Proceedings of the Madras Government, Revenue Department, 24th June 1863.

No. 379. Read the following Proceedings of the Board of Revenue, dated 12th June 1863, No. 3,446 :—

Read again letter from the Collector of Madras, dated 13th September 1862, No. 329, recorded in Board's Proceedings under date 30th October 1862, No. 7,175.

Read also the following letter from the Acting Collector, dated 9th March 1863, No. 78.

1. In reply to the Board's Order on Nos. 212 and 311 of 1863 of 2nd instant, I have the honor to state that when, in the first instance, the Tahsildar reported the death of the late Shrotriemdar, he stated that he had zufted the village; the Collector replied removing the zuft, and informed the Tahsildar he had no authority for the step he had taken, it being his duty to await the Collector's orders in such cases.

2. The Collector subsequently, and in the usual course, sent orders to zuft the village. During the interval between these two orders, the village was re-placed in the possession of Petitioners, who held it at the time of the late Shrotriemdar's demise.

3. With regard to the subject of the Petitions herewith returned, there seem to have been conflicting decisions in cases of this nature; but it appears to me, in the words of the Board's letter of the 28th April 1815, on another case, "the safer and more equitable course to make "over the village to the same parties, who were in possession of it when it was attached;" viz., the mortgagees; especially as in this particular instance, a suit was filed by the late Shrotriemdar against Petitioners in the Civil Court, which was thrown out, appealed to the High Court, and finally rejected on the 14th ultimo.

4. I await the orders of the Board on this point, as also with regard to registering the village in the name of Chengalraya Mudali, the grandson and reputed adopted son of the late Shrotriemdar.

ENCLOSURES Nos. 1 and 2.—Petitions.

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1. The Board resolve to submit the case referred to in the above letters for the consideration and orders of the Governor in Council.

2. In 1816 the village of Pakam was conferred on Venkatachella Mudali on Shrotriem tenure, for three lives, at a Quit-rent of 300 Pagodas. At his death, in 1818, it was registered in the joint names of his two sons, Kumarasamy Mudali and Shunmooga Mudali as the second life. These two persons died without issue, but the former, it is stated, adopted a sister's son. The other grand-children of the original grantee (children of other sisters) all concur in desiring that the adopted youth, named Chengulroya Mudali, may be recognized as Shrotriemdar. The Board recommend that the Shrotriem be accordingly registered in his name, as the third and last life.

3. It will be observed from the letter recorded above that, at the death of the late Shrotriemdar, the village was in possession of a mortgagee, and that after the death of the Shrotriemdar the village was taken under attachment by the Revenue authorities. The strongly expressed opinion of Mr. Cunliffe, the late Acting Member of the Board, that he was bound, as Collector, to adopt that course, has led to some delay in the submission of the case to Government.

4. The Board, however, cannot concur with Mr. Cunliffe, in considering that he had the power of ousting the mortgagee from the possession of the Shrotriem. They are of opinion that the mortgagee could not legally be ousted except by means of a Civil Suit; and that, if the minor heir has a right to possession, this claim must be prosecuted on his behalf, either by the Court of Wards, or by the Executors of the will of the late Shrotriemdar. This view of the case is in part supported by the orders passed by Government under date the 10th August 1840,* authorizing the then registered holder of the same Shrotriem to bring a Civil action against the same mortgagee for the recovery of the village. A similar order was passed by Government in Minutes of Consultation dated 25th October 1840, on a claim preferred by the Shrotriemdars of Attiput and Nundiembaucum for possession, when those villages were held by other parties on mortgage.

* Board's letter to Government, dated 16th July 1840, No 267.

5. The only difference between the cases quoted and the present one is, that in the former cases the mortgagers acquired possession directly from those who had themselves raised loans on the property. In the present case, it is a question whether the minor heir is in any way bound by the act of the person whom he succeeds under the terms of the grant. But, at all events, the Board do not consider that the death of the actual mortgager will warrant the ejection of his mortgagee by the Officers of Government.

6. They therefore resolve to submit the above two points for the orders of Government; first, whether Chengulroya Mudali shall be recognized as the third life; and secondly, whether the late Collector's proceeding dispossessing the mortgagee shall be upheld or not.

7. If the Government decide the first question only in the affirmative, the Board are of opinion that the executors of the late holder should be left to deal with the Minor's claims as against the mortgagees; for the Board have ascertained that the executors are competent persons, and that the interests if the Minor will be properly guarded, if the Estate be left to the management of the executors. They therefore would not interfere with the case as the Court of Wards.

8. With regard to the claim made by the late holder of the Shrotriem against the mortgagee, it appears that in 1858 the Civil Judge of Chingleput passed a Decree (Original Suit No. 1 of 1856) in favor of the Shrotriemdars, but that on appeal from this Decree to the Sudder Udalut the suit was remanded. Subsequently, Mr. Fullerton, the Acting Judge of Chingleput, Decreed in favor of the mortgagee, and the decision was, it would seem, confirmed by the High Court on the 14th February last. The Sudder Court, when remanding the Suit as above stated to the Zillah Court of Chingleput, remarked as follows:—

"It appears to the Sudder Udalut that the Civil Judge has misapprehended the provisions "of Act XXIII of 1838. This Act is in continuation of Regulation IV of 1831, one of the "provisions of which it alters. It is true that the intent of Regulation IV of 1831 is to secure "that grants, such as now in question, shall not be diverted from the purpose for which they "were made, but this is done simply by assuring the grantee from being invaded in his possession "and title by any rival claimant. Act XXIII of 1838 carries on this protection by absolving "his grant from liability for his debts. By neither of these enactments is he empowered to "wrench the grant from another to whom he may have conveyed it by any legal tenure. The "enactments guard him from being pursued by another, but in no way confer upon him any "special power as a pursuer, so as to enable him to recover the property irrespective of any rights "which another may have acquired thereon."

If this principle is applicable to the actual mortgagee of such property, it is equally applicable, the Board presume, to the mortgager's successors or heirs.

(A true Copy and Extract.)

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

No. 380.

ORDER THEREON, 24th June 1863, No. 1,111.

1. The Government authorize the registration of the Shrotriem, as desired by the family, in the name of Chengalroya Moodaly as the third and last life.

2. The second question put by the Board is a legal one. They will therefore consult the Government Pleader on it and act on his advice.

3. Under the circumstances stated by the Board there is evidently no reason for their interposition under Regulation V of 1804.

(Signed) J. D. SIM,

Secretary to Government.

Without going into the question of the legality of the adoption, which appears to the Board to be open to much doubt, they see no objection to the recognition of Chengulroy Mudali, a grandson of the original grantee, as successor to the Shrotriem as third and last life unless any of the other grandchildren prefer a stronger claim by seniority.

(A true Copy and Extract.)

(Signed) C. G. MASTER,
Acting Sub-Secretary.

To B. Cunliffe, Esq., Collector of Madras,
with 3 Petitions and 2 other enclosures returned.

Exd. J. Wright.

1862. Department.

No.

PROCEEDINGS OF THE BOARD OF REVENUE

Dated 30th October 1862.

No. 7,173.

Recognising Chengulroy Mudali, a grand
of the original grantee, as successor to the S
trium of Pokam as third and last life, ur
any of the other grand children prefer a st
ger claim by seniority.

Answer in original suit No. 1 of 1856, dated 18th February 1857.

For the undermentioned grounds, the defendants are not entitled to recover from the plaintiff the shrotrium village, mentioned in the plaint.

1. The 2nd para. of the plaint is true only, in so far as it regards the admission that the plaintiff and his younger brother mortgaged the shrotrium village in question to the 3rd and 4th defendant's father, Chella Teroovengada Moodelly, for rupees 3,100, and executed a mortgage bond to that effect. But the remaining circumstance in the said para. that the said debt having been discharged by the mailwarem income of the said village, there is a surplus of rupees 482 due to him by the said Moodelliar, is entirely false.

2. While the said shrotrium village continued under the enjoyment of the said Teroovengada Moodelly, as per the said mortgage bond, a decree having been passed against this plaintiff in suit No. 46 of 1835, on the file of the late zillah court, one Ramasawmy Moodelly, plaintiff in that suit, caused the said village to be attached by the late zillah court in 1839, in satisfaction of the amount due to him by this plaintiff, as per the above decree. But a motion having been put in by the said Teroovengada Moodelly, detailing therein the mortgage to him, and his enjoyment of the said shrotrium village, an investigation was entered into respecting the said document, &c., and the village was released from the attachment by the court.

3. The plaintiff and his younger brother afterwards interfered in the enjoyment of the village by the said Teroovengada Moodelly; whereupon a complaint having been lodged before the collector by the said Moodelliar, an order was passed to the effect, that as the village was in the enjoyment of the mortgagee at the time of the said attachment, he alone should continue to enjoy it even henceforward, and that the plaintiff and others should not interfere in the village; and the village was, accordingly, placed in the possession of Teroovengada Moodelliar.

4. As the plaintiff and others, did, in disobedience to the said order, interfere in the said village, even after it was placed in the possession of Teroovengada Moodelly, disputes arose between the parties, and they preferred complaints before the collector. Thereupon the collector received in deposit, and, on a rough calculation, rupees 1,100, from the plaintiff in satisfaction of the amount of the said bond, and told the plaintiff that the village would be placed in his possession after settling the accounts of credit, debit, &c, of the said village. But, as the village was put in the plaintiff's possession without ever settling the accounts, the said Teroovengada Moodelly appealed against it to the Board of Revenue, who passed an order in reversal of the above one, to the effect that the village aforesaid be placed in the possession of Teroovengada Moodelly, and the plaintiff be referred to a civil action, if he has any claim. Accordingly, the collector placed the village in the possession of Teroovengada Moodelly, and returned to the plaintiff the amount held in deposit. But as the plaintiff interfered in the said village on several occasions even after it, the collector has imposed fines upon him, and realized the same.

5. In the meantime, a warrant having been issued against this plaintiff by the said Ramasawmy Moodelly for the said decree-amount due to him, the plaintiff came to the said Teroovengada Moodelly, and amicably settled the accounts respecting the amount of the bond referred to in para. 1 of this answer; whereupon a balance of rupees 1,551-4-1, has been found against the plaintiff, and in favor of Teroovengada Moodelly. For discharging the said decree-amount of Ramasawmy Moodelly, and meeting their household expenses, the plaintiff, and his younger brother, contracted a further debt of rupees 1,850, and, under date the 23rd September 1840, executed to the said Teroovengada Moodelly, a mortgage bond for rupees 3,401-4-1, including the balance of the previous bond, on the mortgage of the shrotrium village in question; and containing the stipulation of the bond referred to in the 1st para. Admitting the execution of the said bond in para. 4, of the plaint, and without disclosing the contents of the said document, the plaintiff has falsely set forth that only rupees 885 were paid him, and not more.

6. Under date the 7th December 1855, the court ordered the common ... e to collect from the said defendants, rupees 22,000 and odd, at rupees 1,750 a year remaining over and above the expenses] for the 17 years of their enjoyment of the said villages, commencing from 1840. While so, the statement in paras 6 and 7 of the answer, to the effect that the costs and battas should be adjudged as against the said village, is opposed to regulations.

7 The mortgage debt having been discharged in three years, the defendants are in debt to the plaintiff as set forth in para 1 of the reply. Without, as conditioned in the said bond, managing the affairs of the said village in the presence of the plaintiff's man, and paying even a cash from the profits thereof, the defendants continue for the last 17 years to hold an improper enjoyment of it.

8. The plaintiff prays that under Act XXIII of 1838, the shrotrium villages in question may be recovered to the plaintiff from the defendants. The remaining facts in the answer require no refutation.

28th March 1857.

(Signed) SOOBROYA PILLAY,

Vakeel.

TO

TRANSLATION.

THE CIVIL JUDGE OF CHINGLEPUT.

Rejoinder put in by Court Vakeel Rag... Iyer, on behalf of the Defendants in O. S No. 1 of 1856.

1. The same circumstances in the plaint are stated in the reply, and no proper reasons have been stated to the pleadings set forth in the answer.

2. The act which is referred to in the reply is the same mentioned in the plaint. It has been remarked in the answer that the said act is of no avail, inasmuch as the defendants continue to hold the village in question under mortgage since before its enactment and the plaintiff has silently omitted to meet the said remark in his reply, having no room to do so.

3. It is pleaded in the reply that no maintenance was granted to plaintiff as per the conditions in the document, and the affairs of the village were not managed in company with the plaintiff's goomastah. The sums of money paid to plaintiff for maintenance for some years, are entered in the accounts of those years. The plaintiff himself has not received the maintenance for some years, leaving the same to be credited to the debt; and there was never any delay on the part of the defendants to pay his maintenance. The plaintiff who first employed a goomastah for some years, for the management of the village affairs, has himself discontinued him afterwards. It is argued in the reply that the defendants had appropriated a sum of 29 and odd thousand Rupees out of the income of the said village, and that the Supreme Court had ordered the collection of that amount. This is not true at all. It is unnecessary to answer to the other vain and false statements in the reply. The answer is correct.

24th April 1857.

(Signed) ROYALIER,

Vakeel

Defendants Exhibits No 26

On the 10th day of the month of August, of the year 1857, corresponding with the 28th day of the month of Audy, of the tamil year called Havelumbe, this bond in respect of money borrowed on the mortgage of the shrotrium village, called Parkum, was caused to be written and given to Manamungalum Chellah Teroovengadah Moodeliar, residing in Madrasputnam, by

The integrity of this deed was attested by Ka Appasawmy Moodelly, in whose handwriting it was drawn out with the knowledge of the above persons.

A true translation, as near as can be, from the Malabar language.

M. SOOBAROYLOO,
Interpreter.

Decree passed by W. Dowdeswell.

1. This is an action to recover the shrotrium village of Paukum, and its hamlets Paroomunjee and Elloolpay nuttum, paying to circar an annual kist of rupees 1,050 after ejecting the defendants from the possession thereof.

2. The plaintiff produced an order, signed by the Deputy Secretary to Government, referring the plaintiff to seek redress in the established courts of udalut, as required by Section II, Regulation III of 1831.

3. It is set forth in the plaint, that, in consideration of the eminent services rendered by the father of the plaintiff, the Government were pleased to grant him the village of Paukum, and its hamlets as shrotrium; and, his father having died, he succeeded to the shrotrium in question; that, in 1857, circumstances having rendered it necessary, he, and his deceased younger brother, mortgaged the said shrotrium villages to one Chella Teroovengada Moodelly, and borrowed from him a sum of rupees 3,100, after executing a mortgage bond, with stipulations to the effect that the mortgagee should hold possession of the shrotrium villages until the debt, with interest, shall have been paid off by the profits of the shrotrium villages, and that the mortgagee should restore to plaintiff the shrotrium in question; that, accordingly the debt having been paid off in 1840 by the profits of the shrotrium villages, the plaintiff requested the mortgagee to enter into settlement of accounts, and restore to him the shrotrium villages; but the mortgagee having refused, plaintiff applied to the collecter, who, after making inquiry, and on mortgagee's failure to deposit a certain sum of money previous to entering upon the settlement of accounts relative to the mortgage, put the plaintiff in possession of the shrotrium villages. An appeal was then made by the mortgagee to the Board of Revenue, and the villages were taken back from him and put in possession of the mortgagee. While circumstances stood thus, the mortgagee instigated plaintiff's creditors to take warrants against him, and taking advantage of his difficulties, persuaded the plaintiff and his deceased younger brother to execute to him a fresh mortgage bond, on the same shrotrium villages in 1840 for a sum of rupees 3,100, on promise of advancing that amount to enable plaintiff to discharge the demands of his creditors, and to escape being arrested. Relying on the good faith of the mortgagee, the plaintiff and his brother accordingly executed a fresh mortgage bond for the above sum; but the mortgagee advancing him only rupees 855, defrauded him of the rest. In consequence of which, plaintiff instituted an action against the said Teroovengada Moodelly, in the Supreme Court, where plaintiff's attorney having allowed the case to go by default, he was lodged in debtors' jail for the opposite party's costs of suit, and was, subsequently discharged on proof of his insolvency.

4. The mortgagee and his heirs having held possession of the shrotrium villages for upwards of fifteen years up to the date of plaintiff's insolvency, plaintiff calculated the profits due to him by the mortgagee, on the shrotrium villages for that period, and entered the same in the schedule, together with his other property for collection and payment to his creditors by the common assignee.

5. As the defendants who are the heirs of the mortgagee, refuse to restore to plaintiff the shrotrium villages, although they have held possession of them for more than twenty years, and the mortgage amount with interest has been paid off by the profits of the shrotrium villages, and, as the retention of the shrotrium villages by the defendants is unjust and illegal, being contrary to the provisions of Regulation IV of 1831, and Act XXIII of 1838, the plaintiff pray

C. No. 45. A letter addressed to the plaintiff by the tahsildar of Manemungalum, under date the 24th July 1831. — To show that plaintiff formally succeeded to the shrotrium village in question.

D. No. 46. Copy of a takeed issued by the collector, Mr. Freese, under date the 14th April 1810, to the tahsildar of Pareya Pauliem. — To show that, in consequence of the defendants' failure to produce the accounts of the shrotrium village, the collector ordered the restoration of the same to plaintiff.

E. No. 47. Copy of a takeed issued by the assistant collector to the tahsildar of Pareya Pauliem, dated 27th May 1810. — To show that the Board of Revenue cancelled the order of the collector, and directed the shrotrium villages to be placed again in charge of the mortgagee.

F. No. 48. Endorsement of the Government under date the 27th September 1832, on the plaintiff's application to cancel their order, referring him to the courts for recovering possession of the shrotrium village. — To show that he was referred to the civil courts for redress.

G. No. 49. Endorsement of the Government under date 17th December 1832, on the plaintiff's application, to cancel their order, referring him to the courts for recovering possession of the shrotrium village. — To show that he was again referred to the civil court for redress.

H. No. 50. Extract from the Proceedings of the Supreme Court, held under date the 7th December 1835. — To show that he is a pauper, having been declared an Insolvent by the Supreme Court of Madras.

I. No. 51. Copy of the account of produce and expenditure of the shrotrium village of Paukum, for the year Havelumbee (1837-38), delivered into the court by both parties, witness, Abboo Pillay. — To prove the point recorded for the plaintiff, *viz.*, that the mortgage amount was liquidated by the produce of the village.

J. No. 52. Do. do. for the year Velumbee (1838-39), delivered by Cunda Pillay. — Do. do. do.

K. No. 35. Do. do. for the year Vekaree (1839-40), by Chella Ilay — Do. do. do.

Defendants' Exhibit.

I. No. 26. An attested copy of the mortgage bond, dated 10th August 1837. — To prove that the plaintiff and his brother borrowed from the son of the 1st defendant rupees 3,100, on the mortgage of the shrotrium village.

II. No. 55. Original cadjan accounts of produce and expenditure of the shrotrium village, for the year Havelumbee (1837-38.) — To prove the point recorded for the defendants, *viz.*, that there was a balance on account of the original mortgage bond.

III. No. 56. Do. do. for the year Velumbee (1838-39.)

IV. No. 57. Do. do. for the year Vekaree (1839-40.)

V. No. 58. Copy of a deposition given by the curnum, Cunda Pillay, before the Supreme Court of Madras. — To prove that the account is a correct one and that there was a balance due by the plaintiff.

far as the claim rested on the original mortgage bond. The point now to be decided, is whether the amount of the original mortgage bond was, or was not, discharged by the profits of the shrotrium village collected by the mortgagee, previous to the order passed by the collector on the 14th April 1840. The plaintiff's claim being confined to the said period, and the subsequent profits being left for collection by the common assignee, under orders of the Supreme Court, the same having been entered in the schedule of property filed by plaintiff in the said court, with his application for the benefit of the Insolvent Act.

19. In order to ascertain the actual income of the shrotrium village under dispute, from the date of the original mortgage bond up to the period mentioned above, the village curnums who had been nominated as witnesses by both parties were examined, and the accounts produced by them duly filed. These accounts were examined by the court in the presence of the pleaders for both parties; and the plaintiff having objected to various charges entered against him, the defendants were called upon to produce receipts for them, as many were charges not stipulated for in the mortgage bond, and therefore, ought not to have been charged. The defendants having failed to produce these receipts, the court consider it fair to admit only such payments as were agreed to by the plaintiff, and authorized by the terms of the bond, no objection having been made by either party as to the items of income entered in the accounts. The following statement will show the amount of produce and expenses, as well as the amount paid towards the liquidation of the mortgage bond, during the years 1837, 1838, and 1839, and a part of the year 1840.

Statement showing the amount of produce yielded by, and the expenses incurred on account of the village of Paukum and its hamlets, as well as the mortgage debt and its interest and the sums carried to its credit during the years Havalumbee, Velumbee, and Vekaree.

Year.	Description of Receipts.	Amount. Rs.	A.	P.	Description of Expenses.	Amount. Rs.	A.	P.	Mortgage debt, its interest and sums carried to its credit.	Amount. Rs.	A.	P.
Havalumbee or 1837-38.	Value of grain..	3,317	0	3	Government Kist	1,050	0	0	Amount of the mortgage bond....	3,100	0	0
	Ready money collections.....	30	10	0	Servants' wages..	397	7	6	Interest from 10th August 1837 to 12th July 1838, 12 per cent. per annum.	344	1	6
	Ready money puttah..	39	12	7	Maintenance allowance to the Shrotriumdar in ready money according to the stipulations of the bond ..	232	6	0	Total of principal and interest..	3,444	1	6
	Fines and forfeitures..	16	0	6	Do. in grain....	87	8	0				
	Collection of arrears of the previous year.. ..	88	5	1	Repairs.....	318	1	6				
					Surplus remaining.	2,085	7	0	Deduct from this the surplus money carried to its credit during the year Havalumbee.. ..	1,406	11	5
	Total Rupees..	3,492	2	5	Total Rupees..	1,492	2	5				
Velumbee or 1838-39.	Value of grain.....	3,734	4	0	Government Kist.. ..	1,050	0	0	Balance due on the 12th July 1838	2,037	6	1
	Ready money...	26	14	1	Servants' wages	350	6	7	Interest on Rs. 2,037 6-1 from 13th July 1838, up to 12th July 1839.. ..	244	7	9
	Ready money puttah..	39	12	7	Maintenance allowance to the Shrotriumdar in ready money....	252	0	0	Total of principal and interest..	2,281	13	10
	Fines and forfeitures .	0	0	10	Do. in grain . ..	87	8	0				
					Repairs.....	8	4	1	Deduct from this the surplus money carried to its credit during the year Velumbee	2,052	12	10
					Surplus remaining....	1,548	2	8				
	Total Rupees..	3,800	15	6	Total Rupees..	3,800	15	6				
Vecaree up to Pungoonee or April 1840.	Value of grain..	1,253	14	11					Balance due on the 12th July 1839.....	229	1	0
	Ready money puttah..	11	7	9					Interest up to April 1840, on rupees 229 1 0.. ..	20	9	10
					Servants' wages	221	11	8	Total of principal and interest....	249	10	10
					Surplus remaining....	221	11	8	Deduct from this the surplus money during the year Vecaree..	1,043	11	0
	Total Rupees..	1,265	6	8	Total Rupees.	1,265	6	8	Amount over paid	794	0	2

Zillah of Chingleput. Civil Court, Original Suit No 1 *of* 1856.

Pauper Plaintiff.

Comarasawmy Moodelly,
Shrotriumdar of Paukum and other villages.

Vakeels.

Sundara Moodelly.
Subaroya Pillay.

versus

Defendants.

1. Audee Rungammal, widow of Subaroya Moodelly, and Administratrix of Chella Teroovengada Moodelly.
2. Tiruvulummal, daughter-in-law of the 1st defendant, and widow of Chella Teeroovengada Moodelly.
3. Manika Valoo Moodelly.
4. Singara Valoo Moodelly, sons of the 2nd defendant.

Vakeels.

J. D. Mayne, Esq., Barrister-at-Law.
Tandavaroya Moodelly.

1. The plaintiff sued to recover his shrotrium village held on usufructuary mortgage by the defendants, the value of surplus produce having long since paid off the mortgage loan. The plaintiff states that in the year 1837, on a settlement of accounts, rupees 3,100 were found to be due to defendants, that a bond (No. 26) for that amount was drawn up, and the village made over to the defendant who was to pay off the sum due out of its proceeds. The amount was paid off, it is alleged, in 1840, but another mortgage land was entered into in the same year in consequence of some of plaintiff's creditors having taken out warrants against him, by which he was driven to have recourse again to the defendant for assistance. This bond was for rupees 3,400, of which sum however plaintiff alleges he received only rupees 800, and for the remainder he brought a suit in the Supreme Court in 1855, which, he states, was dismissed on account of the negligence of his counsel.

2. The defendants denied that the first mortgage was satisfied in 1840, and pleaded that the second mortgage bond, which was drawn up on a settlement of accounts, was good and valid. They denied that the sum then advanced had been paid off by the value of produce, and further claimed as due to them their costs in the suit, brought against them by plaintiff in the Supreme Court.

3. The civil judge, Mr. Dowdeswell, before whom the case was originally tried, refused to recognise the second mortgage bond as being executed subsequent to the promulgation of Act XXIII of 1838, which act, if admitted, it would directly set aside. He then examined the accounts with reference to the first bond which, he found, had been satisfied in 1840. On appeal the sudder court over-ruled the civil judge's objection to the validity of the second bond, and remanded the case in order that it might be taken into consideration. Evidence was then taken by direction of Mr. Dowdeswell as to the payments made on its account.

4. At the hearing Mr. Mayne, for the defendants, took the preliminary objection that the whole of the plaintiff's property having vested in the common assignee, he had no *locus standi* in the court, and no right to pursue. This objection appears to me to have much force, and indeed in my opinion completely shuts out the plaintiff; but as I observe it was one of the grounds of appeal before the sudder court, where it would naturally form the first point raised by the appellant, I presume it must have been considered as immaterial by the higher court, and I therefore feel precluded from attaching to it the weight which I would have otherwise done.

5. The first question then to be settled by the court is, from what date is the examination of the accounts of the village to commence. The plaintiff urges that the former civil judge has already found that there had been an over-payment on the first bond in 1840, and wishes to start from this. Setting aside the second bond altogether, this very overpayment being proof that the second bond could not have been entered into on a settlement

10. By the account now set forth, and prepared on the principles above laid down, it appears that on the 30th June 1860 there was a sum owing to the mortgagee of rupees 4,433-4-8. I therefore dismiss plaintiff's suit with all costs.

11. Given under my hand and declared in court at Chingleput this 4th December 1860.

(Signed) G. F. FULLERTON,
Officiating Civil Judge.

Memorandum of Regular Appeal.

Before the Civil Court of Chingleput, Original Suit No. 1 of 1856.

Before the Sudder Court at Madras, Appeal Suit No. 33 of 1861.

	In the Lower Appellate Court.	*In the Sudder Court.*
Comarasawmy Moodelly, Shrotriumdar of Paukum and other villages.	*Pauper Plaintiff.*	*Appellant.*
versus		
Audee Rungammal, widow of Soobaroya Moodelly, and Administratrix of Chella Teroovengada Moodelly and three others.	*Defendants.*	*Respondents.*

Comarasawmy Moodelly, pauper plaintiff aforesaid in the said suit, appeals in *forma pauperis* to the sudder court at Madras from the decree of the civil judge, dated 4th December 1860, for the following reasons :—

i. The defendants not having performed their part of the contract, cannot derive the full benefits thereof.

ii. The acting civil judge was bound by the decision of his predecessor as to the over-payments under the first bond, and such over-payment ought to [illegible]

iii. The acting civil judge ought to have taken account from the date of the first bond.

iv. The non-payment of consideration under the second bond is proved.

v. The defendants have not produced the account required by law, and are not entitled to be heard. The account of the commissioners is not receivable in evidence.

vi. The plaintiff cannot be charged with,

1st. The costs of the Supreme Court.

2nd. Sums paid over and above what was stipulated in the original bond.

3rd. Cart hire.

4th. Outstanding balances.

5th. Loans from ryots.

6th. Interest on kists.

vii. The acting civil judge is in error in dismissing the whole suit, instead of adjudging redemption on payment of the balance.

And your petitioners shall ever pray.

24th April 1861.

(Signed) V. SADAGOPA CHARLOO,
Pleader.

Exd. J. Tulloch.

SUDDER COURT.

REGULAR APPEAL,

No. 33 *of* 1861.

Comarasawmy Moodelly, Shortremdar of Paukum (Pauper Plaintiff) Appellant.

By V. Sadagopah Charry.

Versus

Audee Rungammal, widow of Soobroya Moodelly, and Administratrix of Chella Teroovengada Moodelly and 3 others (Defendants) Respondents.

By Mr. Mayne.

Presented 29*th April* 1861, *with three Enclosures and Vakalutnamah.*

Filed 29*th April* 1861.

To be heard on ——————

Board is a legal
one. – They will there-
-fore consult their
Govt. Pleader on it
and act on his ad-
-vice. –

Under the cir-
-cumstances stated
by the Board there
is evidently no rea-
-son for their inter-
-position under Re-
-gulation V of 1830.

J. B. V.

[illegible]
[illegible]

2 [illegible] Genl. Readers

Revenue 1863 Dept.
Procs. Govt. for June.

No. 1[illegible]

Pro. of the Madras Govt.
Dt. 24 June 1863.

[illegible]
[illegible]
[illegible]

Registration of Pakeem Christians in Madras in the names of Rungaiva roya Moodr. as the Cast Life authorizes.

No. 379 & 380.