioner is informed were brought under the notice of Lord Harris' Government, previous to the institution of the present suit; when in consequence of a reference to Government by the then Collector of Masulipatam, the whole of the papers were submitted to the Government Pleader, their bearing and effect considered, and the Government order passed thereon immediately before the filing of the plaint on the 19th September 1855.

12. The present Decree leaves it open to your Petitioner to establish by evidence the *bonâ fide* character of the considerations which passed from his father to the widow; of the circumstances and objects for which she borrowed, and of her inability to pay from other sources than those of the Estate.

13. It is obvious that your Petitioner cannot at this distance of time produce substantive evidence of facts and events, the witnesses of which are long since dead. The loan transaction extended over a series of years from 1810 to 1838; and by the act of the Collector, Mr. Grant, in 1841 and its subsequent consequences, this difficulty in the path of your Petitioner has been enormously increased, if not rendered a total impossibility by efflux of time.

14. The Plaint filed by the Government in this Suit does not open up any question as to the *bonâ fides* of the transactions between yout Petitioner's father and the widow, or up to his decease with her husband; and your Petitioner is informed and believes that this course was expressly adopted and ordered by the Government in accordance with the opinion of the then Government Pleader, who submitted to the Government whether, under the peculiar circumstances

of the case, they ought to require from the Defendant proof of circumstances which had taken place at such a distance of time, and which had passed unquestioned by their own Collector, and that the Government decided that such views were sound and fair, and directed the Plaint to be formed in accordance therewith.

15. Mr. Cotton, the Judge of Masulipatam, in passing his decision upon the Original Suit remarked upon this point. The Plaintiff, he says, "has not brought the present Suit to question "the validity or legality of the claim in the Original Suit No. 18 of 1838, the Decree in which "awarded to that Plaintiff the amount sued for from the property mortgaged." The Sudder Court, too, in its Decree of the 22nd October 1860, comments upon the frame of the Plaint in the following language: "But even if it might be admitted that the Government could now chal- "lenge the alienation in question, it appears to the Court that the Plaint takes up no ground on "which the act can be called in question."

16. "The Defendant held a Decree in which it was found upon evidence taken that the "debt was one actually incurred by Lutchmedavamah, and of a nature to be fairly and legally "chargeable upon the Estate. To defeat that Decree the Plaintiff had to subvert the facts found, "by showing that the judgment was one obtained fraudulently and collusively; that the debt "was not a *bonâ fide* one, or that the obligation was of a character such as to render it not "chargeable on the Estate. In the Plaint no such grounds are taken. The Plaint, in fact, is "founded upon a wrong view of the Law, being to this purport: 'Let the obligation be of what "'character it will, it is not chargeable upon the Estate, as a female can under no circumstances "'alienate her property in which she holds but a life interest.' Now, it is well known and "certainly not disputed at the hearing of this appeal that a female may alienate her property "absolutely, if for relief of necessities. There can be no more admissible necessity than the "obligation to meet the Peshcush, or Government demand, failing discharge of which the Estate "would be peremptorily sold, and lost both to the occupant and her heirs. Advances for "Peshcush are represented to have formed an essential part of the debt incurred by "Lutchmeedavamah. The fact was so found in the Decree held by the Defendant, "and the Plaint discloses that the Plaintiff was aware, as in truth he was bound to be, "that such was the alleged character of the debt, yet there is no denial that the debt was thus "incurred. On the contrary, the Civil Judge, who had the conduct of the actual examination "of the case, states in his judgment that 'the justice or otherwise of the claim in Original "'Suit No. 18 of 1838, is in no way called in question in the present case.'" But neither the Court of Masulipatam, nor the Sudder Court, nor the Privy Council was aware of the fact that the Government had expressly ordered the Plaint to be framed in the shape in which it was intentionally filed, and had this fact been apparent in the record, your Petitioner ventures to presume that the Government would by its own course of action have been held barred from now questioning the legality or validity of the Decree No. 18 of 1838.

17. He prays that the Proceedings of Lord Harris' Government, upon which, as he has been informed, the present Suit was brought, may be sent for and perused; and he prays that if it shall appear that upon the whole bearings of the case, the Government of the day determined that the *bonâ fides* of Suit No. 18 of 1838 was not to be enquired into, you will now act upon, and in consonance with that determination.

18. Were any such order to be established before the Sudder Court in event of further Proceedings being necessary, your Petitioner submits that it must necessarily be held to preclude the Government from now ripping up the Suit No. 18 of 1838. But your Petitioner prefers to treat with the Government in an amicable spirit for the settlement of his claims upon a fair and equitable footing, in accordance with the spirit of the suggestion thrown out by the Lords of the Privy Council, rather than to protract a litigation which has now extended over a period of 24 years.

19. If the equitable and moral grounds for an amicable adjustment are strong upon a consideration of the effect of the Collector's acts, the bar raised by the Government's own conduct, in waving any enquiry into the merits of Suit No. 18 of 1838, is, he respectfully submits, conclusive.

20. If the case shall seem one for arrangement on the footing of the suggestions of the Privy Council, there remains to be considered the nature of the settlement. This may be either by allowing your Petitioner to retain the Zamíndári or by the payment of the principal and interest due to him, the Government taking possession of the Estate.

21. Of the two, your Petitioner would prefer to be left in possession of the Estate. For he is in actual enjoyment of it up to date, from the time he was legally put in possession by public authorities, and also styled and acknowledged by Government as Zamindár. His character is well known, he holds the Jaghir of Tinnanore for the good services of his father. He has always paid his kists with regularity, and he submits that the establishment of such independent middlemen and landlords as he is, between the Government and the cultivators of the soil, is a better policy than the retention of all the lands of the country in the hands of the Government.

22. But if the Government should prefer for reasons of its own to take the Zamíndári out of your Petitioner's hand, he will cheerfully bow to such decision upon the footing of a settlement of his claim by the payment of his debt and interest.

And your Petitioner as in duty bound shall ever pray.

Memorial from C. V. NARAINAPAH, Jahgírdár Tinnanore, Zamíndár Vissennapet, to the Honorable the Governor in Council, Fort Saint George, dated Madras, 21st September 1860, No. 447.

MOST RESPECTFULLY SHEWETH,

1. That the Zamíndári of Vissennapet was put into the possession of your Memorialist by a Decree of the Sudder Court, after a tedious, lengthened, vexatious, and expensive law Suit in the Courts of Judicature, extending over a period of nearly a quarter of a century, but the Collector of Masulipatam, who claimed it as an escheat for the Government, but did not succeed, having appealed to the Privy Council against the Sudder Court's decision, the Judicial Committee of the Privy Council have remanded the case to the Sudder Court for a re-hearing as per Judgment of the Court, herewith submitted.

2. That the Zamíndári came into your Memorialist's possession in the following manner: There were dealings between the Zamíndár of Vissennapet, and your Memorialist's ancestors from remote antiquity; and your Memorialist's father advanced, from time to time, considerable sums to the late ex-proprietor, to enable the party to discharge the Peshcush. This he did for upwards of 25 years, and as the debt accumulated without any prospect of being liquidated, and as your Memorialist's father foresaw his approaching end, he called upon the late ex-proprietor to come to an immediate settlement of accounts, and pay up the balance; but finding that the accounts only were adjusted, and that the payment of the balance was not forthcoming, he sued the late ex-proprietor in the Court, and obtained a Decree in his favor, on the 10th March 1839. A month after, but before the said Decree could be carried into execution, he ceased to exist, having expired on the 24th May 1839.

3. That your Memorialist, who was then at Masulipatam, as heir to his father's Estate, applied in 1840 for the execution of the said Decree; the Court ordered the Collector of the District to sell the Zamíndári, and forward the proceeds to the Court, to be handed over to your Memorialist; but the Collector, before complying with this order interfered in the matter, and issued a Takeed to the late ex-proprietor to come to some kind of an arrangement with your Memorialist, for the payment of the amount of the Decree, and to file a Razeenamah in the said Court, specifying the terms agreed upon; and further made the parties to come to a settlement, and thus the Razeenamah was entered into by the late ex-proprietor, by and with the advice, sanction, and counsel of the Collector, the representative of Government.

4. That thus and under such an arrangement, the Zamíndári in question, by the process of the Court, passed into the possession of your Memorialist, more than eight years before the death of the late ex-proprietor, which occurred in 1849, but the Estate did not actually come into your

Memorialist's hands till 1855, consequent upon illegal and vexatious proceedings, commenced during the lifetime of the late proprietor and encouraged by the local Courts. On the demise of the late ex-proprietor the Collector of Masulipatam took charge of the Zamíndári, in the first instance in trust for the several rival claimants, but afterwards turned round and claimed the Zamíndári as an escheat for the Government. But at last, in 1855, your Memorialist was put into possession of the property by an appeal to the Courts.

5. That, notwithstanding that his claims to the Zamíndári has been subjected to such protracted litigation, seldom paralleled in the history of law suits, there is now, by the judgment of the Judicial Committee of the Privy Council, every thing to apprehend, that this Suit will be still further prolonged, perhaps beyond the life time of your Memorialist, unless your Honorable Government dispose of the same according to the principles of equity and justice both being in favor of your Memorialist's rights.

6. That from the record of the said Suit, it will be seen that, while there existed several points of Law, and grounds and facts all in support of the rights of your Memorialist, the Court of Sudder Adálat, with reference to Clause 3rd, Section XI, Act IX of 1855, as well as Section 66 of the rules of procedure on the disposal of Civil Suits, have only confined their decision to a single point, involving a question of Law, because Government particularly advanced their claim to the property, as an escheat, on the basis of Hindoo law, and the Law being decisive in the matter, the Court of Sudder Adálat, accordingly, passed judgment on the merits of the Law in question, which the advisers of Government themselves urged, and which being the only course of action, and one of a conclusive nature, the Suit, and consequently the judgment of the Court, was confined to that single point. And that judgment was given in favor of your Memorialist. But the higher Court has objected thereto, and has remanded the case for further hearing in the Madras Court.

7. That it is submitted, that when your Memorialst's father instituted proceedings against the late ex-proprietor, he obtained a Decree in his favor; that the Court ordered the Collector to sell the property in satisfaction of the debt, for which the Decree was passed; that the Collector interfered and prevailed upon your Memorialist not to push the matter to extremity; that he got the late ex-proprietor to execute a Razeenamah and file it in the Court, that the Razeenamah was executed with the knowledge, consent, and direction of the Collector, the representative of Government, and so filed as per his instructions in the Court; that by the failure of one of the conditions of the Razeenamah, the Zamíndári ceased to be the property of the late ex-proprietor, and was vested in your Memorialist in 1842.

8. That the Law proceedings have not only been unprecedentedly protracted, but they have been pushed on beyond the provisions of the statute of limitation: that it is particularly submitted for the equitable, just, and impartial consideration of Government, that when the late ex-proprietor executed the Razeenamah, and filed it in the Court, and when one of its condition was broken there was consequently no Estate of the late ex-proprietor to be claimed by the Government under any Law as an escheat.

9. That a paternal Government, taking all the facts and circumstances into its equitable and just consideration will dispose of the case, now before it, on its just merits, either by not disturbing your Memorialist in his present possession of his Zamíndári, or by discharging the debt due on the Estate with principal and interest up to date, "to meet the real justice of the case and save both parties from protracted litigation," as suggested by the Judicial Committee of the Privy Council in the last paragraph of their Judgment.

(True Copy.)

(Signed) C. V. NARAINAPAH,
Jahgírdár of Tinnanore and Zamíndár of Vissennapet.

No. 447 of 1862.

Referred to the Government Pleader for his remarks.

By Order,

Fort Saint George,
27th March 1862.

(Signed) C. G. MASTER,
Deputy Secretary to Government.

~~Order, dated 17th April 1862, No. 803.~~

~~Ordered to lie over.~~

~~(True Extract.)~~

~~(Signed) T. D. SIM,~~
~~*Secretary to Government.*~~

Exd. S. T. Augustin.

Copy on a Letter to England
D/ 23d June No. 62 of 1863

Judl. No. 36-38
6-3-55

" " 10-11
21-4-55

" " 25-26
24-7-55

" " 15-16
13-8-55

" " 13-14
31-8-55

Revl. No. 5-6
24-6-57

" " 71 & 73
5-4-61

" " 100-101
5-4-62

" " 109-110
3-3-62

" order No. 863
" 17-4-62

Petition No. 676 of 1862

Previously returned to
C.G. Revenue Board
5 August 1862
Re 1699.

Revenue 1862 - Separate
Proc: of Govt for April

No 5

Petition No 447 of 1862

From C Venkata
Narrainapah Jaygeer-
dar of Tinnanore and
Zemindar of Vissen-
napetpreferring an Appeal

Dated 13 Feby } 1862
Rec'd 14 - -

With one Enclosure -

Submitting a copy
of her former Petition dated
21 September 1860 representing
her readiness to acquiesce in
any amicable arrangement
that may be made regarding
the Zemindary of Vissennapet
as suggested by the Judicial
Committee of the Privy Coun-
cil on their decree dated 30
July 1860.

No 289.

Rs. 864 - 17th April 1862

Copy Received July Re 31 July 21 Augt

Proceedings of the Madras Government, Revenue Department,
17th April 1862.

No. 289. Read the following Petition from CAVELLY VENCATA NARAINAPAH, Jághírdár of Tinnanore and Zamíndár of Vissennapet, to the Honorable Sir WILLIAM DENISON, K. C. B., Governor in Council, Fort Saint George, dated Madras, 13th February 1862, No. 447:—

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2. The important principle to ascertain and determine which, your Petitioner is informed, was the object of the Government in originally instituting the present Suit, has thus been determined by the highest judicial tribunal, and the Government right of escheat declared to be valid by Law.

3. This object being gained, your Petitioner respectfully submits, that the case is now ripe for such compromise and arrangement as the Lords of the Privy Council suggested in their Decree of July 30th of 1860. They say, "Their Lordships desire, again to suggest, for the con-"sideration of the parties, that some arrangement for the surrender of the Zamíndári to Govern-"ment, upon payment of what is due to the Respondent for the advances actually made, would "probably meet the real justice of the case, and save both parties from protracted litigation."

4. They had already at the onset of the case, and before the argument commenced, as your Petitioner is informed by one who was present and saw the paper handed to Council by the Lord Justice Knight Bruce, suggested to the Counsel on both sides, that the case was one for amicable settlement, but the Counsel of the Government declined to accede to the proposition (to which your Petitioner's Counsel expressed their readiness on his behalf to conform), probably from a desire to obtain a legal decision on the point, to settle which the Suit was instituted.

5. Their Lordships in their present Decree again express their regret that they are not in a position to satisfactorily determine the long litigation between the parties.

6. Acting upon their Lordships suggestions contained in their Decree of 30th July 1860, herein before quoted, your Petitioner on the receipt of that Decree, at once on the 21st September 1860, presented his Petition to the then Governor in Council (copy of which accompanies marked A) praying for some such arrangement of the case as was suggested by the Lords of the Privy Council.

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9. But for Mr. Grant's then bringing about a Razeenamah in his capacity of Collector, your Petitioner would at that very moment have obtained the full amount of his Decree for principal and interest, Mr. Grant as the Judicial Executive Officer of the Masulipatam Court having been officially directed by the Court to sell the estate forthwith in execution of your Petitioner's Decree.

10. Default was made in the first payment under the Razeenamah on the 15th December 1841, but your Petitioner, as has been proved in this Suit, was prevented from obtaining possession of the Estate, under the Razeenamah, by the *ex parte* order of the Court of Sudder Adálat forbidding the execution of the Decree, which order had been obtained previously to such default on the 19th April 1841, and he has by other subsequent litigations been prevented from obtaining the execution of the Razeenamah down to the year 1854, when he was put in possession of the Estate by order of the Sudder Court.

11. All these circumstances, your petitioner is informed were brought under the notice of Lord Harris' Government, previous to the institution of the present suit; when in consequence of a reference to Government by the then Collector of Masulipatam, the whole of the papers were submitted to the Government Pleader, their bearing and effect considered, and the Government order passed thereon immediately before the filing of the plaint on the 19th September 1855.

12. The present Decree leaves it open to your Petitioner to establish by evidence the *bonâ fide* character of the considerations which passed from his father to the widow; of the circumstances and objects for which she borrowed, and of her inability to pay from other sources than those of the Estate.

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14. The Plaint filed by the Government in this Suit does not open up any question as to the *bonâ fides* of the transactions between your Petitioner's father and the widow, or up to his decease with her husband; and your Petitioner is informed and believes that this course was expressly adopted and ordered by the Government in accordance with the opinion of the then Government Pleader, who submitted to the Government whether, under the peculiar circumstances

of the case, they ought to require from the Defendant proof of circumstances which had taken place at such a distance of time, and which had passed unquestioned by their own Collector, and that the Government decided that such views were sound and fair, and directed the Plaint to be formed in accordance therewith.

15. Mr. Cotton, the Judge of Masulipatam, in passing his decision upon the Original Suit remarked upon this point. The Plaintiff, he says, " has not brought the present Suit to question " the validity or legality of the claim in the Original Suit No. 18 of 1838, the Decree in which " awarded to that Plaintiff the amount sued for from the property mortgaged." The Sudder Court, too, in its Decree of the 22nd October 1860, comments upon the frame of the Plaint in the following language: " But even if it might be admitted that the Government could now chal- " lenge the alienation in question, it appears to the Court that the Plaint takes up no ground on " which the act can be called in question."

16. " The Defendant held a Decree in which it was found upon evidence taken that the " debt was one actually incurred by Lutchmedavamah, and of a nature to be fairly and legally " chargeable upon the Estate. To defeat that Decree the Plaintiff had to subvert the facts found, " by showing that the judgment was one obtained fraudulently and collusively; that the debt " was not a *bonâ fide* one, or that the obligation was of a character such as to render it not " chargeable on the Estate. In the Plaint no such grounds are taken. The Plaint, in fact, is " founded upon a wrong view of the Law, being to this purport: 'Let the obligation be of what " 'character it will, it is not chargeable upon the Estate, as a female can under no circumstances " 'alienate her property in which she holds but a life interest.' Now, it is well known and " certainly not disputed at the hearing of this appeal that a female may alienate her property " absolutely, if for relief of necessities. There can be no more admissible necessity than the " obligation to meet the Peshcush, or Government demand, failing discharge of which the Estate " would be peremptorily sold, and lost both to the occupant and her heirs. Advances for " Peshcush are represented to have formed an essential part of the debt incurred by " Lutchmeedavamah. The fact was so found in the Decree held by the Defendant, " and the Plaint discloses that the Plantiff was aware, as in truth he was bound to be, " that such was the alleged character of the debt, yet there is no denial that the debt was thus " incurred. On the contrary, the Civil Judge, who had the conduct of the actual examination " of the case, states in his judgment that 'the justice or otherwise of the claim in Original " 'Suit No. 18 of 1838, is in no way called in question in the present case.'" But neither the Court of Masulipatam, nor the Sudder Court, nor the Privy Council was aware of the fact that the Government had expressly ordered the Plaint to be framed in the shape in which it was intentionally filed, and had this fact been apparent in the record, your Petitioner ventures to presume that the Government would by its own course of action have been held barred from now questioning the legality or validity of the Decree No. 18 of 1838.

17. He prays that the Proceedings of Lord Harris' Government, upon which, as he has been informed, the present Suit was brought, may be sent for and perused; and he prays that if it shall appear that upon the whole bearings of the case, the Government of the day determined that the *bonâ fides* of Suit No. 18 of 1838 was not to be enquired into, you will now act upon, and in consonance with that determination.

18. Were any such order to be established before the Sudder Court in event of further Proceedings being necessary, your Petitioner submits that it must necessarily be held to preclude the Government from now ripping up the Suit No. 18 of 1838. But your Petitioner prefers to treat with the Government in an amicable spirit for the settlement of his claims upon a fair and equitable footing, in accordance with the spirit of the suggestion thrown out by the Lords of the Privy Council, rather than to protract a litigation which has now extended over a period of 24 years.

19. If the equitable and moral grounds for an amicable adjustment are strong upon a consideration of the effect of the Collector's acts, the bar raised by the Government's own conduct, in waving any enquiry into the merits of Suit No. 18 of 1838, is, he respectfully submits, conclusive.

20. If the case shall seem one for arrangement on the footing of the suggestions of the Privy Council, there remains to be considered the nature of the settlement. This may be either by allowing your Petitioner to retain the Zamíndári or by the payment of the principal and interest due to him, the Government taking possession of the Estate.

21. Of the two, your Petitioner would prefer to be left in possession of the Estate. For he is in actual enjoyment of it up to date, from the time he was legally put in possession by public authorities, and also styled and acknowledged by Government as Zamíndár. His character is well known, he holds the Jaghir of Tinnanore for the good services of his father. He has always paid his kists with regularity, and he submits that the establishment of such independent middlemen and landlords as he is, between the Government and the cultivators of the soil, is a better policy than the retention of all the lands of the country in the hands of the Government.

22. But if the Government should prefer for reasons of its own to take the Zamíndári out of your Petitioner's hand, he will cheerfully bow to such decision upon the footing of a settlement of his claim by the payment of his debt and interest.

And your Petitioner as in duty bound shall ever pray.

Memorial from C. V. NARAINAPAH, Jahgírdár Tinnanore, Zamíndár Vissennapet, to the Honorable the Governor in Council, Fort Saint George, dated Madras, 21st September 1860, No. 447.

MOST RESPECTFULLY SHEWETH,

1. That the Zamíndári of Vissennapet was put into the possession of your Memorialist by a Decree of the Sudder Court, after a tedious, lengthened, vexatious, and expensive law Suit in the Courts of Judicature, extending over a period of nearly a quarter of a century, but the Collector of Masulipatam, who claimed it as an escheat for the Government, but did not succeed, having appealed to the Privy Council against the Sudder Court's decision, the Judicial Committee of the Privy Council have remanded the case to the Sudder Court for a re-hearing as per Judgment of the Court, herewith submitted.

2. That the Zamíndári came into your Memorialist's possession in the following manner; There were dealings between the Zamíndár of Vissennapet, and your Memorialist's ancestors from remote antiquity; and your Memorialist's father advanced, from time to time, considerable sums to the late ex-proprietor, to enable the party to discharge the Peshcush. This he did for upwards of 25 years, and as the debt accumulated without any prospect of being liquidated, and as your Memorialist's father foresaw his approaching end, he called upon the late ex-proprietor to come to an immediate settlement of accounts, and pay up the balance; but finding that the accounts only were adjusted, and that the payment of the balance was not forthcoming, he sued the late ex-proprietor in the Court, and obtained a Decree in his favor, on the 10th March 1839. A month after, but before the said Decree could be carried into execution, he ceased to exist, having expired on the 24th May 1839.

3. That your Memorialist, who was then at Masulipatam, as heir to his father's Estate, applied in 1840 for the execution of the said Decree; the Court ordered the Collector of the District to sell the Zamíndári, and forward the proceeds to the Court, to be handed over to your Memorialist; but the Collector, before complying with this order interfered in the matter, and issued a Takeed to the late ex-proprietor to come to some kind of an arrangement with your Memorialist, for the payment of the amount of the Decree, and to file a Razeenamah in the said Court, specifying the terms agreed upon; and further made the parties to come to a settlement, and thus the Razeenamah was entered into by the late ex-proprietor, by and with the advice, sanction, and counsel of the Collector, the representative of Government.

4. That thus and under such an arrangement, the Zamíndári in question, by the process of the Court, passed into the possession of your Memorialist, more than eight years before the death of the late ex-proprietor, which occurred in 1849, but the Estate did not actually come into your

Memorialist's hands till 1855, consequent upon illegal and vexatious proceedings, commenced during the lifetime of the late proprietor and encouraged by the local Courts. On the demise of the late ex-proprietor the Collector of Masulipatam took charge of the Zamíndári, in the first instance in trust for the several rival claimants, but afterwards turned round and claimed the Zamíndári as an escheat for the Government. But at last, in 1855, your Memorialist was put into possession of the property by an appeal to the Courts.

5. That, notwithstanding that his claims to the Zamíndári has been subjected to such protracted litigation, seldom paralleled in the history of law suits, there is now, by the judgment of the Judicial Committee of the Privy Council, every thing to apprehend, that this Suit will be still further prolonged, perhaps beyond the life time of your Memorialist, unless your Honorable Government dispose of the same according to the principles of equity and justice both being in favor of your Memorialist's rights.

6. That from the record of the said Suit, it will be seen that, while there existed several points of Law, and grounds and facts all in support of the rights of your Memorialist, the Court of Sudder Adálat, with reference to Clause 3rd, Section XI, Act IX of 1855, as well as Section 66 of the rules of procedure on the disposal of Civil Suits, have only confined their decision to a single point, involving a question of Law, because Government particularly advanced their claim to the property, as an escheat, on the basis of Hindoo law, and the Law being decisive in the matter, the Court of Sudder Adálat, accordingly, passed judgment on the merits of the Law in question, which the advisers of Government themselves urged, and which being the only course of action, and one of a conclusive nature, the Suit, and consequently the judgment of the Court, was confined to that single point. And that judgment was given in favor of your Memorialist. But the higher Court has objected thereto, and has remanded the case for further hearing in the Madras Court.

7. That it is submitted, that when your Memorialst's father instituted proceedings against the late ex-proprietor, he obtained a Decree in his favor; that the Court ordered the Collector to sell the property in satisfaction of the debt, for which the Decree was passed; that the Collector interfered and prevailed upon your Memorialist not to push the matter to extremity; that he got the late ex-proprietor to execute a Razeenamah and file it in the Court, that the Razeenamah was executed with the knowledge, consent, and direction of the Collector, the representative of Government, and so filed as per his instructions in the Court; that by the failure of one of the conditions of the Razeenamah, the Zamíndári ceased to be the property of the late ex-proprietor, and was vested in your Memorialist in 1842.

8. That the Law proceedings have not only been unprecedentedly protracted, but they have been pushed on beyond the provisions of the statute of limitation; that it is particularly submitted for the equitable, just, and impartial consideration of Government, that when the late ex-proprietor executed the Razeenamah, and filed it in the Court, and when one of its condition was broken there was consequently no Estate of the late ex-proprietor to be claimed by the Government under any Law as an escheat.

9. That a paternal Government, taking all the facts and circumstances into its equitable and just consideration will dispose of the case, now before it, on its just merits, either by not disturbing your Memorialist in his present possession of his Zamíndári, or by discharging the debt due on the Estate with principal and interest up to date, "to meet the real justice of the "case and save both parties from protracted litigation," as suggested by the Judicial Committee of the Privy Council in the last paragraph of their Judgment.

(True Copy.)

(Signed) C. V. NARAINAPAH,
Jahgirdár of Tinnanore and Zamíndár of Vissennapet.

No. 447 of 1862.

Referred to the Government Pleader for his remarks.

Fort Saint George, 27th March 1862.

By Order,

(Signed) C. G. MASTER,
Deputy Secretary to Government.

No. 290. 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, 10th April 1862, No. 61:—

SIR,

27th March 1862, No. 447 of 1862, Revenue Department.

1. I have the honor to acknowledge the receipt of the Order of Government of the date and number noted in the margin, on a petition from Cavelly Vencata Narainapah styling himself Jághírdár of Tinnanore and Zamíndár of Vissennapet, in which he prays (see paragraph 20) that he may be allowed to retain the possession of the Zamíndári of Vissennapet which has been the cause of the litigation; or that the Government should pay to him the principal and interest which *he claims* as due to him.

2. To this is appended a copy of a petition stated to have been presented by him on the 21st September 1860.

3. I had the honor to report very fully on this case to Government, as also the Right Honorable the Secretary of State for India in Council, under the dates and numbers noted in the margin, and to which I solicit your attention as by that course much repetition may be saved.

19th March 1861, No. 49.
7th August ,, ,, 142.

4. In paragraphs 5 and 6 of my letter to Government, and in paragraphs 14 and 15 of my letter to the Secretary of State, I submitted a short precis of the case, a perusal of which will put you in possession as I believe of the facts.

5. In paragraph 5 of my letter to Government, and paragraph 14 of my letter to the Secretary of State, I have alluded to the Orders passed by the Sudder on the 13th of February and 21st of October 1854, and their effect on the present litigation so far as the position of the parties litigant were concerned.

Mins. Cons., 21st April 1855, No. 290, Judl. Dept.
Do. 24th July ,, ,, 521, do.
Do. 13th August ,, ,, 570, do.

6. The Original Suit No. 103 of 1855, was thereupon instituted in the Civil Court of Masulipatam, by the Collector of that District against the holder of the Huzeenamah pursuant to the Orders of Government of the date and number marginally noted.

7. On the 8th April 1857, a Decree was passed by the Civil Judge of Masulipatam, regarding which, at present, it is unnecessary to offer any comment, further than to say that both parties were dissatisfied with it, and both preferred appeals to the Court of Sudder Adálat, —that by the Defendant was No. 103 of 1857; while that on behalf of the Collector was No. 136 of 1857. The latter was preferred pursuant to the orders contained in the Minutes of Consultation noted in the margin.

Mins. Cons., 24th June 1857, No. 635, Revenue Department.

8. The Appeals came on for hearing on the 14th April, and on the 5th and the 8th May 1858, when the Court of Sudder Adálat dismissed the Suit with costs on the ground that the Estate of a Brahmin could not escheat to the ruling power; no other point was allowed to be argued, and on no other point did the Court pass any judgment.

9. Against that Decree an appeal was preferred to Her Majesty in Council, which was argued before the Lords of the Judicial Committee of the Privy Council on the 15th, 18th, and 19th June 1860; and the Judgment of their Lordships was delivered on the 30th of July 1860, whereby their Lordships expressed their opinion that the decree of the Sudder Adálat of the

8th May 1858 could not stand; but as the manner in which it ought to be varied depended on the decision of the question 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 escheat had been established; and at the conclusion of their judgment made the following remark, "Their Lordships desire again to suggest "for the consideration of the parties that some arrangement for the surrender of the Zamíndári "to Government, upon payment of what is due to the Respondent for the advances actually "made, would probably meet the real justice of the case, and save both parties from protracted "litigation."

10. It appears that the Defendant about the 21st September 1860, presented his petition to Government to which I refer in paragraph 2; this petition was not referred to me, but I learnt that in deference to the suggestion made by the Lords of the Judicial Committee, the Government had lost no time in referring the matter to the Board of Revenue and Collector of Masulipatam, for the purpose of the latter ascertaining and reporting to Government; what was due to the Respondent (the defendant in Original Suit) for the advances actually made.

11. I understand the Despatch of the Secretary of State covering the papers transmitted to Government from England, did not reach Madras till the first Mail in October, they were forwarded to me on the 9th October 1860.

12. And the Suit was posted by the Court of Sudder Adálat for hearing on the 20th of October 1860.

13. These dates are important to be borne in mind, when we come to consider the petition referred to me.

14. On the case coming on, I submitted to the Judges of the Sudder, that the Suit could not be satisfactorily disposed of as the record then stood; while on the other hand, the Counsel for the Defendant vehemently protested against any 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 they prayed the Court to proceed at once. Their Honors the Judges then adverted to the concluding paragraph of the Judgment, and in reply to a question they put to me, I explained that in deference to the suggestion there made, Government had made the reference to the Board and Collector to which I have referred in paragraph 10. I moreover drew their Honors' attention to the dates, and pointed out 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 on, 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 Defendant's 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 Zamíndári, and the Zamíndári he would have"—and he wished the case to be then proceeded with, and to have their Honors' Decree.

15. The Court decided on complying with the Defendant's request and to proceed to a hearing of the case at once.

16. The consequence was, another Decree by the Sudder Adálat dated the 22nd October 1860 upholding the alienation of the Zamíndári by the widow, which ruling has been in like manner as their former Decree reversed by Her Majesty in Council by an Order dated the 6th of January 1862, in compliance with the recommendation of the Lords of the Judicial Committee in a Judgment delivered on the 21st December 1861, in which Order it is declared that the Crown taking by escheat, has the same right to impeach the alienation by the Widow which the next heirs of the husband (if such there had been) would have had; and is not estopped from asserting that right by the acts of the Collector in 1841; that the Crown is not bound by the Decree passed in Original Suit No. 18 of 1838; and that the Widow was not entitled to alienate without

the consent of the Crown, except in so far as she could have alienated without the consent of the next heirs of the husband, if such there had been, but that the Respondent is, at all events entitled to a charge upon the Estate, and to be paid and satisfied thereout the full amount of all such of the advances, if any, made by the Respondent's father to the widow as were made for purposes for which, according to the Hindoo Law, she would have been entitled to alienate the Estate, as against the next heirs of her husband, if such there had been, in so far as she had not Estate for her husband to answer such purposes, and the cause is by such Order of Her Majesty remitted to the Sudder Adálat to inquire whether having regard to the declarations aforesaid, the right of the Crown was absolutely defeated by the Razeenamah; and if not to enquire what advances, if any, were made by the Respondent's father to the widow; and whether all or any and which, of such advances and to what amount, were made for purposes for which according to the Hindoo Law the widow would have been entitled to alienate the Estate, as against the next heirs of her husband, if such there had been, and whether the widow had, when such advances were respectively made, other estates of her husband sufficient to answer such purposes; and the parties respectively are to be at liberty to adduce further evidence touching the matters aforesaid, or any of them as they may be advised, and the Sudder Court is directed to proceed in the cause according to the result of the said enquiries.

17. Thus the matter stands so far as the proceedings in the several Courts are concerned.

18. And the case is again posted by the Court of Sudder of Adálat for hearing on Saturday next the 12th instant.

19. I now propose to consider the Petition presented to Government by the Defendant, dated the 13th February 1862.

20. In doing so I think it right to premise, that although it might be going too far to say the petition has been prepared without any regard to truth, yet I am bound to state that it is most artfully and cunningly framed, and evidently under the hope that Government might be thereby led away from the real bearings of the case and misled, if not deceived, as also that from the manner in which the statements are intermixed with much that approaches to the very verge of untruthfulness it necessarily renders any comment on the Petition extremely laborious and burdensome, and as a natural consequence very lengthy. I have in pencil numbered the several paragraphs of the Petition to facilitate references.

21. Paragraph 1 is not quite accurate, but does not call for special comment.

22. Referring to paragraph 2, the primary object of Government in declaring the Zamíndári to have escheated was the performance of a duty devolving on it to protect the rights of the public and the revenues of the country, by taking possession of the Estate which by Law had devolved on the Crown, in trust of course for the public. The right of the Crown having been disputed, and the Court of Sudder Adálat having unfortunately entirely missed its way in passing the Orders of the 27th of October 1853, and the 21st of October 1854, under which the Collector was wrongfully dispossessed, it doubtless became necessary that the important principles which arose from those acts should be determined by legal decision, the object however of Government in originally instituting the Original Suit, No. 103 of 1855, was to recover from the Defendant for the Crown the Zamíndári to which it was by Law entitled, and of which it had been wrongfully dispossessed. True it is Mr. Norton, the then Government Pleader made a very powerful appeal on behalf of the Defendant, for the kindly consideration of Government when the rights of the Crown should be established; I also observe the Government of the day were actuated by a wish to act in the most equitable and fair manner by the Defendant, in respect of any money which it might be shown he had actually and *bonâ fide* and consequent on her necessities advanced to the widow for the payment of the Government kist; and doubtless the same kindly feeling would be fully extended to the Defendant by succeeding Governments, if it can be seen that he has not by any act of his forfeited his claim for such kindly consideration; and the rights of the Crown having been so far established, it will be my duty, and I shall endeavor to bring before His Excellency in Council such facts as bear upon the point to enable him to form a satisfactory opinion thereon.

23. And referring to paragraphs 3 and 4 of the Petition, brings me to the consideration of the suggestion made by the Lords of the Judicial Committee, the Defendant's conduct with reference to which, it will be necessary to canvass to enable His Excellency to arrive at a just conclusion whether the Defendant has forfeited his claim for such kindly consideration. I have also been "informed by one who was present" that a paper was handed by the Lord Justice Knight Bruce regarding an adjustment of the matter, I understood the gentleman to say that it was so handed at the close of the argument and not "before the argument was commenced" as stated by the Petitioner, and I think that was the most probable, looking firstly at what was most natural to occur; and secondly, looking at what actually was said in Court; I have the short hand writers' notes before me, in which every word that was said is accurately noted, I have read through the whole of them, and I may say that no allusion at all is made to the handing of this paper, it must therefore have been a private communication between the Lord Justice and the Counsel. So far as I can see, it matters not whether the paper was handed before the argument commenced, or during the time it was proceeding, or after it had terminated; but if anything does, in the opinion of the Defendant turn upon it, I believe it can be shown that it was after the argument was concluded. I however have no doubt of the fact, that the paper was handed by the Lord Justice to one of the Counsel, but whether to the Counsel for the Crown, or for the Defendant, I do not recollect. Having so far commented on these (3rd and 4th) paragraphs of the petition, I will proceed to state what was said on the subjects. The argument commenced on Friday the 15th of June 1860, when Mr. Forsyth, the standing Council for the Secretary of State, opened the case and commenced his address to the Lords of the Judicial Committee, during the delivery of which the Court adjourned to Monday the 18th of June; on that day Mr. Forsyth continued and concluded his address, when he was followed by Mr. Melvill the Junior Counsel for the Crown, and it was during his address and after some conversation regarding the total want of evidence in the case, and whether some money had not *probably* been advanced by the defendant's father to the widow, the following dialogue took place.

Lord Justice Knight Bruce (to Mr. Forsyth).—Whatever your rights may ultimately be considered to be, would you be willing to consent to give the Respondent what the first Court gave him?—*he* says it is not enough, *you* say it is too much.

Mr. Forsyth.—Your Lordship means a compromise of the matter upon those terms?

Lord Justice Knight Bruce.—Whatever your rights may ultimately appear to be, would you be willing to consent to that? That is all I mean, of course I did not wish you to trouble yourself to answer it now.

Mr. Melvill.—Then continued his address; at the conclusion of which the following passed:

Mr. Forsyth.—Perhaps I can answer the question your Lordship was kind enough to put to me just now; as I understand, it was whether we would admit the Civil Decree to stand.

Lord Justice Knight Bruce.—Whether you would consent.

Mr. Forsyth.—That is the purport of your Lordship's question, your Lordship sees that if the widow had not borrowed this money to pay the revenue due to us, we should have sold the Zamíndári for the purpose of paying ourselves, as the Government always does, now then she borrows the money of her cousin, and if we allow the cousin to get back that money, I do not think we are justified in doing it.

Lord Justice Knight Bruce.—I asked the question without reference to any question of right. Not a syllable was said on the subject by the Defendant's Counsel showing either "readiness" or unreadiness "to conform" to the suggestion. From the short-hand writers' notes it is shown the learned Counsel for the Defendant were remarkably ready on most other occasions to join in observations that fell from the bench, but as regards this suggestion they appear to have maintained a studied silence, and as it appears to me advisedly so, as the Defendant has displayed a determination to retain the possession of the Zamíndári, if possible, and that in preference to a money payment. The addresses of Counsel for the Defendant were then made during the remainder of that day, when the Court again adjourned to Tuesday the 19th

of June, when the Junior Counsel for the Defendant concluded his address, and Mr. Forsyth was heard in reply. At the conclusion of his address a conversation took place between some of the Judges and Mr. Forsyth, in which that gentleman urged that the Judicial Committee should decide the case one way or the other, rather than remit it to the Sudder; but no allusion was made to a compromise, nor did the Counsel for the Defendant take much part in the conversation. Judgment was delivered on the 30th of July, but on that occasion no allusion was made to a compromise, when the Suit was last before the Judicial Committee (November 1861) Mr. Forsyth on reading, during his address, the concluding portion of their Lordships' first judgment (set out above in paragraph 9) informed their Lordships "we unfortunately were not able "to agree upon that, and the case therefore went back to the Sudder Court;" and that is all, as far as I have yet seen, that then passed on that part of the subject, so far therefore as the acts of the Defendant's advisers in England go, there was no expression of "their readiness on his behalf to conform" to the suggestion made by the Lord Justice Knight Bruce, as is now asserted by this Defendant in the 4th paragraph of his petition, and certainly from what has passed in this country, (see paragraph 14) the *acts* of the Defendant, and his adviser's belie the assertion made by the Defendant in that paragraph I am under the impression that what his Counsel said before the Sudder, was the result of previous *deliberation and arrangement*; such was the impression I received at the time, from the whole of what passed; from the manner in which I was interrupted when explaining to the Court the course which had been adopted by Government, and from the expressions used; for I have not thought it necessary to repeat much of the language used towards the Government. This impression was afterwards confirmed from a conversation, I subsequently had in which this Decree was noticed, and on my remarking how perfectly untenable it was, a remark was made to the effect "*we* have GOT the Decree, we are all right, for "Government *wont* let you appeal." It was very evident from the first *the Court* was with the Defendant, but on what grounds the Defendant could be so confident that the Government would concur in a Decree of that quality, I was not informed and did not ask. The question now arises, has or has not the Defendant by these acts forfeited all claim for the kindly consideration by Government of the suggestion made by the Lords of the Judicial Committee? His Excellency in Council will recollect that suggestion was made in July 1860; that about the 21st of September 1860 the Defendant's first petition was presented; that the Government did not receive the Despatch of the Secretary of State till about the 8th of October; that they immediately took action on the Defendant's petition by referring it to the Board and Collector; that within twelve days after the receipt of the Despatch the case was posted for hearing at the Sudder; that the intervening period was not sufficient for inquiries to be made; that the Defendant by his Counsel opposed my suggestion that the case should be postponed to allow sufficient time for the inquiry to be made; that he by his Counsel asserted 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; but he would have the Zamindari. I submit that the Defendant has most entirely forfeited all such claim; that to meet out justice to him would be to inform him on your alleged rights you elected to stand, on the result of that election you must rest your claim to the Zamindari has been declared by the highest Judicial tribunal to be untenable, and that tribunal has decided that you must prove whether the advances you allege your father made to the widow were made under such circumstances as they can be sustained against the Government under Hindu Law. His Excellency in Council will also bear in mind, that one suggestion of the Lords of the Judicial Committee was the surrender of the Zamindari by the Defendant, while another was made to save both parties from further protracted litigation consequent on the want of proper evidence; the first suggestion the Defendant by his Counsel peremptorily refused to comply with, consequent on which and his other acts protracted litigation has been the result; it is true it may be remarked that it could scarcely have been anticipated that the Sudder would pass a Decree so perfectly untenable, but it is not for the Defendant to complain of that Decree, inasmuch as the Court acted strictly in compliance with the request made by his Counsel not to call for further evidence; and their Decree is a mere echo of the law enunciated by his own Counsel. Moreover, it is to be borne in mind that in October 1860, when his Counsel opposed my suggestion for time being allowed,

the Defendant was in possession of the Zamindari; it could not therefore have been any injury to the Defendant whether the case were heard in October 1860 or October 1861.

24. Proceeding now to paragraph 5 of the petition, I would remark that the reason for the Lords of the Judicial Committee not being in a position satisfactorily to determine the litigation, was because the Defendant's Counsel had opposed in the Sudder the taking further evidence by that Court, and to which the Sudder yielded.

25. Referring to the 6th and 7th paragraphs of the petition, I have already shown the manner in which the Defendant thought it becoming to act towards the Government as regards the petition presented about the 21st September 1861, and from what passed in the Sudder Court His Excelleney in Council will be able to form an opinion as to the truthfulness of the Defendant's assertions that he was compelled RELUCTANTLY to proceed with his case. The Decree be then obtained has been been set aside as utterly untenable.

26. Proceeding to the 8th paragraph of his petition I would drawn His Excellency's attention to the following passage from the Judgment of the Lords of the Judicial Committee delivered on the 21st December 1861, "On every reasonable presumption *the facts* relating to the *creation* "of the original debt *were known to the Respondent*, or to the original Plaintiff in the Suit whose "judgment he was enforcing. The Collector would have no necessary knowledge on the "subject, nor is he proved to have had actual knowledge. His advice to the widow to the "effect that unless she made an arrangement with the creditor, the Estate (which, the sale "being an Execution sale, must be taken to mean her right, title, and interest in the Estate) "would be sold, is not a statement at variance with the true state of things. The Razeenamah "into which she entered, might, for aught that appeared, be satisfied by payment of the "instalments in her life-time. Again, the acts of a Government Officer bind the Govern- "ment only when he is acting in the discharge of a certain duty within the limits "of his authority, or if he exceed that authority, when the Government in fact, or in law, "directly, or by implication, ratifies the excess. The Collector in this case had certainly no "authority to waive the rights to which Government might become entitled by the escheat, "nor were his acts, when fairly viewed, calculated to give rise to the supposition that he had "such an authority." From this, as well as from what passed on the hearing as shown by the short-hand writers' notes, it is evident that the Government would not have been either "morally" or "equitably" bound to accept any consequences if any disastrous to the Defendant had arisen; moreover, the letter was not addressed to the Defendant, and the Collector held no communication whatever with the Defendant on the subject. It is evident the Defendant thought that by the Razeenamah he had procured better terms for himself, but has over-reached himself. The remarks made by the Sudder are shown by what passed in the Privy Council to be bad in law, and unsound logically.

27. Proceeding to paragraph 9, I would remark that it is not in accordance with the truth, when the Defendant asserts that Mr. Grant brought about the Razeenamah he did not do so, either in his capacity of Collector or in any other capacity: and whether the Defendant would or would not have obtained the full amount of principal and interest awarded to him by the Decree in O. S. No. 18 of 1838 would depend on what the widow's Estate and interest in the Zamindari (an interest limited to her life) would have fetched, the Privy Council having shown that that was all that could have been sold.

28. Referring to the 10th paragraph of the petition, probably the Defendant may have some ground for complaint; but if he had, the Government had nothing whatever to do with those proceedings, and the Defendant was himself to blame in not applying to the Court to have the Estate placed under attachment, pending the litigation, when the rents, &c., would have been collected and preserved for those who might ultimately be declared entitled, but he preferred allowing the widow to remain in quiet possession, and he cannot with justice complain of consequences which he might have prevented.

29. Proceeding to the 11th paragraph, I cannot find among the numerous papers that have been sent to me any order of Government dated the 19th of September 1855, I observe the plaint was dated that day at Masulipatam, it is therefore improbable an order of Government for the purpose mentioned would be dated that day, probably this is an error. Assum-

ing however that the assertions made in this paragraph are correct (which they probably are), it shows that notwithstanding all the circumstances were brought fully to the notice of the Government of that day, such Government deemed it their duty to enforce the rights of the Crown against the Defendant. I am aware they reserved to themselves to consider, when the rights of the Crown were established, whether any consideration should be shown to the Defendant in respect of advances which might be shown to have been really and *bonâ fide* and consequent on her necessities advanced to the widow by the Defendant's father. I purpose reverting to this hereafter.

30. With reference to the 12th and 13th paragraphs, the Defendant does not adduce any grounds for his assertion that he cannot produce evidence. With the lapse of time doubtless difficulties in producing evidence will increase, but it occurs to my mind that if the advances were really *bonâ fide* and of the character and for the purposes asserted, evidence might be adduced by a little assiduous labor; but of this again the Defendant ought not with any regard to justice to complain, in 1860 he had the opportunity of showing his evidence to Government, who were prepared to meet him in a liberal spirit. The latter portion of the 13th paragraph is not truthful.

31. As regards the 14th paragraph the Defendant in his Plaint in O. S. No. 18 of 1838 lays his claim against the widow commenced on Monday the 10th Shoodum of Vissaghum of the year Pramoodoota (13th May 1813) three years after the death of her husband. The allusion therefore to transactions with her husband must have been inserted to deceive; moreover, it will be seen from the papers before Government that it is not true that the Collector passed as unquestioned the transactions of the Defendant's father with the widow. The Collector pronounced them to be collusive, I think he goes as far; I believe however it will be found, that the decision of Government on that point was really founded on the opinion of the then Government Pleader, Mr. Norton, that the real question of law could be settled without raising that point, and relying on that opinion (which has proved to be perfectly sound and correct) the Government preferred not raising an unnecessary issue. In the re-application, however, Mr. Norton consequent on the line of defence taken by the Defendant in his answer *did raise the issue* and *put the Defendant to proof of it*; therefore the views of Government when the Plaint was framed were, as now asserted by Defendant, they would have been rendered nugatory by the Defendant provoking the issue which he now finds so unpalatable.

32. Proceeding to the 15th paragraph it is sufficient to say that the whole of the reasoning or observations of the two Courts (Civil and Sudder) are swept away by the Judgment of the Privy Council.

33. So also that contained in the 16th paragraph. As regards the concluding portion of this paragraph, I have shown in paragraph that whatever were the views or wishes of Lord Harris' Government the Defendant by his own mode of putting his defence, forced the Government to raise the issue. This answers the 17th paragraph.

34. Proceeding to the 18th paragraph, I have only to observe that the Sudder could not legally enter into any such consideration as is there suggested.

35. The observations made in paragraph 19, I have already shown, are not founded in fact.

36. Proceeding to the 20th and 22nd paragraphs; I deem it my duty to draw the attention of His Excellency in Council to what passed in the Privy Council; it is apparent that their Lordships never contemplated that the Defendant should retain the Zamindari, they expressly refer to the "surrender of the Zamindari to Government." Again referring His Excellency to the dialogue between the Lord Justice Knight Bruce and Mr. Forsyth, as shown in paragraph Their Mr. Forsyth, the standing Counsel of the Secretary of State, declined to consent that the Decree in the O. S. No. 103 of 1855 should stand; doubtless this was communicated to the Secretary of State, even if Mr. Forsyth were not directly instructed to act as there stated by the India Office.

37. The 21st paragraph scarcely calls for observations except to draw attention to the want of truth displayed by this man in barefacedly asserting that he was "legally put in possession" when he knows perfectly well that the Privy Council have virtually set aside the orders under which he was wrongfully put into possession.

38. Having thus traversed through the whole of this petition, it only remains for me to offer a few observations as to whether there are any grounds on which His Excellency in Council may, even after the course which the Defendant has thought fit to pursue, extend to him some indulgence; I have ever felt that when a mere question of money was concerned Government should pursue a liberal and broad course in dealing with parties, and such has been the tenor of my advice during the (now nearly) twenty years I have had the honor of holding office under this Government, and so far as that principle is involved I agree with Mr. Norton in his observations, when advising Government in this case; but I do not agree with him in much that he has said when advocating this Defendant's claim to the "benevolence" of Government, and much that he urges is fallacious as has been shown in the Privy Council. He doubtless was unfortunately placed in an anomalous position, as shown in paragraph 4 of his letter. I do not believe that a single Rupee has really and *bonâ fide* and consequent on necessities which with proper management on behalf of the widow should have arisen, been advanced by the Defendant's father to the widow, but my impression is that although "some money may have emanated" from the Defendant's father, yet that "the whole was a scheme of the family to keep the estate," and from the shorthand writers' notes I observe I am not singular in this opinion. It is true there is no direct evidence on the point, but I am guided by facts and the acts of the parties, and from them I judge of the probabilities and improbabilities of the case, and on which alone until evidence is adduced can any professional man advise. Now look at the facts of the case and the acts of the parties. The husband of the widow died in 1810. In 1813 the alleged transaction, the subject of the Suit No. 18 of 1838 commenced; these were, as the Defendant's father alleged, advances made by him to the widow, and which he says were continued till 1838; yet in 1830 this gentleman gets the widow to execute in his favor a document conveying to him the entire Estate which document the Collector was requested to register. The Collector refused to do so; the opinion of the Sudder was taken, who had no hesitation in saying the attempted alienation was contrary to Hindu Law; this was communicated to the parties. In that document no allusion was made to any existing debt, nor did the parties on being informed of the opinion of the Sudder then affirm that consideration for the deed was founded on a debt; in fact, the parties did nothing further till 1838, when, as the Defendant alleges, the accounts between his father and this widow, which had been running on as an open account for twenty-five years were adjusted, and she admitted herself his debtor to the extent of Rupees 48,614-13-6. This took place as is alleged on the 20th of April 1838, and then we find that although the Defendant's father had been content to let this account remain open and unadjusted for twenty-five years and for eight years after he had been told the widow could not alienate this Zamindari, yet no sooner is this account of twenty-five years standing adjusted, than he commences the O. S. No. 18 of 1838. I do not know the date on which the Plaint was filed, but from the number of the Suit it must have been within a very short time, subsequent to the 20th of April 1838. To that Suit the widow did not appear; the Defendant's father adduced some evidence, and (there being no person to defend the Suit for the widow) obtained a judgment; and on a judgment so obtained, the Defendant asks the Government to pay the amount decreed with subsequent interest. Now, I submit, that the probabilities are, that if money had been really and truly and *bonâ fide* advanced, the Defendant's father would not have permitted the accounts to remain open and unadjusted for *twenty-five* years, and if money had been really and *bonâ fide* advanced for purposes which the Hindu Law would recognize as sufficient to authorize the widow to incur her husband's Estate. The defendant's father in 1830 would have advanced his claim, and would not have remained quiet for eight years. Then it is a suspicious proceeding after having lain by, for so long a period, that he should rush into Court, immediately after having obtained this so-called adjustment; that the widow should remain perfectly quiescent, not appear in the Suit, but permit her near relative and Agent to obtain a judgment against her.

39. I use the word "Agent" *advisedly*, notwithstanding observations which I perceive have been made regarding my having used that term in previous communications.

40. I have not had time to read through all the papers which have been sent to me (a large bundle), but I have been enabled to glance my eyes over them, and my attention has been attracted to the Minutes of Consultation noted in the margin; the latter part of which I observe was not communicated to Mr. Norton, and from which I perceive there were circumstances, which were probably unknown to him, regarding which the Collector was directed to make enquiry, but of the result of that enquiry I have not been informed.

Mics. Cons. 21st April 1855, No. 209, Judicial Department.

41. Notwithstanding however the opinion I have formed, I feel myself authorized to suggest (supposing nothing of an important character transpired on the enquiry referred to) that His Excellency in Council might allow the Defendant to adduce his evidence before the Collector, who might be instructed to investigate the claim in a liberal spirit, and report what moneys he may consider the Defendant's father has really and *bonâ fide* advanced to the widow, for the purpose of paying the Peshcush, or for any other purpose which under Hindu Law would autho-

rize her to encumber her husband's Estate, and which were rendered necessary to save the Estate, such necessity of course not arising from profligacy or improvident expenditure or bad management on the part or behalf of the widow. Some reliable evidence should of course be produced; although I consider I may advise, that the Collector should be authorized to exercise his discretion in not requiring the strict legal proof which would be required in a properly constituted Court; I would suggest that from the Civil Court authenticated copies of the bond given by the widow to the Defendant's father, as likewise of the account alleged to have been settled on the 20th April 1838; and of the record including the evidence, in the O. S. No. 18 of 1838 might be procured and translated; I would further suggest that if large sums were advanced by the Defendant's father such sums in all probability would be remitted in Hoondies, and doubtless evidence of that character could be without much difficulty obtained even at this period, the revenue accounts of the District would show whether the Kist was in arrear at the times it is alleged the advances were made and whether coercive measures were threatened, or resorted to; while on the other hand the accounts of the Zamindári should show the receipts and expenditure, from which might be seen how far any such necessity as the Hindu Law recognizes was likely to arise. These are mere suggestions thrown out, I would strongly advise that the investigation, if sanctioned by His Excellency, should be carried on by the Collector himself personally, or by an European Civil servant of experience and intelligence, and with the foregoing suggestions as the ground work for his guidance, his own intelligence would dictate other sources as the matter proceeded; this investigation, if wished by Government could be laid before me with the evidence adduced in support, and, if I obtained His Excellency's sanction, I should not be disposed under the circumstances to weigh very critically the evidence on which the claim was attempted to be supported so long as a good *prima facie* case were made out.

42. I have ventured to make this suggestion, without however knowing whether any instructions from the Secretary of State, bearing on the part of the subject, may have been received by Government, and without being aware how far His Excellency in Council may feel themselves tied by what passed in the Privy Council.

43. If His Excellency in Council should feel disposed to meet the Defendant in the manner I have suggested, the sum received by the Defendant from the Collector for mesne profits, as also all revenue received by him since he has been in possession, will have to be brought to account by the Defendant.

44. As regards the Order of Government noted in the margin, I do myself the honor of advising that authenticated copies of the Defendant's Petition to Government should not be furnished to him, they are not evidences *for* the Defendants. It is an unprecedented application, and I do not consider Government would be justified in departing from the ordinary course in the present case, the matter especially as the averments there made are not strictly in accordance with the facts. Of course any Orders of Government, so far as it may be proper to show them to the Defendant, will be forwarded to him in the usual manner, and if the Defendant should be advised that he can make his own Petitions evidence for himself, there will be no difficulty in his adducing them in proof in the ordinary manner, therefore no injury can accrue to the Defendant by the refusal to furnish copies.

9th April 1862, No. 795, Revenue Department.

45. I return all the Petitions, and all the papers which accompanied the Official Memorandum under date the 10th February 1862, No. 41.

No. 291. ORDER THEREON, 17th April 1862, No. 864.

Ordered to lie over.

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

Revenue 1862 Dept.
2 Pcs. of Goods for April
No. 1092

Simon Clement Esqr.
Sole Executor Probate
Probate

Probate 10s. 3d. 8th Oct. 1862
Receive 15s. 3d.

No. 61

Copy rec'd Letter to Liverpool
23d. Recd. 1869 of 1865

Copy rec'd

Register Copy rec'd
Probate of Recently Executed
Declaration to be filed
Copy Testamentary Letters
to obtain Recovery of the
Executorship

287
No 293 & 294

No 814 — 19th April

Sept. 1st 1862
Oct. 3rd 1862