Read the following letter from the Government Solicitor, Madras, to the Secretary to Government, Revenue Department, Fort St. George, dated Madras, 29th January 1873, No. 37 :—

I HAVE the honour to acknowledge the receipt of the Order of Government dated 17th instant, No. 59, Revenue Department, together with its enclosures, requesting the joint opinion of the Advocate-General and the Government Pleader relative to the Ramnad Zemindari.

2. I submitted the matter for the consideration of the Advocate-General and the Government Pleader, and have also conferred with them thereon; and I now forward herewith a copy of their joint opinion.

3. I have marked on the Advocate-General's Brief a fee of Pagodas 40 or Rs. 140, being the usual fee payable to him in such cases, and request the sanction of Government for disbursement to him of that sum.

OPINION.

THE opinions formerly expressed by the Law Officers with regard to the soundness of the Ramnad Zemindar's title are very much confirmed by the Judgment of the Civil Court now before us. Several important points which were previously more or less doubtful have been satisfactorily established; the plaintiff's entire plan of attack is known, and discloses nothing which cannot be met: and we are able with more confidence than before (though subject always to the proviso that the ultimate issue of a case is never certain till it has been finally decided on appeal) to express an opinion that it is highly improbable that any attempt to invalidate the Zemindar's title will prove successful. We think, in fact, that, supposing it to be for the interest of Government to run *some* risk in the matter, it would be difficult to imagine a case in which the risk would be smaller. We proceed to explain the grounds of our opinion.

2. The defence in the case is twofold; it is contended on the defendant's part, first, that the plaintiff has no claims at law on the Zemindari, and, secondly, that, even if he had any such claims, he has formally and absolutely renounced them in the defendant's favour. It will be obvious that supposing either of these defences to be established, the other becomes superfluous; and it is therefore only by way of strengthening the defendant's position and as an additional precaution that it has been thought well to scrutinize the validity of both. The second, as being the simplest and the more absolutely free from doubt, is the one on which we think it most satisfactory to rely, and we proceed to examine it first.

3. The renunciation of the plaintiff's claims is contained in two documents, the execution of which the plaintiff admits; each appears to have been duly registered, though the plaintiff denies in each case his signature attached to the Vakalatnama for registration. There can, however, be no doubt that the documents were executed by the plaintiff, and were duly registered; and the only question is

whether there was any fact attending their execution which will counteract their binding effect on the plaintiff. The only facts which could have this effect are fraud, duress, the incapacity of the plaintiff, or the absence of consideration. The plaintiff alleges that he was not allowed to read the documents or hear them read, and that his signature was obtained from him "by force and fraud." The nature of this force or fraud does not appear to have been specified, nor was it shown that any fact material to the business had been improperly kept back by the defendant: the Court put no faith in the pretended ignorance of the plaintiff as to the nature of the adoption suit, the High Court's decree, the existence of Dorarajah's Will, and other topics incidental to the case. "I do not," the Judge says, "for a moment believe their allegations of ignorance, and the plaintiff's case entirely breaks down so far as it depends or any concealment of facts."

4. The Judge was of opinion that there was not the slightest reason to suppose that the plaintiff was defective in intelligence.

5. It being impossible to show that there was *no* consideration, an attempt was made to show that the consideration was so unreasonably and grossly out of proportion to the rights resigned that the Court ought to regard the agreement as unconscionable and invalid. The Judge discusses the position and prospects of the plaintiff, his consciousness of having a weak and almost desperate case, which he had further weakened by coming into Court and supporting the present Zemindar's adoption (10), and arrives at the conclusion, which seems to us reasonable enough, that nothing could be more likely than such a compromise as the one alleged by the defendant. The state of the case, as put by the Judge, is, in our opinion, a strong argument in favour both of the existence of the agreement and of its reasonableness and equity.

6. The direct evidence adduced in support of the voluntary execution of the agreements is, the Judge finds, "perfectly clear, natural, and consistent;" the evidence brought by the plaintiff to impugn the execution, he stigmatizes as "unworthy of the slightest credence." Though, as might be expected, an attempt was made to show that the plaintiff had not for two years enjoyed the village of Kurrattanendal, to which the agreement entitled him, the Judge says as to this, that "the probabilities are all on the side of the defendant, and I must further admit that his case in this respect is as complete and satisfactory as could reasonably be expected."

7. We find nothing in the judgment to lead us to question the soundness of this view, or to regard, as in any degree probable, the contingency of a different opinion, as regards this part of the case generally, being arrived at by an Appellate Court.

8. Such being the case, we think it necessary only to state very concisely our view of the plaintiff's legal position apart from the effect of the deeds of compromise. He puts forward a twofold claim, one as the devisee of his adoptive mother, Dorarajah, another as heir to his adoptive mother's father Ramasawmy. With regard to the first we think that the evidence set forth by the Judge under issue 3 (p. 6) fully justifies the suspicion which he expresses as to the genuineness of the Will, and renders it not improbable that it may have been concocted after

Dorarajah's death. This point, however, is of the less important as the Judge finds upon grounds which appear to us sound that the Will was invalid under [illegible] of 1804 Section 4, on the ground of Dorarajah's minority.

[illegible] effect of Sections 4 and [illegible] the Court of [illegible] Law Officers [illegible] Advocate and the Government Pleader jointly reported as follows:—"We think it most probable that the claimant's case will fail, but we cannot pronounce that it will fail with such certainty as to justify us in advising Government to advance money upon the security of a title which is actually in litigation. The first hearing of the suit will take place about the 15th of January, and the suit will probably be finally disposed of in the middle of the year. No great harm can happen to the Zemindar by the delay, and when all the evidence has been adduced we shall probably be able to advise with certainty on the result. Supposing Government to accept the title, all costs incurred by them in defending it would be a charge upon the estate. In the event of failure Government would have no remedy whatever for their expenses of suit." In a second joint opinion, with further information before them, they stated:—"We see no reason to suppose that the claim will succeed. If the Government had already advanced their money upon the title we should feel every confidence that it was safe."

G. O., 7th February 1872, No. 251.

2. With the judgment of the Civil Court dismissing plaintiff's suit before them, the present Advocate-General and the same Government Pleader express a joint opinion that supposing Government are prepared to run *some* risk in the matter "it would be difficult to imagine a case in which the risk would be smaller;" and again, "we feel no doubt that the judgment is substantially sound, and that a chance of reversal on appeal is so remote that if the Government think fit to run any risk in the matter, it may be properly encountered."

3. In these circumstances, the Governor in Council has no hesitation in deciding that the arrangement originally contemplated may be proceeded with. The Government Solicitor will go down to Madura, and, in communication with the Collector, give effect to the intentions of Government. In accordance with the instructions of the Supreme Government, the debts chargeable on the inheritance, in advancing money for the discharge of which no risk is incurred, should be promptly paid off, endeavours being made to compromise some of the other liabilities, and the Government demand for the Zemindar's peishcush being suspended till the whole is cleared off. It is observed, as has been already pointed out to the Government of India, that the Zemindar's heir being a boy of tender years, the estate would be taken under the Court of Wards should the father predecease him previously to his coming of age, and would probably be freed by the time he attained his majority; so that the contingency of the son disputing his father's deed is as improbable as the chances of the present claimant's succeeding in appeal, should he be hardy enough to lodge an appeal, are demonstrated to be by the

To Government of India, Home Department, No. 1,043, dated 13th June 1871, paragraph 12.

ance was offered him, and the Government Solicitor was about to draw up the necessary Deed of Assignment to be executed by the Zemindar, one Muttu Vijaya Raghunath Setupati filed a plaint in the Civil Court, claiming the estat[illegible] this plaint being referred by Government for the opi[illegible]

We co[illegible] with the [illegible]
5 of this Regulation is to incr[illegible]ate [illegible]
Wards from dealing with it in any manner previous to the age of 18. Supposing, however, the fact of the Will to be established, and that Regulation V. of 1804 could be shown not to apply, the question would arise as to Dorarajah's competence, under her father's testamentary directions, to devise the Zemindari. The Judge considers that Dorarajah merely took a life-interest, such as vests by Hindoo Law in a daughter who succeeds to property, and that consequently she was not competent to make a devise of the Zemindari. We do not regard this point as so absolutely free from doubt as the Judge considers it: the character of an impartible estate such as the one in question differs so largely from that of the ordinary Hindoo family that any analogy drawn from one to the other is open to danger: as however this point cannot arise except in the event of the Judge's finding on the two last preceding points being reversed, we think it unnecessary to do more than refer to it.

10. With regard to the plaintiff's claim by inheritance as a[illegible] Dorarajah, the judgment deals with this, first, by holding the ad[illegible] invalid under Regulation V. of 1804, Section 25, as being an adoption [illegible] without the written consent of the Court of Wards. As to this we concur. next place, supposing that ground of invalidity to be got over, the Judge [illegible] that the plaintiff has no claim by inheritance to the property of the father of [illegible] adoptive mother as against the present Zemindar. This view appears to us to raise several questions of law which are not altogether free from difficulty, and, as to one of which, viz., the rights of an adopted son to his adoptive mother's ancestral property, there is, we believe, some divergence of opinion between the several High Courts. This point, however, can come into question only in the event of the adoption being upheld and of the deeds of compromise being regarded by an Appellate Court as invalid—a contingency which, for the reasons stated, we regard as highly improbable.

11. Upon the whole we feel no doubt that the judgment is substantially sound, and that the chance of a reversal on appeal is so remote that if the Government think fit to run any risk in the matter it may be properly encountered.

(Signed) H. S. CUNNINGHAM,
Advocate-General.

(Signed) J. W. HANDLEY,
Government Pleader.

27th January 1873.

No. 15. ORDER THEREON, 4th February 1873, No. 140.

Miscellaneous.

THE Governor in Council observes that when the Zemindar of Ramnad had accepted the terms on which assist-

judgment of the Civil Court, in the soundness of which the Law Officers of Govern[illegible] their confidence.

4. Thes[illegible]oceedings [illegible]

(True Extract.)

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

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

Ed. F. R. Bentleman.

No. 37.

Madras, 29th January 1873.

From

H. G. Prichard
Government Solicitor
Madras,

To

D. F. Carmichael Esqre.
Secretary to Government,
Fort St. George,

Sir,

I have the honor to acknowledge the receipt of the Order of Government dated 17th instant, No. 59, Revenue Department, together with its enclosures, requesting the joint Opinion of the Advocate General and the Government Pleader relative to the Ramnad Zemindary.

2. I submitted the matter for the consideration of the Advocate General and the Government Pleader and have also conferred with them thereon and I now forward herewith a copy of their joint Opinion.

3. I have marked on the Advocate General's Brief a fee of Pagodas 40 or Rupees 140 being the usual fee payable to him in such cases, and request the sanction of Government for disbursement to him of that sum.

I have the honor to be,
Sir,
Your most Obedient Servant,

H. G. Prichard
Government Solicitor.

Opinion.—

The opinions formerly expressed by the Law Officers with regard to the soundness of the Ramnad Zemindars Title are very much confirmed by the Judgment of the Civil Court now before us. Several important points, which were previously more or less doubtful, have been satisfactorily established; the Plaintiffs entire plan of attack is known, and discloses nothing which cannot be met: and we are able with more confidence than before, (though subject always to the proviso that the ultimate issue of a Case is never certain till it had been finally decided on appeal) to express an opinion that it is highly improbable that any attempt to invalidate the Zemindari's title will prove successful. We think, in fact, that, supposing it to be for the interest of Government to run some risk in the matter, it would be difficult to imagine a Case in which the risk would be smaller. We proceed to explain the grounds of our opinion.

2. The defence in the Case is twofold; it is contended on the Defendant's part, 1st that the Plaintiff has no claims at law on the Zemindaree, and 2nd, that, even if he had any such claims, he has formally and absolutely renounced them in the Defendant's favor. It will be obvious that supposing either of these defences to be established, the other becomes superfluous; and it is therefore only by way of strengthening the Defendant's position and as an additional precaution, that it has been thought well to scrutinize the validity of both. The 2nd, as being the simplest and the

more

Reference 1873. Oct. 22.
Treasury
Solicitor
Government Pleaders
Madras
Transmitting Opinion
of Law Officers
Dated 22nd January
Rec'd 30th "

No. 37.
Forwards a Copy of the Joint Opinion of the Law Officers of the Crown on the Ramnad Zemindary Case.

Read the 15th February 1873.

Ordered that Mr. Pedder be requested to prepare a Draft Reply to the Secretary to the Government of Madras, Revenue Department, No. 1 of 1873, dated 3rd January 1873.

more absolutely free from doubt is the one on which we think it most satisfactory to rely and we proceed to examine it first.

3. The renunciation of the Plaintiffs claims is contained in 2 documents, the execution of which the Plaintiff admits; each appears to have been duly registered, though the Plaintiff denies, in each case, his signature attached to the Vakalutnama for registration. There can, however, be no doubt that the documents were executed by the Plaintiff and were duly registered; and the only question is whether there was any fact attending their execution which will counteract their binding effect on the Plaintiff. The only facts which could have this effect are fraud, duress, the incapacity of the Plaintiff or the absence of consideration; the Plaintiff alleges that he was not allowed to read the documents or hear them read, and that his signature was obtained from him "by force and fraud" the nature of this force or fraud was not appear to have been specified, nor was it shown that any fact material to the business had been improperly kept back by the Defendant. The Court put no faith in the pretended ignorance of the Plaintiff as to the nature of the adoption suit, the High Courts decree, the existence of Doraisamy's will and other topics incidental to the Case. "I do not" the Judge says "for a moment believe that allegations of ignorance and the Plaintiffs case entirely breaks down so far as it depends on any concealment of facts."

4. The Judge was of opinion that there was not the slightest reason to suppose that the Plaintiff was defective in intelligence.

5. It being impossible to show that there was no consideration, an attempt was made to show that the consideration was so unreasonably and grossly out of proportion to the rights resigned that the Court might regard the Agreement as unconscionable and invalid. The Judge discusses the position and prospects of the Plaintiff, his consciousness of having a weak and almost desperate Case, which he had further weakened by coming into Court and supporting the present Zemindars adoption (10), and arrives at the conclusion, which seems to us reasonable enough, that nothing could be more likely than such a compromise as the one alleged by the Defendant. The state of the Case, as put by the Judge, is in our opinion a strong argument in favor both of the existence of the Agreement, and of its reasonableness and equity.

6. The direct evidence adduced in support of the volume execution of the Agreement is, the Judge finds perfectly "clear, natural and consistent": the evidence brought by the Plaintiff to impeach the execution, he stigmatizes as "unworthy of the slightest credence." Though, as might be expected, an attempt was made to show that the Plaintiff had not for 2 years enjoyed the Village of Kurrattamedu, to which the Agreement entitled him, the Judge says as to this, that "the probabilities are all on the side of the Defendant" and I must further admit that his Case in this respect as "complete and satisfactory, as could reasonably be expected."

7. We find nothing in the Judgment to lead us to question the soundness of this view, or to regard, as in any degree probable, the contingency of a different opinion, as regards this part of the Case generally, being arrived at by an Appellate Court.

Secondly

8. Such being the case, we think it necessary only to state very concisely our view of the Plaintiff's legal position apart from the effect of the Deeds of Compromise. He puts forward a twofold claim, one as the devisee of his adoptive Mother, Dorarajah, another as heir to his adoptive Mother's Father Ramasawmy. With regard to the first we think that the evidence, set forth by the Judge under issue 3 (p. 6.) fully justifies the suspicion which he expresses as to the genuineness of the Will and renders it not improbable that it may have been concocted after Dorarajah's death. This point, however, is of the less importance as the Judge finds upon grounds which appear to us sound that the Will was invalid under Reg. V of 1804, Sec: 4. on the ground of Dorarajah's minority

9. We concur with the Judge in thinking that the effect of Sections 4 and 5 of this Reg. is to incapacitate a person [illegible] under the Court of Wards from dealing with [illegible] in any manner previous to the age of 18. Supposing however the part of the Will to be established, and that Regulation V of 1804 could be shown not to apply, the question would arise as to Dorarajah's competence under her Father's testamentary directions to devise the Zemindaree. The Judge considers that Dorarajah merely took a life interest, such as vests by Hindu Law in a daughter who succeeds to property, and that consequently she was not competent to make a devise of the Zemindaree. We do not regard this point as so absolutely free from doubt as the Judge considers it. The character of an impartible estate such as the one in question, differs so largely from that of the ordinary Hindu Family, that any analogy drawn from one to the other, is often to danger. As however this point cannot arise except in the event of the Judge's finding on the 2 last preceding points being reversed, we think it unnecessary to do more than refer to it.

10. With regard to the Plaintiff's claim by inheritance as adopted Son of Dorarajah, the Judgment deals with this, first, by holding the adoption to be invalid under Regulation V of 1804 Sec: 25, as being an adoption by a minor without the written consent of the Court of Wards. As to this we concur. In the next place, supposing that ground of invalidity to be got over, the Judge holds that the Plaintiff has no claim by inheritance to the property of the Father of his adoptive Mother as against the present Zemindar. This view appears to us to raise several questions of law, which are not altogether free from difficulty and, as to one of which viz: the rights of an adopted Son to his adoptive Mother's ancestral property, there is, we believe some divergence of opinion between the several High Courts. This point however can come into question only in the event of the adoption being upheld and of the deeds of compromise being regarded by an Appellate Court, as invalid, a contingency which for the reasons stated we regard as highly improbable.

11. Upon the whole we feel no doubt that the Judgment is substantially sound, and that the chance of a reversal on appeal is so remote that if the Government think fit to run any risk in the matter, it may be properly encountered.

(Signed) H. S. Cunningham.
Advo: Genl.
J. W. Handley.
Govt Pleader.
27-1-73.

True Copy
H. S. Richard
Government Solicitor.

Rec'd 27th 1773.

Copy of a Letter from Mr Ritter Agent for the Government of Pensylvania to the Secretary of the Treasury, relative to the Warrants granted by the Government of Pensylvania to the Officers & Soldiers of the Pensylvania Regiment, for their Services during the late War.

Treasury Office 24th Dec. 1773.

Sir,

I have the honour to inform you that I have received a Letter from Governor Penn, dated at Philadelphia the 30th of October last, in which he informs me that he has issued Warrants for 500 Acres of Land to each Officer & Soldier of the Pensylvania Regiment, who served during the late War, agreeable to the Resolution of the Assembly of that Province, passed the 23d of March 1770, and that he has appointed Mr Lukens Surveyor General to lay out the said Lands, which he will do as soon as the Indian Claims are extinguished, & the Boundary Line between this Province & Virginia is run & ascertained.

I am Sir
Your most obedient
humble Servant
G. Ritter

The Honble
Thomas Walpole Esq.

G. O. 14th Jany 1774
No 2106

S 67
N.E

No 114.

Rec'd Letter from Govr Solander

No 37 dy 29th Jany 1774

The Govr observed that when the Province Pennsylvania had accepted the terms on the application was offered him, & that Govr Solander was about to transmit the necessary deeds of Assignment to be executed by the Grantees, on Martin's Purchase & Phyn & Ellice's claim to the Crick Co., claiming to retain a copy of his Deeds only expressed by Govr for the Grantees of their Assignees; the Crick Company advised the Govr to Charter formerly expected as follows: "We have it not possible to write ourselves to any will fail but we cannot forbear that we will fail with such certainty as to justify us in attending for Grantees to survey, when the Warrants are actually in Litigation. The passing of the Deeds will take place about the 15th of January, & we doubt not but formally discharged of in the meantime the Grantees may purchase can happen to the Grantees by the delay, when all the evidence has been adduced, we doubt not but be able to obtain an Extension to the Crick, Assigning for the reasons to be, all costs incurred by them in defending to be a charge upon the Estate, which

C.O. 78 Vol 7 fol 287
Pag 25

event of failure Govt would
have no remedy whatever
for their expences of suit" The
Council joint opinion, upon further
information before them, they stated:—
"We see no reason to despond but the claim
will succeed. If the Govt had already
advanced their money upon the title
"we think we feel every confidence that was
"safe".

2. With the Judgment of the first Ct
determining Plaintiffs suit before them,
the present Advn. Genl & the deputy
Govt Pleader desired a joint opinion
how the Govt was to proceed upon
that occasion? & whether it would be
"proper to appeal or not? & whether
"it would be prudent to enter upon
"such a measure? They answered
"that they were of opinion that the
"Judgment originally entered was
"erroneous, & that the Govt ought
"to proceed with the appeal. But
"as the Govt had given directions to
"withdraw the appeal, & to compro-
"mise the claim, they were of opinion
"that unless the Govt was prepared to
"risk all the consequences of the
"appeal not being prosecuted, & that a
"decree would be passed in the
"Plaintiffs favour, it would be
"prudent to endeavour to effect
"a compromise upon the best terms
"they could obtain.

3. The Govt of India, by their despatch
No 46 of 3d June 1771 para 12.

4. The Court of Directors, by their letter
of 14th February 1772 para 3 & 4,
approved of the measures taken by the
Govt of Bengal, & directed that the
appeal should be withdrawn, & that
the claim should be compromised.

5. The Court of Directors, by their letter
of 14th October 1772 para 6, 7 & 8,
directed that the Rajah should be
compelled to pay the Company's
debts, & that the Govt should
not interfere in the management
of the Zemindary.

6. The Court of Directors, by their letter
of 14th February 1773 para 3, 4 & 5,
directed that the Rajah should be
compelled to pay the Company's
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7. The Court of Directors, by their letter
of 14th October 1772 para 6, 7 & 8,
directed that the Rajah should be
compelled to pay the Company's
debts, & that the Govt should
not interfere in the management
of the Zemindary.

the circumstances of the Supreme Govt,
the debts chargeable on the inheritance,
in advancing money for the discharge
of which no risk is incurred, the same being
promptly paid off; endeavours being
made to compromise some of the other
liabilities, and the Govt claimed for
the Zemindars pesheush being discharged
& till the whole is cleared off.

It is observed, as has been already
remarked not to the Govt of India, that
the Zemindary Heir being a boy of
tender years, the Estate cannot be taken
under the Protection of the Courts of Justice
during the father's
predecease him previously to his coming
of age, and would probably be greatly
to the injury of the Infant his majesty's
so that the unfortunate contingency of
the boy's dying his father's death
is an circumstance of the utmost of
the foregoing claims would accordingly
appear — that he be hereby empowered
to give an effectual discharge
to be by the Judgment of the Court &c,
in the event of which the said
Officers of Govt were enjoined their
further claims.

14. Feb. Govt and Select Dec. 4 Feb
3. Ch. Pol Cl.
14. Ch. Odonel of Clerm Dec 1765 4. These Rajs will be connected with
1. Ch. Collecting Dec 1771
6. Ch. Secret Govt Dec 1765 Govt of India.

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