No. 163. Read the following letter from the Government Pleader, Madras, to the Secretary to Government, Revenue Department, Fort St. George, dated 31st July 1872, No. 99 :—

WITH reference to the Proceedings of Government noted in the margin, I have the honour to submit the following report as to the costs in the Vissanapetta suit. The delay in furnishing the same has been caused by my waiting for a statement, which I requested the Zemindar to furnish, showing the amount actually received by him from Government in respect of costs, and also his own estimate of such of his costs as have never been taxed. The Zemindar has been absent from Madras, and his son, Mr. Venkatapatty Rao, who transacts most of his business for him, has, I believe, been ill for some time. I have just received from the latter a statement, which I enclose, showing the amount of costs which the Zemindar submits should be reimbursed to him by Government.

29th January 1872, No. 172.

2. In order to make it clear what costs the Zemindar would be entitled to under the last Privy Council Decree, it will be necessary to give a brief summary of the lengthy litigation in this case.

3. The Original Suit (No. 103 of 1855) in the Masulipatam Civil Court was brought by the Collector, claiming the estate, on behalf of Government, as an escheat, against C. V. Narrainappah, the present Zemindar, who was then in possession by virtue of a decree which he had obtained on a mortgage from the widow of the last proprietor.

4. The Civil Court, in effect, decreed that the estate should be sold, the defendant's claim satisfied out of the proceeds, and the surplus (if any) go to Government. Against this decree both parties appealed to the Sadr Court; the defendant in R. A. No. 103 of 1855, and the Collector in R. A. No. 136 of 1857. The Sadr Court reversed the decision of the Civil Court, and dismissed the suit with costs, on the ground that, according to Hindu Law, the Crown could not take a Brahmin's estate by escheat.

5. On appeal by the Collector to the Privy Council, the Sadr Court's judgment as to the escheat of a Brahmin's estate was reversed, and the case remitted to the Sadr Court for inquiry as to the defendant's title. This decree gave no costs, and directed that the costs in India should be dealt with by the Sadr Court.

6. The Sadr Court, by decree dated 22nd October 1860, again dismissed the suit with costs, holding that the title of the defendant, under the alienation by the widow, must prevail over the title of the Crown by escheat.

7. Upon a second appeal by the Collector to the Privy Council the case was again remitted to the Sadr Court for inquiry as to the defendant's charge upon the estate. No order appears to have been made as to the cost of this appeal.

8. The High Court, which had in the meantime succeeded to the appellate jurisdiction of the Sadr Court, after remanding the case to the Civil Court for inquiry as to the amount of defendant's charge, finally decided that the Government were entitled to take the estate by escheat free from incumbrances, and decreed accordingly for the plaintiff, each party to bear his own costs.

9. On appeal by the defendant to the Privy Council this decree was reversed, the defendant declared entitled to hold the estate as security for the balance due to him, and the suit dismissed without prejudice to the right of Government to redeem. This final decree of the Privy Council gave the defendant his costs of that appeal, certified to amount to £435-19-8, and the proceedings in the Courts below under the next previous order of the Privy Council, and also the general costs of the suit, except such as were occasioned by his contesting the right of the Crown to take by escheat, such costs to be borne by the defendant.

10. The amount of costs to be paid and received by each party under this final decree has never been ascertained by the Courts here, proceedings having been suspended by mutual consent before that stage was reached. In applying the Privy Council Order to the various proceedings in the suit, the difficulty is that it is impossible to ascertain exactly what costs were caused by the defendant's contesting the title of the Crown by escheat. The only way in which I can approximate to a correct estimate upon this point is by taking each particular proceeding by itself, and seeing whether it was rendered necessary by the contention in question.

11. Applying this method I think that the defendant would be entitled to the costs of the original suit and the cross appeals to the Sadr Court therefrom. It is true he raised the question of the right of the Crown to take a Brahmin's estate by escheat for the first time on appeal. Still the first decree of the Sadr Court has been ultimately decided to be right in dismissing the suit, though wrong in its reasons, and the Collector was unquestionably wrong in denying the defendant's title altogether. These costs were taxed by the Civil Court, and found to amount altogether, with interest up to 22nd November 1858, to Rs. 3,199-10-9, which amount appears to have been paid to the defendant in March 1859. In the Zemindar's account credit is given only for Rs. 2,825-1-7. I observe that the Collector, in his letter of 5th September 1868, printed in the Proceedings of Government noted in the margin, states that the Government Vakil at Guntoor had been directed to prepare a report of the costs paid by Government to the defendant. Probably he has by this time done so, and the information is with Government. I have been unable to ascertain the reason for the discrepancy between the Zemindar's accounts and the above quoted Proceedings of Goverument of March 1859 in this respect.

Proceedings of Government, Revenue Department, 17th March 1859, No. 347.

G. O., Revenue Department, 23rd April 1869, No. 1,101.

12. The first appeal to the Privy Council was entirely rendered necessary by the defendant's contesting the right of the Crown to take by escheat. Upon the principle laid down in the last Privy Council order the defendant is not therefore entitled to any costs of that appeal. Moreover, the order of the Privy Council on that appeal expressly gave no costs. This appeal therefore may be excluded from the calculation altogether.

13. The taxed costs of the defendant on the first rehearing in the Sadr Court amounted to Rs. 1,399-5-7. Here again it is impossible to say what portion of the costs was caused by his disputing the title of the Crown. He, of course, at

Proceedings of the Madras Government, Revenue Department,
21st November 1872.

that stage had given up his plea that the Crown could not take a Brahmin's estate, but he seems still to have denied the right of the Crown to question the alienation by the widow under which he claimed, in which contention he was decided by the Privy Council on appeal to be wrong. Perhaps the fairest course would be to allow him half of these costs which were mainly caused by the error of the Sadr Court in not following out the directions of the Privy Council, and making a proper inquiry as to his claim as mortgagee.

14. The order of Her Majesty in Council upon the second appeal appears not to have dealt with the question of costs. I have only among the papers with me a copy of the judgment of the Lords of the Judicial Committee, which says nothing about costs. A copy of the order itself is doubtless among the Government records, but there is little doubt that, as usual, it follows exactly the terms of the judgment. If it does so, and makes no mention of costs, the defendant would not, I think, be entitled to any costs of that appeal, the proceedings in which do not seem to come within the terms of the final order of Her Majesty in Council. In any case, he would not be entitled to all the cost of that appeal, which was rendered necessary, in part at least, by his contesting the right of the Crown to dispute the alienation by the widow. However, as the question seems doubtful, and the costs were occasioned in part by the erroneous proceedings of the Sadr Court, perhaps the Government may be disposed to allow him at least half the costs of this appeal. If I am right in supposing that the order of Her Majesty in Council says nothing as to costs, then they would never have been taxed. The Zemindar estimates his costs of this appeal at £500, which is probably not much in excess of what they would have been taxed at.

January 1862.

15. By the final order of the Privy Council the defendant is entitled to the costs of that appeal and all proceedings in the High Court and Civil Court subsequent to the second remand. The taxed costs of defendant in that appeal amount as before mentioned to £435-19-8. The other costs have not been taxed. The Zemindar estimates his cost in the Civil Court and Sadr Court on the second remand at Rs. 2,794-11-2, which, judging by the taxed costs of the former proceedings, is about correct.

16. According to the foregoing calculations the amount of costs to which the Zemindar would now be entitled would be as follows. Assuming that the costs of the original suit and the first appeals therefrom have been received by him :—

	RS.	A.	P.
One half defendant's taxed costs of the Proceedings of Sadr Court on first remand (Rs. 1,399-5-7)	699	10	9
One half defendant's costs of second appeal to Privy Council (his own estimate £500)	2,500	0	0
Defendant's taxed costs of third appeal to Privy Council (£435-19-8)	4,360	0	0
Defendant's costs of proceedings of High Court and Civil Court on second remand, according to his own estimate...	2,794	11	2
Total ...	10,354	5	11

Proceedings of the Madras Government, Revenue Department,
21st November 1872.

No. 164. ORDER THEREON, 21st November 1872, No. 1,603.

Miscellaneous.

IN consideration of the fact that the erroneous proceedings of the Sadr Court on the first remand were the cause of the subsequent litigation, the Governor in Council resolves to admit the memorialist's claim to the costs in this remand-suit and subsequent appeal to the Privy Council, and to authorize the Collector to pay to him, in full of all demands, the sum of Rs. 13,555 as shown below, to be debited to legal expenses :—

		Rs.
Defendant's costs in Sadr Court on first remand	... ...	1,400
Do. of second appeal to Privy Council	... ...	5,000
Do. of third appeal to do.	... ...	4,360
Do. of High Court and Civil Court on second remand	... ...	2,795
	Total ...	13,555

(True Extract.)

(Signed) D. F. CARMICHAEL,
Acting Secretary to Government.

To the Board of Revenue.
,, the Government Pleader.
,, the Accountant-General.

5R

Memo

The accompanying is a rough estimate of the costs due to the Zemindar by Government in the suits between the Zemindar and Government.

In forwarding the above I have to beg you to consider that besides the costs that would be recognised by Courts the Zemindar incurred a great deal of expenses in travelling from here to Masulipatam where the suit was commenced and in prosecuting his suit against the Zemindarnee in 1839-48 and several pauper suits brought against him by spurious claimants, from whom the Zemindar could & did recover not a Rupee.

I am desired by my father to bring these to your consideration and request that you will suggest the payment to Zemindar of all the costs set forth in the accompanying memo.

C. Venkatapathi Rao

7R

A rough Memo of costs.

	Rs. A. P.
In O.S. No. 103 of 1855 costs	1098-12-"
An appeal therefrom to the late Sudder Court (costs)	719-1-7
A counter Appeal upon the same in No. 136 by Government	1009-4-"
	1726-5-7
	2825-1-7

Costs incurred when Privy Council first remanded the suit to the late Sudder Court in Appeal No. 103	398-1-7
In Counter Appeal No. 136	1001-4-"
	1399-5-7

Costs incurred when there was a second remand to the Privy Council to the late Sudder Court and by them remitted to the Civil Court at Guntore	1397-5-7
An Appeal by Government to the High Court on the finding of the Civil Court, Guntur, that the High Court said each party should bear their own costs, the decision of the High Court being upheld actual costs incurred	1397-5-7
	7019-2-4

Deduct

Costs received in 1858	2825-1-7
	4194-"-9
Charges incurred to defend the first appeal to the Privy Council made by Government	£550-"-"5500-"-"
Do. — Do. — incurred to defend the 2nd. Appeal made by Government	£500-"-"5000-"-"
Brought over	14694-"-9

Rec. 2553/72

Brought forward Rs 14,694-0-

Costs incurred by Zamindar in pre-
ferring his Appeal on the finial de-
cision of the Madras High Court — £600 — 0 — 6000-0-
Charges of obtaining extracts
of papers, depositions of witness-
es, Letters & Interpreters, and
translation of papers forwarded
to Privy Council & c. in the
Madras Court about ——————— 1000-0

Total Rupees. 21694-0

7R(a)

Mr Handley seems to me
to have taken a fair view
of the Case. But I would be
inclined to consider the
whole of the costs mentioned
in para 13. as they are said
to have been "mainly" caused
by the erroneous decision of
the Lower Court.

L. D.S.

1604

6
9R

Rev.: 1872 Sept.
№ 2553.
From Govt Pleader
Madras
To Secy to Govt
Rev. Dept.
Dated 31st July
Recd 5th Augt
№ 99

Costs in Vizianagaratta suit - Reporting as to Zemindar's Claim to be re-imbursed by Govt

№ 163

P.C. 9th Augt/72 R 16th
C. 10th Augt/72 R 3d Septr

Revenue Department.

No. 1603

PROCEEDINGS of the MADRAS GOVERNMENT.

Under date the 21st November 1872.

Read the following Letter from the Government Pleader.

Reporting as to Zemindar's claim to be re-imbursed by Govt. the costs in Vizianagaratta suit.

} H.E. 31st July 1872 № 99.

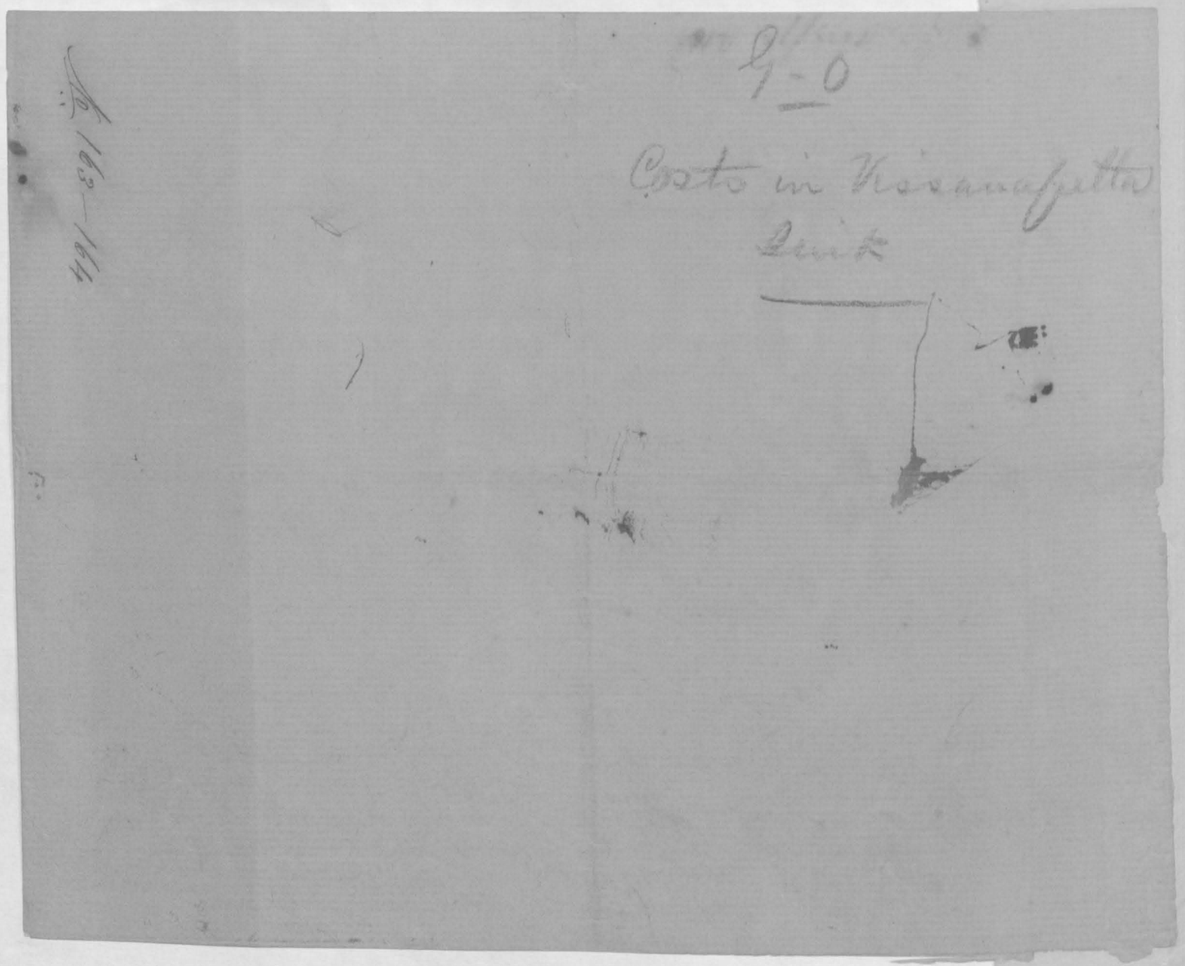
In consideration of the fact that the erroneous proceedings of the Sudr Court on the first remand were the cause of the subsequent litigation the Governor in Council resolves to admit the Memorialists claim to the costs in this remand suit and subsequent appeal

1604

to the Privy Council
and to authorise the
Collector to pay to him
in full of all demands
the sum of Rs. 13,555
as shown below, to be
debited to Legal
Expenses.

	Rs.
Defts. Costs in Sudr Court on first remand.	1,400
Do. - of 2d. appeal to Privy Council.	5,000
Do. - of 3d. appeal to - Do.	4,360
Do. of High Court and Civil Court on second remand.	2,795
	13,555

14 To the Board of Revenue
3. The Government Pleader
1. The Accountant General



Govt. of {1872} Madras.

REVENUE.

To

THE BOARD OF REVENUE,

&c., &c., &c.

Dated November 21st.

Recd. *Encl.*

G. O., 21st November 1872, No. 1,603.

NOVEMBER.
Nos. 163-164.

Vissanapetta Suit.—Collector of Kistna authorized to pay to the Zemindar, in full of all demands, Rs. 13,555, being the amount of costs in connection with this suit.