

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 592 (126-27)	Press <u>Mis.</u>
Dated 8-3-1866.	

Not to be folded or roughly handled

No. 126. Read the following Proceedings of the Board of Revenue dated 20th February 1866, No. 1,207.

Read the following letter from the Government Pleader, to the Secretary to the Board of Revenue, dated Madras, 16th February 1866, No. 24 :—

1. With reference to the letter I had the honor of addressing to you under the date and number noted in the margin, 2nd November 1835, No. 154. I do myself the honor of enclosing, for the information of the Board, five printed copies of the Decree passed by the High Court in Regular Appeal Suits Nos. 103 and 136 of 1857.

2. It will be observed the Decree is dated the 22nd January last ; I applied on that day for a copy, but it has not reached me till this day ; I have been informed the delay has been on the part of the Press at which the printing for the High Court is executed.

ENCLOSURES Nos. 1 to 5.—Printed copies of Decree.

Ordered that the foregoing letter be communicated to the Collector of the Kistna District, and that copy of the Decree be submitted for the information of Government.

No. 127. ORDER THEREON, 8th March 1866, No. 592.

Miscellaneous.

The Government await information from the Government Pleader as to the further proceedings which should be taken in this matter.

(True Extract.)

(Signed) J. D. SIM,

Secretary to Government.

To the Board of Revenue.
„ the Government Pleader.

Exd. S. T. Augustin.

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

Monday, the 22nd day of January, one thousand eight hundred and sixty six.

PRESENT :

The Honorable Mr. Justice FRERE,

and

The Honorable Mr. Justice INNES.

Regular Appeal No. 136 of 1857

(On the file of the late Court of Sadr Adalat).

The Collector of Masulipatam..... *Appellant (Plaintiff).*

and

Kavalu Venkata Narayanappa..... *Respondent (Defendant).*

Regular appeal against the decree of the Civil Court of Masulipatam in original suit No. 103 of 1855.

This regular appeal coming on for final hearing after the return of the finding of the Civil Court of Guntur upon the issues referred to it in accordance with the order of Her Majesty the Queen in Council, dated 21st December 1861, the Court delivered the following

JUDGMENT.

Plaintiff claimed, on behalf of the Government of Madras, to recover the Zamindary of Vissannapetta, which, on the death of the widow of the last male Zamindar of whom there were no heirs in remainder to the widow, had lapsed by escheat to the Crown.

Defendant disputed the right of the Crown to take the Zamindary as an escheat and insisted that, even if that right existed, he had a title paramount to that of the Crown by virtue of a rāzināmā, executed in his favour by the widow to induce him to stay execution of a decree, which his father had obtained, for the recovery of the amount of certain advances made to the widow by his father to enable her to carry out some of the purposes which under Hindu Law justify the alienation by a widow of immoveable property inherited from her husband; and 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, if it could otherwise have done so, was estopped by the conduct of its officer from disputing the transaction.

The first judgment of the Court of Sadr Adalat, which was in favour of the defendant, proceeded on the ground that the Crown had no right by escheat to property held by a Brahminical family, though there were entire failure of heirs. On appeal to the Privy Council the decision upon this point was reversed and the cause was remitted to the Court of Sadr Adalat to be re-heard upon the other points involved in it.

The Court of Sadr Adalat then decided that when the last owner of property, though a female, died without heirs having made in her life time an assignment of the property, the Crown could not take the place of an heir to challenge her power to make that assignment; that, supposing the Crown could do so, it was estopped by the acts of the Collector and the sanction given to the rāzināmā of 1841, from assert-

ing its rights; that, even if the Crown could now challenge the alienation, the plaint had not been properly framed for that purpose.

Upon appeal the Privy Council decided 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 obtained by the defendant's father against the widow 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 her husband if such there had been; but that the defendant was entitled to a charge upon the estate to the full amount of such advances, made by his father to the widow, as were made for purposes for which according to 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 the cause was again remitted to the Court of Sadr Adalat for enquiry whether, having regard to the declarations aforesaid, the right of the Crown was absolutely defeated by the *rāzināmā*, 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; liberty being given to the parties to adduce further evidence.

The form of the issues having been agreed upon by Counsel, the case was remanded by the High Court (which had taken the place of the Court of Sadr Adálat) to the Civil Judge of Guntoor.

The case made by the defendant in the new enquiry was, that the Zamindár died in 1810 leaving a large amount of debt; that the estate being attached by the Collector on the part of Government pending a determination as to the right of the widow to succeed, she was compelled to borrow to defray certain necessary charges connected with the performance of his funeral ceremonies, and that, finding that the aggregate debts of herself, so incurred, and of her husband, amounted to a large sum, she entered into an agreement with Kávali Sitaiya (half brother of defendant's father), the principal creditor, mortgaging the estate to him and placing it under his management; that defendant's father subsequently became transferee of the debt to Sitaiya and made, both before and after the transfer, advances to enable the widow to discharge arrears of peshkash; that similar advances continued to be made at various intervals up to the year 1838, when the widow mortgaged the estate to defendant's father, and that under the terms of the deed defendant's father in the same year sued the widow for recovery of the amount; that, to stay execution of the decree given in favour of defendant's father (the therein plaintiff), the rázinámá was entered into by the widow with defendant (his father having meantime died), whereby the Zamindary, in default of the observance by the widow of certain stipulations, was to become absolutely forfeited to defendant's father; and that the estate did become so forfeited in the same year, but that, in consequence of the opposition of the Collector, the execution of the rázinámá was suspended from 1841 to 1849, when the Sadr Court on appeal from the orders of the Civil Judge ordered that execution should proceed, and possession was then given to defendant with mesne profits for the years during which he had been kept out of possession.

The Civil Judge of Guntoor found for the defendant. He found that the alienation by the widow was for legal purposes sanctioned by the Hindu law in such circumstances, it having been made to discharge debts which were originally in part incurred by the husband and subsequently to his death necessarily incurred by the widow in borrowing money to be applied to funeral ceremonies and to the discharge of the peshkash due to Government upon the Zamindary—purposes for which the widow would be entitled to alienate the estate without the consent of the next heirs of her husband, if such there had been; that the aggregate amount of such advances was, as stated in the mortgage deed (exhibit XXI), rupees 48,614-13-6, an amount which, at the date of the rázinámá in 1841, had accumulated with interest to

rupees 67,444-12-0 ; and that Varigunda Ramanappa, the Zamindar, died possessed of no property, other than the Zamindary, which, at his death, was not unencumbered.

Objections were taken before us upon all the questions of fact determined in this finding, but it was admitted that, if it was necessary for the widow to borrow the amounts advanced, then the purposes for which the advances are said to have been required and to which they are said to have been applied, were such as would justify the widow in alienating without the consent of the Crown. The case embraces transactions ranging from 1795 to 1838 and it will be necessary to go into some detail in considering the evidence upon which our decision is based.

Before entering into a consideration of the evidence to the other issues, we may as well say that we think there is no ground for questioning the decision of the Civil Judge upon the last issue. There is no evidence to show that the Zamindar left any estate, other than the Zamindari, out of which the debts left by him and the debts subsequently incurred by the widow could have been discharged, but from the evidence for defendant there is reason for believing that the Zamindar died very much in debt and leaving no assets to meet his liabilities.

We will now first consider what is established by the evidence for defendant relating to the transactions embraced between 1795 and 1813, then pass on to the evidence as to the period between 1813 and 1822, and conclude with the examination of the evidence to what occurred from the last named year to the date in 1838 at which exhibit XXI was executed.

Exhibit XIV is a bond purporting to have been executed by the widow on 20th December 1810 in favor of Kávali Sitaiya, half-brother of defendant's father, acknowledging her liability to him in the amount of rupees 23,696 and mortgaging 13 out of the 14 villages of the estate to him. Kávali Sitaiya was to manage the estate and any surplus after payment of the Government demand was to be credited in discharge of the debt. It recites that the amount for which the mortgage is effected was found due on adjustment of accounts of pecuniary transactions of the late Zamindar, and (subsequently to his death) of the widow, with Kávali Sitaiya from 16th May 1795 to the date of the bond. The liability incurred up to the date of the late Zamindar's death is recited to be 5,045 pagodas or, according to the value of a pagoda in that part of the country, Rupees 20,180. The liability since incurred was 879 pagodas or Rupees 3,516.

The early liability shown by this document would seem to be the only means of adequately accounting for the difficulties in which the widow is said to have been subsequently involved and for which it became necessary for her to borrow money of defendant's father. It is therefore the very foundation of defendant's case, and it is of the utmost importance to defendant that it should appear from the evidence that it is genuine and that the facts it recites are true. If it be not genuine, no justifiable cause existed, as far as the record shows, for incurring later debts, and if the liability acknowledged by it did not mainly consist of the debts of the deceased Zamindar, there is nothing to show (even though the document be admitted to be genuine) that this charge on the estate, out of which all the subsequent charges grew, was such as could have been validly created by the widow without the consent of her husband's heirs, if such there had been, or consequently that it was valid as against the plaintiff.

There can, we think, be no reasonable doubt of the genuineness of the document. It was discovered by 1st and 2nd witnesses on a search among the papers of defendant's father. It is engrossed on an old stamp paper and bears an endorsement, purporting to be the signature of one of the English Revenue Officers of the time. It has every appearance of genuineness and the 4th and 7th witnesses swear to the signature of the widow therein.

Then as to the truth of the facts recited in it, we have no evidence on the record directly showing that the Zamindar, who died in 1810, was then indebted to Sitaiya in the amount set forth in this document, but there is, it seems to us, ample evidence of an indirect character, which will now be considered, for concluding that exhibit XIV was a *bond fide* document.

Exhibit XIII is a document purporting to have been executed in 1804 by the Zamindar in favour of Chengala Vala Gurrázu and two others, mortgaging part of the estate as security for Rupees 4,400 due to them, and it is endorsed to have been paid off by Kávali Sitaiya (half-brother of defendant's father) on 24th September 1808, showing that the debt still subsisted at that date.

There is really no ground for doubting the genuineness of this document. It was objected that it did not come from the proper custody, because it had come into possession of Sitaiya, who took the place of Chengala Vala Gurrázu and the two others as creditors, and had been transferred by him to defendant's father at a subsequent date, but ought, under the terms of exhibit XXI executed in 1838, to have been returned by defendant's father to the widow with all the other documents connected with former transactions. But exhibit XXI does not particularize the documents returned and in all probability only refers to such documents as were executed between 14th May 1810 and the date of exhibit XXI, as the adjustment made by exhibit XXI was made with reference to transactions which had taken place between those dates, and the widow only acknowledges the receipt "of all other former bonds, letters, accounts, &c. connected with the above transactions." Exhibit XIII would therefore not necessarily be among the documents so returned and it was found among the papers of defendant's father, where it might properly be expected to be.

Nothing can perhaps be legitimately inferred from exhibits I and II, because, although the demand amounting to rupees 9,070-12-0 in the suit in which those documents are the plaintiff and the decree respectively was thrown out on the point of jurisdiction, *non constat* but that the Zamindar may have defended the suit on some other grounds besides that of jurisdiction, and in place of admitting, as it is assumed that he did, may have repudiated the debt.

Exhibit XIII, however, as already noticed, shows that in 1808, *i. e.* very shortly before his death, the estate of the Zamindar was at least encumbered with a mortgage debt of rupees 4,400, and the fact that it was not returned and destroyed indicates that the debt still subsisted at the date of his death.

Then there is the letter of Colonel Mackenzie (exhibit III) to Mr. Travers, written from Madras on the 1st February 1811, shortly after the Zamindar's death. It refers to the Zamindary (which, though herein spoken of as Zamoloovay, is admitted to be the Zamindary now in dispute) having been adjudged to Lakshmi Dēvamma, the widow, "the legal claimant," and goes on to say "but as money is wanted for arrears they are likely to be thrown out for want of it. My Interpreter can obtain the money here. He is the nearest relation of the widow; but I am unwilling to allow him to engage in it without some security can be obtained on the estate. I have wrote to Mr. Hawkins on the subject for his good offices, and I beg you will mention it to him and let me know the result of your combined opinions. Is it safe to venture or not? I am willing to lend my aid to secure the estate to them, but I wish to know if it be prudent. You know I can have no interest in it but to assist poor Lakshmaia." Colonel Mackenzie, now deceased, was Surveyor General of India, and Mr. Travers was Collector of the Masulipatam District, within which the Zamindary lay. The Interpreter alluded to, afterwards spoken of as poor Lakshmaia, is the father of the defendant and a near relative of the widow; he was the sole Interpreter of Colonel Mackenzie, as admitted by Mr. Dale, Counsel for plaintiff. Mr. Dale also said that he believed the signature to the letter to be the signature of Colonel Mackenzie and the evidence of 10th witness, who was a writer in his office, leaves little doubt on the point. The body of the letter is not in Colonel Mackenzie's handwriting and the word 'Copy' in faint ink at the top of the first page, viewed in connection with the signature of Colonel Mackenzie himself, indicates that it was a duplicate of the original letter. It was found among the papers of defendant's father, to whom it was very possibly given at his own request in the idea, as suggested by defendant's Counsel, that it would be some security to him. No objection was taken to this document in the Court below on the ground that it was not a declaration which could be used as evidence, nor does the Counsel for plaintiff appear to insist that it ought not to be read. It is here on the record and, whatever may be its weight, we think that defendant is enti-

led to have it read. The effect of it is certainly to shew that Colonel Mackenzie, just 43 days after the execution of exhibit XIV, proposed to assist Lakshmaia to procure money to lend on the security of the estate, if such security could be had.

On 11th March 1811 (scarcely a month and a half after the date of this letter) there was an order issued by the Collector of Masulipatam (exhibit XVII), threatening an attachment of the estate for arrears of peshkash to the amount of 5,600 rupees and meantime appointing an Ameen. The threatened attachment was however never made and the money must have been somehow procured, and there is nothing therefore improbable in the account of defendant's 4th witness, to the effect that the amount was advanced by Lakshmaia. He says that a misunderstanding arose between the widow and Sitaiya two or three months after the execution of exhibit XIV, and Sitaiya would then seem to have resigned the management of the estate and returned to Ellore. He further says that Lakshmaia then advanced 1,500 pagodas (6,000 rupees) to Sitaiya in part discharge of the debt acknowledged by exhibit XIV and 1,500 pagodas to the widow for payment of the arrears of kist that the mortgage was finally paid off by Lakshmaia, one of the amounts paid by him in discharge of it; having been stated by him to have been borrowed of Colonel Mackenzie, and in confirmation of this we have exhibit XVI of the year 1813, whereby Sitaiya acknowledges the discharge of exhibit XIV and makes over exhibit XIV to defendant's father with exhibit XV, which is a receipt given to Sitaiya by the Collector for certain peshkash paid by him on the 15th January 1811, a few days after he had under exhibit XIV taken the management of the estate upon himself. The genuineness of exhibit XVI, about which there can be no reasonable doubt, seems not to be disputed.

If, as suggested by plaintiff's Counsel, exhibit XV merely shows a payment made by the widow through Sitaiya and not a payment made by Sitaiya from his own funds on account of the widow, the receipt would have been delivered to and preserved by the widow herself, and there could be no reason for Sitaiya's retention of the document up to 1813 and then making it over to defendant's father. The retention of it seems clearly to shew that he himself advanced the amount and kept the exhibit as his own voucher.

Looking therefore to the evidence afforded by exhibit XIII of one debt at least with which the estate was encumbered shortly before the death of the Zamindar; by exhibit III of the embarrassed position of the widow immediately after his death; by exhibit XV of the fact that, immediately after the date at which exhibit XIV purports to have been executed and Sitaiya by its terms constituted mortgagee and manager of 13 villages, we find him making a payment of the peshkash and obtaining a receipt in accordance with the position which, if exhibit XIV were a *bond fide* document, he ought to have assumed; by exhibit XVII of the impending attachment two months later on account of arrears of peshkash: looking to the evidence of defendant's 4th witness to the effect that payment was then made by defendant's father of the arrears of peshkash due; to the significant fact which is admitted, in corroboration of that evidence, that the attachment was not carried out: looking also to the extreme improbability of the supposition that a plan for defrauding the Crown of its eventual right to the estate by escheat should have been set on foot so early as 1810, just after the Zamindar's death, we cannot come to any other conclusion than that the widow was left, at the death of the Zamindar, in a very embarrassed position and that exhibit XIV was executed *bond fide* in discharge of the debts, which it recites, left by the Zamindar at the date of his death and since necessarily incurred by the widow Lakshmi Dēvamma respectively

Taking the debt then with which the estate was *bond fide* charged in 1810 at the amount stated in exhibit XIV, exhibit XVI before referred to and the evidence of 4th, 5th and 7th witnesses for defendant, shew that that debt was gradually transferred to defendant's father, who from time to time paid off portions of it up to the 28th May 1813 or just the close of the fasly year 1222, when Sitaiya, in acknowledgment of the full discharge of the mortgage debts, made over to him exhibits XIV and XV.

During that fasly—as shown by the account KK. prepared by the plaintiff from the accounts in the Collector's possession and which, for the purposes of the argument, was taken by both sides to show though not with absolute yet with approximate accuracy, the collections for 27 of the 44 years embrace between fasly 1219 (1809-10) and fasly 1263 (1853-4)—the collections were extremely low; the were even below the full amount of peshkash. The debt of 23,696 rupees had been increased by the 6000 rupees lent by defendant's father in 1811, so that, exclusive of interest which may have been paid out of the collections, it very nearly amounted to 30,000 rupees.

We now approach a period from which the learned Counsel for the defendant has recourse more to probabilities than to actual evidence. He shows what were the ordinary expenses of the widow and what was the outturn of the estate yearly for a series of years, and by a calculation, to which we will presently refer, arrives at an estimate of the amount of the debt in 1822 which corresponds very closely with the amount in which the widow, in a letter to the Collector in that year, acknowledged herself to be indebted.

We can see no reason to doubt the evidence of defendant's 7th witness as to the ordinary expense of Lakshmi Dévamma. He was employed under her for some years and gives the details both of her revenue and of her domestic establishments. His statement was not in the least shaken in cross-examination. The effect of it is that the revenue establishment and incidental expenses came annually to 2,321 rupees and the private establishment and expenses to 2,716 rupees—total 5,036 annually, which with the peshkash would amount to 9,922 rupees. It is clear that her expenditure in these items was not as economical as it might have been.

This appears to be the proper place to examine the position maintained by plaintiff; that, although charges may be validly created by a widow without the consent of the next heirs of her husband in payment of debts incurred for sums necessarily borrowed in discharge of the Government demand, yet in the present case there was no necessity for so borrowing, and the charges so created could not therefore be valid. The widow's income from the estate, it is said, was ample, and, although in some bad years the outturn was bad, yet on the whole, with the exercise of common economy, it was quite possible for her to discharge the Government demand without borrowing at all. If the extravagance, which created the necessity for borrowing, implied a design on the part of the widow so to impoverish herself as to render it necessary for her to borrow to pay the Government demand and thus enable her to give a *bond fide* air to liabilities which were founded on pecuniary embarrassment of an unreal and fraudulent character, then the charges created for the payment of debts so incurred, to relieve embarrassment having its origin in fraud, would, we have little doubt, be invalid also. But that is not the case here. We have nothing from which we can fairly infer that the widow, though she may not have exercised that strict economy which morally speaking perhaps she ought to have exercised, was wilfully extravagant with any such fraudulent design as that above indicated. And when charges, created by a widow on real estate without the consent of her husband's next heirs, are otherwise valid, we have no authority for saying that they will be invalid by reason of the debts, in discharge of which those charges were created, having been incurred or kept alive through mere want of economy.

As already observed, the learned Counsel for defendant, Mr. Busteed, made a calculation based on the evidence as to the amount of peshkash yearly payable, the ordinary expenses of the widow, the interest payable on the debt and the outturn of the faslies as shown by the account K K. His mode of calculation leaves a balance of debt of between 21,000 and 22,000 rupees at the close of fasly 1229, and the interest simply kept down but the debt maintained up to the close of fasly 1231 or June 1822.

It was just a month prior to this that the petition, of which exhibit XVIII is an authenticated copy, was sent to the Collector, in which the widow states that she is indebted to the amount of 20,000 rupees to certain persons for amounts borrowed to pay peshkash. Viewing this letter in connection

with the calculation just noticed, we think that there is good ground for believing that at the date of the letter the widow was still indebted 20,000 rupees to Lakshmaiya.

Then as to the period between 1822 and 1838. The evidence of defendant's 4th witness is to the effect that during that period 11,200 rupees were advanced by defendant's father as follows:—

- In the year Swabhānu, 1823, 4,000 Rupees for peshkash;
- do. Vyaya, 1826, 2,000 Rupees for a pilgrimage;
- do. Sarvadāri, 1828, 1,200 Rupees for peshkash;
- do. Nandana, 1832, 4,000 Rupees for peshkash.

In regard to the loan in the year Sarvadāri, he is certainly borne out in the main by the facts as shown by exhibit XXV, (order of the Collector, threatening attachment on account of arrears to the amount of rupees 1,033-3-3 and announcing that he has sent an Ameen) and exhibit XIX (letter of widow to defendant's father, supplicating aid) and by the admission of the plaintiff's Counsel that the amount was paid. We cannot say that we think 4th witness' statements are to be depended on, independently of corroboration. It is highly improbable that he would recollect the particular years and the exact sums involved in these transactions, and his evidence is not corroborated except as to the loan in Sarvadāri.

Now from the close of fasly 1231 (1822) to fasly 1248 (1838-9), in which the mortgage deed exhibit XXI was executed, there are only 3 years' accounts forthcoming, viz. 1234 (1824-5), 1240 (1830-1) and 1244 (1834-5). From the absence of accounts the Counsel for defendant assumed, we think erroneously, that these must have been bad years. The presumption, we consider, would be just as much in favor of average years as of bad ones, since the absence of these accounts is not accounted for. Taking the average of the 4 years exhibited in KK (fasly 1259 to fasly 1262 inclusive) during which the estate was in the management of plaintiff, we find the gross collections did not average more than 9,000 rupees a year or about 4,100 rupees over the peshkash. The eight years, fasly 1251 to fasly 1258, exhibit an average of only 8,000 rupees and the results of the 3 faslies 1234, 1240 and 1244 shew an average of just about that same amount. We do not think, therefore, that it would be fair to infer that between fasly 1232 and fasly 1248 the gross receipts averaged more, while the probability is that for some years immediately following fasly 1242 (1832-3), the year of famine when the population died by thousands of starvation, they were so very much lower as to reduce the average of yearly outturn between 1232 (1822-3) and 1248 (1838-9) considerably below that amount.

Taking it however at 8500 and looking at all that is proved to have gone before, it is certainly not improbable, as urged by the Counsel for defendant, that between 1822 and 1838 the widow would be occasionally driven to borrow to pay the peshkash. But when we have conceded this, we have conceded all that can fairly be said to be inferrible from the evidence in support of the contention that exhibit XXI was executed on account of a subsisting debt of the nature which it recites.

From the year 1822 to the year 1838 we have literally no reliable evidence of any transactions having taken place between defendant's father and Lakshmi Dévamma, with exception of a loan of rupees 1033-3-3, which in 1823 may have been paid and probably was paid by defendant's father, on account of arrears of Peshkash due on the estate. Exhibit XXV shows the amount of arrear and it is admitted that the attachment of the estate for the arrear, though threatened, was not put in force, the amount having been paid; and exhibit XIX shows that just at this time Lakshmi Dévamma had implored defendant's father to aid her.

Now exhibit XIX, coming in as it does as part of the *res gestæ*, seems further to be conclusive to show that there had been no loans since 1817, as in it Lakshmi Dévamma specifically refers to a loan which defendant's father had made in 1817 when Lakshmi Dévamma was in a similarly embarrassed position as

at the date of this letter. It however certainly speaks of a still subsisting debt and conveys on the part of the writer solemn promises of payment. As the letter refers specifically to certain loans previously made, as precedents for her present request, and is evidently a carefully worded composition, it is impossible to believe that if the more recent loans said by 4th witness to have been made in 1823 (Swabhānu) and 1826 (Vyaya) had been actually made, all reference to them would have been omitted by the widow in this letter.

In the absence of the accounts of defendant's father and in view of what this exhibit XIX seems to indicate, any inference which might be based on the probable outturn of the estate in a series of years would be utterly inconclusive. We must presume that in large transactions extending over many years, such as that of which exhibit XXI is evidence, the lender would have kept an account of some kind of the particulars of the several loans. It is possible of course that the vouchers themselves were the only evidence which defendant's father thought it necessary to keep, but, if so, he would hardly have been persuaded to return them at the date of the execution of exhibit XXI. A prudent man in the ordinary course of things would undoubtedly have kept an account, and we cannot presume imprudence on the part of defendant's father in defendant's favour. No such account has been produced and (what is very significant) there is no denial of there having been such an account. In the absence of accounts and of other evidence we cannot feel satisfied that any part of the debt subsisting in 1822 was still subsisting in 1838.

If the plaintiff were the debtor, it would of course be different. Then it would lie upon him to show discharge and in the absence of evidence of discharge the debt would be presumed still to subsist. But this is not the position of the present parties. There is no privity in the matter of these debts between plaintiff and defendant. Defendant claims to defeat the legal right of the plaintiff to take the estate by escheat by showing certain transactions between his father and the last owner, whereby the estate was lawfully charged to the exclusion of plaintiff's right to take by escheat. To show this, he proves the execution of a *rāzināmā* arising out of a decree in a suit upon a mortgage bond exhibit XXI. By the very nature of the present suit the *bona fides* of this latter document is challenged and defendant has to show that the debt, which it sets out, had a real and substantial foundation in previous debts, extending over a series of years and still undischarged at the date of it. It is true that exhibit XIX refers to a debt which, not having been discharged, has greatly accrued, but the expressions are too vague to warrant the building any conclusions upon them as to the identity of the debt referred to with that existing in 1822. Thus there is absolutely nothing to show the existence in 1838, at the date of exhibit XXI, of the debt which that document purports to acknowledge.

Then there is the evidence of plaintiff, showing that in 1840 defendant had no property and was quite unable to discharge the amount of a decree in the Court of Chingleput and could not therefore have made the advances. We do not attach much importance to this, because it is quite possible that the sums, upon which the debt professes to be founded, were lent up to 1828 and that defendant's father and defendant may, between that date and 1840, have become much reduced in circumstances.

But taking the absence of all evidence between 1822 and 1835 (with exception of the sum lent in 1828) into consideration, in connection with the refusal of Government in 1831 to countenance a transfer of the estate to defendant's father and the powerful motive which the widow consequently had to secure the estate to her family by all available means, seeing that it would otherwise inevitably lapse to Government; and looking at the absence of that evidence, which ought to be forthcoming, of the subsistence of the pre-existing debt, there seems very solid ground for thinking that the exhibit XXI, the mortgage deed, had no real foundation but was executed with the mere object of defeating plaintiff's right.

We would not be understood as saying that we feel entirely satisfied that it was so. Defendant may be simply very unfortunate in his inability (resulting from the imprudence of his father) to bring forward evidence which might have led us to a conclusion in his favour. But being unable to feel satisfied from the evidence that exhibit XXI, the mortgage deed which gave rise to the decree and the *rāzināmā*, was executed for a debt for which the widow might lawfully have created a charge upon the estate without the consent of the next heirs of her husband, if such there had been, or of any other then subsisting debt, our judgment must necessarily be for the plaintiff.

Our decree will be to reverse the finding of the Civil Judge, and in regard to the points which the order of Her Majesty the Queen in Council requires us to determine, to declare that the right of the Crown to take by escheat was not defeated by the *Rāzināmā*; that from the death of the Zamindar in 1810 up to the year 1813, advances were made to the widow by defendant's father 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 that on the 18th May 1822 the balance due by the widow upon these advances with interest was about 20,000 Rupees; that in the year 1828 a further advance was made, for similar purposes, of Rupees 1,033-3-3 and that, at the times at which the advances beforementioned were respectively made, the widow had not other estates of her husband sufficient, to answer the purpose for which the advances were taken and to which they were applied; that defendant has not shown what, at the date of the advances last mentioned was the debt upon the former advances or whether any such former debt still subsisted; that no advances were made from this date to the date of the mortgage deed (exhibit XXI) in 1838; that defendant was bound to show, and has not shown, that the widow was in debt to the defendant's father at the date of the execution of exhibit XXI, the mortgage deed, for advances made for the purposes aforesaid, and that plaintiff, on the part of Government, is therefore entitled to take the estate by escheat, unencumbered with charges created in favour of defendant's father and defendant, and that the parties do bear their respective costs.

(A true Copy.)

W. J. Registrar,
Appellate side.

Recd. Secy to Govt. 11/18
12/1/1866
12/1/1866

No. 1,207.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 20th February 1866.

Read the following letter from C. DALL, Esq., Government Pleader, to the Secretary to the Board of Revenue, dated Madras, 16th February 1866, No. 24:—

1. With reference to the letter I had the honor of addressing to you under the date and number noted in the margin, I do myself the honor of enclosing, for the information of the Board, five printed copies of the Decree passed 2nd November 1865, No. 154.

by the High Court in Regular Appeal Suits Nos. 103 and 136 of 1857.

2. It will be observed the Decree is dated the 22nd January last; I applied on that day for a copy, but it has not reached me till this day; I have been informed the delay has been on the part of the Press at which the printing for the High Court is executed.

ENCLOSURES Nos. 1 to 5.—Printed copies of Decree.

Ordered that the foregoing letter be communicated to the Collector of the Kistna District, and that copy of the Decree be submitted for the information of Government.

(A true Copy and Extract.)

[Signature]
Secretary.

To the Secretary to Government, Revenue Department,
with copy of Decree.

.. the Acting Collector of the Kistna District.
with copy of Decree,

Copy to the Government Pleader,

Exd. J. Wright.

8.26.2 1865 No 33 - 31

Refused to sign
February 15/1866
Mun.

Recd 1866 Department
Secy of Govt for all India

No. 586.
PROCEEDINGS OF THE BOARD OF REVENUE,
No. 82 of Board of Revenue of 1866
6.13.1866

Dated 20th February 1866.
20/2/66
22/2/66
23/2/66
C.1.

No. 1,307.

Submitting to Government copy of Decree
passed in R. A. Suits Nos 103 and 136 of 1867,
regarding Vissunnapetiah Zemindary, and com-
municating to Collector of Krishna district letter
from Government Pleader forwarding copies of
Decree.

With Corder
No 5928 heretofore

23/2/66

Under charge
of the collector
of the district
and who
will be
responsible
for the
same.

The Govt avail information
from the Collector's office as to
the further proceedings which
should be taken in the matter.

To stand
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6.3.66

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