M.R.O. 1—39,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue **DEPARTMENT.**

G.O. No. 1701 Press ~~Mis.~~

345-346

Dated 14 th June 1869

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department,
14th June 1869.

No. 345. Read the following Proceedings of the Board of Revenue, dated 18th May 1869, No. 3,394:—

Read the following letter from the Acting Collector of South Canara, to the Acting Secretary to the Board of Revenue, dated Karakal, 16th March 1869, No. 299.

With reference to the Board's Proceedings, dated the 27th August 1866, No. 6,126, I have the honor to forward, for their information, copy of the Decree and Judgment passed by the Mangalore Principal Sudder Ameen, in Appeal Suits Nos. 432 and 437 of 1867, in favor of the Collector.

Enclosure No. 1.

Judgment of the Court of the Principal Sudder Ameen of Mangalore,

Present—Srinivasa Row.

Appeal Suit No. 432 *of* 1867.

H. S. Thomas, Esq., Acting Collector of South Canara... } 31*st Defendant.* — *Appellant.*

By Government Vakeel Subba Row.

Respondents.

Narsaya Prabhu.....*Plaintiff.* — By Vakeels Devappaiya and Mangalore Ramachendraya.

Appeal Suit No. 437 *of* 1867.

Appellant.

Narsaya Prabhu.....*Plaintiff.* — By Vakeels Devappaiya and Ramachendraya.

H. S. Thomas, Esq., Acting Collector of South Canara, and 32 others ..... { Defendants 31, 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 24, 25, 26, 28, 29, 32, 33, 34, 35, 36, 37, 38, 39, and 40. } Respondents 3, 24, 25, and 26 deceased.

1*st Respondent.*

By Government Vakeel Subba Row.

The plaintiff had brought this suit to recover several grounds forming part of a certain land purchased by his ancestor, Krishna Prabhu, and capable of producing Rupees 17 annually, which were given on durkhast by the Collector to the defendants 2 to 26 and the 29th, as also from defendants 2 to 10 and 14th, 26th, and 29th the sum of Rupees 115-8-0, being the rent collected by Government for eleven years on buildings erected thereon by them, as well as from the 1st defendant, the present Collector, Rupees 17-4-0, being the value of trees sold by public auction to the defendants 27th, 28th, etc.

2. In his statement the 1st defendant states, that the plaintiff having failed to sue his predecessor, who, while in office, passed the order regarding the land in dispute, the suit subsequently brought by the plaintiff against him, his successor in office, is irregular; and that, therefore, the suit as against him should be dismissed.

3. The 2nd, 6th, 7th, 8th, 12th, 13th, and 16th defendants have put in statements to the effect, that the suit brought by the plaintiff is opposed to the Orders of Government, and to the decision of the Sudder Court.

4. The 20th defendant has put in a statement to the effect, that he obtained a portion of the land on durkhast for his brother, and that as the land is in his enjoyment he ought to defend the suit, and that, therefore, he (20th defendant) should be excluded from it.

5. The 23rd defendant has put in a statement to the effect, that the plaintiff's suit is opposed to a decree of the Sudder Court passed in a certain Special Appeal Suit.

6. The 31st defendant has put in a statement to the effect, that the land in dispute is not attached to the land mentioned by the plaintiff, but is the property of Government. The remaining defendants allowed the suit to go *ex-parte*.

7. In his decree the District Moonsiff of Buntwal directs, that as the land in dispute, which is required as kumaki for the plaintiff's land, appears to have been given on durkhast, a separate ground be given instead by the Collector to plaintiff, and disallows to the plaintiff the land in dispute, rent, etc.

8. From this decision the 31st defendant has preferred an Appeal No. 432, for the portion decreed, and the plaintiff, one No. 437, for the land in dispute, rent, etc., on the following grounds :—

Grounds of Appeal Suit No. 432.

I.—The point at issue was, whether the land in dispute forms part of the plaintiff's muli wurg or not. The Moonsiff has admitted that it does not. The plaintiff's suit ought, therefore, to have been dismissed, and be saddled with the Collector's costs.

II.—The Moonsiff exceeded his authority in decreeing that the Collector should give the plaintiff out of other land a portion equal to that in dispute.

Grounds of Appeal Suit No. 437.

I.—It has been fully proved by the evidence of the witnesses examined on behalf of the plaintiff, and by the exhibits filed by both parties, that the land in dispute has been in the enjoyment of the plaintiff and of his ancestors since the Company's accession.

II.—The Moonsiff was wrong in deciding that the Collector could give to others the land improved and enjoyed by the plaintiff, and grant another in lieu of it.

III.—If the plaintiff is deprived of the land in dispute, the cultivation of his paddy-fields cannot be carried on, and he will be subjected to loss.

9. The Principal Sudder Ameen has perused all the records of these suits and heard the discussions of the Vakeels of both parties.

10. The plaintiff founds his claim on an allegation, that the grounds which have given rise to the suit are attached to the wurg of his ancestor. The Collector, one of the defendants, repudiates the plaintiff's allegation, and pleads the Government right over those lands which were not assessed on account of their being waste hill grounds. The principal point to be determined, therefore, is whether the lands in dispute really belong to the plaintiff's wurg or not.

11. From the Exhibits C. and D. it appears that the lands in dispute are included within the boundaries specified in the deed of sale obtained by the plaintiff's ancestor, and that the other defendants held on rent and enjoyed some pieces of land under the plaintiff's ancestor, erecting shops, etc., thereon, whereas the sketch clearly shows that all the grounds in dispute are in fact uncultivated waste land and portions of hills, and not cultivated paddy-fields and garden. Though they are included within the boundaries specified in the deed of sale executed in favor of the plaintiff's ancestor, yet the said deed was not executed with the knowledge of the Sircar, and the right of the plaintiff's ancestors to these lands does not appear to have been ever admitted by the Government ; therefore neither the documents which took place between the plaintiff's ancestor and other persons, nor plaintiff's enjoyment prior to their coming to the notice of Government, can be of any avail to plaintiff. The mere enjoyment of a piece of ground by a person without any right thereto, does not create to him a right. It appears, that after the question of this land came before the Revenue authorities in Fusly 1259, they immediately rejected plaintiff's ancestor's claim over the lands, and asserted the rights of Government thereto. Moreover, not only has a Travellers' bungalow been erected on the said land, but it also appears, that Gustin Vas had obtained, long ago, some portion on durkhast, and thereby the rights of Government over the land appear to have been enforced.

12. Plaintiff's assertion, that the grounds in dispute have also been assessed, is not worthy of admission. These grounds being portion of waste plain and hill land, there is no reason for their having been assessed in former times. From the Chitta, Exhibit B., produced on behalf of plaintiff, as well as from the Chitta of the year Durmuti 1807,, Exhibit 1, on behalf of the defendants, it only appears that assessment has been fixed on bettu land sowing ten and a half muras seed, on thirty-five cocoanut trees situated on the margin of the land, and on some sundry other trees; but it cannot be supposed that the said plain land had been included therein. Even at present the plaintiff has more land than the above. It has been distinctly ruled that although in the sale deeds, etc., executed in former times it was the practice to specify such boundaries as a water-shed, yet the right to all unassessed hill and waste land vests in the Government and not in the ryot. Hence no right can accrue to plaintiff over the grounds in dispute.

13. The Government was not a party to the Suit No. 17 of 1850, alluded to by the plaintiff. Of the two defendants in that suit, one had admitted the claim, while the other had allowed the suit to go *ex-parte* ; but in the decree it has been observed in one place, that the said admission, as well as the plaintiff's suit, were fraudulent. But the decree was, however, passed in favor of the plaintiff, chiefly on the ground that the land was included within the boundaries specified in the plaintiff's deed. This decree cannot affect the rights of Government who was not a party thereto, and the plaintiff's statement that Idine, son of Fakir Beari, had been refused the land when he preferred a durkhast for the same, on the ground that it belonged to plaintiff, is not true. It appears from the order, Exhibit 4, that the land was refused to him on durkhast, because it was used for encampment of troops and of traders coming down from above the ghauts. It appears, moreover, from Exhibits 7 and 8, that compensation had been paid and a reduction of assessment made on that portion of the land taken up for the public road, which formed part of the paddy-fields belonging to the cultivated land of plaintiff; but that no compensation whatever was paid, nor any reduction of beriz made on account of waste land, as stated by plaintiff, is quite evident from the fact of the portion of the said waste land having been excluded.

14.- The further point to be noticed is in regard to the Moonsiff's opinion, that the grounds in dispute are within 100 yards from plaintiff's land, and form its kumaki.

15. It does not appear to the Principal Sudder Ameen necessary to consider anything about this point in the present suit, because the plaintiff has brought his action on a different ground, claiming the lands as being included within his estate. If he thinks that they are the kumaki to his land, and that he has a right to them, he ought to bring a separate action. The Moonsiff's direction in his decree, after a lengthy consideration of this point, that the Collector should provide other land in lieu of these grounds, was beyond the points at issue before him, and the Principal Sudder Ameen cannot, therefore, coincide with this opinion of the Moonsiff. It appears also that plaintiff's mother had not consented like others to take these lands on durkhast, and that plaintiff applied for them only after they had been given to others on durkhast.

16. For these reasons the Principal Sudder Ameen dismisses the plaintiff's Appeal, No. 437, with costs ; and in regard to the 31st defendant's Appeal, No. 432, modifies that part of the decree which adjudges to the plaintiff a separate land in lieu of the plaint grounds, and orders that the plaintiff do pay the costs incurred by the 31st defendant in both Courts.

(Signed) SRINIVASA ROW,
Principal Sudder Ameen.

16th November 1868.

(True Translation.)

(Signed) H. S. THOMAS,
Acting Collector.

ENCLOSURE No. 2.—Translation of Decree.

Board's Procs., 17th June 1864, No. 3,725.
" 27th August 1866, No. 6,126.
" 17th February 1868, No. 1,138.

SUBMITTED for the information of Government, together with copies of the Board's Proceedings noted in the margin.

2. These Appeal Suits arose out of a suit (No. 92 of 1861) instituted in the Buntwal District Moonsiff's Court, by one Narasaya Prabhu for the recovery of

certain lands which had been given on durkhast by the predecessors of the Collector (who was made a defendant) to certain parties, who were also included as defendants.

3. The Collector's chief defence was, that the orders regarding the lands were the acts of his predecessors, and that he was not liable to be sued for them, and the result was the dismissal of the suit.

4. Plaintiff appealed* to the Principal Sudder Ameen of Mangalore, and the result of this appeal was that the case was remanded to the Moonsiff's Court for trial *de novo*.

* Appeal Suit No. 310 of 1864.

5. The Collector's answer on the re-hearing of the suit stated that the plaintiff had no legal claim to the land.

6. The Moonsiff decreed that the ground in dispute should have been given to the plaintiff, but that as those to whom it had been given had been at great expense in erecting ware-houses, etc., on it, the Collector should make over other ground to the plaintiff in lieu of it, and that each party should bear his own costs.

7. Both parties appealed against this decision—the Collector in Appeal Suit No. 432, and plaintiff in No. 437 of 1867.

8. The plaintiff's appeal is dismissed with costs, and that part of the decree of the Moonsiff which adjudges to the plaintiff separate lands in lieu of the plaint lands is modified, and the plaintiff is adjudged to pay the costs incurred by the Collector in both Courts.

No. 346. ORDER THEREON, 14th June 1869, No. 1,701.

Miscellaneous.

ORDERED to be recorded.

(True Extract.)

(Signed) H. WELLESLEY,
Acting Under-Secretary to Government.

To the Board of Revenue.

Exd. E. C. Shunker.

Govt. of Madras Collection.

REVENUE.

To

THE BOARD OF REVENUE.

Dated June, 11*th*.

Recd. *Encl.*

G. O., 14*th June* 1864, No. 1,703.

JUNE

Nos. 345-346.

Suits No. 432 *and* 437 *of* 1867, *against the Collector of South Canara.*—Board's Proceedings forwarding copy of Decree and Judgment in this case, recorded.

No. 3,725.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 17th June 1864.

Read the following letter from the Acting Collector of South Canara, dated Mangalore, 7th June 1864, No. 89:—

1. I have the honor to forward herewith for the information of the Board of Revenue, translation of a Decree passed by the District Munsiff of Bantwal dismissing Original Suit No. 92 of 1861, instituted by one Narsay Prabhu against the late Collector, Mr. Fraser and others, on the 9th April 1861.

2. I find from a reference to the record of this suit, that its institution was not formally reported to the Board as it should have been; but that its defence has been conducted at the Public expense simply under the authority of Board's Proceedings, dated 2nd September 1861, No. 4,756.

3. These Proceedings however do not convey any special sanction for the defence of the Suit; but the Board therein simply approve of the Collector's proposal to challenge the right of the Plaintiff to institute the suit in a Taluk Munsiff's Court, instead of at Mangalore before taking any steps to defend the same.

4. The costs incurred by the Collector hitherto, and which amount to the trifling sum of Rupees 2-13-9, have been passed by the Audit Office under the above quoted authority; but as the Government Vakil informs me that the Plaintiff has preferred an appeal against the decree of the Munsiff, and further proceedings will be necessary in order to defend the suit in the Appellate Court, I have the honor to request that the Board will be pleased to give their formal sanction for the defence of the Suit at the Public expense until its final decision by the Courts.

5. I beg to enclose herein translation of the Plaint filed by the Plaintiff in the above Suit, together with copy of the answer put in by Mr. Fraser as 1st Defendant, as the Board will probably require them for their information.

ENCLOSURE No. 1.

Original Suit No. 92 of 1861.

Filed on the 9th April 1861.

To the District Munsiff's Court at Bantwal in Zillah of Mangalore.

Memorandum of Plaint under Section 25 of Act VIII.

Narsaya Prabhu, son Kolkere Vaicunta Prabhu, residing at Kaldaka, Village Mogarnad Mogarni, in Bekul Taluk. } Plaintiff.

versus

1st. J. Fraser, Esq., Collector of South Canara, and others.

1. I sue the above Defendants, twenty-nine in all, for recovery of a piece of land, producing Rupees 149-12-0 together with its produce, &c.

2. In succession to my ancestors, I held and enjoyed a land and its appurtenances of Muli, No. 8, paying formerly a Shist of Hs. 3-6-4, and now a Taraw Beriz of Hs. 6-3-3 as per boundaries specified in a deed of sale obtained by my ancestor Krishna Prabhu from Hammad Beari, for Hs. 52 on the 15th Vaishak Shud of Rudrodgari.

3. A part of the above land was allowed to Fakira Beari, who raised a warehouse on it, and carried on merchandize paying the rent charged on the building. In the meantime the Magani Shanbog by fraud got it assessed to house rent. To obtain redress therefrom my mother brought a Suit No. 17 of 1850 on the file of this Court, in which the Court gave a decree directing the release of the ground from attachment, as it was proved that it formed part of the above land.

ENCLOSURE No. 2.

Original Suit No. 92 of 1861.

Before the District Munsiff's Court of Bantwal, in the Zillah of Mangalore.

Present :—A. J. COELHO, Munsiff.

Plaintiff.

Narsaya Prabhu, son of Kolhere Vaicunta Prabhu, residing at Kalladka village, Mogarnad Morgani, in Kassergode Taluk, by Vakils Kristnaiya and Annappa.

versus.

Defendants.

1st. J. Fraser, Esq., Collector of South Canara, and others.

1. The Plaintiff states that Defendants 3 to 29 having applied on Durkhast for a piece of ground attached to the land and its appurtenances included within the boundaries of his Estate, Muli No. 8, bearing a Shist of Hoons 3-6-4, and now paying a Taraw Beriz of Hoons 6-2-3, which was purchased by his ancestor Kristna Prabhu from one Hammad Beari, for Hoons 52, so for back as 15 Vaishah Shud of Rudrodgari, and which has been enjoyed by him in succession to his ancestors, the said ground was unjustly made over to them on Durkhast in spite of the Mahazarnamah, which was given during the inquiry, declaring that the same was included in his (Plaintiff's) warg ; that in consequence of this, he (the Plaintiff) has been deprived of the rent which was derived from it ; that the spring which irrigated his land has also been obstructed ; and that he has thus been subjected to loss in various ways ; that the 1st Defendant is the present Collector ; that the rent of Rupees 10-8-0, which was annually collected on the warehouses and shops standing on the grounds which have been given on Durkhast from Defendants 2, 3, 4, 5, 6, 7, 8, 9, 10, 14, 26, and 29 has not been levied from Fasli 1259, and that the same is credited as "Extra Revenue ;" that the Karaka, or house rent imposed is nevertheless still collected. The Plaintiff, therefore, sues for the recovery of the said ground, yielding an annual produce of Rupees 17 from Defendants 2 to 26 and 29, to whom it has been given on Durkhast, together with Rupees 115-8-0, being the rent payable for eleven years, *i. e.*, from Faslis 1259 to 1270, as also Rupees 17-4-0, being the value of the trees felled from the said ground, and sold in auction to Defendants 27th and 28th and others. The Plaintiff further prays that the rights of the above individuals may be annulled, and that the present occupants of the ground may be made to quit the place, and that he may be allowed further rent at the above rate until he is put in possession of the ground.

2. The 1st Defendant pleads that Plaintiff has failed to bring this Suit during the incumbency of his predecessors, Messrs. Maltby and Fisher, by whom the orders regarding the ground claimed by the Plaintiff were passed, and that he is now barred by the ruling of the Sudder Court, contained in their Decision in Special Appeal Suit No. 204 of 1859, from suing him (1st Defendant) as their successor in office for their acts. The 1st Defendant therefore prays that the Suit may be dismissed as far as it affects him.

3. The 2nd, 6th, 7th, 8th, 12th, 13th, and 16th Defendants in their Statement urge that the Suit brought by Plaintiff is opposed to the rule of Government, dated 17th October 1861, as also to a decision of the Sudder Court for 1860, contained at page 21 of the "Rulings," and that consequently nothing is due from them to the Plaintiff.

4. The 20th Defendant pleads that his elder brother Narnappa, son of Venkappaiya, residing at Narikomba village in Mogarnad Morgani, having desired him to apply on Durkhast for a portion of the unassessed hill land, situated beyond a certain public road, he obtained it from Government on an assessment of four annas ; but that it is enjoyed by his brother, he having laid out nearly 200 Rupees and erected some shops on it ; that as the assessment is

4. On an application from Idine Beari, son of Ullal Fakir Beari, requesting that this and its Kumaki land may be given to him for cultivation, the Collector after personal inspection of the ground found that the same is merged in the assessment charged on the estate, and declined to comply with his request accordingly. This fact being reported by the Naricombu Shanbog to the Vittal Peishcar the application was rejected.

5. On the appeal Petitions preferred by the 3rd, 7th, 8th, and 29th Defendants against the distraint made by my mother for arrears of rent due by them on leases executed by them for warehouses, the Collector Mr. Fisher, notwithstanding their admission of the execution of the leases and payment of rent, and my previous possession, and the facts elicited by the proceedings held in the case, issued an order No. 478, directing that the rents should be collected and carried to Government account, and that the grounds built upon, should be measured, and a statement showing under what class they may be assessed sent together with Durkhast Petitions from the holders.

6. On the appeal from my mother against the above order, that passed by the local officer admitting that the grounds belong to the said land was affirmed.

7. Subsequently during the inquiry held on the spot (after submission of applications by the Defendants 3 to 29) as to what rate of assessment must be charged, I put in Petitions stating that the grounds belong to the estate on which I pay assessment, but my claim was not inquired into nor was any legal order passed on it. The Mahazarnamah taken in consequence of the applications from the Defendants, however, states that the grounds are not fit to be applied for cultivation; that they are those on which I pay assessment and on which I have a right. Such being the case, the grounds have been unjustly given up to the Defendants, and thereby I have been deprived of the rents payable to me, and of the use of the spring that irrigated my land, and also subjected me to divers other losses from destruction of crops by red mud water getting into fields, &c, which losses will recur to me hereafter. The above order is further contrary to the precedents whereby I was allowed a reduction in the assessment of Hs. 0-0-6 in Fasli 1249, and subsequently of Hs. 0-1-14½, as well as Rupees 22 as value on account of the ground taken up for Government road as far as the grounds given out on Darkhast.

8. I therefore sue all the Defendants including the 1st, who has succeeded to the office of Collector, and pray that they may be summoned and examined, and an award given cancelling the rights of the Defendants to the grounds producing Rupees 17 per annum, given out on Darkhast to Defendants 2 to 26 and 29, and ordering them to remove themselves from the said grounds and give them up to me, together with Rupees 115-8-0, being the arrears of rent due by the Defendants 2, 3, 4, 5, 6, 7, 8, 9, 10, 14, 26, and 29, on account of the warehouses and shops for eleven years, viz., from 1259 to 1270 Faslis, at Rupees 10-8-0 per annum, (which with something additional as Karaka, was collected by Government and credited to extra revenue) Rupees 17-4-0, being the value of the trees removed from the land in question and sold to the 27th and 28th Defendants and others; as well as further produce at the same rate to date of restoration of possession to me.

Boundaries.

East.—Uppinagudi, Niryarakallu, and Nellikattu.
South.—The large water course of Aladka.
West.—Large water course.
North.—Wall of the bazar.

I, Plaintiff named in the above statement do declare that what is stated therein is true to the best of my information and belief.

(Signed) NARSAYA PRABHU.

4. On an application from Idine Beari, son of Ullal Fakir Beari, requesting that this and its Kumaki land may be given to him for cultivation, the Collector after personal inspection of the ground found that the same is merged in the assessment charged on the estate, and declined to comply with his request accordingly. This fact being reported by the Naricombu Shanbog to the Vittal Peishcar the application was rejected.

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6. On the appeal from my mother against the above order, that passed by the local officer admitting that the grounds belong to the said land was affirmed.

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I, Plaintiff named in the above statement do declare that what is stated therein is true to the best of my information and belief.

(Signed) NARSAYA PRABHU.

5½.

ENCLOSURE No. 2.

Original Suit No. 92 of 1861.

Before the District Munsiff's Court of Bantwal, in the Zillah of Mangalore.

Present:—A. J. COELHO, Munsiff.

Plaintiff.

Narsaya Prabhu, son of Kolhere Vaicunta Prabhu, residing at Kalladka village, Mogarnad Morgani, in Kassergode Taluk, by Vakils Kristnaiya and Annappa.

versus.

Defendants.

1st. J. Fraser, Esq., Collector of South Canara, and others.

1. The Plaintiff states that Defendants 3 to 29 having applied on Durkhast for a piece of ground attached to the land and its appurtenances included within the boundaries of his Estate, Muli No. 8, bearing a Shist of Hoons 3-6-4, and now paying a Taraw Beriz of Hoons 6-2-3, which was purchased by his ancestor Kristna Prabhu from one Hammad Beari, for Hoons 52, so for back as 15 Vaishah Shud of Rudrodgari, and which has been enjoyed by him in succession to his ancestors, the said ground was unjustly made over to them on Durkhast in spite of the Mahazarnamah, which was given during the inquiry, declaring that the same was included in his (Plaintiff's) warg; that in consequence of this, he (the Plaintiff) has been deprived of the rent which was derived from it; that the spring which irrigated his land has also been obstructed; and that he has thus been subjected to loss in various ways; that the 1st Defendant is the present Collector; that the rent of Rupees 10-8-0, which was annually collected on the warehouses and shops standing on the grounds which have been given on Durkhast from Defendants 2, 3, 4, 5, 6, 7, 8, 9, 10, 14, 26, and 29 has not been levied from Fasli 1259, and that the same is credited as "Extra Revenue;" that the Karaka, or house rent imposed is nevertheless still collected. The Plaintiff, therefore, sues for the recovery of the said ground, yielding an annual produce of Rupees 17 from Defendants 2 to 26 and 29, to whom it has been given on Durkhast, together with Rupees 115-8-0, being the rent payable for eleven years, *i.e.*, from Faslis 1259 to 1270, as also Rupees 17-4-0, being the value of the trees felled from the said ground, and sold in auction to Defendants 27th and 28th and others. The Plaintiff further prays that the rights of the above individuals may be annulled, and that the present occupants of the ground may be made to quit the place, and that he may be allowed further rent at the above rate until he is put in possession of the ground.

2. The 1st Defendant pleads that Plaintiff has failed to bring this Suit during the incumbency of his predecessors, Messrs. Maltby and Fisher, by whom the orders regarding the ground claimed by the Plaintiff were passed, and that he is now barred by the ruling of the Sudder Court, contained in their Decision in Special Appeal Suit No. 204 of 1859, from suing him (1st Defendant) as their successor in office for their acts. The 1st Defendant therefore prays that the Suit may be dismissed as far as it affects him.

3. The 2nd, 6th, 7th, 8th, 12th, 13th, and 16th Defendants in their Statement urge that the Suit brought by Plaintiff is opposed to the rule of Government, dated 17th October 1861, as also to a decision of the Sudder Court for 1860, contained at page 21 of the "Rulings," and that consequently nothing is due from them to the Plaintiff.

4. The 20th Defendant pleads that his elder brother Narnappa, son of Venkappaiya, residing at Narikomba village in Mogarnad Morgani, having desired him to apply on Durkhast for a portion of the unassessed hill land, situated beyond a certain public road, he obtained it from Government on an assessment of four annas; but that it is enjoyed by his brother, he having laid out nearly 200 Rupees and erected some shops on it; that as the assessment is

however collected in his name, he has presented an application to get it transferred ; that his brother is therefore the proper person to defend this Suit ; and prays that as there is no reason for his defending it his name may be struck off from the case.

5. The 23rd Defendant in his statement contends that the Plaintiff's Suit is opposed to the decision of the Sudder Court in Special Appeal Suit No. 204, and that therefore nothing is due from him.

Judgment.

6. On a perusal of the record connected with this case, the Court finds that this suit is inadmissible under the provisions of Sections 28 and 29 of Regulation XXVII of 1802, and accordingly resolves to dismiss it with costs.

7. Mr. Fisher, the then Sub-Collector of this District, being desirous of enlarging the town of Panemangalore assessed and made over to Defendants 2 to 29 on Durkhast a certain piece of waste or hill land situated within the limits of the Panemangalore bazaar and adjoining the Plaintiff's warg. After Mr. Fisher was transferred from this District on some other appointment, the Plaintiff at first brought this Suit for its recovery against his successor Mr. Fraser, and against the other Defendants who obtained it on Durkhast, alleging that the said land formed a part of his warg. As Collectors are not responsible for the acts of their predecessors the present Munsiff thinks that the Court erred in admitting on the file the Plaint brought by the Plaintiff with the name of Mr. Fraser as Defendant, and that it ought to have rejected it at once. As the Suit had, however, been already admitted on the file, and notice has been served on the Defendants, and their statements had been received, and the case was ready for the first hearing, it was accordingly taken up. On hearing the arguments of the Vakeels on both sides, it appeared that the Suit was inadmissible under the ruling of the Sudder Court, contained in their decision in Special Appeal Suit No. 204 of 1859, and it was accordingly resolved to dismiss it; but on hearing this the Plaintiff, through his Vakeel, withdrew the name of Mr. Fraser, and addressed a Petition to the Court, praying that in his stead Mr. Fisher, who originally gave the land on Durkhast, might be admitted as Supplemental Defendant. The decision of the case was therefore delayed for some days in order to determine whether a Suit could at this time be admitted against Mr. Fisher.

8. On referring to the provisions contained in the law regarding the institution of Suits against Collectors, and also on considering the representation made by the Plaintiff's Vakeel, the Munsiff is of opinion that this Suit is opposed to the provisions of Sections 28 and 29 of Regulation XXVII of 1802, as also to the Rules of the Civil Procedure, and to Clause 4, Section I of Act XIV of 1859, and that the Suit cannot therefore be entertained. The Sudder Court have ruled in their decision No. 204 of 1859 that a party considering himself injured by the acts of a Collector, done in his official capacity, should take legal steps to obtain redress during the lifetime or incumbency of such Collector, and that he cannot sue his successor for the same (see page 11 of the Rulings.) By Clause 4 of Act XIV of 1859 it is provided that Suits for the recovery of lands alienated by order of Revenue authorities should be instituted within the period of one year. In the present case, upwards of six years have elapsed before the Petition for substituting the name of Mr. Fisher, who gave the land on Durkhast, was presented. The Munsiff is therefore of opinion that a Suit either against Mr. Fisher or Mr. Fraser cannot now stand.

9. Since the Plaintiff cannot sue the Collector who gave the land on Durkhast, he has no right to sue the persons who obtained it. These persons are in no way to be blamed for obtaining the said land from a Collector who was fully competent to grant unassessed waste lands on Durkhast and enjoying it on payment of the assessment fixed on it. If the Plaintiff considered that the said land, from its being situated within 100 yards of his warg, as the Munsiff finds to be the case from personal inspection, should have been reserved for the use of the cultivation of his land, or at least granted to himself on assessment, and that he was subjected to loss in consequence of its having been given to others, he ought to have represented his grievances to the Collector, and failing to obtain any redress from him to have appealed to the Board of Revenue ; or if he was desirous of having the matter settled by a regular Civil Suit, he ought to have instituted one against Mr. Fisher while he held the office of Collector in this District and within the time prescribed by the law. The present Suit is therefore inadmissible, and the Court accordingly resolves to dismiss it with costs, and directs that the Plaintiff shall pay the costs incurred by the Defendants.

Dated 29th February 1864.

	Plaintiff's Costs.	1st Defendant's Costs.	2nd,6th, 7th, 8th, 12th, 13th, 16th & 23rd Defendants' Costs.	20th & 30th Defendant's Costs.	Totol.
	RS. A. P.	RS. A. P.	RS. A. P.	RS. A. P.	RS. A. P.
Stamp duty on institution... ...	8 0 0	... ...	... ...	... ...	8 0 0
Fees of the Vakeels...	1 13 9	1 13 9	1 13 9	1 13 9	7 7 0
Value of sundry Stamp papers used.....	1 8 0	1 0 0	3 8 0	1 8 0	7 8 0
Expenses for serving processes.	6 14 0	... ...	... ...	... ...	6 14 0
Total.....	18 3 9	2 13 9	5 5 9	3 5 9	29 13 0

Plaint filed first..... ... ... 9th April 1861.
Pleadings completed ... ... 16th December 1863.
Date of first hearing... ... do.
Do. of final do. ... ... do.
Do. of decision..... ..... 29th February 1864.

The period for preferring an Appeal from this Decree will expire on the 29th of March.

(Signed) A. J. COELHO, District Munsiff.

(True Translations.)
(Signed) J. G. THOMPSON, Acting Collector.

ENCLOSURE No. 3.

Original Suit No. 92 of 1861.

To the District Munsiff of Bantwal.

1. The Plaintiff having failed to bring his action during the incumbency of my predecessors Messrs. Maltby and Fisher, who issued the orders complained of, he is now barred by the Ruling of Sudder Adalut in their decisions in Special Appeal Suit No. 204 of 1859 from suing me as their successor for their acts.

2. I therefore pray the Plaintiff's Suit as against me may be dismissed with costs.

(Signed) J. FRASER, Collector.

MANGALORE, 3rd October 1861.

I, J. Fraser, Collector of South Canara, named in the above statement, do declare that what is stated therein is true to the best of my information and belief.

(Signed) J. FRASER, Collector.

(True Copy.)
(Signed) J. FRASER, Acting Collector.

The proceeding in question was highly irregular; but the Board have now no alternative but to sanction the defence of the Suit to its termination.

(True Copies and Extract.)
(Signed) W. HUDLESTON,
Secretary.

To J. G. Thompson, Esq., Acting Collector of South Canara.

Exd. R. H. Lee.

Enclosure in the Proceedings of the Bd of Revenue to the Govt N.W.P. dy. 18 May 1869. No 3394.

1864. Department

2

Rev. 1699, 69

No.

PROCEEDINGS OF THE BOARD OF REVENUE,

Rec'd in Govt Office 1345

Dated 17*th June* 1864.

No. 3,725.

Sanctioning the defence of Suit No 92 of 1861 to its termination, and observing that the proceeding in question was highly irregular.

No. 6,126.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 27th August 1866.

Read the following letter from W. M. CADELL, Esq., Collector of South Canara, to the Secretary to the Board of Revenue, dated Mangalore, 18th August 1866, No. 155:—

1. Referring to the Board's Proceedings, dated the 17th June 1864, No. 3,725, in which the Board were pleased to accord their formal sanction to the defence of the Civil Suit noted in the margin, I have the honor to state that the additional Principal Sudder Ameen of Mangalore, before whom the Plaintiff in the above suit had preferred an appeal from the Munsiff's decision, as already intimated to the Board, since remanded the suit to the District Munsiff for trial *de-novo* on the merits of the case, and I beg to forward, herewith, a translation of the appeal preferred by the Plaintiff, together with the Principal Sudder Ameen's decision thereon.

Original Suit, No 92 of 1861, on the file of the District Munsiff of Buntwal.

Narsaya Prabhu ... ... Plaintiff,

versus

1. J. Fraser, Esq., Collector of South Canara, and twenty-eight others, } Defendants.
30 G L Morris, Esq., Collector, } Supplemental
31. W. M. Cadell, Esq., do. } Defendants.

2. The District Munsiff has now called upon the Collector, as the 31st Defendant in the case, for a written Statement of his defence of the suit, and has, further, fixed the 20th proximo for the settlement of issues.

3. As I believe that the line of defence to be now adopted should receive the approval of the Board, I beg, herewith, to submit the Draft of the written Statement I propose to put in, and in view of the limited time allowed for filing the same, I request that their approval, or otherwise, of the statement may be communicated to me as early as possible.

4. I enclose herein, for the Board's inspection, a sketch of the disputed plots of ground, which I request may be returned to me along with the Board's reply to this reference.

ENCLOSURE No. 1.

Appeal Suit No. 310 *of* 1864.

MEMORANDUM OF APPEAL.

Original Suit No. 92 *of* 1861.

Narsaiya Prabhu, son of Vaikunta Prabhu, residing at Kalladaka village, Mogarnad Magane, in Kassergode Taluk, } *Plaintiff.*

versus

1, Collector of South Canara, and thirty others ... ... *Defendants.*

We, Anantaya and Venkat Row, Vakils on behalf of the above-named Plaintiff, appeal to the Civil Court of the Zillah of Mangalore, against the Decree of the District Munsiff of Buntwal, dated 29th February, and claim a piece of land producing Rupees 17; Rupees 115-12-0, the rent claimed in the plaint and the subsequent rent after deducting the amount remitted; Rs. 17-4-0, value of trees cut down; and the costs of the suit, on the following grounds:—

I. That the dismissal of this suit, by the Munsiff, without entering into its merits, is clearly irregular, and the result of a misconception on his part.

II. That neither the Sections, 28 and 29 of Regulation XXVII. of 1802, nor the decision of the Sudder Court, in the Special Appeal Suit No. 204 of 1859, on which the Munsiff has based his decision, are in the least applicable to this case.

III. That the whole of the above-quoted Regulation refers to the recovery of revenue by Collectors, and the Sections thereof, quoted by the Munsiff, refer exclusively to suits brought for refunds of assessment unlawfully levied by the Collectors, and the decision in Suit No. 204 is also one of the same nature.

IV. That the present suit is not against the *person* holding the office of Collector, and cannot be so; but is against the Collector in his official capacity; because the object of the suit brought by the Plaintiff is to have cancelled the grant made by the Collector, in his official capacity, of certain pieces of land, the property of the Plaintiff, to Defendants from No. 2 on assessment as Government property, and to recover the said lands, together with the loss sustained thereby.

V. That, since assessment is levied, on the said pieces of land by the Collector, from the Defendants from No. 2, and credited to Government account, the present claim cannot be said to refer to the Collector in his private capacity; and that the Munsiff has, therefore, erred in considering that the *successors* in office of the Collector, who passed the order affecting the Plaintiff's rights, is not amenable to this suit.

VI. That it was in obedience to the orders of the Munsiff that a supplemental plaint should be filed against Mr. Fisher, the Collector, who passed the order affecting the Plaintiff's rights, that the Plaintiff had put in a supplement against him, and not of his own will. That the Munsiff included Mr. Fisher among the Defendants, and sent a notice to him, but subsequently countermanded the notice, and dismissed the suit. That, under these circumstances, the Plaintiff is by no means to be blamed in the matter, since it was the duty of the Munsiff, after the Plaintiff had filed his suit, to include therein all such parties as ought to have been included in the same.

VII. That the Munsiff is, likewise, wrong in considering that the Plaintiff's claim is opposed to Clause 4th, Section 1 of Act XIV., inasmuch as this suit was instituted by the Plaintiff within the period prescribed by the former Regulations for the institution of suits from the date of a Collector's order, which, in the present case, was passed before the above Act came into operation. Besides this, the Plaintiff was a minor during the above interval, and his proprietary right to a portion of the land in dispute has been acknowledged by competent authorities, and parties trespassing on the same have been punished by them, by fines. Under these circumstances, the Plaintiff's suit cannot be considered to be in any way barred by the Law of Limitation.

For the above reasons, we pray that the decree appealed against may be reversed, and a fresh one passed in accordance with the plaint.

(True translation.)

(Signed) W. M. CADELL,
Collector.

ENCLOSURE No. 2.

Judgment pronounced by the Principal Sudder Amin's Court of Mangalore.

Present.—SHRINIVAS ROW.

Appeal Suit No. 310 *of* 1864.

P. Narsaya Prabhu, *Plaintiff, Appellant,*

By Vakeels K. Anantaya and Venkat Row.

Defendants, Respondents.

J. Fraser, Esq., Collector of South Canara, and thirty-nine others, of whom the 4th, 17th, 22nd, 23rd, and 27th are dead. } 31st Respondent, by Vakeel Suba Row; 36th, 37th, 38th, 39th, and 40th Respondents, by Vakeel N. Anantaya.

I. Plaintiff brought the suit for recovery of a ground producing Rupees 17, which lies within the boundaries of a land specified in a deed of sale obtained by his ancestor, but which has been granted on Durkhast, by the first Defendant's predecessor, to the other Defendants; and also to recover Rupees 115-8-0, being the amount of rent for eleven years, and Rupees 17-4-0, being value of trees.

2. First Defendant put in a statement urging that the suit brought against him, in respect of an order passed by his predecessor, instead of suing the latter during his incumbency, was irregular

3. Defendants 2, 6, 7, 8, 12, 13, 16, 20, and 23 also presented statements urging objections against the Plaintiff's claim.

4. The District Munsif of Bantwal dismissed the claim on the ground, that Plaintiff having failed to sue the late Collector for his acts during his incumbency, the present suit against his successor was irregular.

5. Dissatisfied with the above decision, the Plaintiff appeals on the following grounds :—

I. That the Regulation and the decree relied upon by the Munsiff as his authority for dismissing the suit, are inapplicable to this case.

II. That the present suit does not lie against the individual holding the office of Collector, but against the office itself.

III. That the Munsiff is wrong *in holding* the suit barred by Clause 4th, Section 1 of Act XIV., the same having been instituted before the enactment in question came into operation.

6. On a careful consideration of the record of this case, and the oral arguments of the parties and their pleaders, the Principal Sudder Amin is of opinion that the Munsiff's decree cannot be upheld.

7. The Plaintiff stated that certain pieces of ground, forming part of an estate, purchased by his ancestor, were declared to belong to Government, and, as such, were given out on Durkhast by the late Collector, Mr. Fisher; and he, therefore, instituted the present suit against the said officer's successor, Mr. Fraser, and the other Defendants, who had obtained the pieces of ground on Durkhast, and prayed that the grant might be set aside, and the pieces of ground, rents, &c., awarded to him.

8. The lower Court was of opinion that Plaintiff should have sued the Collector, of whose acts he complains, and that the present suit, brought against the successors of that officer, is contrary to Sections 28 and 29 of Regulation XXVII. of 1802, and the Decree of the late Sudder Court in Special Appeal Suit No. 204 of 1859; and, further, that the suit should have been brought within the period prescribed by Clause 4th Section 1 of Act XIV. of 1859. The Court, therefore, dismissed the suit with costs, without entering into its merits.

9. Act XIV. of 1859 came into operation in January 1862, and consequently the provisions thereof cannot apply to this suit, which had been already filed prior thereto. The Plaintiff was, therefore, competent to bring the suit conformably to the provisions of the Regulations then in force regarding limitation.

10. The Principal Sudder Amin having carefully perused the Regulation, and the late Sudder Court's Decree quoted by the Munsiff, feels himself unable to conclude that those authorities are applicable to the present case. The Principal Sudder Amin thinks that they apply to suits brought for damages occasioned to any person by an "official act" therein alluded to, *i.e.*, an act done by a Collector in the discharge of his duties. The present case is not of that description. The contested ground has been declared to belong to Government, and has been given out on Durkhast. The benefit arising from this act (the assessment) is derived by Government. The Collector is like an agent to the Government, and therefore the Principal Sudder Amin has no doubt that for acts of this description done by a former Collector, the Plaintiff is competent to sue his successor and representative. Moreover, the Regulation alluded to by the Munsiff has been wholly rescinded by Act II. of 1864; and Section 60 of the said Act provides that a suit may be brought against a Collector for the acts of his predecessor.

11. With a view of removing doubts on the subject, the Principal Sudder Amin submitted a question to the High Court; but he has, in reply, been directed to dispose of the question himself. As the Principal Sudder Amin is of opinion that Plaintiff is competent to bring the suit, he reverses the Decree appealed against, and remands the suit for investigation *de-novo*. The lower Court

ha re-admit the suit on its file, and pass a decision by a regular investigation into the merits of the case. The costs in this appeal shall be charged to the party cast.

(Signed) SHRINIVAS ROW,
Principal Sudder Amin.

31st January 1866.

(True translation.)

(Signed) W. M. CADELL,
Collector.

ENCLOSURE No. 3.

Draft of Written Statement proposed to be filed under Section 122 of the Code of Civil Procedure in Original Suit No. 92 of 1861.

1. The piece of land granted on Durkhast by the first Defendant's predecessor to the other Defendants forms no part of the Plaintiff's Muli Wurg No. 8. The ground in question, as well as all the waste ground comprised within the boundaries specified in the plaint, is the property of Government, and which the Collector is fully competent to dispose of in such manner as he may think fit.

2. The fact that the land in question is comprised within the boundaries mentioned in a deed of sale obtained by Plaintiff's ancestor, in respect of the Muli Wurg No. 8, from one Hammad Byari, can create no title to Plaintiff over the land. The deed is merely *res inter alios acta*, and cannot in the least affect the rights of Government. The deeds of rent stated to have been obtained by Plaintiff's mother from some of the Defendants are of the same nature.

3. The decree in Original Suit No. 17 of 1850, alluded to in paragraph 4* of the plaint, is likewise of the same nature. The suit was between Plaintiff's mother and a third party named Pachappa Shetti, and the Collector was no party thereto.

*Three in the English translation, forwarded to the Board.

4. Plaintiff's assertion that the application of Ullal Takira Byary's son, Idine, for a grant of the land to him, was refused in consequence of the land having been found to be merged in the assessment of his wurg, is utterly false. The application was rejected, because the land was reserved for public use.

5. The orders alluded to in paragraphs 6 and 7† of the plaint, contain no admission that the land forms part of Plaintiff's wurg, as asserted by him.

† Five and six in the English translation

6. The reduction in the assessment of the Plaintiff's wurg, and the payment of compensation to him, consequent upon the construction of the public road alluded to in the plaint, was on account of portions of the Plaintiff's rice-fields that had been appropriated for the road, and for those portions alone.

The 31st Defendant, therefore, prays that the Plaintiff's suit may be dismissed with costs.

(Signed) W. M. CADELL,
Collector.

ENCLOSURE No. 4.—Plan.

The Board authorize the Collector to file the written Statement in defence as proposed by him.

(True Copies and Extract.)

(Signed) W. HUDLESTON,
Secretary.

To the Collector of South Canara,
with plan returned.
Copy to the Accountant General.

Exd. J. Wright.

No 1,138.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 17th February 1868.

Read the following letter from H. S. THOMAS, Esq., Acting Collector of South Canara, to the Secretary to the Board of Revenue, dated Kundapur, 11th December 1867, No. 228:—

17th June 1864, No 3,725.
29th August 1866, No. 6,126.

1. Referring to the Proceedings of the Board noted in the margin, I have the honour to submit, for their information, translation of a revised decree, passed by the District Munsiff of Buntwal in Original Suit No. 91 of 1861, therein alluded to.

2. The Munsiff, it will be observed, has rejected the plaintiff's alleged proprietary title to the piece of ground claimed, but has, nevertheless, decreed an equivalent to be assigned to him as "Kumaki," and has disallowed the Collector's costs of suit.

3. The question of "Kumaki" was not at issue in the suit, and I have, therefore, preferred an appeal to the Civil Court, through the Government Vakeel. I enclose a copy of my draft instructions to him, a copy of which he has been directed to file in English together with the Vernacular record.

4. I beg to add that, though the disputed piece of ground lies partly within one hundred yards from the plaintiff's (Muli) proprietary estate, yet Mr. Fisher, who granted it on assessment in portions to the several defendants, in 1859, did not consider it proper to allow the plaintiff the ordinary privilege of "Kumaki" in respect to this land, inasmuch as it lies at a place which was at the time a rising town.

5. Kumaki being a privilege conceded by Government, and not a right claimable by the cultivator in such cases, as, for special reasons like the present, the Collector may think it most for the public good that the privilege should not be granted, I thought it important not to allow such an erroneous decision to pass unchallenged.

6. The Board having sanctioned the defence of the suit "to its termination," this appeal was made without a second reference.

ENCLOSURE No. 1.

Translation of the Revised Decree passed by the District Munsiff of Buntwal, in Original Suit No. 92 of 1861.

(Continued from paragraph 9 of the Original Decree, dated the 29th February 1864; Enclosure 1 in Board's Proceedings, dated 17th June 1864, No. 3,725.)

10. The records were received with the Decree and Judgment of the Principal Sudder Amin's Court, directing that the case should be re-admitted on the file and a fresh decree passed; and the case was accordingly re-admitted on the file, and a note having been then taken in behalf of the plaintiff to the effect that the fourth, seventeenth, twenty-second, twenty-third, and twenty-seventh defendants are dead, notices were issued to the defendants from No. 2, and to four other defendants including the Collector, Mr. Fraser.

11. In the statement filed with the Vakalutnamah given by the thirty-first defendant, the Collector, Mr. Cadell, to Subba Row, appointing him Vakeel on his behalf, he asserts that the ground in dispute does not form part of the Wurg No. 8; that the document the plaintiff obtained

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Department.

No.

PROCEEDINGS OF THE BOARD OF REVENUE,

Dated 27th August 1866.

Received

No. 6,126.

Authorizing Collector of South Canara to file the proposed written Statement, in defence of Original Suit No. 92 of 1861, on the file of the Buntwal District Munsiff's Court, regarding certain lands.

from third parties, including therein the ground in dispute, cannot affect the rights of Government; that the Collector was no party to the Suit No. 17 of 1850, said to have been carried on regarding a portion of the ground in dispute; that as a portion of the ground in dispute was reserved for Government purposes, the application of Idine Beari for the same was rejected; that the remission made in the beriz paid by the plaintiff, and the compensation granted to him, was only on account of the portion of his paddy-fields which was taken up for the road; and prays, therefore, that the plaintiff's suit may be dismissed.

12. The plaintiff's Vakeel cited nine witnesses, and two were cited on the part of the thirty-first defendant, and lists of them given. The plaintiff contented himself with the examination of five witnesses only.

13. Petitions were presented on behalf of the plaintiff and the thirty-first defendant with the following exhibits:—

On behalf of plaintiff:

A. Authenticated copy of a Decree of this Court in Original Suit No. 17 of 1850, on two sheets.

B. Copy of the Chittah of Muli Wurg No. 8, situated in Narikomb village, and registered in the name of Krishtna Prabhu, belonging to plaintiff, on five stamped-papers.

C. Copy of a report No. 56, addressed by the Shanbogue of Narikomb division to the Vittal Peshkar, on the 8th November, Fusly 1259, on four stamped papers.

D. Copy of an Order, No. 472, issued by the Collector, Mr. Fisher, to the Vittal Peshkar, on the 17th June 1851, on three stamped-papers.

E. Copy of an Order, dated 26th July 1861, passed on an appeal preferred from the said order, on one stamped-paper.

F. Copy of an Order No. 1, issued by the Collector, Mr. Maltby, to the Vittal Peshkar, on the 18th July 1861, on two stamped-papers.

G. Copy of an Order, Revenue No. 16, issued by the said officer to the Buntwal Tahsildar on the 26th July, Fusly 1263, on four stamped-papers.

H. Copy of an order issued by the Collector, Mr. Chamier, to the Peshkar of Vittal, on the 1st July 1853, on one stamped-paper.

I. Copy of an Order, No. 13, issued by the Collector, Mr. Williams, to the Vittal Peshkar, on the 16th November, Fusly 1269, on two stamped-papers.

J. Copy of an Order in English, passed by the Civil Court, on an appeal presented by Narsa Naika on the 9th October 1860, on one stamped-paper.

K. Copy of an Order, No. 17, in English, passed by the Civil Court on the 17th November of the said year, on one stamped-paper.

L. Copy of a decision passed by the second class subordinate Magistrate of Buntwal, on the 31st July 1865, on two stamped-papers.

Filed on behalf of the thirty-first defendant.

I. Original Chittah of the year Durmuti, in Hindvi, in the name of Hammad Beari, of Narikomb village, Mogarnad Magane, with a Canarese copy of the same.

II. Canarese statement of the survey of the above Wurg No. 8, made by the Vittal Peshkar in Fusly 1260.

III. Original Order No. 1, under signature and seal, issued by the Collector Mr. Maltby, to the Vittal Peshkar, on the 18th July, Fusly 1261, on plain paper.

IV. Original order, under signature and seal, issued by the additional Sub-Collector, Mr. Silver, to the Vittal Peshkar, on the 4th December, Fusly 1259, on plain paper.

V. Letter No. 12, written by the Buntwal Tahsildar to the Vittal Peshkar, on the 18th November of the above Fusly.

VI. Original petition No. 219 of Fusly 1262, on plain paper.

VII. Azmaish list alluded to in the said petition, on plain paper.

VIII. Original Order, No. 16, issued to the Tahsildar of Buntwal talook on the 23rd July, Fusly 1263, on two plain papers.

IX. Azmaish statements made in Fusly 1262, on plain paper, formed into a book.

X. Sketch drawn by the Surveyor in 1866.

XI. Deposition taken from Govinda Bhandari by the Vittal Peshkar, on the 15th September, Fusly 1260, on two plain papers.

XII. Original petition addressed by the plaintiff to the Collector Mr. Robinson, on the 8th August, Fusly 1267, on plain paper.

XIII. Petition presented to the said officer on the 14th August of the said Fusly, on two plain papers.

XIV. Deposition of the plaintiff given before Gustino Vas, Moneagar of Vittal division, on the 23rd September of the said Fusly.

14. The following witnesses were examined on oath on behalf of the plaintiff, namely, 1, Krishnaya; 2, Ramachendrappa; 3, Narsa Naika; and 4, Cheradappa.

Judgment.

15. The dismissal of this suit by the Munsiff on the first hearing having been found to have been improper, the Principal Sudder Amin, who inquired into the appeal, issued an extract directing that it should be re-admitted on the file; that the Collector who succeeded Mr. Fisher should be included as a defendant, and the suit decided on its merits. The suit was accordingly re-admitted on the file, and the following points at issue between the parties were recorded:—

Issues.

1. That the ground in dispute belongs to plaintiff by proprietary right.

2. That the plaintiff has suffered loss to the amount claimed by him, and that he is entitled to recover it.

16. The chief point to be determined in this suit is whether the ground given on Durkhast by one of the defendants, the Collector, to the other defendants forms part of the plaintiff's wurg, or whether it is the property of Government, and could, therefore, be given by the Collector to any one he thought proper.

17. From the statements of the witnesses examined on the part of the plaintiff, and from the exhibits filed by both parties, it is plain that, until it was determined by the Collector that the ground in question belonged to Government, the plaintiff's ancestor had been in enjoyment thereof, giving it out on rent, and appropriating the fruits, &c., of the trees growing thereon, and regarding the same as belonging to them by proprietary right. As the ground, however, does not pay a separate assessment, it is doubtful whether the plaintiff could acquire proprietary right to the same. The Munsiff having personally inspected the ground in dispute finds that it lies contiguous to the petitioner's wurg, and within 100 yards of it, and therefore there is no doubt whatever that it forms the actual Kumaki of his wurg.

18. The plaintiff's Vakeel has argued and adduced strong reasons to show that Kumaki land forms part of a wurg, by stating that when lands were originally assessed while the country was under the former Sovereigns, the assessment was fixed not merely for the rice fields, but also allowing the necessary Kumaki ground for the cultivation of the fields; that in order to carry on the cultivation of the paddy-fields, green leaves for the preparation of manure, and grass and dry leaves for "Sudu Mannu" (burnt earth), and ground to erect cow-pens, out-houses, &c., for the accommodation of tenants and on account of the cattle, sufficient materials for building these houses and repairing them, the necessary firewood for boiling the paddy grown on the land and other purposes, and hills for the cattle to graze on, are necessary; that without these it is impossible to cultivate lands and pay the assessment, and that, therefore, the former Government allowed the Wurgadars the hills and jungles on the borders of their wurgs, and fixed an assessment jointly for the land and its Kumaki.

19. The plaintiff's Vakeel has further urged that, in the Deeds of Sale executed by ryots on lands being alienated amongst themselves previous to Government determining latterly that they had a right to the Kumaki lands attached to wurgs, the hills, ravines, and ditches, &c., existing therein were mentioned as the boundaries; that such Deeds of Sale, when filed before the Revenue authorities, were admitted by them without any objections, and even alterations in the registry of the wurgs were made agreeably to them; that in the surveys made by the Sirkar Moneagars, Shanbogues, and other servants, the same boundaries have been shown; that the Wurgadars, and they alone, have, from time immemorial, been appropriating the Jack, Mangoe, Palmyra, and all other sorts of trees growing within those boundaries, as well as their produce; that on complaints brought against other parties for felling trees that grew within those boundaries, such trees were ordered to be made over to the Wurgadars; that in Durkhast puttahs given on lands being sold by the authorities, boundaries of the same description as above were mentioned; that, therefore, as the ryots believed, from the time of the former Government until a recent period, that the Kumaki lands formed portion of the wurgs, the Government were also of the same opinion; that the Collectors who came of late have arbitrarily set aside, without any grounds whatever, the right to Kumaki lands which the ryots enjoyed from the time of the former Government, and declared that the Kumaki lands did not belong to the ryots but to Government, and that this is an act of force, and not of justice and equity.

20. The Vakeel on the part of the Collector urges that the beriz was fixed only for paddy-fields, and that as the Kumaki lands belong to Government, the Collector has a right to give them to any one he pleases; but he has not shown any regulations or any decisions on the subject, passed by superior Courts after inquiry.

21. As the cultivation of lands can never be carried on without the aid of Kumaki grounds, the Munsiff is of opinion that the arguments set forth by the plaintiff's Vakeel are reasonable, and that the privilege of Kumaki must have been taken into consideration in fixing the beriz on lands originally. If the assessment were originally fixed only with reference to the paddy-fields without giving the Wurgadars to believe that the right to the Kumaki was also vested in them, I do not think the ryots would have agreed to take up the paddy-fields only for the assessment fixed, foregoing the right to the Kumaki which is most essential for the cultivation. Considering that they believed from of old that the Kumaki lands belonged to them, and that the same were transferred from one to another by documents publicly executed, and that such right was not questioned by the former Government, nor even by the present until a recent period, it is to be presumed, that when the beriz was originally fixed, it was determined that these grounds should be considered to belong to the Wurgadars. No positive evidence, however, has been adduced in this respect on the part of the plaintiff, and his Vakeel alleges that, as from the Durmuti Chittah filed on the part of the defendants, it appears that a beriz of Hoons 3-3-4 has been collected on the rice land, Hoons 0-3-4 on garden, and Hoons 0-4-11 on sundry other trees, and that as cocoanut and other sundry trees are such as grow also on the Kumaki land, the latter, that is, Kumaki land, is merged in the beriz. On looking into the said Chittah, it appears that a beriz also on sundry trees was collected, as stated by him; but it cannot be ascertained whether this beriz was fixed only on the trees, or on the ground also. If it was fixed on the ground, it would have been calculated on the number of acres, and not on the number of trees. It appears, therefore, that the said beriz was fixed on the trees only. Therefore, though it cannot be ascertained whether the ground is included in the assessment, it is certain that the Government authorities supposed, at the time, that the right thereto was vested in the plaintiff's ancestors. It appears that the Collectors who came of late did not decide of their own will that such lands belong to Government, but must have addressed the Board of Revenue and the Government, and decided agreeably to their orders, that the ryots do not possess a proprietary right to such lands. I am not, therefore, able to decide that the Kumaki grounds belong to the ryots by proprietary right, against the orders of the Board of Revenue and the Collector, who are more read in law than I am, and who are learned and have experience by ruling the country. The Munsiff has not before him the proceedings held when the beriz was originally

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ENCLOSURE No. 2.

Memorandum of Appeal in Original Suit No. 92 of 1861, on the file of the District Munsiff of Buntwal.

Narsaya Prabhu, son of Vaikunta Prabhu, residing at Kolakere, in Kalladka village, Mogarnad Magane, } *Plaintiff,*

versus

H. S. Thomas, Esq., Acting Collector of South Canara..... } *Successor of 31st Defendant.*

I, Henry Sullivan Thomas, Acting Collector of South Canara, beg to prefer this appeal to the Civil Court of Mangalore, against so much of the decree passed by the District Munsiff of Buntwal on the 17th August 1867, in the above suit, as casts the Collector in costs, and directs him to give plaintiff a piece of ground equivalent to that claimed by him on the following grounds:—

The point at issue was, whether the land was part of plaintiff's Mali wurg. Munsiff has agreed that it was not, and has yet cast Collector in costs.

Munsiff has decided a question not at issue, proprietary right in Kumaki. This, too, he has given in favour of Collector, and yet cast him.

Munsiff has still further gone beyond his jurisdiction in ordering Collector to give an equivalent piece of admitted Government ground.

(Signed) H. S. THOMAS,
Acting Collector.

(True Copy.)

(Signed) H. S. THOMAS,
Acting Collector.

The Board approve of the Collector's proceedings, and await his further report.

(True Copies and Extract.)

(Signed) R. A. DALYELL,
Secretary.

To the Acting Collector of South Canara.

Exd. J. Wright.

1868. Department, 4 No. 1,138.

PROCEEDINGS OF THE BOARD OF REVENUE,

Dated 17th February 1868.

Approving proceedings of Collector of South Canara, in having preferred an appeal to Civil Court of Mangalore, against decree passed by District Munsiff of Buntiwal, in O. S. No 91 of 1861 on file of his Court regarding certain land; and awaiting Collectors further report on the subject.

fixed, nor the Chittahs or Mahazernamahs and other old records alluded to by the plaintiff's Vakeel in his petition.

22. From the evidence adduced in this case, and from the facts abovementioned, I am of opinion that it is not just to destroy the right which the Wurgadars possessed from of old to Kumaki grounds; that if it be certain that the same are not merged in the beriz of the wurgs they should be assessed, and the amount included in the amount of the other assessment for the wurgs, and be collected from the respective Wurgadars, and that if they be given on Durkhast to other individuals, it would be difficult for the ryots to cultivate their lands and pay the assessment, and they will thereby suffer injustice. The ground in dispute ought to have been given on Durkhast to the plaintiff himself; but as he was a minor when it was given on Durkhast, the Vakeel who appeared on the part of his mother urged, on the ground of the boundaries mentioned in the Deed of Sale in favour of the plaintiff's ancestor, that he had a proprietary right to the ground in question, and refused to take it on assessment; nevertheless, immediately after it had been given on Durkhast to others, the plaintiff filed a petition agreeing to pay the assessment that they might pay; but it appears that plaintiff's request was not complied with, in consequence of the ground having been already given to others.

23. Though I am of opinion that the ground in dispute, having formed the Kumaki of the plaintiff's wurg, could not have been given on Durkhast to any others but himself, still the same having been already given on Durkhast to others, and the other defendants having, at a considerable outlay, erected on it warehouses and other buildings, and it having also been alienated from one to another, it cannot now be directed to be made over to the plaintiff. As it does not appear that there is other Kumaki for the cultivation of plaintiff's land, it is decreed that the Collector do give the plaintiff, as Kumaki for cultivation, ground from another Government hill equal to the ground given on Durkhast, and that, owing to the circumstances of the suit, each party do bear his own costs. The price of the junglewood trees that grew on the land given on Durkhast, and also the rent subsequent to the date it was so given, cannot be awarded to the plaintiff.

Dated 17th August 1867.

	Plaintiff's costs.	1st defendant's costs.	Costs of defendants 2, 6, 7, 8, 12, 13, 15, 23.	Costs of defendants 20 and 30.	31st defendant's costs.	Costs of defendants 36, 37, 38, 39, and 40.	Total.
	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.
Costs as entered in the Original Decree	18 3 9	2 13 9	5 5 9	3 5 9	... ...	... ...	29 13 0
Do. as entered in the Appeal Decree	18 14 0	... ...	... ...	... ...	2 6 0	2 6 0	23 10 2
Fees of Pleaders in the remanded stage of the suit	0 13 7	... ...	... ...	... ...	0 13 7	... ...	1 11 2
Value of sundry stamp papers	14 8 0	... ...	... ...	... ...	1 0 0	... ...	15 8 0
Expenses of serving processes	5 2 0	... ...	... ...	... ...	... ...	... ...	5 2 0
Registering fees	... ...	... ...	... ...	... ...	... ...	... ...	... ...
Total...	57 9 4	2 13 9	5 5 9	3 5 9	4 3 7	2 6 0	75 12 2

Pleader's fees on the amount decreed, Rupees 6-9-7.

Signature of PANAMBUR SUBROW,
Vakeel.

(True translation.)

(Signed) H. S. THOMAS,
Acting Collector.

Rev - 1869. Oct^br.

Board of Revenue,
MADRAS.

A: 1699.

PROCEEDINGS, 18TH MAY 1869, No. 3,394.

Recd. 22nd May 1869 Encl. 4+

Received 25th -

+1 Refd.

MAY.

No. 3,394.

Appeal Suits—Nos 432 and 437 of 1867, on file of Mangalore Principal Sudder Ameen's Court in South Canara District, regarding certain lands,—Letter from Collector forwarding copy of Decree and Judgment in, submitted for information of Government.

A: 1701.

RECORDED.

11th June/69

Ed. J. Tulloch.

c 29 May/69. N: 7 ditto