No. 69. Read the following Proceedings of the Board of Revenue, dated 5th June 1873, No. 943 :—

Read the following letter from the Hon. D. ARBUTHNOTT, Officiating Collector of Tanjore, to J. GROSE, Esq., Secretary to the Board of Revenue, dated Vallam, 6th May 1873, No. 172 :—

WITH reference to the Board's Proceedings, dated 1st April 1873, No. 498, I have the honour to submit, for their consideration, whether in the event of Samyan's wife and the two creditors remaining to be paid, coming to a compromise, the former withdrawing the suit now instituted by her on behalf of her minor sons, the land held under attachment by the Revenue authorities may not be restored to her.

2. The land now in the hands of the Revenue authorities, after deducting the small portion sold for Rupees 400 for discharging the decree of the first claimant, is 7 V-4 M-98½ Gs., and the two-thirds of the whole, which Samyan's wife seeks to recover on behalf of her two minor sons, is 5 V. 2 M. 6 Gs. The remainder, therefore, which is all that is forfeited to Government by Samyan, is 2 V. 2 M. 92½ Gs., and this, if sold, would realize about Rupees 2,000, while the amount for which the two creditors whose claim remain to be paid, hold decrees, (they have obtained decrees since the date of Mr. Cadell's letter* of the 1st July 1872) is Rupees 3,567.

* In Board's Proceedings, 10th idem, No. 1,272.

3. My object in considering a compromise between the parties preferable to their being left to fight out their respective claims in the usual course of litigation, is firstly, that Government may not be involved in unnecessary litigation, since, having the land in their possession, they cannot avoid being made a party to every one of the suits severally instituted by these parties; and secondly, that the heirs and creditors of Samyan might share between themselves what there is, without these heavy expenses of prolonged litigation, which must necessarily considerably reduce the available assets.

4. The case of the creditors, as it stands, is rather hard; they sued and obtained, each a decree for the money for which they held a prior mortgage upon the landed property attached under the criminal law, and when the Court was proceeding to execute the decrees, it was pointed out on behalf of the Collector, that the decrees could not operate as against the property under his charge, inasmuch as he had not been a party to the suits. The Court accordingly withdrew, and told the creditors to bring fresh suits including the Collector as a defendant. They have thus to go over the same ground again with all the incidental expenses of a regular suit, and all this with assets which, after all, would only partially liquidate their claims.

5. The three including the one already adjusted, are all the claims yet brought forward, and these were brought forward at the very first. If, however, any more claims turn up, hereafter, (which however does not seem likely), the heirs of the absconding delinquent will alone be answerable, and after having made

over the land to them, the Government need not be involved in any future litigation.

SUBMITTED for the orders Government.

2. One Samyan alias Lakshminarasimhayan, who was accused of forgery having absconded to evade a warrant his landed property was, in December 1870, attached through the Collector by order of the Sub-Magistrate of Madhiarjunam under Section 184 of the Criminal Procedure Code. As he failed to appear within the time specified in the proclamation issued under Section 183, the property was declared to be at the disposal of Government. Samyan having subsequently surrendered himself, he was tried and convicted of forgery; but on appeal the conviction was quashed by the High Court. He then applied to the Session Court for the restoration of his property, but his application was rejected. The land is still under attachment.

Board's Proceedings, 4th Jan. 1872, No. 24.

3. In August 1871, one Sivaswami Rayer brought a suit for Rupees 973, principal and interest on a bond executed by Samyan in 1869, by which a portion of his land was hypothecated as security for the debt. As the land was in the Collector's possession, he was made a defendant in the case. The decree was in Plaintiff's favour. As the mesne profits that accrued after attachment were insufficient to satisfy this claim, the balance was realized by the sale of a small portion of the land.

Board's Proceedings, 10th July 1872, No. 1,272.

4. In December 1872, Samyan's wife filed a suit on behalf of her two minor sons to recover two-thirds of the land attached, as their share of the property which is alleged to be ancestral. The Collector having ascertained that the property is ancestral, and that the sons are minors, it was not considered expedient to dispute the claim. The Collector's answer was to the effect that the land was attached, and declared to be at the disposal of Government, under the provisions of the Criminal Procedure Code, and that he had no objection to the claim being adjudicated upon according to law. No decision has yet been passed.

Board's Proceedings, 1st April 1873, No. 498.

5. It appears from the letter above recorded that two other creditors, to whom portions of the land had been mortgaged prior to its attachment, have obtained decrees for Rupees 3,567. On the Court proceeding to execute these decrees, it was objected, on behalf of the Collector, that they could not operate against the land, as he was not a party to the suits. Execution was then stayed, and the decree-holders were advised to bring fresh suits against the Collector. After deducting the two-thirds claimed by Samyan's wife, what remains of the land under attachment is not likely to realize more than Rupees 2,000, a sum considerably less than that due to the two decree-holders. As their claims are no doubt valid, and as the claim of Samyan's wife cannot be disputed, the Collector, in order to avoid further litigation, suggests for consideration the advisability of restoring to Samyan's wife the land under attachment, in case she withdraws the suit and comes to terms with the two decree-holders. The Board approve of this proposal, and recommend that the Collector be authorized to act according to his suggestion.

Proceedings of the Madras Government, Revenue Department, 9th July 1873.

No. 70. ORDER THEREON, 9th July 1873, No. 706.

Miscellaneous.

IT is to be regretted that the late Collector originally stayed the sale of the land; but as matters now are the Government authorize the Board to instruct the Collector to make the proposed arrangement with Samiyar's wife.

2. Before doing so, he should, however, satisfy the Board that the suits brought by the alleged mortgagees were based on *bona fide* claims, and were decided on their merits. For all that now appears, their claims may have been purely fictitious, and the suits, instigated by Samiyar, have been allowed by him to go by default.

(True Extract.)

(Signed) R. A. DALYELL,
Acting Secretary to Government.

To the Board of Revenue.

Exd. F. R. Bantleman.

In Tanjore

599

Revenue Department

Proceedings of the Board of Revenue
dated 5th June 1873.

Read the following

No. 172.

From,

The Honorable D. Robertson,
Offg. Collector of Tanjore.

To,

J. Grose Esqr.,
Secretary to the
Board of Revenue,
Chepauk.

Sir,

With reference to the Board's Proceedings dated 1st April 1873, No. 498, I have the honor to submit for their consideration whether, in the event of Samiyyar's wife and the two creditors remaining to be paid coming to a compromise, the former withdrawing the suit now instituted by her on behalf of her minor sons, the land held under attachment by the Revenue authorities may not be restored to her.

2. The land now in the hands of the Revenue authorities after deducting the small portion sold for Rupees 400 for discharging the decree

decree of the first claimant, is 7-4-9½ and the two thirds of the whole which Samiyyar's wife seeks to recover on behalf of her two minor sons is 5-2-6. The remainder, therefore, which is all that is forfeited to Government by Samiyyar, is 2-2-9½ and this if sold, would realize about Rupees 2000, while the amount for which the two creditors whose claim remain to be paid hold decrees (they have obtained decrees since the date of Mr. Leadell's letter of the 18th July 1872) is Rs. 3,567.

3. My object in considering a compromise between the parties preferable to their being left to fight out their respective claims in the usual course of litigation, is, firstly, that Government may not be involved in unnecessary litigation; since, having the land in their possession, they cannot avoid being made a party to every one of the suits severally instituted by these parties, and secondly, that the heirs and creditors of Samiyyar might share between themselves what there

1400 rupees given see 140-1115-

+ In Board's Proceedings 10th idem No. 1272.

there is, without those heavy expenses of prolonged litigation, which must necessarily considerably reduce the available apeta.

4. The case of the creditors, as it stands is rather hard; they sued and obtained each a decree for the money for which they held a prior mortgage upon the landed property attached under the criminal law, and when the Court was proceeding to execute the decrees, it was pointed out on behalf of the Collector, that the decrees could not operate as against the property under his charge, in as much as he had not been a party to the suits. The Court accordingly withdrew, and told the creditors to bring fresh suits including the Collector as a defendant. They have thus to go over the same ground again with all the incidental expenses of a regular suit, and all this with apeta which, after all, would only partially liquidate their claims.

5. The three including the one already adjusted, are all the claims yet brought forward and these were

were brought forward, at the very first. If, however, any more claims turn up hereafter (which, however, does not seem likely) the heirs of the absconding delinquent will alone be answerable, and after having made over the land to them, the Government need not be involved in any future litigation.

Tanjore Collector's Office, Vallum Tanjore Talug, 6th May 1873. } I have &c. (sd) D. Arbuthnot Offg. Collector

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Submitted for the orders of Government.

Board's Proceedings 4th January 1872, No 24.

One Samyan alias Lakshmi-narasimhayan who was accused of forgery having absconded to evade a warrant his landed property was, in december 1870, attached through the Collector by order of the Sub Magistrate of Madhaiyanium under Section 184 of the Criminal Procedure Code. As he failed to appear within the time specified in the proclamation issued under Section 183 the property was declared to be at the disposal of Government.

Board's Proceedings 10th July 1872, No 1272.

Government. Samyan having subsequently surrendered himself he was tried and convicted of forgery but on appeal the conviction was quashed by the High Court. He then applied to the Sessions Court for the restoration of his property but his application was rejected. The land is still under attachment.

Board's Proceedings 1st April 1873, No 498.

In August 1871 one Sivaswami Royer brought a suit for Rs 973, principal and interest on a bond executed by Samyan in 1869 by which a portion of his land was hypothecated as security for the debt. As the land was in the Collector's possession he was made a defendant in the case. The decree was in Plaintiff's favor. As the mesne profits that accrued after attachment were insufficient to satisfy this claim the balance was realized by the sale of a small portion of the land.

In December 1872 Samyan's wife filed a suit on behalf of her two minor sons to recover two thirds of the land attached as their share of the property which is alleged to be ancestral. The Collector having ascertained that

Revenue Dept.

Memo for Orders on No. 1623.

Proceedings Board of Revenue.

Regarding restoration to wife of deceased Sannyasi of certain land belonging to him and attached for arrears of revenue

No. 5 June 1873.

In 1871 the landed property of one Sannyasi alias Lakshmiaracimhaiyan was by order of a Sub Magistrate in the Tanjore District attached under Section 183 of the old Criminal Procedure Code through the Collector of the District

2. Subsequently Sannyasi appeared but as he could not satisfy the Judicial authorities that he had not absconded his property remained attached

3. In 1871 a suit on a mortgage on the land was brought and won against Sannyasi and the Collector, and the latter paid the money out of the mesne profits and by the sale of some of the land.

Two

Revenue 1873 Sept.

No. 1623.

Proceedings of the Board of Revenue

Dated 5th June 1873

Read 9 ——

Submitting with reference to Your Lordship's letter No. 1623 of 5th June 1873 the petition of Lakshmiaracimhaiyan Sannyasi of deceased Sannyasi of certain land belonging to him attached by order of Revenue.

S.O. No. 706-9 Sept. 1873

Lib. 23 p. 645

4. Two other suits on mortgages were brought against Samyan and won; but the successful parties could not realize their money because they had not included the Collector as a defendant. They are now however coming to do so and the wife of Samyan is also suing for two thirds of the estate for his sons on the ground that it is ancestral property.

5. The Collector reports that the last sale must be unsuccessful and that if two thirds of the land are deducted the remainder if sold would not realize the money due on the other two mortgages.

6. He therefore proposes and the Board recommend the whole estate being made over to Samyan's wife on condition of her withdrawing her suit and satisfying all claims against the land.

13(a) 59/11

7. The Provincial Magistrate ordered the sale of the land in 1871 but the late Collector suspended the sale; though it does not appear that he had any authority to do so. It is submitted that this was an error on his part but matters being in the state they are this present suggestion seems the only feasible one provided, the suits brought by the alleged mortgagees were bona fide ones decided on their merits, and were not fictitious ones instigated by Samyan and allowed by him to go by default. The Collector gives no information on this point

Sec.

Yes 1873

Revenue Department.

No. 706

PROCEEDINGS of the MADRAS GOVERNMENT.

Under date the 9 July 1873.

Read the following Proceedings of the Board of Revenue.

Regarding restoration to wife of deceased Samyan of certain land belonging to him and attached for arrears of revenue

H.S. 5 June 1873.

It is to be regretted that the late Collector originally stayed the sale of the land, but as matters now are, the Government authorize the Board to instruct the Collector to make the proposed arrangement with Samyan's wife.

2. Before doing so he should however satisfy the Board that the suits brought by the alleged mortgagees were based on bona fide claims and were decided on their merits. For all that now appears, their claims may have been

G.O.

Land & decree &
Sams are attached for
arrears of Rent