M.R.O. 1—88,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 1370 Press Mis.

388-389

Dated 17th May 1869

Not to be folded or roughly handled

No. 388. Read the following Proceedings of the Board of Revenue, dated 1st May 1869, No. 2,954.

Read the following letters:—

From J. W. HANDLEY, Esq., Government Pleader, Madras, to the Acting Secretary to the Board of Revenue, dated 18th January 1869, No. 208.

I HAVE the honor to acknowledge the receipt of the Proceedings of the Board noted in the margin, forwarding copies of the Proceedings of the Civil Court of Guntoor in Original Suits Nos. 3 and 4 of 1867. It now becomes my duty to advise as to the course to be pursued to enforce the claim of Government upon the bonds, the subject matter of these suits, and the moneys secured thereby.

Dated 7th January 1869.

2. It appears to me, after a careful consideration of the whole case, that for this purpose it will be necessary to institute three suits in the Guntoor Civil Court: 1, asking for a declaration of the lien of Government as judgment creditors of V. Lutchmiputty Naidu upon the decree in Appeal Suit No. 50 of 1861, and that the bonds, the subject of that suit, may be handed over in satisfaction of that lien, or that M. A. Lutchmi Narsu Puntulu may pay the amount due to Government himself; 2 and 3 Suits against the Devaracottah Zemindar, on the bond for Rupees 31,000, and his mother, on the one for Rupees 10,000, to enforce the bonds against the lands hypothecated thereby. Suits Nos. 2 and 3 would of course only be instituted in the event of the result of No. 1 being the delivery of the bonds to Government.

3. The object of Suit No. 1 might possibly be attained by applying to the High Court to further execute the decree of the Privy Council awarding costs to the East India Company, by attaching the bonds, the subject of Original Suit No. 2 of 1861, and Appeal Suit No. 50 of 1861; but I think it most likely that the result of such an application would be that the High Court would refer the Government to a regular suit. However, if thought, desirable, the attempt might be made in that way first; then, if necessary, recourse might be had to a suit. I can see no other summary way in which the claim of Government can be asserted.

They cannot apply directly for execution of the decree in Appeal Suit No. 50 of 1861, for they are neither transferrees nor representatives of the original plaintiff within the terms of Section 208 of the Civil Procedure Code.

4. With regard to the probability of the Government being able to maintain their claim against the bonds in preference to that of M. A. Lutchmi Narsu Puntulu the transfer plaintiff, I think it right to point out one difficulty which has presented itself to my mind from the first time that I had anything to do with the case, and that is the fact that the claim of Government upon the decree in question appears never to have been asserted while the same was in the hands of V. Lutchmiputty Naidu; no opposition was made to his application for execution, and it was only after he had transferred the decree to M. A. Lutchmi Narsu Puntulu (and after the decision of the High Court in Civil Petition No. 135 of 1867, it must be assumed, I think, that that transfer was *bona fide* and for value) opposition was made to the execution of the decree by the transfer plaintiff. Under these circumstances it appears to me by no means clear that the priority of the Government claim to that

14. On the following day Narsu Puntulu presented a petition objecting to the Government claim, which petition was rejected, and the claims of Government against M. A. Lutchmi Narsu Puntulu, as in the place of V. Lutchmiputty Naidu, affirmed in accordance with the admission of the Vakeel as above stated.

15. Narsu Puntulu and the heirs of Ananda Row then made a private adjustment in regard to the decree in Suit No. 2 of 1861; the Razeenamah being a collusive one, intended to leave no property of Ananda Row's to satisfy the decree.

16. At the same time, the Devaracottah Zemindar brought Suit No. 4 of 1867, against the heirs of Ananda Row for the return of the bonds which he stated he had only produced as evidence, and which he had satisfied by paying to Ananda Row Rupees 78,800, objecting also to Ananda Row's heirs being in any way permitted to alienate them.

17. On the 20th December 1866, Narsu Puntulu filed a Suit (No. 3 of 1867) against the Devaracottah Zemindar for the recovery of Rupees 1,13,387-10-8, being the principal and interest then due on the bonds.

18. The Suit No. 3 of 1867 has been thrown out as barred by the Statute of Limitation, and Suit No. 4 has been withdrawn, and the question now is, how Government is to get execution of the Privy Council decree in their favor.

19. The bonds were ordered to be made over to Narsu Puntulu in full satisfaction of the decree, by order of the Court, 6th August 1866, and his costs were ordered to be collected from the heirs of Ananda Row and paid to him (Narsu Puntulu.)

20. On the 27th March 1867, the Civil Judge cancelled his order of 6th August 1866, and held that the decree in No. 2 of 1861 could be properly executed only by the sale of the property of the heirs of 2nd defendant in that Suit (Ananda Row), the property being already under attachment.

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precept to the Civil Court to recover the amount of the costs from V. Lutchmiputty Naidu. Under this precept it appears to me that the Civil Court have still the power to attach any part of his estate without any further direction from the High Court.

2. I think it very probable that the Civil Court may consider that the conflicting claims to these bonds must be settled by a regular Suit; but if the Court should entertain an application of the nature above mentioned, the whole question might be decided under Section 246 of the Civil Procedure Code.

RESOLVED that the foregoing letters be submitted for the consideration and orders of Govern-

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5. The value of the two bonds was Rupees 41,000, given on loans contracted by the Devaracottah Zemindar and his mother, one being for 30,000 Rupees lent to the Zemindar on the security of the ryots of several villages of the estate, the second being for 1,100 Rupees lent to the Zemindar's

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On the other hand there is the fact that the Zemindar was not condemned in costs in Original Suit No. 2 of 1861, and he was no party to the Appeal.

8. If the obstacle of the Limitation Act were successfully surmounted, there would remain the defence that the bonds have been satisfied by the payments alleged to have been made to Ananda Row; but even assuming, which is more than doubtful, that these payments were really and *bona fide* made, I do not think they can operate to extinguish the debt, being made to a person who is found to have been in possession of them by fraud, and to have no title whatever to receive the money.

9. These are all the observations that it occurs to me to make at the present time upon the case. Should the Government decide upon proceeding further in the matter, doubtless many other important questions will suggest themselves for consideration in a case complicated as this is by the existence of so many conflicting interests, and by the number of judicial proceedings which have taken place with regard to it.

From the same Officer, dated Madras, 19th January 1869, No. 209.

IN continuation of my letter noted in the margin, I have the honor to mention that it has occurred to me, since writing the same, that the application mentioned in paragraph 3 thereof would more correctly be made to the Civil Court of Guntoor. I have no copy of the order originally made by the Sudder Court for the execution of the Decree of the Privy Council awarding costs to the East India Company against the Vassireddy estate, but from the recital of it in the Written Statements filed on behalf of Government in these Suits it appears to have been a general

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6. Supposing possession of the bonds obtained by one of the methods before mentioned, it remains to be considered what would be the probable result of Suits Nos. 2 and 3. It will be seen that the Suit No. 3 of 1867 was dismissed as barred by the Act of Limitation, because, being a mere money suit, the period of limitation was six years, which expired before the date of the fraudulent abstraction of the bonds by the 2nd defendant in Original Suit No. 2 of 1861, and consequently before the exception in Section 9 of the Limitation Act could have any application. The Civil Judge expressed a strong opinion, which is in accordance with that of the High Court in a case reported in volume 2, page 51 of the Reports, that a Suit to enforce bonds hypothecating lands against the lands hypothecated is a Suit for immovable property, and that twelve years is the period of limitation; consequently, if the view of the Civil Judge as to the construction of Section 9 of the Limitation Act is the right one, the Suit on these bonds, if framed so as to seek the remedy against the lands hypothecated, would not be barred, provided it can be shown to be within the provisions of Section 9.

7. In order to show this it will be necessary to establish three points: first, that the bonds were fraudulently concealed; second, that up to a time within twelve years from the present, it was impossible to produce or compel their production; and third, that the Zemindar was a party to the fraud. The first point is decided by the decrees in Original Suit No. 2 of 1861 and Appeal Suit No. 50 of 1861; as to the second the Civil Judge's view seems to be a sound one, that it was not possible to produce or compel the production of the bonds until they were brought to light in December 1863 in the course of a Suit, No. 31 of 1863. Up to that time the contention of the Zemindar had been that they were lost or destroyed. The third point will be the most difficult to establish at this distance of time from the date of the events.

There is much, certainly, to point in that direction; the fact of the date of the alleged payment and surrender of the bonds to the Zemindar being only a few months before the institution of Suit No. 2 of 1861; the great doubt that exists whether any payment was ever made by him other than by giving another bond; his statements that the bonds were lost or destroyed: all these things point to the fact of collusion between the Zemindar and Ananda Row, the person originally guilty of the fraud, and his representatives, which collusion was hinted at by the Civil Court in Original Suit No. 2 of 1861, and distinctly found by the High Court on the Appeal.

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5. Besides the difficulty last mentioned, I see no other obstacle to the maintenance of the Government claim upon the bonds. The decree of the Privy Council is still in force, the Limitation Act not affecting such decrees, and the period of limitation for executing the decree in Appeal Suit No. 50 of 1861 is twelve years from its date (March 1861), even supposing that the frequent applications for execution would not keep it alive for a much longer time.

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5. The value of the two bonds was Rupees 41,000, given on loans contracted by the Devaracottah Zemindar and his mother, one being for 30,000 Rupees lent to the Zemindar on the security of the ryots of several villages of the estate, the second being for 1,100 Rupees lent to the Zemindar's [illegible] Original Suit No. 2 of 1861, and distinctly found by the High Court [illegible] Appeal Suit No. 50 of 1861 [illegible] they are neither transferrees nor representatives of the original plaintiff within the terms of Section 208 of the Civil Procedure Code.

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7. The widow, Chavu Veerammah, then brought the Suit already alluded to (No. 2 of 1861), to recover possession of the bonds or their value, and denied that she had transferred them to Ananda Row, stating that she had deposited them with her mother Paupammah, (widow of Ramanadha Baboo,) from whom Ananda Row had obtained them by forcible and illegal means.

8. The result of the Suit was that the Civil Judge decreed that Ananda Row should restore to the widow the bonds, or else pay to her Rupees 78,800 being the principal and interest of the original loan, and all costs of the Suit.

9. This decree was fully confirmed by the Sudder Adawlut in Appeal Suit No. 50 of 1861.

10. At this stage, Ananda Row compelled the Zemindar to produce bonds in Court for the purpose of using them as evidence in support of the endorsement on them: took them from the Civil Court and produced them in the High Court.

11. While an appeal from Sudder Adawlut decree in the Vassireddy case was pending before the Privy Council, the widow, Chavu Veerammah, transferred the decree in Suit No. 2 of 1861 to Lutchmiputty Naidu, who again transferred it to the son of Narsu Puntulu.

12. This transfer was opposed on behalf of Government, but the Vakeel of Narsu Puntulu begged the Court to allow it, at the same time stating that the transfer would not be considered by his client as barring the claim of Government against Lutchmiputty Naidu; and, on this condition, the Judge admitted the transfer.

13. The bonds shortly afterwards came into possession of, and were impounded by, the Court for the satisfaction of the Government claim.

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17th May 1869.

On the other hand there is the fact that the Zemindar was not condemned in costs in Original Suit No. 2 of 1861, and he was no party to the Appeal.

8. If the obstacle of the Limitation Act were successfully surmounted, there would remain the defence that the bonds have been satisfied by the payments alleged to have been made to Ananda Row; but even assuming, which is more than doubtful, that these payments were really and *bona fide* made, I do not think they can operate to extinguish the debt, being made to a person who is found to have been in possession of them by fraud, and to have no title whatever to receive the money.

9. These are all the observations that it occurs to me to make at the present time upon the case. Should the Government decide upon proceeding further in the matter, doubtless many other important questions will suggest themselves for consideration in a case complicated as this is by the existence of so many conflicting interests, and by the number of Judicial proceedings which have taken place with regard to it.

From the same Officer, dated Madras, 19th January 1869, No. 209.

Dated 18th January 1869, No. 208.

In continuation of my letter noted in the margin, I have the honor to mention that it has occurred to me, since writing the same, that the application mentioned in paragraph 3 thereof, would more correctly be made to the Civil Court of Guntoor. I have no copy of the order originally made by the Sudder Court for the execution of the Decree of the Privy Council awarding costs to the East India Company against the Vassireddy Estate, but from the recital of it in the written Statements filed on behalf of Government in these Suits it appears to have been a general precept to the Civil Court to recover the amount of the costs from V. Lutchmiputty Naidu. Under this precept, it appears to me, that the Civil Court have still the power to attach any part of his estate without any further direction from the High Court.

2. I think it very probable that the Civil Court may consider that the conflicting claims to these bonds must be settled by a regular Suit; but if the Court should entertain an application of the nature above mentioned, the whole question might be decided under Section 246 of the Civil Procedure Code.

Resolved that the foregoing letters be submitted for the consideration and orders of Government.

2. The circumstances connected with the institution and progress of Suits Nos. 3 and 4 of 1867, in the Civil Court of Guntoor, have already from time to time been laid before Government who have passed orders on the subject.

3. As Government will now have to decide what further steps should be taken to preserve their interests, the Board, in submitting the foregoing letters from the Government Pleader on the subject, beg to offer the following brief outline of the case.

4. The question now before Government is what course is to be pursued to obtain possession of certain bonds (or their value) the subject of Original Suit No. 2 of 1861, the bonds having been transferred by their owner, under the decree

in the above case, to Vassireddy Lutchmiputty Naidu, a debtor to Government, for the balance (Rupees 1,01,380-13-1) of costs paid by the late East India Company, in carrying before the Privy Council the Vassireddy Suits, in which he, although successful, was saddled with costs amounting to Rupees 1,12,573-11-7.

5. The value of the two bonds was Rupees 41,000, given on loans contracted by the Devaracottah Zemindar and his mother, one being for 30,000 Rupees lent to the Zemimdar on the security of the ryots of several villages of the estate, the second being for 1,100 Rupees lent to the Zemindar's mother.

6. The bonds fell into the hands of Chavu Veerammah, widow of the lender, and were deposited with her mother Paupammah, from whom they were, by force and illegal means, obtained by one Pottury Ananda Row, who endorsed the bonds to the effect that he had received the amount of their value from the Zemindar of Devaracottah and had returned them to him.

7. The widow, Chavu Veerammah, then brought the Suit already alluded to (No. 2 of 1861), to recover possession of the bonds or their value, and denied that she had transferred them to Ananda Row, stating that she had deposited them with her mother Paupammah, (widow of Ramanadha Baboo,) from whom Ananda Row had obtained them by forcible and illegal means.

8. The result of the Suit was that the Civil Judge decreed that Ananda Row should restore to the widow the bonds, or else pay to her Rupees 78,800 being the principal and interest of the original loan, and all costs of the Suit.

9. This decree was fully confirmed by the Sudder Adawlut in Appeal Suit No. 50 of 1861.

10. At this stage, Ananda Row compelled the Zemindar to produce bonds in Court for the purpose of using them as evidence in support of the endorsement on them: took them from the Civil Court and produced them in the High Court.

11. While an appeal from Sudder Adawlut decree in the Vassireddy case was pending before the Privy Council, the widow, Chavu Veerammah, transferred the decree in Suit No. 2 of 1861 to Lutchmiputty Naidu, who again transferred it to the son of Narsu Puntulu.

12 This transfer was opposed on behalf of Government, but the Vakeel of Narsu Puntulu begged the Court to allow it, at the same time stating that the transfer would not be considered by his client as barring the claim of Government against Lutchmiputty Naidu; and, on this condition, the Judge admitted the transfer.

13. The bonds shortly afterwards came into possession of, and were impounded by, the Court for the satisfaction of the Government claim.

14. On the following day Narsu Puntulu presented a petition objecting to the Government claim, which petition was rejected, and the claims of Government against M. A. Lutchmi Narsu Puntulu, as in the place of V. Lutchmiputty Naidu, affirmed in accordance with the admission of the Vakeel as above stated.

15. Narsu Puntulu and the heirs of Ananda Row then made a private adjustment in regard to the decree in Suit No. 2 of 1861; the Razeenamah being a collusive one, intended to leave no property of Ananda Row's to satisfy the decree.

16. At the same time, the Devaracottah Zemindar brought Suit No. 4 of 1867 against the heirs of Ananda Row for the return of the bonds which he stated he had

Proceedings of the Madras Government, Revenue Department,
17th May 1869.

only produced as evidence, and which he had satisfied by paying to Ananda Row Rupees 78,800, objecting also to Ananda Row's heirs being in any way permitted to alienate them.

17. On the 20th December 1866, Narsu Puntulu filed a Suit (No. 3 of 1867) against the Devaracottah Zemindar for the recovery of Rupees 1,13,387-10-8, being the principal and interest then due on the bonds.

18. The Suit No. 3 of 1867 has been thrown out as barred by the Statute of Limitation, and Suit No. 4 has been withdrawn, and the question now is, how Government is to get execution of the Privy Council decree in their favor.

19. The bonds were ordered to be made over to Narsu Puntulu in full satisfaction of the decree, by order of the Court, 6th August 1866, and his costs were ordered to be collected from the heirs of Ananda Row and paid to him (Narsu Puntulu.)

20. On the 27th March 1867, the Civil Judge cancelled his order of 6th August 1866, and held that the decree in No. 2 of 1861 could be properly executed only by the sale of the property of the heirs of 2nd defendant in that Suit (Ananda Row,) the property being already under attachment.

21. The bonds were accordingly given over to the Devaracottah Zemindar, and Ananda Row's property was ordered to be sold, the proceeds of the sale to be paid to Narsu Puntulu only on condition of his furnishing security to meet the contingency of the Government (as a judgment creditor of Lutchmiputty Naidu) being successful in a suit to be brought (if advisable) to cancel the transfer of the decree (in Suit No. 2 of 1861) by Lutchmiputty Naidu to Narsu Puntulu.

22. The High Court reversed this order and declared the bonds to be property of Narsu Puntulu, but ordered them to be detained by the Court in order to meet any claim of Government against Narsu Puntulu as representative of Lutchmiputty Naidu.

23. The Government have now to prove their right to the decree as creditors of Lutchmiputty Naidu, who transferred his rights to Narsu Puntulu.

24. The Devaracottah Zemindar declares that he has paid the bonds, but even if he did do so, the payment was illegal and null, for it was made to Ananda Row who was not competent to demand payment, having no right to the bonds.

25. The Government Pleader recommends, first, that Government should move to have the bonds attached in execution of the Vassireddy decree awarding costs to the East India Company, although he is not sanguine as to the success of this measure.

26. Failing this, he suggests a Suit against Narsu Puntulu as transfer holder of decree in Suit No. 2 of 1861, if he be not held responsible and will not pay, thus getting a declaration that Government have a lien on the decree; and as a further step, Suits against the Devaracottah Zemindar and his mother-in-law, the granters of the bonds.

27. Mr. Handley observes that Government cannot apply directly for execution of the decree, as they are neither transferrees nor representatives of the original plaintiff, within the terms of Section 208 of the Civil Procedure Code.

28. He considers that as Government did not assert their claim on the decree while it was in possession of Lutchmiputty Naidu, it may be held that the claim of

Government is not preferable to that of Narsu Puntulu, and he does not attach much importance to the admission of Narsu Puntulu's Vakeel, that the execution of the decree in his favor should not prejudice the legal rights of Government.

29. Mr. Handley also shows the difficulties in the way of the prosecution of Suits against the Devaracottah Zemindar and his mother-in-law, and the Board are of opinion that it would not be worthwhile to undertake the former, as it is barred by limitation, referring only to money, although the other case might be tried.

30. The Board have had some doubts as to the expediency of attempting any further litigation, which must of necessity be expensive and may result merely in "throwing good money after bad."

31. On the other hand, it appears quite certain that the whole affair has been evasive or fraudulent, and the Board resolve therefore to lay the matter before Government, with their recommendation that the course proposed by the Government Pleader be tried.

32. The Collector of the Kistna District will, in the event of Government resolving to persevere in the matter, take such measures as he can to procure evidence in support of the claims of Government.

No. 389. ORDER THEREON, 17th May 1869, No. 1,370.

Miscellaneous.

THE Right Honorable the Governor in Council sanctions the adoption of the first of the recommendations* made by the Government Pleader; but if the application should prove unsuccessful, the Government are not prepared, without further consideration, to authorise direct litigation on behalf of Government, as the result appears to be at least doubtful.

* Government Pleader, to Board of Revenue, paragraph 3, 18th January 1869.

(True Extract.)

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

To the Board of Revenue.

Exd. E. C. Shunker.

Govt. of {1869} Madras.

REVENUE.

To

THE BOARD OF REVENUE,

Dated May, 17th.

Recd. Encl.

G. O., 17th May 1869, No. 1,370.

From Boss Rum 5th July/69
C No 223 f.

MAY.

Nos. 388-389.

Suits Nos. 3 and 4 of 1867, in the Kistna District.—The adoption of the Government Pleader's first recommendation in connection with these Suits, sanctioned.

No 1370 No 610

Pro: of the H: Gov.
Read the following Pro:
of H.E. of 1st May/69 No 2954

The Rt. Hon.ble the
Govs in Council
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on behalf of Govt, as
the result appears to
be at least doubtful

Govt Pleader to H.E. of Rec
dated 3. 18 day 1869.

without further consideration

14 Copies Folio B of Rec Despatch

17 May/69

Copie de la
Minute

28 May 99. R-15 May.