Proceedings of the Madras Government, Revenue Department, 13th February 1873.

No. 89. Read the following letter from the Government Pleader, Madras, to the Secretary to Government, Revenue Department, Fort St. George, dated Madras, 5th February 1873, No. 16 :—

I HAVE the honour to acknowledge receipt of the Proceedings of Government noted in the margin, referring for my opinion a despatch from the Right Honourable the Secretary of State for India on the subject of the appeal to the Privy Council in the Marangapuri Zemindari case.

G. O., 28th January 1873, No. 116.

2. The difficulty suggested in that despatch was, it will be remembered, pointed out by me in my letter of 11th December 1871, No. 172, embodied in the Proceedings of Government of 8th January 1872, No. 36, and also in my report to the Secretary of State for India of 30th September 1872. If the legal advisers of the India Office are of opinion that the Judicial Committee will refuse to entertain the appeal on this ground, it would certainly be better to withdraw it. I believe the plaintiff has appealed against the final decision in the suit. If so, Government might apply to the Privy Council to be made a respondent in that appeal, and might then raise the question of jurisdiction in support of the Zemindar's case. Whether such an application would be likely to be granted is a matter which the Law Officers of the Home Government, who are conversant with the practice of the Privy Council, can best decide. There might be some inconvenience in this course as regards the Zemindar, whose defence on the merits is so good that he really has no need whatever to rely on the plea of no jurisdiction, so that he may very probably object to the introduction of Government into the case for the purpose of raising a question in the decision of which he has no interest.

3. On the whole, I think the best course will be to obtain a decision of the question in another case, and the Chinna Kimedy case alluded to in paragraph 2 of the above Order of Government seems to offer a very good opportunity for such a decision. I have obtained a sight of the papers in that case from the defendant's Counsel, and find that the present position of affairs is as follows:—The plaintiff claimed as adopted son of the late Zemindar to recover the Zemindari from Raghunath Deo whom Government had recognized as the successor. The plea of no jurisdiction was raised, and a considerable amount of evidence adduced as to the exercise by Government from time to time of the right of nominating successors to the Zemindari. In the face of the decision in the Marangapuri case the defendant's Counsel thought it useless to insist on this plea, either in the Civil Court or before the High Court, and there was therefore no decision upon the point in the judgment of either Court. The Civil Court found against the alleged authority by the late Zemindar to his widow to adopt, and dismissed the suit. On appeal the High Court reversed that decision and decreed for the plaintiff holding the adoption to be valid. An oral judgment to that effect was delivered, as I am informed, on the 5th December last, but no written judgment has as yet been recorded. The defendant, I believe, intends to appeal, and will no doubt urge before the Privy Council the plea of no jurisdiction which he raised in the Court of First Instance. Government not having been party to the suit have no *locus*

standi to appeal, and I do not think the Judicial Committee would accede to any application to make Government a party to the defendant's appeal. Of this again, however, the Law Officers of the India Office are the best judges. Practically, the same object would be obtained by assisting the defendant in his appeal as suggested in the above Proceedings of Government.

4. There is another case now pending in which the question of the soundness of the decision of the High Court in the Marangapuri case may be decided, viz., the appeal in the Guntamanaiknur case, the subject of the Proceedings of Government of 23rd January 1873. I am about to report to the Secretary of State on the subject of that appeal immediately as directed by those Proceedings.

Revenue Department G. O., 23rd January 1873, No. 88.

No. 90. ORDER THEREON, 13th February 1873, No. 177.

Miscellaneous.

THE Government Pleader concurring in the suggestion made in G. O., 28th January last, No. 116, that a decision of the Privy Council as to the power of Government to nominate a successor in unsettled estates may be obtained in the "Chinna Kimedy" case, he is authorized to assist Raghunath Deo, the Government nominee, in framing his appeal from the judgment of the High Court, and to address the Secretary of State in view to Government being made a party, if possible, to the appeal, or, if that cannot be done, in view to the Law Officers of the India Office assisting the appellant in prosecuting his appeal before the Privy Council.

2. Ordered that the following despatch be forwarded to the Secretary of State, assenting to His Grace's suggestion (Judicial despatch No. 18 of 24th December 1872) to abandon the appeal in the Marangapuri case, and reporting the further proceedings taken to raise the same general question.

(True Extract.)

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

To the Government Pleader.
,, the Board of Revenue.

Exd. F. R. Bantleman.

13th Feby 73

#177.

Read the following letter from the Govt Madras. No 163/5-2-73

The Govt Madras concurring in the suggestion made in G.O. 28th Jany last, No. 116. that a decision of the Privy Council as to the power of the Govt to nominate a successor in unsettled Estates, may be obtained in the "Chinna Kimedy" case, he is authorised to assist Raghunatha Deo, the Govt nominee, in framing his appeal from the Judgment of the High Court, and to address the Secy of State in view to Govt being made a party, if possible, to the appeal or if that cannot be done, in view to the Law Officers of the India Office assisting the appellant in prosecuting his appeal before the Privy Council.

F.R. 6/2/73.

2. Ordered that the following despatch be forwarded to the Secy of State, assenting to His Grace's suggestion (Judicial despatch No 18 of 24th Decr 1872) to abandon the appeal in the Marangapuri case, & reporting the further proceedings taken to raise the same general question.

13 Feby 73 Sent to Govt Madras
14 Feby 73 Sent to Govt India

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