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*Proceedings of the Madras Government, Revenue Department,
6th March 1871.*

No. 83. Read the following Proceedings of the Board of Revenue, dated 28th February 1871, No. 88:—

Read again Board's Proceedings, 6th June 1868, No. 4,226.

„ „ 10th July „ „ 5,099.

„ Government Order, 30th „ „ 2,054, R.D.

Read also the following letter from the Acting Collector of South Canara, to the Acting Secretary to the Board of Revenue, dated Mangalore, 15th February 1871, No. 226.

In continuation of my letter of the 18th ultimo, No. 93, I have the honour to forward a copy of the decree and judgment in Original Suit No. 104 of 1866 on the file of the Principal Sadr Amin's Court.

2. The chief issue was whether plaintiff's tenure of the kumeri jungles was that of a proprietor, or whether he was merely a tenant, the permission to cut kumeri being resumable at will.

3. The Board will perceive that the Principal Sadr Amin's decision, holding plaintiff to be a proprietor, is apparently based on three grounds—

1st.—That as the country, where the kumeris are situated, was formerly a portion of the old Nair kingdom, the waste lands are, as is now the case in Malabar, private property.

2nd.—That the Government have never expressly restricted the cultivation of kumeri to a smaller area than the proprietors have, prior to Mr. Fraser's order, been in the habit of annually clearing.

3rd.—That the entry of kumeri shist in a chitta of a warg confers a right to cultivate kumeri in the same manner that an entry of Dhanamadi (rice land) or Bagayot (garden) shist confers the right to cultivate those crops. Were it otherwise kumeri shist would not have been included in the land chitta, but would have been transferred to extra revenue.

4. As regards the right of the Revenue authorities to forbid any other cultivation than pepper or cardamoms on the lands on which that description of shist was charged the Principal Sadr Amin has ruled that the cultivation cannot be restricted to a particular crop, but that the entry of this shist in the chittas gives the holder a proprietary right in the soil.

5. The effect of this decision, as the Board are doubtless aware, will be felt not only in the five maganis of the Kasargod Taluq, south of the Chendrageri river, but throughout the district; for it has been judicially decided that kumeri shist in a chitta gives a proprietary right in the soil. I shall advert to this subject hereafter, but I mention it now to show the Board the importance of the case. I shall now proceed to offer a few remarks on the grounds of the decision, and on the question of appeal.

6. With reference to the analogy between the lands in dispute and the Ponum lands of Malabar, I beg to refer the Board to paragraph 7 of the decision, in which the Principal Sadr Amin states that as the kumeri lands in Malabar are private property, it is *only fair to treat* the kumeris in the five southern maganis of Kasargod equally as private property, and a particular right conceded in one portion of the Nair kingdom *cannot, in justice, be denied* in the other portion.

The opinion of the Principal Sadr Amin may not be clearly expressed by the wording of that paragraph of his decision. If it is, it appears to me that he should have based his decision on facts, not on the question of abstract justice. The only facts alluded to in his decision, as showing the proprietary right of the plaintiff in the kumeris, are the two decisions under which the plaintiff obtained the lands from third parties, but Government were not parties to those suits, and cannot, therefore, be bound by the decisions. It is doubtless the fact that at the time the decisions were passed, the right of the transferer to convey, and of the plaintiff to acquire, the specified kumeris was not considered open to doubt. The right has, however, been called in question in the present suit, but has not been decided.

7. I believe that in Malabar Ponum cultivation was formerly untaxed. If it was free, while the old kumeris of this district were taxed, there must be some difference between the tenures in the two districts. I may, however, be wrong on this point, as I cannot lay my hand on the paper from which I obtained the information, but the Board are doubtless in possession of information on the subject.

8. It is admitted that, with the exception of escheats, all waste lands in Malabar are private property. How far the right existing in that district is inherent in the Mulgars in Canara, I am not in a position to state. But few estates in Canara have Sanads or Mulpattahs, and the question must, therefore, in a great measure, turn on the opinions of the first Collectors of the district as to the rights they found existing on our acquisition of the country. The old records of this district containing these opinions have long since been destroyed. The originals of many may, however, still exist in the Board's office, and if the correctness of the Principal Sadr Amin's decision is to be called in question it is from their office that the proofs must be obtained.

9. The earliest letter on the subject which I have seen is one from Sir T. Munro, dated 31st May 1800, in the 3rd paragraph of which he states: "Previous to the conquest of Canara by Hyder all lands were private property, * * *." The use of the word "lands" instead of land would seem to imply that a certain specified area of land was included in a warg, and that all these lands (i.e., blocks of land) were private property. Later on in the same letter, however, appear the following remarks with which I doubt not the Board are well acquainted, and which do not appear to agree with the interpretation I put on his previous remarks:—

"Paragraph 27. The only land in Canara that can in any way come under the description of Sirkar land is unclaimed waste, to a great deal of which it is very likely claimants would appear were it once brought into cultivation. There are also some cultivated lands particularly in the northern district which may be reckoned public. These are lands which were originally unproductive, and which, from the death or absence of their owners, would have been allowed to run to waste had they not laid contiguous to more productive lands, whose owners, it was supposed, were able, and were, therefore, compelled to cultivate them; but, exclusive of this land cultivated by compulsion, and unclaimed waste, all other land is private property."

The word "unclaimed" was attempted to be explained by Mr. Blane as a clerical error for "unreclaimed" waste. I must confess, however, that Mr. Blane's explanation is open to doubt; for the word "reclaimed" could hardly be a clerical error, considering it occurs twice, and the word "claimant" once in the same paragraph.

10. It would, however, be presumptuous in me to offer an opinion on the general question of the proprietary right in the waste lands in the southern part of this district, as the matter has received the careful consideration of the Board and Government; but I may state that since Mr. Blane's time (1848) until now the claims of the Mulgars to any other than the cultivated or assessed lands have been disallowed.

11. The Principal Sadr Amin has taken the broad ground that all the waste lands in that portion of the Kasargod Taluq are private property, and has not confined himself to basing his decision on the third of the grounds above mentioned, so that the payment of assessment (kumeri shist) has only a secondary bearing on the present case. An appeal, if one is to be preferred, will have to be made on the larger question of proprietary right by immemorial custom.

12. I pass over the finding of the Principal Sadr Amin, that Government have never authorized the restriction of kumeri cultivation, for even if correct it has nothing to do with the question at issue as soon as it is brought into a Civil Court. The list of the defendants

Letter from Collector to Board, 13th July 1860, No. 109.
Board's Proceedings, 4th Aug. 1860, No. 3,595.
Proceedings of Madras Government, 24th Aug. 1860, No. 1,431.
Do. 24th October 1861, No. 2,032.
Board's endorsement on do., 28th October 1861, No. 5,907.

in the suit should, however, have shown the Principal Sadr Amin that the suit was being defended on behalf of Government. I beg to refer the Board to the correspondence noted in the margin, from which they will see that

the restrictions as to the area to be annually cleared was sanctioned by Government.

13. With reference to the Principal Sadr Amin's deductions regarding the entries in the chitta, I beg to state that the matter is one on which considerable difference of opinion may exist. In support of the view taken by the Principal Sadr Amin it may be urged that there is nothing specially distinguishing the temporary nature of the kumeri tax from the other shists which are acknowledged to be permanent. No boundaries, nor names of localities, are given for lands on which cultivation may be carried on. The area of the rice land is given approximately in moodahs, that of the kumeri (in the Kasargod Taluq only) in podipads. If, therefore, the entry of Dhanamadi or Bagayet shist confers a proprietary right the entry of kumeri shist must give equal rights for that kind of cultivation.

14. On the other side it can be argued that the chitta of a warg contained a statement of all the sums due by the owner of the warg on account of land assessment proper, as well as certain miscellaneous items, and that, although it is true that there is nothing specially to distinguish the character of one tax from another, some of the taxes may well have been of a permanent, while others were of a temporary nature, and that as the chittas contained no boundaries or names of any of the lands on which cultivation was carried on, they could not by

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themselves confer any proprietary right. In support of the above argument the following authorities might be cited:—

(1). In paragraph 6 of the Government Order of 23rd May 1860 reference is made to the 13th and 14th paragraphs of the Board's Proceedings of 16th April 1859, No. 1,350, in which it is stated, on the authority of Mr. Blane, that the entry of kumeri shist in a Wargdar's puttah conferred no proprietary right in the soil, but that it was, with many other miscellaneous items, entered in the land puttah (chitta) for convenience' sake only.

(2). In paragraph 7 of the Government Order above alluded to reference is made to a report of Mr. Fisher, to the effect that, up to Fasli 1231, the kumeri collections were entered in the moturpha accounts, thereby showing that the item was not of a permanent nature.

(3). Some of the Sarasari chittas contained entries of taxes* which may be said to be connected with the land, and which have since been discontinued.

* Tambaku, Karaka, Billawar, Kokke.
Translation of some of these chittas are enclosed for the Board's information. They will perceive that this tax was under the Coorg Government included in the land chitta, but was struck off when the Sarasari chittas were prepared. In the case of the Adur warg (Enclosure No. 4) the tax was levied up to Fasli 1270, when the whole of the assessment on the warg was remitted under the Government Order, dated 23rd May 1860, No. 830.

15. I must, however, inform the Board, with reference to the second authority cited, that I think the Board and Government have slightly misunderstood Mr. Fisher's statements regarding the inclusion of kumeri taxes in the moturpha accounts. Mr. Fisher, in the 45th paragraph of his letter, is, I think, alluding to Sirkar kumeri, with reference to which a direct and individual settlement was made with the kumeri cutters. The receipts from this source could have been credited to moturpha, not so the amount of kumeri shist which formed an item of the Taran beriz, and which could not have been detached from it without causing confusion in the accounts.

16. I am not, however, sanguine of being able to show that the Principal Sadr Amin's reasoning, with reference to the entries in the chittas, is incorrect, and should be loath to put forward a plea (which, based on the fact of there being no names or boundaries of the localities in the documents, might be accepted) that the chittas confer no proprietary right whatever in land of any description. The Durmuti and Sarasari chittas are the only old records of wargs we have, and if these are declared worthless doubt will be thrown on the validity of tenures of which these accounts have hitherto been considered evidence. I am aware that these accounts are not necessary to the establishment of a Wargdar's rights to his estate, but it would be very unadvisable to cast discredit on them now.

17. With reference to the pepper and cardamom jungles included in Warg No. 1 of Pannatadi village the decision of the Principal Sadr Amin, awarding to the plaintiff the right of raising optional produce thereon, is open to question, as the nature of the cultivation required, especially as regards pepper, is well known not to involve the destruction of valuable trees. The vines are planted at the foot of the trees and the produce gathered without the jungles being damaged.

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Cardamom cultivation certainly involves felling a few trees, but not many, and the cultivation is of a more permanent description than that of kumeri. The fact that plaintiff had grown kumeri in these jungles is no proof of his right to do so, as the act was unauthorized, and probably escaped notice through the carelessness of the village officials.

18. I have alluded, in paragraph 5 of this letter, to the effect this decision will have in other parts of the district. The Board are aware that there were many estates in the other taluqs of the district of Canara (North and South Canara) in the chittas of which kumeri shist was entered. Mr. Fisher, in paragraph 41 of his letter above alluded to, gives a statement of their number and of the kumeri beriz paid. I subjoin an extract, referring to the estates in the present South Canara District:—

Taluqs.	Estates.	Kumeri Beriz.		
		RS.	A.	P.
Kundapur	7	316	2	5
Barkur (Udipi Taluq)	1	12	0	0
Bantwal (Mangalore Taluq)	35	717	10	5
Puttur (Uppinangadi Taluq)	1	61	3	7
Bekal (Kasargod Taluq)	147	527	1	7
Total ...	191	1,634	2	0

19. In addition to these estates there are others, notably the Neriya cardamom estate, which have entries of cardamom and pepper shist. I shall not have time now to prepare a list of these estates, but I am able to inform the Board that, under the cardamom shist alone in the Neriya warg, the then proprietor claimed in 1865 about 50 square-miles of jungle. Most of the wargs in the old Puttur Taluq, especially in the Amara Sulliya Magani, have pepper shist in their chittas. If the Principal Sadr Amin's decision is upheld, the proprietors will not be backward in asserting their claims to cultivate these jungles with optional produce. It is true that the entries of these shists in the chittas of wargs in the other part of the district are not so full as those in the five Maganis of the Kasargod Taluq,

* See paragraph 50 of Mr. Fisher's letter. in which the extent* of the kumeris are given in podipads, but the very omission to give the extent in the other part of the district will render it more difficult to define the area of jungle to which claims will be set up.

20. It appears from the Principal Sadr Amin's decision (paragraph 16) that he has not laid much stress on the entries in the chittas of the amount of shist payable by the plaintiff. The plaintiff claimed to pay Rs. 37-12-0 under the Durmuti chitta; Mr. Morris ruled that the Durmuti chitta had been revised by the Sarasari chitta, and that plaintiff could only claim kumeri to the extent allowed by the latter chitta. I subjoin an extract from Mr. Morris's order† relating to the point—

† Dated 4th August 1864.

"Paragraph 4." In the Sarasari chitta of the Pannatadi warg from which the Taran was fixed, there are several items that were not included in the Durmuti chitta, and also there is a great difference in the two chittas regarding the amount of beriz, paid under different heads. The Taran beriz, however, was fixed as the demand on the estate, and the items specified in the Sarasari chitta must, therefore, be considered as making up the Taran assessment. In the Callar warg the items of the Durmuti and Sarasari chittas are the same, and no remarks are consequently necessary.

"Paragraph 5. It does not appear from the petition what reason there was for petitioner mentioning anything about the Durmuti chitta, unless it was because he considers that he has a right to cut kumeri under that, and not under the Sarasari chitta. The Durmuti chitta was cancelled by the Sarasari chitta and the Taran, and petitioner has since then (Fasli 1229) paid yearly Rs. 20-6-0 kumeri shist in the Pannatadi warg, whereas had the Durmuti chitta and assessment not been cancelled, he would have paid Rs. 37-12-0 per annum for kumeri."

The Principal Sadr Amin has apparently refused to go into this question, as, after it has once been decided that kumeri should not be restricted to an arbitrary extent with reference to the amount of shist paid, it became unnecessary to enter on the subject of the amount of shist in the chitta. No extent of kumeri being entered in the Sarasari chitta the Durmuti chitta will have to be taken as evidence as to the extent which plaintiff can clear. The Board will perceive, on referring to the translations of the Durmuti chittas of these wargs (forwarded with Mr. Thomas's letter of 30th April 1868, No. 432,) that plaintiff in his plaint claims the extent of kumeri there entered, and that he claims the pepper and cardamon jungles by name, and as the extent of these jungles was not given in the chitta estimates them at 3,228 acres. Plaintiff has also given in the plaint certain boundaries as being the limits of his claim. The jungles never having been surveyed, or in any way defined, the correctness of these boundaries was not called in question.

21. As regards the pepper kans (jungles) of the Puttur Taluq, I do not anticipate that Government interests will ever be seriously affected for the extent of the present khans is tolerably well known, and the Forest Department do not (or at least did not when I was in the district formerly) fell trees in those jungles, so that if the Wargdars cultivate the lands with other crops than pepper the Government can revise the assessment as may in each case appear expedient, and can either charge kumeri assessment if the lands are cleared for that cultivation, or should they be cultivated with rice and garden crops can charge the appropriate assessment. The proprietors, however, of other estates, who, by virtue of the entries of these miscellaneous shists in their chittas, have formerly claimed the proprietary right in large tracts of jungle will now re-assert their claims.

22. As regards the question of appeal, although I am not sanguine of ultimate success, I think the judgment should not be accepted as it stands, but an appeal should be made in order that the case should be remanded for further inquiry on the proprietary right of the persons from whom plaintiff obtained the lands. It would be as well also if the correctness of the decision of the Principal Sadr Amin on the other points were brought before the Appellate Court. If,

therefore, the Board consider that an appeal should be preferred, I beg to suggest that it should be on the following grounds:—

1st.—That the Lower Court has accepted, as proof of plaintiff's proprietary right in the lands sued for, decisions of Civil Courts to which Government were not a party.

2nd.—That no evidence has been taken to prove the proprietary right of the parties from whom the plaintiff acquired the lands.

3rd.—That Government have sanctioned the restrictions of plaintiff's kumeri cultivation.

4th.—The entry of kumeri shist in a chitta confers no proprietary right in the soil.

5th.—That the Lower Court is wrong in finding that the waste lands in the five southern Maganis of the Kasargod Taluq, are, as is the case in Malabar, private property.

6th.—That the entry of pepper and cardamom shist in a chitta confers no proprietary right in land, neither does it confer a right to cultivate other produce than pepper or cardamoms.

23. Considering the importance of the case it will be better, I venture to think, if the appeal is drawn up by the Government Solicitor.

24. The period for appeal will expire on the 10th March 1871.

25. I beg to enclose a list of the correspondence relating to kumeri, to enable the Board to refer speedily to the papers on the subject.

ENCLOSURE No. 1.

Decree of the Court of the Principal Sadr Amin of Mangalore.
Dated 16th January 1871.

Present: A. ANNUSAMI MOODELLIAR.
Original Suit No. 104 of 1866.

Nileshwar Taliyankula Krishna Varma Muta Arasu, younger brother of Rama Varma Arasu,
Nileshwar Kasba Village, Nileshwar Magani, Kasargod Taluq... .. Plaintiff.

By Vakils Shiva Row, Ramappaya, and K. Manjunathaya.
versus

1. G. Lee-Morris, Esq., Collector of South Canara, } Defendants.
2. W. M. Cadell, Esq., do.,
3. H. S. Thomas, Esq., do. Supplemental Defendant.

The plaintiff has brought this suit against the defendants to remove the prohibition placed by the defendants' order against cultivating annually the kumeri land, measuring acres 116 and producing Rs. 185-8-10, and forming part of the land I. of Pannatadi village, Nileshwar Magani, registered in the name of Rama, and assessed at Rs. 133-0-5; and also that measuring acres 36½, and producing Rs. 58, forming part of the land II. of Kallioor village, registered in the name of the said Rama, and assessed at Rs. 43-13-3, which were purchased by his elder brother Rama Varma Munankula Arasu from Tancheri Kanna and three others, on the 29th of the month Mesha of Kolla 1013 (10th May 1838), and made over to him in 1843, in execution of the Decrees in Original Suit Nos. 320 of 1839 and 503 of 1840 on the file of the Court of the Assistant Zillah Judge, confirmed by the Provincial Court in Appeals Nos. 35 and 36 of 1842; and against raising other grains as usual in the three jungles, Kadumale, Kurgimale, and Mandimale, producing Rs. 496 and attached to the said land I., as they do not produce pepper and cardamom; as well as to recover Rs. 450-8-5 collected from him in excess of the assessment, with interest thereon, amounting to Rs. 55-11-2, and further interest.

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The Principal Sadr Amin having this day taken up this case, for hearing, having perused the record, and heard the arguments of the Vakils for plaintiff, and the supplemental third defendant, decrees that the plaintiff is entitled to cultivate kumeri and raise optional produce on the disputed lands and that in consequence of the peculiar nature of this suit, each party bear his own costs.

(Signed) A. ANNUSAMI,
Principal Sadr Amin.

ENCLOSURE No. 2.

In the Court of the Principal Sadr Amin of Mangalore.

Present: A. ANNUSAMI MOODELLIAR.

Original Suit No. 104 of 1866.

Plaintiff. *versus* Defendants.

Krishna Varma Muta Arasu.

G. Lee-Morris, Esq.
W. M. Cadell, Esq.
H. S. Thomas, Esq.

JUDGMENT.

PLAINTIFF sues to obtain a decree declaring his right to grow kumeri upon 152½ acres of land, and raise optional produce upon 269 acres of pepper and cardamom jungles. He further sues to recover Rs. 506-3-7, additional tax collected for Faslies 1274 and 1275. The lands in dispute are situated at Pannatadi and Kallioor in the taluq of Bekal.

2. Plaintiff affirms that the lands are his private property, and complains that 1st defendant, as Collector of the district, has, in 1864, issued an injunction against his cultivated kumeri upon the extent of land above noticed, and raising such crops as he might choose upon the said jungles. He declares the injunction to be an unjustifiable act of the Collector.

3. Third defendant, the present Collector, puts in the following statement:—

I.—Neither the plaintiff nor his predecessors ever had any proprietary right to the kumeri lands claimed in the plaint as forming part of his proprietary estates, No. 1 of Pannatadi village, and No. 1 of Kallioor village.

II.—The proprietors of these wargs were like several others allowed formerly to cultivate annually certain tracts of forest land on payment of a certain amount irrespective of the assessment on their proprietary lands; but this privilege was simply of the nature of a rent or farm resumable at will by Government.

III.—The Court decrees, relied upon by the plaintiff, did not determine the question of his proprietary right to such tracts of forest land, and even if they had, they could not affect the rights of Government who were no parties to those suits.

IV.—The Government having latterly found it expedient to prevent the reckless destruction of their forests, directed the entire resumption of kumeri farms in some places, and allowed its continuance temporarily in others as an act of grace, as in the case of the plaintiff, to the extent of four acres for every Rupee of tax entered in a chitta, and subject to the payment of 1 Rupee for each acre of kumeri so cultivated.

V.—The Collector accordingly required the plaintiff as well as other kumeri cultivators in Kasargod Taluq, by a public notification issued in December 1862, to conform to these restrictions and revised terms, if they desired to continue to hold their farms.

VI.—Plaintiff's tenure of the pepper and cardamom jungles claimed in the plaint is of the same nature with that of the kumeri lands. Moreover, they having been farmed out, according to his own admission, expressly for growing pepper and cardamom at the low rent of Rs. 33-8-5, he has no right to make a different description of cultivation such as kumeri.

VII.—The chittas produced by plaintiff in support of his claim are simply accounts of the various taxes due from their holders to Government; and though, for convenience sake, kumeri and other rents are found entered in one and the same total account of all the different descriptions of dues payable by the holder to Government, the fact of the total demand being as usual in

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such accounts (that is, wargs) thrown together, does not make them all of one nature, so that entries of rents resumable at pleasure can be argued to be entries of proprietary rights.

VIII.—Under Section 58 of Act II. of 1864, no Court of Civil Judicature has authority to take into consideration or decide any question relating to the rate of land-revenue payable to Government, much less of a rent resumable at pleasure.

4. The following are the issues joined on the 22nd July 1869:—

I.—What is the nature of plaintiff's tenure: whether the whole of the plaint lands are subject to his proprietary right, or whether any portion of the lands is held by plaintiff merely on rent or farm, the portion being resumable at will by Government.

II.—Whether plaintiff is competent to raise on these lands any produce which he likes without restrictions as to kind or nature of the same.

III.—Whether plaintiff is liable to any extra amount as tax upon these lands.

IV.—Whether plaintiff is entitled to claim back the money collected as extra assessment.

V.—Whether plaintiff as the proprietor can cut the forests on the plaint lands.

VI.—Whether this Court has jurisdiction to entertain and decide questions relating to land-revenue payable to Government.

5. First and fifth issues. In respect of the kumeri lands in dispute, plaintiff pleads a proprietary right, and points to decisions C. and D., as also to entries in A., B., H., and I., as supporting his title. But the 3rd defendant's contention is, that these lands are Government property, plaintiff possessing no more right to them than that of a lessee or tenant at will.

6. The evidence on record leads me to confirm the plaintiff's alleged title. The decisions C. and D., for instance, show that the plaintiff's ancestors sued for the recovery of these lands at the hands of certain third parties by virtue of certain bills of sale obtained about the year 1837 or 1838, and that these were then treated as private property between the contracting parties. They further show that the Court which disposed of the matter never questioned the validity of the conveyance, but simply granted the relief sought for by the then plaintiff. G. evidences the execution of those decisions by the late Assistant Judge of this zillah. As to A., B., H., and I., (Revenue Chittas), they contain amongst other taxes an allusion to that leviable on plaintiff's kumeri lands. If the plaintiff's tenure was simply in the nature of a rent resumable at will, the tax relating thereto should have been transferred to extra revenue and not found an entry in these chittas.

7. The kumeri lands or forests in Malabar are, as it is on all sides acknowledged, treated as private property. The southern part of Bekal, where the plaint lands are situated, it is clear adjoins the district of Malabar, and forms a part of the Nair kingdom, and has still its Nair population and customs. It is then fair to treat the kumeri in this taluq equally as private property, and a particular right conceded in one portion of the Nair kingdom cannot, in justice, be denied the other portion. The Government Order I., paragraph 17, indeed allows the kumeri cultivation in this taluq, in express terms, to remain undisturbed.

8. These lands are designated as Warg kumeri by defendant, although called Muli kumeri by plaintiff. Assuming the description given them by defendant to be correct, does it follow that more than a mere farm is the plaintiff's right to these lands? Surely not in my humble opinion. In the common or ordinary acceptance of the word "warg" it necessarily means a landed estate, and when kumeri is entered in the warg of a particular person, it follows that it is his property or estate.

9. In the warg of plaintiff, as it is clear from Exhibit III., there are several descriptions of lands included; and, if his tenure of kumeri (one of the items so included) is nevertheless to be treated in the light of a mere farm, what better guarantee can there be in respect of Dhanamadi and Bagayet items in respect of which nobody now questions his proprietary right.

10. Paragraph 4 of the said Government Order testifies to claims on the part of Wargdars to kumeri having been acquiesced for many and many years by the Revenue authorities of this district.

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11. Paragraph 17 of this Order, which, as already remarked, contains important concessions in favour of Bekal, runs as follows:—

"In the Bekal Taluq alone Wargdar kumeri has not been abolished, and the continuance of the existing system is recommended both by the Collector and by the Board. The practice stands on no better ground of right than in North Canara; but the reasons given for permitting its continuance are, first, that this taluq adjoins Malabar, where there is no check on kumeri; and, second, that it is so general in the taluq. The south part of Bekal not only adjoins Malabar, where, as already said, kumeri is unrestricted, but also forms part of the old Nair kingdom, and has still its Nair population and customs. The idea of an inherent right to the waste does not appear to be extinct, and the kumeri cultivation is there carried on as a regular part of their farming by the resident landholders, and not by wandering tribes unconnected with the soil as in North Canara. At once to stop the kumeri which is there cultivated would be harsh. The Government, therefore, assent to the Board's recommendation that kumeri in the Bekal Taluq should be allowed to continue for the present; but they wish the Board to consider and report whether there is any reason why the tax payable should not be raised to one Rupee, the rate levied in North Canara. Even that rate is very light compared with the profit derived as noticed above in paragraph 15."

12. Third defendant relies upon the Proceedings of the Board of Revenue of a subsequent date, namely, of the 4th August 1860 (Exhibit II.), as justifying the restriction. But these Proceedings only explain the Government Order above noticed, and chiefly recommend a check of abuses and unauthorized cultivation.

13. Third defendant's Vakil refers to paragraphs 4, 5, and 6 of the said Proceedings as treating of the particular question in issue.

14. These paragraphs run thus:—

"4. Circumstances having in Bekal given to this mode of cultivation a more permanent character than elsewhere, while its frequent repetition on the same spot is precluded by its nature, it has been tacitly allowed there that a wargdar whose 'warg' includes the item of kumeri shist has, so far as other individuals are concerned, the exclusive right to carry on this cultivation within a defined area, twelve times as large as that which the amount of assessment represents at 4 Annas per acre, it being assumed that the same spot cannot be cultivated in this manner more frequently than once in twelve years, and that thus no more than one-twelfth of the whole can be cultivated in any one year, although it is believed that the period of rest allowed to each plot is now not more than eight years on an average instead of twelve years, and that thus one-eighth of the whole area is probably cultivated annually. The limits of the whole area, however, are understood to be well known and permanently maintained, and it was on the belief that such is really the case that the Board's recommendation in the matter proceeded."

"5. As they understand the matter, 10 Rs. of kumeri shist in a Bekal royt's warg would represent an annual extent of Kumeri cultivation of 40 acres, and the exclusive right to carry on that mode of cultivation within a permanently defined area of 40 acres, the fact that, owing to shorter terms of rest to the land, the annual cultivation was probably 60 acres instead of 40 acres being intentionally overlooked."

"6. Anything more than the above privileges in connection with Warg kumeri must be considered as altogether unauthorized encroachments, and be treated by the Collector as Sirkar kumeri to be assessed to its full extent at one Rupee per acre, or to be disallowed altogether in future, accordingly as the Collector may consider the particular cultivation in question permissible, or otherwise, from its locality."

15. From the language of the Members of the Revenue Board as used in the last paragraph, I still fail to see that a total prohibition of kumeri upon lands, circumstanced or situated as the plaintiff lands are, was at any rate positively meant. No objection attaches, as all admit to kumeri being grown upon this tract from its particular locality. Even assuming that such prohibition was really conveyed by the paragraph in question, it does not, in my mind, hold good in the face

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of Exhibit I. which allows the present system to be carried on, and, in fact, says that it should remain unchanged.

16. There is a conflict between both parties as to the exact amount of kumeri shist included in plaintiff's warg. While, for instance, plaintiff claims so many as Rs. 52-8-0, and this according to Durmuti Chitta, defendant concedes but Rs. 35-2-0 on account of this item, and this according to Sarasari Chitta. But I do not enter upon the subject of this conflict, and feel I have not the right to do so. The question is one which relates to public revenue with which I cannot properly interfere. Should the shists actually levied fall short of the actual cultivation carried on by plaintiff, it has, in my opinion, simply to be revised on a level with that cultivation.

17. No question is raised against the plaintiff lands being old standing kumeri, and plaintiff has admittedly not exceeded the limits of the once-defined area.

18. My finding, under all these circumstances, is that plaintiff must be considered proprietor of the lands, and that at any rate no restriction on the part of defendant as to the growth of kumeri thereupon is valid.

19. Second Issue.—As to the growth of optional produce upon the waste called cardamom and pepper jungles, defendant has, in my mind, no right to check it or to define the kind of produce to be raised. No such particular right he has, I see, made out. None of the exhibits filed treat of the subject. The only argument brought forward by defendant's Vakil at the hearing in favour of his position is that the shist imposed upon these jungles is too low compared to the value of the crops which plaintiff seeks to grow. But this affords, in my mind, no sufficient reason for defendant's interference in the way complained of by plaintiff.

20. Third, Fourth, and Sixth Issues.—Plaintiff's Vakil at the hearing gives up the contentions involved in these issues.

21. I direct that plaintiff be allowed to grow kumeri and raise optional produce upon the lands in dispute. Each party, with reference to the peculiar nature of this suit, to bear costs respectively.

Judgment given on the 16th January 1871.

(Signed) A. ANNUSAMI,
Principal Sadr Amin.

The following exhibits stand filed for plaintiff:—

- A.—Durmuti Chitta of Tulcheri Rama's Warg No. 1.
- B.—do. do. No. 2.
- 27th June 1842.—C.—Decision in No. 339 on the file of Canara Zillah Court in respect of the 1st Warg.
- 27th June 1842.—D.—Decision in No. 339 in respect of the 2nd Warg.
- E.—Beriz puttah for 2nd Warg for 1265 Fasli.
- F.—do. do. 1266 do.
- 11th April 1843.—G.—Order by the Assistant Zillah Judge to the Bekal Munsif.
- H.—Sarasari Chitta of the Warg No. 1 of Pannatadi village.
- I.—do. of the Warg No. 1 of Kallioor village.
- 5th Sept. 1270.—J.—Order to the Bekal Tahsildar by the Collector, Mr. Fisher.
- 16th Jan. 1865.—K.—Order on the plaintiff's petition by the Collector.
- For 3rd Defendant.
- 23rd May 1866.—L.—Copy of the Madras Government Proceedings, No. 830.
- 4th Aug. 1860.—M.—do. Revenue Board's Proceedings, No. 3,595.
- " 1864.—N.—Copy of the order of the Collector.

The following witnesses stand examined for plaintiff:—

- 1. Toma.
- 2. Raghwa Barya.
- 3. Shankraya Ambrandri.
- 4. Kalu.
- 5. Chandu.

(Signed) A. ANNUSAMI,
Principal Sadr Amin.

*Proceedings of the Madras Government, Revenue Department,
6th March 1871.*

ENCLOSURE No. 4.

KUMERI No. 1.

KUMERI No. 1.
Jamabandi Kulwar, Sarasari Chitta of Kusba Adur Village, Adur Magani, in Dekal
Talug, Fasli 1244.

		Taluk, Fasli 1244.		HS. P. A.	
Beriz on sundry items fixed during the Government of the Coorg Rajahs...	...	...	...	31	4 6
Beriz on Kumeri or Billhook...	...	...	...	18	1 4

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As entered in the accounts of the Company's

Government as per former accounts...	9	7	7
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Payable to the Adur Devastan...	...	...	8	3	13
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Hathatte or beriz on kumeri land cultivated					
under orders of the Coorg Rajahs...	...	5	5	10	5 5 10

N. B.—The said beriz is paid in full by the

Devastan to the Sirkar, but the produce (of

the kumeri) on which it is paid goes to the

Devastan under orders of the Coorg Rajahs.

Krayavasi (difference in commutation rate)
stated by the Shanbog as being entered in

the accounts of Puttur	...	...	...	...	...	0	7	8	0	7	8
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Tobacco Duties or tax...	...	...	...	...	6	7	8	6	7	8
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Billawar Kokke or knife	...	...	...	...	...	0	2	8	0	2	8
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Jamabandi of Fasli 1243.

Total II utta- walli or Jama- bandi.	Deduct paid to Sirkar.	Balance paid to Devastan.	
HS. F. A.	HS. F. A.	HS. F. A.	
19 1 14	9 7 7	9 4 7	Kumeri.
7 9 6	5 5 10	2 3 12	Hathatte.
4 8 2		4 8 2	Tobacco tax.
3 5 0		3 5 0	Billawar Kokke.
35 4 6	15 3 1	20 1 5	

H9. F. A.

Paid to the Devastan as per above particulars, as is done annually, under orders of the Coorg Rajah, dated 7th Vyshak Bholl of the year

orders of the Coorg Rajah, dated 7th Vyshak Bholl of the year 20 1 5
Chitrabhanu... .. 20 1 5

	15	3	1
Balance credited to Government	...	...	...

In the Takeed, dated 12th Vyshak Bholl of the year Chitrabhanu, produced by the Devastan Shanabhog, as having been given by Manaya, the Subadar of Amar and Sulya and Appanappa, Parpatigar of Adur, as per Sanad issued by the Coorg Rajah, it is stated that Rs. 15-3-1 should be collected, and the remaining produce left for the Devastan, and that this should be done annually. " The Takeed was seen and returned to the Shanabhog.

The Shanabhog said that the amount of the Koralaya of the said warg was Rs. 22-3-12; that of Billawar Kokke, Rs. 6-4-6; the number of mura of paddy collected on account of Hathatte, at the rate of one mura of paddy for every mura of seed sown in the kumeri was 81½, which, at the rate of F. 1 per mura, amounts to Rs. 8-1-12; the amount of Chillarekarka (sundry taxes) Rs. 11-0-10; making in all Rs. 48-0-8, which was collected on account of the Devastan, and that out of this, Rs. 15-3-1 went to the Sirkar, and the balance to the Devastan. As it did not

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6th March 1871.

Board's Proceedings	...	...	...	...	...	1st Nov. 1861, ..	6,007.
Do.	...	...	...	...	...	14th ,, ,, ,,	6,266.
Do.	...	...	...	...	...	21st July 1863, ,,	4,495.
Proceedings of Government	...	...	...	...	...	12th ,, 1864, ,,	1,219.
Proceedings of the Board of Revenue	...	...	...	...	...	28th ,, ,, ,,	4,781.
Do.	...	...	...	...	...	4th Jan. 1865, ,,	2.
Proceedings of Government	...	...	...	...	...	11th Feb. ,, ,,	287.
Do.	...	...	...	...	...	23rd May ,, ,,	1,095.
Letter to Board of Revenue	...	...	...	...	...	12th Dec. 1866, ,,	227.
Proceedings of the Board of Revenue	...	...	...	...	...	4th Jan. 1867, ,,	27.
Letter to Board of Revenue	...	...	...	...	...	22nd Sept. 1866, ,,	180.
Do.	...	...	...	...	...	17th July 1867, ,,	126.
Proceedings of the Board of Revenue	...	...	...	...	...	24th June 1868, ,,	4,664.
Letter to Board of Revenue	...	...	...	...	...	9th Dec. ,, ,,	1,225.

(Signed) A. McC. WEBSTER,
Acting Collector.

THIS letter announcing that a suit brought against Government by a Kasar-god land-holder to establish his proprietary right in forests where he has been allowed only to cut Kumeri and gather pepper and cardamoms, has been decided in his favour will be submitted for the information and orders of Government.

2. What has been declared is the plaintiff's right to cut kumeri on 152½ acres of land and raise optional produce on 269 acres of pepper and cardamom jungles.

3. The contest turned entirely upon the question whether the plaintiff was the *proprietor* of the land in dispute.

4. The Principal Sadr Amin decided that he was on the following grounds :—

1st.—Because the land has been treated as private property in sale transactions and suits between the plaintiff's ancestors and other private individuals.

2nd.—Because the entry of kumeri shist and pepper and cardamom rent in the plaintiff's *warg* is as good evidence of his proprietary right in the jungles as the entry of ordinary land assessment is of proprietary right to rice land.

3rd.—Because forests are private property in Malabar and the plaintiff's magani was once apart of the Malabar country.

5. None of these reasons can stand. The first is not good in law against Government who were not parties to the suit, and the second and third are pure assumptions.

assumptions.

6. The case as Mr. Webster shows is one of great importance and affects the claims of Government to forest lands throughout the district. The Board are inclined to think that the rights of private proprietors in South Canara have been too much disregarded or rather overlooked of late years, and they will shortly address Government on the subject, but, however, this may be, it is clear, that the decree now reported must be contested so as to leave Government free to act as they may deem proper. The Board accordingly propose, with the consent of Government, to instruct the Government Pleader to draw up a memorandum of Appeal in conference with them.

10th March.

7. The appeal time expires on the 10th March.

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6th March 1871.*

appear from what time this practice had been continued, and under whose orders the Tahsildar was directed on the 10th March, Fasli 1244, to inquire and report on the matter.

Huzur Jamabandi for Fasli 1244, Hs. 15-3-1.

Order issued to Tahsildar to report on the above and other matters on the above date.

	Hs.	P.	A.
Huzur Jamabandi for Fasli 1245 as per last year ...	15	3	1
For Fasli 1246 as per last year ...	15	3	1

The remarks and other unimportant entries in the Taluq Chitta have been omitted, and the important ones only entered herein as per Huzur order.

Jamabandi for Fasli 1247 as per last year :—

	Hs.	P.	A.
Kumeri ...	9	7	7
Hathatte ...	5	5	10

15 3 1 fixed.

The Arzi No. 259, dated 23rd February, Fasli 1246, submitted by the Tahsildar of Bekal, to the effect that it appeared to him proper that the former practice should be continued, was read over to Mr. Maltby, Sub-Collector in charge, who stated that the Board would be addressed on the subject, and a translation forwarded.

ENCLOSURE No. 5.

List of Correspondence relating to the cultivation of Kumeri in Canara.

	Date and Number.
Letter from Mr. T. L. Blanc, Collector of Canara, to the Secretary to the Board of Revenue ...	31st August 1847, No. 70.
Do. do. do. ...	31st „ 1849, „ 54.
Proceedings of the Board of Revenue ...	10th June 1850.
Report of Mr. W. Fisher, Collector of Canara, addressed to the Board of Revenue ...	30th August 1858, No. 91.
Extract from the Proceedings of the Board of Revenue ...	16th April 1859, „ 1,350. ✓
Proceedings of the Madras Government, Revenue Department ...	23rd May 1860, No. 830. ✓
Mr. Fraser's letter to Board of Revenue ...	20th June „ „ 91. ✓
Proceedings of the Board of Revenue ...	24th July „ „ 3,383. ✓
Mr. Fraser's letter to the Board of Revenue ...	13th „ „ „ 109. ✓
Proceedings of the Board of Revenue ...	4th August „ „ 3,595. ✓
To Board of Revenue ...	18th „ „ „ 135. ✓
Proceedings of the Board of Revenue ...	27th „ „ „ 3,897. ✓
Proceedings of Government ...	24th „ „ „ 1,431. ✓
Board's Proceedings ...	29th „ „ „ 3,955. ✓
Report of Mr. Fraser, Collector of South Canara, to the Board of Revenue ...	15th March 1861, No. 37.
Proceedings of the Board of Revenue ...	6th May „ „ 2,309. ✓
Proceedings of the Board of Revenue ...	14th Sept. „ „ 5,004. ✓
Do. do. on Ponum cultivation in Malabar District ...	14th Sept. „ „ 5,005. ✓
Proceedings of Government on the above ...	1st Nov. „ „ 2,086. ✓
Proceedings of Government ...	24th October „ „ 2,032. ✓
Board's Proceedings ...	28th „ „ „ 5,907. ✓
Proceedings of Government ...	23rd „ „ „ 2,027. ✓

*Proceedings of the Madras Government, Revenue Department,
6th March 1871.*

No. 84.

ORDER THEREON, 6th March 1871, No. 400.

Miscellaneous.

WITH reference to the extent of the interests involved the Government, without committing themselves to any opinion on the general question, which the Board propose to bring again shortly under their consideration, agree with the Board in thinking that the grounds for the decision of the Principal Sadr Amin on the particular case before him, should be tested by appeal to the Higher Court. The Board are at liberty to confer with the Government Pleader on the preparation of the memorandum of Appeal, which when settled the Government desire may be submitted to them.

2. It is observed that the land in question is situated in the Nileshwar Magani, which is well south of the Chendragiri river, forming the northern boundary of the "Malayala désa," and that the plaintiff is said to be the present senior representative of the family of the Rajahs of Nileshwar who are Nairs, so that he may very possibly have rights, the establishment of which would not be incompatible with those claimed on behalf of the Government in other cases in South Canara.

(True Extract.)

(Signed) W. HUDLESTON,
Secretary to Government.

To the Board of Revenue.
„ the Acting Collector of South Canara.
„ the Government Pleader.

Exd. F. R. Bantleman.

PROCEEDINGS of the MADRAS GOVERNMENT.

Under date the 6th March 1871.

Read the following letter *Proceedings*

of the Board of Revenue

*Submitting letter from M^{rs}.
of S. Canara forwarding copies
of Decree & Judg^t passed in certain
Suit by P^r Dair Mueen of Mangalore
regarding certain Kumari lands.*

H. E. 28th Feby 1871. N^o 884

*With reference to the
extent of the interests in-
volved, the Govt without
committing themselves to
any opinion on the general
question, which the Board
propose to bring again
shortly under their
consideration*

*N. A.
J. W. L.*

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REVENUE.

THE BOARD OF REVENUE.

Dated March 6th

Recd.

G. O., 6th March 1871, No. 400.

11/11/71

Mos. 68-61.

*Suit relating to certain Kumari lands
in South Canara District. Board of Revenue
ordered to report against the decision of the
Principal Sudder Ameen in this case in accordance
with the Government Pleader.*

consideration, agree with
the Board in thinking
that the grounds for
the decision of the Princi-
pal Sadr Ameen on the
particular case before
him, should be tested
by appeal to the Higher
Court. The Board
are at liberty to confer
with the Govt Pleader
in the preparation of
the Memorandum of
appeal, which when
settled the Govt desires
may be submitted to
them.

2. It is obvious that
the land in question is
situated in the ~~Mishwar~~
Magani, which is well
south of the Chendragai
river, forming the
northern boundary of
the "Malayala desa"
and that the Plaintiff
is said to be the present
senior representative of
the family of the Rajahs
of Mishwar who are
Hairs, so that he may
very properly have rights
the establishment of
which

which would not be in.

compatible with Moses.

Examined on behalf of the

foot in other cases in

South Canara -

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10/10/1944

Indy To the Board of Revenue

2. The City Collection of South Carolina
3. The Great Green Bay River

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 9. *Juniperus communis*
 10. *Juniperus communis*

Paul

с. 100, 106