

Proceedings of the Madras Government,
25th August

Revenue Department,
1.

No. 269. Read the following letter from the Government Pleader, Madras, to the Acting Secretary to Government, Revenue Department, dated Madras, 8th June 1871, No. 100:—

reference to the Proceedings of Government noted in the margin, and in continuation of my letter dated 28th April, 1871, No. 62, I have the honour

G.O., 10th May 1871, No. 817. to forward copies of the judgment of the High Court in the Marangapoor case (Regular Appeal No. 129 of 1869) and of two orders in the same suit.

2. It will be seen that the Court having decided the preliminary question of jurisdiction in favour of the appellant, gave her three weeks to decide whether she still wished the issue as to the heirship of the present possessor of the Zemindary to be tried, and that she having within that time intimated, through her counsel, her wish in the affirmative, an issue on that point has accordingly been sent to the lower Court for trial. With the trial of this issue Government have no concern, and, moreover, have no *locus standi* to be heard upon that question; the only question on which they were made a party to the appeal being that of jurisdiction which has been decided against them.

3. Should Government be desirous of appealing to Her Majesty in Council against the decision of the High Court upon the preliminary point, special leave must be obtained from the High Court, the judgment not being a final one (High Court Letters Patent, Section 40). The time allowed for appealing is six months from the date of the judgment, with the addition of the forty-two days' time taken in obtaining copy of the same in this case.

No. 270. ORDER THEREON, 25th August 1871, No. 1,456.

Miscellaneous.

to the statements of facts asserted in the preamble that the succession to the enjoyment of unsettled right, and in no way dependant on the will of existence of an Istimrar Sunnud is simply a hereditary title, and no bar to the claim of right.

2. The result is to unsettle the titles of Poligars in the Presidency, for they all derive their possession immediately from the orders of Government settling the succession in the individual cases, and to afford an opening for litigation in every case in which the question of hereditary right can be raised, whether as regards the present or former possessors, so long as the Statute of Limitation does not bar action.

3. The Government have, by the recent grant of Sunnuds in many cases of Polliems, relinquished all voice in future succession to those Polliems, and have expressed their readiness and intention to carry out the same measure in every case, so that their interest in the question at issue is now almost nothing; but in justice to their nominees, and to save them, if possible, from heavy expense and protracted

THE High Court have decided in opposition to the previous decrees of the Sudder Adawlut on the subject (and to Regulations 25 and 31 of 1802,) Polliems is a matter of hereditary ruling power, and that the non-effect in the conclusive proof of

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In litigation, the Government deem it right that they should omit no endeavour to establish and maintain their power to make the nomination from which the Poligar title is immediately derived, and desire therefore that the necessary steps may be taken for carrying the question in appeal to the Privy Council.

(True Extract.)

(Signed) W. HUDLESTON,
Secretary to Government.

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

Wednesday the twenty-sixth day of
April, one thousand eight hundred and
seventy-one.

PRESENT.

The Honourable Sir C. H. Scotland, *Knight*, Chief Justice.
The Honourable Mr. Justice Innes.

Regular Appeal No. 129 of 1869.

Lekkamani, widow of the late
Thirumalay Puchaya Naiker, } Appellant (Plaintiff).
Zemindar of Marungapury.

Srimat Renga Kistna Muttu
Vira Puchaya Naiker, present } Respondent (2nd Defendant).
Zemindar of Marungapury.

REGULAR APPEAL against the decree of the Civil Court of Trichinopoly in
Original Suit No. 30 of 1868.

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

JUDGMENT.

This is a suit by the senior widow of the late Zemindar of Marungapury to recover the Zemindary estate together with the Punnai lands enjoyed therewith and certain jewels, the whole being in the possession of the defendant (the Collector) as the agent of the Court of Wards and guardian of the alleged minor, who is the half-brother of the late Zemindar. The material part of the defence made by the Collector's written statement is, in effect, that the property is not a hereditary Zemindary, but an unsettled Polliem in which the late Zemindar had only a life-estate, and had been granted by the Government on the Zemindar's death to the minor, and such grant being an act of State could not be questioned in the suit. But that, if a hereditary Zemindary or Polliem, the minor as the undivided half-brother of the late Zemindar is the rightful heir to the whole property. Issues were framed raising those points of defence, and, after several adjournments of the hearing of the suit at the instance of both parties for the reasons stated in the judgment of the Court below, the cause stood for trial in that Court on the 28th of August 1869. In the interval the minor having attained his full age, he was, on the application of the plaintiff's vakil, made a supplemental defendant.

2. On the 28th of August, the Advocate-General, on whose application as counsel for the minor as supplemental defendant the last adjournment had been granted, appeared to conduct the defence. But the vakils for the plaintiff and the supplemental defendant put in a razinamah by which these parties agreed to an adjustment of the suit on certain terms. The Advocate-General objecting that this was a surprise to him and might not be received, the case was again adjourned until the 31st of August. On that day the Advocate-General stated that he appeared for the Collector and no longer for the 2nd defendant, and the Court, after hearing his arguments as to the Collector's right to insist on the several points of his defence and those of the vakil for the plaintiff on the point of the admission of

the razinamah, the cause stood over for judgment to the next day. The Civil Court then decided that the Collector was entitled to be heard in support of the defence, and the Advocate-General immediately called and examined the Collector as a witness and put in evidence certain proceedings of the Local Government upon which he relied. The vakil for the plaintiff declined to cross-examine the witness, and prayed the further adjournment of the hearing to admit of his client's obtaining the services of Mr. Mayne, who had appeared as his counsel on the occasion on the adjournment immediately before that obtained by the Advocate-General; and, on the Court's refusing to accede to this application, the vakil declined to act further in the conduct of the case. Thereupon the Civil Judge appears to have given judgment, dismissing the suit on the ground that, as the evidence of the Collector showed not only that the estate was a life-polliem and the right of succession to it was vested in, and had been exercised by, the Government, but also that such had been declared to be the nature of the proprietary right by the official act of the Government in making the grant to the minor, the Court had not jurisdiction to entertain the suit, and, therefore, could not consider the question as to the reception of the razinamah.

3. The objections to this determination raised by the appellant (the plaintiff) are, that, in point of evidence, the case was not before the Civil Court in such a way as to warrant the finding as to the proprietary right, and that the razinamah ought to have been received and a decree passed in conformity therewith. With respect to the latter objection, we think it enough to say that it is met by the altered position in which the supplemental defendant has placed himself. He now appears as a resisting respondent in the appeal represented by the Advocate-General, and altogether repudiates the acceptance of the razinamah as an adjustment of the suit. He cannot be compelled to submit to a decree in the terms of compromise which he has withdrawn from and now resists the acceptance of by the Court. Then as to the former objection. There is nothing in the record to justify a conclusion adverse to the *bona fides* of the parties in entering into the razinamah, or to indicate that it is otherwise than reasonable to believe that the plaintiff's vakil might expect, down to the time of the judgment, that, if the razinamah was not received, further time would be given for the production of the evidence and a full hearing: and his application for a postponement ought, we think, in the peculiar circumstances, to have been attended to. Looking, then, at the case as it stood when judgment was given, it appears right that all the questions between the parties arising out of the claim and subject-matter of the plaint, and involved in the relief prayed, should be tried and determined, and, if necessary, that the Court's power to add issues should be exercised.

4. For these reasons, we held, at the close of the arguments on the first day of the hearing of the appeal, that, upon the case presented by the record returned by the Court below, the decree could not stand; and we adjourned the further hearing to admit of the parties producing before this Court their evidence bearing on the question of the nature of the deceased Polligar's right in the property which appeared to be altogether documentary, reserving for consideration, if necessary, on the determination of that question, the issue or issues to be sent for trial by the

Court below. Before proceeding to deal with this question, we will dispose of the preliminary objection of the agent of the Court of Wards (upheld by the Court below, but not seriously relied upon before this Court (that the Government Proceedings, granting the property to the minor, constituted an act of State which debarred the cognizance of the suit by a Municipal Court, and we think it enough to repeat our observations at the first hearing that, assuming the Proceedings to evidence a grant of the property, the objection is quite untenable. The Government acted upon what was believed to be its right under the municipal law, and can claim no exemption from the jurisdiction of the Courts to entertain a suit questioning a right of that nature.

5. With respect to the proprietary rights possessed by the late Zemindar. There is now before the Court the whole of the evidence which the parties have been able to adduce and we have had the advantage of hearing the case ably argued. The question for determination is whether he had vested in him a hereditary estate which passed on his death to his heir in the order of legal succession as the plaintiff contends, or an estate for his life on the termination of which the right to dispose of the property reverted to the Government as the defendants contend. The villages and lands mentioned in the plaint form one of the Manapuri polliems, but the estate and the holder of it have been commonly given the designations used in the plaint of Zemindary and Zemindar; it is, however, a conceded fact that no Istimirari sunnud, granting the estate under Regulation 25 of 1802, has ever existed. And the positions advanced on both sides stated summarily are on behalf of the plaintiff, that there is sufficient evidence from which to draw the inference that the property had been permanently assessed. But if not, that the tenure by which Polliems not permanently assessed are held had not attached to it as an essential incident, the limit of the life of the holder; but that, both historically and by judicial authority, the tenure is rather shown to be in its nature hereditary. That it may be either hereditary or for life according to the nature of the grant creating it, and that, in the present case, the evidence proved the polliem to have been held as an hereditary estate.

6. On behalf of the defendants the opposite to each of these positions was maintained and the arguments against the first went to the length of contending for the major proposition, that there were no hereditary proprietors of land between the Government and the cultivators of the soil except the rightful holders of estates permanently settled under Regulation 25 of 1802.

7. In dealing with this question of proprietary right it is important at the outset to ascertain how far it is affected by the authority of judicial decision. There are the decisions of this Court in the case of *Subba Chetty versus Macti Immadi Rani*, 3, *Madras High Court Report* 303, and *Arbuthnot versus Oolagappa Chetty*, 5, *Madras High Court Report* 303, in which Polliems not permanently settled were treated as estates for life only, but in neither of them was there any question raised as to the nature of the Polligar's holding. They amount to recognitions of Polliems held on life-tenure, but certainly not of that tenure as their peculiar and only kind of tenure: Indeed, this Court in the case of *Chantri Gounden versus Venkata Ramanier*, 5, *Madras High Court Report* 211, gave an express intimation of a different impression by the observation in the judgment; "the

Poligar of an unsettled Polliem may, according to the generally-received theory as to his rights, have only an estate for life in his Polliem, but for such an estate as he has his relation to the Government on the one side and to the occupiers of lands within his Polliem on the other side resembles that of a Zemindar" and in *Peddammattu Viramuni versus Appu Row*, 2, *Madras High Court Report* 117, the Court acted on the assumption of the existence of a hereditary estate in a Polliem.

8. The other cases referred to in the course of the argument as bearing directly upon the question are, *Nargunty Lutchmeedaramah versus Vengama Naidu*, 9, *Moore's Indian Appeals* 66, and *the Collector of Madura versus Verracunnoo Ummal*, *I. C.* 446, both relating to Polliems not permanently settled. In the former the question was whether the Polliem was ancestral property and as such passed to the plaintiff, the undivided cousin of the last Poligar, in preference to his widow. Their Lordships, who decided the case, accepted the description of a Polliem given in Wilson's Dictionary and the corresponding account given in the 5th Report of the Select Committee on the Affairs of the East India Company in 1812, to the effect that originally Polligars were petty chiefs subject to tribute and service to the paramount State which they seldom paid, and were more or less independent; but, under the rule of the East India Company, they had become peaceable landholders, and they determined that the estate was ancestral and passed to the plaintiff, upon a consideration of the evidence in the case as to the descent and enjoyment of the property. In the other case it was not disputed that the evidence as to the enjoyment of the Polliem proved it to be an ancestral estate. The only question raised was whether it was an ancestral estate heritable by male heirs only, and for default of such heirs escheated to the Government, and their Lordships held that the evidence in the case proved the right of females to succeed.

9. These decisions are not decisive authorities for the position, that the quality of heritage is inherent in the Polliem tenure, any more than the decisions of this Court are for the counter-contention that the tenure is essentially for the life of the grantee. But the earlier of them bears forcibly against the latter contention; and the later decision is not without some effect in the same direction, seeing that the point was unsuccessfully taken on the hearing on the case in the Sudder Court, and not again attempted to be set up before the Privy Council. The combined effect of the judgments in all the cases does not, it appears to us, amount to any deliberate adjudication as to the Polliem tenure being of a definite nature; but does go the length of giving the weight of judicial acceptance to its being legally either hereditary or for life according to the express or implied grant established in each case.

10. The authority of judicial decision cannot, therefore, be held to preclude the contention on either side as to the estate held by the late Zemindar, but we think it throws on the defendants the burden of sustaining their contention that his estate from the very nature of the tenure was limited. It was put by their learned Counsel, the Advocate-General, that all Poligars have been mistaken as to their rights since 1802. That, before Regulation 25 of 1802 was passed, there were no possessors of hereditary rights between the Government and the cultivating ryots, and only those holding permanently-settled lands by

Istimrari-sunnud under that Regulation have ever acquired such rights, and for this the declaration and provisions contained in the Regulation were relied upon as conclusive. If such be their irresistible positive force, we should be bound to give it effect as a legislative exposition of the law, although the results would certainly be very startling as respects hereditary proprietary rights long enjoyed subject to the payment of kist and repeatedly recognized judicially; those for instance in the lands in Malabar, Canara, and Tanjore, and in many maniem properties.

11. As leading up to this point the historical view of the relative rights of Poligars and other intermediate proprietors was a good deal discussed in argument, and it is, no doubt, important to see what their position appears to have been as respects the tenure of their rights before the passing of the Regulation 25 of 1802, as it may legitimately be used to aid in the construction of that Regulation. But, for this purpose, it would be profitless in the present case to go so far back as we should be carried by a consideration of the long and much contested question which the Government Pleader attempted in his argument to bring under discussion; whether absolute property in the soil was not before the country came under British Rule vested in the cultivating tenants, and the rights of all Poligars and others in a similar relation to the Government and to such tenants limited to the receipt of a proportion of the produce of the soil, payable as a State tax. The question in controversy in this case concedes (and rightly as we are about to decide) the proprietary right to be in either the Government or the heir of the late Poligar and the consideration of this abstruse point would afford no material aid in determining whether the tenure of the late Zemindar was hereditary or for life.

12. If it were necessary to deal with the point we should probably adhere to our present impressions. It appears to us to be too late in the day to attempt to uphold the notion said to have been first enunciated by the ancient Historian Deodorus Siculus and the Geographer Strabo, and which has been repeated by some modern authors, that the King possessed the proprietary right in the soil, and that in India there was no such thing as private landed property. The former authors by general acknowledgment cannot be regarded as safe authorities, and as regards the latter we are disposed to adopt the view expressed in Colonel Wilkes' learned and instructive work, "The History of Mysore," that because there existed no efficient and equal protection for property, they concluded at once in its absolute extinction. The same theory, it is true, has been maintained in more recent times by able English writers, but it has also been forcibly assailed by others of not less ability; and, looking at the subject from a judicial stand-point, all it seems to us that can be said is that what little exists of recorded tradition and events affords some support for diverse views, but no firm ground on which to rest a positive assertion.

13. At the present day a judgment with respect to property in land must necessarily, we think, be formed upon what has been, under British Rule, the legislation relating to land; the course of usage in regard to the acts and dealings of the Government and individuals with landed interests; and the nature of the proprietary rights which judicial decisions have confirmed and enforced, and upon those grounds we apprehend it may be laid down as a sound conclusion that whatever

be technically the correct theory as to the person in whom the soil originally vested, and the precise nature of the rights over land formerly acquired by the ruling power, or Zemindars and Poligars before the British Rule, the Government, in respect to lands held by ryots in which private intermediary interests have never existed or once existing, have been completely terminated and lands lying waste; and Zemindars and Poligars in respect to the lands within their Zemindaries and Polliems now possess rights of property as well as the tenant cultivators of such lands. Property in land as in any other thing is but a qualified dominion over it. In the most extensive sense it is the dominion enjoyed subject to the restrictions and incidents attached to all land by the general law. Such was the *plenum dominium* of the Roman law, and is the nature of the "absolute property" of the laws of European and other countries, and rights of property vary in extent with the degree of dominion. However their dominion over land be circumscribed by the creation of special obligations and modifying rights in others, so long as some substantial paramount dominion remains, the possessor of it has a proprietary interest in the land. He possesses (to use the phrase of modern Roman law) a *dominium minus plenum* and the owner of the rights which lessen the paramount dominion has in him a second dominion and property either as an occupier enjoying the usufruct of the land or as an intermediate proprietor and that the Government and Zemindars and Poligars are possessed of such a paramount dominion and consequently a property in the several lands just specified is a matter, we think, now put beyond question by the effect of their continual exercise of the rights of disposition and improvement and other rights of a proprietary nature from the earliest times of settled British Rule, and the provisions for the maintenance and furtherance of such rights found throughout the Regulations and Acts relating to both permanently and periodically assessed lands; and by the numerous decisions of the tribunals of the country and the Privy Council upholding and enforcing the same. The *plenum dominium* or absolute proprietary right in land may now, no doubt, be in the person who carries on its cultivation and be evidenced to have come from first occupancy. But in our judgment the pervading principle of executive Government, legislative and judicial decisions, is that, where the holding of the cultivator is ryotwary or for a limited term of years, Zemindars and other middlemen having similar rights, or the Government, when there is no such person intervening, possess a paramount property in the soil like a seignior, in which right they receive a rent or return for the possession and use enjoyed by the cultivating tenant, and that, when absolute proprietary rights exist, they must be regarded as derivative from the Ruling Power in the State. This principle has governed in Canara and Malabar where the most ancient proprietary rights have been preserved, and, with respect to such an absolute proprietary right, it is laid down in the judgment of the Privy Council in the recent case of *Gunga Gobind Mundul versus the Collector of the 24 punggunnahs*—11, *Moore's I. A.* 362, that there is not "the relation of landlord and tenant between the Government and the owner of the lands who is the landlord and not a ryot. The Government has a title to the rent or jumna. By whatever name it may be called the right and title is to the rent substantially; it does not include a right to the possession of the lands though such a right might arise by forfeiture or extinction of the ownership."

14. Reverting to the question of title now before the Court, we proceed to consider the conclusion deducible in our view from what appears historically as to the nature of the tenure of the proprietary estate of Poligars at the time of the passing of Regulation 25 of 1802. The learned Counsels on both sides rested their arguments upon the 5th Report of the Select Committee on the Affairs of the East India Company presented to the House of Commons in 1812—(Volume 2 of the Edition of Reports published by Messrs. Higginbotham & Co.) as setting forth the true historical view; and certainly we could hardly have a more authentic and instructive guide in forming our conclusion, containing, as the Report no doubt does, the substance of all the information derivable from the official records and reports in the possession or power of the Company's Government.

15. The name "Poligar" appears to have been applied before the Mahratta Invasion to persons holding in the Southern and Western portions of the Madras Presidency the position of those who had acquired the name of Zemindar in the Northern Districts, and substantially the history of the two classes is similar. Originally the descendants of officers of Police and Revenue Agents of Hindu sovereigns, they advanced themselves to the positions of chiefs maintaining Military forces and possessing fortresses and strongholds. As such they were employed by Mussulman Rulers in upholding subjection to their Government and managing the collection of revenue; and, although (as remarked by Mr. Mountstuart Elphinstone in his History of India), it seems doubtful whether they were more than chiefs enjoying some degree of independence before the time of Aurangzeb, yet in later times, by embracing the frequent opportunities for refractoriness and the extension of their powers, afforded by the weakness and inefficiency of the Ruling Power, they reached to the independence of tributary feudatories and proprietary holders of land and that position they or their descendants were in general permitted to enjoy hereditarily down to the establishment of British Government. That permission, however, cannot be pronounced to have amounted to a positive recognition establishing their assumed rights generally (except, perhaps, as respects a few who traced heirship through a long descent from rajahs or officers who had received villages in *inam*) because of their not unfrequently having been deprived of their rights. But it can hardly be doubted that it was decisive and retentive enough to give strong claims to such a recognition. Indeed the Company's Officers appear to have at first regarded them as already possessing established titles as landed proprietors; and, although that view was after a time modified, nothing was done indicating any doubts as to the strength of the claims of both Zemindars and Poligars to be secured in such titles, or any wish in opposition to a compliance with such claims.

16. Among the first acts of the Company's Government were the reinstatement of some Poligars who had been driven out of their Polliems, and the confirmation of the others (save a few who continued rebellious) in the enjoyment of their estates, upon the conditions of rendering to the Government their tribute and services (which were soon after converted into an increased jumna or rent adjusted according to the productive value of the lands) and of the regular letting of their lands to ryots for cultivation; and, when subsequently disturbances were caused by the Poligars of some districts, the Government, in the course which was deliberately decided upon and pursued, treated them as insubordinate landowners who exercised powers incompatible with the position of subjects, and paid an insufficient jumna.

They were coerced to surrender all their Civil and Military administrative powers and had their jumna increased to a new temporary assessment to an amount which left them more of the returns from the land than was consistent with any other position than that of proprietors. When again on the recurrence after such assessment of rebellious conduct on the part of some Poligars in the Tinnevely District, their Polliems were taken from them, some of the lands were added to the holdings of other deserving Poligars. Other Polliems, too, that were given up to the Government because of the discontent of the holders with the new assessment, in order that their actual productive qualities might be known, were, upon the proper rates of jumna being fixed, returned (with the exception of one or two sequestered on special grounds) to the former holders, and in one or two instances at least to the heir of a former holder.

17. All these occurrences appear to have taken place before the close of the last century, and the only change since made has been the bringing of some Polliems under the permanent settlement and the assessing of the others on the principle of the permanent settlement, and that all were not brought under the permanent settlement, was, there can be little doubt, owing solely to the need for that cautious experience which the Board of Directors urged on the Madras Government in 1804 and subsequent years in consequence of the reasons and objections of the Government against an irrevocable settlement founded upon grounds of State Policy. On the nature and effect of these settlements and assessments we shall have to observe when we allude presently to the Proceedings of the Board of Revenue of the 14th January 1813.

18. This review of the salient points of the history of Polliems, found in the Report of the Select Committee, confirms the impression derivable from the reported cases in which titles of Polliems have been contested, and we think that it is sufficiently apparent that Polliems, before the passing of Regulation 25 of 1802, had been acknowledged to be what they have since been dealt with as proprietary estates held under the Government by either a hereditary tenure or a life-tenure. Now, applying this result to the Regulation, we have next to consider whether, in regard to Polliems not permanently settled, it has the effect of declaring positively a different view, namely, as to the past, that private proprietary estates were not existent before; and as to the future that they would exist only when created hereditarily by a Sunnud Milkeut-i-Istimrar upon a permanent assessment being fixed under the Regulation.

19. We should not have been prepared to adopt this construction if nothing more had been before the Court than appears from the Regulation itself. But read by the light which, in our view, history affords as to the mode in which the Company's Government had dealt with Zemindaries and Polliems, and together with the subsequent emphatic declaration expressed in Regulation 4 of 1822, we feel no doubt that it was intended to be affirmative of existing proprietary rights in Zemindars and Poligars and others. The 1st Section, which is in the form of recitals, refers to what had been the mode of administration under Asiatic Rulers for the purpose of augmenting the revenue, and states that it involved the implication of the proprietary right of the ruling power to take possession of all lands for such purpose. It next points out serious evils caused by such a mode of administration, and as one of them, "the diminishing the security of *private property*,"

and concludes by declaring that the British Government had determined to remove "so fruitful a source of uncertainty and disquietude," and to make grants to Zemindars and other *landholders* of a hereditary property in *their land* subject to a permanently-fixed assessment of revenue. Then follows in Section 2 a positive enactment requiring a fixed assessment to be made on *all lands*, and declaring that thereupon hereditary estates should become vested in "*Zemindars or other proprietors of land*;" and in Section 3 provision is made for the granting of sunnuds to and obtaining of Caboolents from "*all persons being or constituted to be Zemindars or proprietors of land*." The other sections of the Regulation relate to lands when brought under permanent settlement.

20. Without preventing the language of these Sections we do not see how the Regulation can be said to import the negative declaration contended for; or what other effect can reasonably be given to it than that of a deliberate recognition of existing private proprietorship in land; except, indeed, upon the supposition that the terms "*private property*," "*landholders*," "*proprietors of land*" were used in no definite sense, a supposition quite gratuitous for anything that appears in the Regulation, or is, we think, presented by history as to the manner in which the Government had before dealt with Zemindars and Poligars. However, upon such a supposition, doubts would very likely arise from the introduction of a new system of formal hereditary grants, in regard to the certainty of private rights in those lands which were not soon brought under a permanent assessment; and very probably it was doubts of that kind which led to the passing of Regulation 4 of 1832.

21. But, whatever were the moving doubts, that Regulation does afford strong confirmation of the view we take of the declaratory effect of Regulation 25 of 1802. It recites in the 1st Section that, because of doubts regarding the meaning of the latter Regulation and others, it had become necessary to declare that in passing them the Government "had no intention of authorizing the infringing, or limitation of any established rights of any class of its subjects, such as rights being determinable by judicial investigation only," and in the 2nd Section declares that the provisions in those Regulations "were not meant to define, limit, infringe, or destroy the actual rights of any description of landholders or tenants." There is certainly some indication in the Regulation that it was rather meant to apply, as argued for the respondents, to the provisions in the earlier Regulations relating to the relative rights of landholders and occupying tenants. But we must give to the words just quoted their full effect and hold that the Regulation applies to all rights in land recognized by the Government as established at the passing of Regulation 25 of 1802 or the other Regulations therein referred to. Regulation 4 of 1822, therefore, confirms, we think, in the clearest manner, the recognition of private property in land when Regulation 25 was passed, and the intention not to interfere with the maintenance of rightful claims to it. Indeed, it would have been strange to have found the contrary in effect declared by Regulation 25 of 1802, for then it would, it seems to us, have involved the inconsistency of a declaration adverse to the very intent and purpose of the legislation, or (putting the inconsistency in another form) of providing for the confirmation and effectual settlement of titles which the Government framing the Regulation did not recognize as existing.

22. On the part of the respondents three decisions of the late Sudder Court reported in the 1st Volume of *Select Decrees*, pages 80, 141, and 172, were relied upon. They bear directly in support of the valid existence of proprietary estates for life in Zemindaries and Polliems not brought within Regulation 25 of 1802; but lay down that there can be no hereditary interest in them unless created by an Istimirari Sunnud granted under that Regulation. For this position the reasons given in the judgments, pages 80 and 172, are that it is deducible from the Regulation and confirmed "by information obtained from other sources," that, prior to the permanent assessment, succession to Zemindars was not governed *exclusively* by the laws of inheritance; but that the ruling power disposed of them as might be considered most expedient for the realization of the public revenue, and in page 172 there is the additional reason given that it was clear to the Court that the succession to the property in dispute which had passed to the next heir had always depended upon the arbitrary will of the ruling power. With the former part of the deduction our view accords and so too with the latter part if it was meant to refer to the mode of administration under Asiatic Rulers; but, if meant to refer to the period of the Company's Government down to the passing of Regulation 25 of 1802, we cannot concur in it. Further, if what is stated in the latter ground was shown by evidence, it was by itself a proper ground for the decision in the case. But the strongest remarks against the weight of the decisions are, that no clue is given to the source or nature of the information by which the Court was influenced; that the cases were decided sometime before the date of Regulation 4 of 1822, and in Clause 3, Rule 10, of the Agency Rules of Ganjam and Vizagapatam, made some years after Regulation 4 of 1822, we find the Government not denying the right of succession to Zemindars not permanently settled, but only claiming the inherent right of selection in the case of more than one claimant of the right. For the appellant reliance was placed on the judgment of Lord Chancellor Lynhurst in *Freeman versus Facille*, 1 Moore's I. A. 342, deciding that Zemindars and Tahsildars of Bengal had a *permanent* property in the soil at the time when the English established themselves in the country. This goes further than our present judgment; but, as it appears to rest upon a series of documents and, opinions besides the Bengal Regulations, which are somewhat different from the Madras Regulations, we cannot consider it as a supporting authority beyond the point that a course of arbitrary dealings with the land for revenue purposes, similar to that recited in Regulation 25 of 1802, was considered consistent with the existence of the proprietary rights of Zemindars and others in such land.

23. For these reasons we are of opinion that Zemindars and Poligars and others in a like position, and occupying tenants, possessed different proprietary rights in land by recognition of the Government before the passing of Regulation 25 of 1802. That by it the Government declared with the force of law their acknowledgment and confirmation of such rights as they were then enjoyed, and in order quiet all uncertainty and disquietude respecting them, and to establish general certainty of tenure in the holders of the same provided for the permanent assessment of all lands liable to pay revenue to Government, and for the issuing thereupon of express hereditary grants to every Zemindar and other intermediate proprietor, and written engagements between them and their tenants, and, therefore, that the Regulation does not operate to exclude or disfavour the maintenance

of a claim against the Government to a hereditary or other estate in lands, which has not been secured the benefits of a settled title under the Regulation, because, for political reasons, the Government has thought it inexpedient to give full effect to its enactments. But that claims of title to such estates are merely left without the conclusive proof of hereditary title afforded by an Istimirari Sunnud. It could never, we think, have been intended that the Government by delaying to do in regard to some estates, what the Regulation enacts should be done in regard to all lands for the purpose of setting at rest all uncertainty as to titles, should secure the power to treat all such estates as held by no permanent title whatever. It follows that the existence of a proprietary estate in Polliems or other lands not permanently assessed, and the tenure by which it has been held are, in our opinion, matters judicially determinable on legal evidence just as the right to any other property.

24. We are thus brought to consider the evidence laid before the Court, and on this point the conclusion contended for on the part of the respondents is not that the Government have the absolute right to deprive the family of the Polliem on the death of each holder of it, but that they have the right to appoint whom they please of the kindred of the deceased Poligar to be his successor. In effect that the members of the family have taken successive life-estates by express concession of the Government.

25. The earliest documents in evidence bear date in 1803. They are the letters of the Acting Collector Mr. Watts and its enclosures, and the Proceedings of the Board of Revenue, and Resolution of the Government thereon (Exhibits K, Q, and R). The letter communicated that, on commencing the survey of the Manapura Polliems, the holder of the Polliem now in dispute had claimed his (the Collector's) intervention for the purpose of recovering several villages of which his grandfather had been forcibly disposed by the ancestors of the Tondaman Rajah, and enclosed the evidence brought forward to support the claim. Among the documents enclosed was the copy of a grant inscribed on stone of some of the villages so seized as a free and perpetual endowment for the support of a temple. An act this of absolute ownership. The opinion of the Board and the Government resolution were to the effect that, although considerable hardship appeared to attend the case of the applicant, he could not recover the villages after the lapse of so long a time. These documents were used for the appellant partly to show that the Polliem was then regarded as an ancestral estate which had come down to the applicant by right of hereditary succession; and we think they have that effect at all events from as far back as 1691. But not the further effect contended for of showing that the successions had been quite independent of the control of the Government, for, consistently with what the document sets forth, each successor, although heir according to the order of legal succession, might have been nominated by the ruling power. On this point, more we think cannot be said in connexion with these documents than that the exercise of such control is rendered improbable by the non-production of any document from the Government records tending to evidence it and this improbability must have its due weight in considering the other evidence as to what occurred on successions since the date of the Government Order.

26. The next document, in point of date, is the letter of the Collector Mr. Parish to the Board of Revenue of the 8th June 1804, explaining the nature and amount of new assessments then made on the Manapura and other Polliems, and it is important as showing that those assessments were a considerable increase on the former rates and made upon the same principle as the permanent assessments on Zemindaries secured by the grant of sunnuds under Regulation 25 of 1802, that principle having been before applied to other unsettled properties without objection on the part of the holders. But, in judging of the effect of this evidence, we must consider it with the information afforded by the Proceedings of the Board of Revenue dated the 14th June 1863 (*Exhibit 34*) relating to such assessments. Those Proceedings, it appears, were consequent upon the resolution of the Government proposing the issue of permanent sunnuds to the holders of Polliems throughout the country; and they show that in 1802 permanent settlements of peishcush had been effected in regard to the Polliems in the Ceded Districts and Tinnevely, the Ramnad and Shivagunga Zemindaries in Madura, and those known as the western Polliems, upon the principle generally adopted in the permanent assessment of Zemindaries under Regulation 25 of 1802. That about the same time assessments upon a different principle were made on the Dindigul Polliems; but they were subsequently re-assessed upon the same principle. That the Government approved such re-assessment and confirmed the settlement of all the Polliem estates in perpetuity, and thereupon sunnuds under Regulation 25 were actually issued in 1805, but not delivered to the holders of the Polliems owing, it would seem, to some doubts as to whether forfeitures had not occurred by reason of frequent sales having taken place, and that Mr. Parish's assessments were recognized as the extension of a similar mode of assessment to the Manapura Polliems, and had been continued in force ever since except as regarded one Polliem (Mambaray), but no sunnuds had been issued. The Board, with reference to this extension, remark that, at the time the assessments were imposed, "it was probably intended to extend to those Polliems the permanent settlement which had been made on the Polliems of Dindigul." They might have expressed this with certainty since it appeared on record in the Proceedings of their office in 1815 with reference to the Manapura assessments, that "it was fully intended to extend to those Polliems the permanent settlement on the Zemindary tenure, but whether in consequence of the Collector having neglected to submit the previous report necessary for the purpose or in consequence of the discussions which subsequently arose respecting the inexpediency of extending that system, it does not appear that this intention has ever been carried into effect. The result has been that, although the demand on the Polliems has since continued invariably the same, it has not been considered regular and legal on the occurrence of arrears to enforce the Regulation of 1802. The Board, then, after reviewing the subsequent official communications relating to the several Polliem estates, conclude by recommending that "all existing Polligars be confirmed in their tenures on the present terms as regards peishcush and that sunnuds of permanent settlement be granted to all who are willing to accept them."

27. The legitimate conclusions deducible from all that is stated in those Proceedings and the other documents above referred to we consider to be these.

The Government appear to have always dealt with the Manapura Polliems as ancestral estates passing by succession in the families of the holders. They have never retained any of the Polliems except on an escheat for failure of heirs or a voluntary surrender in consideration of a Malkana allowance, or when Polliems were resumed for the purpose of being kept under management temporarily or until redeemed by the payment off of arrears of peishcush (which occurred once as respects the Polliem now in dispute), instead of attempting to sell the estate or enforcing payment against the persons of the Poligars owing the arrears of their property generally, and, although these Manapuri Polliems have never been permanently settled under Regulation 25 of 1802, they have been continued for more than half a century before the institution of the suit, under an assessment equivalent to that fixed on Zemindaries permanently settled under that Regulation, and made with the intention of its becoming permanently fixed by the grant of sunnuds. In effect have practically been permanently settled ancestral estates in the estimation of the Government from the time of Mr. Parish's assessments. In support of the latter conclusion, we have the additional circumstance that the Polliems are described as "permanently settled" in the statement of revenue account from Fusly 1275 to 1278 furnished by two Collectors (*Exhibits M and N*), and in the letter of a third Collector addressed to the Board of Revenue. The Advocate-General argued that that description was shown to be a mistake by the letters of another Collector in Exhibits 14 and 5 correcting the statement in the latter communication. And no doubt the correction was right if the statement was understood to mean permanently settled under Regulation 25 of 1802, which we may consider to have probably been the case, when we find from Exhibit N that the description was continued for two years after the date of the letters of correction. This argument, therefore, does not remove the force which we give to the description. Further, we have yet stronger proof of the conclusion in the fact appearing from Exhibit 14 that, so recently as 1866, it was determined by the Revenue Board that a sunnud should be offered to the late Poligar when he came of full age.

28. We have next to consider the force of the direct evidence relied upon as showing that the Government have exercised a control over the course of succession. The Revenue Board, in their Proceedings of 14th January 1863, paragraph 25, assert the right to nominate as successor on the occasion of a death a person who had no claim to it according to the general law of succession, and, if that has been established, the plaintiff is not entitled to the Polliem although a family estate. The earliest succession, of which there is any particular evidence, took place in 1811 or 1812, and the succession of the late Poligar in 1854 was the next. The former was denied on the part of the respondents, but nothing was suggested to cast a doubt on the fact appearing from the certified copy of the record in Original Suit No. 49 in the register of the Southern Provincial Court (*Exhibit 6*), that, in consequence of a death in 1811 or 1812, the right to the succession was litigated in that suit, and determined in 1813, by a decree in favour of the defendant as the heir of his father who had inherited from his grandfather. He cannot, therefore, doubt the fact of a succession at that date, and there is not the least evidence to show that control was then exercised by the Government, but an inference to the contrary may be drawn from the fact that there was no

mention of any control in the suit; besides it is highly probable that, if any had been exercised, some evidence of it would have been forthcoming from the Government records. Consequently, we must take it that the Government had exercised no further control than we have already alluded to (which does not appear to have touched the right of succession) at the date of the death of the late Zemindar's predecessor in 1854.

29. The evidence relating to the succession of the late Zemindar are the letters of the Sub-Collector to the Collector (*Exhibits 10 and 11*), and the Proceedings of the Board of Revenue and the Government Order thereon (*Exhibits 33 and 12*). In his first letter the Sub-Collector reported the death of the Zemindar, and his having recognized his son as heir, and that, on receipt of further communication from the Tahsildar, he would submit his opinion on the right of the son to the succession. In his 2nd letter he gave a statement of the family of the deceased showing that the heir recognized by the Zemindar was his eldest son, and recommended that he should be recognized and invested as Poligar. The Collector then forwarded a similar recommendation to the Board who submitted it to the Government recommending that, as the person named was the eldest son and to be presumed capable of managing the property, he should be recognized as proprietor in succession to his father; and thereupon the Government passed an order recognizing the eldest son as Poligar in succession to his deceased father, and his right to be placed in possession of the estate.

30. What took place when the late Zemindar died on the 17th July 1864 appears from the Collector's letter to the Court of Wards, reporting the death, the Proceedings of the Court, and the Government Order thereon (*Exhibit P*). The Collector's report mentioned the surviving relations and the receipt of a petition from the Zemindar just before his death asking the recognition of his minor brother as his successor and his cousin as manager during his minority. That he had inquired and ascertained it to be the wishes of the widows that their deceased husband's desire should be complied with subject to the 1st widow's having a control over the management. The Government, adopting the opinion expressed in the Proceedings of the Court, ordered that, as the brother appeared to be the legal heir, he should be recognized and the estate taken charge of by the Collector as agent of the Court, and that the Collector should report further as to the management.

31. These are all the acts and circumstances advanced to prove that the right of succession was conditional upon the will of the Government; and, had their combined effect been to show an order applied for and made on each occasion granting or confirming the right of succession, it would have been meagre evidence of such a condition in the face of the adverse improbability arising from the non-production of any evidence of Government interference with a succession before 1854. But, in our opinion, such is not their effect. We think the proceedings on the late Zemindar's succession prove nothing more than that, after the principal revenue officers of the Government had ascertained, on due inquiry, that he was the next legal heir, the Government in a formal manner recognized him as by that right entitled to be inducted to the possession and enjoyment of the estate. We think, too, that no further evidence is afforded by the proceedings on the death

of the late Zemindar in regard to the succession of the present defendant. We do not see that the mention in the Collector's report of the wishes of the widows having been ascertained adds anything on this point. It had reference, no doubt, to the control to be exercised in regard to the management of the property during the defendant's minority, and such a control, by Regulation 5 of 1804, was a duty imposed on the devolution of property by inheritance. In short, we consider the acts done on both occasions to amount simply to the rendering of a kind of fealty to the Government as supreme lord, and the official recognition in return of the renderer's right to be inducted to the Polliem as the person ascertained by the Government to be the next heir in the line of legal succession to the deceased holder just such a submission and recognition as takes place commonly on the succession of heirs to permanently-settled Zemindaries.

32. In support of this conclusion we are glad to have proof of the very satisfactory kind presented by the minutes of the Members of the Revenue Board (*Exhibit 12*), which we learned during the argument had unwittingly been put within reach of the appellant. They appear to have been recorded in August 1864 with reference to the Collector's letter regarding the defendant's succession, and in distinct terms express that no legal sanction was considered to exist for the recognition of any one as proprietor in succession to the deceased Poligar, who was not the actual heir-at-law, and that, on that ground and on the understanding that the Polliem was undivided, the defendant was entitled to the recognition of the Government as the rightful heir to his uncle, the deceased Poligar. It is evident that, had he not been considered the legal heir, the senior widow (present plaintiff) would as the next heir have been the recognized owner.

33. Upon the whole, we are of opinion that it has been established as strong, as a claim of this nature can be expected to be proved that the polliem in dispute is an ancestral hereditary estate which has devolved through several generations in the ordinary course of legal succession. Almost everything tending to this conclusion that could reasonably be looked for, it seems to us, exists save the grant of a sunnud under Regulation 25 of 1802, and that is not in our judgment made by law indispensable except to render the revenue assessment permanent. It follows that the right of succession contested in the present suit depends upon the question raised by the 2nd issue in the suit whether the 2nd defendant is the legitimate brother of the late Poligar, Triumalai Puchaya Naicker. If so, he is the rightful heir to all the property claimed in the plaint, no division having taken place between him and his deceased brother. But if illegitimate, he has no right to any portion of it. No additional issue is necessary.

34. We wish it to be distinctly understood that it is not intended by anything said in this judgment to indicate any opinion as to the right of the Government to alter the assessments of peishcush on this or other polliems not held under an Istimirari sunnud if they think it equitable to do so, and have not bound themselves not to do so, an obligation which, it seems from Exhibit 23, does in some instances exist. The question of the first defendant's legitimacy we are not now in a position to determine, and, if the plaintiff persists in her denial of it, the issue must be sent for trial by the Court below. She must be required to state within three weeks whether she abandons the issue or desires to have it tried.

(A True Copy.)

(Signed) H. WIGRAM,
Acting Registrar, Appellate Side.

(True Copy.)

(Signed) P. WEIR,
Deputy Registrar, Appellate Side.

Reported to Council
18th October 72 No 31

Revenue 1871 Sept
No 1855

From
Genl Pleader

Dated 28 June
No 100

G. O. 25th August 1871
No 1456

Forwarding copies
of the judgement and
of two orders in
R. A. S. No 129 of 1869
on the file of the
High Court.

No 25th Sept 74 Dec 13.

No 269-

Enclosure in D

Qd 25 August 71

No 269-270

324/71

No 25-Sept 1871, Dec 13.
No 269

I have no hesitation in expressing
my conviction that the decision
of the High Court in this case is
erroneous on the point of law the
tenure of Pollaines.
But I do not think it expedient
to litigate the matter further
by an appeal to the Privy Council
because, as far as is concerned,
I do not think the advantages
even of a successful appeal
would counterbalance the heavy

Expense which went to
such a measure would entail.
In point of fact the decree, though
as I said before erroneous in my
judgment, coincides with the past
conduct & the present policy of
the Government in relation to these territories. We
have as a rule for many years
past nominated the members of
the family whom we considered
the ^{best} legal heirs to the Polity. We
may some times have erred in our
selection but such has been the
principle by which we have been

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guided. Formerly in some cases, where
conditions of military or Police service
were attached to a Polity the right
of selection irrespective of kinship was
exercised - females - for example -
being passed over in favor of more
distant male heirs. We could then
see presented them from effectively
performing the service - but such
services have long since been com-
muted or have ceased. We do
any longer see and now we
wisely take the next heirs - In
some cases we have waived the right
of selection and left the Courts to
decide.

determine, which of several rival
claimants was the next heir &
have nominated the person to deter-
mine. I may go further & say, from
my own knowledge as Secy to the pt.
that this course would have been adopted
in every case but for the various conse-
quences of litigation - Many of the
~~pollutions~~ ~~are~~ ~~all~~ ~~for~~ ~~the~~
and in no instance has the pt. selected
a person unconnected with the family.
So far therefore as the post is con-
cerned the decree merely affirms
what has been the policy of the pt.
For the future the pt. has decided on

2/
converting all these pollutions into
permanently settled estates. &
the right of nomination will then
cease and the succession will
follow according to legal heir-
ship. In other words he intended
to make these ~~estates~~ ^{pollutions} what the
decree declares them to be - viz
hereditary estates.
Practically therefore the decree
is of very little moment.
The Board have urged that if
the decree stands, the post as-
-sumptions of the pt. may be interrupted
and a course of ruinous litigation
may

may ensue. But this danger may
incure by issuing Summons.
and I do not know that Polignac
has any perfect claim to be
tested by the special interpretation of
the State from risks but not all
the provisions are subject.

Another question to acquire sense in
the decree is that it renders the
successor liable for all the debts
of the person whom he succeeds. But
the same answer applies here also.

On the other hand we know
what serious expense attends an

appeal to the Privy Council. We have had
a very recent exemplification of this
in the case of the Beaumont Estate.

I think too that we shall
be in Court in a long unbroken
way. We shall be striving to establish
an abstract ^{right} principle which we
have deliberately abandoned as these
principles by which we are guided.
We may even be in a worse position.
For the PLH in this case may succeed
in proving our nominee the illegitimate
in which ~~case~~ event he shall be
constrained to admit that if we
had been aware of this fact, we had

have been nominated by us in the
first instance!

The case is certainly an em-
barrassing one but on the whole I think
it best that it should acquiesce in
the decision - as being naturally im-
portant now. My note on the previous
reference will show that I was un-
willing to over-interfere at all
in the suit.

If the Aff fails in proving
the alleged illegitimacy of our
nominee I at least to the Privy Council
~~and the Court of Appeal~~
~~will be in a very strong position~~
in the trial - I do. 12 Sept 71

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This case as to him & others
is a very embarrassing one.
As regards the Privy Council
for the purpose of maintaining
it more abundant right, which
the Council must have no
intention of admitting is
certainly open to my objection
objection. On the other hand there
is a strong ground for
thinking that the result of the
referring the matter to the
Privy Council is erroneous.
but if it is allowed to stand
it may lead to some of those
difficulties which the Privy Council
have committed Privy Council
in its position regarding this
right to their intervention
rather of such nomination;
a litigation which if this
does not not have passed
might have been carried
even as regards those to whom
the Privy Council has consented or to

them they may have the
great permanent benefit.
On this point I do not quite
understand his line of argument.
It is true that the acceptance
of a permanent demand involves
the future acceptance of the
whole subject of debt litigation
and perhaps the whole liability
for the debts of his jurisdiction,
but it does not amount to
the interpretation of the law
with a view to settling
problems as his line of argument
being much the cognizance
of the courts the nomination
of Justs. of the person by
whom the demand has been
accepted.

the question is whether we
should not seek to maintain
this interpretation of the law
with the view of preventing
our past nominations being
made a ground of litigation
to the detriment of those
jurisdictions who have hitherto

had reason to regard their
nominations of Justs. as con-
firming on them an indefeasible
right. I am inclined to
think that is doubtful.

Ry D. 954
18th Aug 1871

Or an appeal to the
High Court

Yours very &c
Madras J. Goss
Aug 4

I am by the last two issues
persuaded that she
has done so. LK
21.8.71

I gather from this note
that the trial of the issue
promised by the High Ct. in their
order of 17 May 71. "Whether the
2d. wife is the legitimate widow
of the late Soligor" has resulted

in his being found legitimate
there is fact again upholding the
Govt's original selection.

It seems probable that the widow
of the late Soligor will appeal at
least to the High Ct. and if
the High Ct. decision is upheld. It
may perhaps stop there. In that
case it may be unnecessary
for the Govt. to carry the H.C. decision
on the larger question of 2d. wife
succession to the P.C.

If however on either question
she appeals to the P.C. then as Mr.
Linn suggests, Govt. can join in
the trial. LK 10 Aug 71.

End Pleader

Letter from Govt. Pleader

No 100 of 8th June 1871.

The Govt. Pleader forwards copy of the H. Ct. Judgment (Chief Justice and Justice J.) in the Marangapuri unsettled pollien suit.

2. The Judgment is dated 26th April last: 42 days elapsed before copy of it was obtained. This leaves six months to appeal to the Privy Council: from (or about) the date of Mr. Handley's letter.

3. History of the Pollien. Marangapuri

though now in Trichinopoly, was originally in Madurai. It is one of a group of polliens generally referred to in old correspondence as the "six polliens of Manaspara".

Many of the Madurai polliens were "settled", but none of the Manaspara group ever were so.

They were surveyed by Mr. Handley in 7/1212, and the Peshcud was fixed into the Poligars for 7/1213 at 70 per cent of the survey outturn of the previous year. This demand

Para 18. Bdt to Govt

5th Nov 1869 No 2356

settled in

Bd to Pro 14th Jan 1863

No 210 para 11

disposed of in

G.O. 10th Nov 1865

No 2730

has remained unaltered." At the
time when it was imposed, it was
probably intended to extend to these
Polliems the permanent settlement,
but the intention was abandoned.
They have always, consequently, been
treated by the Govt. authorities as
temporarily settled Polliems, &
are still borne under that de-
signation in the accounts of the
District.

In 1816, the Poligar being hopelessly
in arrears, Govt. resumed the Polliem
and kept it under Am for
the space of thirty years, allowing
the Poligar a charitable pension
of 10 per cent of the revenues.

In their despatch No 17 of 1845
the Board of Directors - para 15 &c -
were pleased to restore the Polliem,
in answer to the Poligar's prayer,
and in consideration of his default
having been brought about by cir-
cumstances over which he had no
control.

5. Six years after the Poligar wished to
alienate a portion of the Polliem, but
the Bd. were of opinion that he

was not being permanently
settled, did not come within the
provisions of Reg. XXV of 1802. The Govt.
concurring, refused to allow any
subdivision of the Estate.

6. Three years later the old Poligar
died, when apparently to the recom-
mendation of the Bd., the Govt. resolved to
recognise his eldest son as Poligar,
and to grant authority for his
being placed in charge of the
Estate.

7. In 1864, his 2nd Poligar died.
In the interval, or in 1856, the Polliem
had been transferred from Madurai
to Trichinopoly. The Collector of
the latter district, in reporting
the death, inadvertently describes
the Estate as a Zamindari & is
followed therein by the Bd. of Rev.
The Polliem now devolved on
deceased's half brother, a minor,
& was therefore taken under the
Court of Wards.

8. By and by, the deceased's widow
brought a suit against the minor
for the Estate. The boy became of
age before the suit came on, but
the Ct. of Wards directed the Polliem

Pro. C. of Wards - to continue to defend the suit,
No 5825
7th Aug '69
as "the reversionary interests of
Govt in unsettled pollicins are
involved in it"; and finally
Mr Horton, the Advocate Genl
appeared at Trichinopoly, and
filed, amongst others, the following
pleas, to be put in issue:
First That the 1st Dept (Colon)
was merely acted as agent to the C. of Wards,
who, under the orders of Govt, had
declared the Minor to be the successor
to the Pollicin.
Fourth That Marangapalay is an
unsettled Pollicin, & that therefore
the Govt have, as declared in the decision
of the High C. (Vol III. 17308) & other
authorities, the right to nominate
& declare the party entitled to sue
such Pollicins.
Fifth That such act, as an act of
State, is therefore not cognisable by
any Municipal C. whatever, as
laid down in the Tanjore & other
cases.

The Civil Judge acquiescing in these
pleas, dismissed the suit.
The widow appealed to the High C.;
the respondent (Zamindar) had retained
Mr Horton; and he had reported it
as "most desirable that Govt should be
Pro. Govt 25th July 170
No 1118

2/
represented, if (as seemed probable)
the question whether a Pollicin, for which
an Interim Summud has not been
issued, is or is not hereditary property,
is raised & argued. If it is decided
that Govt, in assuming the power to
determine the succession to unsettled
Pollicins, have erred - here may be
cases in the suits for the recovery of
such estates from men whom Govt
have placed in possession will not be
barred by limitation; and, even
in cases where claims are barred,
a wide field will be opened out
for petitioning, & even for litigation.
Hence they conclude "he makes
it of importance in spite of the
fact that Govt are about to issue
Summuds for all unsettled Pollicins."
10. The Law Officers also jointly recom-
mended the same course, on the
ground that the possibility of an
ultimate resort to the King's Council
must be kept in mind, though this
was not likely to result, unless the
Appellant, he undertook, took the case
here: "for" said they "we have
ascertained that no Full Bench
will assemble as requested by Mr.
Mayer, the Appellant's Counsel;

"and we may therefore fairly assume that the Chief Justice feels no doubts as to the soundness of the cases already decided regarding the nature of a Poligar's estate."

G.O. 10th August 170
No 1206.

The Govt accordingly sanctioned the proposal.

11. The Judgment. The authority of

previous judicial decision is first discussed; and it is laid down

(para 10) that it cannot be held to

preclude the contention on either side

as to the estate of the late Poligar,

but that it "throws on the defendants

burden of proof that his Estate,

from the very nature of the tenure, was

hereditary."

12. Next, our learned argued that before

the Regt. Settlement, there were no proposals of

hereditary rights between the Govt & the

Regt. that there are none now, except

where Sanads were issued under

Regt. of 1802. I apprehend this is the

correct view. But the Court, after tracing

the history of Poligars & Zamindars

during the dynasties of the old Hindustani

Rajp & their Mahomedan successors,

when their status - they admit - was

uncertain & unstable, arrived at the conclusion that the E.T. Company from the first, regarded them as possessing established titles as landed proprietors. I think their attention had been called to the preamble of Regt. of 1802 (passed on the same date as Regt. of 1802) setting forth how the "ruling power of the provinces now subject to the Govt of Fort St. George" has, in conformity to an ancient usage of the country, reserved to itself & his exercised the actual proprietary rights of lands of every description. The true state is, that a Poligar or Zamindar was originally a collector of revenue paid by a commission; his office became hereditary, & it was only because it is the tendency of the country to allow officers to become hereditary that the older rulers now the Company had any objection in superseding him capable son of a capable father; but can it be shown that he son was considered to have any right to succeed?

The learned argument is deduced from the preamble of Regt. of 1802. It is stated that the ruling power for the time being, holds this act from the earliest times the present position of the Poligar is a right and the actual & direct of the Poligar's possession of the lands & the Regt.

13. However, having taken this right as existing before 1802, the C.E. proceed to inquire how a Poligar's position will be affected by Regt. of that year; and they decide that the absence of a Sanad makes no count whatever. That Regt. they argue, provided for the permanent disposal of all lands liable to pay revenue to the Govt for the revenue; hereafter, in the

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Zamindar or other intermediate
Proprietor, his heirs & successors, an
indefeasible title, whereof the grant
is only the conclusive evi-
dence. In connection with his argument,
they point to Reg IV of 1822, which declares
that the earlier Regs (of 1802) were not meant
to infringe any established rights, such
rights being determinable by judicial
investigation only. Our Council strongly
urged that Reg IV of 1822 referred to
disputes between land lord & tenant
alone; but this was overruled. In point
of fact, as I find by reference to the old
correspondence, the Reg was passed
with a view of benefiting the Regt by
its declarations; of upholding him
against the tyranny of the Zamindar.
14. The Ct next discuss the question whether
the successive Poligars have, as our
Council urged, taken life interests
only, by express conception of the Govt.
They find that the Poligar has practically
been treated as a permanently settled
ancestral Estate from 1802 - here, no
doubt, they are right. & it was on his
ground Govt lately offered Sanads to
the Poligars all round. But they say
it is open to Govt to raise his aforesaid
estate of any other Poligar (where no ex-
press pledge has been given to the contrary).
15. The question is, is there to be an appeal? Many Poligars have refused to
leave Zamindars & have circumvented it has been authorized to carry no further.
It is impossible to reconcile his dictum
with his previous interpretation of the scope
of Reg 25 of 1802, & the position w^{ch} it assigns
to Proprietors with or without Sanads.
The Zamindars have refused to
leave Zamindars & have circumvented it has been authorized to carry no further.

3/ such cases, had his judgment not
been reversed, Govt would still have
regulated the succession. Now, it
will be left to the law to do so.
This result hardly affords ground
for preferring an appeal, seeing
that it was always considered
an unsatisfactory duty for the
Executive Govt to arbitrate between
conflicting family claims.
In such cases again, Govt still
remains at liberty, it seems, to raise
the public demand on the Estate.
They had not of course hints of
doing so, as long as it remained
with the ancient family; but
on any alienation occurring,
the rate of the permanent aforesaid
rent must not be observed in
favour of the alienees, as it must
be (by law) in the case of aliena-
tions in a Zamindari proper.
The Select Committee of the H. of
Commons, who has just passed a
resolution deprecating any extension
of the Per^{pet} Settlement, may be pleased
to hear this!
There remains, lastly, the probability

Don't let the Govt be carried into appeal, if
you can. Don't let the Govt think it can be upset.

There was a contested succession
in the case of the Bungalow pollium
in Thulloor in 1866, when the Govt.

G.O. - 1st May 1866
 No 1022.
 "in the exercise of its prerogative"
 selected the son of the eldest
 wife - eldest by priority

23. Nuptials - passing over his
elderborn half brother - and
other recent cases no doubt could

[Faint handwritten notes]

I timely affirm the
 view taken by Mr. Carmichael
 in the review of the recent
 decision. But to this is
 to go to the White for the for
 I appeal to the S. C. Court
 depend I think mainly
 on the considerations
 urged by the D. C. as reasons
 why Gov. should take

in the defence of the appeal
viz: that if the power of the
Legislature is a Luculent
of which is made the
necessary to be said
a bit full and to be said
for questioning the petition
from at least the same
the institution present
in the same.

The first law in fact is that
the right in the majority of
cases - and in the very
state of Pennsylvania
the law is only held
in a way that it is
decided to have it
be issued.

1. For the decision
 of the 1st. (2^d) dependent
 the 3rd. nominee of the
 position in V. for. placed
 him, unless in opposition
 but to check he able to
 establish his illegitimacy.
 V. if established V. is
 being he unwarmed. have
 equally affected the right
 decision of for. as to
 the succession.

The wisdom of the late
Soligen has elected to
try this question at last.
I cannot shut

think it advisable that
 the Govt. should carry the case
 before the Army Council
 if the H.C. decision be
 against it - a great amount
 of litigation might be prevented
 and preserve the position
 if Govt. in regard to the
 pecuniary in sol. cases for
 S. Lumsden was not yet
 been issued. With this
 around. At present the
 Govt. has decided that the
 acceptance of a command
 shall be a condition of
 his future nomination.
 But if the H.C. decision
 stands this resolution
 must be rescinded. It
 cannot burden an individual
 right in the conditions.
 If the H.C. decision be
 upheld the Govt. will be in
 a worse position than
 they now are, while they
 will have some authority
 for time on S. Lumsden with
 intention that may be
 used against previous
 decisions. - says a friend
 for the Govt. - V.D.
 7.8.76

Memorandum
 H.C. decision
 no longer
 In view of the fact
 for O.D. 100

could carry the question
 to the Army Council in
 the interests of the
 numerous persons placed
 in position of states under
 the prerogative of Govt
 for the purpose of establishing
 their title. The interests
 of Govt in the question is
 now almost nothing

N
 P
 A.A.
 To be it. see my
 note. L.O.S.

324
 1876
 from the Govt. Secy
 of S. Lumsden 1876
 The H.C. has decided
 in opposition to the previous
 decision of the Lord Alder
 on the subject (and the
 statements of fact
 accepted in the preamble
 of the 1875 Act of 1875
 that the decision of the
 majority of another
 court is a matter
 of authority & of the
 law. Every dependant
 on the side of the ruling
 power. and that the
 non-existence of a
 decision is a defect in
 the conclusive proof
 of a claim. It is
 to be the claim
 for S. Lumsden
 The result

in 2 months the letter of
at 2 hours in the
sudden for the
drives this succession
immediately from the
order of the sitting
the succession in the
individual cases and
I afford an opening
for litigation in every
case in 2. the question
of the original of the
be raised & the time
regards the present
former process so
long as the statute of
limitation does not
bar action.

3. The Gov. can by the
executive grant of pardons
in many cases of crimes
distinguish all vice
done.

338
in future succession &
three 2 hours - and then
expressed their readiness
to continue & carry out
the same measure
in every case. So that
their interest in the
question at issue is
now almost nothing.
But in justice & their
conscience - and I have
seen if possible from
heavy expense &
protracted litigation -
the Gov. deem it right
that they should not
withdraw & establish
maintain this power
to make the nomination
from 2. The Gov. is
immediately divided
and draw therefore
that the necessary
steps may be taken
for carrying the

12-696 of

Enacted in appeal to the
King Council in the month of

the month of
the month of
the month of
the month of

the month of
the month of

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