M.R.O. 14—13,000—27-9-24.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue **DEPARTMENT.**

G.O. No. 607	Press Mis.
179-180	
Dated 11-6-	19 1923

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department, 11th June 1863.

No. 179. Read the following Petition from STREEMATU HIRANYA GARBHA YAJI RAVIKULA VIJYA RAGHUNADHA RAJAH MUDDU RAMALINGA SETUPATY, present Zemindar of Ramnád, to His Excellency SIR WILLIAM DENISON, K.C.B., Governorin Council of Fort Saint George, dated 20th May 1863:—

RESPECTFULLY SHEWETH,

That your Petitioner feeling aggrieved at the Order of Government, dated the 15th December last, on his Petitions of the 26th March, 2nd April, 4th July, 6th October and 11th November 1862, begs leave humbly to submit herewith his Petition* of Appeal therefrom to Her Majesty's Secretary of State for India in Council, and humbly to pray that your Excellency in Council will be pleased to forward the same to the Right Honorable Sir Charles Wood in Council.

* In triplicate.

And your Petitioner shall ever pray,

(Signed) V. SADAGOPAH CHARLOO,
Vakeel for Petitioner.

No. 180. ORDER THEREON, 11th June 1863, No. 1,017.

Resolved that one copy of the Memorial be forwarded to the Government Pleader with a view to his making any remarks thereon, which he may think may be of use to the Home Government or their legal advisers.

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

TO

THE RIGHT HONORABLE SIR CHARLES WOOD, BART.,
HER MAJESTY'S SECRETARY OF STATE FOR INDIA.

The humble Memorial of Srimatu Hiranya Garbha Yaji Ravikula Vijaya Raghunadha Rajah Muddu Ramalinga Sètupaty, present Zemindar of Ramnad, in the Presidency of Fort Saint George in the East Indies.

MOST HUMBLY SHEWETH,

1. That the kingdom of the *Sètupaties* was one of the ancient sovereignties of Southern India, and its rulers belonged to the *Sètupaty* dynasty, which was celebrated in the primitive period of Indian History. The term *Sètupaty* is a compound of the words *Sètu* and *Paty* meaning the king of *Sètu* or of the sacred dam thrown by *Rama** across the arm of the sea which separated Lanka (Ceylon) from the continent of India. Not to trouble your Excellency with any lengthened account of the historical or traditionary origin of this kingdom, it is enough to observe that the preservation of this sacred dam was the original object of its foundation by *Rama* himself, (as it is believed to be by the people) and that in ancient times it embraced a very wide extent of territory which gradually diminished by foreign conquest, till in the 18th century of the Christian era, it only comprised the tract of country composing the present Zemindaries of Ramnad and Shivaganga. In the latter part of that century the then ruler of Ramnad dismembered a portion of it which he erected into the Zemindary of Shivaganga, and which he conferred in gift on his son-in-law Sasivarna Periya Oodaya Tèvar.

* The hero of the Ramayana and the 8th Incarnation of Vishnu.

2. The rest of this principality now forming the Ramnad estate continued to be held by the descendants of the *Sètupaty* race till 1795, when it forfeited to the Government of the late East India Company, in consequence of the rebellion of the then Zemindar Mudduramalinga *Sètupaty*. In 1803, however, the Government of Madras in pursuance of an Agreement which they had entered into with His Highness the Nabob of Arcot, stipulating to appoint a successor to the deposed Zemindar of Ramnad, restored the Zemindary to his sister Ranee Mangalèswara Nachyar and granted to her an *Istimirar Sunnud* commonly called *Sunnud-i-Milkeut Istimirar* or deed of permanent settlement, under the provisions of Regulation XXV of 1802 of the Madras Code. The nature of this grant and the conditions of its tenure are set out in the *Istimirar Sunnud* itself, and its terms are governed by the provisions of the said regulation.

3. The objects of this Regulation are clearly set out in its preamble. They are twofold; 1st, to provide for the assessment of a permanent and invariable, and at the same time moderate tax on all landed possessions; and 2ndly, to guarantee "to all landholders "and their heirs and successors *permanent* property in their land *in all time to come*." These objects were fulfilled by the grant of the *Istimirar Sunnud* under Section II fixing permanently the assessment on land, and *in consequence of such assessment* declaring that "the proprietory right of the soil shall become vested in the Zemindars or other proprietors "of land, and in their heirs and lawful successors for ever." These provisions were in substance repeated in Clauses 1 and 2 of the *Istimirar Sunnud*. The terms "heirs and successors" occurring in the passages quoted above must be taken to apply to assignees also, and that such was the intention of the enactment also appears from Section VIII which (and Clause 7 of the *Istimirar Sunnud* is to the same effect) provides that proprietors of

land, *i. e.* such as hold under such *Sunnud* shall be at *free liberty* to transfer *without the previous consent of Government*, or of any other authority to *whomsoever* they may think proper by sale, gift or otherwise, their proprietory right in the whole or in any part of their Zemindaries; and that such transfers shall be valid and be respected by the Courts and officers of Government, provided they be not repugnant to the Hindu or Mahomedan Law or to the Regulations, &c. &c. A few extracts from the said Regulation and Sunnud are subjoined for your Excellency's perusal in opposite columns.

REGULATION XXV OF 1802.

Whereas it is known to the Zemindars, Merasidars, Ryots, and cultivators of land in the territories subject to the Government of Fort St. George, that, from the earliest until the present period of time, the public assessment of the land revenue has never been fixed; but that according to the practice of Asiatic Governments, the assessment of the land revenue has fluctuated without any fixed principles for the determination of the amount, and without any security to the Zemindars or other persons for the continuance of a moderate land-tax; that on the contrary, frequent inquiries have been instituted by the ruling power, whether Hindu or Mahomedan, for the purpose of augmenting the assessment of the land revenue; that it has been customary to regulate such augmentations by the inquiries and opinions of the local officers appointed by the ruling power for the time being; and that in the attainment of an increased revenue on such foundations, it has been usual for the Government to deprive the Zemindars, and to appoint persons on its own behalf to the management of the Zemindaries, thereby reserving to the ruling power the implied right, and the actual exercise of the proprietory possession of all lands whatever; and whereas it is obvious to the said Zemindars, Merasidars, Ryots, and cultivators of land that such a mode of administration must be injurious to the permanent prosperity of the country by obstructing the progress of agriculture, population, and wealth, and destructive of the comfort of individual persons by diminishing the security of personal freedom and of private property; wherefore, the British Government, impressed with a deep sense of the injuries arising to the State and to its subjects from the operation of such principles, has resolved to remove from its administration so fruitful a source of uncertainty and disquietude, to grant to Zemindars, and other landholders, their heirs and successors, a permanent property in their land in all time to come, and to fix for ever a moderate assessment of public revenue on such lands, the amount of which shall never be liable to be increased under any circumstances.

II. In conformity to these principles, an assessment shall be fixed on all lands liable to pay revenue to the Government; and in consequence of such assessment, the proprietory right of the soil shall become vested in the Zemindars or other proprietors of land, and in their heirs and lawful successors for ever.

VIII. Proprietors of land shall be at free liberty to transfer, without the previous consent of the Government, or of any other authority, to whomever they may think proper, by sale, gift, or otherwise their proprietory right in the whole, or in any part of their Zemindaries; such transfers of land shall be valid, and shall be respected by the Courts of Judicature and by the Officers of Government; provided they shall not be repugnant to the Mahomedan or to the Hindu Laws, or to the Regulations of the British Government. But unless such sale, gift or transfer shall have been regularly registered at the Office of the Collector, and unless the public assessment shall have been previously determined and fixed on such separated portions of land by the Collector, such sale, gift, or transfer shall be of no legal force or effect, nor shall such transaction exempt a Zemindar from the payment of any part of the public land-tax assessed on the entire Zemindary previously to such transfer, but the whole Zemindary shall continue to be answerable for the total land-tax in the same manner as if no such transaction had occurred.

ISTIMIRAR SUNNUD.

1. It is known to the Zemindars, Talookdars, Merasidars, Ryots, and all cultivators of land in the territories subject to the Government of Fort St. George, that from the earliest until the present period of time, the publi assessment of the land revenue has never been fixed; but that according to the established practice of Asiatic Governments, the assessment of the land revenue has fluctuated without any fixed principles for the determination of the amount; and without any security to the Zemindars, or other persons for the continuance of a moderate land tax. On the contrary, frequent enquiries have been instituted by the ruling power, whether Hindu or Mahomedan, for the purpose of augmenting the assessment of the land revenue; and it has been customary to regulate such augmentations by the enquiries and opinions of the local officers appointed by the ruling power for the time being. In the attainment of an increased revenue on such foundations, it has been usual for the Government to deprive the Zemindars, and to appoint persons on its own account to the management of the Zemindaries; thereby reserving to the ruling power the implied right, and the actual exercise, of the proprietory possession of all lands whatever, it is obvious that such a mode of administration must be injurious to the permanent prosperity of the country, by obstructing the progress of agriculture, population, and wealth, and destructive to the comfort of individual persons by diminishing the security of personal freedom, and of private property.

2nd. The British Government, impressed with a deep sense of the injuries arising to the State and to its subjects from the operation of such principles, has resolved to remove from its administration so fruitful a source of uncertainty and disquietude; to grant to Zemindars, and other landholders, their heirs, and successors, a permanent property in their land in all time to come; to fix for ever a moderate assessment of public revenue on such lands, which shall never be liable to change under any circumstances; to institute Courts of Judicature for the protection of these valuable rights; and to secure to every description of its native subjects under the operation of fixed and defined laws, the free exercise of the religious institutions, and domestic usages of their ancestors.

7th. You shall be at free liberty to transfer, without the previous consent of Government, or of any other authority, to whomever you may think proper either by sale, gift, or otherwise, your proprietory right in the whole or in any part of your Zemindary; such transfer of your land shall be valid, and recognized, by the Courts and Officers of Government, provided they shall not be repugnant to the Mahomedan or the Hindu Laws, or to the Regulations of the British Government, but unless such sale, gift, or transfer shall have been regularly registered at the Office of the Collector, and unless the public assessment shall have been previously determined, and fixed on such separated portions of your estate by the Collector, such sale, gift, or transfer shall be of no legal force or effect; nor shall such transaction exonerate you from the payment of any part of the public land-tax assessed on your entire Zemindary previously to such transfer; but your whole zemindary shall continue to be answerable for the total land-tax, in the same manner as if no such transaction had occurred.

4. From these extracts as well as from the other provisions of the Regulation and of the *Istimirar** *Sunnud* it must be evident to your Excellency that the grantee of this *Sunnud* and her heirs, successors and assigns had and have as *against Government* an indefeasible title to hold the estate unreservedly for all time to come or to alienate or transfer the same to others wholly or in part by sale, gift or otherwise, and as far as Government were or are concerned, their title to the estate comprised in the grant ceased to exist, except as to enforcing punctual payment of their dues in the mode laid down in the said Regulation and *Sunnud*. That this is the correct view of the legal consequences which flowed from the act of Government in conferring the estate on Ranee Mangaleswara Nachyar will be evident to your Excellency on reference to page 103 of the 1st volume of the Select Decrees of the Madras Sudder Court, where in a suit† respecting this very estate and the nature of its grant to the said Ranee, that Court observed as follows—"In determining the succes- "sion in favor of Ranee Mangaleswara Nachyar, the Government expressed no intention "of limiting the inheritance, no special restrictions were imposed on the future disposal "of the Zemindaree; and the right of succession was left liable to be affected, by any act "within her power to perform, under the provisions of the Hindu Law. The rights "conferred by this act of the Government were confirmed by the deed of permanent "settlement, granted to her in the year 1803."

* See general form of the *Sunnud* at page 590 of Circular Orders Board of Revenue, Vol. 1.

† Appeal No. 18 of 1814.

5. Accordingly Ranee Mangaleswara Nachyar held the estate till her death which occurred in 1807, exercising the full powers of Zemindars under the Regulations‡ of 1802. Previous to her death, but after that of her husband, she in 1803 or 1804 adopted Annasamy, *alias* Muttu Vijaya Raghunadha *Setupaty* who was nearly related to her husband, under authorization from his (her husband's) relations. She also left a Will§ dated 11th May 1807, in confirmation of his adoption, and devising the whole estate to him. This will was attested by Colonel Martin and the then Collector Mr. George Parish. But the right of Annasamy to succeed to the estate was contested by Sivagamy Nachyar, the daughter of the deposed Polygar. On the 20th or 30th March 1812, the Board of Revenue of the day recommended that the right of Annasamy to the estate should be recognized in preference to Sivagamy Nachyar on the following grounds. The Board observed :—

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§ Enc. A.

15. "The will of the deceased Ranee, of which copy and translation has been submitted by the "Collector, is dated the 11th April 1807, and appears to be witnessed by Colonel Martin and the late "Collector Mr. Parish, and by the Prodhani or Minister Teagaroya Pillay. At which precise period the

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* See general form of the *Sunnud* at page 590 of Circular Orders Board of Revenue, Vol. 1.

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5. Accordingly Ranee Mangaleswara Nachyar held the estate till her death which occurred in 1807, exercising the full powers of Zemindars under the Regulations‡ of 1802. Previous to her death, but after that of her husband, she in 1803 or 1804 adopted Annasamy, *alias* Muttu Vijaya Raghunadha *Setupaty* who was nearly related to her husband, under authorization from his (her husband's) relations. She also left a Will§ dated 11th May 1807, in confirmation of his adoption, and devising the whole estate to him. This will was attested by Colonel Martin and the then Collector Mr. George Parish. But the right of Annasamy to succeed to the estate was contested by Sivagamy Nachyar, the daughter of the deposed Polygar. On the 20th or 30th March 1812, the Board of Revenue of the day recommended that the right of Annasamy to the estate should be recognized in preference to Sivagamy Nachyar on the following grounds. The Board observed :—

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§ Enc. A.

15. "The will of the deceased Ranee, of which copy and translation has been submitted by the "Collector, is dated the 11th April 1807, and appears to be witnessed by Colonel Martin and the late "Collector Mr. Parish, and by the Prodhani or Minister Teagaroya Pillay. At which precise period the

" act of adoption was performed does not appear from any papers before the Board, but it is understood " that it took place so long ago as the year 1803, shortly after the death of the late Ranee's husband."

18. " On the part of the person who claims the succession under the act of adoption by the late " Ranee, it is to be observed that Section 8 Regulation XXV, A. D. 1802, as also the 7th Clause of the " deed of permanent property which is quoted in the will acknowledged the right of proprietors to " transfer without the previous consent of Government or of any other authority to whomsoever they " may think proper by sale, gift or otherwise, their proprietory right in the whole or in any part of the " Zemindary, and such transfers are declared to be valid, provided they shall not be repugnant to the " Mahomedan or to the Hindu Law, &c."

19. " This provision of the Regulations and of the deed of permanent property appears to have " been considered by the late Ranee as vesting in her an absolute right over the Zemindary superseding " all other pretensions and possibly a similar impression may have been entertained by the late Collector, " otherwise he would probably have hesitated to become a witness to an instrument whose tendency was " to set aside hereditary claims."

6. Accordingly the Madras Government sanctioned the proposition of the Board in these terms :—

" I am directed to acknowledge the receipt of your letter under date the 30th March and inform " you that the Honorable the Governor in Council concurs in your opinion that under the decision of " the 3rd July 1795, the alleged adoption and bequest by will of the Zemindary of Ramnad to Muttu " Vijaya Raghunadha Sètupaty by the late Ranee afford sufficient ground for allowing him possession, in " the first instance ; leaving to the party or parties out of possession to contest the right to the " Zemindary in the Court of Judicature."

7. Annasamy was thus put in possession of the Zemindary. But shortly after this the said Sivagamy Nachyar instituted a regular suit* before the Provincial Court to recover it from him on the grounds among others, 1st, that she was the lawful successor to her aunt, the late Mangalèswara Nachyar, and 2ndly, that Annasamy's adoption was false in fact and invalid in law. The Provincial Court gave judgment in her favor, but this judgment was reversed by the Sudder Court in the appeal† suit already referred to, in which after putting the following, among other, questions to the Hindu Law officers and obtaining their answers thereto, the Court declared the adoption of Annasamy to be true and valid.

* No. 3 of 1813.

† No. 18 of 1814.

Questions.	*Answers.*
May a widow adopt a son, without the consent of her husband ?	A widow may adopt a son, with the consent of her husband or with the consent of her relations. Thus it is declared in Dutta Mimamsa Vivada Sararnavam Lohita Darmam, and other Law Books ; and in confirmation thereto, is the custom of this country.
Q.—If the husband's consent be required, will that consent be sufficient if given orally, or must it be given by a written instrument ? Must such instrument be witnessed ?	*A.*—If the adoption be made with the consent of the husband, the consent will be sufficient if it is verbal. But the consent must be proved, for the satisfaction of the relations ; the consent may be given in writing. If the hand-writing be proved to be that of the husband, the signature of witnesses (to the deed) is unnecessary ; otherwise it must be signed by witnesses.
Q.—If a written instrument be required, is it necessary that the name of the child to be adopted and of the parents of the child, be mentioned therein ; or may the consent be given generally, to adopt any child, not mentioning any one in particular ?	*A.*—The consent may be given, by a writing, either mentioning the name of the child to be adopted, and of its parents ; or leaving the child to be afterwards fixed upon.
Q.—If a husband and wife execute an agreement to adopt a child, and one of them afterwards die, is the survivor bound to fulfil the agreement, or is the agreement rendered invalid, by the death of one of the parties ?	*A.*—If a man and his wife have agreed in writing to adopt a child, and one of them die, the survivor must fulfil the engagement ; the agreement is not rendered void, by the death of one of the parties.
Q.—If the husband, at the time of his death, should speak concerning such deed of agreement, is the widow authorized by anything that may have been so said to adopt the child mentioned in the agreement ?	*A.*—If the husband, at the time of his death, refer to such agreement, the wife is authorized, thereby, to adopt the child mentioned in the agreement.
Q.—In such a deed of agreement, must the name of the child to be adopted, and the names of his parents, be mentioned, according to law, or if, as in the following passage, the name of the mother and of the tribe only be mentioned, is such a deed valid in law—" the son of—born in the tribe of"—" the father of the woman about to adopt him ?"	*A.*—Whether the name of a child and of its parents be mentioned, in such agreement, in order to identify it ; or whether to know whose child is referred to, the names of the mother and of the tribe from which he is descended be named, such agreement is binding in law.

8. This Decree of the Sudder Court was affirmed by the Privy Council, on the 28th April 1828.

9. Annasamy *Sètupaty* married Ranee Muttuveeroy Nachyar as his *Pattama Sree ;* but having no son by her, he adopted her brother named Ramasamy *Sètupaty* (about this adoption there is no question whatever) who succeeded to the estate on his (Annasamy's) demise in 1820 and continued to hold it till his death in 1830. Ramasamy *Sètupaty* married Ranee Parvatavardhiny Nachyar who was the daughter of Muttusamy Tévar his cousin on the female side. By her he had no son, but only daughters Mangalèswara Nachyar (junior) and Doraraja Nachyar, who together with their mother and their grandmother (father's mother) Muttuveeroy survived him. At his death Ramasamy arranged that the Zemindary should be held by his two daughters instead of his widow, but that as they were under age at the time, his adoptive mother Muttuveeroy and one Muttuchella Tevar should continue to be respectively their guardian and manager of the estate. He also authorized his wife Ranee Parvatavardhiny Nachyar to adopt a boy for him in case his daughters should have no issue so as to continue the line. Parvatavardhiny though legally entitled herself to succeed to the estate, assented to these arrangements in favor of her own daughters ; and accordingly the estate was registered in the joint names of these two daughters, but was managed for them by the said Muttuchella Taver. One of them namely Mangalèswara (junior) died in 1840, after which the estate continued in the name of the other daughter Doraraja Nachyar and was managed by Parvatavardhiny and Muttuchella Tevar aforesaid. While they were thus in management, Muttuveeroy brought a suit* to oust Parvatavardhiny and Muttuchella; and while that suit was pending, Doraraja Nachyar the other daughter of Ramasamy *Sètupaty* also demised.† Upon this Parvatavardhiny assumed and held possession of the Zemindary in her own right, and has continued in the exercise of all her powers as the Zamindar, and Government also recognised her position as such and registered the estate in her name. To proceed with the history of the suit adverted to above, Ranee Parvatavardhiny set up in para 11 of her supplemental Rejoinder‡ the authorization which she had received from her husband to adopt a son in the event of both her daughters leaving no issue (in fact both her daughters died without issue). On the 26th February 1847, Muttuveeroy Razeed or compromised that suit on certain terms which it is not necessary now to detail, and in that Razee¶ she authorized Parvatavardhiny to adopt a boy under the circumstances set forth in the supplemental Rejoinder quoted above.

* No. 3 of 1843.

† In 1845 or 1846.

‡ Enc. B.

¶ Enc. C.

10. Being thus authorized not only by her husband Ramasamy *Sètupàty,* but also by his mother Muttuveeroy, and being likewise permitted by her relatives, she (Parvatavardhiny) accordingly on the 24th May 1847, duly, legally, and with all the publicity and

solemnities required by law and custom adopted your Memorialist, who was nearly related to her by blood, being her own sister's son. Five days previous to this adoption, *i. e.* on the 19th idem, she wrote a letter to the Collector of Madura, giving him notice of such her intention and of the day of adoption, and inviting him to be present on the occasion. On the 21st, the Collector expressing doubts regarding her power to make the adoption, desired information on certain points, and suggested the propriety of her postponing the ceremony till he ascertained the wishes of the Board. The Ranee received this letter on the 23rd, *i. e.* the day preceding that fixed for the adoption. On the same day she sent a reply to the Collector, stating that it was impossible to put off the ceremony for the performance of which every preparation was made, and most even of the guests had arrived; that under the Regulations of Government there was no necessity to obtain the previous sanction of the authorities, and that she had authority from her husband, mother-in-law and relations, and was therefore fully competent to make the adoption. On the 24th she again wrote another letter to the Collector, informing him of the completion of the ceremony of adoption.

11. Applications were made to the Collector, the Board of Revenue and Government on the subject of the adoption. In 1849 Government fully recognised its validity and ordered that the adopted son should be treated with all the insignia of honor due to the Zemindar of Ramnad. In July 1855, Government again declared their opinion in favor of the adoption, and pointed out to the Collector a mistake into which he had fallen in supposing that their orders of 1849 disallowed the adoption. In October or November following they, however, on the opinion of their law officer Mr. J. B. Norton which was opposed to his former opinion, rescinded their orders in 1849 and of July 1855, and issued instructions to the Collector to resume the estate on the death of Ranee Parvatavardhiny. On the 15th November 1855, the Collector sent the accompanying letter to her.

"I have on the 28th July last, intimated to you by a Yadast the Order of the Government dated "the 2nd idem, cancelling the Order of the Board of Revenue under date the 10th March 1849, which "directed the escheat of the Zemindary subsequent to your demise, and recognising the adoption made "by you till it should be repudiated by the Civil Court."

"But on the 29th October, the Government issued an Extract, setting aside the above Order, con- "firming that of the Board dated the 10th March 1849 and directing the escheat of the Zemindary "after your time. The Board, in pursuance thereof, forwarded their proceedings on the 31st idem, a "correct translation and copy of the same are herewith sent for your perusal. I have also despatched "an Order on the 3rd Instant, to Narasinga Row the Amildar of the Salt pans and the Head of Police "of the Cusba directing the Zemindary and its appurtenances to be zufted, when under the dispensation "of Providence, you should have departed this life."

12. Your Memorialist who was about 9 years old at the date of the adoption, completed his minority in 1856 and sought to be put in possession of the Zemindary; but the Ranee, though fully desirous of complying with his wishes, having been afraid of giving him possession in the face of the threatening orders of Government last adverted to, he instituted Original Suit No. 1 of 1860 before the Civil Court of Madura against the Ranee as 1st Defendant and the Collector of Madura as 2nd Defendant. The object of the suit was to obtain possession of the estate, and to set aside the orders of Government directing its assumption on her death by right of escheat. The Civil Court of Madura passed a Decree under date the 18th March 1861, declaring that the Collector had no right to challenge the adoption inasmuch as it was abundantly clear that there were numerous heirs to the estate, which precluded all possibility of the right of escheat operating as against them. From this decision of the Civil Court, the Collector appealed to the late Sudder Court in Appeal Suit No. 35 of 1861, which appeal is still pending before the High Court of Madras, and will take some time before it shall be decided.

13. To avoid however the delay and costs of a protracted litigation, and to remove the doubts of Government in regard to the right of your Memorialist to succeed by

virtue of his adoption, and anxious also to see him in the full exercise of his rights to the Zemindary, the Ranee on or about the 21st February 1862, executed in his favor a deed of gift on a sufficient and proper stamp in confirmation of the adoption and with the consent of all her and her husband's heirs; and on the same day put him in possession of the Zemindary and all other real and personal property belonging to her. The following is a Translate of the deed of gift.

"A deed of gift executed by me, Srimatu Hiranya Garbha Yaji Ravikula Vijaya Raghunadha Ranee "Sètupaty Parvatavardhiny Nachiyar, the present Zemindar of Ramnad in the District of Madura, to you "Muddu Ramalinga Sètupaty my sister's son and my own adopted son, of my own free will, accord, and "affection, and with the full and entire consent and sanction of all my Dayadies, Bandhus, and all other "classes of heirs, under date the 21st February 1862, corresponding to 11th Masi of Durmati.

"Whereas it is a fact known to all the world that I, the Zemindar of Ramnad, have with and ac- "cording to the authority given me by my late husband, and with the entire consent and sanction of "my Dayadies, Bandhus, and all other descriptions of heirs, and also with the consent and sanction of "my mother-in-law Ranee Muttuveeroy Nachiyar as conveyed in the Razinama filed in O. S. No. 3 of "1843, on the file of the late Zillah Court of Madura, duly adopted and affiliated you on the 24th May "1847, as son both on my account and on account of my deceased husband, attended by Dattahomam "and all other ceremonies prescribed by law:

"Whereas on such adoption having been forthwith reported upon to the Collector of the District, "that Officer tacitly admitted the fact of the adoption, though he called in question the legal validity "thereof:

"Whereas the Government, who, in July 1855, acknowledged you as the legal heir and successor to "the Zemindary aforesaid, have changed their opinion in November of the same year, and directed the "Collector to take possession of the Zemindary after my death, pursuant to which the Collector issued "an Order to me to the like effect under date the 15th November 1855:

"Whereas although you have been fully entitled to succeed to the Zemindary of Ramnad, and all "the wealth thereunto appertaining from and after the 24th May 1856 when you have attained your "majority, still I having considered it advisable and expedient to remove the bar imposed by the "Collector's Order of the 15th November aforesaid before putting you in actual possession of the said "Zemindary and all the wealth thereunto appertaining, brought a suit against the Collector in the Civil "Court of the said Zillah in O. S. No. 9 of 1857, which suit having been rejected by an Order directing "you to bring the suit, you have accordingly instituted the Original Suit No. 1 of 1860 against me and the "Collector, and obtained Decree setting aside the Collector's Order of the 15th November aforesaid:

"Whereas the Collector has however preferred an Appeal to the Sudder Court in No. 35 of 1861 "from the Decree of the Civil Court aforesaid, and such Appeal is still depending:

"Whereas the disposal of that Appeal, and of the Special Appeal, if any, that may be preferred to "Her Majesty's Privy Council from the Decree of the Sudder Court in the present Appeal is likely to be "attended by immense loss of time and money:

"Therefore I with a view to remove the doubts expressed by the Government as to the rights "flowing from your adoption, and also to prevent all disputes that may arise in future as to your rights, "do hereby of my own free will, accord, and affection and with the full and entire consent and sanction "of my Dayadies, Bandhus and all other heirs, make a free gift to you of my said Zemindary of Ramnad "and all the wealth thereunto appertaining, and also of all and every other real and personal property "belonging to me, and now resign to you outright all my interest, right, and title in the said Zemindary "and its wealth, and the other real and personal property aforesaid, accompained by the ablution of "water with gold, and have and do further hereby put you in possession and enjoyment of the said "Zemindary, and all the wealth thereunto appertaining, and all the other real and personal property "aforesaid, and also all my interest, right, and title therein.

"You shall therefore hold and enjoy all and every of the said property, interest, right and title, "together with all their appurtenances such as hidden treasures, water, trees, stones, metals, the eight "enjoyments, and the ten rights of ownership with full liberty to alienate the same by gift, mortgage, "sale, &c., with a right so fixed and indefeasible as the course of the sun and moon, and transmit the "same to your sons, grandsons, and other heirs.

"Thus have I executed this deed of gift of my own free will and accord.

"This deed of gift has been transcribed by me.

(Signed) DORASAMIEN,
Son of M. Soobbien,
Transcriber.

(Signed) RANEE SÈTUPATY PARVATAVARDHINY NACHIYAR.

Witnesses.

Mark of Stanapaty Muttal residing at Ramnad.
Do. Karuppayi.
Do. Minakshi.

(Signed) Muttoovijaya Raghunada Tevar.
" Moottoosamy Tevar.
" Ponnoosamy Tevar.

"We the Dayadies of Srimatu Hiranya Garbha Yaji Ravikula Vijaya Raghunadha Ranee Sètupaty "Parvatavardhiny Nachiyar, and her deceased husband, do hereby agree to and sanction and have agreed "to and sanctioned this deed of gift with our own free will and accord.

(Signed) MUTTUSAMY TEVAR.
" RAMASAMY TEVAR.
" SAMY IYA TEVAR.
" MUTTUKARUPPA TEVAR.
" RAMARAJA TEVAR.

"We the undersigned Bandhus of Srimatu Hiranya Garbha Yaji Ravikula Vijaya Raghunadha Ranee "Sètupaty Parvatavardhiny Nachiyar, and her deceased husband, do hereby agree to and sanction and "have agreed to and sanctioned this deed of gift with our own free will and accord.

(Signed) E. POOLARA TEVAR.
" DORASAMY TEVAR.
" IYASAMY TEVAR.
" VANNY POOLARA TEVAR.
" MUTTU VAYIRU TEVAR.
" NADAMBAVANA TEVAR.
" CHINNASAMY TEVAR.
" PONNUSAMY TEVAR.

14. On the same day your Memorialist made an application to the Collector to register the Zemindary in his name under Regulation XXV of 1802, but that officer refused compliance with that application pending a reference to the Board of Revenue.

15. Your Memorialist tendered the said deed for registration in the Subordinate Court of Madura under Regulation XVII of 1802, and that Court accordingly registered the same on the 1st March 1862 as shewn below.

" *Endorsement.*

Seal.

"This deed of gift is entered in the Madura Zillah Sub Court Register Book Vol. XII page 5610, "No. 4580, this 1st day of March 1862, at 3 o'clock P. M.

(Signed) J. D. GOLDINGHAM,
Sub Judge."

16. Your Memorialist thereupon presented the Petitions noted in the margin* to the Board and Government; but after a delay of several months, Government passed an order under date 15th December 1862, refusing to recognise the gift; against such order of the Government, your Memorialist humbly begs leave to appeal to your Excellency in Council, submitting herewith printed copies† of the said Petitions.

* To the Board 5th March 1862.
2nd April 1862.
To Government 26th March 1862.
2nd April "
4th July "
6th October "
11th November "

† Enc. D.

17. The matters involved in this appeal may be treated of under the following heads.

I. The validity of the adoption of your Memorialist.
II. The validity of the deed of gift.
III. The right of Government to object to the acts of the Ranee.
IV. The policy of Government in this case.

18. In regard to the adoption there is no dispute as to the *factum* thereof. The adoption was made with great pomp and publicity, attended with every formality and solemnity required by law or usage. Due notice of the Ranee's intention to adopt was given to the Collector and he was invited to be present at the ceremony, and after the adoption was thus made and completed the fact was duly reported to the Collector. Indeed no objection has been raised by the officers of Government in respect of the actuality of this adoption.

I. Adoption.

19. The legality of adoption is now challenged by Government on the ground that the Ranee being a widow could not adopt without authorization from her husband or other relations competent to give such authority. In the first place the Collector denies that Ramasamy *Sètupaty* gave the authority to adopt under the circumstances set forth in para 9 hereof. The chief and indeed the sole argument of the Collector in support of this denial is this *viz.* that if he had given such authority he would not have addressed the Arzee which he did in 1829 or 1830 asking that his daughters should be recognized his successors to the estate. But this argument if there is any thing in it shews too much. It shews that in preferring his daughters, his widow Parvatavardhiny had no title to succeed him. But it is clear that the title was in her and that she waived it in favor of her own children. After all whatever weight may be due to this Arzee, it ceases to exist when it is seen that the authorization to adopt was conditional on the daughters begetting no children. Such conditional permission is allowed by Hindu Law (See Morley's Digest Vol. I *adoption* case 111.) and it is consistent with all the facts and probabilities of the case. The dying Zemindar leaving two daughters capable of continuing his line was not likely to have given unqualified authorization to adopt, which if carried out would have had the effect of dis-inheriting not only his daughters but their children also who may be afterwards begotten. The fact of such authority was moreover prominently put forward in the supplemental rejoinder in No. 3 of 1843, just after the death of the last of the two daughters, and the contending party admitted the same in the Razeenamah which terminated that suit.

20. In the second place even if such authorization was not given by Ramasamy Sètupaty (which in point of fact he did) the permission given by his mother Muttuveeroy Nachiyar would suffice in law for legalising the adoption. That she gave the permission is amply shewn by the said Razeenamah; nay the fact is not disputed. That it is sufficient in law to make the adoption valid must be obvious from any work on Hindu Law. See Sir Thomas Strange* Vol. I, pages 79 and 80, also *Sreerama Pundita* in his Datta Mimamsa in which he says "An issueless widow may with the permission "of the parents,† brothers, &c. take a son in adoption." see also Borraidale's Vyavahara Mayukha, p. 72 And there

* Edition of 1830.

† Parents here means the father or mother of the husband.

is no point of Hindu Law and usage more clear than that in the absence of the husband's authority, his mother who would be the next heir after the widow can supply the omission.

21. In the next place it is contended in one and the same place that the heirs did not consent to the adoption and that there are no heirs competent in law so to consent. The argument is an inconsistent one. But taking it for what it is worth, your Memorialist would submit that there are abundant heirs who would be entitled to succeed the Ranee failing the adoption (as to the existence of the heirs, see post, paras 24 and 25 of this Memorial) and that their consent would render valid the adoption which would be otherwise invalid, (see the authorities quoted in the preceding para and also Datta Mimasa of Nunda Pundita by Sutherland, Chapter I, 17). The fact that the heirs did give their consent will be evident from their consenting signatures to the deed of gift above adverted to, and will, if necessary, be shown by ample evidence if opportunity be allowed to adduce the same.

II. Deed of gift.

22. Before executing the deed of gift aforesaid in favor of your Memorialist, the Ranee obtained the advice of Counsel. She had the benefit of the opinion of three Members of the Sudder Bar, two of whom were practising Barristers at Law and all entitled to weight and consideration. Their opinions are submitted* herewith for your Excellency's perusal, and in point of law this deed of gift is good and valid for the following reasons.

* Enc. E.

23. Firstly, because the heirs have all assented to the gift which is therefore binding on the whole world. That such is undoubted law will be seen from the work of Sir Thomas Strange, Vol. I, pages 246 and 247. Your Memorialist is aware that great reliance is placed by the Revenue authorities on the Judgment* of the Privy Council in the case of the Collector of Masulipatam *versus* Cavaly Vencata Narainappa, as defining and declaring the rights of Government to object to alienations by a Hindu widow without heirs. No doubt that decision goes the length of holding that under Hindu Law a widow *without* heirs is under the same restriction in regard to her powers of alienation as against the Crown as a widow *with* heirs is as against such heirs; or in other words that the Crown has in the absence of heirs the same right to object to her alienation as an existing heir has. The chief and indeed the sole ground on which this decision is based is the supposed absolute state of dependence in which females are placed by the Hindu Law. Their Lordships observe—"It is not merely for the protection of the "material interests of her husband's relations that the fetter on the widow's power is "imposed. Numberless authorities, from Menu downwards, may be cited to show that, "according to the principles of Hindu Law, the proper state of every woman is one of "tutelage; that they always require protection and are never fit for independence.—*Sir* "Thomas Strange (see "Strange on Hindu Law," Vol. I, page 242) cites the authority of "Menu for the proposition that, if a woman have no other controller or protector, the "King should control or protect her. Again, all the authorities concur in showing that, "according to the principles of Hindu law, the life of a widow is to be one of ascetic "privation (2 "Colebrooke's Digest," 459). Hence probably it gave her a power of dis- "position for religious, which it denied to her for other purposes. These principles do "not seem to be consistent with the doctrine that on the failure of heirs, a widow becomes "completely emancipated, perfectly uncontrolled in the disposal of her property, and free "to squander her inherited wealth for the purposes of selfish enjoyment." They conclude— "Their Lordships are of opinion, that the restrictions on a Hindu widow's power of "alienation are inseparable from her estate, and that their existence does not depend on "that of heirs capable of taking on her death. It follows that if, for want of heirs, the "right to the property, so far as it has not been lawfully disposed of by her, passes to the

* Enc. F.

"Crown, the Crown must have the same power which an heir would have of protecting "its interests by impeaching any unauthorized alienation by the widow." With the utmost deference to their Lordships, your Memorialist humbly submits that the law as laid down by them is not correct. They allow that the estate which a Hindu widow takes far from being a mere life estate is an estate of inheritance though a special and qualified estate and an anomalous estate as compared with any estate of inheritance passing under the English law. The first citation relied on by their Lordships, viz., I Strange 242 (page 244 in the edition of 1830) has it will be seen reference obviously to the state of continence which the law exacts from every Hindu widow, and not to her power of alienation. The 2nd quotation, viz. that from II Colebrooke's Digest 459 refers to the life of privation she is enjoined to observe. These citations are therefore inapplicable to the question in issue, viz., her powers of alienation. Looking to the real Hindu law it will be seen that in the absence of the husband actual or constructive the wife can contract for necessaries, viz., maintenance of the family, nuptials of the daughters, funeral rights, &c., (See I Strange 276 and 277). In certain of the laboring classes as washermen, cowkeepers, toddy drawers, musicians, oilmongers, &c., the woman that contributes to the support of the family may contract obligations which will bind the husband (See I Strange 277—Strange's Manual, Cl. 135). So much for her power of contracting, which though allowed in exceptional cases shows that women under Hindu law are not the *absolutely* dependent beings they are supposed to be. Then as to her powers of alienation it will be observed that as far as personalty is concerned that is absolutely at her unshackled disposal. (See I Strange, edition of 1830, pages 247 and 248. Madras Sudder Court, page 115 of the Reports for 1849.) How is this consistent with the position laid down by their Lordships that she is in a state of perpetual tutelage? Again as to *Soudayaca* (affectionate gift) which is her *Sridhana* given to her by her parents or brothers, she has unfettered dominion over it (See Strange's Manual, Clause 147. Mitakshara II, XI, 5. Saraswati Vilasa. Vyavahara Mayuksha IV, VII, 1, IV, X, 8.) This is undoubted Hindu law, and is utterly incompatible with the position laid down by their Lordships. Then as to real property derived from her husband, her powers of alienation are doubtless restricted by the law. But male holders of real property are under a similar restriction, though not to the same extent. A father having sons, son's sons or son's grand-sons cannot alienate immoveable property whether ancestral or acquired *without their consent* (See I Strange, pages 19 and 20. II Strange 9 and 11. C. Mitakshara I, 1, 27). But even where he can alienate property ancestral or acquired moveable or immoveable, he *must* leave a sufficiency for the maintenance of the family. (I Strange 18 and 19—Strange's Manual Cl, 153. From these authorities it will be seen that it is not *women alone* that are restricted in their capacity to alienate. *Men* also are in certain circumstances placed under a similar prohibition. Why should the law impose these restrictions on alienations? Simply because it attaches such paramount importance to the interests of those who are to be maintained out of such property as forms the fund for their maintenance. But the Crown depends not for such support on any property; and therefore cannot object to their alienation by any person whether male or female. In support of this view, the Honorable T. L. Strange observes at page 40 of the 2nd edition of his Manual with reference to the same judgment.—"It is certainly novel doctrine that the Sovereign, in "view of his power under escheat, can do more than take possession of property without "an owner; and that, as if a true heir, he can challenge the act of the last incumbent "in assigning away the property. But beyond the objection arising from the general "doctrine of escheat, the decision of the Privy Council, which is more an argument "than a construction of the law, will not stand the test of the written law." "The "term heritage (Daya)," says the author of the Mitacshara "signifies that wealth "which becomes the property of another solely by reason of relation to the owner." "Again "Heirless property (*Adayikam;* that is without a Dayi, or heir), or wealth which "is without an heir (Dayadi) to succeed to it goes to the King" (Mitacshara I i. 2; II i. 27).

"Again Madhavyuam lays it down from a text of Brihaspati that "a widow is pre-"cluded from alienating the real property by gift, sale, or otherwise, without the consent "of the heirs (Dayadies). Mayookha and Smruti Chandrika hold the like doctrine from "the same text. It is clear, therefore, from these passages, that the restriction upon the "widow is in protection of the Dayadies, simply; namely those interested in the estate "by reason of relationship to the one from whom the property is traced, and that it is not "laid upon her in protection of those rights accruing to the Sovereign, not as one of the "heirs in any sense, but as coming in when these are no Dayadies or heirs; that is, as a "stranger." From all the foregoing authorities it must be clear to your Excellency in Council that the Judgment of their Lordships was based on an incorrect view of the law; most probably they were led to it from the way in which counsel argued the case before them. But it is neither Hindu law nor English law that the Crown can challenge alienations of private property. Granting however for the sake of argument that that Judgment is correct, it cannot affect the present question. That Judgment related confessedly to "heirless property." Their Lordships observe that "*if for want of heirs*" the right to the property passes to the Crown, the Crown must have the same power which an heir would have of impeaching unauthorized alienations. From this it must be evident to your Excellency in Council that where there are heirs, the Crown cannot challenge a widow's acts, for the *want of heirs* is the only circumstance which in their opinion permits the interference of the Crown. Again, their Lordships observe "it may be taken "as established that an alienation by her which would not otherwise be legitimate may "become so if made with the consent of her husband's kindred."—"The exception in "favour of alienation with consent may be due to a presumption of law that when that "consent is given, the purpose for which the alienation is made must be proper." From this declaration of the law proceeding from the highest judicial authority, it follows that the gift assented to as it has been by all the heirs must be allowed to be good and valid, and that it is not open to Government to challenge it.

24. Secondly, because the existence of such heirs in spite of the denial of Government, is abundantly shown by the Decree of the Sudder Udalut in Appeal Suit No. 66 of 1857 reported at pages 8 to 14 of the Decrees for 1858. In that Decree a Pedigree* is given showing the existence of numerous Dayadies (Kinsmen) of Ramasamy *Sètupaty*, and the Court in that case held that the relationship alleged between him and the members of the family of *Rachoory Poola Taver* "is fully established by the oral and documentary evidence of the Plaintiff." From this Pedigree it will be seen that Ramasamy Taver who was the husband of Ranee Mangalèswara Nachyar (the first *Istimirar* Zemindar), and therefore the grandfather of Ramasamy *Sètupaty* deceased, had an uncle named Ragunadha Tevar whose son Muttucarupa Tevar married two wives by each of whom he had several sons, and grandsons; that Ramaraja Tevar one of Muttucarupa's grandsons was the 7th witness in that suit, Sivasamy Tevar, great-grandson of Muttucarupa was Plaintiff in that suit and that Muttusamy Tevar the last son of Muttucarupa was the 5th witness therein. All these persons were then alive and would succeed the Ranee if they survive her. In objection to this Decree it is urged that Government were no parties to that suit. Nevertheless they are it is submitted bound by it, as it is clearly a judgment *in rem* relating as it does to the personal *status* of individuals. It is not suggested that the parties were in collusion, for on the face of the Decree it is evident that every point in dispute was contested from first to last. It is also urged as an objection to the force of the Decree or rather of the deed of gift that the Ranee who then denied that the descendants of *Rachoory Poola Taver* were Dayadies, now takes their consenting signatures to the deed of gift. This can form no possible objection to this instrument. The Ranee in ignorance of the descent of the parties could not be expected to admit their relationship. She therefore called on the Plaintiff to that suit to prove the fact and on the same being found by the highest

* Enc. G.

Court in the country, she submits thereto, and taking her stand on it obtains their consent to the gift. Moreover in the Decree of the Civil Court in Suit No. 1 of 1860 already adverted to, the Court observes "that by the 2nd Defendant's own pleadings, the "records of the Court and the evidence of Plaintiff's witnesses, it is clear that there are "heirs." Furthermore, the Deputy Collector of Madura has taken certain evidence in conformity with the Orders of the Board of Revenue (11th March 1862) and a table of the existing relations of the Ranee and her husband was prepared by that Officer and submitted to his superiors. A copy of that table is subjoined, from which it is evident that there are now living several heirs who by Hindu Law are, on failure of the adoption, entitled to succeed to the estate on the death of the Ranee.

Table showing the relationship of the Ranee Sètupaty of the Ramnad Zemindary and her husband to the persons specified in the Collector's Memorandum, No. 19 *of the 24th March* 1862.

Number.	Name of the Village.	Names of Fathers.	Names of the persons specified in the Memorandum.	Remarks.
1	Mennandy..	Muttusamy Tevar ...	Muttu Vizia Ragunadha Tevar.....	Married to the deceased younger daughter of the Ranee Parvata Vardhiny Nachyar.
2	Poosary.....	Ramasamy Tevar ...	Muttusamy Tevar	Son of the younger brother of the preset Ranee.
3	Mennandy..	Muttana Tevar.....	Ponnusamy Tevar	Son of the younger maternal aunt of the present Ranee.
4	Kanary.....	Muttukarappa Tevar.	Muttusamy Tevar	Younger brother of Annasamy Sètupaty, the adoptive father of the present Ranee's husband. Ramaraja Tevar, the adoptive paternal grandfather of the said Annasamy Sètupaty, and the paternal grandfather of this person were brothers.
5	Kanary.....	Muttusamy Tevar....	Samy Iya Tevar.....	Son of the said Muttusamy Tevar.
6	Kanary.....	Muttusamy Tevar...	Ramaraja Tevar.....	Younger brother of the said Samy Iya Tevar.
7	Yedambady.	Muttirula Tevar.....	Ramasamy Tevar	Son of Muttuvira Tevar, elder brother of the said Muttusamy Tevar.
8	Yedambady.	Muttirula Tevar.....	Chinnasamy alias Muttukaruppa Tevar.	Younger brother of the said Ramasamy Tevar.
9	Vella.....	Chinnatamby Tevar.	Poolara Tevar.....	Son of the younger maternal aunt of the Ranee's mother-in-law Muttuveeroy Nachyar.
10	Poosary...	Ramasamy Tevar ...	Dorasamy Tevar.....	Son of the younger maternal aunt of the said Muttuveeroy Nachyar, and the junior paternal uncle of the present Ranee.
11	Mennandy..	Muttusamy Tevar....	Iyasamy Tevar	Son of the maternal uncle of the present Ranee.
12	Yadambady.	Sèturama Tevar.....	Vanny Poolara Tevar...	Younger brother of the Ranee's mother-in-law Muttuveeroy Nachyar.
13	Mennandy..	Muttusamy Tevar ...	Muttuvira Tevar.....	Son of the maternal uncle of the present Ranee, younger brother of the said Iyasamy Tevar.
14	Mennandy..	Muttusamy Tevar ...	Kadambavana Tevar ..	Younger brother of the said Muttuvira Tevar.
15	Mennandy..	Muttana Tevar.....	Chinnasamy Tevar.....	Son of the younger maternal aunt of the present Ranee.

(True Copy.)

(Signed) T. RAMA ROW,
Deputy Collector.

5th April 1862.

25. The several classes of heir of the Ranee thus proved to be now alive are.

1stly. The Dayadies or Sapindas or Kinsmen of the Ranee's husband and therefore of herself, who are entitled to succeed as collaterals on failure of descendants or ascendants. (See Sir Thomas Strange, Vol. I, page 148, Vol. II, page 253.)

2ndly. The Bandhus or cognate kindred of the Ranee's husband who succeed in default of Dayadies. (See Mitakshara, Chapter II, Sec. VI.) The Bandhus are,

I. Sons of father's sisters.
II. Do. of mother's sisters.
III. Do. of mother's brothers.

3rdly. The mothers and brothers of the Ranee and their sons, who succeed as *her own* heirs, taking the estate to be *Sridhana* of the Ranee which is the law in the Madras School. (Strange's Manual Clauses 145 and 343, also I Strange 248.)

26. Under any circumstances it is allowed that the Ranee has a life estate which she can make over to any one she likes, and such act can only be questioned after her death.

III. Right of Government.

27. The objections raised by the officers of Government against the adoption and deed of gift are not offered in their ministerial capacity as mere registering officers. No objections have been started by any heirs or relations of the Ranee so as to justify the hostile attitude assumed by them towards your Memorialist. The hostility of Government emanates from their asserted right of prospective escheat; which pretension can be put forward only *in default of* heirs, and *after* the death of the Ranee. Nowhere do they assert that there is an absolute want of heirs between the Ranee and the Crown and unless this position is made out, they can have no *locus standi*. The Privy Council in their Decree already quoted observe—"It follows that if *for want of heirs*, the right to "the property so far as it has not been lawfully disposed of by her passes to the Crown, "the Crown must have the same power, &c." But from the preceding paragraphs it must be abundantly clear that there are several classes of heirs who would bar the operation of the right of escheat. These heirs have all consented to the acts of the Ranee, from which it is fairly presumable as laid down by the Privy Council that those acts are all legal and proper. The Collector of Madura was under these circumstances acting wholly without right or jurisdiction, in sending to the Ranee under the order of Government the very uncourteous communication, to say the least of it, of the 15th November 1855 referred to in a former part of this Memorial. The action of Government in the Ramnad case has been entirely premature, and your Memorialist humbly submits unwarranted by any principle of law or equity.

28. Under Regulation XXV of 1802 and the *Istimirar Sunnud* granted by Government to Ranee Mangalèswara Nachyar, they divested themselves of all contingent right of escheat and of all power to oppose or challenge the acts of the present Ranee. The general scope of that Regulation and of the *Sunnud* has already been discussed in paras 3 and 4 of this Memorial. Let us see their effect in the present case. The Government of the day after a full enquiry as to who was the most proper person to be selected for the vacant Zemindary, conferred it on a female. They knew they were dealing with a *female*. They knew that the effect of the *Sunnud* would be to vest in the grantee and all her heirs and successors *for ever* a permanent, and as far as Government were concerned, an *unreserved* right to the estate. With these facts before them, they granted the *Sunnud* not only allowing her and her heirs to hold it *for all time to come*, but also conferring on her (as provided in the 7th Clause of the Instrument) unfettered powers of alienation and that too *without the previous consent* of *Government*. This was the way that the Regulation and the *Sunnud* aforesaid were read* not merely by Ranee Mangalèswara Nachyar but also by the then Collector Mr. Parish and the Board of Revenue. Accordingly we find her adopting a son and leaving a will in his favor, both which acts were respected by the Government and the highest judicial authority in the land. With what consistency then can, it is humbly asked, the present Madras Government object to the acts of the present Ranee Parvatavardhiny—acts which are identical with those of Ranee Mangalèswara Nachyar in every respect? In that case there was an adoption and a will, in this case there is an adoption and a deed of gift assented to by the heirs. The conduct of Government towards Mangalèswara has led the present Ranee into similar acts, and therefore it is humbly submitted that Government are, as it were, estopped from demurring thereto. It may be said that Section VIII, Regulation XXV and Cl. 7, of the *Istimirar Sunnud* quoted above provide that the alienation must be conformable to the Hindu Law in order that it may be upheld, and that as the alienation by the present Ranee who is a widow is detrimental to the interests of the Government who would take it as an escheat under Hindu Law, it is contrary to that Law and therefore could not be maintained. In answer

* See ante, para 5.

to this possible argument, your Memorialist humbly submits that the conformity to the Hindu law required by the said enactment and the *Sunnud* has reference solely to parties *other than* Government, *i. e.* the "heirs" &c., and that the phrase "without the previous consent of Government" can be construed only *in* this sense. For, if Government meant that their rights of escheat were also intended to be protected by the provision respecting the conformity to Hindu law, they would have introduced such saving clause in them, knowing full well that they were dealing with a *female* whose powers of alienation were more restricted than those of a male. Taking, therefore, the whole of the provisions of the said Regulation and the *Sunnud*, and considering the subsequent conduct of all parties including Government when Mangalèswara's acts of alienation were discussed, there can be no doubt in the mind of your Excellency in Council that the right of escheat now put forward by Government has no foundation in fact or in law.

IV. Policy of Government.

29. Apart from mere questions of right this case involves considerations of policy of a very weighty character. The idea of resuming this Zemindary on the death of the Ranee was the offshoot of that once all-pervading but now abandoned policy of annexation which the Government of the late East India Company pushed in all directions. The order of Government of 1855 points to the times when the school of annexation was at its culmination point. It is well known that for some time before and after that period, principalities, regalities, Zemindaries and estates of Native princes, high and low, large and small, were annexed by the state on the most flimsy grounds. Your Memorialist will not now detain your Excellency by any lengthened discussion as to the acts of Government during that eventful period; for the principle of those acts has been deservedly condemned by Her Majesty almost as a condition precedent, though a gracious and spontaneous one it is true, to her assuming the direct government of this vast empire. He will content himself with observing that in no other age of British Indian Government was such a letter as that of the 15th November 1855 ever addressed to a Native noblewoman in the position of Ranee Parvatavardhiny by the Collector of a district concluding with this phrase, viz. "I have dispatched an order on the 3rd instant "to Narasinga Row the Amildar* of the salt pans and "the Head of Police of the Cusba, directing the Zemin- "dary and its appurtenances to be zufted, when *under the dispensation of Providence* "*you should have departed this life.*" Your Memorialist cannot say what the feelings of a countess in England would be on receiving such a communication from an Officer of Government declaring the prospective exercise of the right of the Crown to escheat her estate. Probably she may ridicule the idea. But with a *Hindu* lady of rank, such a letter would not only be taken to be a studied insult to her feelings and position but as a very ominous event foreboding her speedy death. Your Memorialist is sure that such action as Government thought fit to take in 1855 would not be initiated now adays; and therefore feels no little astonishment at the *present* Government of Madras not abandoning the career commenced in former days. These are days in which Government are ready wherever possible to undo any mistakes that had been committed by their predecessors. In the spirit of liberality which now characterizes the acts of Her Majesty's Government of India, principalities are restored with a free hand. In the Madras Presidency the Zemindaries of Chokkampatti, Nidadavole and Chintalpad have been *actually* restored to their owners. The right of Government to lapses of Inams of the most fraudulent character has been voluntarily renounced from one end of the Presidency to the other. In the case of your Memorialist no step which cannot be retraced has been taken by Government. They have simply declared an intention to escheat the Zemindary which they can retract at any moment with grace and with honor. For it is ungraceful on the part of Government to keep fighting with a comparatively small Zemindar without even the prospect of any very great benefit to the State. The Zemindary

* An Officer on the monthly pay of 100 or 150 Rupees.

bears a permanent assessment of a little more than 3 lacs of Rupees per annum. This assessment is paid with the utmost punctuality, and there is no complaint or even a suggestion that the estate is mismanaged. What then is the advantage to be derived by Government in keeping up this almost indignified contest with one of their own peaceful and loyal subjects? Your Memorialist can conceive no adequate gain to Government. The personal property of the Ranee can be given away by her to any one she likes. (See Strange's Manual, Cl. 161, Sir Thomas Strange, Vol. I, pages 247 and 248, and Sudder Decree No. 5 of 1849 at page 115) and she has given that to your Memorialist. This therefore Government cannot touch. The only productive portion of her property is the Zemindary. This as already shown bears its proper assessment. If it be assumed by Government, they may introduce the Ryotwar system with all its annoying interference with the details of the cultivation of each field, and may probably realise a few thousands of Rupees of additional revenue and purchase the discontent of the ryots and of the members of the family of the Zemindar who shall of course have to be pensioned. The costs of litigation into which Government have dragged themselves and your Memorialist—for in point of fact it is the interference of Government that has driven him into it—must be something frightful before final decree is pronounced on the case. Added to all this, the Native public in general and the holders of large estates in particular are anxiously looking to the result of this case. The event will prove to them either that Government are acting in good faith in the spirit of Her Majesty's Proclamation on the assumption of this country and of the despatches of your Excellency* on the subject of the adoption of Native princes, or that all the solemn and noble and generous pledges of Her Most Gracious Majesty and of her advisers are mere moonshine and no more to be depended upon than the promises of the defunct East India Company.

* Dated 26th July 1860, No. 59.

30. Fully conscious and confident of the strength of his own rights which ultimately will and must prevail, yet most unwilling to keep up a strife with his rulers which must be a perpetual source of expense and annoyance to him no less than a cause of difficulties and obstacles in the management and administration of his own possessions, and wishing to show to Government his feelings of loyalty and obedience, your Memorialist offered* certain terms of compromise and purchase of peace. Even this it has not pleased the Madras Government to accept. They have in effect driven him into further and probably still more protracted litigation. The Collector of Madura, under orders from Government, has declined to receive the Peishcush from and in the name of your Memorialist and grant him a receipt even under protest, and has also declined to register the Zemindary in his name. Under this state of things, *i. e.* his rights not being recognised by the Collector, your Memorialist stands incapable of enforcing at law his rights to rents due to him from his tenants or of exercising any of the powers of a Zemindar in respect of irrigation and cultivation of his lands. Thus he has been constrained to file another suit before the Civil Court of Madura to compel registration of the Zemindary in his name. However, what it has not been in his power to obtain at the hands of the Madras Government, it is in the power of your Excellency in Council to give. The moment the prayers of this Memorial are granted, the suits that have been instituted against Government will be withdrawn.

* See his Petition to Government dated the 6th October 1862.

31. It is said that while the suit No. 1 of 1860 on the adoption of your Memorialist is still pending, the Ranee ought not to have proceeded to give the estate under the deed of gift. It is humbly submitted that the Ranee and your Memorialist are fully entitled, and in fact it is their duty to place his rights in the best possible legal footing as advised by counsel. She has done no more than what holders of other estates would have done under similar circumstances, to secure their possession against all contingencies. It is also said that the execution of the deed of gift shows that the adoption is an untenable

one. This is easily answered, for the gift being *in confirmation* of the adoption can show no such thing. It is further urged that your Memorialist has been holding Government at arm's length. Whether this is the case or whether it is not Government that holds your Memorialist in such a position, it is for your Excellency in Council to consider.

32. Denied by the local authorities of that justice to which your Memorialist is entitled in law and on the facts of this case, he has as his last resource appealed for redress to your Excellency in Council. Though your Excellency's time must necessarily be occupied with consideration of far more weighty and momentous interests than are involved in this case, he is confident that the subject of his Memorial will receive its due share of your Excellency's attention. If in any observations contained in this Memorial, he has exceeded the bounds of fair discussion, he can only say that it is far from his intention to be disrespectful to any Officer or members of Her Majesty's Government and shall therefore crave your Excellency's indulgence. In fine he begs leave to invoke the justice and generous spirit of Her Majesty's Government at Home in the treatment of this case and to implore and pray

1st. That his adoption and the deed of gift may be recognised as good and valid either unconditionally or on such terms of proffered compromise as to your Excellency's Government may seem meet; or,

2ndly. That such further or other relief may be granted to your Memorialist on the premises as Her Majesty's Government may deem proper.

And your Memorialist as in duty bound,

WILL EVER PRAY.

20th May 1863

Vadasoodachamboo
Vakeel for Memorialist

Rec'd 17a
11-6-63

Will executed by me Srimatu Hiranya Garbha Yaji Ravikula Vijaya Raghunadha Ranee Sètupaty Mangalèswari Nachyar, Proprietor of the Zemindary of Ramnad, subject to the Honorable Company, to Muttu Vijaya Raghunadha Sètupaty, my adopted son, and heir under the Hindu Law to all my effects and debts, the Zemindary and all my other property, and to the performance of obsequies after my death, in the presence of Colonel L. Martin and of Prodhani Teagaraja Pillay under date the 1st Chitirai of Prabhava corresponding to the 11th April 1807.

1. Whereas I have, of my own free will and accord, delivered and made over to you Muttu Vijaya Raghunadha Sètupaty who, according to the Hindu Law, are my son, and successor to my estate, the Permanent Pattayam *(Istimirar Sunnud)* granted under date the 22nd April 1803, in connection with our estate, the Zemindary of Ramnad, under the hand of the Honorable Lord Clive the Governor in Council of Fort Saint George, and under the hand of Mr. Parish, Collector of the Zillah of Ramnad, for and on behalf of the United Company of Merchants in England trading to the East Indies, together with the estate, viz., the villages specified in the Permanent Pattayam, my Sirutettu villages, jewels and other personalties; you shall, for ever and ever continue to hold and enjoy the same, and transmit the same to your sons, grandsons, and other descendants, conforming yourself to the terms of the Permanent Pattayam, and the enactments of the Honorable Company.

2. Whereas in addition to the rights you have, under Hindu Law as my adopted son, of succeeding to all my property, I have by virtue of the power given to me in para 7 of the Permanent Pattayam granted by the Honorable Company, made a gift of the whole of my estate of the Ramnad Zemindary and procured the same to be entered in the accounts of the Collector's Office, you shall hold and enjoy the whole estate, paying the Peishkush according to the instalments specified in the Permanent Pattayam.

3. Should the management of the affairs of the estate devolve upon you before the expiration of the eighteenth year of your age, which is enacted by the Regulations of the Court of Wards as the limit of minority, then and even afterwards you shall retain, as your Prodhani, my present Prodhani Teyagaraja Pillay who has all along served me faithfully and with great interest, and look, with care and attention, after the affairs of the Zemindary and of the state.

4. You shall make arrangements for the perpetuation and improvements of my charitable endowments, and the lands allotted to that end.

5. Thus have I of my own free will and accord, and in a sound and healthy state of mind and body, and consistently with all Sastras and regulations executed and delivered this deed of gift, with my best prayers for the prosperity and long life of the Honorable Company, and of the gentlemen that come down here to rule on behalf of the Company, with my best wishes for the success and prosperity of our intimate friends, viz., Colonel M. Martin, Mr. Lushington and Mr. George Parish, and with the ardent hope that you, my son, will with the aid of those gentlemen enjoy fortune, happiness, and long life, and with good sense maintain and improve the charitable endowments.

(Signed) SÈTUPATY RANEE MANGALÈSVARA NACHYAR.
(Signed) PRODHANI TEYAGARAJA PILLAY.

(Signed) COLONEL M. MARTIN.
(„) GEORGE PARISH,
Collector.

Enclosure A.

Last part of the 11*th para. of the Supplement Rejoinder.*

It has not only been stated in paras 7 and 10 of the Reply by the Plaintiff but also ruled by the Sudder Court in Appeal No. 18 of 1814 that even in the absence of authorization by the husband, a widow may make an adoption. But this supports the case of the 1st Defendant; for both her daughters are dead, and it is laid down in the Sastras that even in the absence of authorization by the husband a widow may make an adoption, if permitted to do so either by the father, mother, brothers, or Bandhus, and the Decree in Suit Appeal No. 18 aforesaid which ruled thus has been confirmed by His Majesty in Privy Council. This citation and the approval thereof by the Plaintiff, are of very great service in law, to the 1st Defendant, in making an adoption. And more important than this is the permission given to the 1st Defendant by her husband Ramasamy Setupaty, on his death-bed and in the presence of his relations, authorizing her to adopt any boy she liked, in case of her two daughters being destitute of children.

Enclosure. B.

To

C. R. BAYNES, Esq.,

Officiating Civil Judge of Madura.

Razeenama presented by SAMA ROW, *Pleader for* RANEE MUTTUVEEROY NACHYAR, *Plaintiff in Original Suit No.* 3 *of* 1843, C. SUBBA ROW, *Vakeel for* RANEE PARVATAVARDHINY NACHYAR, 1*st Defendant in the said Suit, and* SUBBANARASAYAN, *Vakeel for* RANEE VIJIA MUTTUVEEROY NACHYAR *and* RANEE TANGAMUTTU RAKU NACHYAR, *Motioners in that Suit.*

After the completion of the four pleadings in this Suit, brought to recover from the 1st Defendant and others the Zemindary of Ramnad, producing annually Rs. 5,51,950, and paying a Peshkush of Rs. 3,31,365-8-0, thereout; together with wealth of the value of Rs. 23,55,212-11-0, both parties and the Motioners have entered into a Razee as follows.

1. The entire property specified in the plaint including the said Zemindary of Ramnad, now continued in the name of the 1st Defendant shall all along be enjoyed by her alone, and she shall, as stated in the supplemental rejoinder, adopt a son that she may choose; and such adopted son and his sons, grandsons, &c., in succession shall enjoy the Zemindary with all (its) wealth after (Defendant's) lifetime.

2. From the 1st March Instant, the 1st Defendant shall pay the Plaintiff on account of her husband and all other expenses Rs. 1,500 per mensem as long as she (Plaintiff) is alive out of the income of the Zemindary and take receipt either from the Plaintiff, or from persons attached to her.

3. A monthly allowance of Rs. 100 should be paid to the Motioners and the Plaintiff's husband's other cousins for their maintenance so long as they are alive from the 1st March aforesaid.

4. The Colonel's Bungalow, situated within the Fort of Ramnad, together with the adjoining compound, and the trees therein shall be enjoyed by the Plaintiff in perpetuity.

5. The Plaintiff's foster son Sivasamy Tevar and his descendants in succession shall enjoy the whole of the Ayan villages attached to the "Maganam" of Padaranendal in the Taluq of Arunuttumangalam in the said Zemindary, and shall pay to the Zemindar the Peshkush assessable thereon, under Regulation XXV of 1802, Sec. IX.

6. The Plaintiff shall for the purpose of distributing rice, &c., in the Choultry maintained by her at Ramnad, enjoy in perpetuity the villages of Siruvergal Mangalam, and Kadambur in the Kasba Taluq of the Zemindary, and Kulpanayur in the Taluq of Chikkal in all four villages sowable with 1,000 Kallams, as also the Royal Tope on the south bank of the Lakshmipuram Tank outside the Ramnad Fort, paying the full Teerwah of Dharmasanam tenure on the Nanjah and Punjah lands of the said four villages.

7. Of the sum of Rs. 6,74,983 which was invested in Government Securities out of the surplus profits of the Zemindary during and before the management of the Court of Wards, and which are held by the Collector in deposit Rs. 3,37,491-8-0 worth of Bonds shall be received by the Plaintiff, and the remaining Rs. 3,37,491-8-0 by the 1st Defendant through the Court on receipts duly executed. The Plaintiff shall deal as she likes with the whole property obtained by her under this Razeenama as also with all the property in her possession.

8. For the paddy required for the Plaintiff's household she shall enjoy, with liberty to alienate by sale, gift, exchange, &c., the six Sirutettu Pangus belonging to the Zemindary in the village of Kannivayal attached to the Sivaganga Zemindary.

9. The Plaintiff shall discharge her debts and the 1st Defendant those due on the Zemindary.

10. On "Dasara" and other festival days the respects rendered in the palace of the Zemindary to Pagodas and all others shall be rendered also to the Plaintiff.

11. Besides the place now frequented by Plaintiff's people in the palace at Ramnad, occupied by both the parties the Plaintiff's people can frequent the vacant place to the south of the private apartments occupied by the Plaintiff and of the "Navaratri" hall and shall erect stables, cattle, stalls, &c., and opening gateways to the east and south thereof and frequent the place.

12. Should the Zemindary be ever attached for the arrears of Revenue or for any other reason the Plaintiff and the Motioners shall then also enforce it (Razeenamah) and enjoy the same agreeably to the conditions of the Razeenama.

13. The costs of this suit shall be paid by the respective parties. As both the parties and the Motioners have, of their own accord, come to this settlement, we pray that in case of the 1st Defendant acting against this, the Court should enforce this by means of a precept.

As we have entered into this Razeenama to the above effect, we pray that the Court will be pleased to admit this, and stop all further investigation in this Suit.

(Signed) SAMA ROW,
Pleader for Plaintiff.
(„) SUBBA NARASAYAN,
(„) C. SUBBA ROW,
Pleaders.

FILED 1*st March* 1847.
(Signed) C. R. BAYNES,
Offg. Civil Judge.

Enclosure. C.

TO

THE PRESIDENT AND MEMBERS OF THE BOARD OF REVENUE.

The humble Petition of Sreematu Hiranya Garbha Yaji Ravikula Vijaya Ragoonadha Rajah Muddu Ramalinga Setupaty, present Zemindar of Ramnad; presented on his behalf by his duly constituted Vakeel V. Sadagopah Charloo.

RESPECTFULLY SHEWETH,

I. That your Petitioner need hardly say, for your Board is already aware of the fact, that he is the adopted son of Ranee Parvatavardhiny Nachyar. This adoption is admitted in point of fact, but demurred to as illegal and invalid by the Collector of Madura and the superior Revenue authorities.

II. That the validity of such adoption is the subject of dispute in an appeal suit before the Sudder Udalut numbered 35 of 1861, which is still pending before them.

III. That such appeal is not likely to be disposed of soon, and even if so decided, the decision may be carried in appeal to Her Majesty's Privy Council, thereby indefinitely postponing your Petitioner's acquiring possession of the estate.

IV. That the Ranee of Ramnad, anxious to see your Petitioner in the exercise of the rights of the Zemindary and to remove the doubts of Government in regard to the adoption, did on or about the 21st ultimo execute to him a deed of gift with the consent of all her heirs and on the same day put him in possession of the Zemindary.

V. That on the same day your Petitioner sent an application to the Collector to register the deed and Zemindary in his name in his Cutcherry. But that Officer refused to comply with the application pending a reference to your Board on the subject.

VI. That on such reference your Petitioner begs to submit the following grounds in support of his application for the favorable consideration of the Board. In doing so, he will refrain from all observations in regard to the legality of the adoption. That matter is now the subject of a Judicial investigation and will be dealt with by the Courts.

VII. That the only question now before your Board is the validity of the deed of gift above referred to. On this point your Petitioner humbly submits that the gift is good and valid, and that the Government have no right to object to it.

1st. Because the heirs have all assented to the gift which is therefore binding on the whole world. Such is the undoubted Hindu Law. See Sir Thomas Strange, Vol. I, pages 246 and 247. Even in the recent decree of the Privy Council in the Vissannapet case, their Lordships observe "it may be taken as established that an alienation by her which would not otherwise be legitimate may become so if made with the consent of her husband's kindred." * * "The exception in favor of alienation with consent may be due to a presumption of law that "where that consent is given, the purpose for which the alienation is made must be proper."

2nd. Because the existence of such heirs is amply shown by the Decree of Sudder Udalut in appeal suit No. 66 of 1857 reported at pages 8 to 14 of the Decrees for 1858. In that Decree a Pedigree is given showing the *Dayadi* kinsmen of the Ranee, and the Court have declared that the descendants of Rachoory Poola Taver in that Pedigree were her *Dayadees*. That suit was by no means a collusive one, as the parties hotly contested all the points in issue, and the Sudder Court have arrived at their conclusion on consideration of the whole evidence. Such Decree relating as it does to the *status* of individuals is a Judgment *in rem* and is binding against the world. The mere fact of the Government having been no party to it or of their having been prevented by the Court from entering it (which might have been the case because Government had no interest yet in existence) cannot affect the Decree. Until Government has

shown that the suit was a collusive one, and the Decree was obtained by fraud, it must stand good and be received as *primâ facie evidence* of the facts found by it. Besides this, the Collector in the suit regarding the adoption aforesaid contended in his answer and appeal Petition, that *all* the kinsmen of the Ranee did not consent to the adoption, thus admitting the existence of kinsmen.

3rd. Because the several classes of heirs of the Ranee are

1. The *Dayadees* as shown above.

2. The Bandhoos or Cognate kindred of the Ranee's husband who succeed in default of Dayadees. See Mitakshara, chapter II, Sec. VI. These Bandhoos are

I. The sons of his father's sisters.
II. Do. of his mother's sisters.
III. Do. of his mother's brothers.

3. The mother and brothers of the Ranee who succeed to her as *her* own heirs and should your Board doubt the existence of these heirs, your Petitioner begs that an enquiry may be ordered, which is but fair and just to him.

4th. Because in the case of an alienation by the Ranee under a Razeenamah to Sivaswamy Taner, the Collector at first objected to it; but withdrew the objection having been advised, as your Petitioner has been informed, by the Law Officers of Government that such objection would be untenable.

5th. Because under any circumstances, the Ranee has a life estate which she can give away at her pleasure to any one she chose.

6th. Because Government can put forward their right of escheat only in default of all heirs. The Privy Council in the decree above referred to observe,—"It follows that if, *for "want of heirs,* the right to the property so far as it has not been lawfully disposed of by her, "passes to the Crown, the Crown must have the same power" &c. Accordingly the "*want of heirs*" is the only circumstances which would entitle Government to object to the gift now made to your Petitioner.

7th. Because the right of escheat has not arisen, and therefore Government cannot raise any objection to this gift *at present*

8th. Because Government is precluded by the original Sunnud-i-milkeat Istemirar granted by them to the first Zemindar Ranee Mungalaswara Nachyar. Government were then dealing with a *female,* and with full knowledge of the fact did in that document empower her to dispose of the Zemindary at her pleasure. How can they now object to the acts of the present Ranee?

9th. Because the Collector was applied to *ministerially* to register the Zemindary. He cannot on such application raise objections which an heir alone would be entitled to make. On all these grounds your Petitioner humbly but earnestly prays

1st. That the Zemindary may be registerd in his name by virtue of the deed of gift.

2ndly. That should the Board have any doubts as to the existence of heirs, an enquiry may be ordered, and,

3rdly. That if there should be any doubts on the points of law set out in this Petition, a reference may be made to the law Officers of Government.

And your Petitioner as in duty bound will ever pray.

(Signed) V. SADAGOPAH CHARLOO,
Vakeel for the Zemindar.

5th March, 1862.

TO

THE PRESIDENT AND MEMBERS OF THE BOARD OF REVENUE.

The humble Petition of Srimatu Hiranya Garbha Yaji Ravikula Muttu Vijaya Raghunatha Rajah Muddu Ramalinga Setupati, Zemindar of Ramnad, presented on his behalf by his duly constituted Vakeel V. Sadagopah Charlu.

RESPECTFULLY SHEWETH,

1. That your Petitioner begs to submit herewith copy of a Petition addressed by him to Government under date the 26th March 1862; and also copies of another Petition submitted by him this day to Government with enclosure; and prays that these documents may receive your Board's kind consideration when disposing of his case.

2. Referring to para. 12, and the latter part of the prayer of the last mentioned Petition, your Petitioner prays that the Collector of Madura may be directed to accept payment of Kist made by him, if necessary under protest, until the final disposal of this case by Government, and not to resort to any measures of attachment of the Zemindary.

And your Petitioner as in duty bound,

WILL EVER PRAY.

(Signed) V. SADAGOPAH CHARLOO,
Vakeel.

2nd April 1862.

TO

HIS EXCELLENCY SIR WILLIAM DENISON, K. C. B.

The humble Petition of Sreematu Hiranya Garbha Yaji Ravikula Vijaya Raghunadha Rajah Muddu Ramalinga Setupaty, present Zemindar of Ramnad; presented on his behalf by his duly constituted Vakeel V. Sadagopah Charloo.

HUMBLY SHEWETH,

1. That the kingdom of the *Setupaties* was one of the most ancient sovereignties in Southern India, and the *Setupaty* race of kings were celebrated in times of yore.

2. That such kingdom of *Setupaty* embraced in ancient times a great portion of the Southern Peninsula. Its extent diminished by foreign conquest, till in the 18th century it only comprised the tract of country forming the two Zemindaries of Ramnad and Shivaganga. In the latter part of that century the then ruler of Ramnad dismembered a portion which he erected into the Zemindary of Shivaganga, which he conferred on his son-in-law Sasivarna Periya Oodaya Taver.

3. The rest of this principality now forming the Ramnad estate, continued to be held by the descendants of the Setupaty dynasty till 1795 when it forfeited to the Government of the late East India Company in consequence of the rebellious acts of the then Zemindar Mootooramalinga Setupati.

4. In 1803, however, the Madras Government conferred the Zemindary on his sister Ranee Mangaleswari Nachyar under a Sunnud-i-milkeut Istimirar or deed of permanent settlement.

5. The Ranee on her death was succeeded by her adopted son Annasawmy Setupaty, on whose demise the Zemindary descended to his adopted son Ramasawmy Setupaty, who died in 1830 leaving behind him no sons, but a widow named Ranee PARVATA VARDHINY Nachyar, two daughters who were minors and a mother named Mootooveeroy Nachyar.

6. At his death Ramasawmy Setupaty arranged that the estate should devolve on his two daughters and their children if any; but that if the daughters did not beget children, his widow Rance Parvatavardhiny Nachyar should adopt a son.

7. Accordingly the daughters succeeded, but they dying shortly afterwards, the estate reverted to Ranee Parvatavardhiny Nachyar in 1843.

8. In that year Ramasawmy's mother Mootooveeroy Nachyar instituted a suit No. 3 of 1843 against Parvatavardhiny Nachyar for the recovery of the estate. This suit was met by Paravatavardhiny Nachyar who in the pleadings of that suit and more especially in the supplemental Rejoinder prominently set up the authority of her husband to adopt in bar of Mootooveeroy's claim. That suit however ended in a Razeenamah, dated in February and filed in March 1847, under which Parvatavardhiny Nachyar was left in undisturbed possession of the Zemindary with liberty to adopt a son under the circumstances set out in the supplemental Rejoinder aforesaid.

9. In May 1847, Parvatavardhiny Nachyar accordingly adopted your Petitioner with all solemnities and reported the fact to the Collector on the same day. But that Officer objected to the adoption as having been made without sufficient authority.

10. In July 1855 Government recognised your Petitioner's adoption and his right to the estate in virtue thereof. In November following Government however altered their opinion with reference to the advice of the then Government Pleader, Mr. John Bruce Norton, (which advice was opposed to one already given by him) and issued instructions to the Collector to assume possession of the Zemindary on the death of the Ranee.

11. In 1856, your Petitioner attained his majority and sought possession of the estate

which the Ranee hesitated to give in consequence of the last orders of Government dated in November 1855.

12. He then instituted original suit No. 1 of 1860 before the Civil Court of Madura against the Ranee and the Collector. The Civil Judge held that the Collector had no right or warrant to object to the adoption, inasmuch as by the Collector's own admission and the evidence adduced by your Petitioner, it was evident there were heirs entitled to succeed to the estate and that the existence of such heirs was a complete bar to the pretensions of Government to escheat the Zemindary.

13. Against this decision of the Civil Judge, the Collector has appealed to the Sudder Udalut in No. 35 of 1861 which is still pending before that Court.

14. To avoid however the delay and costs of a protracted litigation, and to remove the doubts entertained by Government in regard to the legality of the adoption, the Ranee on or about the 21st February 1862 executed in favor of your Petitioner a deed of gift, in confirmation of the adoption, with the consent of all her heirs and on the same day put him in possession of the Zemindary.

15. On the same day your Petitioner sent an application to the Collector to register the deed and Zemindary in his name in his Cutchery. But that Officer refused to comply with that application pending a reference to the Board of Revenue. On such reference, your Petitioner addressed a Petition to the Board, copy of which is enclosed herein for the consideration of your Excellency in Council.

16. Your Petitioner understands that the Board have referred the whole question for the final decision of Government, and in deciding the same, he prays that this Petition may be taken into consideration.

17. Your Petitioner has, he trusts, satisfactorily shown in his Petition to the Board the legality and validity of the deed of gift above referred to. He will not reiterate the arguments therein set out to which he craves leave to refer.

18. He will confine himself in this address to a brief discussion of the validity of his adoption, a point which he did not notice in his Petition to the Board above adverted to.

19. The fact that your Petitioner was adopted in 1847 is fully admitted. The objection is only as to the legality of such adoption. This objection embraces four points, 1st, that the Ranee's husband did not give authorization. 2ndly, that the authorization by Mootooveeroy is insufficient to render the adoption valid, 3rdly, that the heirs did not consent to the adoption; and, 4thly, that there are no heirs whose consent would legalise the adoption.

20. On the first point, the chief and indeed the sole argument of the Collector against the probability of Ramasawmy's authorization consists in the fact that such authorization, is inconsistent with his application to the Collector to continue the Zemindary to his daughters. But the weight of this argument vanishes when it is seen that the authorization given was *conditional* on the daughters having no children. And that such condition is consistent with all the probabilities of the case. The dying Zemindar had then two young daughters capable of begetting issue and whose children if born would continue the line. It was therefore unlikely that if he gave any authority, he would have given it unconditionally. That such authority was so given was prominently put forth in the pleadings of a Civil suit; and the contending party in that suit admitted it in her Razeenamah which terminated that suit.

21. On the second point, your Petitioner submits that even if there was no such authority from the husband, the authority given by Mootooveeroy Nachyar the mother of such husband and the mother-in-law of the Ranee would quite suffice for legalising the adoption. That she did give such authorization is evident from the said Razeenamah. Nay it is not disputed. That it is sufficient in law must be obvious from any work on Hindu Law. See Sir Thomas Strange, Vol. I, page 79 and 80, Strange's Manual, Clause 73, also *Sreerama Pundita* who says, "An issueless widow may with the permission of the *parents** brothers &c "take a son in adoption." And there is no point of Hindu Law and usage more clear than that in the absence of husband's authority, his mother can supply the omission.

* Parents here means the father or mother of the husband.

22. Your Petitioner will dispose of the third point with a few observations. The same authorities quoted in the preceding paragraphs together with Nanda Pandita I. 17, show beyond all doubt that in default of the husband's or parent's authority, the kinsmen can authorise an adoption by a widow. That the heirs did consent to the adoption is shown by their signature to the deed of gift, and will be proved by ample evidence, if an opportunity is afforded your Petitioner.

23. The 4th point is inconsistent with the third. If there are no heirs whose consent would legalise the adoption, then their consent was needless. But that there are such heirs is shown in your Petition to the Board (see 2nd and 3rd grounds under para 7 of that Petition) and will be proved by decree of the Civil Court in No. 1 of 1860 above adverted to by decree of the Sudder Udalut in No. 66 of 1857 and by further evidence if an enquiry is ordered.

24. On all these grounds your Petitioner submits that the adoption is good and valid and cannot be objected to by any one. But even if it were not, the deed of gift executed by the Ranee *with the consent of the heirs* is enough to remove all objections to the registry of the Zemindary in your Petitioner's name.

25. The objection to your Petitioner's adoption, raised in 1847 was in July 1855 withdrawn by Government. In November following it was revived on the conflicting opinion of Mr. Norton.

26. Your Petitioner is grieved to find that although the policy of Government in regard to their treatment of Native chiefs has of late been entirely changed; that notwithstanding their renunciation of their right to lapses of Inams of even the most fraudulent character from one end of the Presidency to the other, your Petitioner should be the only person that has met with their disfavor in these days of liberal administration; that while millions of Inamdars and numerous landholders are rendered happy and contented by the liberality of Government, he alone should be doomed to disappointment and misery. He would respectfully ask what has he done to deserve this treatment at their hands? For upwards of half a century the Zemindars of Ramnad have paid their tribute with a cheerfulness and loyalty which is scarcely inferior to that of any other Zemindar. The Ranee in her old age has made a provision under sanction of Hindu Law and usage for the continuance of the race of the ancient family of *Setupaties*. And it only remains with your Excellency in Council with a full liberal heart to save your Petitioner from an uncertain tenure and prolonged litigation and all the evil consequences of a subject litigating with his rulers for his rights which it is in their power at any moment to bestow.

Your Petitioner most submissively but most earnestly prays that he may be confirmed in his possession of the Zemindary as its rightful owner and possessor.

(Signed) V. SADAGOPAH CHARLOO,
Vakeel for the Zemindar.

26th March, 1862.

TO

HIS EXCELLENCY SIR WILLIAM DENISON, K. C. B.,
GOVERNOR IN COUNCIL OF FORT SAINT GEORGE.

The humble Petition of Sreematu Hiranya Garbha Yaji Ravikula Rajah Muddu Ramalinga Setupaty, present Zemindar of Ramnad; presented on his behalf by his duly constituted Vakeel V. Sadagopah Charloo.

Respectfully Sheweth,

1. That on the 26th March 1862, your Petitioner has addressed a Petition to Government on the subject of his right to the said Zemindary. Since addressing that Petition, he has received copy of proceedings of the Board of Revenue, dated 21st March 1862, No. 1891, on his Petition to the Board under date the 5th March 1862.

2. It appears from those proceedings that copy thereof was sent to the Secretary to Government Revenue Department for information, and as the same may come under their consideration in connection with the reference already made by the Board on the Collector's communication in this matter, your Petitioner desires once more to approach your Excellency in Council with a few very succinct observations on the remarks of the Board.

3. In para 8 of their proceedings the Board observe "it does not appear that her husband "has left any kindred who can be looked on as heirs within the recognized degrees." If reference be made the third ground under para VII. of your Petitioner's Petition to the Board, it will be found that the first class of heirs therein mentioned viz. Dayadis of the *Ranee*, are *Dayadis* of her *husband* also, because she is of the same *Gotram* with her husband and has no other *Dayadis* than those of her husband.

4. In the latter part of the same para, the Board say that the remarks of the Privy Council were confined only to the case of an estate without heirs. The *Judgment* of their Lordships no doubt referred to such a case, but their *remarks* as quoted in the first ground of your Petitioner's Petition to the Board were unquestionably *general* in their nature.

5. In the conclusion of the same para, the Board observe that Government may refuse registration on the objection of an *heir* with a colorable title. No doubt they can do this. But the present objection of the Collector is not based on such grounds but on the right of *escheat*. Indeed it would be inconsistent with the right of *escheat* to refuse registration on the objections of an *heir*.

6. Referring to the first part of para 9, your Petitioner submits that the Decree in No. 66 of 1857 establishes the existence of *Dayadis* to the Ranee and her husband, who in law are the next heirs. Though the estate vested originally in Mangaleswara Nachyar, it descended on her death to her adopted son (Annasawmy) and on his death to his adopted son, following therefore the same rule as if it descended from her (Mangaleswara's) husband. If as observed in the last part of that para, the estate descends as *Sridhana*, then it would on the present Ranee's death go to her mother and brother who are the 3rd class of heirs described in the third ground under para VII. of the Petition to the Board.

7. In para 10 the Board admit that "the Collector named certain parties who might be "deemed to possess claims to the estate." The opinion of Mr. Norton, was adverse to his own former opinion, and such opinion cannot destroy or take away the rights of parties, and cannot get rid of the *fact* that an heir exists. The quotation in Morley's Digest, Vol. II, page 155, is no authority at all. It was a paper drawn up by *Mr.* Macnaghten, son of *Justice* Macnaghten. See page 153 of the same Vol. The case is moreover one based on Bengal Law, and such *private* opinion of *Mr. Macnaghten* is opposed to all authorities including the Privy Council. See page 33, Vol. II, Macnaghten's Principles and Precedents of Hindu Law.

8. In regard to the mention of "natural relations" "and natural families" in paras 11 and 12 of the Board's proceedings, your Petitioner begs leave to quote clause 341 of Mr. Strange's Manual in support of their right.

9. Before concluding this Petition, your Petitioner humbly begs leave to refer to a few more matters in connection with his case.

10. Mangalaswara Nachyar on whom Government conferred the Sunnud-i-milkeat Istemirar in 1803, was a widow at that time. *After* she was made Zemindar, she adopted Annasawmy, of course, without the consent of her husband. On the 11th May 1807 she also executed a will in favor of Annasawmy. This will was attested by the then Collector; and the Board recommended that, under Sec. VIII, Reg. XXV of 1802, and the 7th clause of the Deed of permanent settlement, the Ranee had authority to make the adoption and execute the will in favor of Annasawmy, and Government sanctioned these arrangements (see letter from Board to Government, 20th or 30th March 1812, and from Government to Board 15th May 1812. Copies whereof are submitted herewith.) Such adoption subsequently became the subject of litigation before the Civil Court in which the Sudder Udalut in Appeal No. 18 of 1814 (see page 101 Select Decrees) upheld the adoption and such Judgment of the Sudder Udalut was affirmed by the Privy Council on the 28th April 1828. This case is parallel in all respects to that of your Petitioner and in some respects better. Here the present Ranee makes an adoption with the consent of her relations (even allowing for the sake of argument that her husband gave no authority.) With the consent of the heirs she also executes a deed of gift in favor of such adopted son and gives him possession. Why should such adoption be objected to by the Collector? On the strength of the aforesaid correspondence and the Decrees alone, Government may unhesitatingly recognise your Petitioner as the rightful Zemindar.

11. Your Petitioner now begs to crave the attention of your Excellency in Council to the despatches of Lord Canning and Sir Charles Wood on the subject of the adoption of Hindu princes and chiefs. (See pages 17 to 22, Fort Saint George Gazette of the 8th January 1861.) He submits that this case exactly comes under the spirit and letter of the sound and liberal policy enunciated in those despatches. Every chief above the rank of a Jaghiredar is declared therein as entitled to the benefit of those rules; and it only remains with your Excellency in Council to make the formal declaration thereby required in your Petitioner's individual case. The only circumstances under which a Zemindar would forfeit the benefit of those rules is either opposition to Government or incorrigible misconduct. These of course do not affect your Petitioner's case.

12. One more point and your Petitioner is done. He has tendered the instalments of the Peishcush due on the Zemindary to the Collector who refuses to receive payment thereof unless the money was paid by the Ranee. She having resigned all her title in favor of your Petitioner cannot be expected to pay the balances of Peishcush. And her failure, your Petitioner has reason to apprehend, is likely to be made by the Collector a ground for attaching the Zemindary. The Collector seems to consider that because the registry stands in the Ranee's name, no one but she can pay the Peishcush. In this he is clearly in error. For, according to Circular Order Board of Revenue, 11th October 1832, see page 139, the existence or absence of registry cannot affect the title of parties in possession of the Zemindaries. And it would be a harsh nay cruel proceeding indeed if on the one hand the Collector is to refuse registration of your Petitioner's deed of gift, and on the other to attach the estate in spite of proffered payment of the Peishcush, which payment is not accepted for want of such registry, and for which your Petitioner is not in the least blameable.

Your Petitioner prays that this Petition may be considered along with his former Petition; and that pending the disposal of this matter, the Collector may be directed to accept payment of Peishcush and adopt no steps for zufting the Zemindary.

(Signed) V. SADAGOPAH CHARLOO,

Vakeel for the Zemindar.

2nd April, 1862.

TO

THE HONORABLE SIR GEORGE BARLOW, BART, K. B.

GOVERNOR IN COUNCIL.

HONORABLE SIR,

1st. Under date the 19th ultimo, we received the enclosed letter from the Collector respecting the death of the Ranee of Ramnad, and stating that by a will which she had left, it appeared that she had bequeathed the Zemindary to an adopted son who the Collector understood, was performing the necessary ceremonies.

2nd. With the same letter was submitted translation of an Arzee from the daughter of the late Poligar of Ramnad, laying claim to the Zemindary, and the Collector informed us that he had in consequence directed Teagaraya Pillay the minister to continue in management of the District until further orders.

3rd. With a subsequent letter which is enclosed dated the 22nd ultimo, the Collector submitted copy of the will left by the late Ranee of Ramnad.

4th. Besides these communications we have received various Petitions amongst the rest Petitions from the Rajeshenary and Parvate Vurdana Ammal each claiming the Zemindary as lawful widow of the late deposed Paligar.

5th. The circumstances which led to the deposition of the deceased Poligar and the subsequent nomination of his sister the late Ranee to the succession are but imperfectly traceable on the records of this Office, the general impressions however entertained by the Board was that the Zemindary had been forfeited in consequence of the rebellion of the Poligar and had been conferred on the late Ranee by an act of the Government influenced rather by the considerations of expediency than by the claims of the late Ranee in virtue of her relationship to the deposed Poligar.

6th. The death of the late Ranee having given rise to the different pretensions to the succession, it appeared to us to be desirable to acquire a knowledge of the ground upon which the measure of installing that person in the Zemindary was founded, and having for this purpose had reference to the Records of the Government, we have been enabled to form a somewhat more correct view of the question than that which we previously entertained.

7th. The deposition of the late Poligar for rebellion, it appears was not accompanied with any declaration tending to set aside the claims of his family. On the contrary in the agreement concluded upon that occasion with his Highness the Nabob of Arcot for the administration of the affairs of Ramnad by means of the Company's Officers, it was stipulated by the first article that a successor to the deposed Poligar should be appointed as soon as the person entitled to succeed to him could be satisfactorily ascertained.

8th. These are the words of the first article of the Agreement, bearing date the 2nd March 1795, and it appears that the Poligar's sister, the deceased Ranee, soon afterwards presented a Memorial in which she urged her right to the succession.

9th. The report of the Collector, Mr. Powney, to whom his Memorial was referred by the Government is dated the 30th May 1795, and the decision of Government upon the case is contained in a Minute of the superior Board, dated the 3rd July 1795.

10th. In that Minute it is stated that the Board are desirous of preserving a due regard to the claims of those persons whose pretensions are the most prominent without divesting themselves entirely of motives of political expediency, and though from the general tenor of the Minute, it is apparent that the Board was not convinced of the preferable legal right of the sister over that of the daughter of the deposed Poligar, they deemed it expedient to decide in favour of the former. Their resolution is expressed in the following words.

11th. "Under the impression of all these circumstances, the Board have come to the de-
"termination of nominating the sister of the deposed Paligar to the succession and have also re-

"solved to place his daughter under her charge without touching upon the question of the future "expectations of the child to succeed to the Government, expectations, however, which may "reasonably be entertained from the little probability of her aunt's pregnancy."

12th. The letters addressed to the Collector and to the late Ranee respectively bearing date the 4th July 1795 tend to corroborate conclusions which the papers before referred to are calculated to establish, namely, that it was not the intention of Government to set aside the ancient family, nor to interfere with the due course of succession further than considerations of political expediency were thought at the time to require; they also show that though such considerations did enter into the grounds of the decision which was passed in favour of the sister of the deposed Paligar the daughter was regarded by the Government her presumptive and natural successor.

13th. The Agreement with his Highness the Nabob which has been already mentioned provided that the District should continue under the management of the Company's Officers for a period of 3 years; that at the conclusion of this period the amount of the Peshcush to be paid to the Company on account of his Highness should be permanently settled, and that in the meantime an allowance should be made to the person who might be nominated to the succession equivalent to 10 per cent of the Revenue.

14th. Duration of the immediate management of the District by means of the Company's Officers was limited in the Agreement with his Highness the Nabob to the short period of the 3 years with the view, as it appears, of rendering the arrangement less unacceptable to his Highness. In point of fact, however, the District remained under the immediate management of the Officers of the Company nearly 8 years, for though the claims of the deceased Ranee to the succession was acknowledged so early as July 1795, soon after the conclusion of the agreement already mentioned with his Highness the Nabob she was not placed in possession of the District until February 1803, preparatory to the determination of the permanent settlement which was then under the consideration of the Special Commission, and which was shortly afterwards declared.

15th. The will of the deceased Ranee, of which copy and translation has been submitted by the Collector, is dated the 11th April 1807, and appears to be witnessed by the late Colonel Martin by Mr. Parish, the late Collector, and by the Pradhani or Minister Teagaraya Pillay. At which precise period the act of adoption was performed does not appear from any papers before the Board, but it is understood that it took place so long ago as the year 1803, shortly after the death of the late Ranee's husband.

16th. It would appear that the late Ranee and her niece have been for several years at variance, the pretensions of the latter to the Zemindary during the lifetime of her aunt may probably have been the original cause of the disagreement, and to such disagreement whencesoever it may have originated, there can be little doubt to be ascribed the arrangement made by the late Ranee for the exclusion of her niece from the succession.

17th. On more than one occasion this arrangement has been the subject of representation and remonstrance on the part of the niece. In the month of April 1807, about the time of execution of the will now submitted, it appears that she addressed a Petition to the Board of Revenue on the subject; this Petition is not forthcoming, it having been returned with an endorsement as appears from the register of the Petitions that the subject did not appear to demand the attention of the Board of Revenue for whatever might be the pretensions of the Petition to succeed to the Poliam of Ramnad on the demise of the present Ranee, those pretensions would doubtless be ascertained and she would be supported in them by the Judicial authorities.

18th. On the part of the person who claims the succession under the act of adoption by the late Rance, it is to be observed that Section VIII, Regulation XXV. A. D. 1802 as also the 7th clause, of the deed of permanent property which is quoted in the will acknowledged the right of proprietors to transfer without the previous consent of Government or of any other authority to whomsoever they may think proper by sale, gift or otherwise, their proprietary right in the whole or in any part of the Zemindary and such transfers are declared to be valid provided they shall not be repugnant to the Mahomedan or to the Hindu Law, &c.

19th. This provision of the Regulations and of the deed of permanent property appears to have been considered by the late Ranee as vesting in her an absolute right over the Zemindary superseding all other pretensions and possibly a similar impression may have been entertained by the late Collector, otherwise he would probably have hesitated to become a witness to an instrument whose tendency was to set aside hereditary claims.

20th. The circumstances under which the late Ranee became possessed of the Zemindary having, as we have shown, been imperfectly understood, we considered it to be right on the occasions to examine or briefly to state the case as well for the satisfaction of the Honorable the Governor in Council as with the view of eventually facilitating the means of deciding upon the case if it should as is probable become the subject of a legal suit.

21st. The questions to be determined in the meantime is whether possession shall be allowed to either of the claimants, the Zemindary being at present in charge of the late Ranee's minister under orders from the Collector; Clause 5, Section XVI, Regulation III. of 1802, provides that in all cases wherein there may be no person authorized and willing to take charge of the landed estate of a person deceased, an administrator shall be appointed by the Judge. Should this course of proceeding be thought proper, the several claimants will equally have to sue for possession.

23rd. The provision however above mentioned appears to have reference more particularly to the estate of a person dying intestate. In the present case, the will of the late Ranee may perhaps be considered to constitute sufficient authority for allowing possession to the adopted son in the first instance in which event the party or parties out of possession will be left to the option of either resigning their claims or preferring them by regular suit in Court.

24th. It is understood that the adopted son has not fully attained to majority; if therefore his right to the possession of the estate in the first instance should be acknowledged he will for some short time be subject to the superintendence of the Court of Wards.

We have the honor to be,
Honorable Sir,
Your most obedient and humble servant.
(Signed) W. PETREE, &c.
Members.

FORT SAINT GEORGE,
20th March, 1812.

TO

THE PRESIDENT AND MEMBERS OF THE BOARD OF REVENUE.

GENTLEMEN,

I am directed to acknowledge the receipt of your letter under date the 30th March and inform you that the Honorable the Governor in Council concurs in your opinion that under the decision of the 3rd July 1795, the alleged adoption and bequest by will of the Zemindary of Ramnad to Mootoovizia, Ragoonada Setupaty by the late Ranee afford sufficient ground for allowing him possession, in the first instance; leaving to the party or parties out of possession to contest the right to the Zemindary in the Court of Judicature.

I have the honor to be,
Gentlemen,
Your most obedient servant,
(Signed) WILLIAM THACKERAY,
Chief Secretary to Government.

True copies,
(Signed) W. OLIVER,
Secretary.

FORT SAINT GEORGE,
15th May, 1812.

TO

HIS EXCELLENCY SIR WILLIAM DENISON, K. C. B.,
GOVERNOR IN COUNCIL OF
Fort Saint George.

The humble Petition of Strimatu Hiranya Garbha Yaji Ravikula Vijaya Raghunada Raja Muttu Ramalinga Setupati, present Zemindar of Ramnad, presented on his behalf by his Vakeel V. Sadagopah Charloo.

RESPECTFULLY SHEWETH,

1. That on the 5th March last, your Petitioner presented a Petition to the Board of Revenue, praying that the Collector of Madura might be directed to register the deed of gift passed in his favor by the Rance of Ramnad, under date the 21st February preceding.

2. On the 11th March 1862, the Board, without reference to the said Petition, held and forward to Government their Proceedings, recommending that the application of your Petitioner be refused, and that the question be referred to the Government Pleader to give his opinion upon. Such reference was at once made to Mr. Dale.

3. On the 21st March, the Board passed their orders on the said Petition, and communicated copy thereof to your Petitioner's Vakeel, who received it so late as the 30th idem.

4. On the 26th of the same month, your Petitioner addressed his first Petition to Government, on the subject of his rights as adopted son, and also enclosed a copy of his said Petition to the Board, which dwelt only on the effect of the deed of gift above adverted to.

5. On the 2nd April following, your Petitioner submitted a second Petition to Government, urging his objections to the order of the Board of the 21st March preceding, and praying that pending the decision of the matter, the Collector might be directed to accept payment of Peishcush from your Petitioner, and refrain from all steps to zuft the Zemindary.

6. Although full three months have now elapsed since the presentation of these Petitions, no orders have yet been passed on them. Your Petitioner learns that the delay in the disposal of this matter is attributable to Mr. Dale, who has not submitted to Government his opinion on the questions referred to him. And as your Petitioner is anxious to have his case *speedily* disposed of;

He humbly prays that Mr. Dale may be directed to submit his opinion without delay, and on receipt thereof that the case of your Petitioner may receive the early attention of Government.

And your Petitioner as in duty bound shall ever pray.

(Signed) V. SADAGOPAH CHARLOO.

4th July 1862.

TO

HIS EXCELLENCY SIR WILLIAM DENISON, K. C. B.,
GOVERNOR IN COUNCIL OF FORT SAINT GEORGE.
&c. &c. &c.

The humble Petition of Sreematu Hiranya Garbha Yaji Ravikula Rajah Muddu Ramalinga Setupaty, present Zemindar of Ramnad; presented on his behalf by his duly constituted Vakeel V. Sadagopah Charloo.

RESPECTFULLY SHEWETH,

1. That on the 26th March last your Petitioner addressed a Petition to your Excellency in Council on the subject of his claims to be recognised by Government as the lawful Zemindar of Ramnad. In it he enclosed copy of a Petition he had presented to the Board of Revenue on the 5th idem touching the effect of the deed of gift executed in his favor by his adoptive mother, the Ranee of Ramnad. Printed copies of both these documents are submitted herewith for the consideration of your Excellency in Council.

2. On the 2nd April following, your Petitioner presented another Petition to Government on the same subject, enclosing therein copy of a former correspondence between them and the Board regarding the Ramnad estate. Printed copies of these documents also accompany this.

3. All these papers were referred to the legal adviser of Government for his opinion so far back as April 1862; and though a reminder was sent to Mr. Dale, on the 16th July last on a further Petition of your Petitioner dated 4th idem, he has not yet forwarded his opinion to Government.

4. Your Petitioner need scarcely say that he has been driven to sue Government in the Civil Court for establishing his right, simply because for seven long years they declined to recognise it upon repeated applications made from time to time by him and on his behalf. He has resorted to the Court as an unavoidable necessity though most unwillingly on his part. He desires not to keep up any litigation with his rulers, which it is in their power and only just at any time to put an end to by granting his prayer. If your Excellency in Council should have reason to consider that the suit now pending between him and Government is a bar to their compliance with his prayer, he will on the fact being intimated to him, gladly withdraw all proceedings from the Court.

5. In this his last appeal to Government, your Petitioner, conscious of the validity and goodness of his claims and rights but being earnestly actuated by a desire to purchase peace and avoid further litigation, begs leave to submit for the consideration of your Excellency in Council whether, as a final compromise, Government will be prepared to recognise his adoption on payment by him of a Nuzzerana as provided in the Despatches* of Lord Canning and Sir Charles Wood in cases of what to Government may appear to be the doubtful adoptions of Native Princes and Chiefs. If Government is willing to dispose of your Petitioner's case in this way, he will pay into the Collector's Treasury at Madura such reasonable sum as Government may, in their direction, fix in communication with his Vakeel V. Sadagopah Charloo. He need hardly repeat his motives in suggesting this course, which must be obvious to your Excellency in Council; his sole desire being to have as little dispute as possible with Government and its Officers. He begs therefore to submit that in the event of Government declining to accept this compromise, this Petition will not be taken or put forward as affording any evidence of the supposed weakness of your Petitioner's right or of any other matter whatsoever. If on the contrary your Excellency in Council is disposed to terminate this case in the manner above pointed out, it is scarcely necessary to wait for the opinion of Mr. Dale. The papers sent to him may be at once called for, and the case disposed of as in your wisdom may appear proper.

* See pages 17 to 22 of the Fort Saint George Gazette of January 1861.

And your Petitioner as in duty bound shall ever pray.

(Signed) V. SADAGOPAH CHARLOO,
Vakeel for the Zemindar.

6th October 1862.

TO

HIS EXCELLENCY SIR WILLIAM DENISON, K. C. B.,

GOVERNOR IN COUNCIL OF

Fort Saint George.

The humble Petition of Strimatu Hiranya Garbha Yaji Ravikula Vijaya Raghunada Raja Muttu Ramalinga Setupati, present Zemindar of Ramnad, presented on his behalf by his duly constituted Vakeel V. Sadagopah Charloo.

Respectfully Sheweth,

1. That your Petitioner is informed that Mr. Dale has transmitted, or is about to do so, his legal opinion on the several matters referred to him by Government in connection with his (Petitioner's) case. Before your Excellency in Council finally dispose of it, he desires to offer such further explanations as such opinion may require, and with this view he solicits the favor of his being furnished with a copy of Mr. Dale's Report, and of the Proceedings of the Board thereupon, should there be no objection to complying with this request.

2. The decision of Government will rest mainly on the question of whether or not there are heirs, who under Hindu Law would be entitled to succeed to the Zemindary after the death of the Rance, supposing your Petitioner's adoption should fail. If there are such heirs, then unquestionably Government can have no reversionary rights at stake; it being competent to them and them alone to dispute the validity of your Petitioner's adoption and deed of gift. Far from challenging his rights they (heirs) have all consented to his adoption and deed of gift. It would therefore be most inexpedient to say the least of it, to compel your Petitioner to wait the result of a protracted litigation or to drive him into fresh suits against Government.

3. That there are such heirs will be apparent to your Excellency in Council, on reference to the Decree of the Sudder Court, (See page 8 to 14 of the Decrees for 1858) already adverted to by your Petitioner. In further proof of the fact, he begs to submit herewith attested copies of Depositions taken by the Deputy Collector of Madura, in accordance with the orders of the Board of Revenue (11th March 1862) and of the table of the existing relations of the Ranee and her husband, which was prepared by that Officer. A perusal of the translates of these papers, which are also presented herewith, will not fail to convince your Excellency in Council, that far from there being no relations of the Ranee, there is such a number of them as precludes all possibility of the Estate escheating to Government for want of heirs.

4. The question therefore for the decision of Government is simply this;—namely, whether in the absence of any objection from any of these heirs is it just or expedient that your Excellency in Council should, without any advantage to the State present or prospective, continue objecting to your Petitioner's rights, and compel him to resort to a tedious and expensive Law Suit, when it is in the power of Government to prevent the vexatious delays and heavy expenses attending such a course.

5. In conclusion, your Petitioner begs to state that before the deed of gift was executed, the opinion of counsel was obtained, and it was in accordance with such opinion that the step was taken. He begs to submit herewith for the consideration of Government, copies of the opinions of three Members of the Sudder Bar, viz., J. D. Mayne, Esq., J. W. Branson, Esq., and V. Sadagopah Charloo, men whose views are entitled to respect and consideration.

And your Petitioner shall ever pray.

(Signed) V. SADAGOPAH CHARLOO.

11*th November* 1862.

Enclosure. D.

Ramnad Zemindary.

The last holder of this Estate before the permanent settlement was Mootooramalinga Setupati, who forfeited it to Government in 1795 by his acts of hostility and rebellion.

In 1803, Government conferred the Zemindary on his Sister, Ranee Mangaleesmara Nachyar under Sunnud-i-Milkeat Istimrar or Deed of permanent settlement.

The Ranee was succeeded by her adopted son, Annasamy Setupati, on whose demise the Zemindary descended to his adopted son, Ramasawmy Setupati, who died in 1830 leaving behind him no sons, but a widow named Parvata Vardhiny Nachyar, two daughters, and a mother by name Mootooveeroy Nachyar.

In obedience to Ramasawmy's arrangements, the Estate devolved on his daughters, who dying shortly afterwards, it reverted to their mother, Ranee Parvata Vardhiny Nachyar in 1843 and continues still in her possessi n.

In 1843, Ramasawmy's mother, Mootooveeroy Nachyar, instituted a Suit No. 3 of 1843 against Parvata Virdhiny Nachyar, to recover the Estate as the successor of the deceased son. But this Suit terminated in a Razeenamah, dated in February and filed in March 1847, under which Parvata Virdhiny Nachyar was left in undisturbed possession of the Zemindary, with liberty to adopt a boy.

In May following, she accordingly adopted Mootooramalinga Setupati, and reported the fact to the Collector on the same day. That Officer objected to it as having been made without sufficient authority. In 1855, Government at first* recognized him as the lawful heir of the Zemindar, but afterwards, *i. e.*, in November following altered their opinion, and issued instructions to the Collector to assume possession of the Estate on the death of the Ranee.

* 24th July 1855.

In 1856, the adopted son attained his age and sought possession of the Estate. The Ranee hesitated to give possession in consequence of the order of Government dated in November 1855.

He has then brought the Suit No. 1 of 1860 against the Ranee and the Collector. The Civil Judge held that the Collector had no right to object to the adoption, and declared that the Ranee was at liberty to give possession to the Zemindar, (See Decree and Judgment herewith sent.)

The Collector has appealed to the Sudder Udalut in No. 35 of 1861, which Appeal is still depending before that Court.

To avoid however the delays and costs of litigation, she is now willing to give possession to the adopted son, and also execute a deed of gift to prevent all contingencies.

Counsel is now asked to advise.

1st. Whether she can now give him possession.

2nd. Whether Government can object to her so doing, and sequester the Estate if she persisted in her giving possession ?

3rd. Whether she can execute a deed of gift, and if she can whether Government can either now or at any time object to such gift ?

To enable counsel to advise on these points satisfactorily, it is stated that the adoption was made with the consent of the next heirs of the Ranee and of her husband. These heirs are :—

I. The Dayadees (Kinsmen) of Ramasawmy Setupati, (See Decree of the Sudder Udalut at page 8 of the Reports for 1858.)

II. The Bandhus of Ramasawmy Setupati, being,

1st. The sons of his father's sisters.

2nd. The sons of his mother's sisters.

3rd. The sons of his mother's brothers.

III. The mother and brother's sons of the Ranee.

If all these parties have consented to the adoption, is it open to Government to object to it ?

I am of opinion that she can.

I am of opinion that Government *cannot* object in any way, and that they cannot sequester theEstate.

I am of opinion that she can, and that Government cannot object thereto. I would suggest that the deed of gift should recite the adoption, declare it to have been with the sanction and consent of the next heirs of the Ranee and the deceased, and then proceed to give and grant the Zemindary to the adopted son, his heirs and assigns. Let it be under seal on proper stamp. Let it be registered and let possession be given *under* it, and let all the provisions of Reg. XXV of 1802 be strictly complied with. If the next heirs can be induced to join in this deed as declaring their full consent to the alienation or to subscribe an endorsement or declaration at foot to that effect, so much the better.

(Signed) J. W. BRANSON.

2nd January 1862.

The following papers are sent herewith.

1st. The Judgment and Decree of the Madura Civil Court in O. S. 1 of 1860.

2nd. Proceedings of the Board of Revenue, 23rd April 1861.

3rd. Appeal Petition of Mr. Dale.

Opinion.

1. I am clearly of opinion that under all the circumstances, it is most advisable that immediate possession should be given to the adopted son, and that the Ranee has perfect right to do so.

2. Government cannot now object to her giving possession. The only right they set up is escheat; but this cannot arise till the death of the Ranee.

3. Neither can they oppose her doing so. She has at all events a life interest, and this she can give away. Her giving the adopted son possession can be no excuse for Government assuming possession. Their doing so would be contrary to Law and Equity.

4. To prevent all contingencies, she can make a gift of the Estate to her adopted son, and Government cannot object to such gift beyond refusing to register the transfer. But such refusal to register cannot take away the title of the adopted son nor affect his possession.

5. There is not the most distant pretence for the operation of the right of escheat as long as there are so many heirs of the Ranee and of her husband alive; who have consented to the adoption and to the gift. The Dayadies of the Ranee would be her heirs at all events. On failure of them, the Bundhos succeed if her marriage was of the approved form, and her mother and brother's sons, if of the disapproved species.

6. I would therefore advise the Ranee to make the gift and give possession to the adopted son.

(Signed) V. SADAGOPAH CHARLOO.

31*st December* 1861.

I quite agree with the above opinion. The Ranee has, even according to Government, a life interest by virtue of which she can put any one she wishes in possession, and they cannot complain of such act, the validity of her grant for a period beyond her own life may depend upon the fact of their being heirs capable of succeeding to the Zemindaree after her death. If there are such as would appear to be undoubted, then the right of Government vanish as they rest merely upon the prospective escheat, and if the next heirs give their consent, the deed would be binding upon the world. The heirs should all be made parties to the deed of gift, and should expressly consent to it, and renounce all claims upon the Zemindaree. On the other hand, if it can be assumed that there are no heirs except the plaintiff, then unless his adoption is valid, the deed of gift would directly intercept the right of Government as heir by escheat. The decision in the appeal now pending before the Privy Council will probably soon decide whether a grant by a widow under such circumstances would be valid or the reverse. My opinion is, that in the case supposed it would be valid.

I do not see that Government can take any hostile action against the Zemindaree upon the execution of such deed of gift and delivery of possession. If they attempted to seize it in attachment, they would be liable to a suit for trespass, and if they refuse to register, the Court would, in my opinion compel them to do so.

Under these circumstances, I join in recommending the execution of a deed of gift by the Ranee in favor of the Plaintiff. Such deed should recite the previous adoption, with consent of the families, the order of the Collecter A, and the present suit and should go on to state that in consequence of the doubts which have been expressed by Government, and to obviate future dispute, the Ranee gives all her title and interest in the Zemindaree to the Plaintiff. I think this deed should be sent up for the approval of Counsel; when executed by all parties, it should be communicated to the Collector and the Board, and should be tendered for registration. If registration is refused, a suit should be instituted against the Collector to compel registration. Possession should be given to the Plaintiff with all formality, and this fact also notified to the authorities.

(Signed) JOHN D. MAYNE.

1*st January* 1862.

Enclosure. E.

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of the Collector of Masulipatam, versus *Cavaly Vencata Narainappa, from the Sudder Dewany Adawlut of Madras, delivered the 21st December* 1861.

PRESENT.

LORD JUSTICE KNIGHT BRUCE.
LORD JUSTICE TURNER.
SIR JOHN TAYLOR COLERIDGE.
SIR LAWRENCE PEEL.
SIR JAMES W. COLVILE.

This cause has come before their Lordships on appeal for the second time. They regret to find that they are still without the means of satisfactorily determining the long litigation between the parties.

The Zemindary, which is the subject of the suit was claimed by the Appellant on behalf of the Government of Madras, as an escheat to which the Crown became entitled on the death of the widow of the last male Zemindar, of whom there were no heirs in remainder to the widow, and he claimed to have it free and discharged from all incumbrances with which it had been charged by the widow during her enjoyment of it.

The Respondent disputed the right of the Crown to take the particular property by escheat in any circumstances; and insisted that, even if that right existed, he had a title to the Zemindary paramount to that of the Crown by virtue of a Razeenamah executed in his favor by the widow in her life-time His case as to this was, that his father had made advances to the widow for some of the purposes which, under the Hindu Law, justify the alienation by a widow of immovable property inherited from her husband, and had obtained a decree for the amount of the debt; that after his father's death, he had taken out execution on that Decree, and that to stay his execution, the Razeenamah had been executed. He further contended that this had been done with the sanction and under the advice of the then Collector of the District, and that the Government was estopped from disputing the transaction, if it could otherwise have done so, by the conduct of its Officer.

The Razeenamah was in the nature of an agreement for the payment of the judgment debt by instalments, with stipulations that, if default were made in the payment of any instalment, the whole sum should become due, and that the judgment creditor should be put into possession of twelve out of the fourteen villages comprising the Zemindary (which were to be impledged to him), and should, on her death, take possession of the two other villages, and hold the whole Zemindary as his absolute estate. No instalment was paid by the widow, nor yet was possession taken under the Razeenamah in her life-time. The Respondent however, alleged that it was by reason of an order of the Sudder Court, suspending the execution of the Razeenamah, in consequence of proceedings in another suit, that he failed to get possession.

It follows from this statement, that the questions to be determined in the cause were, whether the Crown had any title by escheat to the lands; and, if so, whether that title had been defeated, either absolutely or to the extent of any subsisting charge, by the acts of the widow in her life-time. The latter question involved the consideration of the powers of a Hindoo female taking her husband's estate by inheritance, and whether the transaction relied upon by the Respondent was an act done *bonâ fide* in the exercise of her powers, or a mere colourable contrivance for transferring the property to the Respondent in spite of her disabilities.

In the judgment of the Sudder Adawlut, which was the subject of the first Appeal, the Court had dealt with the first of these questions only. It held that the property having belonged to a Braminical family, the Crown had no right to take it by escheat, though on the clearest failure of heirs, and therefore dismissed the suit on that ground, without adjudicating upon the other questions raised in it.

Upon the Appeal however, the whole case was more or less fully argued. Their Lordships came to the conclusion that the judgment of the Sudder Adawlut was erroneous; that the Crown was entitled to take the property of a Bramin, as of any other Hindoo subject, dying without heirs; and that the question whether such property would be subject, in the hands of the Crown, to any trust in favor of Bramins,

that would be capable of enforcement, was one which could not be determined in that suit. After stating their reasons for this conclusion, their lordships' Judgment proceeded thus:—

"Their Lordships' opinion is in favor of the general right of the Crown to take by escheat the land "of a Hindoo subject, though a Bramin, dying without heirs; and they think that the claim of the Appel- "lant to the Zemindary in question (subject or not subject to a trust) ought to prevail, unless it has been "absolutely, or to the extent of a valid and subsisting charge, defeated by the acts of the widow in her "life-time. In the latter case, the Government will, of course, be entitled to the property subject to the "charge. It follows that the Decree of the Sudder Adawlut cannot stand. The manner in which it ought to "be varied depends upon the decision of the questions which have been raised touching the acts of Lutch- "medevamah in her life-time. On none of these has the Sudder Adawlut adjudicated. On some of them, "as, for instance, the effect of the Collector's act in 1841, it is peculiarly desirable to have the judgment of "that Court. Again, it appears to their Lordships very doubtful whether the present record affords the "materials requisite for the satisfactory decision of some of those questions. There is little, if any, legal "evidence of the nature of the advances made to the widow, or of the necessity for them. It may also be "material to know what was the nature, and what the effect of the proceedings by which the execution of "the Razeenamah was suspended. In these circumstances, their lordships do not feel that they can safely "do more than remit the Appeal to the Sudder Adawlut for further hearing, with a declaration that the "general right of the Government by escheat (subject or not subject to a trust) has been established."

Their Lordships also suggested to the parties the expediency of compromising the suit upon some such terms as the surrender of the Zemindary to Government, upon payment of what might be due to the Respondent for the advances really made.

Upon the recommendation of their Lordships, an order was made by Her Majesty in Council in July 1860, pursuant to their judgment and remitting the cause to the Sudder Adawlut.

The case went back to Madras, and was re-heard by the Sudder Adawlut there. In the judgment pronounced on the 22nd of October 1860, the judges stated that they had ascertained that both parties having failed to come to an agreement, wished the suit to proceed. They further stated that they had not found it necessary towards their pronouncing upon the merits of the suit, to call for the additional evidence which their lordships had indicated as apparently requisite. They accordingly proceed to deal with the merits of the suit in the following way:—

Admitting the right of the Crown to take by escheat property of which the last owner died without heirs, they held that where there had been an assignment by that owner, though a female, the Crown could not take the place of an heir to challenge her power to make that assignment. They therefore decided that the suit having been brought upon the erroneous assumption that the Crown had the power to challenge and defeat the act of the last incumbent, should be dismissed.

They next decided that, even if the Crown had the right contended for, it was estopped from asserting it by the acts of the Collector, and the sanction given by him to the Razeenamah in 1841.

They, lastly, decided that, even if the Crown could now challenge the alienation in question, the plaint had not been properly framed for that purpose.

It is with the Appeal against this judgment that their Lordships have now to deal.

It has been argued for the Appellants that in ruling the first and third of these points, the Court below has exceeded its powers, inasmuch as it has come to conclusions inconsistent with those expressed in or implied by Her Majesty's Order of July 1860. In their Lordships' opinion, this objection is well founded. The order of 1860, which, after argument here, recommended, if it did not enjoin, the Court below to take additional evidence on the question, whether the acts of the widow in her life-time were valid against the Crown, must be taken to assume that the question was one fairly open to the parties upon the pleadings.

Again, the declaration that the general right of the Crown to take the property by escheat ought to prevail, unless it had been defeated by the acts of the widow in her life-time when followed by the direction to adjudicate upon those acts, seems to imply a decision that the Crown had established its right to maintain a suit of this nature.

The first conclusion of the Sudder Adawlut, however, involves a question of substance, an important question of law; and if their Lordships were satisfied that it was well founded, they would be disposed to

prevent its being met by the objection, in some degree formal, of its inconsistency with the Order of Her Majesty, by taking measures to procure the variation of that order. They, therefore proceed to consider first, whether the conclusion is in fact correct.

The principal argument in support of it, which has been very ably put by the learned Counsel for the Respondents, is that on the death of a Hindu owner of an undivided estate without preferable heirs, the whole inheritance descends to and vests in his widow; and that, although it be true that her power of disposition over it is qualified, and only valid against the heirs next in succession, when exercised for certain puposes, or with their consent, yet if there be no such heirs, it becomes absolute; or, at all events, its exercise at her free will can be questioned by nobody. Her power of disposition was likened to that of the male owner of an undivided estate in that part of India, in which the general Hindu law obtains without qualification: he can dispose of that as he will, if he has no adult sons, but if there be such sons, their consent is necessary to render his disposition valid. The only difference between the two cases was said to be, that in the one the right of objection was confined to sons or other direct descendants; in the other, it was possessed by all collaterals capable of inheriting to the deceased husband of the widow.

It was justly observed in the course of the argument, with reference to those authorities which speak of the widow's interest as a life estate; that great confusion arises from applying analogies derived from the English law of real property to the Hindu law of inheritance; and that when so applied, the terms by which we describe estates in land under the English law were more likely to mislead, than to direct the judgment aright. It may, however, be doubted whether the argument on behalf of the Respondents does not really require some such process of reasoning to support it. The Hindu widow, it was urged, has an estate of inheritance, not a life estate; the original estate, it is said, devolves on her in a course of succession derived from the husband, who had in him an estate of inheritance which she takes as heir. Yet what is this in effect, but to apply the English law regulating the descent of lands in fee simple from ancestor to heir?

It is clear that under the Hindu law the widow, though she takes as heir, takes a special and qualified estate. Compared with any estate that passes under the English law by inheritance, it is an anomalous estate. It is a qualified proprietorship, and it is only by the principles of the Hindu law that the extent and nature of the qualification can be determined.

It is admitted, on all hands, that if there be collateral heirs of the husband, the widow cannot of her own will alien the property except for special purposes. For religious or charitable purposes, or those which are supposed to conduce to the spiritual welfare of her husband, she has a larger power of disposition than that which she possesses for purely worldly purposes. To support an alienation for the last, she must show necessity. On the other hand, it may be taken as established that an alienation by her which would not otherwise be legitimate, may become so if made with the consent of her husband's kindred. But it surely is not the necessary or logical consequence of this latter proposition, that in the absence of collateral heirs to the husband, or on their failure, the fetter on the widows power of alienation altogether drops. The exception in favor of alienation with consent may be due to a presumption of law, that where that consent is given, the purpose for which the alienation is made must be proper.

Nor does it appear to their Lordships, that the construction of Hindu law which is now contended for, can be put upon the principle of "*Cessante ratione cessat et ipsa lex.*" It is not merely for the protection of the material interests of her husband's relations that the fetter on the widow's power is imposed. Numberless authorities, from Menu downwards, may be cited to show that, according to the principles of Hindu law, the proper state of every woman is one of tutelage; that they always require protection and are never fit for independance.—*Sir* Thomas Strange (see "Strange on Hindu Law," Vol. I, page 242) cites the authority of Menu for the proposition that, if a woman have no other controller or protector, the king should control or protect her. Again, all the authorities concur in showing that, according to the principles of Hindu law, the life of a widow is to be one of ascetic privation, (2 "Colebrooke's Digest," 459). Hence, probably it gave her a power of disposition for religious, which it denied to her for other purposes. These principles do not seem to be inconsistent with the doctrine that on the failure of heirs, a widow becomes completely emancipated, perfectly uncontrolled in the disposal of her property, and free to squander her inherited wealth for the purposes of selfish enjoyment.

Their Lordships cannot but think that, if the consequences of the failure of heirs of the husband were such as they are now argued to be, there would be some decisions on a case so likely to have happened

before, or at all events that th re would be some trace of so startling an exception to the general rule of Hindu law touching females, taking by succession the property of males in the ancient text writers and commentators. The proposition, however, rests upon the argument founded on the nature of the Hindu female's estate, as an estate of inheritance, upon a passage from a modern treatise by Mr. Strange, for which no authority is cited and upon the opinion of the Pundits. The first for the reasons already given, their Lordships consider unsatisfactory. The second cannot be treated as more than opinion, though an opinion deserving of respect and attention. Upon the last, their Lordships cannot but repeat an observation made by them in a late case to the following effect: "where an opinion apparently discordant from works of current and established authority is delivered by Pundits, it must not be taken on their authority to be a correct exposition of the law. They should be questioned further as to authorities, usage and generally received opinions. Such an inquiry might produce a conviction that the Pundits on a new case delivered rather their own notions of expedient law, as law, than delivered it on the force of the opinions of any writers or authorative expounders of the Hindu law."

Their Lordships are of opinion, that the restrictions on a Hindu widow's power of alienation are inseparable from her estate, and that their existence does not depend on that of heirs capable of taking on her death. It follows that if, for want of heirs, the right to the property, so far as it has not been lawfully disposed of by her, passes to the Crown, the Crown must have the same power which an heir would have of protecting its interests by impeaching any unauthorized alienation by the widow.

Their Lordships, therefore, dissent from the first ground on which, by the judgment under appeal, the Sudder Adawlut has dismissed the Appellant's suit.

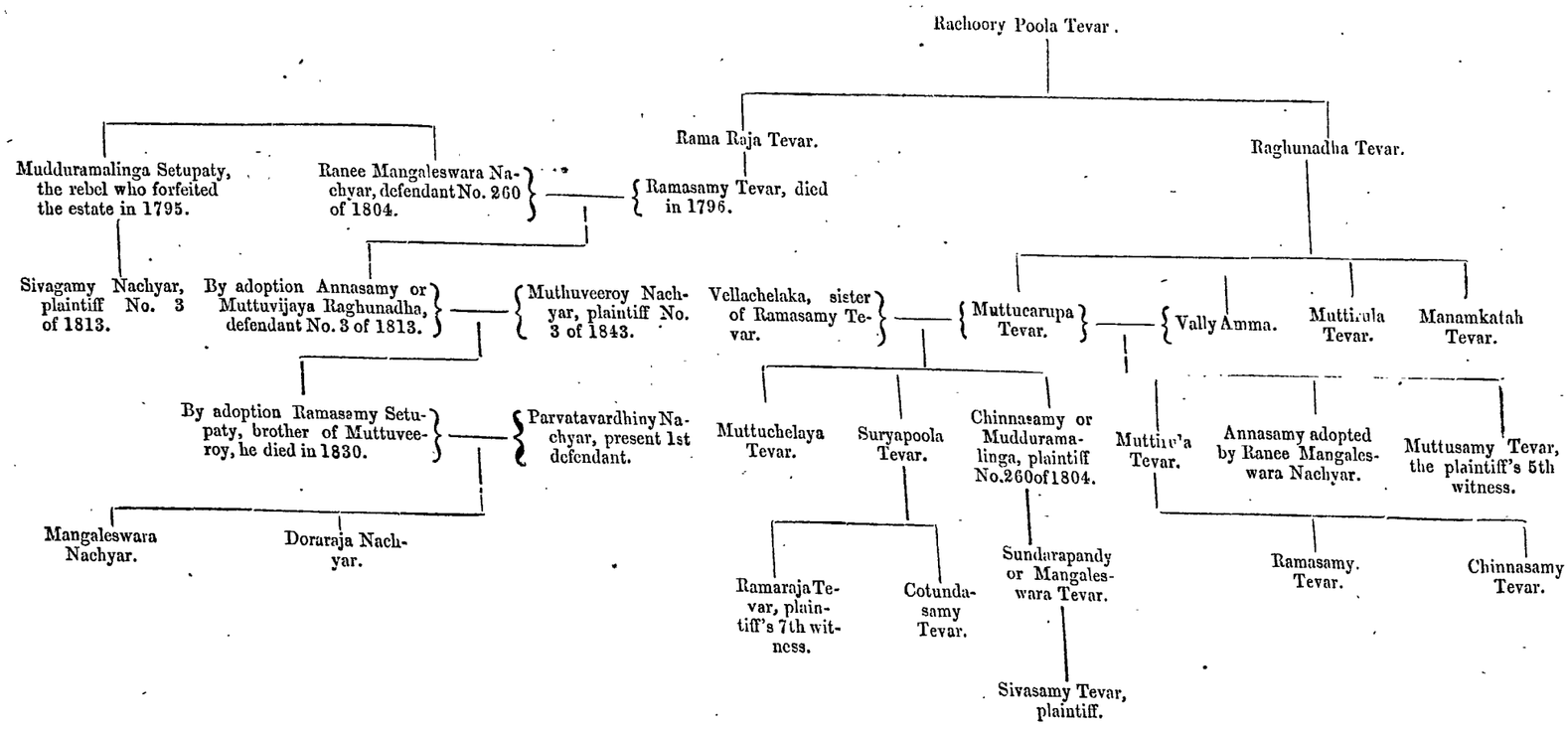
The next consideration is, whether the Sudder Adawlut was right in holding that the Crown is estopped by the act of the former Collector, Mr. Grant, from disputing the title asserted by the Respondent under the Razeenamah. In their Lordships' opinion the principles of estoppel do not support this contention. 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 Government 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.

Their Lordships have already indicated their opinion, that it is too late to assert, if it could ever have been successfully asserted, that it is not open to the Appellant on these pleadings to question the validity of the widow's alienation against the Crown. The reasoning of the Sudder Adawlut on this point seems to their lordships to involve some misconception of the effect of the Decree under which the Respondent claims. As regards the Appellant that Decree is *res inter alios acta*. He is, therefore, in a very different position from one who, coming into Court to get rid of a Decree binding upon him, has to allege and prove that it was fraudulently or collusively obtained, or is open to some other definite objection.

Again, though particular circumstances may shift the burthen of proof, the general rule certainly is, that it lies upon those who claim under an alienation from a Hindu female, to show that the transaction was within her limited powers

Their Lordships continue to think that the evidence before them is not such as to admit of a satisfactory decision of the question, whether the Razeenamah does to any and what extent constitute a charge on the Zemindary as against the Crown, and that there ought to be a further trial of that issue. Under the former order of Her Majesty, the Sudder Adalut should have given to each party if so disposed, an opportunity of adducing further evidence. It does not appear to have done this, but to have acted on its own impression that no further evidence was necessary. Such at least is their Lordships' understanding of the preliminary statements in the judgment under Appeal.

In these circumstances, their Lordships propose humbly to recommend to Her Majesty that the present Appeal be allowed; that it be 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; 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 Hindu 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 other estate of her husband to answer such purposes, and that the cause be remitted to the Sudder Adawlut to enquire 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 Hindu 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 to proceed in the cause according to the result of the said inquiries.


Rachoory Poola Tevar.
Rama Raja Tevar.
Raghunadha Tevar.
Mudduramalinga Setupaty, the rebel who forfeited the estate in 1795.
Ranee Mangaleswara Nachyar, defendant No. 260 of 1804.
Ramasamy Tevar, died in 1796.
Sivagamy Nachyar, plaintiff No. 3 of 1813.
By adoption Annasamy or Muttuvijaya Raghunadha, defendant No. 3 of 1813.
Muthuveeroy Nachyar, plaintiff No. 3 of 1843.
Vellachelaka, sister of Ramasamy Tevar.
Muttucarupa Tevar.
Vally Amma.
Muttirula Tevar.
Manamkatah Tevar.
By adoption Ramasamy Setupaty, brother of Muttuveeroy, he died in 1830.
Parvatavardhiny Nachyar, present 1st defendant.
Muttuchelaya Tevar.
Suryapoola Tevar.
Chinnasamy or Mudduramalinga, plaintiff No. 260 of 1804.
Muttiru'a Tevar.
Annasamy adopted by Ranee Mangaleswara Nachyar.
Muttusamy Tevar, the plaintiff's 5th witness.
Mangaleswara Nachyar.
Doraraja Nachyar.
Ramaraja Tevar, plaintiff's 7th witness.
Cotundasamy Tevar.
Sundarapandy or Mangaleswara Tevar.
Ramasamy. Tevar.
Chinnasamy Tevar.
Sivasamy Tevar, plaintiff.

Enclosure. F.

Enclosure. G.

9th 1817.

Resolved that one copy of the memorials be forwarded to the Govt Pleader with a view to his making any remarks thereon, which he may think may be of use to the Home Govt or their legal advisers.—

L. H. S

3 Chas Forbes Govt Pleader with Memorials &c Enclosures. Bo Bd &c

Govt Bt
11th June 1817

Rec.d 1863 Nov.r
Pol. & Govt for Orme.
W. 1227

Pro 15 April /62 nos 236-237
23 — u — u — 303-304
16 July u - u - 211-212
21 Oct.r u - u - 260-261
15 Dec.r - u - u 216 @ 218-

Jeeva Erimatu Ni-
ranya Garbha Yaji
Panikula Vijaya
Raghunadha Raja
Bhuddu Ramalinga
Setupati Tthrd his
Vakeel
V. Vadagopacha-
riarlu

Dated 20th May
Received 27th 1863.
E-8.

Requests that the
accompanying Memorial
on Inspeximus, may be
forwarded to Her Majesty's
Secretary of State for India.
No 1017-71 Orme
William Corder.

No 179 & 180