

*Proceedings of the Madras Government, Revenue Department,
4th February 1873.*

Read the following letter from the Government Solicitor, Madras, to the Secretary to the 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 document or hear them, 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 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 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 Section 4, on the ground of Dorarajah's minority.

effect of Sections 4 and

of the Court of
Advocate and the Govern-

G. O., 13th Decem.

ment reader 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

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

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."

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 peishchush being suspended till the whole is cleared off. It is observed, as has been already pointed out to the

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

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

Proceedings of the Madras Government, Revenue Department.
4th February 1873.

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 ~~estate~~ ^{estate} this plaint being referred by Government for the ~~consideration~~ ^{consideration}

We concur with the ~~opinion~~ ^{opinion} of this Regulation is to in ~~clude~~ ^{clude} the 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 Dorarajah, the judgment deals with this, first, by holding the adoption invalid under Regulation V. of 1804, Section 25, as being an adoption 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 holds that the plaintiff has no claim by inheritance to the property of the father of an 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-

Proceedings of the Madras Government, Revenue Department.
4th February 1873.

judgment of the Civil Court, in the soundness of which the Law Officers of Govern-

4. These proceedings ^{in their confidence} ~~shall be referred to the~~

(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.

Erd. F. R. Bantleman.

N^o 37.

Madras, 29th January 1873.

From

H. G. Prichard

Government Solicitor

Madras,

To

D. F. Carmichael Esq^{re}

Secretary to Government,

Fort St. George,

Sir,

I have the honor to acknowledge the receipt of the Order of Government dated 17th instant, N^o 59, Revenue Department, together with its enclosures, requesting the joint Opinion of the Advocate General and the Government Pleader relative to the Pannad 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 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 Rannad 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, 1st that the Plaintiff has no claims at law on the Zemindar, and 2^{ndly}, 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

Revenue 1893. 24th Dec.

of the Government's Advocate

of the Government's Advocate

of the Government's Advocate

of the Government's Advocate

of the Government's Advocate

of the Government's Advocate

of the Government's Advocate

of the Government's Advocate

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 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 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 Dorasajah'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 account of the facts 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

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 me 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 voluntary execution of the agreement 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 2 years enjoyed the Village of Kurrattamandal, 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.

Such

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 Ramasamy. 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 ~~who is under the Court of Wards from dealing with~~ 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 his Father's testamentary directions to devise the Zemindaries. The Judge considers that Dorarajah merely took a life interest, such as was by Hindu Law in a daughter who succeeds to property, and that, consequently, she was not competent to make a devise of the Zemindaries. We do not regard this point as so absolutely free from doubt as the Judge considers it. The character of an imperishable 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 open to danger. as however this point cannot arise except in the event of the

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.

27-1-173.
True Copy

H. S. Richard
Government Solicitor.

37-140.

Rest taken from Govt Solicitor

No 37 d/29th Jan'y/78

The Govt. observes that, when the Zamindar
 Prasad had accepted his terms and
 a guarantee was offered him, the
 Govt. Solicitor was about to draw up the
 necessary Decree of Appointment to be issued
 by the Zamindar, one Mulla Nizam
 Raghunath Bahadur filed a plaint in
 the Civil Ct., claiming the estate. Copy of
 his plaint being referred by Govt for the
 opinion of their new officers, the late
 Acting Adv. to the Govt 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 Govt to advance
 money upon the security of a title
 which is actually in litigation. The
 hearing of the suit will take place about
 the 15th of Jan'y, & the suit will probably
 be finally disposed of in the middle of the
 year. No great harm can happen to the
 Zamindar by the delay, when all the
 evidence has been adduced, we shall
 probably be able to advise with certainty
 as to the result. Supposing Govt to accept the
 title, all costs incurred by him in depositing
 it will be a charge upon the estate, but the

G.O. 14 E. Secy.
 No 2106

J. D.
 N. S. E.

Recd. 27/1/78.

Enclosure in letter from
 the Government of India,
 Madras, to the Government
 of Mysore, dated 29th January
 1878, No. 37.

event of failure Govt. will
 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 Govt. had already
 advanced their money upon the title
 we do feel every confidence that it was
 safe."

C. O. 752 of 1872

Dec 25/72

With the judgment of the full C.
 dismissing Plaintiff's suit before them,
 the present Adv. Genl. & the same
 Govt. Pleader express a joint opinion
 that assuming Govt. are prepared to run
 some risk in the matter "it will be
 difficult to imagine a case in which the
 risk will be smaller"; and again, "We
 feel no doubt that the judgment is
 substantially correct, and that a
 chance of reversal on appeal is so
 remote that if the Govt. think fit to run
 any risk in the matter, it may be pro-
 perly encountered."

In these circumstances, the Govt. has
 the honor to inform the Hon. Secy. that the
 arrangement originally contemplated
 may be proceeded with. The Govt. do not

the Govt. put Plaintiff's suit down to checking & to come
 the Govt. I think so. with the Govt. give effect to the
 but the Govt. are not taking any action of Govt. In accordance with

the instructions of the Supreme Govt.
 the debt chargeable on the Government,
 in advancing money for the discharge
 of which no risk is incurred, shall be
 promptly paid off, and every step
 made to compromise some of the Govt.
 liabilities, and the Govt. demand from
 the Zamindars' present being due paid
 till the whole is cleared off.

It is observed, as has been already
 pointed out to the Govt. of India, that
 the Zamindars have been as long of
 tender years, the Estate will be taken
 under the gift of Wards shall be taken
 precedence him previously to his coming
 of age, and will probably be friendly
 to him & attach his majority;
 so that the misfortune of his coming of
 age will not be his fault, and
 is as inevitable as the chance of
 the present Government's execution of
 appeal - shall be be ready enough to
 keep an appeal in one demonstrated
 to be by the judgment of the full C.
 in the knowledge of which the Govt.
 officers of Govt. have expressed their
 confidence.

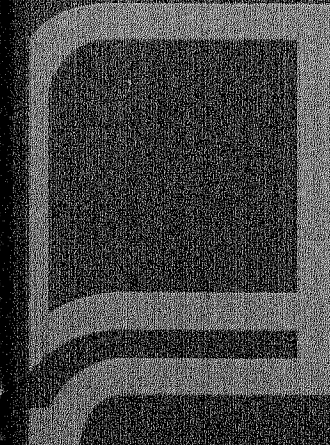
To Govt. of India, Home Dept.

No 463 of 1872, dated 10/12/72
 para 18.

14. For the Govt. and Solicitor Genl. 4. Feb
13. The Govt. Secretary
14. The Board of Revenue 10. Feb
1. The Collector of Baramulla 10. Feb
10. The Hon. Secy. to Govt. of India.

25/12/72

Manuscript - The first
page of the first
book of the Bible
which is the first
of the Pentateuch



B5