M.R.O. 1—39,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 146 Press Mis.

296-97
Dated 27-1-1870 10

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department,
27th January 1870.

No. 296. Read the following letter from JIVANI BOYE, residing at Bangalore, to the Chief Secretary to Government, Fort Saint George, dated Bangalore, 13th November 1869.

I BEG to forward herewith a Memorial, in triplicate, to the address of the Right Honourable the Secretary of State for India, praying for the restoration of the third life-pension enjoyed by me on account of N. Kristna Row, late Head Sheristadar of the District of Canara, the adoptive father of my husband, Nursinga Row, the heir by adoption and under Will to all the civil and social rights of the said N. Kristna Row, but which pension Government were pleased, after enjoyment by my husband for seven years and by me for thirteen years, to take from me and to give to Jivu Boye, the daughter of N. Kristna Row. This action of Government was owing to a misapprehension of a Judgment by the High Court, given in a Suit brought by me against Jivu Boye for the recovery of the estate bequeathed to my husband, Nursinga Row, under the Will of N. Kristna Row; and this action of Government was contrary to the publicly expressed wish, desire, and intention of N. Kristna Row.

2. If, on perusal of the facts, arguments, and grounds now set forth in the Memorial, and the legal opinion on the case attached to the Memorial, Government are satisfied that the pension has been erroneously taken away from me, and are willing to restore the pension to me, I have no objection to abide by the decision of the Madras Government; but if Government are of opinion that they cannot restore the pension without the special sanction of the Right Honourable the Secretary of State for India, I trust Government will be graciously pleased to forward my Memorial with their best support.

No. 297. ORDER THEREON, 27th January 1870, No. 146.

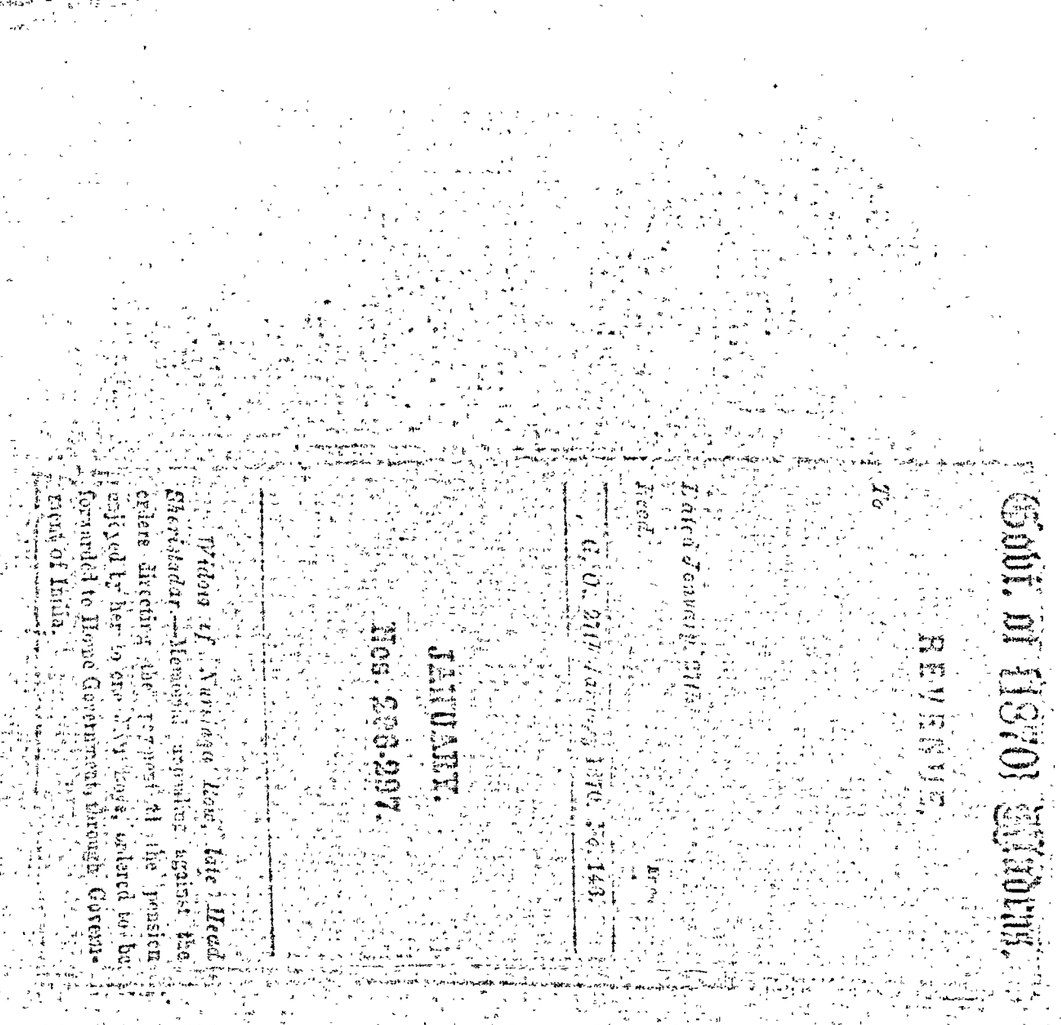
Miscellaneous.

THE Memorial will be forwarded to the Right Honourable the Secretary of State, through the Government of India, under Clause III. of the Revised Memorial Rules.

(True Extract.)

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

Exd. T. O'Connor.



REVENUE DEPARTMENT,
FORT SAINT GEORGE,
27th January 1870.

No. 147.

No. 298.

To

THE SECRETARY TO THE GOVERNMENT OF INDIA,
FINANCIAL DEPARTMENT.

SIR,—I am directed to forward, for transmission to the Secretary of State, a Memorial from Jivani Boye, the widow of Nursinga Row, appealing against the Order, dated 29th August 1866, No. 2,272, in which the Government directed that the pension which had been theretofore enjoyed by her should be paid to one Jivu Boye, and against subsequent Endorsements confirmatory of that Order. The following brief statement of the case will show the grounds upon which the action of the Government as regards Memorialist was based.

Procs. of Govt., 29th Aug. 1866, Nos. 786, 787.
Do. 27th Jan. 1870, ,, 296, 297.

2. In 1848 the Court of Directors bestowed upon the late Namkul Kristna Row, Head Sheristadar of Canara, a pension of Rupees 4,500 per annum to be continued to three lives, including that of the grantee, and subject to a deduction of one-third and two-thirds for the second and third lives respectively. Kristna Row died in April 1848, and the question who was entitled to succeed to the reduced pension of Rupees 3,000 then arose. There were two claimants, viz., Jivu Boye, the daughter of Kristna Row, and Nursinga Row, her son, and therefore the grandson of Kristna Row who had in addition adopted him. Nursinga Row's claim depended on the validity of this adoption which was disputed. But as the Subordinate Court of Mangalore had, on the institution of a suit for that purpose by Kristna Row, ordered Nursinga Row to be restored to his adoptive father, this decision, although it did not expressly state as much, was assumed at the time to be tantamount to an affirmation of the validity of the adoption, and on this ground alone the Government, at the instance of the Collector and the Board of Revenue, directed that the pension should be conferred upon Nursinga Row.

3. Nursinga Row continued to enjoy the stipend of Rupees 3,000 per annum during the whole of his life-time. On his death, in February 1854, the Government, still presuming on the validity of his adoption by Kristna Row, and therefore regarding Nursinga Row's widow and nearest heir (the Memorialist) as the "third life" from Kristna Row, ordered the payment to her of the reduced pension of Rupees 1,500,—an arrangement which continued in force until August 26, 1866, on which date the pension was transferred to Jivu Boye.

4. In November 1865, the High Court passed judgment on an appeal against the Decree of the Civil Court of Mangalore in a suit instituted by Jivani Boye, to recover from Jivu Boye the property of Kristna Row. The plaintiff (Memorialist) claimed on the ground that she was a widow of Nursinga Row, the adopted son of Kristna Row, and also on the ground that her deceased husband was the devisee by Will of all the property left by Kristna Row. It will be observed, from perusal of

the document marked G. in the Appendix to the Memorial, that the High Court decided in Memorialist's favour on the latter ground alone, viz., that her deceased husband was the *persona designatas* in Kristna Row's Will, irrespectively of the question of adoption. But in the last paragraph of their judgment, the High Court "to avoid misapprehension" notice this question briefly, laying down, with reference to the adoption of Memorialist's husband, that all the authorities are perfectly consistent in declaring invalid all adoptions of the son of a person with whom the adopter could not have inter-married. The Government regard this *dictum* as conclusive of the fact that Memorialist's husband, through whom she now claims, never ought to have succeeded to the allowance to the exclusion of Kristna Row's natural heir, and it was on this consideration that the order alluded to in paragraph 1 was passed.

5. There is another circumstance connected with the case which, although it could hardly form a legitimate ground for depriving Memorialist of the pension, may perhaps be adduced as an argument against disturbing existing arrangements. Since the pension was conferred upon Memorialist, she has been declared by the above-mentioned judgment of the High Court to be the possessor of all the property left by Kristna Row and devised to her husband, which appears to have exceeded Rupees 20,000 in value. She is, therefore, in comfortable circumstances owing to Kristna Row's having bequeathed to her late husband property which might, in the absence of a Will, have passed to Jivu Boye, the present holder of the pension.

6. I am to state that the Government have no recommendation to make on Memorialist's behalf.

I have the honour to be,
Sir,
Your most obedient servant,
(Signed) R. A. DALYELL,
Acting Secretary to Government.

Exd. F. R. Bantleman.

Inst. 2822/69

A.

From T. PYCROFT, ESQ., *Secretary to the Board of Revenue, to* J. F. THOMAS, ESQ., *Chief Secretary to Government; dated Revenue Board Office, Fort St. George, 7th August* 1848, *No.* 409.

SIR,—With reference to the correspondence noted in the margin, I am directed by the Board of Revenue to submit for the orders of the Right Honorable the Governor in Council, the accompanying letter from the Collector of Canara, dated the 6th ultimo, reporting the death, on the 15th April last, of Krishna Row, late Head Sheristadar of his District, and requesting instructions in respect to the arrangements to be made for the continuance of the pension enjoyed by that individual.

Revenue Department. To Government, 8th April 1847. From Government, 20th May 1847. From Government, 18th March 1848.

2. From this, it will be seen that Krishna Row had adopted his grandson, the son of his daughter, named Nursinga Row, a boy of about 9 years of age, and that the adoption having formed the subject of a suit before the Civil Court of Mangalore, has been confirmed by that authority, whose decision, as no appeal has been preferred from it, must be regarded as final. The question now referred by the Collector for orders is, whether Nursinga Row is to be regarded as the first of the "two next heirs" of Krishna Row, to whom his pension is to be continued under the orders of the Honorable the Court of Directors, or whether the pension should terminate with him as being of the third generation from the original grantee; and in the latter case, what arrangements are to be made respecting the disbursement of the pension to Nursinga Row and his mother, Krishna Row's daughter.

3. The Board of Revenue cannot doubt that Nursinga Row must be held to be the first of the "two next heirs" to Krishna Row, and the second of the three lives for which the pension was granted. They observe that the circumstance of Krishna Row having adopted his grandson was brought to notice by the Collector in submitting his application for a Shrotrium, and was before the Honorable Court when they sanctioned the grant of a Shrotrium or of a money pension in lieu of it. The adoption of Nursinga Row having, moreover, been legally established before a competent tribunal, he must, the Board think, be considered as the immediate heir to Krishna Row, the inheriter of all his property, and the first of his two successors in the enjoyment of the pension. On referring to their records for precedents upon the point, the Board have found some instances in which parties on whom Shrotriums have been conferred have been required to name the remaining lives, but none in which, where such nomination was not made, the adopted son of the first grantee, whether of the next or third generation, has been treated otherwise than as the immediate successor and second life in the grant. In proof of this, the Board may refer to the case of Venkat Row, Head Sheristadar of Tinnevelly, whose widow, after his death, was allowed to make an adoption, and *on her adopting her grandson, son of Venkat Row's daughter*, the Shotrium passed to him as the second life.

Vide Memo. on succession to Shotriums furnished by Secretary to the Board of Revenue to Secretary to Government, 12th April 1848.

4. Under these circumstances the Board beg to recommend the continuance of the reduced pension of Rupees 3,000 per annum to Nursinga Row as the second life, from the date of his adoptive father's death, or from the 15th April last. The Collector has further represented that the arrears of Krishna Row's pension from the 18th January 1847, the date of his retirement from office, to that of his decease, amount to Rupees 5,606-12-3, and have not yet been disbursed. "These," he states, "as the assets left by the deceased, become the property of the male heir, his grandson and adopted son, and should be paid to Krishna Row's widow as his guardian, for his benefit." The Board of Revenue, however, adverting more particularly to the bad feeling existing among the different members of the family, are of opinion, that if the estate belonging to the minor be not of such description as to require its being taken under charge of the Court of Wards, and if, which appears doubtful, the nomination of Krishna Row's widow has not received the sanction of the Civil Court, the circumstances of the case should, under Section XX, Regulation V, 1804, and Section III, Regulation X, 1831, be reported to that Court in view to a guardian being duly appointed, and that the disbursement, both of the arrears and of the reduced pension payable during Nursinga Row's minority, should be regulated by the orders of that authority.

B.

REVENUE DEPARTMENT.

No. 955.

Extract from the Minutes of Consultation, under date the 4th September 1848.

Read the following letter from the Secretary to the Board of Revenue:—

(Here enter 7th August 1848, No. 409.)

PARA. 1. The Right Honorable the Governor in Council entirely concurs in opinion with the Board of Revenue, that Nursinga Row, the adopted son, should be considered as the first of the two next heirs of the late

Financial 1870 Enclosure.

From Government of Fort St. George.

No. 137.

Dated 27th Jan.

To

D. No.

Encls.

L. No.

JANUARY.

No. 293.

FORWARDING, for transmission to the Secretary of State, Memorial from the widow of Narsinga Row, appealing against the orders directing the payment of the pension enjoyed by her to one Joye.

In paras. 20 and 21 of their Revenue Despatch, 12th January 1841, No. 1.

Krishna Row, and he accordingly directs that the reduced pension of three thousand (3,000) Rupees per annum, authorized by the Honorable the Court of Directors, be continued to him as the *second life* from the 15th April 1848, the date of his adoptive Father's demise.

2. The Governor in Council is also of opinion with the Board, that the management of Nursinga Row's inheritance, for which he is incapacitated by minority, should be placed under the control and orders of the Civil Court, to whom the circumstances of the case should be reported; and he desires that the Collector of Canara may be instructed accordingly. In the meantime, he grants sanction for the disbursement of the arrears of Krishna Row's pension, from the 18th January 1847, the date of his retirement, to that of his decease, amounting to Rupees (5,606-13-8) Five thousand, six hundred and six, Annas thirteen and Pies eight, which sum, as well as the pension now authorized, will be held at the disposal of the Civil Court.

(A True Extract.)

(Signed) H. C. MONTGOMERY,
Secretary to Government.

C.

REVENUE DEPARTMENT.

Extract from the Proceedings of the Board of Revenue, dated 18th September 1851.

Read the following:—

No. 361.

Extract from the Proceedings of the Board of Revenue, dated 11th August 1854.

Read letter dated 3rd July 1854, from the Collector of Canara, reporting the death of Nursinga Row, the adopted son of Krishna Row, late Head Sheristadar of Canara, and requesting instructions as to the future disposal of the case in regard to the present claimants to the property.

(Here enter No. 60.)

Resolved that the letter above recorded be submitted for the consideration and orders of the Right Honorable the Governor in Council.

2. By the order of the Hon'ble Court, dated 12th January 1848, a pension of Rupees 4,500 per annum was granted to Krishna Row, late Head Sheristadar of Canara for three lives, subject to a deduction of one-third on the second life, and of two-thirds on the last. Accordingly, on the death of Krishna Row, a reduced pension of 3,000 Rupees was continued to Nursinga Row, the adopted son of the deceased.

Communicated in C. M. in 18th March 1848.

3. Nursinga Row has now died under age, and childless, leaving a widow who claims the pension as the third life. He has also left property in Government Bonds and loose cash to the amount of Rupees 26,241-2-11, which, under the arrangements made on the decease of the late Head Sheristadar, is now in the custody of the Collector. As regards this property, Mr. Maltby thinks it would be unsafe to pay it until the party entitled to claim the same shall produce a certificate from the Civil Court under Act XX of 1841. In this opinion the Board entirely concur.

4. The pension, which is the more immediate subject of this reference, is claimed by the widows both of the late Sheristadar and of the deceased minor, but as the latter is heir at law of her deceased husband, the Board are of opinion, that agreeably to her request to be considered the third life, the pension may be paid to her.

(A True Extract.)

(Signed) W. H. BAYLEY,
Secretary.

D.

Extract from the Minutes of Consultation, under date the 1st September 1851.

Read the following Papers:—

From the Collector of Canara..... } H. E. 24th June 1854, No. 11.
Extract from the Proceedings of the Board of Revenue..... } H. E. 14th August 1854, No. 361.

The Right Honorable the Governor in Council concurs in the view taken by the Board in respect to the claim of the widow of the late Nursinga Row. Under the opinion expressed by the Pundits of Sudder Udalut, his widow, Jewene Doyé, is his heir at law, and entitled to the pension in succession to him. His Lordship in Council accordingly grants authority for the payment to her, as the third life, of a reduced allowance of Rupees [1,500] one thousand and five hundred per annum, from 18th February 1854, the date of her husband's death, agreeably to the conditions on which the pension was originally granted to Krishna Row by the Honorable Court in their Despatch, dated 12th January 1848.

27th March, and circulated to Collectors with Board's Proceedings of 11th May 1854.

The Governor in Council also concurs with the Board, that the property left by Nursinga Row, now in the custody of the Collector, should not be paid until the party entitled to claim the same shall produce a Certificate from the Civil Court under Act XX of 1841.

Ordered that the pension certificate of Nursinga Row, submitted by the Collector, be cancelled.

(A True Extract.)

(Signed) T. PYCROFT,
Secretary to Government.

E.

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

Saturday, the Eighteenth day of November, One Thousand Eight Hundred and Sixty-five.

PRESENT.

The Honorable Mr. JUSTICE FREERE,
and
The Honorable Mr. JUSTICE HOLLOWAY.

L. S.

Regular Appeal No. 35 of 1865.

Jivani Bhai.....*Appellant* (Plaintiff.)
and
Jivu Bhai.....*Respondent* (1st Defendant.)

Regular Appeal against the Decree of the Civil Court of Mangalore in Original Suit No. 4 of 1863.

GROUNDS OF APPEAL.

1st—"The decree of the Civil Court is contrary to the weight of evidence and law."

2nd—"The fact of adoption is proved beyond all doubt."

3rd—"The defendant is concluded by her own conduct, and by the numerous admissions of her father."

4th—"The adoption of the Plaintiff's husband is good and valid."

5th—"It could not be called in question after the lapse of 18 years, and after the adoption was fully recognized with all its consequences."

6th—"The Plaintiff is at all events entitled to recover under the Will, which is a perfectly good and valid assignment."

7th—"The fact of the adoption was fully established by a previous decree; and the question of its validity was left open."

8th—"The expositions of Law quoted by the Civil Judge do not apply to the present case."

9th—"The Defendant has not established any of her positions."

Decree:—This Regular Appeal coming on for hearing: Upon perusing the grounds of Appeal, the Judgment and Decree of the Court of first instance, and the material papers in the suit; and upon hearing the arguments of Mr. Advocate General, counsel, and Rajagopala Charlu, vakil for the Appellant, and of Mr. Miller, counsel, and Srinivasa Chariyar, vakil for the Respondent; this Court doth order and decree, that the Decree of the Court of first instance be, and the same hereby is, reversed, and this Court doth declare the Plaintiff entitled to recover the property devised to her late husband Nursinga Row by *his adoptive father Krishna Row*; and this Court doth order and decree that an account be taken of the proceeds of the said property since the decease of Nursinga Row, and that what, upon the balance of the said account, after all just allowances shall appear to be due to the said Plaintiff, be paid to her by the defendant; and this Court doth further order and decree that the Defendant do also pay to the Plaintiff Rupees 1,319-12-7 for her costs in this Regular Appeal, together with her costs in the Court of first instance.

(Signed) H. FREERE,
(") W. HOLLOWAY } *Judges.*

MEMORANDUM OF COSTS.

Appellant's (Plaintiff's) Costs.—	Rs.	A.	P.
1 Stamp for Vakalutnama	2	0	0
1 Do. for Regular Appeal Memo	700	0	0
1 Do. for Copy of the Original Decree	1	0	0
1 Do. for Copy of the Original Judgment	0	8	0
Vakil's fee on Rupees 20,210-4-7	642	1	7
Printing charge	4	0	0
Postage	0	3	6
To be paid to the Appellant (Plaintiff) by the Respondent (Defendant).	1,349	12	7

(Signed) THOMAS WILKINS,
Dy. Registrar Appellate Side.

(True Copy.)

(Signed) THOMAS WILKINS,
Dy. Registrar Appellate Side.

F.

I HAVE perused the papers submitted to me, including the Judgment of the High Court in R. A. 35 of 1865, and I am clearly of opinion that the Judgment does not decide the validity or invalidity of Narsinga Row's adoption. All that is contained in the 16th para. of that judgment is merely *obiter dicta*, unnecessary for the decision of that case, as is admitted in the commencement of that paragraph; and it is a remarkable fact that the opinion there expressed as to the invalidity of this adoption by the Judges (Frere and Holloway, JJ.) is opposed to the opinion expressed by Mr. Justice Holloway, that this very adoption was clearly good, in Civil Petition 78 of 1863, heard before (Phillips and Holloway, JJ.), as appears by Mr. Mayne's notes of what fell from his Lordship on the hearing of that petition.

On the other question upon which I have been consulted, viz., was the adoption to Krishna Row of Narsinga Row (the grandson), by Jevoo Boye (the daughter), a valid one according to Hindoo Law, I find it more difficult to come to a determination; for the point has never been judicially settled. Mr. Strange in his Manual of Hindoo Law, section 8789, lays it down that the adoption of a daughter's or sister's son is valid in the Madras Presidency. The daughter's son, and the sister's son, are declared to be the sons of Soudras, and may be affiliated by Soudras such adoptions do not appear to be in favor with the three superior tribes, but they do not appear to be prohibited. They are allowed to all classes, 2 Strange's H. L. 100, Strange's Manual 87. The decision in 9 Moore's Indian Appeals, p. 566, does not appear to me to help one to come to a clear conclusion on this point; but so far as it goes, it goes distinctly to add strength to Mr. Justice Strange's opinions. In this case, there is no question as to the factum of the adoption. Narsinga Row was in fact adopted, and was treated as Krishna Row's son, and is styled and designated as such in his Will. The doubts cast upon such adoptions as this one, appear to be important only on religious considerations; they may be questioned as being invalid or improper from the orthodox theological point of view of the Sastras and Commentaries, and as being likely, in Hindoo belief, to entail painful consequences in Put. Even although such adoption is not approved of when it has taken place, the maxim *factum valet* must, I think, apply. An adoption, however blamable, would nevertheless be held good according to the maxims of Civil Law prevailing; perhaps in no Code more than in that of the Hindoo *factum valet quod fieri non debuit*. 1 Madras H. C. R. 54. That was the case where the adoption of an only son was held valid according to Hindoo law. The adoption of any particular person is a matter of conscience and discretion with the adopter not of absolute prescription, rendering invalid an adoption of one not being precisely him, who, on spiritual considerations, ought to have been preferred. (Grady's Hindoo Law, p. 43.) In the present state of the law, I am at a loss to understand why the Government should have transferred to Jevoo Boye the pension which was so long enjoyed by the adopted son, and after his death continued to his widow, Jivani Boye. If Jevoo Boye disputes the validity of the adoption, she should be referred to the Civil Court for the judicial determination of that important question; and I would advise a respectful memorial to Government, praying that they would refer the questions involved for the consideration of the Law Officers of the Crown, and pass such orders as will place the parties in their respective proper positions, leaving the party disputing the adoption to have it decreed invalid if she can do so by a decree of the Civil Court.

Chambers, High Court, Madras. JOHN MILLER, *Barrister-at-Law.*

G.

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

Saturday, the Eighteenth day of November, One Thousand Eight Hundred and Sixty five.

PRESENT:

The Honorable Mr. JUSTICE FRERE,

and

The Honorable Mr JUSTICE HOLLOWAY.

Regular Appeal No. 35 of 1863.

Jivani Buai.....*Appellant* (Plaintiff)

and

Jivu Bhai.....*Respondent* (1st Defendant.)

Regular Appeal against the Decree of the Civil Court of Mangalore, in Original Suit No. 4 of 1863.

This Regular Appeal coming on for hearing, the Court delivered the following—

Judgment:—This was a suit to recover from one Jivu Bhai, daughter of one Krishna Row, deceased, the property of Krishna Row. The Plaintiff claimed on the ground that she was the widow of Narsinga Row, the adopted son of Krishna Row, and also on the ground that her deceased husband was the devisee of all property of Krishna Row, by a Will dated 26th November 1845.

2. Defendant answered that Plaintiff is not entitled; that the adoption of Narsinga Row, her son, by Lefather Krishna Row, is altogether illegal; and that the Will can have no force or effect; and for this she quoted Mr. Justice Strange's Hindu Law.

3. The Civil Judge observed that the Pundits had declared the adoption of a daughter's son altogether invalid; that there was, moreover, ample authority for this position; that as to the claim under the Will, the bequest was to Narsinga Row as adopted son, and it can have no effect when he is found not to be so.

4. In the argument before this Court, it was admitted by the Counsel for the Respondent that it was impossible for him to dispute that the ceremony of adoption was performed, and that, if the adoption of a daughter's son is valid, there was a valid adoption, and that the document called a Will was executed by Krishna Row.

5. The only questions for determination, therefore, are—what interest, if any, Narsinga Row took under the document dated 26th November 1845, and whether that interest, if any, has passed to his widow, the Plaintiff? whether the adoption of Narasinga Row was valid?

6. We may at once say that the grounds upon which the Civil Judge has disallowed the Plaintiff's claim under the document of 1845 are unsustainable. If the language of the testator sufficiently indicates the person who is to be the object of his bounty, the person so indicated will not be prevented from taking because the testator conceived him to possess a character which in point of law cannot be sustained. The authorities for persons taking as 'personæ designatæ," even in opposition to an established rule of construction of the words used, are very numerous. It is unnecessary to enlarge upon this subordinate rule, which is only a particular example of the more general rule, that the construction of all written instruments is to be such as will effectuate the expressed intent of the author of the instrument. The whole language of this document leaves no doubt as to the person described throughout as Narsinga Row. He is described as son of his daughter, the Defendant, whom he had adopted with the consent of his parents. There is really no dispute upon this matter, and the person to take being sufficiently indicated, he will be entitled to any benefits which, on the true construction of this document, the testator intended him to take. That the testator can disinherit both widow and daughter by a testamentary disposition is the exact point decided by the Privy Council, and by the leading case in this Court.

7. The question is somewhat complicated by the fact that Narsinga Row died in the lifetime of Bhagirathi, the widow of Krishna Row, who by the statement in the plaint, enjoyed the property until her death in 1857, three years after that of Narsinga Row. To determine, therefore, whether the present Plaintiff can take anything through this Will, it is necessary to see whether anything was, by virtue of it, vested in Narsinga Row at his death.

8. Two constructions have been proposed by the Counsel for the Respondent,—(1) That the document vested the whole estate in Bhagirathi Bhai and Narsinga Row as joint tenants, and that Bhagirathi Bhai took therefore the whole by survivorship. (2) That Narsinga Row took nothing under the Will, unless he survived Bhagirathi Bhai. For the Appellants, it was contended that the estate vested in Narsinga Row by virtue of the Will, and that nothing more existed than a precept that he should listen to the precepts of Bhagirathi Bhai; but that even if it could be said that she took a life-estate, there was at all events an estate vested in Narsinga Row; to which the widow had a right to succeed.

9. The document is very inartificial, and one word constantly used throughout it "Swatantrita," may mean either management or ownership, and in itself really is not conclusive as to whether an estate is to be given by the vesting of the quality described by this word, or merely a right of ownership.

10. The first clause is a key to the subsequent provisions. It recites the adoption, and states that the following arrangements are made on account of the boy being only seven or eight years old. The second recites that he will enjoy and manage during his life; and that, after his death, all the power will belong to Bhagirathi and Narsinga Row. It then involves the two cases of Narsinga Row being of age and competent to manage at his death, and of his non-age and incompetency. If competent, he is to manage with due deference to her. If incompetent, she is to manage it without waste. She may appoint an agent to manage, unless he has himself done so, but even then she is to retain the whole property and possession.

11. It seems impossible not to conclude that these words are intended to provide for the case of non-age, for it then goes on to say that he is to listen to Bhagirathi as to the management, even if he be of age, and not act on his own will. He then provides that the documents are to be executed in the name of Bhagirathi, and on her death in the name of Narsinga Row, or they may be passed in the name of both. Here the provision for the mode of execution of the documents seems intended to secure the exercise of the wife's power of control. They can scarcely be said to furnish any guide to the nature of the interest to be vested. As to this, they are quite neutral. It is, moreover, no uncommon thing for family agreements, in the country in which this Sheristadar spent a great portion of his official life, to check lavish expenditure by requiring the signature of some person not the actual manager of property, to documents passing family property.

12. Clause 3 furthers the construction that management only is provided for. It vests the management in Bhagirathi until the arrival of Narsinga Row at years of discretion. She is to manage with great economy, and so as to "have the property secured from dissipation, so as to be beneficial to Narsinga Row." We have, here, what appears to us a clear indication, that the beneficial interest is in Narsinga Row, and the object of all the provisions for management, appointment of agents, &c., is the securing to him of that beneficial interest.

13. The other clauses, until we come to the conclusion, have little bearing upon the question. He there sums up the provisions having mainly reference to the management of the property. He is to have the power during his life, she after his death;—but it is clear from the words which immediately follow, that Narsinga Row

is to manage under instructions of Bhagirathi during her life, and she is to take steps for the boy's proper support, and for the estate vesting unwasted in him.

14. Taking first the language of these provisions, it seems to us that an estate is clearly vested by them in Narsinga Row; that all the provisions which have reference to Bhagirathi are simply directed to the duties of management, which are to be subordinate to the main purpose, that of protecting the beneficial interest for the son. It seems to us that there are no words which could lead to the conclusion that the vesting of the beneficial interest, clearly given, was to be suspended, either during the life of Bhagirathi or for any other period, and we can find no words giving an estate to her; on the contrary, they all provide for her not dissipating any portion of the capital. If it was intended that she should take for life, and he only if he survived her, it would be impossible to explain the constant reference to the management by him on his attaining years of discretion. Nor do we think that there is any foundation for an argument that his taking at all was dependent upon his reaching the age of discretion. There are words amply sufficient to give him a vested estate, and there are none, as it seems to us, to suspend that vesting. When we look, too, at the circumstances of the testator, believing, as he did, that he had affiliated the boy, and the recital that he makes this arrangement on account of his tender age, great aid is given to the conclusion, which we should, from the language alone, have put upon these provisions. We are unable to see the least colour for the argument that the words have created a joint tenancy. There are really no words whatever to give an estate to two without words of severance. Supposing, however, that the words were susceptible of the construction that there was a life estate to Bhagirathi, with a gift of it after death to Narsinga Row: Reivan Prasad v. Mussuma Radha Bhibhi (IV Mo. I. A. 137), to which we referred during the argument, is a distinct authority that the death of the husband, during the pendency of the life estate, would not prevent Narsinga Row from taking a vested interest, the actual enjoyment being suspended until the death of Bhagirathi. It is also a distinct authority that the widow will take the property so vested, although the actual possession of the husband was postponed.

15. It is clear to us, therefore, that the whole estate of Krishna Row passed to Narsinga Row under this Will, and that his widow is entitled to recover it.

16. It is unnecessary, therefore, to discuss the second point upon which the Plaintiff's claim was based. To avoid misapprehension, it is, however, necessary to state, that we do not consider the question settled by the case at IX. Moore's I. A. p. 506, because, in the first place, the parties in that case are clearly Sudras and not Vaisyas; and in the second, the judgment of the Privy Council upon a point never raised in the Court below, as indeed it could not have been raised, went upon admissions of the Appellant's father, who would have been acquainted with Hindu laws and customs, and have been aware of the legal invalidity of the adoption if there had been any. On the point of the validity of the adoption of a daughter with whom the adopter could not have intermarried, there will be found great conflict of opinion among the pundits, but none whatever upon the authorities. They are all perfectly consistent in declaring such adoptions invalid. It will perhaps be found that the allegation of custom in this case will be found to amount simply to an allegation that people do that which the law has forbidden.

(A True Copy.)

(Signed) P. P. HUTCHINS,
Registrar, Appellate Side.

(True Copy.)

THOMAS WILKINS,
Deputy Registrar, Appellate Side.

H.

Extract from the Will of N. Kristna Row.

Para. 10. Besides the ornaments, &c. already given by me to my daughter Jeevoo Boye, I intend bestowing her *a land annually yielding a net rent of Rupees* 60. After the land is given to her, she will be entitled only to enjoy its produce; but neither she nor her husband will have any right or title to alienate it by mortgage, sale, &c. After her, her children will enjoy the same on the same terms and restrictions. I shall have no more to pay her in future.

I.

HIGH COURT OF JUDICATURE AT MADRAS, 9TH AUGUST 1866.

In Regular Appeal, No. 35 *of* 1865.

I HEREBY certify that on Mr. Advocate General presenting an appeal this day before Holloway and Innes JJ., against the proceedings of the Civil Court of Mangalore dated 17th ultimo, on Miscellaneous Petition No. 244 of 1866, and moving for an *ex parte* order reversing the said proceedings, the High Court declined to make any such order, on the ground that notice had not been served on the opposite party, but the Court at the same time stated that the Civil Judge had clearly mistaken the meaning of their decree, which was not at all of the nature of a declaratory decree, but decided that the plaintiff was entitled to the property therein specified.

(Signed) P. P. HUTCHINS,
Registrar Appellate Side.

To the Advocate General.

In no 2822/69

To

HIS GRACE THE DUKE OF ARGYLL, K.T. & G.C.B.,
Her Majesty's Principal Secretary of State for India,
&c. &c. &c.
LONDON.

THE HUMBLE PETITION OF JEVANI BOYE, WIDOW OF NURSINGA ROW, THE ADOPTED SON OF NAMAKUL KRISTNA ROW, LATE HEAD SHERISTADAR OF SOUTH CANARA.

RESPECTFULLY SHEWETH,

That the abovementioned Namakul Kristna Row, finding in his old age that he had no male issue, did, with the full possession of his senses and sound mind, and with the *full consent* of his daughter Jevoo Boye, and her husband Sreenevasa Row, according to the practice of the Hindoos and the custom of his caste, adopt their son Nursinga Row, your Petitioner's husband, on the 26th November 1845.

2. That on retirement from the public service of the abovementioned Kristna Row, in consideration of the long, faithful and valuable services rendered by him to the State, he applied to Government for a pension for three lives, the second and third lives being distinctly mentioned as Nursinga Row and his posterity. This application was submitted by Government to the Court of Directors, who sanctioned the same, as recorded in Extract Minutes Consultation, 18th March 1848, and a pension of Rupees 4,500 per annum was authorized for three lives, subject to a deduction of one-third for the second life, Nursinga Row, and of two-thirds for the last life.

3. That after this, Jevoo Boye and her husband took Nursinga Row away, and in violation of their solemn agreement and obligation, would not return him to his adoptive father Namakul Kristna Row, who was therefore compelled to bring a suit in the Subordinate Civil Court of Mangalore, No. 18 of 1846. That the decision of this Court was at first unfavourable to Kristna Row; but on appeal, this judgment was returned to the court for revision, when it was decreed that your Petitioner's husband, Nursinga Row, should be restored to his adoptive father, and this was tantamount to establishing the adoption of Nursinga Row. That in the meanwhile Kristna Row died. That at the time of his demise, his daughter Jevoo Boye and her husband returned with Nursinga Row to Kristna Row, and on his (Kristna Row's) demise, Nursinga Row performed all the funeral ceremonies of Kristna Row, thereby publicly declaring and establishing his adoptive rights; and Jevoo Boye and her husband did not appeal against the decision of the court. On the other hand, Bagarathee Boye, the wife of Kristna Row, wrote and informed the court that she had received her adopted son Nursinga Row, and the full time of appeal was allowed to pass without any action being taken by Jevoo Boye and her husband.

4. That on the demise of Namakul Kristna Row, the Collector reported to the Revenue Board the same, and submitted a full and detailed account of the civil suit which had been instituted by the deceased for the recovery of his adopted son and the ultimate judgment given therein. That the Board, after a due consideration of all the

facts of the case, submitted the same to Government, with their recommendation that the pension should be continued to Nursinga Row, your Petitioner's husband, subject to a deduction of one-third, he being the second life. That the Board, in making this recommendation,* quoted the case of Venkat Row, Head Sheristadar of Tinnevelly, whose widow was allowed, after the demise of her husband, to adopt the son of Venkat Row's daughter, and which adopted son was allowed as the second life to succeed to a Shotrium that had been given for three lives to Venkat Row. That your Petitioner submits that by citing this case, the Board established the validity of the adoption of your Petitioner's husband, who was the son of Kristna Row's daughter, and it was because this was the case, the Revenue Board stated that Nursinga Row, "must be held to be the "first of the two next heirs to Kristna Row, and the second of the three lives for which "the pension was originally granted to Kristna Row." Furthermore, the Board observed that the circumstance of Kristna Row having adopted his Grandson, was brought to notice by the Collector in submitting Kristna Row's application for a Shotrium, and that it was before the Honorable Court of Directors when they sanctioned the grant of a Shotrium or of a money provision in lieu of it, and the Board also stated "that as the adoption of Nursinga Row had moreover been legally established before "a competent tribunal, they thought that he must be considered as the immediate heir "to Kristna Row, *the inheritor of all his property, and the first of his two successors in "the enjoyment of the pension*;" and the Government, in confirming the recommendation of the Revenue Board, stated in their proceedings that they entirely concurred in opinion with the Board of Revenue, that Nursinga Row, the adopted son, should be considered as the *first of the two next heirs of the late Kristna Row*; and this was further confirmed by the Honorable Court of Directors.

* Board's letter No. 109, dated 7th August 1848, copy enclosed marked A.

E. M. C. No. 955, dated 4th September 1848, copy enclosed marked B.

5. That though at this time Kristna Row's own widow, Bagarathee Boye, and his daughter Jevoo Boye, were alive, yet the local Government and the Honorable Court of Directors accepted Kristna Row's request, and recognised his adopted son as the second life or heir to the pension.

6. That your Petitioner's husband, Nursinga Row, enjoyed the pension seven years. That Nursinga Row died in 1851, and thereupon Bagarathee Boye, his adoptive mother, claimed on behalf of herself and daughter Jevoo Boye, to succeed to the pension of Nursinga Row. That the Board of Revenue, in submitting the case for the orders of Government in their Proceedings* No. 361, dated 14th August 1854, stated that your Petitioner was the *Heir at Law of her deceased husband*, and that therefore they were of opinion that your Petitioner *must be considered the third life*, and that the pension might be paid to your Petitioner; and Government, in confirming that opinion, stated that they concurred in the views of the the Revenue Board in respect to the claim of your Petitioner *under the opinion of the Pundits of the Sudder Adawlut*, to whom a reference on the subject was made by Government, that your Petitioner was *heir at law*, and entitled to the pension of Nursinga Row *in succession*, and accordingly granted authority for the payment as the third life to your Petitioner, who accordingly received an allowance of Rupees 1,500 per annum from 16th February 1854, the date of your Petitioner's husband's death, agreeably to the conditions on which the pension was originally granted to Kristna Row by the Honorable Court of Directors, in their Despatch dated 12th January 1848. That your Petitioner accordingly enjoyed that pension for about thirteen years up to

Copy enclosed marked C.

Vide E. M. C. dated 1st September 1854, copy enclosed marked D.

September 1866. Thus your Petitioner and her husband enjoyed the pension as the heirs of Kristna Row for about twenty years.

7. That by the Will of Kristna Row, his widow was nominated the Manager with Nursinga Row of the estate of the deceased. That on the demise of Nursinga Row, the whole of the property was in the hands of Bagarathee Boye, and she managed the same for your Petitioner as the heir at law of Nursinga Row, who by the Will of Kristna Row, inherited the whole of his adoptive father's estate. That on the demise of Bagarathee Boye, Jevoo Boye took possession of the property, in consequence of the absence of your Petitioner, who was a minor at the time and lived at Bangalore in the house of her father. That when your Petitioner attained her majority, she demanded of Jevoo Boye the property, but she refusing to deliver up the same, your Petitioner was obliged to file a Suit No. 4 of 1863, in the Civil Court of Mangalore, basing her claim upon the Will of Kristna Row, but which was dismissed. On appeal, however, this decision was reversed by the High Court, who held that as the language of the testator sufficiently indicated the person who was the object of his bounty, the person so indicated was entitled to take, although the testator conceived him to possess a character which in point of law cannot be sustained. The Court remarked that the authorities for persons taking as *personæ designatæ* even in opposition to an established rule of construction of the words used are very numerous. The Court futher said it was unnecessary to enlarge upon this subordinate rule, which is only a particular example of the more general rule that the construction of all written instruments is to be such as will effectuate the expressed intent of the author of the instrument. And under these circumstances the Court declared your Petitioner entitled to recover the property devised to her late husband, Nursinga Row, by his adoptive father Kristna Row, and your Petitioner obtained all the property. and upon this ruling your Petitioner submits that her claim to the pension which descended to her husband was fully and finally confirmed.

* Vide copy of Decree, dated 18th November 1865, marked E.

8. That in the Judgment given in the case, the High Court stated that it was unnecessary to discuss the second point upon which your Petitioner based her claim for the recovery of her husband's adoptive father's estate, viz., the adoption by Kistna Row of her husband; but they observed, in reference to his being the son of Kristna Row's daughter; "To avoid misapprehension, it is however necessary to state that we do not consider the question settled by the case at IX Moore's "Indian Appeals 506, because, in the first place, the parties in that case are "clearly Sudras and not Vaisyas; and in the second, the judgment of the Privy "Council upon a point never raised in the court below, as indeed it could not "have been raised, went upon admissions of the appellant's father, who would have "been acquainted with Hindu laws and customs, and have been aware of the legal "invalidity of the adoption if there had been any. On the point of the validity of "the adoption of the son of a person with whom the adopter could not have intermarried, there will be found great conflict of opinion among the Pundits, but none whatever upon the authorities. They are all perfectly consistent in declaring such adoptions invalid. It will perhaps be found that the allegation of custom in this case will "be found to amount simply to an allegation that people do that which the law has "forbidden."

9. That upon this Jevoo Boye appealed to the Revenue Board, who submitted the same to Government, and the Government thereupon took away the pension which your Petitioner had been enjoying for thirteen years, and conferred the same on Jevoo

(Signed) Jevoo Boye

Boye, the daughter of Kristna Row, on the ground that she was the nearest surviving relative of the original grantee.

10. That with regard to the judgment of the High Court upon which Jevoo Boye based her appeal to the Revenue Board, and upon which Government were pleased to deprive your Petitioner of her pension, your Grace will observe that the High Court neither negatived your Petitioner's right, nor declared Jevoo Boye to have any right; that moreover, the adoption could not have formed a matter for the decision of the High Court; that twenty years had elapsed since the adoption had been made; that that adoption had been confirmed by the subordinate Civil Court of Mangalore, restoring to Kristna Row his adopted son, and further confirmed by the natural parents of that adopted son not appealing at any time for 18 years against his restoration to Kristna Row. Thus all claims against the rights acquired by your Petitioner's husband by his adoption by Kristna Row were absolutely and for ever barred by lapse of time; and therefore the High Court could not pass any judgment in a matter thus barred by the Limitation Act, and any incidental opinion let fall by that court can have no weight nor authority. The High Court therefore confined its decision to the Will of Kristna Row, and simply expressed an opinion as to a question which arose during the discussion of the subject by Counsel, as to the applicability of a case in IX Moore's Indian Appeals to your Petitioner's husband's adoption. That this expression of opinion your Petitioner submits did not amount to a judgment: it was merely an *obiter dictum*, but the Madras Government took the *obiter dictum* of the court as a judgment of the court negativing the legality of the adoption of your Petitioner's husband; but this was admittedly incorrect, as such opinion is only tantamount to the private opinion of a legal officer, and not binding like a judgment *in rem* on all the world. That had it been intended by the High Court that this opinion should have the weight and effect of a judgment, it would not have said that it was unnecessary to discuss the point, and consequently it must be admitted that the question of the validity or otherwise of the adoption of your Petitioner's husband has been left open by the High Court.

11. Your Petitioner has obtained legal opinion as to the bearing of the judgment of the High Court, on which your Petitioner has been deprived of her pension. Copy of the opinion thus obtained from J. Miller, Barrister-at-Law, is enclosed marked F, and your Grace will observe that the objection to the adoption cannot affect the civil rights acquired by that adoption, as the objection is not a civil but a religious matter. That if the adoption was considered invalid by Government, a definite judgment, determining the important question, should have been obtained by Government, by referring the parties to the Civil Court; and that the pension should not have been withdrawn from your Petitioner and conferred on another until such decree had been obtained.

12. That if the Government are even now doubtful about the adoption, they can have the matter settled by stopping the pension of Jevoo Boye, and directing her to establish her right to it by appeal to the tribunals, or obtaining the opinion of their law officers thereon; which, your Petitioner respectfully submits, ought to have been the course pursued by Government in the first instance.

13. That the act by which your Petitioner has been deprived of the pension after an enjoyment of thirteen years, is therefore incorrect. Petitioner appealed to the Madras Government twice, pointing out the incorrectness of their decision, and they passed the following endorsment:—

"The Government have decided that Jevoo Boye being, according to the "High Court decree, the nearest surviving relative of the original grantee, should enjoy "the pension."

(Signed) [illegible]

14. That your Grace will observe by reference to the judgment of the High Court, that no such declaration as that stated by Government

Copy enclosed marked G.

to have been made by the High Court is contained in the judgment, and that the inference drawn by Government is erroneous. That Kristna Row, when making his first application for a Shotrium, for three lives, stated that having no male issue, he had adopted his Grandson (his Daughter's son), to whom he requested the Shotrium may descend after him as the second life, and to his posterity. That thus, it will be observed that before any differences arose, Kristna Row informed the authorities that he had adopted his *Grandson*; that this adoption was really made; that with this statement before them Government recommended to the Honorable Court of Directors compliance with his request, and the Honorable Court of Directors accepting that recommendation, and knowing that Kristna Row had adopted his *grandson* (his Daughter's son) authorized a pension of Rupees 4,500 for three lives to Kristna Row, Nursinga Row and his posterity after him being the second and third lives respectively. That on the death of Kristna Row, when the question as to whom the pension should be continued came to be settled, the Revenue Board, in their letter to Government

Enclosure A

para. 3, No. 409, dated 7th August 1848, in order to meet the objection that may be taken to the adoption of a Daughter's son, cited the case of Vencata Row, Head Sheristadar of Tinnevelly, whose widow was after his death allowed to make an adoption, and on her adopting her Grandson (the son of Vencata Row's Daughter), the Shotrium passed to him as the second life. That your Grace will observe that having before them a case identically parallel with that of your Petitioner's husband, the Revenue Board considered your Petitioner's husband the proper successor to the pension of his adoptive father, and that the Government concurring in that opinion sanctioned the pension to your Petitioner's husband, and after him to your Petitioner; who therefore submits that the pension was granted to Kristna Row with the full knowledge that the second life was to be Nursinga Row, the son of Kristna Row's Daughter, whom he declared to have adopted. That Kristna Row, in recognition of his services, requested that the pension may after him be given to Nursinga Row and his posterity, and Government having approved of the same, are bound by the solemn promise thus made by them to their old and faithful servant, and cannot disturb the arrangement made with that servant.

15. The object of granting a pension for the meritorious services of a public officer is chiefly to afford him satisfaction; but this cannot be accomplished by extending the boon to others than those whom the original grantee wished to share in the bounty, and much less, as in the case of Kristna Row and his Daughter, when it is extended to one whom that original grantee disliked, and who had occasioned him during his lifetime much grief, and was the cause of hastening his death by her unfilial and wicked conduct. Kristna Row had, as already stated, distinctly expressed to Government his earnest wish that the pension which he solicited should, after him, be continued to Nursinga Row and his posterity; and having by his Will, para. 10*, declared that

* Extract enclosed marked H.

besides the property therein left to his Daughter Jevoo Boye, she was not entitled to anything more from him, your Petitioner submits that every consideration is due to Kristna Row's expressed wishes as to the disposal of that which he had earned by his long and faithful services, as in the case of R. R. R. Kandi Narasinga Row, recorded in Proceedings of Government No. 3,281, dated 1st December 1866. Government have therefore acted in opposition to the expressed wish of Kristna Row in taking away the pension from your Petitioner and giving it to his Daughter, whom he had desired should not succeed to anything more than what he had devised to her in his Will.

(Signed) [illegible]

16. That even supposing for argument's sake that Kristna Row had asked that the pension may be continued after his demise to parties, to the exclusion of others who may have had greater natural claims; yet his expressed wish should have been respected, and have had every consideration shown to it; and this is in accordance with the general practice of Government. That your Petitioner can cite many cases in support of this, but it will be sufficient to quote a single instance in point. That in the case of M. Runga Charlu Roy Bahadoor, a late Head Sheristadar of Cuddalore, the Government, in carrying out his intentions, extended his pension to *his Brother's Grandson,* in supersession and exclusion of his *own two Daughters, who naturally stood nearer heirs of their father.* The Government, in their above quoted endorsement on your Petitioner's petition to them, assign as their reason for depriving your Petitioner of her pension and giving it to Jevoo Boye, that she is the nearest surviving relative of Kristna Row. But your Petitioner submits that, in accordance with their own practice, as quoted above, this is utterly wrong. If Government were pleased to allow a pension as in the above cited case to pass to the *Grandson of the Brother of an original grantee in supersession and exclusion of his Daughters,* your Petitioner submits that there is no valid reason whatever for their not allowing the request which they had originally approved and which was afterwards confirmed by their own act, and the expressed will of Kristna Row, to remain undisturbed, viz., that the pension should pass to his *adopted son* and his posterity as the second and third lives.

17. In conclusion, your Petitioner submits that Kristna Row publicly acknowledged the adoption of your Petitioner's husband; that the act of adoption was proved in the Courts. That Kristna Row intimated to Government his earnest desire and wish that in consideration of his past services, the bounty of Government accorded to him for three lives may be continued to his adopted son, your Petitioner's husband, as the second life, and his posterity as the third life; that Government acceded to his request, and Kristna Row died with the assurance given him by the Government that his earnest wishes would be solemnly observed by the Government whom he had faithfully served all his life. That by his Will Kristna Row had declared your Petitioner's husband entitled to all his estate and civil and social rights; that your Petitioner's husband so succeeded under that Will, and received from Government the pension as the second life, and that after your Petitioner's husband's demise, she succeeded under that Will to all the estate and social and civil rights of her husband, and also to the pension as the third life; and she therefore submits, that for all the reasons now herein submitted, your Grace will be pleased to accord justice, and cause the pension to which she is entitled both by law and by the expressed wish of the original grantee, but which has been taken from her on gravely erroneous grounds, to be restored. For which, as in duty bound, she will ever pray.

18. Your Petitioner would beg to observe that the decree of the High Court alluded to above is apparently not clearly worded, is most difficult to be correctly read, and is liable to be misunderstood, as is proved by the fact that the Civil Judge of Mangalore, a law officer, misunderstood it and passed an order opposed to its tenor and intention, and he had therefore to be corrected on appeal, as will be observed by the appended Certificate marked I. And in the same manner, it is clear Government misunderstanding the said decree, acted erroneously in depriving your Petitioner of her pension, which she therefore humbly entreats may be restored to her.

(Signed) Jeemmee Boye

---

2 Jan 1870
15 Nov 69
Copy

His Excellency
The Right Honorable
Lord Francis Napier Baron Napier
K.T.

Yea. Yea. Yea.

May it please your Lordship—

I have the honor to forward herewith Copy of a Petition after your Lordship's fund perusal and consideration, I am about submitting to the address of the Right Honorable the Secretary of State for India and humbly to crave that when the same comes before you officially in Council Your Lordship will accord to the prayer therein contained your best aid and support—

I have the honor to be
Your Lordship's
most obedt & humble Servt
Jeevuni Boye—

Mangalore
26th October
1869.

(Signed)

Returned to the Memorialist wi
reference to Rule No. IX, below.

Extract from Rules for Memorials addressed to Her Majesty's Government.

RULE IX. Memorials may be transmitted either in manuscript or in print, but must, with all accompanying documents, be properly authenticated by the signature of the Memorialist on each sheet.

A. Wellesley

A/g Under Secy. to Govt.

19th November 1869.

No. 146.

This Memorial will be forwarded to the Right Honble the Secretary of State, through the Govt of India, under Clause 8 of the Revised Memorial Rules.

27th January 1870

14 00
2

Sent

Rev. Dpt.
27 Jany 70.

No 147.

To
The Secretary to the Govt
of India
Financial Dpt.

Sir.

I am directed to
forward for transmission
to the Secretary of State a
Memorial from Juane Boye,
the widow of Nursinga Row,
appealing against the order dated
29 Augt 1866 No 2272 in which the
Govt directed that the pension
which had been heretofore enjoyed
by her should be paid to one
Iswa Boye, and against subse-
quent indorsements confirma-
tory of that order. The following
brief statement of the case will
show the grounds upon which
the action of the Govt was

regards

Por of Govt 29 Augt 66 No 7865/67
Por of Govt 27 January 1870 296-97-

regards Memorialist's case.

2. In 1848 the Court of Directors bestowed upon the late Ramkul Krishna Row, Head Interpreter of Canara, a pension of Rs 4,500 per annum to be continued to three lives including that of the grantee and subject to a deduction of one-third and two-thirds for the second and third lives respectively. Krishna Row died in April 1848, and the question who was entitled to succeed to the reduced pension of Rs. 3,000 then arose. There were two claimants, viz. Jeve Bai, the daughter of Krishna Row, and Narsinga Row her son, and therefore the grandson of Krishna Row who had in addition adopted him. Narsinga Row's claim depended on the validity of this adoption

which was disputed. But as the Subordinate Court of Mangalore had on the institution of a suit for that purpose by Krishna Row ordered Narsinga Row to be restored to his adoptive father, this decision, although it did not expressly state as much, was assumed at the time to be tantamount to an affirmation of the validity of the adoption, and on this ground alone the Govt. at the instance of the Collector & the Board of Revenue directed that the pension should be conferred upon Narsinga Row.

3. Narsinga Row continued to enjoy the stipend of Rs 3,000 per annum

annum during the whole of his life time. On his death in February 1854 the Govt. still presuming on the validity of his adoption by Kristna Row and therefore regarding Nursinga Row (the Memorialist) as the "third life" from Kristna Row, ordered the payment to her of the reduced pension of Rs. 1500/- per annum engagement which continued in force until August 26th 1866 on which date the pension was transferred to Jiva Boye. In

4. In November 1865 the High Court passed judgment on an appeal against the decree of the Civil Court of Mangalore in a suit instituted by Jivani Boye, to recover from Jivai Boye the property of Kristna Row. The plaintiff (Memorialist) claimed on the ground that she was a widow of Narsinga Row the adopted son of Kristna Row and also on the ground that her deceased husband was the devisee by will of all the property left by Kristna Row. It will be observed from perusal of the document marked A in the appendix to the Memorial that the High Court decided in Memorialists favor on the latter ground alone, viz, that her deceased husband

husband was the "persona designatus" in Krishna Row's will irrespectively of the question of adoption. But in the last para of their judgment the High Court "to avoid misapprehension" notice this question briefly, laying down with reference to the adoption of memorialist's husband that all the authorities are perfectly consistent in declaring invalid all adoptions of the son of a person with whom the adopter could not have intermarried. We forbear this dictum as conclusive of the fact that memorialist's husband through whom she now claims never ought to have succeeded to the allowance to the exclusion of Krishna Row's natural heir, and it was on this consideration that the order alluded to

in

in para 1 was passed.

3. There is another circumstance connected with the case which although it could hardly form a legitimate ground for depriving Memorialist of the pension, may perhaps be adduced as an argument against disturbing existing arrangements. Since the pension was conferred upon Memorialist she has been declared by the above mentioned judgment of the High Court to be the possessor of all the property left by Krishna Row and devised to her husband, which appears to have exceeded Rs. 20,000 in value. She is therefore in comfortable circumstances owing to Krishna Row's having bequeathed to her late husband property which

which might in the absence
of a will have passed to
Jane Boye the present
holder of the pension.
6. I am to state that
the Court have no recom-
mendation to make
on Memorialist's
behalf.

&c.

Sothill