M.R.O. 1—20,002—12-8-65.

(1) Number of Pages 20.

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(3) Initials of the Referencer

MADRAS RECORD OFFICE

GOVERNMENT OF MADRAS

Revenue DEPARTMENT

G.O. No.	1230	Press
B.P. No.		Mis.
Dated	28-9-1874.	196

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department,
28th September 1874.

No. 251. Read the following Proceedings of the Court of Wards, dated 18th September 1874, No. 2,683 :—

Read again the following papers :—

Government Order, 29th June 1874, No. 816.

Proceedings of the Court of Wards, dated 18th July 1874, Miscellaneous No. 4,853.

Read Proceedings of the Madras Government, Revenue Department, dated 29th June 1874, No. 816.

ABSTRACT.—Approving Collector's action in the matter of Gopalapur Estate in Godavery District.

COMMUNICATED to the Collector of the Godavery District who is requested to state when the suits to set aside the adoption are likely to be decided.

Proceedings of the Court of Wards, dated 25th August 1874, No. 2,379.

Read the following letters :—

From W. S. FOSTER, Esq., Ag. Collector of the Godavery District, to J. GROSE, Esq., Secretary to the Court of Wards, dated Cocanada, 10th August 1874, No. 281.

REFERRING to the Board's Proceedings of the 18th ultimo, Miscellaneous No. 4,853, I have the honor to report that the two suits referred to brought against the Zemindar of Gopalapur were struck off the file by the District Court. Copies of Judgments are enclosed.

2. The suits were brought seeking for declaratory decrees; but on the death of the proprietrix the status of the plaintiffs having been completely altered the Court considered that the suits in the present form are not maintainable, and therefore directed that they should abate. The Court have also removed the injunction issued to the Collector prohibiting the registry of the estate in the name of the adopted son of the deceased proprietrix. The District Court also held a Proceedings on the 20th July 1874 (copy of which is enclosed) to the effect that "it is for the Collector to determine on behalf of Government which of the claimants is to be registered as proprietrix and have possession of the estate, and that it will then be open to any party dissatisfied therewith to bring a suit to establish his title and obtain possession."

Vide page 242 of the District Gazette of this year.

I have, therefore, registered the estate in the name of the adopted son named Vuppalapaty Venkata Vizaya Gopalarazu Garu, with reference to the notice formerly issued by me.

3. I request that the Board will consider whether the estate may now be taken charge of by the Court of Wards, and that on this subject early instructions may be sent.

ENCLOSURES Nos. 1 and 2.—Copies of Judgment in Suits Nos. 2 and 13 of 1874.

ENCLOSURE No. 3.—Copy of Court's Proceedings, dated 20th July 1874.

From the same officer, dated Cocanada, 14th August 1874, No. 290.

In continuation of my letter of the 10th instant, No. 281, I have the honor to forward herewith copies of decrees passed by the District Court in the suits therein referred to.

Enclosures Nos. 1 and 2.—Copies of Decrees in Suits Nos. 2 and 13 of 1874.

The Collector is requested to endeavor to ascertain on what grounds the validity of the adoption is contested, and to report the result of his inquiries at an early date with his opinion as to the prospects of the opposition being successful.

2. In their order of the 29th June 1874, No. 816, the Government desired the Court to obtain legal advice; but they have not at present sufficient information to enable them to lay a case before the law-officers. The Collector will furnish all the information which is available.

Proceedings of the Court of Wards, dated 5th September 1874, No. 2,512.

Read again the following papers:—

G. O., dated 29th June 1874, No. 816.

Board's Proceedings, Miscellaneous No. 4,853.

Proceedings, dated 25th August 1874, No. 2,379.

Read also the following letter from W. S. FOSTER, Esq., Acting Collector of the Godavery District, to J. GROSE, Esq., Secretary to the Court of Wards, dated Cocanada, 26th August 1874, No. 308.

With reference to my letter of the 10th instant, No. 281, reporting that the registration of the Gopalapur Estate has been made because the suits then pending were disposed of, I have the honor to inform the Court that Uppalapaty Terupatiraz Gar, the brother's grandson of the deceased's father-in-law, has filed Suit No. 17 of 1874 afresh in the District Court of Rajahmundry for the recovery of the estate and other property left by the deceased.

2. I beg to enclose translation of the plaint. It will be observed that the plaintiff claims a sum of Rupees 28,000 which he says the 3rd, 4th, and 5th defendants have made away with. I have written to the Tahsildars to report if there is any foundation for this assertion.

3. The adopted son appears to be one of a different gotra, but his adoption, if it has been made, cannot be set aside. The adoption appears to have taken place in the Vizagapatam District. I am not sure I shall be able to prove that it has been made. Probably there were none present at the adoption, except those connected with the family of the minor and the late proprietrix; there does not appear to have been present any one of the family of her husband, and it may be difficult, though not impossible, to satisfy the Court as to the truth of the adoption, the burden of proving which lies upon us if the estate should be taken under management. From what the guardian has told me in person I believe that the adoption was made, and in the present state of the law the only essentials that constitute adoption are the giving and receiving of the adopted. There was a demand of Rupees 2,439-14-4 for the charges of the funeral rites of the deceased, and I have directed the amount to be paid from

the collections of the estate and the funds in hand. I have now received a requisition from the Sub-Collector for payment of Rupees 574-1-10 on account of expenses incurred for the journey of the minor, his guardian, and relations, costs of suits disposed of, *etc.*; a petition from the guardian for the payment of Rupees 344-7-, for the maintenance of the minor and his retinue while at Rajahmundry; and a petition from Saripally Gopalakristnamma, a Pleader of the District Court, claiming payment of Rupees 500 on account of his fee in the suits disposed of. I am of opinion that as little money as possible should be spent till the Government finally decide whether the estate should be taken under the management of the Court of Wards or not, and I have deferred paying the money pending instructions. The hearing of the suit has been fixed for the 18th November 1874. I request instructions by telegram. I take this opportunity of reporting that the guardian of the minor has since informed me that the deceased left some Inam and assessed land in ten villages in the Vizagapatam District. At my request, the Collector there has attached movable property to the value of Rupees 308-15-10 in the village of Palepalli belonging to the deceased. He says that the widow possessed a share in the house belonging to one Venkatapatiraz: I have not interfered as yet with the immovable property.

Enclosure No. 1.—Translation of Plaint.

The Board resolve to furnish the Government Pleader with copies of the above correspondence, and to request him to favor them with his opinion, at the earliest possible date, as to the advisability of taking the Gopalapur Estate under the management of the Court of Wards; a suit having recently been filed for the recovery of the estate and the validity of the adoption having been impugned.

2. Should the Collector's reply to the Board's Proceedings of the 25th ultimo, calling for further information as regards the grounds on which the validity of the adoption is contested, furnish particulars likely to throw a light on the subject, it will be communicated to the Government Pleader without delay; but from paragraph 3 of the Collector's last letter, it appears that but little evidence is forthcoming in regard to the circumstances under which the adoption was made.

Proceedings of the Court of Wards, dated 11th September 1874, No. 2,575.

Read the following letter from W. S. FOSTER, Esq., Acting Collector of the Godavery District, to J. GROSE, Esq., Secretary to the Court of Wards, dated Cocanada, 4th September 1874, No. 317.

In reply to the Court's Proceedings of the 25th ultimo, requesting me to ascertain on what grounds the validity of the adoption of the Gopalapur minor Zemindar is contested, and to report whether there are any prospects of the opposition being successful, I have the honor to inform you that the disputing party has filed Suit No. 17 of 1874 in the District Court of Rajahmundry as reported on in my letter of the 26th August 1874, No. 308.

2. It will be seen from the translation of the plaint, which accompanied my letter, No. 308, that the plaintiff contends—

1*st*.—That the proprietrix was not authorised to adopt;

2*nd*.—That she never made the adoption; and,

3*rd*.—That the adoption alleged to have been made is not valid in law.

In my opinion there is not much reason to expect that the opposition of the plaintiff will be successful.

4. Jogi Jagannathraz, the husband of the widow-proprietrix, died in 1860. A few days after his death the widow sent a petition to the Collector that her husband had given her authority to adopt a son. This document is in my office. There is, it seems, ample oral evidence to prove that the authority had been given. In Suit No. 216 of 1861, in the Munsif's Court at Rajahmundry, the father of the plaintiff in the suit under reference filed a statement in reply to the claim made by the widow, in which he says: "When Rajah Jogi Jagannathraz, the plaintiff's husband, and my uncle's son, died without a son, he told plaintiff to make my son her 'Karta,' (కర్త) heir." This is clearly an authority to appoint an heir, and it may amount to an authority to adopt a son. It is further reported that the plaintiff's father filed a Razeenamah in the suit relinquishing all his claim to the property of the widow and binding his heirs to the same effect. I have called for a copy of the document, and will send it on to the Court if it contains anything to the contrary. I am not sure whether he said he had no objection to the widow adopting a boy, though the guardian's Pleader says he said so. If the guardian's information turns out to be the truth the consent of the plaintiff's father alone is sufficient. The Madras High Court have ruled that, if the requirement of the consent of the sapindas be anything more than a moral precept, the assent of any one of the sapindas will suffice. There is, therefore, ample room to suppose that authority had been given to adopt.

Madras High Court Report, Vol. II., Part II., page 206.

5. As to the fact of the adoption of the minor having been made there is good evidence. The High Court have ruled that the giving and receiving a boy who is capable of being adopted is sufficient to constitute a valid adoption according to Hindu law. The performance of ceremonies is no longer essential to complete the adoption. The guardian says there is very good oral evidence to show that the boy was formally given and received. The guardian has produced a letter which bears post-mark, dated 16th January 1873, and which was addressed to the widow by the natural father of the minor. In it the writer said: "your adopted son, Vizaya Gopalarazu, is so and so," and asked her to come and celebrate the Upanayana of the boy. The natural mother of the minor filed a petition* in the District Court of Vizagapatam asking for a certificate of heirship for her husband's property in favor of her two sons. In the petition she says that the minor had been given away by her husband in adoption to the deceased widow. The certificate was granted to her two other sons. The deceased proprietrix sent in a petition to me in November 1873 asking me to register the estate in the name of the minor, and sent it to me with a power of attorney attested and sealed by the Head Gumastah of the Bhimanipatnam Taluq. She filed also a statement, it seems, in the first suit filed by plaintiff. There is, therefore, no doubt to my mind that the adoption will be sufficiently established.

Page 165, Part III., Vol. IV., H. C. R.

* Dated 4th November 1873.

6. Next comes the consideration whether the adoption that has been made is valid. It would appear that plaintiff pleads that the boy does not belong to the same gotra. From the authorities quoted in the margin it is clear that this position of the Hindu law is not imperative. The minor is the grandson of the widow's sister. The law allows the adoption of a sister's son by Sudras generally and by other castes in cases of emergency. The parties in this case belong to Kshattriya caste. The boy adopted is not the sister's son but sister's grandson, and *a fortiori* the objection is removed. Allowing that the adoption of the nearest kinsman of a sapinda has preference, the guardian tells me that there are no boys in any of the families of the deceased that can be adopted. This is a stronger reason which speaks against the contentions of the plaintiff. Under these circumstances, I think the adoption will stand.

Strange's Manual of Hindu Law, pages 21 and 22, paragraphs 83 and 87, 2nd Edition, page 549, paragraph 13, Hindu Law Books, by Whitley Stokes, Esq.; Strange's Hindu Law, Vol. I., page 85.

7. The plaintiff has applied to the Court to appoint a receiver under Section 92 of the Civil Procedure Code. The hearing was fixed for the 2nd instant; I have directed the Vakeel to apply for a month's extension, or to represent to the Court that they could pass any orders they liked. I have heard since that the Courts have refused to appoint a receiver.

8. There are several matters to be soon attended to in the interests of the estate, and I request that early orders may be passed on the subject as to whether the estate would be taken under management or not.

9. The guardian offers to furnish security for the payment of costs in the suit if the Court should so require.

COMMUNICATED to the Government Pleader for early report in continuation of Court's Proceedings, dated 5th instant.

Read also the following papers :—

From W. M. SCHARLIEB, Esq., Acting Government Pleader, to J. GROSE, Esq., Secretary to the Board of Revenue, dated Ootacamund, 11th September 1874.

I HAVE the honor to acknowledge the Proceedings of the Board of Revenue, dated 5th September 1874, and to state, in reply, that I am not in a position, with the information before me, to advise that the Court of Wards assume the management of the Gopalapur Estate, in the Godavery District.

2. In his letter, dated 22nd May 1874, No. 149, the Acting Collector reported the death of Janikaya Garu, and styled her the proprietrix of the Gopalapur Estate, and added that she left an adopted son named Venkata Vijaya Gopalraz, a minor of eleven years of age, whose adoption was disputed by two persons, one being stated to be a brother's grandson of the deceased's husband's father, and the other the widow of the deceased's husband's brother. If the adoption cannot hold good, the former of these two disputants, viz., the brother's grandson of the deceased's husband's father, a man named Terupatiraz, is *prima facie* the next heir to the estate. But was the woman whose death was reported by the Collector in his letter of the 22nd May last the proprietrix of the estate as *widow* of the last holder, or as the *daughter* of the last holder, that is to say, did the estate come to her from her husband or from her father? If the estate came to her from her husband, she can adopt as regards succession to the estate; but if the estate came to her from her father, any adoption by her would be in vain as far as succession to the estate is concerned. The doubt in my mind, irrespective of the absence of all information on the point, has been raised

the plaint which has now been filed by Terupatiraz, in Original Suit No. 17 of 1874; for in it he states that Jogi Jagannathraz, whose heyayu, was the husband of the deceased Janikaya Garu, was related to him as "*young paternal uncle.*" If deceased's husband was of the younger branch, the inference is that the estate came to the woman from her father, or it may be that it was a self-acquisition in the younger branch of the husband's family, for ordinarily an ancestral estate is in the elder branch.

3. From the imperfect information afforded by Terupatiraz in his plaint, I gather the following to be the pedigree of the family:—

Common Ancestor.

Name not given.

Name not given.			Name not given.			
Kondraz Gar.	Divided cousins.	Jogi Jagannathraz.	Married.	Janikaya Garu. Died May 1874.		
		Said to have died 1860.		Adopted.		
Terupatiraz.	Plaintiff.		Minor.	Venkata Vijaya Gopalraz.	Said to be sister's grandson of adoptive mother.	

If Jogi Jagannathraz was the holder of the Gopalapur Estate before Janikaya, an adoption made by her would be to her husband, and the adoption would be good for the purposes of succession to the estate. Presuming this to be the state of the case, the validity of the adoption must next be considered. A widow is competent to adopt if her husband gave her authority to adopt, or if she has received the consent of her husband's sapindas. I fancy that the parties are not Brahmins; if so, *gotram* would not be of much consequence provided that the adopted is of the same caste as the family into which he is adopted. As stated by Mr. Foster, the essentials in an adoption are the giving and receiving of the boy; but there must be more than this when the adoption is made by a widow; there must either be the authority of the husband, or, in the absence of such authority, the consent of the husband's sapindas. I see nothing stated on behalf of the adoption as to the widow having adopted by virtue of any authority from her husband; we must, therefore, take it that we have only to deal with the assent of the sapindas. There must be some such assent. I have not my authorities with me here, but I believe that this was laid down by the Privy Council in the Ramnad case; and that, in his judgment, in the recent case of the Chinna Kimedy Zemindar, His Lordship, Mr. Justice Holloway, laid it down that the assent of a sapinda, no matter how remote, was sufficient to empower the widow to adopt. There must thus be the assent of some one sapinda. The Collector does not say that there has been any such assent: on the contrary, Terupatiraz distinctly alleges in his plaint that Janikaya never received any assent to the adoption made by her. When, in addition to this, Mr. Foster states in his letter of the 26th August last, paragraph 3: "I am not sure I shall be able to prove that it (adoption) has been made;" it will be apparent that I must feel considerable hesitation in advising any assumption of management of the estate by the Court of Wards.

4. I find from the Proceedings of the District Judge of Godavery, dated Rajahmundry, 20th July 1874, that he threw out that it was for the Collector to determine, on behalf of Government, which of the claimants was to be registered as proprietor and to hold possession of the estate, when it will be open to any dissatisfied party to bring a suit to establish his rights. This the Collector has now done under the authority of these Proceedings, as reported by him in his letter of the

Proceedings of the Madras Government, Revenue Department,
28th September 1874.

10th August last. Under these circumstances, I would advise that matters be allowed to stand as at present. The alleged adopted son being now registered as the *prima facie* holder of the estate, it is for the Collector to see that a proper and trustworthy agent is in charge, and that due strict economy is observed, and, in the meantime to put in as answer to Terupatiraz's suit, that the Collector has, with reference to the Proceedings of the District Court, dated 20th July, registered the estate in the name of Venkata Vijaya Gopalraz as the adopted son of the late holder, but that he is ready and willing to obey the order of a Court of competent jurisdiction, as to who is the rightful claimant to the estate in question.

From W. M. SCHARLIEB, Esq., Acting Government Pleader, to C. A. GALTON, Esq., Acting Sub-Secretary to the Court of Wards, dated Ootacamund, 14th September 1874.

I HASTEN to acknowledge the receipt (yesterday) of the Proceedings of the Court of Wards, dated 11th September 1874, on the subject of the proposed assumption by the Court of the management of the Gopalapur Estate, in the Godavery District. In my letter of the same date, on this subject, to the address of the Secretary to the Board of Revenue, I reported that, with the information then before me, I was not in a position to advise any such assumption of management. The information now furnished by Mr. Foster is of a totally different character, and it may not be unadvisable to take charge of the estate.

2. I now find that the Collector has every hope of establishing both the *factum* of the adoption and its validity in law. In paragraph 5 of his present letter, he says that there is good evidence forthcoming to prove that the adoption did take place; and I think that the circumstance of the minor's natural mother applying for and obtaining what is known as a certificate of heirship in the name of her two other sons to the exclusion of the adopted is strongly corroborative of the fact that Venkata Vijaya Gopalraz was adopted by the late proprietrix. In paragraph 4 of his letter, Mr. Foster reports that there is ample oral evidence to prove that the husband's authority had been given. I am not so sanguine as to construe the circumstance of the claimant Terupatiraz's father asking the deceased Jogi Jagannathraz to make his son his *heir* as an assent on his part to the *adoption* of any body else; nor do I think that his filing a Razeenamah relinquishing all his claims to the property held by the widow would be sufficient absolutely to bind his son and debar him from raising his own claims if he had been of age at the time and had not joined in the Razeenamah; but if it is true that Terupatiraz's father did say that he had no objection to the widow adopting a boy, that would amount to his assent to an adoption, and it would be such an assent by a sapinda as would satisfy the requirements of the law.

3. I have already said that the circumstance of the boy being of another *gotram* would not be of much consequence if the parties were not Brahmins, provided he was of the same caste. I now find that the parties belong to the second or military caste, so that the question of *gotram* may be dismissed. The canon of the law of adoption so strictly applicable in the case of Brahmins, and which among Brahmins precludes the adoption of a sister's son, is not applicable to this family; and as it affects the adoption in question, the general canon of the law of, namely, that a boy must not be adopted whose mother the adoptive father could not have married, has no application whatever; for it is not the sister's son of the deceased Jogi Jagannathraz that has been adopted, but the sister's grandson of his widow. So, under all circumstances, considering the law as well as the facts of the case, more especially as we find that at the end of paragraph 5 of his letter, Mr. Foster says that there is no doubt in his mind that the adoption will be sufficiently established, there is not that difficulty in the case which presented itself to me when I addressed my letter of the 11th to the Secretary to the Board of Revenue.

4. But taking even this view of the case, are the several matters, which Mr. Foster at paragraph 8 of his letter require early attention in the interests of the estate, of sufficient importance to justify the assumption of the estate by the Court of Wards, in view of a suit which is to be heard and determined on the 18th November next, as reported in paragraph 6 of Mr. Foster's former letter? Would not the Collector or the Court of Wards be in a better position if matters were allowed to stand as they are at present; that is to say, the estate be allowed to stand as

now registered in the name of the minor as *prima facie* heir, and the Collector continue to be in the position to plead that he has simply acted in obedience to the orders of the District Court, dated 20th July last in registering the estate, but is ready and willing to obey the order of a Court of competent jurisdiction as to who may be the rightful claimant? Could not the estate be as well conserved through the present guardian of the minor, who, I presume, is completely amenable to the influence and control of the Collector, as if the estate were directly under the management of the Court of Wards? These are questions that must be considered and determined by the Court themselves. If I followed the bent of my own inclinations, I would say better let matters stand as at present; but if nonassumption by the Court of Wards of management of the estate at the present moment is likely to be detrimental to its interests, I think I could, looking at the present report of the Collector, safely advise the Court of Wards to take charge of the estate at once, especially as I infer from paragraph 9 of the Collector's letter, that the guardian offers to furnish security for the payment of the costs of the suit, this security being, of course, available from other sources than the property in dispute. In this report, I have gone on the assumption that Jogi Jagannathraz was the holder of the Gopalapur Estate before his widow Janikaya.

From W. S. FOSTER, Esq., Acting Collector of the Godavery District, to J. GROSE, Esq., Secretary to the Court of Wards, dated Cocanada, 10th September 1874, No. 326.

In continuation of my letter of the 4th September 1874, No. 317, I have the honor to forward herewith copy and translation of the Razeenamah, in Suit No. 216 of 1861, in the Rajahmundry District Munsif's Court, filed by the father of the plaintiff, in Suit No. 17 of 1874, on the District Court's file.

ENCLOSURE No. 2.

Suit No. 216 *of* 1861.

To the District Munsif's Court of Rajahmundry.

RAZINAMAH presented by both the plaintiff Sri Rajah Vuppalapaty Janikayya Gar, an inhabitant of Dwarapudi, and the defendant Vuppalapaty Kondraz Gar, an inhabitant of the same village.

The defendant represents as follows:—

As regards the suit preferred by plaintiff for the recovery of Rs. 474-5-0, being the consolidated amount of the principal and interest on account of a Sanad (a bond) executed by me to the plaintiff, I admit the suit and satisfy the plaintiff as follows:—

Of the amount sued for I obtained a remission of Rs. 214-5-0 from the plaintiff. After deducting this sum there remains a balance of Rs. 260. In part payment of this sum, Rs. 240 have now been paid in cash before the Court. I settled with the plaintiff to pay her the remainder, Rs. 20, within one month from this date, and to obtain a receipt from her to that effect, and that the costs of this party should be borne by him. I have thus satisfied the plaintiff. I stated in the answer that, when Rajah Vuppalapaty Jagannathraz Gar, the late husband of the plaintiff, was alive, he expressed his desire to make my son as heir and then died; that plaintiff had an intention to make over the estate to another person without conforming to the above advice, and that plaintiff had preferred this suit from revenge, because I have been trying to institute a suit after obtaining an endorsement from the Collector on my presenting a petition to him against the plaintiff on the subject. The statement thus made by me is attributed to the misunderstanding between me and the plaintiff. But it is not at all true: when the plaintiff's husband was alive, he did not ask me to give him my minor son Terupatiraz for admitting him as his heir, nor did I promise the gift of my son, nor did the said Rajah Jogi Jagannathraz Gar advise his widow (plaintiff) to admit my son as her heir. After the death of the plaintiff's husband, even the plaintiff did not make any request. A long time back Sri Rajah Ramaraz Gar, the plaintiff's father-in-law, and my father Terupatiraz Gar divided their property, *viz.*, lands, *etc.*, each party holding himself responsible for

his debts and profits, and used to have their rice cooked in separate utensils. There are no disputes whatever between me and the plaintiff. I as well as my heirs will never set up any claim whatever against the plaintiff or the person who might become heir on her selection to succeed to her movable and immovable property.

The plaintiff states he has agreed to all the conditions stated above by the defendant.

We both parties pray that the conditions of this Razeenamah may be given in force.

(Signed) KONDRAZ,
Defendant.

24th September 1861.

(„) KOTA ISWARAPPA,
Plaintiff's Pleader.

Filed 24th September 1861.

(Signed) M. SUBBAROYDU,
District Munsif.

(True Translation.)

(Signed) W. S. FOSTER,
Acting Collector.

(True Copy.)

(Signed) C. A. GALTON,
Acting Sub-Secretary.

THE correspondence recorded above will be submitted for the orders of Government with reference to G. O., 20th June 1874, No. 816.

2. In his letter recorded in the Court's Proceedings of the 25th August, the Collector reports that the two suits to set aside the adoption have been struck off the file by the District Court, and that he has registered the Gopalapur Estate in the name of the adopted son.

In his further letter recorded in the Court's Proceedings of the 5th September 1874, he reports that Uppalapaty Terupatiraz Gar has filed a fresh suit for the recovery of the estate, the hearing of which has been fixed for the 18th November.

3. In his first letter, the Government Pleader states that he feels considerable hesitation in advising any assumption of management by the Court of Wards, and recommends that matters be allowed to remain *in statu quo*. But in his second letter, written after the receipt of the further information communicated with the Court's Proceedings of 11th September, the Government Pleader reports that it may not be unadvisable to take charge of the estate if nonassumption is likely to prove detrimental to the interests of the estate.

4. The Collector appears to be sanguine of success, and with regard to the doubt expressed by Mr. Scharlieb as to the manner in which the estate devolved upon the deceased widow as bearing upon the question of her power to adopt, the Court observed that it was expressly stated in the plaint filed by Terupatiraz in the first suit that Jogi Jagannathraz, the deceased's husband, was possessed of the landed property which forms the subject of the present suit.

5. Looking at all the circumstances of the case, the Court are of opinion that they may safely recommend the Government to authorise the assumption of management on condition that the guardian furnishes security for the payment of costs, should the suit prove successful, which appears he is ready to do. The minor has been registered as proprietor, and is to all appearance the rightful proprietor; now that his title is in dispute the protection of the Court is of the utmost importance to him, and would probably enable him to offer a much better defence than he otherwise could do. The guardian having undertaken to furnish security for the costs, the risk is reduced to a minimum.

Proceedings of the Madras Government, Revenue Department,
28th September 1874.

The Court request that the decision of the Government may be communicated to the Collector direct by telegram.

To the Secretary to Government, Revenue Department, with copies of Court's Proceedings, dated 5th and 11th September 1874, and of letters from Government Pleader, dated 11th and 14th September, and from Collector, dated 19th September 1874, with copy of its enclosure.

No. 252. ORDER THEREON, 28th September 1874, No. 1,230.

Miscellaneous.

HIS EXCELLENCY the Governor in Council authorises the Collector to assume management of the estate on behalf of the Court of Wards, with the proviso as to security suggested in paragraph 5 of the foregoing Proceedings.

2. Telegraphic instructions have been sent.

(True Extract.)

(Signed) C. G. MASTER,
Acting Secretary to Government.

To the Court of Wards.

Esd. J. B. Bantleman.

b
1230

Govt. of {1874} Madras.

REVENUE.

To

The BOARD OF REVENUE.

Read September 28th.

Encl.

G. O., 28th September 1874, No. 1,230.

SEPTEMBER.

Nos. 251-252.

Gopalapur Estate, Godavery District.—Authorising the Collector to assume management of the on behalf of the Court of Wards, with the proviso that the guardian be required to furnish security for payment of costs of the suit filed by another party for the recovery of the estate, should it prove successful.

No. 2,512.

PROCEEDINGS OF THE COURT OF WARDS dated 5th September 1874.

Read again the following papers:—

G. O., dated 29th June 1874, No. 816.

Board's Proceedings, Miscellaneous No. 4,853.

Proceedings, dated 25th August 1874, No. 2,379.

Read also the following letter from W. S. FOSTER, Esq., Acting Collector of the Godavery District, to J. GROSE, Esq., Secretary to the Court of Wards, dated Cocanada, 26th August 1874, No. 308.

WITH reference to my letter of the 10th instant, No. 281, reporting that the registration of the Gopalapur Estate has been made, because the suits then pending were disposed of, I have the honor to inform the Court, that Uppalapaty Tirupatiraz Gar, the brother's grandson of the deceased's father-in-law, has filed Suit No. 17 of 1874 afresh in the District Court of Rajahmundry for the recovery of the estate and other property left by the deceased.

2. I beg to enclose translation of the plaint. It will be observed that the plaintiff claims a sum of Rupees 28,000 which he says the 3rd, 4th and 5th defendants have made away with. I have written to the Tahsildars to report if there is any foundation for this assertion.

3. The adopted son appears to be one of a different Gotra, but his adoption, if it has been made, cannot be set aside. The adoption appears to have taken place in the Vizagapatam District. I am not sure I shall be able to prove that it has been made. Probably there were none present at the adoption, except those connected with the family of the Minor and the late Proprietrix: there does not appear to have been present any one of the family of her husband, and it may be difficult, though not impossible, to satisfy the Court as to the truth of the adoption, the burden of proving which lies upon us, if the estate should be taken under management. From what the guardian has told me in person, I believe that the adoption was made, and in the present state of the law, the only essentials that constitute adoption are the giving and receiving of the adopted. There was a demand of Rupees 2,439-14-4 for the charges of the funeral rites of the deceased, and I have directed the amount to be paid from the collections of the estate and the funds in hand. I have now received a requisition from the Sub-Collector for payment of Rupees 574-1-10 on account of expenses incurred for the journey of the Minor, his guardian and relations, costs of suits disposed of, etc.; a petition from the guardian for the payment of Rupees 344-7-2 for the maintenance of the Minor and his retinue while at Rajahmundry, and a petition from Saripally Gopalakristnamma, a pleader of the District Court, claiming payment of Rupees 500 on account of his fee in the suits disposed of. I am of opinion that as little money as possible should be spent, till the Government finally decide whether the estate should be taken under the management of the Court of Wards or not, and I have deferred paying the money pending instructions. The hearing of the suit has been fixed for the 18th November 1874. I request instructions by telegram. I take this opportunity of reporting that the guardian of the Minor has since informed me that the deceased left some Inam and assessed land in ten villages in the Vizagapatam District. At my request, the Collector there has attached immoveable property to the value of Rupees 308-15-10 in the village of Palepa[illegible] to the deceased. He says that the widow possessed a share in the house belonging to the Venkatapatiraz. I have not interfered as yet with the immoveable property.

ENCLOSURE No. 1.—Translation of Plaint.

THE Board resolve to furnish the Government Pleader with copies of the above correspondence, and to request him to favor them with his opinion at the earliest possible date as to the advisability of taking the Gopalapur Estate under the management of the Court of Wards, a suit having recently been filed for the recovery of the estate, and the validity of the adoption having been impugned.

Read also letter from the Secretary

2. Should the Collector's reply to the Board's Proceedings of the 25th ultimo, calling for further information as regards the grounds on which the validity of the adoption is contested, furnish particulars likely to throw a light on the subject, it will be communicated to the Government Pleader without delay, but from paragraph 3 of the Collector's last letter, it appears that but little evidence is forthcoming in regard to the circumstances under which the adoption was made.

(A true Copy and Extract.)

(Signed) C. A. GALTON,
Acting Sub-Secretary.

To the Government Pleader, with translation of plaint,
copy of G. O., dated 29th June 1874, No. 816, and Miscellaneous
Proceedings, dated 18th July 1874, No. 4,853, also copy
of Board's Proceedings, dated 25th August 1874, No. 2,379,
with five original enclosures.

Copy to the Acting Collector of the Godavery District.

Ed. W. H. French.

Rs. 2264/74.

1874.

Court of Wards,

MADRAS.

PROCEEDINGS, 5TH SEPTEMBER 1874, No. 2,512

Encl.

SEPTEMBER.

No. 2,512.

Gopalapur Estate—in Godavery District.—Opinion of Advocate-General requested as to advisability of taking—under Court's management.

Received on 7th September 1874.

Revenue Department.

Court of Wards.

PROCEEDINGS OF THE BOARD OF REVENUE,

Dated 18th September 1874.

Read again the following papers—

Government Order, 29th June 1874 No. 816.

Court's Miscellaneous Proceedings dated 18th July 1874 No. 4853.

Proceedings of Court of Wards 25th August 1874 No. 2379.

——do——do—— 5th September 1874 No. 2512.

——do——do—— 11th September 1874.

Read also letter from the Acting Government Pleader, dated 11th September 1874 No.— reporting opinion that, as at present advised, the Court of Wards had better not assume management of Gopaulpur Estate, Godavery District.

Read also letter from the same writer dated 14th idem No.— reporting that, upon the information now furnished by the Collector in respect to the adoption of the boy, it would not be unsafe to assume management of the Gopaulapur Estate.

Read also letter from the Collector of

of the Godavery District dated 10th September 1874 No 326, forwarding in continuation of his office letter of the 4th Idem No 317 Copy of translation of Rajamundry Munsiff's Suit No 216 of 1861 on the file of the Rajamundry Munsiff's Court.

The correspondence recorded above will be submitted for the orders of Government with reference to Government Order 29th June 1874 No 816.

2. In his letter recorded in the Courts' Proceedings of the 23rd August, the Collector reports that the two Suits to set aside the adoption have been struck off the file by the District Court and that he has registered the Gopaulapur Estate in the name of the adopted son. In his further letter recorded in the Courts' Proceedings of the 5th September 1874 he reports that Appalapaty Sriupatiraz Garu has filed a fresh suit for the recovery of the Estate, the hearing of which has been

been fixed for the 18th November.

3. In his first letter the Government Pleader states that he feels considerable hesitation in advising any assumption of management by the Court of Wards and recommends that matters be allowed to remain in Statu quo. But in his second letter, written after the receipt of the further information communicated with the Courts' Proceedings of 11th September, the Government Pleader reports that it may not be inadvisable to take charge of the Estate, if non-assumption is likely to prove detrimental to the interests of the Estate.

4. The Collector appears to be sanguine of success and with regard to the doubt expressed by Mr Scharlieb as to the manner in which the Estate devolved upon the deceased minor as bearing upon the question of her power to adopt, the Court observes that it is expressly stated in the Plaint filed

filed by Tirupataraz in the first Suit that Jogi Jagannatharaz the deceased's husband was possessed of the landed property which forms the subject of the present Suit.

5. Looking at all the circumstances of the case the Court are of opinion that they may safely recommend the Government to authorize the assumption of Management on condition that the guardian furnishes security for the payment of costs, should the Suit prove successful, which it appears he is ready to do. The minor has been registered as proprietor and is to all appearances the rightful proprietor, now that his title is in dispute the protection of the Court is of the utmost importance to him, and would probably enable him to offer a much better defence than

than he otherwise could do. The guardian having undertaken to furnish security for the costs, the risk is reduced to a minimum.

6. The Court request that the decision of the Government may be communicated to the Collector direct by Telegram.

(True Extract)

G. D. Colton
Ag. Sub-Secretary

To
The Secretary to Government,
Revenue Department,
with Copies of Court's Proceedings dated 5th and 11th September 1874 and of letters from Government to Head dated 11th and 14th September and from Collector dated 10th September 1874 with Copy of its Enclosure.

E. A. Murphy
Copyist to the Court

No 3264.

Revenue 1874 Department.

Proceedings of the Court of Wards.

Dated 18th
Despd 18 } September
Recd 19th } 1874.

en 6 Encloses

No 1230 - 28 September 1874

Application for Estate in Godavery District — Papers on subject of assumption of management of —— by Court of Wards — submitted for orders of Government, with recommendation in favour there of on condition that guardian pays suitable stakes to pay certain costs to refer

Read No 1230 of 28th Sept 1874 from Board of Revenue recommending assumption of the Estate of deceased Rajah with the provisions contained in Section 8 Act IX of 1874 as therein modified in Section 5 of Act XXXVII of 1858 and proceedings of Government thereon

I would certainly assume charge

Rajah Seetharamaraju 1874

27/9