M.R.O. 1—89,000—16-10-39.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue. **DEPARTMENT.**

G.O. No.	2403.	Press ~~Mis.~~
343-352		
Dated	24th August	1869.

Not to be folded or roughly handled

No. 349. Read the following Proceedings of the Board of Revenue, dated 3rd August 1869, No. 5,681 :—

Read the following letter from the Collector of Vizagapatam, to the Acting Secretary to the Board of Revenue, dated 5th June 1869, No. 302.

Referring to the Board's Proceedings, dated 20th November last, No. 8,224A, I have the honour to forward, herewith, copies of the Judgment and Decree of the Principal-Sudder-Ameen's Court at Vizagapatam in Appeal Suit No. 1 of 1869.

2. The Principal-Sudder-Ameen, it will be observed, has modified the decision of the lower Court in every instance, except in reference to the land in dispute which he decrees to the plaintiff.

3. By the Moonsiff's decision, the costs, etc., amounted to Rupees 813-2-9 as particularised below :—

	Rs.	A.	P.
Amount of costs, etc., as per decree of the Moonsiff's Court...	195	7	0
Interest on the above amount up to 31st October 1868	1	3	8
Produce of the land for four years, at Rupees 150 a-year, from 1864...	600	0	0
Stamps for motion and Vakalutnama	1	0	0
Stamps for plan and copyist's fee, etc.	3	10	1
Fee to the Pleader	11	14	0
	813	2	9

By the Appellate Court's decree, our liabilities are as follow :—

	Rs.	A.	P.
Amount to be paid to the plaintiff by Government ...	112	15	0
Deduct amount to be paid to Government by the plaintiff	110	4	0
Balance to be paid by Government	2	11	0
Add probable amount of past produce from Fusly 1274 (1864-65)	350	0	0
	352	11	0

4. A sum of Rupees 109 is also payable to Mr. Pleader Siee, who conducted the case in appeal as fees for himself and copyist. I have ordered that this latter sum be disbursed at once.

5. There appear no grounds now for a Special Appeal, nor would I recommend one.

6. On motion for execution, I shall be prepared to comply with the decree of the Appellate Court. Meanwhile, I request the sanction of the Board to the measure proposed.

Enclosure No. 1.

In the Principal-Sudder-Ameen's Court at Vizagapatam.

The Twenty-fourth March, One thousand Eight hundred and Sixty-nine.

Present :—P. Streenevassa Row, Principal Sudder Ameen.

Regular Appeal No. 1 of 1869.

Judgment.

The plaintiff, the Mokassadar of the village of Cotta Yellavaram, sued for certain lands, alleging that they formed part of his village ; and that the 1st and 2nd defendants and 3rd defend-

ant's deceased father usurped the same with the help of mirassidar, the 4th defendant, seven or eight years ago.

2. The 1st, 2nd, 3rd, and 4th defendants pleaded the lands sued for formed part of the village of Yercampetta which belongs to the Madras Government.

3. The Madras Government interposed in the suit as the 5th defendant, and took the defence upon itself.

4. The District Moonsiff of Prayavarem adjudged the land and mesne profits and costs to plaintiff's against the 5th defendant, and exonerated the 1st to 4th defendants from the suit.

5. The 5th defendant appeals, and is answered by the plaintiff.

6. The first ground of appeal is, that the suit is barred by the twelve years' rule of the Statute of Limitations, as the accounts marked I. to V. prove that the 5th defendant, (the Government,) has been in adverse possession of the land for more than sixteen years before the date of this suit. I cannot allow this objection to prevail for one moment. All the aforesaid accounts, except the one marked No. 1, are of dates within only *ten* years prior to the institution of the suit, so that they can be of no help to the 5th defendant, and the exhibit No. 1, though dated somewhere about sixteen years before the suit, is not shown to be in any way connected with the lands in question. I may add here that 5th defendant's own witnesses, 7 and 10, show that the possession of the 5th defendant extends over a period of ten years only. Under these circumstances it is perfectly clear that the suit is not at all shown to be barred by the Statute.

7. The second ground of appeal is, that although the accounts marked I. to V. are not verified by any authority, superior to a village officer, yet they are admissible in evidence. This may be the case; but surely, before putting them in evidence, the 5th defendant should show that they refer to the lands in question, as otherwise those accounts will be looked upon as so many waste papers for the purposes of the suit. But there is not an iota of evidence to connect the accounts with the lands sued for. Surely, if the lands belonged to Government (5th defendant) much better accounts than those signed by a village official (4th defendant) ought to have been forthcoming; such as puttahs and muchilikas issued under Regulation XXX. of 1802, and Section 4, Regulation II. of 1806; receipts of payments of revenue and other public accounts in the talook and Huzoor Cutcherries. But none of these is produced, nor is the omission accounted for.

8. The third ground of appeal is, that the oral evidence adduced by either party has not been correctly appreciated by the lower Court, I am not prepared to allow the objection. The plaintiff's 1st, 2nd, 3rd, 4th, 7th, and 8th witnesses prove that the lands sued for belong to plaintiff's Mokassa village, and they gave a detailed description of the boundaries of the said village, showing that the lands are situated beyond the limits of the Government village of Yercampett. On the other hand, no attempt has been made on the part of Government to prove the boundaries of its own village, and it is very remarkable that many of the 5th defendant's witnesses (5th, ect..) admit that the lands in question did once belong to plaintiff's Mokassa village, but were subsequently added to the Government village. They however assign no satisfactory reason for this transfer; and if such a transfer had actually taken place, some mention of it ought surely to have been made in the public records in the Revenue Department, but no such thing appears to have been done. The witnesses, moreover, give the period of such transfer as being from ten to twenty years before the date of their examination (1868) in this suit, so that I am inclined to think that the transfer spoken of by the witnesses must be usurpation complained of by the plaintiffs as having been made by 1st to 4th defendants seven or eight years before the date of suit, 1865.

9. The fourth ground of appeal is, that the District Moonsiff ought not to have taken notice of the Principal-Assistant-Collector's proceedings, by which the plaintiff's right to the lands in dispute was fully recognised, because those Proceedings were all quashed by the District Collector on appeal. Although I admit that these proceedings have lost their legal force by being set aside by the Appellate authority, yet I think the plaintiff is entitled to take advantage of the same, to show what has been the line of procedure adopted by Government officers in regard to the lands in question until a very recent date. If the lands had been indubitably the property of Government for many years past, as contended by the 5th defendant, the Principal-Assistant-Collector could not have decided that the lands belonged to the plaintiff. This act of the Principal-Assistant-Collector is certainly no conclusive evidence against Government, but it cannot fail to weaken the defence set up by Government in this case.

Proceedings of the Madras Government, Revenue Department,
21th August 1869.

10. Under these circumstances I affirm the lower Court's decree, establishing the plaintiff's right to the lands sued for. But I cannot agree with the District Moonsiff in adjudging the mesne profits of the lands against the Government (5th defendant). The Government can only be held liable to refund to plaintiff any amount of revenue which it may have collected upon the land, from the year Ractachee (1864) up to execution of the decree. The exact amount of such revenue being ascertained during the execution of the decree, under Section 197 of the Code of Civil Procedure.

The costs of the suit will be charged against the several parties in proportion to the claim awarded and disallowed.

(Signed) P. STREENEVASSA ROW,
Principal-Sudder-Ameen.

Enclosure No. 2.—Decree.

Board's Procs., dated 15th Sept. 1865, No. 5,744A.
Do. do. ,, 20th Nov. 1868, ,, 8,224A.

Submitted, together with the papers noted in the margin, for the information and orders of Government.

2. The facts of the case are clearly stated in the Judgment, and are briefly as follow:—

3. In a letter, dated 2nd September 1865, the Collector reported that a suit for ejectment, with sundry mesne profits, had been filed in the District Moonsiff's Court at Viravelli, against certain Government ryots by the Mokassadar of the adjoining village, on the plea that they were cultivating his lands.

4. The Collector reported that he had, on his own application, been included as 5th defendant in the suit.

5. It appears that some years previously a complaint of a similar nature was made by the plaintiff to the then Principal-Assistant, who referred the dispute to a punchayet, under Clause 2, Section 15, of Regulation V. of 1822. The punchayet decided in favour of the plaintiff, but the decision was reversed by the Revenue authorities, on the ground that the plaintiff had been out of possession for several years; and further that, "a Revenue officer had no authority to refer to a punchayet a suit wherein he had no jurisdiction, Act XIV. of 1859, allowing one year only as the period of limitation, within which summary suits under the Regulation cited (Act V. of 1822) might be brought".

6. In the draft answer submitted for the Board's approval, it was urged that the suit was barred by the Statute of Limitation, as it was shown by the public accounts that the land had been in possession of the Government ryots since Fusly 1259. Failing the recognition of this plea, it was proposed to join issue on the merits of the case.

7. Judgment was given in favour of the plaintiff, and it was decreed "that the 5th defendant (the Collector) do cause the lands on the south and west of the boundary mentioned in the plaint to be delivered to the plaintiff, together with the past and subsequent produce and costs; that the 1st, 2nd, 3rd, and 4th defendants, (the Government ryots,) be excluded from the suit; that the costs incurred by them be defrayed by the plaintiff; and that interest at six per cent. per annum be paid on the past produce, and the costs from the date of the decree to that of the payment."

8. Against this decision the Collector appealed, and it will be seen that the decision of the lower Court has been, though upheld in its main feature, somewhat modified, the mesne profits adjudged against the Collector in the original decree having been reduced to such revenue as may have been collected from the lands, the amount to be ascertained during execution of the decree.

No. 350. ORDER THEREON, 24th August 1869, No. 2,403.

Miscellaneous.

THE Government are of opinion that it would not be advisable to institute a special appeal. Payment of Rupees 352-11-0, or of the sum together with costs for which the Government are declared liable under the decree of the Principal-Sudder-Ameen, is sanctioned.

(True Extract.)

(Signed) R. A. DALYELL,
Acting Secretary to Government.

To the Board of Revenue.
& the Accountant General.

Rad. F. R. Bantleman.

No. 5,7 Ha.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 15th September 1865.

Read the following letter from D. F. CARMICHAEL, Esq., Collector of Vizagapatam, to R. A. DALYELL, Esq., Acting Secretary to the Board of Revenue, dated 2nd September 1865, No. 660:—

1. A suit for ejectment, with sundry mesne profits, has been brought in the District Munsiff's Court at Viravilli against some Government Ryots of Yerukampeta, of Golgonda Taluk, by the Mohasadar of an adjoining village, on the pretence that they are cultivating his lands. On this being brought to my notice by the Principal Assistant, I moved the Court to appoint the Government a supplemental Defendant. This has now been done, and I enclose copy of the Plaint and of the answer I propose to file.

2. Public accounts show that the lands claimed have been occupied by our Ryots from Fasli 1259, and in the third paragraph of the answer it is contended that the suit should accordingly be dismissed as Statute run; while, if the Court thinks proper to overrule this plea, we are prepared, as stated in paragraphs one and two of the answer, to join issue on the merits.

3. Some three years or more ago, the late Principal Assistant, on complaint made by Plaintiff as to the wrongful occupation of his land by Government Ryots, referred the dispute to a Punchayet, under Clause 2, Section 15, Regulation V of 1821. The Punchayet decided in favor of Plaintiff, and the late Principal Assistant ordered the decision to be carried out; but as it was clear that the Plaintiff had been out of possession several years, it was necessary, on appeal, to reverse this order. A Revenue Officer has no authority to refer to a Punchayet a suit wherein he has no jurisdiction, and Act XIV of 1859 allows one year only as the period of limitation within which summary suits under the Regulation cited may be brought.

4. The answer is to be filed on the 5th October proximo. Sanction to defend is therefore solicited at an early date.

ENCLOSURE No. 1.

No 18 of 1865.

Maha Raja Sri.

The Court of the District Munsiff of Viravilli.

Plaintiff.

Sri Bahubalendruni Pattrajugaru, Mokassadar and inhabitant of Madgole.

Versus.

1. Koppular Sanyasi ... ... } Pettynadars and inhabitants of Yerukampeta
2. Kurakula Chinnaya ... ... } of Golgonda.
3. Channdaka Chinnaya ... ... }
4. Madhira Suabarayudu, Karnam and inhabitant of Narispatam.

Copy of Letter from the Board of Revenue,
No. 2,463.
Dated August, 24th.
Read.
G. O. 24th August 1865, No. 2,463.
To
THE BOARD OF REVENUE.
Report the action taken on the accompanying Petition.

AUGUST.

Nos. 349-350.

Suit No. 1 of [illegible] Vizagapatam District.—Institution of a [illegible] against the Judgment passed in it, [illegible] advisable. Papers [illegible] in compliance with it, sanctioned

1. The 1st and 2nd Defendants, and the 3rd Defendant's late father Sanyasi, having at the instigation of the fourth Defendant encroached upon a piece of waste Land belonging to Plaintiff's Mokasa Village of Kottayellaram, about seven or eight years ago, made cultivation on it sub-letting portions thereof to certain others.

2. The Principal Assistant Agent, before whom it became a matter of dispute, disposed of it by means of a punchayet, and caused the land to be made over to Plaintiff, and he (Plaintiff) received one year's sist of the land in dispute. But again, in Appeal, the Governor's Agent having made an Order to the effect that the case was not adjudicable in the Revenue Department, and caused the land to be put in the same state in which it was up to the date of complaint, it reverted to the possession and enjoyment of the first, second, and third Defendants. Hence, the cause of action rests on the endorsement of the Governor's Agent, dated 14th September 1864, given on the last petition. Foregoing the sist of the year "Rudhirodgari" (1862-63), Plaintiff now prays for the recovery from Defendants of Rupees 150, being the sist of the year "Raktakshi," 1864 (1274) and costs of Court with interest, as also of possession of Malguzari dry lands, yielding an annual sist of Rupees 150, appertaining to Plaintiff's Mokasa Village of Yellavaram, and situated within the undermentioned boundaries, with subsequent produce of the same.

31st January 1865.

Boundaries.

On the East by the hill of Gundupala Village.

On the South by three pieces of cultivated land belonging to the Village of Mallavaram.

On the West by a piece of land called "Wadavani Chelaka", situated on this side of Jilladpudi.

On the North by the large bank of the river, and Jargam Muttyalu's bund.

(Signed) BUDTAURI VENKATARAMAIYA, Pleader.

I, Sri Bahubalendruni Pattray, Plaintiff to the above suit, do declare that what is herein contained is, to the best of my knowledge and belief, correct.

(Signed thus) ✱.

(True Translation.)

(Signed) D. F. CARMICHAEL, Collector.

ENCLOSURE No. 2.

Answer of the Supplemental Defendant in Suit No. 18 of 1865, of the Court of the District Munsiff of Viravilli.

1. The complaint brought by the Plaintiffs, stating that the first and second Defendants, and the father of the third, had, with the advice of the fourth Defendant, encroached upon several of the Plaintiff's lands situated in his Mokhasa village of Kotta Ellavarem, and praying that lands of Rupees 150 annual sist from the year Rachtachi, together with costs, may be ordered to be made over to him is not true.

2. The lands claimed do not belong to Plaintiff's Mokhasa village, they appertain to the Government village Errakampet of the Golgonda Taluk; the first, second, and third Defendants, as well as other Ryots, have been in the habit of cultivating the said lands, paying the sist thereof to Government from many years, which the public accounts and other evidence will prove if the Court puts the Plaintiff to his proof.

3. But it is submited; that the preliminary issue is, whether Plaintiff's claim is or is not barred by the Act of Limitation. The public accounts will show that the land was occupied by the Government Ryots in Fasli 1259, or sixteen years ago, and it is clear that it was Plaintiff's business to sue in a Civil Court within twelve years, which he has not done.

(Signed) D. F. CARMICHAEL,
Collector.

The Board approve of the proposed answer, and sanction the defence of the suit on the usual terms.

(True Copies and Extract.)

(Signed) R. A. DALYELL,
Acting Secretary.

To D. F. Carmichael, Esq., Collector of Vizagapatam.

Copy to F. Lushington, Esq., Accountant General.

Exd. J. Wright.

No. 3,224A.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 20th November 1868.

Read the following letter from J. I. MINCHIN, Esq., Collector of Vizagapatam, to the Acting Secretary to the Board of Revenue, dated 10th November 1868, No. 824:—

I HAVE the honour to forward translation of the Judgment in Suit No. 18* of 1865, of the late Viravilly District Munsiff's Court's file, the defence of which was sanctioned in Board's Proceedings, No. 5,744A, dated 15th September 1865.

* No. 391 of 1867, of the Rayavaram District Munsiff's Court.

2. I consider the finding of the District Munsiff erroneous, and have appealed from the same on the following grounds:—

(1.) The suit was barred by the Statute of Limitations, as the accounts produced by the appellant in the lower Court, as well as the oral evidence adduced by him, fully established the fact of the land being in the appellant's possession, for a period of sixteen years before the suit was filed.

(2.) It is no where required that a Curnum's accounts should be attested or verified by any superior authority.

(3.) The lower Court erred in its appreciation of the oral and documentary evidence brought forward by both parties.

(4.) The lower Court erred in taking notice of certain proceedings of the Assistant Collector, in reference to the land in dispute which had been quashed on appeal by the Governor's Agent. (Filed on the 17th October 1868).

3. The Judgment reached me on the 9th ultimo. The appeal time expired with 18th ultimo, so that there was no time to make a reference to the Board before filing the appeal.

ENCLOSURE No. 1.

Judgment in Regular Suit No. 391 of 1867, on the file of the District Munsiff's Court at Rayavaram.

THIS suit was originally instituted in the Court of the District Munsiff of Viravilly, but was since transferred to this Court, village in which the land sued for is situate, having been added to the jurisdiction of this Court in the distribution of the villages under the jurisdiction of the Viravilly District Munsiff's Court consequent on its abolition.

2. This suit was for the recovery of certain Malguzari lands situated in the village of Kotta Yallavaram, plaintiff's Mokhasa, and bearing an annual sist of Rupees 150, together with Rs. 150 past sist for the year Raktakshi (1864), as also subsequent produce.

3. The plaint states that about seven or eight years ago, when the lands were uncultivated, the first and second defendants' and third defendant's late father Sanyasi, at the instigation of the fourth defendant, encroached upon them, and, together with some others under them, carried on cultivation thereon; that the complaint preferred regarding this by plaintiff was disposed of by the Principal Assistant Agent by means of a Punchayet, and plaintiff placed in possession of the lands; that in appeal the Governor's Agent ordered the lands to be put in the same state as they were at the time of the complaint, stating that, as plaintiff had received a year's sist, the case ought not to have been disposed of in the Revenue Department; that ever since the lands have been in the possession and enjoyment of the first, second, and third defendants; and that no claim is urged to the sist payable up to the year Rudrodgari, (1863).

4. The first, second, third, and fourth defendants have presented a written statement that the lands sued for are Jerayati lands of the village of Yarakammapeta belonging to Government, and have as such been under their enjoyment for a long time.

5. At the request of the Collector of this district, the Madras Government has been made the fifth defendant.

6. The fifth defendant has caused a written statement to be presented to the effect that the lands sued for do not appertain to the Mokhasa village of plaintiff, but to the Government village of Yarakammapeta; that first, second, and third defendants, as well as several other ryots, have, for many years, been cultivating the lands, paying the sist thereof to Government; that the fact of the

PROCEEDINGS OF THE BOARD OF REVENUE.

Dated 15th *September* 1865.

Despatched

Received

No 5,744A.

Sanctioning the defence, on the usual terms, of the suit for ejectment, filed in the District Munsiff's Court at Viravilli against certain Government Ryots of Yerakampeta, Golconda Taluk, and approving of the proposed Draft Answer.

lands having been enjoyed by Government ryots since Fusly 1259, or sixteen years back, is apparent from the public accounts; that the plaintiff ought to have brought the Civil Suit within twelve years, which he did not do.

7. The following are the exhibits filed by the plaintiff:—

A. Authenticated copy of the decision of a Punchayet, dated 1st January 1862, in a dispute regarding the boundary between Kottayallavaram and Yarakammapeta villages.

From this document, it appears that the Principal Assistant Collector referred a dispute between plaintiff and the present first, second, and fourth defendants in respect of lands lying on the boundary between the outskirts of Yallavaram and Yarakammapeta villages, to a Punchayet, who inquired into it and decided the boundary to be from Gundipalametta straight to Peddavaddu, thence straight to Chintamanuchervu, thence straight to Gudamarrichalama, from which to Jilagam Mutyalukattu, from which obliquely to Vadavanichalaka, thence to Jilledumettah, and placed the disputed lands on the west of the said boundary under Yallavaram village of plaintiff, and those on the east under Yarakammapeta belonging to the present fifth defendant.

Of the members of the Punchayet, four were named by both the parties at two by each, and the other nominated by the Government.

B. Authenticated copy of an order issued by the Principal Assistant Collector to the Tahsildar, dated 16th January 1863, No. 26.

In this document it is mentioned that the Principal Assistant Collector is of opinion that the said decision is right, that to guard against re-occurrence of such disputes, big stones should be fixed at the several boundaries, and that it must be seen that the lands are enjoyed from this year forward according to them.

C. Proceedings held by the Agent to the Governor on 3rd September 1863.

These proceedings show that the present first, second, and fourth defendants appealed to the Governor's Agent against the order marked B; that the decision of the Principal Assistant Collector had been reversed as he had no jurisdiction in the case in his Revenue capacity; it seeming that the lands sued for had been out of the plaintiff's possession for ten years, and that the Governor's Agent ordered that the lands should be put in the [illegible] they had been at the time of the plaintiff's complaint.

D. Complaint presented anew by plaintiff before the Principal Assistant Collector under Section 4, Regulation No. XII. of 1816, regarding a boundary dispute, setting forth that the Governor's Agent had reversed his decision, being of opinion that the case was not adjudicable under Section 15, Regulation No. V. of 1822, together with the plaintiff's order thereon that the plaintiff should go to the Civil Court as the Revenue Authorities could not interfere in the matter.

E. Appeal petition presented by plaintiff before the Governor's Agent from the above order, together with his endorsement confirming the order.

F. Title-deed showing that the plaintiff's Mokhasa village, of Yallavaram, has been enfranchised.

8. Exhibits filed by the fifth defendant.

Nos. I. to V.—Accounts of Pallapupollu for Fuslies 1260, 1264, 1265, 1267, 1268, and 1271.

Some entries in these accounts, the Vakeel for the fifth defendant says, relate to the lands in dispute.

9. The Vakeel for the plaintiff alleged, at the time of the first hearing, that the village of Yallavaram, in which the lands sued for are situated, were rented by a Bhimireddi Bucchaya for thirty years; that during that period one Setti Yarakaiya was renter under Bucchaya; that subsequently the lands remained uncultivated for some years, when the villagers of Yarakamapeta cultivated the lands, having cut the jungles that had grown thereon; and that the lands have no connexion with the accounts referred to above.

10. Of the lands in question plaintiff produces one plan and the fifth defendant two, seeing which the Court finds no dispute whatever as regards the situation of the lands, but there exists a dispute in respect to the boundary between the village of plaintiff and that of the fifth defendant; that is to say, plaintiff affirms that the boundary is according to the marks given in the decision marked A, whereas the Vakeel for the fifth defendant alleges that the boundary is not in accordance to the affirmation of the plaintiff, but that it runs from Gundipalum Mettu straight to Peddavadu, thence to Yendutallapadu through Kuppurallu, and passing Yendutalabanda from which up to Jillidupadumettalu through Saripilli Lakkidipadu.

11. The late Viravilly District Munsiff personally inspected the disputed boundaries shown by both parties, and declared that it could not be decided which was the proper one except upon examination.

12. The following are the issues to be determined in this case:—

(1.) Whether the lands sued for are included in plaintiff's Mokhasa village of Kottayallavaram.

(2.) Whether the first, second, and third defendants, at the instigation of the fourth, usurped the lands seven or eight years previous to the date of the plaint.

(3.) Whether the boundary between plaintiff's Mokhasa village of Kottayallavaram and Yarrakamapeta village of the fifth defendant is according to the allegation of plaintiff.

13. It rests with the plaintiff to prove the above points in the affirmative. The plaintiff examined nine, and the fifth defendant ten, witnesses on the said points.

14. The first, second, third, fourth, seventh, and eighth witnesses for plaintiff gave evidence that the boundary between the plaintiff's Mokhasa village of Yallavaram and Yarakammapeta of the fifth defendant is according to the statement of plaintiff.

15. From the evidence of the witnesses Nos. 2 to 10 for fifth defendant, it appears that, about twenty years ago, plaintiff and the Government settled among themselves that the boundary should be according to the marks pointed by the plaintiff; but this evidence is not worthy of credit on account of the discrepancies therein regarding the appointment of the boundary. Moreover, the fifth defendant has not alleged that the boundary was fixed.

16. From the evidence adduced on behalf of the plaintiff, it is apparent that the lands sued for belong to the plaintiff's Mokhasa village of Yallavaram; and that the people of Yarakammapeta village, assisted by the fourth defendant, usurped them about ten years ago, and have since been cultivating them. This fact is supported by the evidence of the seventh and tenth witnesses for fifth [illegible]

17. The first witness for the plaintiff states, that, ten years age, one Bhimireddi Bucchaya rented the village of Yallavaram from plaintiff; that he (witness) knows that the said Bucchaya rented for ten or twelve years or until his death, since which period the lands had remained uncultivated for two years, when they were encroached upon by the first and second defendants, and the father of the third.

The second witness deposes to his father Bhimireddi Bucchaya having previous to ten years back rented the village of Yallavaram from plaintiff, and cultivated and enjoyed the lands in dispute for sixteen years.

The third witness states that he knows that the lands in dispute were previous to ten years ago cultivated by the ryots of Yallavaram village for forty years, and that Bhimireddi Bucchaya and Setti Yarakaiya used to cultivate them as renters under plaintiff.

The fourth witness deposes that before ten or twelve years back, one Bhimireddi Bucchaya renter under the plaintiff used to cultivate the lands sued for, and that afterwards the fourth defendant encroached upon them having collected Kattubadies from the ryots of Yallavaram that had been cultivating them under plaintiff.

The fifth witness gives evidence, that, previous to ten years ago, he cultivated a third portion of the land called "Vadavani chalaka," which is one of the lands in question, for four years; that he paid the sist thereof to plaintiff for two years, and to the Tahsildar of Narsipatam through the fourth defendant for the other two years; and that the plaintiff and fourth defendant having quarrelled, the latter collected sist on the land, saying that it was Government land.

The sixth and ninth witnesses depose, that, ten years ago, Bhimireddi Bucchaya, renter under the plaintiff, gave them Vadavanichalaka, one of the lands sued for as a Mokhasa for rendering service.

The eighth witness states, that, ten years back, Bhimisetti Bucchaya rented the lands in dispute from plaintiff, and cultivated them for thirty or forty years, and that during that period he cultivated some lands for three years.

18. There are certain discrepancies in the above evidence for the plaintiff, which, however, from the following circumstances, are considered so slight as not to be worth noticing.

19. The first witness for the fifth defendant states that the lands in dispute appertain to Yerakammapeta; that previous to ten years ago they were under Government for twenty years, and that he used to collect the sist thereof on behalf of the defendant. He adds that the said village was his Mokhasa, and that the Government took it from him seven or eight years ago. If the village was his Mokhasa till seven or eight years back, how was it possible that he should collect the sist on the lands in dispute on behalf of the Government.

20. The second witness for the fifth defendant deposes that the lands sued for have been under Government for upwards of twenty years; that the sist thereof used to be levied by his maternal uncle, who was the Head of the village, and the fourth defendant.

The fourth witness states that the lands appertain to Yerakammapeta; that they have been under Government for the last twenty years; that he has been cultivating a Podu, by name Musalabailu, which is one of them, paying the sist thereof to the Government.

The fifth and sixth witnesses depose that the lands were under Kotta Yellavaram previous to twenty years back, and that they have since been under Yerakammapeta.

The seventh witness states that twenty years ago one Bhimareddi Bucchaya, renter under the plaintiff, granted to him a certain piece of land for rendering service, and that he (witness) cut the jungle that had grown thereon; that he cultivated and enjoyed the land for ten years; that for two years the Government collected from him sist thereon; and that he then relinquished the land, being unable to pay the sist.

The eighth witness deposes to the sist on the lands in dispute having, for the last twenty years, been paid to the Government under collections on Yerakammapeta.

The ninth witness states that the lands have been under the enjoyment of the Government for the last twenty years.

The tenth witness says that the lands have been under the enjoyment of the Government for the last ten years, and that he has been cultivating one of them called Buragamanucheruvu for twenty years.

21. It is clear, from the evidence of the witnesses Nos. 5 to 10 for the fifth defendant, that the lands in dispute belong to the village of Yellavaram. It does not appear, from the plans filed by both the parties, that the lands, which the fourth and fifth witnesses for the fifth defendant say they have been cultivating, are among those in dispute.

22. The plaintiff has mentioned in the plaint that the lands were encroached upon seven or eight years previous to the date of plaint; but it seems from the above evidence adduced for the plaintiff, and that of the seventh and tenth witnesses for the fifth defendant, that the lands were usurped ten years before the time of their giving the evidence. The date of the plaint is 31st January 1865. The examination of the witnesses took place in July 1868. Hence it might be presumed that these witnesses stated the time of usurpation by mere guess. From the above facts, it does not appear that the evidence for the fifth defendant deserves more weight than that for the plaintiff in respect to the boundaries and time of usurpation.

23. The fifth defendant presented some accounts (Nos. 1 to 5) to prove that the lands have been in its enjoyment for sixteen years; but it failed to show that they have any connexion with the lands sued for. Even if they bear connexion, the only account which shows that the suit is barred by the Law of Limitation is the one No. 1 for Fusly 1269. The Vakeel for the fifth defendant alleges that there are only two items marked in red pencil in the said account that have connexion with the lands. This account seems to bear the signature of the fourth defendant, the Mirasidar; but it contains no sign of its having been confirmed after its preparation by any superior authorities; consequently, this account is not valid enough to show that the suit is barred by the Law of Limitation.

24. The decision made in the Revenue Department was favourable to the plaintiff, but it was reversed by the Agent to the Governor as illegal.

25. It is the argument of the defendants that the lands appertain to Yerakammapeta village of Government; the plaintiff, therefore, ought to have brought the suit against the Government; consequently it is considered proper that the defendants Nos. 1 to 4 should be excluded from the suit.

26. The fifth defendant raises no objection to the quantity of the produce for the year Rakshi mentioned in the plaint.

27. Accordingly the issues are found in favour of the plaintiff. It is decreed that the fifth defendant do cause the lands on the south and west* of the boundary mentioned in the plaint, to be delivered to the plaintiff, together with the past and subsequent produce and costs; that the first, second, third, and fourth defendants be excluded from the suit; that the costs which they have incurred be defrayed by the plaintiff; and that interest at six per cent. per annum be paid on the past produce and the costs, from the date of the decree to that of the payment.

* See second Plan filed for the fifth defendant.

(Signed) C. VENKATARATNAM,
District Munsiff.

12th September 1868.

(True translation.)

(Signed) J. L. MINCHIN,
Collector.

The Board approve of the steps taken by the Collector for defending the appeal.

(True Copies and Extract.)

(Signed) A. MACGREGOR,
Acting Sub-Secretary.

To the Collector of Vizagapatam.

Ed. J. Wright.

Revl. Department

No. 2403.

Proceedings of the Madras Government

Under date the 24th August 1869.

Read the following

Proceedings of the Board

of Revenue.

Subj. letter from Collector forwarding copies of Judgment & Decree in Appeal Suit No. 1 of 1869 filed by Govt. in Vizagapatam Principal Sudder Ameen's Court against decision of Rayaveram Dist. Munsiff in Suit No. 391 of 1867 regarding certain lands.

(H.C. 3rd August 1869 No. 5681)

The Government are of opinion that it would not be advisable to institute an special appeal. Payment

of

Enclosure No. 1 to Board's Proceedings dated 3rd August 1869.

1868. Department.

Rec'd 2nd Nov 1868

No.

PROCEEDINGS OF THE BOARD OF REVENUE,

Dated 20th November 1868.

Received

No. 8,224.

Appeal from decision of District Munsiff of Rayavaram in Vizagapatam, in Suit No. 391 of 1867, on file of his Court.— Steps taken by Collector for defending —, approved.

Rec'd 24th August 1869

of Rs. 352-11-11 or.
of the sum together
with costs for which the
Government are de-
clared liable under
the decree of the Prin-
cipal Sudder Ameen,
is sanctioned.

[illegible]

[illegible] Collr Bp[illegible] Revenue Board Dep[illegible]
[illegible]