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Ramasawmy, no doubt, *intended to be represented by his daughters' line, should that line continue*; but he made no express provision for its failure, and the same reasons which justify a presumption of authority to adopt in the absence of express permission are powerful to exclude a presumptive prohibition to adopt, when on a new and unforeseen occasion the religious duty arises. His widow has not claimed a power to adopt, except on the happening of the contingency for which her husband omitted to provide, and her power so limited not having been qualified by his disposition must be determined by the general law. Another argument was founded on the attempted adoption of a son, Annasawmy (plaintiff), by Dorarajah. That person is not a party to either of these Suits; he has not impeached the adoption; he has, on the contrary, supported it as a witness. *Nothing decided by the decrees under appeal can prejudice his rights*, if he has any, under an adoption which the Revenue authorities at the date of it seem to have treated as illegal. Their Lordships have not before them the necessary materials for determining whether that adoption was in fact valid or invalid; or whether, if valid, it would have any, or what, effect on the title of the (defendant) respondent."

It is on the words underlined that the plaintiff chiefly relies. It was this suggestion of some possible rights in plaintiff which led to the Agreements I. and II.

Issue I.—It is admitted that Ramasawmy wrote an Arzi to the Collector, and it is not denied that that Arzi must be taken as setting out his intentions with regard to the course of succession. The Arzi has, in fact, been treated in the argument as an informal but perfectly effectual Will, and the only question raised on it is that embodied in the second issue, viz., what estate was created by it in favour of Dorarajah.

Issue II.—The material part of the Arzi runs as follows:—"I have made arrangement that my mother, who is my guardian in every respect, and who holds chief right to the Zemindari, should enjoy this Zemindari and all other things. pay peishcush to the Circar, maintain my royal wife (Parvata), my daughter Mangaleswara, aged five, and her younger sister (Dorarajah), a small child, and, when these children shall attain their proper age, to make an arrangement with regard to their right to the Zemindari and continue the same." The plaintiff's argument upon this is founded on the English doctrine that where a devise creates an estate, and there are no words of limitation, the estate created is an absolute one. The Will, he says, clearly indicates an intention that the daughters shall succeed before the widow; that gift to the daughters was not accompanied by any words of limitation; therefore the gift was an absolute one, and the effect was to vest the Zemindari in the daughters as their own absolute Stridanam property.

In my opinion, such a construction of the document is untenable. It is repugnant to the general principle of Hindoo Law that a woman's estate is never absolute, and there is nothing in the document to indicate an intention that this general principle should be departed from, and an English principle adopted in its place. I think, I must take the case as if every power vested in the mother had been performed; for whatever power of appointment or limitation was given her was a power of the nature of a trust; but what was the trust or power committed to her? It was simply this, that when the daughters came of age she was "to make an arrangement with regard to their right to the Zemindari." I can understand these words in no other way than as meaning that when either of them came of age she was to be let into possession of the Zemindari with such rights as a daughter would possess under the general law; the only change in the natural order of succession being that the mother was passed over, or, at all events, postponed till after the daughters.

I think it extremely probable that Ramasawmy thought that his daughters were his legal heirs, for the right of a widow to succeed in this Presidency has not always been recognized or understood (c. f., XXVIII. on this point). If, however, he knew that his widow was the natural heir, it may be assumed that his desire was that the Zemindari should be continued intact to his own lineal descendants, or, as the Privy Council expressed it, that he "intended to be represented by his daughters' line, should that line continue." This is just what would have resulted if they were let in simply as heiresses, their mother being passed over. If, on the contrary, they were let in as absolute owners, with the same absolute powers which a woman has over her Stridanam,

a very different result would be attained. If they died intestate, their daughters would have succeeded to the exclusion of their sons. The Zemindari would necessarily have been divided or held in joint tenancy. Half or the whole might have been given away at the option of two females, subject only at the utmost to the interested control of their husbands, and the result would probably have been, in the absence of issue, that half the Zemindari would go to the relations of one husband, and the other moiety to the family of the other husband, Ramasawmy's own relations being altogether excluded.

At the hearing I asked the plaintiff's Counsel whether, upon his construction of the Arzi, the Zemindari would have passed to the daughters jointly or one after the other. He contended that they would have taken one after the other, because the Zemindari was impartible. It seems to me that is quite inconsistent with the theory of an absolute unqualified gift to the daughters; and that, if in deciding the terms of the gift I can let in the general limitation that a Zemindari is impartible, I must also let in all other limitations to a daughter's estate recognized and established by the Hindoo Law. This, in fact, is just what I do when I decide that, on the true construction of the Arzi, all that the grandmother was directed or empowered to do, and all that the law can regard as done was to do what the daughters' legal rights as daughters rendered necessary and proper, or, in other words, to give over the Zemindari to either of them who attained her majority with such an estate as she would naturally have taken as a daughter in the absence of a widow.

My finding, therefore, on the second issue is that Dorarajah's estate was simply such estate as is possessed by a daughter who succeeds to property as a daughter. Three cases were quoted in the argument as further tending to show that this would be an estate by inheritance and not by purchase, notwithstanding the fact that but for the Will the widow would have taken first for life. I shall just mention them, but do not propose to discuss them at length. In the first (Marshall's Rep. 241) a widow waived her claim, just as Parvata has all along affirmed that she did in favour of her daughters, and the heirs were let in at once to sue as heirs. In the case at 6, M. H. C., 93, an elder brother's estate was outstanding, and if he had disclaimed, the younger brother would have had a decree for possession as the heir. In the third case (13, Moo. I. A., 333) a usurper was held to have come in under the same estate of inheritance as if he had waited for it to fall in naturally.

The following Exhibits were also referred to as showing that the idea that Dorarajah held the Zemindari as her Stridanam was altogether novel:—XXVI., XXVII., XXVIII., XXIX., LXXXIV., LXXXV., XXXVI., XXXIX., XL. It appears from these papers that both before and after Dorarajah's death, her mother Parvata was recognized both by the Government and the Sadr Court as 'the next lawful incumbent' in her own right, she being the widow and having waived her claim "exclusively in favour of her own children." It is certainly probable, as admitted by plaintiff's Counsel, that Parvata was a consenting party to the arrangement made by Ramasawmy, and that, I suppose, is the sense in which she was considered to have waived her rights in favour of her children. The Will (C.) of Dorarajah, whether genuine or not, supports this view, and recognizes Parvata as next entitled; but it is remarkable that throughout all her proceedings there is no indication that Parvata considered that her title derived any support from this Will; her claim as widow of Ramasawmy was put forward and recognized on its own merits, and as having been in abeyance with her own consent during the lifetime of her children. The Arzi of Dorarajah's husband in which her Will is first referred to is to the same effect as the Will and in XXXIV., though referring to this Arzi, XXXIII., Parvata relies on her own title. I shall have to refer to these documents more particularly under the next issue. As to the novelty of the plaintiff's contention, I need only allude further to the case in the Privy Council out of which this suit has arisen (12, Moo. I. A.). If the devise to Dorarajah had been an absolute gift as Stridanam, it would have been impossible to presume a consent by Ramasawmy to this defendant's adoption; the gift and the consent would have been irreconcileable. Yet this tolerably obvious point did not suggest itself either to their Lordships or to any of the learned Counsel by whom they were assisted.

Proceedings of the Madras Government, Revenue Department, 17th January 1873.

No. 119. Read the following Proceedings of the Board of Revenue, dated 14th January 1873:—

Read the following letter from the Acting Collector of Madura, to the Secretary to the Board of Revenue, dated Madura, 6th January 1873, No. 1.

I HAVE the honour to submit copy of the Judgment of the Civil Court of Madura in Original Suit No. 20 of 1871 and of a letter dated 19th December 1872, addressed to me by the Zemindar of Ramnad in which he points out that some arrangement must be made immediately to satisfy the claims of those of his creditors who hold decrees against him. All the material points in the suit are fully discussed in the Judgment, and I trust that Government will now be able to decide at an early date whether they can advance money for the payment of the Zemindar's debts. The Zemindar's title seems perfectly good, and something must be done at once to prevent the sale of a portion of the Ramnad Estate in satisfaction of decrees of Court.

ENCLOSURE No. 1.

From V. MUTTURAMALINGA SAYTHUPATHY, Zemindar of Ramnad, to the Acting Collector of Madura, dated Ramnad, 19th December 1872.

I RESPECTFULLY beg leave to bring to your notice a few but important circumstances connected with my Zemindari, and request you will be good enough to advise me regarding them at your earliest convenience.

2. You are aware of the suit brought against me which awaits the decision of the Madura Civil Court. If I am to judge from the Proceedings of the Madras Government, they are not likely to carry out the measures they had in view for me to advance the required loan and relieve me from my embarrassments, until the result of the suit now pending in the Civil Court is known; and it is doubtful whether they will redeem their promise no sooner the decision, if it is in my favour, is known, or they will have to wait till it passes through the High Court. If they deem it absolutely necessary to wait the result in the Appellate Court, and defer payment till then, I need scarcely describe to you the insurmountable difficulties I will be subjected to before then.

3. You are equally aware that two of my Chetty creditors have instituted suits against me, and ready to pounce on me on the beginning of the next month with the decrees of the Court obtained in their favour, and other creditors are only waiting an opportunity to follow their example. Under these circumstances, I am at a loss to know what to do with them. I cannot say they will have patience enough to wait till the Government prepare themselves to liquidate their debts, and if the Court's decree is put into force, I could only leave you to imagine my position then.

4. A gentleman from England, Mr. Gordon, proposes to grant me a loan, without any reference to the suit now before the Court, and first of all to satisfy the demands of the Chetties which fall due on the first proximo. The terms proposed by that gentleman, though not so favourable as those by Government, but still they are such as calculated to afford me immediate relief from all my present predicaments.

5. It is nearly four years since I have thrown myself entirely upon the bounty of Government, and I am really very thankful to them for their best intentions in promising me assistance, though unfortunately obstacles had been thrown, from time to time, in the way of their carrying out their intentions. Nothing is definitely said, and there is no knowing what their further proceedings will be in the matter.

6. I therefore beg you to be kind enough to advise me, without loss of time, whether it would be worthwhile to continue to hang on Government, or to lay hold of this opportunity which

Mr. Gordon presents so favourably. In case of my letting slip this chance, and in the event of the Government withholding their aid also, which is so very much uncertain, my circumstances will be better imagined than described.

7. Expecting from you an early reply, I beg to remain, etc.

ENCLOSURE No. 2.

Original Suit No. 20 *of* 1871.

THE plaintiff in this suit claims the Zemindari of Ramnad, which is now in the defendant's possession under the decrees in Original Suit No. 3 of 1856 and No. 1 of 1860 (S. C. in High Court Regular Appeal Nos. 35 and 49 of 1861, and before the Privy Council, 12 Moore's I. A., 397). In those suits it was ultimately established that this defendant had been well adopted by the late Zemindarni Parvata Nachiar as the son of herself and her deceased husband, and on his adoption became the heir of her husband Ramasawmy Setupaty.

This Ramasawmy Setupaty left two daughters, of whom the survivor Dorarajah died in 1845. This suit was first instituted by her husband, relying on a Will purporting to have been made by Dorarajah just before her death. By that Will, if genuine, she settled that her mother, Parvata, should have the Zemindari and her other estates for life, remainder to her husband for life, remainder to their adopted son absolutely. Six weeks after the institution of the suit the husband died. The present plaintiff is the adopted son.

He claims first under Dorarajah's Will, but he also claims as heir of Ramasawmy Setupaty independently of the Will. The defendant denies his title either way, and further pleads that whatever rights he may have once possessed have been renounced by two agreements entered into between them in 1868 and 1869. Upon these pleadings the following issues were framed :—

(1.) Whether Ramasawmy in 1830 made a Will or other valid disposition of the Zemindari to Dorarajah Nachiar.

(2.) What estate was created, if any, by such disposition in favour of Dorarajah Nachiar.

(3.) Whether Dorarajah did, in fact, make a Will on the 23rd September 1845 as by plaintiff alleged.

(4.) And if so, whether it is invalid for any of the reasons mentioned in 1st defendant's written statement.

(5.) Whether supplemental plaintiff's adoption is invalid for the reasons assigned.

(6.) Whether there is a preferable heir to his father's estate in Kundasawmy Tever.

(7.) Whether supplemental plaintiff, as the adopted son of plaintiff and Dorarajah, has any claim to the estate of the deceased Ramasawmy or of Dorarajah.

(8.) Whether the claim is barred by the Statute.

(9.) Whether Exhibits I. and II. were executed by supplemental plaintiff as by 1st defendant alleged.

(10.) Whether plaintiff is estopped by Exhibits I. and II. from asserting his claim to the Zemindari or mesne profits or any part thereof.

I will discuss the issues in the order in which they stand, although my conclusion is that the plaintiff's case must fail, and might be disposed of on the two last issues only.

It is right, however, that I should note first that neither of the plaintiffs were parties to the adoption Suit (1 of 1860, etc.), but that the present plaintiff's rights seem to have been argued before the Privy Council as a *Jus tertii* inconsistent with the defendant's adoption. Upon this point their Lordships remarked :—

"It has been argued, however, that, even if the adoption would have been regular, had Ramasawmy died childless and intestate, his Arzi relating to the management and descent of the Zemindari contains an indication of his intention that his daughters and their descendants should be his successors and representatives, which ought to be taken to imply a virtual prohibition of the act of adoption by his widow. Their Lordships cannot accede to this argument.

ISSUE III.—After my finding on the above issues it is immaterial at what conclusion I may arrive with regard to the genuineness or validity of Dorarajah's Will, for if she was only in with a daughter's estate for life, she was, of course, incompetent to pass it on after her death. It is right, however, that I should set out the evidence on this point to assist the Appellate Courts.

This Will (C.) was filed on the defendant's behalf in the former suit (P. C., Book 81), but he did not refer to it in his pleadings, or rely upon it in any way, and the circumstances in which it came to be filed must be borne in mind. It is admitted that the Will was first produced in that case by the Collector, this defendant's opponent. The defendant's Counsel apparently had never heard of it till then, but when the Collector was about to withdraw it as useless, he insisted on having it filed. It was filed accordingly but not as a document produced or guaranteed by the defendant, simply as a document found in the Collector's records which, for some reason or another, the defendant thought useful to his case. What that reason was it is difficult to imagine, but it is at all events clear that defendant's counsel did not put his title on the Will in any way or ask for any relief upon it. He may have had a passing idea that it would tend to defeat the Collector's claim to escheat, or possibly (though I do not think this likely) that the present plaintiff's mouth might be stopped by having the Will and his evidence consenting to the adoption on the same record. But whatever his reason, I do not consider that his having put it on the record can in any way estop him from disputing its genuineness now. I do not even consider that it approaches as nearly to an estoppel or rather is as strong a point against defendant as the Exhibit XXXIV. to which I have referred above.

This is Parvata's Arzi to the Collector written after Dorarajah's death, and will be found at page 90 of the P. C. Book. She there says, "my right of succession will be manifest from the petition addressed this day by my son-in-law as regards continuing the Zemindari in my name," and that petition (XXXIII.) most distinctly refers to the Will. Parvata, however, did not stop there, but continued, "while I had vested my title in my daughter through affection, the said my beloved child having departed this life by the will of God, my Zemindari and all other property now under the management of the Court of Wards on her account are to be placed in my possession according to Hindoo Law, the worldly usage, and the rules observed by the reigning authorities." If she had in any way recognized the Will, it is curious that, in addition to the Hindoo Law, usage, and recognized rules, she did not say 'according also to my daughter's express directions.' Taking the whole Arzi together, it does not even show conclusively that Parvata even knew of the Will : it hardly amounts to more than this—"I am entitled under Law, usage, and recognized rules, and even Dorarajah's husband admits this, and has addressed you to that effect."

There can be no doubt that the Will was in existence on the 27th September, which is the date of both XXXIII. and XXXIV. There is also no doubt that at that time it bore the genuine signatures or attestations of Dorarajah's husband; of plaintiff's (natural) father, Kadambana Teven; of Parvata's brother, Kottasawmy; of plaintiff's 6th and defendant's 44th witness; and of the other persons now dead by whom it purports to be signed. Dorarajah, however, died on the 24th, and the Will was executed by her, if at all, simultaneously with her adoption of the plaintiff on the 23rd. On the 24th she and her husband addressed an Arzi (E) to the Collector, reporting the fact of the adoption, and that Arzi is set out at p. 84 of the Privy Council Book. There is not a word about the Will in that Arzi, or a hint that any Will had been executed. The plaintiff is simply said to have been adopted as heir to the Zemindari, and it is hardly conceivable that if a formal settlement of the Zemindari had been made, postponing his claim till after the death of Parvata and the husband, and if such a settlement had actually been put into writing, it would have been passed over in silence. On the 25th Dorarajah's husband reported her death (XXXII.), still not mentioning the Will. On the 27th he writes again (XXXIII.), for no particular reason, stating that the Will had been sent through the Manager appointed by the Court of Wards. This looks very much like a device to get over the delay. The Will does not seem to have reached the Manager until the 27th when he was at Ramnad (B. B. and XXXV.) It

is not a thing altogether unheard of that a Will should be got up by a palace intrigue after the death of an important personage. It is said that its genuineness was never impugned, but it was impugned at once by Muttu Virayi, and the only reason why the Collector took no notice of her objection was that he held both Will and adoption to be wholly invalid. His description of it as a "deed of adoption, dated the same 23rd September, forwarded to me *without comment* by the Manager in an address of the 27th" (XXXV.), certainly does not tend to show that it regarded its genuineness as unquestionable. The plaintiff's 6th witness swears that the Will was drawn up and executed by Dorarajah immediately after the ceremony of adoption. The 7th to 11th witnesses speak to the same effect, but they did not attest the Will. The defendant's 44th witness, on the other hand, swears that the Will was brought to him by Kottasawmy two days later, and that he attested it at Kottasawmy's request. This witness is perhaps not entitled to much credit, for, on his own admission, he attested a Will as genuine which he did not see executed, and which he had every reason to believe not to be genuine. On the other hand, the plaintiff's witnesses have evidently told a concocted story as to the oral arrangement regarding the succession to the Zemindari. The evidence shows that the adoption of the plaintiff had been determined on several days before, and if any terms were offered and agreed to that must assuredly have happened before the guests were invited and had assembled to witness the ceremony. It is highly improbable that all these men would have been allowed to see the dying girl at all. Some witnesses, ladies and maids of the palace, were examined upon this point by commission. As I have not to give any opinion regarding their demeanour I need only say that the defendant's witnesses seem to me entitled to more weight. Of plaintiff's four witnesses the 4th is his own mother, the 2nd, the mother of his brother Aramanay Sawmy's sister-in-law, the first Kunjara Nachiar, while the 3rd, in some measure, supports the defendant's evidence that Dorarajah was not in such a state of health or sense as to be able to make a valid testament. Some of the defendant's evidence is curiously in accordance with Muttu Virayi's allegations in XXXV. and XXXVI.

Kunjara Nachiar, it will be remembered, was plaintiff in one of the adoption suits, and claimed as reversioner, which, of course, she could not have been if this Will of Dorarajah was a good one. Indeed, if the Will is a true one, it is astonishing that neither Dorarajah's husband nor the plaintiff should have taken any step to resist the Collector's declaration that the Zemindari would escheat and that their rights should have been ignored throughout. If they really believed in the Will, it is hardly possible the plaintiff would have supported defendant's adoption in Court, or that the husband would have attested the deed of gift by which Parvata made over the Zemindari absolutely to defendant (XXIII., P. C. Book 52). The evidence shows, and to suppose the contrary would be absurd, that he knew perfectly well what he was about, and attested as an assenting party.

On the whole, as to the third issue, I think that the non-mention of the Will in E and XXXII. casts great suspicion upon it; that this suspicion is increased when it is found that the report of Dorarajah's death reached the Manager before the Will did (B. B.); that the two plaintiffs' tacit and express acquiescence in the defendant's adoption shows at all events that they cannot have regarded themselves as having any rights under the Will; that neither Parvata's allusion in XXXIII. to the Arzi, XXXIV., nor the admission of the Will at defendant's request upon the record of the adoption suit is fatal to his present objection ; and consequently that the suggestion that the Will was got up after Dorarajah's death to quiet the original plaintiff, while admitting Parvata's claim to possession, and at all hazards to exclude the Collector's management and shut out Muttu Virayi, is not undeserving of consideration.

Issue IV.—There are two objections to the validity of the Will ; the first founded on the Court of Wards' Regulation (V. of 1804), the second on Section 8, Regulation XXV. of 1802.

As to the first objection it has been admitted that Dorarajah, though more than 16, was within the age of 18. Section 4 provides that where minor's may *succeed to inheritable property* . . . . the duration of minority shall, without exception, continue until the completion of the 18th year of age. The plaintiff, however, says that Dorarajah did not succeed

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to inheritable property, but took the property as devisee. She certainly succeeded to it in the ordinary sense of the word, and it is equally certain that the property was inheritable. The last clause of the preceding Section speaks of females succeeding to the possession of property by inheritance, gift, or otherwise. The following Section speaks of persons incapacitated by mental infirmity as distinguished from minors : the words there are not succeeding to inheritable property but succeeding to property by inheritance. I presume that there was some reason for the change, but I cannot think of any except that a gift or devise to a minor is a thing which may be anticipated, whereas none is likely to make a gift or devise to a lunatic. In other words, the framers of the Regulation seem to contemplate the succession of a minor by inheritance, gift, or otherwise, the succession of a lunatic only by inheritance. I cannot, therefore, admit the first step in plaintiff's argument, namely, that when they spoke of a succession to inheritable property they intended to limit their enactment to cases of succession by inheritance. The mischief aimed at in the Regulation would, of course, be as likely to occur where a devise was made to a minor, and no guardian appointed as in a case of ordinary inheritance. The words immediately preceding the 4th Section clearly recognize the case of the Court of Wards being in lawful possession of the property of a female entitled to it by gift or otherwise. If so, the inference is that the preceding Section (2) which prescribes the circumstances in which the Court of Wards may act must have been intended to cover such a case. In other words, the present case of a female 'succeeding' under a devise must be included in those "cases of property devolving to heirs incapacitated" in which the Court is authorized to act. I consider, therefore, that even if Dorarajah's estate was not an estate of inheritance, the Regulation would still apply and extend her minority to the close of her 18th year. This apparently would have been the case even if the estate had not been taken by the Court of Wards (1 Beng. L. R., F. B., 49), but it is admitted that the Court had the estate under their management at the time of her death. It is, therefore, unnecessary, for me to consider the further question whether, if the Regulation did not apply, Dorarajah's acquiescence in the Court of Wards' management, and her neglect to dispute it under Section 7, would estop the plaintiff from asserting 30 years later that their management was throughout illegal. It will have to be remembered hereafter that this objection to the validity of the Court of Wards' interference is a perfectly novel one, and has never been heard of in the seventy years which have elapsed since the enactment of the Regulation.

The other objection to the validity of the Will is that it purports to make a transfer of the Zemindari, and such transfer not having been registered as required by Regulation XXV. of 1802, Section 8, is null and void. This Court is bound by the High Court's decision (3, H. C., 5, 67) that non-registration is not a mere question between Government and the Zemindar, but renders a transfer of a portion of a Zemindari absolutely null and void. I do not find that decision touched by the two subsequent decisions (4, H. C., 396, 463) quoted by the plaintiff's Counsel : all that they establish, following the decision in 8 Moore, is that a permanent lease is not such a transfer as requires registration under the Section. Then the plaintiff's Counsel seeks to distinguish this case on the ground that the transfer here is of the entire Zemindari. It seems to me, as I stated at the opening, that the words of the Section cover a transfer of the whole equally with a transfer of a part. Proprietors are at liberty to transfer their right in the whole or in any part : but unless *such* transfer, namely, a transfer either of the whole or of a part, be regularly registered, such transfer shall be of no legal force or effect. The object of the Regulation, no doubt, was to protect the rights of Government, and it must be very material to them to know who is the proprietor with whom they have to deal. I also find it difficult to distinguish this case on the ground that the transfer was not *inter vivos* : the Section speaks of every kind of transfer, "by sale, gift, or otherwise."

There is, however, another answer to this technical objection by which I am glad to say it may be defeated. The transfer is first to Parvata, then to the original plaintiff, lastly, to the present plaintiff. The transfer to Parvata was registered. It is true that the Collector registered her as successor in her own right, and ignored the Will, but that I conceive would make no difference ; for the only aim and object of the Regulation is that the name of the transferee should be ascer-

tained and registered. It is now settled law that a suit will lie against the Collector to compel registration, and the Collector is a party to this suit. If the plaintiff succeeds, he will certainly be registered, and it seems to me, the Collector being a party, that the plaint subsequently prays not only for the recovery of the Zemindari but that he may be registered as proprietor. On this ground, I hold that the Will, which was certainly communicated to the Collector, is not invalid, because he chose to ignore it, and did not register the gifts over to the plaintiffs.

So far I have dealt with plaintiff's claim as devisee. I now come to his claim to succeed by inheritance as daughter's son, by adoption, of Ramasawmy. This claim, of course, presupposes that the Will is out of the question. Then,

5th Issue. if plaintiff is right in his first contention, that Dorarajah took an absolute estate as Stridanam, the suit is barred, because either the original or present plaintiff was her heir, certainly not Parvata, and more than twelve years have elapsed since the inheritance fell in. If, on the other hand, Dorarajah took merely a daughter's life-estate, and Parvata came in afterwards in her own right as widow with a life-estate, now we have to seek for the next heir of Ramasawmy, and plaintiff says that he is the next heir, because he is his daughter's son.

Issue V.—The first answer to this, and one which is conclusive, if I am right in holding Regulation V. of 1804 applicable, is that the plaintiff's adoption is absolutely illegal. Section 25 expressly provides that it shall not be competent for disqualified landholders to adopt children without the consent of the Court of Wards in writing. If the Regulation applies at all, it seems to me that the adoption of plaintiff, whether by Dorarajah's husband alone or by him and her together, was wholly ineffectual to make him her son, or give him any claim through her. It is quite true that a husband may adopt without the consent, and even notwithstanding the dissent of the wife, but the adopted son in such a case could hardly claim through the wife : and even if he could claim through her generally, I do not think he could when she is specially debarred by law from adopting for the purpose of passing her property. The law will not allow a thing to be indirectly accomplished which it prohibits directly.

I may here mention that the sixth issue has been given up, as it is clear that the present plaintiff, though he takes in his father's place, does not claim through him, but merely after him.

Issue VII.—If, however, plaintiff's adoption as Dorarajah's son was a good one, then he says that he is entitled before the defendant, and that the defendant's subsequent adoption by Parvata is ineffectual as against him. First of all he relies on the case at 10, Moo. I. A., 279, but all that was decided by that case was that a widow of a previous male holder could not defeat the heirs of a subsequent male holder who was in with full rights by making an adoption. Perhaps this case might help the plaintiff if Dorarajah was in with full rights, and he could claim as her heir, but then failing her Will he would be barred by limitation.

Then he relies on the passage in the Privy Council's decision in the adoption suit which I have set out at the beginning of this judgment. Now Ramasawmy's Will, if it had any effect at all, made either an absolute gift to his daughters or a strict settlement on their line to the exclusion of his widow, or it simply postponed his widow's claim till his daughter's death. If it amounted either to an absolute gift, or a strict settlement, the plaintiff is barred by limitation. If not, he can simply claim as daughter's son, and cannot take advantage of any possible desire on the part of Ramasawmy to be represented by his daughter's line. The passage quoted, therefore, will not help him, and the only remaining question will be whether when there is a daughter's son in existence a widow can be allowed to adopt. In the judgment of the Privy Council their Lordships stated their conclusion as follows (12, Moo. I. A., 443) :—"The power to adopt cannot be inferred where a prohibition by the husband either has been directly expressed or can be reasonably deduced from his disposition of his property, or *the existence of a direct line competent to the full performance of religious duties*, or from the other circumstances of his family which afford no plea for a supersession of heirs on the ground of a religious obligation to adopt a son in order to complete or fulfil defective religious rites." It may be that, under these dicta, the existence of a daughter's son would have been fatal to Parvata's claim to adopt,

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but it by no means follows that the existence of a daughter's adopted son would have the same effect. A full Bench of the High Court of Calcutta have held that an adopted son cannot succeed to his adoptive maternal grandfather's estate, even when there are only collateral heirs (Suth. W. R. Spec., No. 121), and the Judges remarked : "The adopted son standing in the same relation as a natural born son to his adoptive mother or her father is altogether opposed to the theory and principle of Hindoo Law. According to it a son of some sort is essential to the eternal happiness of a *man*, and in consideration of the performance of funeral obsequies the adopted son succeeds to the estate of his adopting father. But "a woman needs no such mediation." "The adopted son, whether adopted by the husband and wife in concert, or by the husband alone" (as seems probable in this case), "is adopted for the benefit of the husband." And the reason given by Macnaghten why he does not succeed to the estate of his adoptive mother's father is that he "becomes the son of a person whose lineage is distinct from that of the maternal grandfather." With this decision before me, and with my view already expressed, that plaintiff was not even a legally adopted son, I refrain from discussing the question further as between a daughter's natural son and a subsequently adopted son to whose adoption he has deliberately assented. The circumstances of the family, as understood by the family including plaintiff and his alleged adoptive father, certainly justified an adoption by Parvata.

I now pass to the last question arising in the suit which is whether the plaintiff has not entered into a compromise, whether he has not renounced such rights as he had, if any, for a valuable consideration ; and if so, whether such compromise or remuneration will bind him and estop his setting up those rights in the present suit. There are two agreements, and plaintiff admits that he signed them both. He alleges, however, that he was not allowed to read them or hear them read, and that his signature was extracted from him 'by force and fraud.' The nature of the force or fraud was not stated in his Counsel's opening, which put the case as one in which there had not been a full and fair disclosure of all the facts. What precise fact was known to the defendant and kept back from plaintiff has never been stated. It is, therefore, hardly necessary to refer to the cases of Gordon *v.* Gordon and Groves *v.* Perkins which the learned Counsel quoted from the Notes to the leading case of Stapilton *v.* Stapilton (2 W. and T. L. C., 766—7). Both those cases went on the ground that there was a material fact known to the one side and not communicated to the other ; the knowledge of which fact might reasonably have prevented the other side from agreeing to the terms of the compromise. In Gordon *v.* Gordon the fact was that some sort of ceremony had been celebrated between two parties, and the person kept in ignorance of this fact would have been clearly entitled if that ceremony amounted to a valid marriage. In Groves *v.* Perkins the value of the property given up was not disclosed. In the case which intervenes between these two, Harvey *v.* Cooke, one side had received legal opinions, and knew the state of the accounts, and did not communicate either to the other. I presume it was to get as near these cases as possible that the plaintiff pretended absolute ignorance as to the nature of the adoption suit, of the High Court's decree, and of the existence of the Privy Council, or, indeed, of any Supreme Court sitting in England. He also denied having heard of Dorarajah's Will, but in this he is distinctly contradicted by his own father-in-law. He would not admit having received even from his adoptive father, or any one else, any but the very vaguest information regarding his title. Beyond this, I am not aware that there has been the faintest suggestion throughout the case that the defendant can have had any information which he withheld from plaintiff. I do not for a moment believe any one of these allegations of ignorance, and the plaintiff's case entirely breaks down so far as it depends on any concealment of facts.

Then it is said that he is a mere simpleton, and advantage was taken of his defect of intellect. He was under examination before me for nearly four hours, and I am bound to state for the information of the Appellate Court (although, I think, a perusal of his evidence will lead them to the same conclusion) that I saw no signs of a deficient intellect in him. He was, of course, bound to *pretend* ignorance of all sorts of matters, but from his demeanour and evasiveness I had no doubt that it was merely pretence. Except that he was so foolish as to expect me to believe him, I am clearly of opinion that he is possessed of at least ordinary intelligence,

Lastly, as a sort of forlorn hope apparently, his Counsel, while admitting that inadequacy of consideration would be no ground for setting aside the compromise, appealed to me to consider the whole case together, and to say upon it as a whole whether the consideration was not so out of all reasonable proportion to what was given up that the bargain could not be regarded as equitable and binding. Of course, in one sense it was the whole Zemindari that was given up: the plaintiff renounced whatever right he had, if any, to the entire Zemindari. But to estimate the position of the parties fairly, it would be necessary to recapitulate a little some of my conclusions as to the previous issues.

The plaintiff, or his advisers, now put forward his claim in a double aspect, as devisee and as heir. As devisee his title depends on several points. First, he says Dorarajah had the property absolutely: this proposition is based on a doctrine of English Law, and had never been hinted at throughout the litigation preceding the agreements. Then he asserts that Dorarajah made a Will which Will was valid. I entertain no doubt that plaintiff knew at least as much about the Will as defendant, but I think it very doubtful whether either of them thought of it at the time of the compromise. It had been ignored by the authorities from the very first as unworthy of notice; it had seen the light again for a few minutes in the adoption suit when, for some reason or other, it was clutched by the Counsel; it was never from that moment relied on or referred to in any way by any of the Courts which dealt with that suit. I have shown already that there are strong grounds to doubt the genuineness of the Will, and I now say that there are equally strong grounds for doubting whether its existence was remembered by either party. Then as to its validity, if its existence was remembered, what reason had either side to think that it was valid? For five and twenty years it had been treated as invalid, and it is only now sought to be supported by a novel construction of a Regulation which could never have suggested itself to an unprofessional mind. So far, therefore, as he claimed as devisee, it seems to me that when plaintiff renounced his rights, neither party could have supposed that he was giving up much.

Then as to his title by inheritance, this depends first on the validity of the adoption, and that adoption had all along been regarded as null and void for the very same reason that avoided the Will. I do not believe that plaintiff ever lived with his adoptive father after his adoption, and it seems pretty clear that it was regarded as a mere device which had failed. I found this conclusion not only on the evidence in this case that he was living with his natural brother to all appearance as one family, but also on the proceedings in the Adoption Suit. XI. is the plaintiff's deposition in that suit. He there stated that he was living with Parvata sometimes, and at other times with his natural father. I do not believe his present evidence in which he contradicts this, and says that he lived for the most part with Parvata, but at other times with his adoptive father. Again in the list of relatives filed in that Suit (LXXXVIII.) plaintiff is entered in his natural place as second son of his natural father, and not a word is said about his adoption. I conclude, therefore, that both plaintiff and defendant had every reason to suppose the adoption to be invalid, and could not have anticipated the present novel argument for his validity.

But plaintiff's position in their eyes was even worse than this, for he had come into Court and deliberately supported and assented to the adoption of the defendant, and it was impossible for him to assert a claim in himself without first making out that the adoption was invalid as against him. It may be that this assent to the adoption will not operate as an estoppel, but to an ordinary Hindoo mind, unskilled in the subtleties of the law, I think it would appear at least a very difficult point to be got over. There was also the difficulty of limitation.

My view of the plaintiff's position, therefore, at the time of this compromise is that neither party had any reason to suppose that he could make out a good title either under Dorarajah's Will or as her adopted son, and that both had every reason to suppose that whatever title he might otherwise have possessed had already been pretty effectually waived by his public assent to the defendant's adoption and suit. That being so, the Privy Council's judgment arrived stating that a reference to his attempted adoption had been made before them, that he did not appear to dispute but on the contrary had supported defendant's case, but that as he was not a party to the decree

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his rights could not be prejudiced if he had any. There is not a word in the expressions used by their Lordships to lead either plaintiff or defendant to suppose that they thought plaintiff's adoption really valid. On the contrary, they are reminded that it had, from the very first, been treated as invalid, and that even if valid there would still be the question "whether it could have any and what effect on the title of the defendant."

With the parties in this position I cannot imagine a compromise between them taking the shape of a tolerably equal division of the property at stake, but I think nothing was more likely to happen than what the defendant's evidence shows actually did happen. The defendant's Agent or Manager at that time was Seturajah. He had married the plaintiff's own sister, and his brother Janakarajah is one of the witnesses on whom plaintiff relies most. This Seturajah, like most other people acquainted with Ramnad, must have been pretty well aware that protracted and expensive law suits are often constructed out of the most unpromising materials. The estate was already much impoverished by a decade of litigation, and here was the germ of another possible suit suggested to his mind. I can imagine nothing more natural than that he should suggest to the Zemindar the advisability of nipping it in the bud, even at a slight sacrifice, and I think that such a proposition would have been made in perfect good faith, not with the object of injuring his young brother-in-law but with the double object of obtaining for him some slight benefit, while he secured to the estate the rest which it so greatly needed. Nothing again can be more natural than that the Zemindar, whose title had just been established at such cost, should consent to perfect it by buying up any shreds of title which might be outstanding in others, especially if while so doing (the Agreement I. evidences the double object) he could benefit the plaintiff who had done him considerable service by assenting to his adoption under the guise of Dorarajah's adopted son. As for the plaintiff I have already said that he was not likely to refuse a good thing when he could obtain it at what he must have considered merely nominal cost, and nothing can be more natural than that he should go about, as one of the witnesses deposes, asking his friends or relatives whether he had not better accept the proferred benefit.

Then the terms agreed upon are a village, a life-pension of Rs. 50 a month, and Rs. 4,000 to build a house. These are embodied in the Agreement I. which is engrossed on two stamps both admittedly signed by the plaintiff. The village chosen by plaintiff is Karuthanendal, and the grounds he gives, or is said to have given, are that it is near Mannandy where he lived, that his wife's family lived there, and that he himself had some pannay lands there from which as both ryot and proprietor he would be able to extract considerable profit. The agreement provides that this village shall be separately assessed and registered as required by Regulation XXV. of 1802. It was presented for registration and duly registered on the day of its execution. The plaintiff, however, repudiates his signature to the Vakalatnama under which it was registered.

I pass over for the present the evidence that this agreement was acted upon and come to the second agreement dated a year later. The signature to this agreement is admitted and that affixed to the Vakalatnama for registration denied. This varies the terms of the first agreement in some respects, and the variation is said to have been made at plaintiff's request. The evidence shows that it had been discovered that separate registration of the village under Regulation XXV. was unnecessary, as it was a Sirutatu village, or the Zemindar's private property. That part of the agreement was, therefore, waived, and it now rested with the Zemindar, and not with the Collector, to apportion what would have been the peishcush but was now to be a quit-rent. The Zemindar fixed a lump sum of Rs. 350, and as this was deemed favourable, and would be perpetual, the plaintiff gave up his life-pension. As to the house the agreement recites that some part of it had been constructed, and the balance of the Rs. 4,000 is conditioned to be paid over.

The evidence as to the voluntary execution of these agreements is perfectly clear, natural, and consistent. I. is admittedly attested by Seturajah who died before the second agreement. It and the Vakalatnama II. are also proved by the 10th, 13th, and 14th witnesses who attested I. by the defendant himself (8th witness) and by the Sub-Registrar (9th witness). The 13th witness is the plaintiff's first cousin, and plaintiff denies that he was present, but there is not the slightest ground for doubting his presence, and he has certainly attested the document. However,

it will be impossible for me to go through all these little objections, and with due regard to the limits of a judgment I can only observe generally that both agreements and both Vakalatnamas are established by the clearest evidence. The plaintiff alleges that he was forced by threats to sign both agreements, but that his signature to both Vakalatnamas has been forged ; in other words, the Zemindar in each case has chosen, for no conceivable reason, to supplement his fraud by a little forgery. Of course, I do not believe this, but here again I have only space to say generally that I consider the plaintiff's evidence unworthy of the slightest credence. The signatures perfectly correspond, and the Sub-Registrar is an independent witness to the Vakalatnamas.

Plaintiff's story as to the first agreement is repeated almost verbatum by Janakarajah and another witness (12th and 13th witnesses), but it carries its own confutation on its face ; among other things it is absolutely incredible that such a transaction would have been carried on by the Zemindar and abetted by the Sub-Registrar in their presence. The story is further sought to be bolstered up by the production of a letter (C. C.) alleged to have been written by Seturajah. Of this I can only say that I believe it to be a forgery and a cunning, but about as impudent an attempt to impose upon the Court as I have ever met with. Its appearance was almost enough, but the signature is also disproved by the Zemindar and (in a fairly reliable way) by the 14th witness who was Head Clerk under Seturajah. It may be considered as finally demolished by the account given by Aramanay Sawmy, plaintiff's brother, as to how this precious relic came to be preserved for four years and then found by him during the hearing of the suit, and at the very moment when plaintiff's case seemed to be breaking down for want of some documentary corroboration. The writing is no doubt somewhat similar to Seturajah's ; it is possible that his brother, Janakarajah, writes like him. That the plaintiff's story as to the first agreement is untrue is made still clearer by his own account of his subsequent conduct. His story is not that he was cajoled, but that he was compelled by actual threats to sign his name. He might reasonably have concluded that the contents of the paper might effect him, and that it might be as well for him to ascertain them. Janakarajah says Seturajah told him the contents desiring him to keep them secret, but plaintiff admits that he made no inquiries whatever about the matter. The only people he ever mentioned it to were his adoptive father, his brother, and the late Ponnusawmy Tever. As for the father the mention to him seems to have been of both agreements together, and as for Ponnusawmy plaintiff seems to have been perfectly satisfied with his assurance that he was sorry, and would get the papers cancelled ! The brother, Aramanay Sawmy, again says plaintiff told him to inquire about the contents, and also informed him who were present ; he further asserts that he did make inquiries but from whom he does not know ; he does know, however, that he asked none of those who were present.

Plaintiff's story as to the second agreement is equally incredible, and has no direct corroboration at all. Aramanay Sawmy again tells an improbable story about the Zemindar having fined him Rs. 500 for cutting some palmyras, and in cross examination continually contradicts himself. The other witnesses, who (according to plaintiff's evidence) were present, have not been called.

Then there is a question to which the greater part of the voluminous evidence, oral and documentary, is directed—a question which, in any other country but this, could hardly arise, and certainly could not long remain doubtful. It is whether or not the plaintiff actually enjoyed the village of Karuttanendal for two whole years as asserted by the defendant, or whether the whole mass of evidence adduced to prove this is a mere concoction, and a concoction dramatically made from time to time, for this was almost admitted, so as to deceive the Court and carry on the fraud already practised on the plaintiff. I must say 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 as satisfactory as could reasonably be expected.

I will take the exhibits first, but hardly to do more than indicate their nature, though each one was duly proved. The first agreement is dated 11th July 1868. On the 13th a regular order (XLI.) to put plaintiff into possession was issued to the Tahsildar. Corresponding orders were issued by the Tahsildar to the Muzumdar on the 6th of August (XLII.), and by the latter to the

No. 59 -
Read Report ... 17th Jany. 1873.
D/14-1-73-

G.O. 7th Feby 72
No 251.

It is observed that the late Ag Advocate Genl & the Govt Pleaders in their joint opinion recorded in the Proc of Govt marginally noted "saw no reason "to suppose that the Claimant of "the Ramnad Zamindary would "succeed", and remarked "that if the Govt had "already advanced their money upon the "title of the present Zamindar, they "would feel every confidence that it was "safe" - The Govt, on that occasion resolved to defer making any advance of money until at least the first stage in the litigation was passed.

2. The Judgment of the Civil Ct now before them concludes with the emphatic declaration that "from every point of view "Plff must fail" & his suit is accordingly dismissed with costs. These further papers will have to be referred to the Law Officers of Govt for their opinion as to whether there can be any longer room for hesitation before advancing the money to the Zamindar (as originally arranged.

4. To the Govt Solicitor dy 17 Jany
3. The Govt Pleaders
14. The Board of Revs

2d. An early consideration of the question is requested. P.T.C. 14/1/73.

village officers on the 15th of August (XLIII). This (XLIII.) says the village is (hereby) made over, so that no answer was necessary. I do not see that there was any undue delay or unnecessary correspondence as alleged by the plaintiff. On the 5th of September another Order (XLIV.) is despatched to pay plaintiff Rs. 200 towards the agreement. On the 14th September the plaintiff puts in petition VII. praying that steps may be taken to settle the quit-rent, and that Rs. 3,000 may be granted to him, viz., 1,500 to repair the irrigation works and 1,500 to complete the house; it also asks that his name may be registered for his monthly salary, and that he may be granted a bandy and bullocks. The request for the money is passed over in silence, and this is not inconsistent with the most perfect good faith, for the Zemindar's embarrassments are a matter of notoriety, and have now led to the attachment of his estate. But the petition is not unnoticed, for an order (XLV.) was sent (XLVI.) to plaintiff on the 19th informing him that he had already been directed to be put in possession, and that the porappu should be fixed as quickly as possible. On the 22nd November the Tahsildar reports (XLVIII.) that, though the plaintiff had been put in possession, the collection of the porappu could not proceed as its amount had not been fixed. On the 25th December the Tahsildar is reminded (XLIX.) of the order to pay Rs. 200, and desired to pay it immediately with an additional 500. The payment of this Rs. 100 on the 3rd January 1869 cannot be proved by plaintiff's receipt as it is unstamped, but it has been collaterally established to my satisfaction by witnesses 33, 40, 41, 42, 43, by the order LII. ordering the Inspector, 40th witness, to make it; by the entries of it in the accounts (LXXXII. and LXXXIII.) and by the Irusalnama report (LXII.) The 40th witness's evidence seems to me perfectly natural and credible. On the 25th December 1868 another order (L.) was sent desiring the Tahsildar to collect the arrears due for previous years in Karuttanendal, and to pay them to plaintiff. These two orders and LI. going out on the same day seem to show that plaintiff had remonstrated at his request for money being ignored. LI. desires an inquiry to be made into a complaint that the Karnam had collected some of the kist, but not paid it over to plaintiff. LIII. A is the Karnam's deposition, and LIII. (dated 1st January) the report on the matter; both seem perfectly natural. LV., dated 7th January, communicates L. to the Inspector. All this time the porappu had not been fixed, but on the 20th January the Agent called for a return of the income for ten Faslis (LVI.) LVII. is the corresponding call made by the Tahsildar on the Inspector. LVIII. (25th January) calls the attention of the Inspector to LV., and desires him to explain why he has not ordered the village officers to collect the arrears and paid them to plaintiff. LIX. (dated 8th February 1869) repeats this order and ends 'do you require a second order even for this?' On the 14th March the Agent asks (XXII.) why the return of income for ten Faslis has not been sent. On the (LX.) 19th the Tahsildar fines the Inspector for his delay, and directs the immediate transmission of the return. On the 25th of August there is the second agreement fixing the porappu; the witnesses to this being the 14th—17th, besides the Sub-Registrar and Zemindar. LXI. of the 31st August recites that the average income had been found to be Rs. 583-15-11, but that, at plaintiff's request, the porappu had been reduced to Rs. 350, and desires the Inspector to collect it at that rate. XLVII. is an order regarding supplies for the Navaratry festival, dated 8th October 1868. LXXIX purports to be an order on the same subject for the year 1869, and is signed by the 37th witness as plaintiff's Goomastah. X. and LXXV.—LXXVIII. are receipts, and LXXIX.—LXXXI. are orders purporting to be signed by the same witness or by the 38th (or his father) or 39th who also call themselves plaintiff's Goomastahs. I shall have to speak of these again. LXIV.—LXVIII. show how many of these documents were obtained from the records then in charge of the Special Assistant, and are put in to show that there was no possibility of their having been recently forged. All documents connected with the transfer were called for emergently on the 16th January and on that or the following day; X., XLI.—XLIII., XLV., XLVIII., XLIX., L., LIV.—LVI., LVIII., LIX., LXI., LXVIII., LXXIX., LXXX., LXXXI., and some other Exhibits seem to have been sent in to the Vakil.

The exhibits hitherto mentioned, or nearly all of them, come from the Zemindari records. I must now allude to the evidence of the ryots and village officers of Karuttanendal and the

My conclusion, therefore, is that from every point of view plaintiff must fail, and I accordingly dismiss his suit with costs.

(Signed) P. P. HUTCHINS.

SUBMITTED for the orders of Government.

No. 120. ORDER THEREON, 17th January 1873, No. 59.

Miscellaneous.

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

IT is observed that the late Acting Advocate-General and the Government Pleader, in their joint opinion recorded in the Proceedings of Government marginally noted, "saw no reason to suppose that the claimant of the Ramnad Zemindari would succeed," and remarked that "if the Government had already advanced their money upon the title of the present Zemindar, they would feel every confidence that it was safe." The Government, on that occasion, resolved to defer making any advance of money until at least the first stage in the litigation was passed.

2. The Judgment of the Civil Court now before them concludes with the emphatic declaration that "from every point of view plaintiff must fail," and his suit is accordingly dismissed with costs. These further papers will now be referred to the Law Officers of Government for their opinion as to whether there can be any longer room for hesitation before advancing the money to the Zemindar as originally arranged.

3. An *early* consideration of the question is requested.

(True Extract.)

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

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

Exd. F. R. Bantleman,

Govt. of {1873} Madras

REVENUE.

To

THE GOVERNMENT SOLICITOR,

&c., &c., &c.

Dated January 17th.

Recd. Encl

G. O., 17th January 1873, No. 59.

JANUARY.
Nos. 119-120.

Ramnad Zemindari in Madura District.—Proceedings Board of Revenue submitting a Judgment of the Civil Court dismissing the suit against the estate, referred to the Law officer for opinion as to whether there can be any longer room for hesitation for advancing money to the Zemindar as originally arranged.