

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 1210

Press
- - Mis. -

Ug. 120

Dated

6 - 7 - 19 1863

Not to be folded or roughly handled

*Proceedings of the Madras Government, Revenue Department,
6th July 1863.*

No. 119. Read the following Proceedings of the Board of Revenue, dated 10th June 1863, No. 3,386.

Read the following letters:—

From C. DALE, Esq., Government Pleader, to W. HUDLESTON, Esq., Secretary to the Board of Revenue, dated Madras, 3rd June 1863, No. 63.

SIR,

1. In continuation of the letter I had the honor of addressing to you under the date and number noted in the margin, I now do myself the honor of enclosing for 8th May 1863, No. 43. the information of the Board of Revenue, a copy of the Order passed by the High Court under date the 2nd May 1863, in Regular Appeal Suits, Nos. 103 and 136 of 1857.

2. It is difficult, at this distance, and without some tolerably clear statement of the nature of the evidence which could be adduced on behalf of Government, to advise the Collector as to the course best for him to pursue, and any suggestions I can make must necessarily be of a very general character.

3. The first issue is as to the effect of the Razinamah. That Razinamah was executed by the widow in favor of the Defendant's father, and the Civil Court is directed to "decide whether the right of the Crown was *ABSOLUTELY* defeated by the Razinamah." It is a question of law; and I must confess I never did, and I do not now, understand exactly why the Lords of the Judicial Committee raised that issue. By their own judgment they have *virtually* decided that the rights of the Crown were not "*ABSOLUTELY*" defeated by the Razinamah. I can only imagine their Lordships considered it necessary, perhaps more as a matter of form, that the Civil Court should decide that the rights of the Crown were not *absolutely* defeated by the Razinamah; and then proceed to consider whether the Crown was in any way affected; and if so, to what extent by the Razinamah.

4. It appears to me that that question will have to be decided on the evidence which may be adduced on the other issues. The validity of the Razinamah, and whether it can be enforced at all, will depend on the Defendant being able to prove, to the satisfaction of the Court, that his father did advance any portion of the sums which he alleges he paid to the widow; and if he succeeds in proving that his father did really and in truth advance any sum to the widow; then by his, the Defendant, being able to prove, to the satisfaction of the Court, that any portion of the sums really, and in truth paid, were advanced "for purposes for which, according to 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 that the widow had not "when such advances were respectively made other estates of her husband sufficient to answer such purposes." If the Defendant fails to prove to the satisfaction of the Court that his father did make any advance, the Razinamah fails; if, on the other hand, he does succeed in proving that his father did make some advance, then the Razinamah will equally fail, unless the Defendant is able by proof to satisfy the Court that some part of such advances came under the category referred to by the Privy Council. But if the Defendant should succeed in proving to the satisfaction of the Court, that his father did make some advance to the widow, and that some portion was advanced "for purposes for which according to 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 that the widow had not when such advances were respectively made other estate of the husband sufficient to "answer such purposes;" then to such extent, and to such extent only, will the Court be able to give effect to the Razinamah.

5. It appears to me the Civil Court will not experience any difficulty, on studying the Decrees of the Privy Council, in finding the first issue in the negative, and for the Crown.

6. In paragraph 4 I have somewhat anticipated the observations I should have to offer on the second and third issues.

7. The *onus probandi* of the second issue, clearly lies on the Defendant, and he must prove that his father did really and in truth pay some money to, or for the use, or on account of the

widow. It has been pretended that the last male Zemindar (the husband of Vargondah Lutchmedarummah the widow) who died in 1810, was indebted to the Defendant's father, and that the balance due from the Zemindar in 1810 was carried forward in the account with the widow, and as such formed part of the pretended account settled with the widow on the 20th of April 1838. The Collector will observe the second issue specially confines the inquiry to advances by the Defendant's father to the widow. The Court cannot travel out of that issue, but must confine itself strictly to inquire what sums were really and in truth advanced by the Defendant's father to the widow, and for what purposes. I presume the Collector will be in Court during the trial with the Government Vakeel; both should watch narrowly that no attempt is made to foist into the evidence any papers or statements relating to, or in which may be included, any other sums than alleged advances to the widows. If any attempt be made, the Government Vakeel should object to the reception of such evidence, and if the Civil Judge should overrule his objection (which I do not think he would) the Government Vakeel should solicit the Civil Judge to record a note of his objection.

8. On this point, however, the Collector's attention is drawn to the 2nd paragraph of the Decree of the Provincial Court Northern Division in Original Suit No. 18 of 1838, where it is stated that the transactions, out of which the debt now claimed arises, commenced with the 15th of May 1813.

9. It might be well for the Collector to make himself master of the pleadings and proceedings in that suit, with the view of enabling him to detect any discrepancies which may arise in the evidence which may now be offered.

10. In that suit, and also in the present suit, it was averred that on the 20th April 1838, the widow settled an account with the Defendant's father, and admitted a balance of Rupees 48,614-13-6. I think the Defendant may attempt to put that account in, arguing it is an admission by the widow, and therefore conclusive upon her, and through her on the Government. That account cannot be admitted as evidence in this suit, and if tendered, the Government Vakeel should object to its reception, and if the Civil Judge overrules his objection, the Vakeel should request the Judge to record a note of his objection.

11. The ground of the objection is, that the Government do not take the Zemindary as heir to the widow, but as heir to her husband, and consequently the Government are not bound by any acts or admissions of the widow, to which they were not parties. That the Privy Council were aware of this account, and ordered the inquiry comprised in the second issue. The Defendant must therefore prove the payment of each sum which he claims, by direct and independent evidence, as also that each sum was paid for purposes such are specified in the Decree of the Privy Council.

12. In the Original Suit No. 18 of 1838, it was averred that the widow was accustomed to execute to the Defendant's father Bonds, Kararnamahs, &c. All the facts of the case tend to show that such was not likely to be the case. The Defendant may however tender some documents, which he may allege are instruments of that nature executed by the widow. They however are inadmissible as evidence in this suit for the reason stated in paragraph 11, and if tendered the Government Vakeel should object, and if overruled request the Civil Judge to record a note of his objection.

13. The Defendant's Counsel has stated that the only evidence he has to adduce is documentary, with the testimony of one old witness and the Defendant himself. With the exception of such documents as those I have alluded to in paragraphs 10 and 12, and receipts from the Collector for the Peishcush, I cannot surmise what documents can be tendered. Care should be taken that no document is admitted in evidence which is not properly proved and stamped, in cases where stamps are requisite, and that they are proved to come from the proper custody; and as regards oral testimony, care should be taken to prevent witnesses from speaking of any thing which they do not know of their own knowledge.

14. On this issue I think the Collector should be prepared, if possible, with evidence to rebut any evidence which may be given by the Defendant with the view of showing that any payments he may endeavor to prove, were advanced for the purposes referred to in the Privy

Council Decree. I cannot specify of what such evidence should consist, as I am not aware what evidence the Collector can tender. I can only suggest generally, that evidence, if practicable, to show that under proper management and care the Zemindary was productive during the time the widow was in possession, or if proof cannot be adduced to show such a result during the whole of the time, proof of such a result for as large a portion of that period as may be practicable; also to show that the Peishcush was paid regularly, if such were the fact, or that no pressure was exercised for enforcing payment also, if such were the fact, that the Peishcush was paid into the Cutcherry by the servants of the widow, in her name, and the receipt granted in her name: on looking in the records of his Cutcherry other evidence tending to cut down the Defendant's case may suggest itself to the mind of the Collector. This recalls to my recollection that I have seen some very lengthy reports of the late Mr. F. D. Lushington, and if my memory serves me correctly, he there showed that the widow was really a wealthy woman, and stated other circumstances which, if proved, would at once cut away the hypothesis set up by the Defendant. I am aware my predecessor has written on the subject, but when I read his observations I did not entirely agree with his views of the effects of such evidence, they struck me as being in many respects more specious than stable; it would be well, however, to make the evidence as strong as possible, on the points to which Mr. Norton took exception.

15. The third issue rests with the Collector to prove, and I do not know that I can suggest any course which may assist him. The inquiries necessary will readily suggest themselves to the mind of the Collector.

16. I conclude that Mr. Foord has not previously had any thing to do with the case. I enclose a paper in which I have shortly put down the dates on which the more important circumstances occurred; adding notes of the results, which may possibly assist Mr. Foord in considering the case and instructing the Government Vakeel.

17. If there be in the Government Office, or with the Board, a "record of the proceedings" as printed for the Privy Council, and there be not one in the Collector's Cutcherry, it would greatly assist the Collector if such printed copy were furnished to him.

18. The Defendant has received large sums, but I do not think an account of them can be taken under this reference.

19. In case any document should be produced which bears a stamp, it would be desirable to refer to the Register of Stamps with the view of ascertaining that the stamp was purchased at the time, &c., indicated by the endorsement, and if not to tender the Register in evidence.

ENCLOSURE No. 1.

In the High Court of Judicature at Madras, 2nd May 1863.

Present.

The Honorable Mr. Justice PHILLIPS.

The Honorable Mr. Justice FRERE.

Regular Appeals Nos. 103 and 136 of 1857, in the late Sudder Court.

Cavally Venkata Narrainapah... .. Appellant.

By J. D. Mayne, Esq. Vakeel.

Collector of Masulipatam... .. Respondent.

By C. Dale, Esq. Government Pleader.

1. In pursuance of the directions of the Judicial Committee of the Privy Council, the High Court resolve to refer the following issues, framed and prepared by consent of Counsel on both sides, for trial by the Court of first instance, which will take such evidence as may be tendered by the parties and return its finding to the High Court within two months from this date.

2. The Civil Judge having regard to the declarations contained in the Order passed by Her Most Gracious Majesty in this Suit bearing date the 6th day of January 1862, is to inquire and decide whether the right of the Crown was absolutely defeated by the Razinamah in the pleadings mentioned.

3. He is further to inquire and decide what advances, if any, were made by Cavally Venkata Lutchmiah, the father of the Defendant (Respondent) to Vargondah Lutchmedavummah, the widow of Vargondah Ramanapah in the plaint respectively mentioned, and whether all or any, and which, of such advances were made for purposes for which according to the Hindu Law the said Vargondah Lutchmedavummah would have been entitled to alienate the estate in dispute as against the next heirs of her husband, if such there had been.

4. He shall further inquire what other property besides the estate in dispute in this suit the said Vargondah Ramanapah died possessed of, and whether at the time when such advances if any, were respectively made, the said Vargondah Lutchmedavummah had any of such property; and if so, whether the same were sufficient to answer the purposes for which the advances were made by the said Cavally Venkata Lutchmiah to the said Vargondah Lutchmedavummah.

5. 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.

(True Extract.)

(Signed) T. WILKINS,
Acting Deputy Register.

9th May 1863.

To J. R. BOYSON, Esq., Government Solicitor for his information, with
reference to his letter dated 4th instant.

ENCLOSURE No. 2.

1810 ... Husband died. No issue. No adopted son. No authority to widow to adopt. Widow succeeded.

1813, May ... Defendant alleges pecuniary transaction with widow by his father.

1830 ... Contemplated conveyance—see exhibit A. No mention of debt then.

1838, April 20th ... Defendant alleges widow adjusted accounts, and executed bond. Alleged she mortgaged 12 out of 14 villages. 11 payable by instalments.

O. S. No. 18 of 1838—*Ex parte.*

1839, March 20th ... Decree.

May 24th ... Defendant's father died.

1840 ... Petition for execution.

1841, January 14th ... Provincial Court, N. D. granted prayer Precepts.

April 5th ... Razinamah. Rupees 67,444-12-0 payable by eight instalments, commencing 15th December 1841 to 15th October 1848. In default of one instalment Defendant might recover all. Two villages to be retained by widow for life.

True character. Afterwards to Defendant and incorporated with his estate. What consideration? Defendant and his posterity to enjoy as ancient Zemindary. Defendant prayed Court to postpone execution for the present. From date of Razinamah to her death the widow continued in full and undisturbed possession of Mootah. Razinamah not acted on by Defendant.

1849, Sept. 1, widow died. Defendant says litigation no part of present issue, but Defendant might have had receiver pending litigation; but see his motion in page 20 What has he done with the rents?

8. Collector attached.

1810 to 1841 ... Widow in possession. Zemindary of considerable extent. With prudent management no fresh debts should have been incurred, and if any old ones paid off. Hindu female and Defendant is a relative—only advances.

Acts of Defendants.

1830. Attempt to get conveyance registered. No mention of debts

1838. Alleged adjustment of accounts by widow and bond. No. 18 of 1839, No appearance by widow.

March 1839. Decree *ex parte*. Government no party.

Execution.

1841, Razinamah.

Twelve Villages. Two reserved FOR LIFE; afterwards, &c.

True character of transaction by under hand means, to get Zemindary.

Showed two villages sufficient for maintenance. If so, no debt necessary.

From C. DALE, Esq., Government Pleader, to W. HUDLESTON, Esq., Secretary to the Board of Revenue, dated Madras, 6th June 1863, No. 65.

SIR

1. In continuation of the letter I had the honor of addressing to you under the date and number noted in the margin; it has occurred to me that the Defendant has represented that his father and himself, in addition to being near relatives of the widow Vargondah Lutchmedavummah were her agents, and acted for her in the management of her pecuniary affairs, and also in the superintendence of the Zemindary. If the Defendant's father or himself did so act, it would be very desirable to prove such fact.

2. If, on inquiry, the Collector should ascertain that the interference by the Defendant's father or himself was not of a continuous character, and such as would show clearly to the Court, that if mismanagement of the Zemindary did take place, the Defendant and his father must have been parties to such mismanagement, it would be desirable to lay before me an outline of the evidence which could be adduced on the point, when I would advise as to the course to be pursued.

1. Ordered that the above letters be communicated to the Acting Collector of the Kistna District for his information and guidance, in continuation of Board's Proceedings dated 12th May 1863, No. 2,829.

2. He will address Mr. Dale direct on any points on which he needs further advice.

(True Copies and Extract.)

(Signed) W. HUDLESTON, *Secretary.*

No. 120.

ORDER THEREON, 6th July 1863, No. 1,210.

Ordered to be recorded.

(Signed) P. P. HUTCHINS,

Acting Deputy Secretary to Government.

1819, Sept. 1, widow died. Defendant says litigation no part of present issue, but Defendant might have had receiver pending litigation; but see his motion in page 20. What has he done with the rents?

8. Collector attached.

1810 to 1841 ... Widow in possession. Zemindary of considerable extent. With prudent management no fresh debts should have been incurred, and if any old ones paid off. *Hindu female* and Defendant is a relative—only advances.

Acts of Defendants.

1820. Attempt to get conveyance registered. No mention of debts

1833. Alleged adjustment of accounts by widow and bond. No. 13 of 1833. No appearance by widow.

March 1839. Decree *ex parte*. Government no party.

Execution.

1841, *Razinamah*.

12 Villages. Two reserved for LIFE; afterwards, &c.

True character of transaction by under hand means. to get Zemindary
Showed two villages sufficient for maintenance. If so, no debt necessary.

From C. DALE, Esq., Government Pleader, to W. HUDLESTON, Esq., Secretary to the Board of Revenue, dated Madras, 6th June 1863, No. 65.

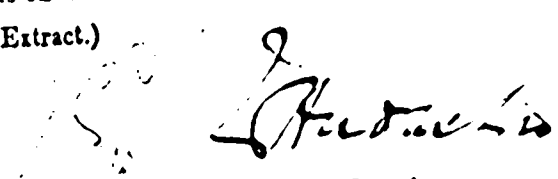
1. In continuation of the letter I had the honor of addressing to you under the date and number noted in the margin; it has occurred to me that the Defendant has represented that his father and himself, in addition to being near relatives of the widow Vazgonlah Lutchmelavunnah were her agents, and acted for her in the management of her pecuniary affairs, and also in the superintendence of the Zemindary. If the Defendant's father or himself did so act, it would be very desirable to prove such fact.

2. If, on inquiry, the Collector should ascertain that the interference by the Defendant's father or himself was not of a continuous character, and such as would show clearly to the Court, that if mismanagement of the Zemindary did take place, the Defendant and his father must have been parties to such mismanagement, it would be desirable to lay before me an outline of the evidence which could be adduced on the point, when I would advise as to the course to be pursued.

1. Ordered that the above letters be communicated to the Acting Collector of the Kistna District for his information and guidance, in continuation of Board's Proceedings dated 12th May 1863, No. 2,829.

2. He will address Mr. Dale direct on any points on which he needs further advice.

(True Copies and Extract.)


Secretary.

To E. B. Foord, Esq., Acting Collector of the Kistna District.

Copy to J. D. Sim, Esq., Secretary to Government, R. D., for information.

„ C. Dale, Esq., Government Pleader.

Ed. J. Wright.

30-8-11-13/10-204-245
 15-11-11-13-219
 15-11-11-13-219
 15-11-11-13-219

1863. Department.
 Order of Secretary for Q. A. G.

No. 13/2.

PROCEEDINGS OF THE BOARD OF REVENUE.

C-11-2236

Date 10th June 1863.

2nd 11/20

No. 3,386.

Communicating to the Acting Collector of the
 Krishna district letter from the Government Plea-
 der forwarding copy of Order passed by the
 High Court in R. A. S. Nos 103 and 126 of 1857.

RECORDED.

cc. Aug 103. L. B. G.

1863/19/1120

cc. Aug 103.