M.R.O. 14—10,000—21-4-22.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 995 Press Mis.

(51-152

Dated 7 5 - 1862.

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department, 7th May 1862.

No. 131. Read the following Proceedings of the Board of Revenue, dated 10th April 1862, No. 2,396 :—

Read the following letter from C. DALE, Esq., Government Pleader, Sudder, Adálat, to R. A. DALYELL, Esq., Sub-Secretary to the Board of Revenue, dated Madras, 8th April 1862, No. 57.

SIR,

1. I have the honor to acknowledge the receipt of the Proceedings of the Board of Revenue, under the date and number noted in the margin, and to return the Draft of the written Statement which accompanied.

5th April 1862, No. 2,275, Revenue Department.

2. It does not appear that the letter of the Collector, dated 27th February 1862, No. 41, nor the Board's Proceedings dated the 1st March 1862, No. 1,426, have been forwarded to me. I conclude, however, from the Proceedings now under acknowledgment, that a sum of Rupees 11,000 was paid by the Collector to the 1st Defendant, and that it was the value of the produce as averred in the plaint. I have, therefore, struck out from paragraph 2 the words within brackets to which I referred.

3. In accordance with the Board's views I have modified paragraph 3 of the written Statement. I do not see the object " in omitting all mention of the Tahsíldár," but as I understand the instructions it may be of importance to retain such mention.

Ordered that the Draft answer received with the above letter be forwarded to the Collector of Salem.

(A true Copy and Extract.)

(Signed) R. A. DALYELL, *Sub-Secretary.*

In the Civil Court of the Zillah of Salem.

In Original Suit No. 1 of 1862, wherein

Pethamuthu Viramaney of Ankusagiri Poliput, in the Táluq of Oossoor in the Zillah of Salem, is } Plaintiff.

And

1. Appa Ráu,
2. Chinnamaney,
3. Chennamuthu Virmaney,
4. Ukkachi Ummani,
5. H. A. Brett, Esq., Collector of Salem, are } Defendants.

Written statement of the 5th Defendant.

I. The fifth Defendant says that the Poliput of Ankusagiri in the plaint mentioned is not in the possession of this Defendant, nor was it in his possession at the time the said plaint was filed, and he submits that the Plaintiff is not entitled to any relief as against this Defendant in respect of such Poliput.

II. The fifth Defendant further submits that in respect of the produce of the said Poliput, to which reference is made in the plaint, the said Plaintiff is not entitled to any relief as against this Defendant,

III. And in respect of the Pattucutu lands and moveable property in the plaint mentioned or referred to, this Defendant says, your Honorable Court by order, dated the 28th of February 1862, has directed that the Nazir of the Court should, as Receiver, manage and account for all the property in the plaint mentioned (except the Poliput), in pursuance whereof this Defendant has delivered to the Nazir the possession of such lands and moveable property. And this Defendant submits that the Plaintiff is not entitled to any relief as against this Defendant in respect of such Pattucutu lands and moveable property, but whether such Puttucutu lands yield an annual produce of 900 Rupees, or whether such lands and moveable property belong to the said Poliput, or whether they are of the value in the plaint mentioned, this Defendant does

not know; and he further says, he denies that such lands and moveable property were at the time the plaint was filed, or at any other time under the Zuftee of the Defendant, for he says that on the death of Viramaney in the plaint mentioned, Mr. Knox, the then Collector, directed the Tahsíldár of Oossoor to take charge of the Poliput in the manner, and for the reasons hereinafter mentioned, and that such Tahsíldár in the performance of such orders did take charge of the Poliput, and in so doing he did also take possession of the said Puttucutu lands and of some moveable property (which this Defendant believes is the moveable property referred to in the said plaint), but he says that at the time of the Tahsíldár taking charge of the Poliput, he, the Tahsíldár, did not know what portion, if any, of the moveable property belonged to the Poliput, or what, if any, was the private property of the said Veramaney, and for those reasons among others hereinafter mentioned or referred to, and not being able at the time to distinguish the one from the other, this Defendant says that the said Tahsíldár did take possession of the moveable property herein mentioned or referred to. And this Defendant further says, that the members of the family of the said Viramaney and of her deceased husband (and as this Defendant believes the Plaintiff) solicited the said Tahsíldár to secure the whole of the property, lately in the possession of the said Viramaney, until the rights of the several claimants thereto could be adjusted. And this Defendant admits that subsequently and on discovering that such Puttucuta lands and moveable property had under the circumstances hereinbefore mentioned, been taken possession of by the Tahsíldár, Mr. Knox did sanction the retention of the possession of the same because such retention had been solicited as beforementioned, and also because he was the nearest Magistrate. And he says that for these reasons he in good faith granted such sanction in order to prevent injury thereto in the absence of, and in order to preserve the same for, the true and lawful owner thereof, and with the view of preventing a breach of the peace. Mr. Knox, however, at the same time publicly notified to all claimants that he claimed no interest whatever in any part of the said property, and that he was ready and willing to deliver up the whole of such property, to any person who should produce and show to him a title, order or authority from a competent Court, such as would justify him in delivering up the possession thereof, and this Defendant says, that on or about the 19th day of December 1861, and before any such title or authority was produced or shown to him the Judge of your Honorable Court addressed a letter to this Defendant, requiring him to retain possession of the said property until the further order of this Honorable Court, in compliance wherewith and acting in good faith this Defendant did retain the possession of the said property till the same was taken possession of by the said Nazir as Receiver, under the order of this Honorable Court hereinbefore mentioned. And this Defendant says he claims no interest in the said Puttucutu lands (except so far as relates to the Kist payable to Government) or in the said moveable property, and submits to this Honorable Court that he ought to be relieved from further litigation in this suit in respect thereof.

IV. This Defendant says, that one Careyappa Gowd was the possessor of the Poliput at the time the part of the country, in which the Poliput is situated, came under the management and Government of the British; and this Defendant admits that Kempey Gowd in the plaint mentioned was a grandson of the said Careyappa Gowd, and that he married five wives. But as to the several events and changes which have taken place in the family of the said Kempey Gowd, as set out in the 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th and 10th paragraphs of the plaint, this Defendant puts the Plaintiff to the proof, as he is not sufficiently acquainted with all that has taken place to be able to admit or deny the several averments made in those paragraphs.

V. This Defendant, however, believes it to be true that no son of the said Kempey Gowd had male issue, and if there were any, this Defendant admits none lived beyond infancy.

VI. This Defendant denies that the said Poliput and its appurtenances, or any part thereof descended on the death of the said Kempey Gowd to his eldest son, Chokey Gowd, as in the plaint, is in that respect untruly averred; but this Defendant admits that under the law and circumstances, and with the sanction or permission hereinafter mentioned or referred to, the said Chokey Gowd did succeed to the possession of the said Poliput and its appurtenances on the death of the said Kempey Gowd.

Proceedings of the Madras Government, Revenue Department, 7th May 1862.

VII. In like manner this Defendant denies that the Poliput descended to Timmaroy Gowd or to Sanjivyamaney or to the said Viramaney, but admits that under the law and circumstances, and with such sanction or permission as is hereinafter mentioned or referred to, the said Timmaroy Gowd, Sanjivyamaney and Viramaney did succeed to the possession of the said Poliput and its appurtenances.

VIII. This Defendant says, that for several hundred years previously to the present century the ancestors of the said Careyappa Gowd had held and been in possession of the said Poliput; that prior to the management and government of the country being assumed by the British, such ancestors, as also the said Careyappa Gowd, had held the said Poliput at the will of the ruling power for the time being; that since the assumption of the management and Government of the country by the British, no Sanad-i-Milkiut-i-Istimrar has been granted in respect of the said Poliput.

IX. And this Defendant submits to the judgment of your Honorable Court, that under the law as recognized in this Presidency, such a Sanad under the operation of the Regulation No. 25 of 1802 is necessary to constitute a Poliput hereditary property. As also that under such law it is settled that prior to the fixing of the permanent assessment, succession to Poliput tenures 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 considered most expedient for the purpose of realizing the public revenue due from the lands; as also that on the death of one possessor, it rested with the ruling power according to the declared usages of the country to determine to whom possession of the Poliput should be given, and that on the assumption of the management and government of the country by the British, exercise of such right became vested in the British Government as such ruling power.

X. This Defendant further submits as a question of law, that the exercise of such right is now vested in the British Government as such ruling power.

XI. And this Defendant says, that on the death of the said Careyappa Gowd, and on the death of each of the parties who have since his death succeeded to the possession of the said Poliput, the possession was of his and of each succeeding possessor was under the sanction or permission of the Government of Madras as such ruling power. And this Defendant submits to the judgment of your Honorable Court as a question of law that each and every act of the Madras Government by which such sanction or permission was given or granted, was passed in exercise of the general powers, privileges and authority at the several times at which such acts were passed vested in the East India Company by the various Charters and Acts of Parliament by which the possession and Government of British India were then committed to such East India Company in trust for the Crown of Great Britain, and that all such acts were acts of State and that as such, those acts are matters which cannot be enquired into in this Court, or in any Municipal Court of Justice within Her Majesty's dominions.

XII. This Defendant admits that the said Kempey Gowd had a daughter who was named Paddankhalamaney, but whether by his second wife, this Defendant does not know; and he admits that the said Paddankhalamaney has issue Appa Ráu, the first Defendant, and other children.

XIII. This Defendant admits that all the sons of the said Kempey Gowd are dead, as also that the Plaintiff and the 2nd, 3rd and 4th Defendants are widows of sons of the said Kempey Gowd, and this Defendant believes that the Plaintiff was the first wife of the said Chokey Gowd.

XIV. This Defendant admits that on the death of the said Viramaney, Mr. Knox did, as hereinbefore mentioned, Zuft the said Poliput, and that he was at that time the Collector of Salem. And this Defendant says and submits that in so Zufting the said Poliput, Mr. Knox acted in the due and proper discharge of his duty and in good faith for the protection of the property, and to prevent injury thereto, the possession thereof being then vacant, until the Government of Madras, in the exercise of the right vested in them as the ruling power, should determine to whom the possession of the said Poliput should be given.

XV. This Defendant admits that subsequent to the Poliput being so Zufted, and on or about the 8th day of May 1861, but under the order hereinafter mentioned or referred to, he did deliver to the first Defendant Appa Ráu the possession of the said Poliput, and he says that such order is dated the 9th day of April 1861, No. 794, was passed by the Honorable the Governor of Madras in Council, and that thereby it was determined that the possession of the said Poliput should be given and delivered to the first Defendant. And this Defendant says that such order was made and passed by the Government of Madras as the ruling power within this Presidency, and this Defendant submits to the judgment of your Honorable Court that such order was passed in the exercise of the right vested in such Government as the ruling power, and that the passing of such order was an act of State, and that as such it is a matter which cannot be enquired into in this Court, or in any Municipal Court of Justice within Her Majesty's dominions.

XVI. And this Defendant submits to the judgment of your Honorable Court that, even if the facts relating to the Poliput and the family of the said Kempy Gowd were, as stated in her Plaint, the Plaintiff under the Hindu law, as recognized in this Presidency, could not succeed as heir to the said Poliput.

XVII. And this Defendant says, that an action of ejectment as also a suit in equity in which the Right Honorable the Secretary of State for India in Council is the Defendant, and in both of which, as this Defendant is informed, the said Poliput is the subject in litigation, are now pending in Her Majesty's Supreme Court of Judicature at Madras.

(True Copy.)

(Signed) R. A. DALYELL, *Sub-Secretary.*

No. 132.

ORDER THEREON, 7th May 1862, No. 995.

Ordered to be recorded.

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

Copy in a Letter to Govt
Dd 8th March 1862 No 10

Rev: 1862 Dest 14
Pros: of Govt for May
No 1870.

Proceedings of the
Board of Revenue

Dated 10th April 1862.
Dest 11 Do
Rec. 12th
Ex 1 No 2396.

38-469

Forwarding the Draft
Answer in the Ankusa
= giri Suit.

No 396.

RECORDED.

7th May 62

Draft Answer to Petition

No 131 & 132

Ld 16 April Rect