976/4

M.R.O. 1—20,002—12-3-65.

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MADRAS RECORD OFFICE

GOVERNMENT OF MADRAS

Revenue DEPARTMENT

G.O. No. ~~B.P. No.~~ 976 Press ~~Mis.~~

Dated 3-8-1874 ~~196~~ .

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department, 3rd August 1874.

No. 32. Read the following letter from Lieutenant-Colonel C. S. HEARN, Inspector-General of Police, to C. G. MASTER, Esq., Acting Secretary to Government, Revenue Department, Ootacamund, dated Madras, 30th July 1874, No. 2,969 :—

I HAVE the honor to submit, for the consideration of Government, the accompanying papers regarding the position of Kuttubadies (Village Police), and particularly of *Jungi* Kuttubadies, in the Cuddapah District.

2. The paper marked A is an extract from a Report from the Inspector of Pullampet Division, bringing to notice that certain Jungi Kuttubadies have been convicted in a case of Torch-light Dacoity. Upon this the Superintendent of Police addressed the Collector with a view to the Inam lands of these men being forfeited. Mr. Horsley, the Collector, in his letter, No. 46, dated 16th July 1873, thus replied :—

" The Board of Revenue having declared that assessment and not land is the emolument of office in villages, I very much regret that I cannot interfere with the Inam lands of the Kuttubadies referred to in your letter. The order of the Board is contrary to usage, and upsets the authority of Collectors and Magistrates over village officials." The order of the Board referred to is attached, marked B.

3. Papers C, D, and E contain a correspondence regarding Jungi Kuttubadies in Muddenpilly Taluq. The Assistant Superintendent of Police reports to the Joint Magistrate that some of these Kuttubadies have resigned and ceased to do duty. He requests that others may be appointed in their stead. The Joint Magistrate replies : " The Government have recently issued an order prohibiting the Revenue authorities from exercising any control over Jungi Kuttubadies. I cannot, therefore, recognize them as Government servants, nor can I appoint any new ones in the place of those who have resigned". On this, the District Magistrate was applied to on the subject, and he replies : " I have no control whatever over Jungi Kuttubadies, as I have no power to punish them by interfering in any way with their emoluments, whether in land or assessment".

4. Throughout the large taluq of Pullampet and in a considerable portion of the Voilpad and Muddenpilly Taluqs, Jungi Kuttubadies alone form the Village Police. Therefore, the effect of the present state of affairs is this that the Village Police (in these portions at least) of Cuddapah are free from all control or liability to service, while they can still take advantage of their position to abuse it, as in the dacoity case.

5. I believe, I am right in saying that a very few years ago it was customary to punish offending village servants in Cuddapah by the forfeiture of their Inam lands. If this power no longer exists, a state of anarchy must prevail amongst this important body which, I submit, should be remedied. The endless division and sub-division of Inams amongst the members of families has long been a source of great confusion in Cuddapah, and the introduction of a stipendiary Village Police (as in Kurnool) would be preferable to the present paralysis, though the village Reddies (Munsifs) would be better untouched.

No. 33. ORDER THEREON, 3rd August 1874, No. 976.

Miscellaneous.

FORWARDED for the observations of the Board of Revenue.

(True Extract.)

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

To the Board of Revenue.

Exd. F. R. Bantleman.

Govt. of (1874) Madras.

REVENUE.

To

The Board of Revenue

Dated

Recd.

[illegible] No. 976.

AUGUST

[illegible]

No. 2969 Chief Office of the Inspector General of Police,
Madras, 30th July 1874.

176/2

From

The Inspector General of Police,

To

The Ag. Secretary to Government,
Revenue Department
Ootacamund.

Sir,

Enclosures. 5.

I have the honor to submit for the consideration of Government the accompanying papers regarding the position of Kattubadies (Village Police) and particularly of Jangi Kattubadies in the Cuddapah District.

2. The paper marked **A** is an extract from a report from the Inspector of Pullampet Division bringing to notice that certain Jangi Kattubadies have been convicted in a case of Torchlight Dacoity. Upon this the Superintendent of Police addressed the Collector with a

a view to the inam lands of these men being forfeited - Mr Horsley the Collector in his letter No. 46 dated 16 July 1873 thus replied.

"The Board of Revenue having declared that assessment and not land is the emolument of Office in Villages I very much regret that I cannot interfere with the Inam lands of the Kattubadies referred to in your letter. The order of the Board is contrary to usage and upsets the authority of Collectors and Magistrates over Village Officials" The order of the Board referred to is attached marked **B**.

3 Papers **C. D** and **E**. contain a correspondence regarding Jungi Kattubadies in Muddenpilly Taluq. The Assistant Superintendent of Police reports to the Joint Magistrate that some of these Kattubadies have resigned and ceased to do duty. He requests that others may be appointed in their stead. The Joint Magistrate replies "The Government have recently issued an order prohibiting the Revenue authorities from exercising any control over Jungi Kattubadies. I cannot therefore recognize them as Government servants, nor can I appoint any new ones in the place of those who have resigned". On this the District Magistrate was applied to on the subject and he replies "I have no control whatever over Jungi Kattubadies as I have no power to punish them by interfering in any way with their emoluments, whether in land or assessment."

4. Throughout the large Taluq of Pullampet and in a considerable portion of the Voilpâd and Muddenpully Taluqs Jungi Kattubadies alone form the Village Police. Therefore the effect of the present state of affairs is this that the Village Police (in these portions at least) of Cuddapah are free from all control or liability to service, while they can

still

still take advantage of their position to abuse it, as in the Dacoity case.

5. I believe I am right in saying that a very few years ago it was customary to punish offending Village servants in Cuddapah by the forfeiture of their inam lands. If this power no longer exists a state of anarchy must prevail amongst this important body which I submit should be remedied. The excess division and subdivision of inams amongst the members of families has long been a source of great confusion in Cuddapah, and the introduction of a stipendiary Village Police (as in Kurnool) would be preferable to the present paralysis, though the Village Reddies (Moonsiffs) would be better untouched.

I have the honor to be
Sir,
Your most obedt. Servant,

C. Mears

Inspector General of Police.

No. 2578.

Revenue 1874 Dept.

From

The Inspector General
of Police,

To

The Ag. Secy. to Govt.
Rev. Deptt.
Ootac'd

Dated 30 July 1874
Recd. 3 August 74
No. 2969 Enc. 5.

Submits for the Consid'n
of Govt. certain papers
regarding the position of
Kattubadies in the
Cuddapah District.

Vide an Order

No. 976.
Forwarded for the observa-
tions of the Board of Revenue
3 Augt./74

To Bd. Rev. with F.S. Case
7/11/8/74

32–33.

Proceedings of the Madras Government, Revenue Department, *3rd August* 1874.

No. 34. Read the following petition from MADANAMMA DEVI, guardian and senior grandmother of CHANDRA SEKARA CHANNARAYA CHAUTER, an infant Pattamdar, residing at Mudbidri, Mangalore Taluq, South Canara, to the Chief Secretary to Government, Fort St. George, Madras, dated 6th July 1874 :—

RESPECTFULLY SHEWETH,

That your petitioner most respectfully requests that your honor will be pleased to transmit the accompanying memorial, in triplicate, with enclosures, to the Most Noble the Secretary of State for India in Council, with such recommendations as the Right Honorable the Governor in Council may deem proper on her behalf.

For which act of kindness, your honor's petitioner, as in duty bound, shall ever pray.

ENCLOSURE No. 1.

To the Right Honorable His Grace the DUKE of ARGYLL, K.G., M.P.,
Her Majesty's Secretary of State for India.

The humble petition of MADANAMMA DEVI, as guardian and senior grandmother of CHANDRA SEKARA CHANNARAYA CHAUTER, an infant Pattamdar or holder of a dignity, residing in Mudbidry, in the taluq of Mangalore, in the district of South Canara.

RESPECTFULLY SHEWETH,

That, aggrieved by the order of the local Government, contained in their order, dated 14th November 1867, No. 2,695, your petitioner begs to appeal on the following grounds :—

1st.—That, notwithstanding Chandra Sekara Channaraya Chauter has been lawfully adopted and installed by the Magany community as the sole legal heir and successor of Chandra Sekara Chikharaya Chauter, the last Pattamdar, he has been deprived of the Government allowance due to the deceased Chauter's family.

2nd.—That the allowance now discontinued was granted, and has been continued, in consideration of the resumption of domains, consisting of twelve Maganies or sub-divisions of a Taluq in South Canara, once ruled over by the house of your petitioner.

3rd.—That the Chief Court have declared that your petitioner has a *primâ facie* right to hold the property attached to the dignity of Chauter, observing that, in the present case, it is clear that the grandson of the deceased is *de facto* his successor by the virtue of his nomination to the *Put* by a portion of the Magany community, which, it is admitted, possesses the right to elect.

4th.—That Unhamma, to whom the local Government have sanctioned the payment of the allowance, was not, from her own statements before the local authorities, justly entitled to it.

2. That on the death of the last Pattam-holder, when inquiries were being instituted by the taluq authorities, the said Unhamma put in a petition claiming to be heir by adoption, and on a report to the Huzur, Mr. Whiteside, the then Collector, issued orders to hold the allowance in deposit until the parties should obtain, through the Regular Courts, a certificate for the deceased Chauter's property. But before such a certificate was issued, his successor, Mr. Thomas, supported Unhamma's claim for the allowance and got the same paid to her.

3. His recommendations in favor of Unhamma were based on the following grounds :—

1st.—That, according to a decision of a punchayet, dated 11th March 1835, Unhamma was declared to be the successor of the deceased Chauter.

2nd.—That the deceased Chauter was an alien to the house of the Chauters into which he was adopted.

Proceedings of the Madras Government, Revenue Department,
3rd August 1874.

3rd.—That Unhamma was of the same Gotra with the Chauters.

4. These arguments in her favor are of no avail; for it will be seen from a perusal of the papers connected with the case, and paragraphs 39 to 52 of the enclosed copy of a petition addressed to the Madras Government, that the decision of the punchayet is utterly fraudulent, that Unhamma nowhere stated that your petitioner's husband, the deceased Chauter, was an alien to the house of the Chauters, and that the fact of Unhamma belonging to the same Gotra is clearly without meaning; for, according to the Hindu Law, a married woman takes the Gotra of her husband, and that, therefore, Unhamma cannot be said to belong to the Gotra of the Chauters in which she was born.

5. A reference to gentlemen such as those named in the margin, who were for a series of years employed in the district, and who are well acquainted with the Chauter's family and the laws and peculiarities of the district, will, your petitioner trusts, satisfy your Grace of the justice of the Chauter's cause.

Messrs. A. McWebster and J. Sturrock, of the Madras Civil Service.

6. The Chauter being a minor and your petitioner an uneducated female without the aid of men who would give her sound counsel on matters affecting the minor's rights, she was prevented from urging her claims before His Grace at an early opportunity.

7. In conclusion, your Grace's petitioner most earnestly prays that the Chauter's case will be taken into your Grace's consideration, and justice rendered to the petitioner by the issue of instructions to disburse to the petitioner the allowance of which the petitioner was unjustly deprived for the last seven years.

For this act of justice your Grace's petitioner, as in duty bound, shall ever pray.

Dated 6th July 1874.

No. 35. ORDER THEREON, 3rd August 1874, No. 977.

Miscellaneous.

THE petitioner is informed that her memorial has been received, and will be forwarded to the Secretary of State.

(True Extract.)

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

Exd. F. R. Bantleman.

Govt. of 1874 Madras

REVENUE.

To

Dated August 3rd.

Recd. Encl.

G. O. 3rd August 1874, No. 377.

AUGUST

Nos. 34-35.

Medanamma Devi, guardian and senior grandmother of Chandra Sekara Channaraya Chauter, an infant Pattamdar of Mudabidri, Mangalore Taluq, South Canara District.—Informing — that the petition regarding the payment of certain allowances will be forwarded to the Secretary of State.

3/9777

No.

From Medanamma Devi, guardian and senior grandmother of Chandrasekara Channaraya Chauter, an infant Pattamdar, residing in Mudabidray in Mangalore, South Canara.

Dated

Received

Enclosures

States that on the death of the late Chauter his daughter's son and only legal heir was, according to the expressed wishes of the deceased, publicly nominated by a body of electors ascertained by the Collector as well as by the Civil and High Courts to be entitled by the immemorial usage of the country to make such nomination; that one Unhamma claiming the succession represented herself to be the adopted heir of a certain elder member of the family named Chandraiya *Bellala*, who had himself been adopted away (as admitted by Unhamma's own Vakil) into another family (that of the Bellalas, whose family name he consequently assumed); that it was further admitted by Unhamma's Vakeel that "Chandraiya Bellala had no "right to the Chauter's house at the time of the adoption "of Unhamma by him;" that nevertheless Mr. Acting Collector Whiteside ordered (reporting the same to the Board of Revenue) that the Government allowance payable to the holder of the Chauter's dignity for the time being should be kept in deposit till the contending parties settled in the regular Courts the general question of heirship to all the Chauter's estates and rights, of which the right to the Government allowance was but a part) and that the same should be conferred on that party whose heirship should be thus established. That while the question of heirship and representation to the deceased Chauter was accordingly being tried in, and was pending the decision of the Civil Courts, Mr. Collector Thomas (Mr. Whiteside's successor) procured (unknown to your Petitioner) the cancellation of the above provisional order of Mr. Whiteside, and the immediate grant of the Government allowance to Unhamma without waiting for the decision of the regular Courts as to the general right of succession; that the Civil Court and the High Court have since received and investigated the evidence on both sides, disallowed the claim of Unhamma, and pronounced the deceased Chauter's infant grandson to be the legal heir and successor of the deceased, placing him at the same time, under the guardianship of your Petitioner.

Prays, that with the light of the Judicial proceedings aforesaid, and all the oral and documentary evidence adduced in the course thereof, and the Civil and High Courts' decisions thereon, all of which are set forth in this Petition, and which have come into existence since the passing of the order of Government dated 23rd September 1868, granting the Government allowance to Unhamma; Government will be pleased to *reconsider* this last order and grant the allowance to the deceased Chauter's own daughter's son and heir in preference to Unhamma, who, as already shown, is a stranger claiming by an unrecognised and unproved adoption by one who was not himself a Pattamdar, and who had himself been adopted away into another family, and who is therefore actually admitted to have no right "to the Chauter's house at the time of the "adoption of Unhamma by him."

o the true pedigree thus established, the six succes-

To

His Excellency the Right Honorable
THE GOVERNOR IN COUNCIL,
Fort Saint George.

The Humble Petition of Madanamma Devi *as Guardian and Senior Grandmother of Chandrasekara Channaraya Chauter, an infant Pattamdar or holder of a dignity, residing in Mudabidray, in the Talook of Mangalore, in the District of South Canara, presented by* S. Parthasarathy Aiyangar, *a Vakeel of the High Court of Madras.*

Respectfully Sheweth,

I. That the aforesaid Chandrasekara Channaraya Chauter as the daughter's son and sole legal heir of Chandrasekara Chikkaraya Chauter, the last Pattamdar, was, upon the death of the latter[1] on the 31st January 1867, installed on the following day as Pattamdar by the common consent of a body of electors known as the "Magane Community."

II. That the right of succession of the aforesaid Chandrasekara Channaraya Chauter having been disputed by a[2] lady named Unhamma, who put in a petition claiming to be heir by adoption by certain elder members of the deceased Chauter's family, there was an inquiry before the Tahsildar, upon whose report the then Acting Collector, Mr. Whiteside, feeling that the question of right to the Government allowance to which the dispute before the Revenue authorities was confined, would naturally have to be decided in favor of that party who should, through the regular Courts, obtain all the rest of the deceased Chauter's property, passed an order[3] to the effect that till this question of heirship was

[1] Report of Magane Community to Tahsildar, dated 1st Feby. 1867.

[2] Her Petition to Collector, dated 31st July 1868.

[3] Dated 13th April 1867.

decided by the Courts, the Government allowance to the family should be kept in deposit, and reported the same to the Board of Revenue.

[illegible]

III. That the said Unhamma accordingly commenced proceedings in the Civil Court of Mangalore under Acts XIX of 1841 and XXVII of 1860 (respectively entitled "An Act for the protection of moveable and immoveable property against wrongful possession in cases of succession" and "An Act for facilitating the collection of debts on successions, and for the security of parties paying debts to the representatives of deceased persons") for the purpose of establishing the right of succession to the deceased Chauter, and by consequence the right of possession of all his property and the right of representation as heir.

[illegible]

IV. That all the foregoing proceedings finally terminated in the Civil Court's order upholding your Petitioner's right of representation of the deceased, and her right to retain possession of all the property of the deceased Chauter in the interest of her infant grandson, the said Chandrasekhara Chaulappa Chauter.

[illegible]

V. That the said order of the Civil Court was on appeal confirmed by the High Court of Madras.

VI. That while pursuant to the aforesaid order of Mr. Acting Collector Whiteside, both parties were contesting their rights in the Civil Courts, and while those Courts were engaged in investigating the same, Mr. Whiteside's successor (Mr. [illegible]) as your Petitioner has since learned, made a report, unknown to your Petitioner, recommending the cancellation of Mr. Whiteside's order and the recognition by your Excellency's Government of your Petitioner's opponent Unhamma as legal heir of the deceased Chauter so far as regards the single item of the deceased Chauter's estate capable of departmental disposal, viz., the Government allowance due to the deceased Chauter's family, without any

reference to the then pending decision of the Courts as to the succession to, and the possession of, the deceased Chauter's estates generally.

VII. That the above recommendation of the Collector, as your Petitioner now understands, having been supported by the Board of Revenue, was sanctioned by your Excellency's[1] Government.

VIII. That aggrieved by the order of Your Excellency's Government in the last preceding paragraph mentioned, Your Petitioner humbly craves a reconsideration thereof upon a thorough investigation of the whole of her case with all the light now thrown upon the same by the various judicial proceedings, by means of which she has been up to this time harassed by her opponent, and in all of which she (your Petitioner) has now finally succeeded.

IX. That Your Petitioner accordingly begs leave to state her case as follows :—

Admitted facts establishing your Petitioner's case and removing all foundation for Unhamma's claim.

1. The House, the right of succession to which is now disputed, once ruled over twelve Maganes or sub-divisions of a Taluq in South Canara.

2. The pecuniary allowance enjoyed by this House from Government, and to which the question now sought to be opened for the consideration of your Excellency in Council is confined, was granted and has been continued in consideration of the resumption of the domains aforesaid.

3. Although a pecuniary allowance thus took the place of extensive domains, both the Chauter's House and the Community of the twelve Maganes aforesaid have nevertheless continued to regard the enjoyment of, and succession to, the dignity of Chauter in exactly the same light as before.

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[1] Order of Government, dated 13th Nov. 1867, No. 280, Board's endorsement dated 14th September 1869 on Petition No. 266 of 1869, Collector's endorsement, dated 22nd September 1869.

2. Answer [illegible] by the Chautar and of the Magane Community in O. S. No. 151 of 1866. 4. In the event of the dignity becoming vacant, the right of appointing a successor is by immemorial usage recognized by repeated decisions of the Sudder Court (Decisions for 1855, pp. 27, 28 and 29, and Decisions for 1854, page 63) and having the force of law in Canara, vested in the Magane Community who are stated to be made up as follows:—"The families of Kavaliga Stanam and the Muktesors of the Magane" (your Petitioner's Exhibit VI in the Civil Court, vide para. 30 hereof.)

2. Decis. &c. [illegible] 5. The appointment in such a case (to avoid an interregnum) should, according to a long and well established custom,² be made before the removal of the deceased's corpse, and the name of the person thus elected should be immediately certified to the Authorities by report of the electors. (Evidence given by Ullamma's witnesses in the Civil Court, post para. 34.)

6. Excluding the succession now in dispute, there have been twenty-six successions in this family.

1. Para [illegible] 7. The last six of these successions are correctly exhibited in the pedigree¹ filed and relied on by your Petitioner, and admitted by Ullamma throughout the proceedings had in this matter, before the Revenue Authorities as well as before the Civil and High Courts. (Vide post, page 7, answer to question 25.)

8. The pedigree produced by your Petitioner's opponent Ullamma, to whom the allowance has now been ordered to be disbursed, has been admitted by Ullamma herself to be false. (Ibid.)

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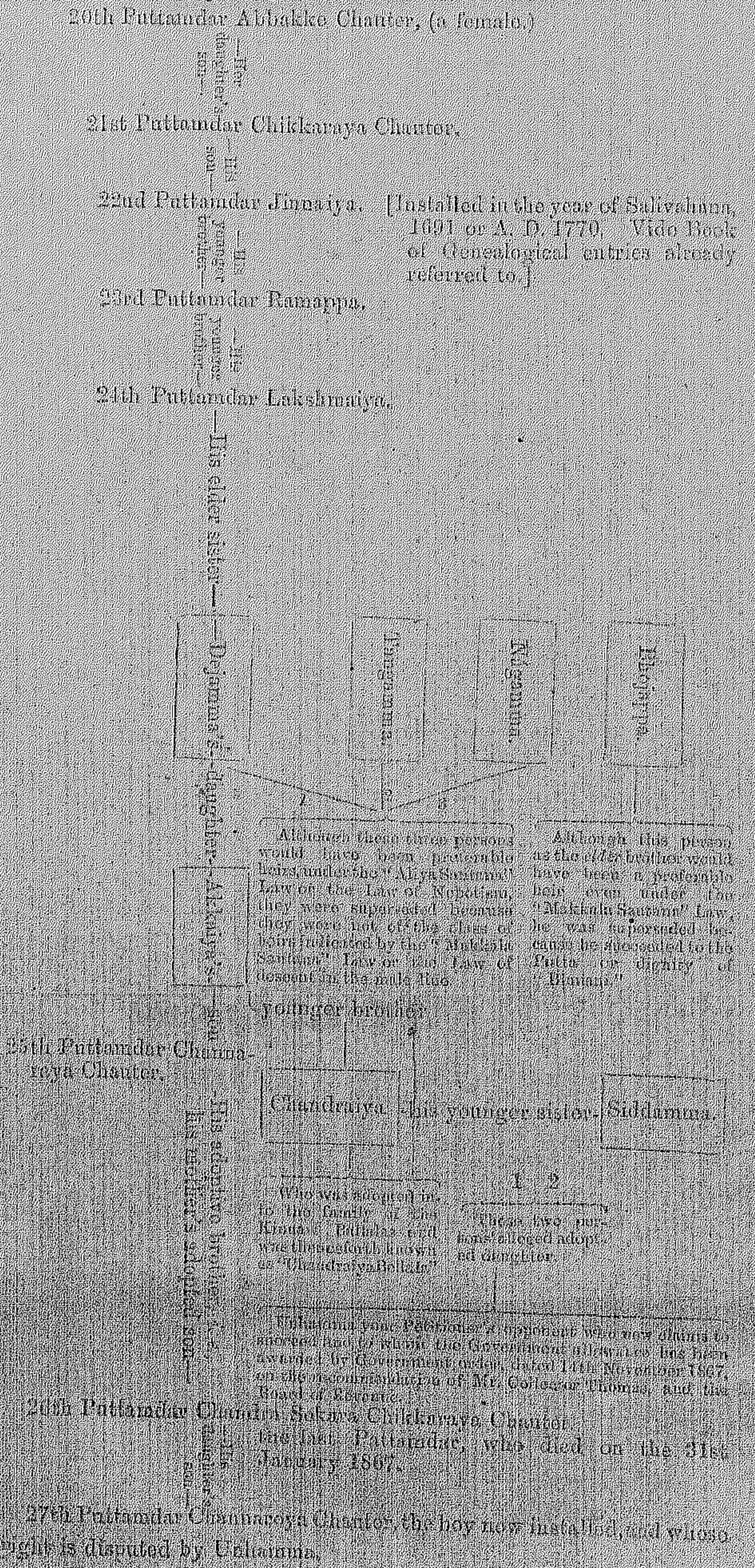
9. According to the true pedigree thus established, the six successions from the 20th to the 27th, both exclusive (the last being the succession now disputed), have been as follows:—



20th Puttamdar Abbakke Chauter, (a female.)

21st Puttamdar Chikkaraya Chauter.

22nd Puttamdar Jinnaiya. [Installed in the year of Salivahana, 1691 or A. D. 1770. Vide Book of Genealogical entries already referred to.]

23rd Puttamdar Ramappa.

24th Puttamdar Lakshmaiya.

Although these three persons would have been preferable heirs under the "Aliya Santana" Law or the Law of Nepotism, they were superseded because they were not of the class of heirs indicated by the "Makkala Santana" Law or the Law of descent in the male line.

Although this person as the *elder* brother would have been a preferable heir even under the "Makkala Santana" Law, he was superseded because he succeeded to the Putta or dignity of "Bimana."

25th Puttamdar Channaraya Chauter.

Who was adopted in to the family of the Kinnara Balalas and was thenceforth known as "Chandraiya Ballala."

These two persons alleged adopted daughter.

Ullamma your Petitioner's opponent who now claims to succeed and to whom the Government allowance has been awarded by Government order, dated 14th November 1867, on the recommendation of Mr. Collector Thomas, and the Board of Revenue.

26th Puttamdar Chandra Sekara Chikkaraya Chauter the last Puttamdar, who died on the 31st January 1867.

27th Puttamdar Channaraya Chauter, the boy now installed, and whose right is disputed by Ullamma.

10. The six successions shown above, cover a period of nearly a century and a half.

11. During all this time certainly, the Magane Community have been electing successors from among the class of heirs indicated by the law of descent to sons or the General Hindu Law, called in Canara the "Makkala Santana Law" and not according to the Law of Nepotism, known as the "Aliya Santana" Law.

12. Your Petitioner is the legitimate daughter's son of the 26th Puttumdar, while your Petitioner's opponent represents herself to be the *daughter by adoption* of certain elder members of the family.

13. In determining the succession as between the members of the deceased Chauter's family, it has been usual to prefer a male to a female.[1]

14. "As in the case of adoption so it is the unreserved "custom in this district[2] that when a person who is not the "lineal heir is appointed to a Puttah (or dignity), he forfeits "all right to his family property acquiring in lieu thereof a "full right and title to all the property appertaining to the "Puttah."[3]

15. The maternal uncle of the 25th Puttumdar of this House, Chandraya Bellala, as whose adoptive daughter or niece your Petitioner's opponent Unhamma now claims the right of succession, forfeited his right of succession in the family of the Chauters under the principle stated in the last preceding paragraph hereof, having been appointed to succeed to the dignity of the Kinnavi Bellalas of Puttundray. Unhamma, consequently can, even if the adoption alleged by her be true, succeed only to the rights of her adopter Chandraiya Bellala in the dignity called the Kinnavi Bellalike, and can have no right of succession in this House.

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[1] Vide [illegible] No. 21, [illegible] and 30.

[2] Canara.

[3] Sudder Decisions for 1851, page 27.

Recognition of the deceased Chauter's grandson recommended by the course of Legislative enactments on the subject.

16. As in all miscellaneous proceedings conducted before the Civil Courts under Special or Local Laws, the Courts are almost invariably directed to conform as much as possible to the well digested rules of procedure laid down in Act VIII of 1859 (the Code of Civil Procedure), your Excellency's Government, although their powers may strictly be unlimited by law, will not, perhaps, object to adopt, in making a summary disposal of the right of succession to the emoluments of a dignity such as the present one, the well considered and equitable rule laid down in Act XIX of 1841, entitled "An Act for the protection of moveable and "immoveable property against wrongful possession in cases "of successions." Section XV of this Act, having in view the danger of interfering on any supposed grounds of expediency with any public act of settlement or with instructions which a dying man may have left as to who should succeed to his property and rights, provides as follows :— "And it is hereby enacted, that the Act shall not be put in "force to contravene any public act of settlement. Neither "in cases in which the deceased proprietor shall have given "legal directions for the possession of his property after his "decease in the event of minority or otherwise, in opposition "to such directions, but, in every such case, so soon as the "Judge having jurisdiction over the property of a deceased "person, shall be satisfied of the existence of such directions, "he shall give effect thereto."

17. In the present case the nomination of the deceased Chauter's grandson[4] by the Magane Community, (vide their report set out in para. 22 hereof) confirmed and upheld as it has been in this particular instance by the Civil and High Courts (orders, dated respectively the 21st February and the 11th November 1868) is a "Public act of settlement" within

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[4] Admitted to have been made in accordance with the usage of the country which has been judicially recognized by Courts of Law (Sudder Decisions for 1851, pp. 27 and 28, and the deci-

16. The six successions shown above, cover a period of

the meaning of the first part of the enactment quoted in the last paragraph, and, as such, deserves to be respected and upheld by Your Excellency's Government.

18. The further ground for the non-exercise of summary power, which is the subject of the latter clause of the said enactment, exists likewise in the present case.

19. On the 20th May Fusli 1262 (1852) an investigation was made by the Tahsildar, of all the particulars connected with the grant in question. The following is an extract from the deposition then made by the Vakeel of the deceased Chauter :—

"As the possessions of the Chauter's were attached by "the Government, the Tasdik in question was allowed on "account of the customary observances of the house and for "the expenses of its maintenance."

* * * *

"The Chauter is 32 years old. He has two wives, the "elder one about the age of 22 and the younger about 21 "with two female children; one a girl of 5, and the other a "girl of 2 years; a mother about 50 years old, a grand-"mother past 70, and five brothers."

20. The Tahsildar on completing his investigation submitted "a statement of Brahmadaya Inam in force at "the end of Fusli 1262 according to the form received with "the Circular Order, No. 31, dated 23rd April for Bantwal." The following extracts are from columns 17 and 18 of this statement, the latter of those columns being intended to exhibit a complete list of all possible heirs of the holder (now deceased). Your Excellency's Government will here observe that "no allusion is made to Unhamma or to any claim by her.

Entry in Column 17.

"The grant was made for the performance of Katte Kuuducha ceremonies of the Chauter's family."

Entry in Column 18.	*Age.*
"1 Chandrasekara Chikkaraya Chauter ...	32
"1 His wife	22
"1 His 2nd wife	21
"2 Daughters	—
"1 Ditto...	5
"1 Ditto	1
"1 Chauter's mother	50
"1 Grandmother	70

21. The boy 3 years' old now installed as Chauter is the son of the 2nd of the daughters abovementioned.

22. Chandrasekara Chikkaraya Chauter subsequently died on the 31st January 1867, and his grandson was immediately installed as Chauter by the Magane Community who made the following report of the fact.

"To

"RAMAPPAYA, TAHSILDAR OF
MANGALORE TALUK.

"Petition of the community of the Puttiya "Magane, namely, (1) K. Ramappaya "belonging to the Chauter's house; (2) "Lakshmi Narainn Atikari; (3) K. "Nagappa Ballal; (4) B. Aumabanga; "(5) Guttina Kantu Shetti; (6) S. Chandappa Balipa; (7) K. Ramai Hegade; "(8) M. Puvani Hegade of Biluvai; (9) "Doddamane Chandappala, and (10)[2] "Antappa Cottari, dated the 1st Feb. 1867.

"Chandrasekara Chikkaraya Chauter of Puttage, *i. e.*, "Mudubidri having in consequence of the illness from which "he was suffering, died on the mid-day of Thursday the "31st January last, we together with others as the Magane "community, have, according to the usage and custom which "has long since prevailed, and with the consent of his

[2] The 10 persons herein named are admitted to be nearly all the persons entitled to elect a successor to the Chauter's dignity.

successions shown above, cover a period of

"widow, this day nominated and installed to the Patta "with the usual observances, his grandson under the title "of Chandrasekara Chennaraya Chauter. This we have "reported for the knowledge of the authorities." (Here follow 10 signatures.)

Unhamma's case before the Revenue Authorities.

23. Unhamma now appeared for the first time on the stage and put in a Petition in the Talook Cutchery claiming the succession. To that Petition Your Petitioner put in a reply.

I have in [illegible] shown that [illegible] of succession. 24. The Tahsildar of Mangalore thereupon examined the Vakeels for both parties as to their respective cases. The following are extracts from the deposition made on this occasion by Unhamma's Vakeel, and a mere perusal of them, Your Petitioner believes, will, without going any further, suffice to demonstrate to Your Excellency's Government the utter weakness of Unhamma's case or rather that Unhamma herself has been undecided, as to what case she should set up for herself or what kind of objection she should take to Your Petitioner's case.

Extracts from the Deposition of Unhamma's Vakeel.

Question.	*Answer.*
"Upon what authority do you say that Unhamma was taken by adoption into the Chauter's family?"	"The authorities supporting the "Petitioner's case, viz., a written declaration made by Chandraiya Bellala and "Siddamma, members of the Chauter's "family before a Punchayet on the 10th "March 18[illegible], and a *decree* passed by "the Punchayet in the same year in "connection therewith. In the declaration it is said that Chennaraya "Chauter adopted one Dhanavati, and "this Dhanavati is admittedly the "present Petitioner Unhamma, the latter "being her name in her natural family "and the former given after her adoption. "The deeds shows that her consent was "obtained to the proceedings."

"2. In the Petition and Vakalut filed "by you, only one name, viz., Unhamma "is mentioned. Why was not the other "name Dhanavati mentioned also?"	"She is generally known by the name "of Unhamma in her village, consequently that name alone was mentioned. She was adopted by Chennaraya Chauter the 25th occupant of the "Patta at the desire of his mother "Akkaiya."
"9. You say that the Petitioner is "named Dhanavati as well as Unhamma, "and that she was adopted by Chennaraya Chauter the 25th and at the desire "of Akkaiya. Had this Akkaiya no "power to adopt?"	"Akkaiya had the power, and it was "by her order that the adoption was "made."
"10. In the Petition filed by you on "behalf of Unhamma, you state that she "was adopted by Chandraiya Bellala and "Siddamma as they had no issue. Is it "false?"	"It is not false. It was so written "because Chandraiya Bellala and Siddamma acknowledged the Petitioner's "adoption when a dispute arose about "the Patta and property belonging to "the Chauter's family after the death of "Akkaiya and Chennaraya Chauter, *but "no adoption of the Petitioner was made "by Chandraiya Bellala and Siddamma "themselves.*"
"18. You stated on the 8th Instant, "that you would produce your evidence "as to the fact of Petitioner having two "names yesterday. Produce it."	"I stated that Petitioner is also named "Dhanavati because the only woman adopted into the Chauter's family was the "Petitioner, and the declaration of "Chandraiya Bellala and Siddamma, in "which the Punchayet's decision originated, seemed, as I heard it when read, "to refer to one Dhanavati as having "been adopted, from which I concluded "that the Petitioner may have that name "also. On further information from "my client's people as to the truth of "this, however I find that my assertion "that she has also the name Dhanavati "is wrong, and that it is the name of her "elder sister. Chandraiya Bellala and "Siddamma made the abovementioned "declaration resolving to adopt the said "Dhanavati, but as her natural relatives "refused to part with her partly on the "ground that she was to be married to "Chandai Heggade of Darbasuli, and "partly because she was the first-born of "her mother, her younger sister, the "Petitioner Unhamma was in her place "given in adoption to Siddamma and "Chandraiya Bellala. So I have no "evidence to offer."

shown above cover a period of

" 79. If the vakil was upon your own " information that you [illegible] that the Estate " Property also belonged to Unhamma, " what could you state that the name was " [illegible] her to her adoption into the " Chauter's family ?"

" The Petition and Vakalut being " written in the name of Unhamma and " also signed in the same name, while " the above-mentioned declaration was " found to mention Bhavani as the " name of the adopted, I was led to think " that this name was probably given by " her adoptive family, and therefore " stated so."

" 80. Was Unhamma no other name " besides that ?"

" I am not informed about it."

" 81. In contradiction to the state- " ments in your Petition, you first stated " in your answer to question 74, that " Unhamma was not adopted by Pid- " dammu and Chandayya Ballala, and " then again, in contradiction to the last " statement, you say that it was the said " two persons that adopted Unhamma— " which of these statements is true, and " according to what you have last said, " is it not your case that the Chowtaraya " Chauter (the 24th), adopted Unhamma " with the concurrence of his mother " Akkaiya, [illegible]?"

" In fact, Unhamma was adopted by " Chandayya Ballala, and Siddammu, " and not by the 24th Chauter, the " brother of Akkaiya."

" 82. Had Chandayya Ballala any " right in the Chauter's house so as " then to adopt Unhamma?"

" Chandayya Ballala had no right in " the Chauter's house at the time of the " adoption of Unhamma by him."

" *Examination continued on the 11th March 1867.*"

" *Memo.*—The table showing the genealogy of the past Chauters in " the order of their succession, incorporated with the record received " along with Tahsil Order No.   is read and shown to the examinee."

" 83. You have heard and seen the " genealogical table; have you any " objection to make to it?"

" I have heard and seen the gene- " alogical table of the Chauters just shown " to me. I have nothing to say against it; " it exactly agrees with the original " that in go behalf of Mudhamma and " others."

" The genealogical table filed for the Petition in Unhamma " was prepared from what was furnished by her people as " being copy of what said to have been filed before the " Collector. Consequently there may be errors in the same " put in by the female Petitioner."

27. As it is just possible to suspect that the vakil who made so many and such contradictory statements so as

[illegible]

entirely to break down Unhamma's case, either acted without Unhamma's authority or mala fide towards Unhamma, Your Petitioner begs to submit the following considerations for the purpose of removing all ground for any such suspicion.

26. The above deposition was given on three several days, (viz. the 8th, 10th and 11th) in March 1867. From that time up to this date, Unhamma conducted various proceedings before the Civil Courts, in none of which does she make the remotest suggestion of want of authority or mala fides against Bhavani Sankarayen[1] the vakil, who made the deposition aforesaid on her behalf upon production of a registered Power of Attorney from her. (Vide Unhamma's Petition, No. 265 of 1867 under Act XIX of 1841, and Petition No. 266 of 1867 under Act XXVII of 1860, and Petition No. 1096 of 1867 presented during the pendency of the previous Petitions, and the depositions of the *nine* witnesses cited by Unhamma on her behalf before the Civil Court during the investigation of the aforesaid Petitions.) This circumstance, taken in conjunction with the fact that the above deposition of Unhamma's vakil was produced as (Exhibit III) and relied on by Your Petitioner in the Civil Court, ought, Your Petitioner submits, to be held conclusive on the point that the said deposition was a boná fide representation of Unhamma's case by Unhamma's duly authorised vakil, and that if it broke down Unhamma's case at all, it was solely by reason of the total want of a case for Unhamma.

27. Upon taking the deposition of Unhamma's vakil extracted and commented on in the last two paragraphs, as also a deposition from Your Petitioner's vakil, the Tahsildar forwarded the same to the then Acting Collector Mr. W. S. Whiteside, who made the following provisional order thereon.

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[1] A certified Practitioner then practising in the District Munsif's Court of Mangalore and still practising in the District Munsif's Court of Cundapur.

Proceedings of the Acting Collector of South Canara, dated 13th April 1867.

"Read letter of [illegible], dated 11th March 1867, "received from the Tahsildar of Mangalore together with "the proceedings held in a case involving a question of "right to succeed to the annual Tasdik allowance of Rupees "176-12-0 due to the late Chouter Subaya Chikkaraya "Chouter, a Poligar and Jemindar of Mudbidrey, who died "on the 21st January 1867, pending between his two widows "and Unhamma, niece of Tular Chendaya Shetti."

"From the above it appears that the two widows of the "deceased aver that the puttah of Chouter has been held "by the Maekala Santana, heirs of the family since the 22nd "generations, and that the deceased having had no male "children the Mukhtesars of the country have installed to "that puttah a third named Rajanna, son of the deceased's "daughter by his 2nd wife and request that the Tasdik may "be paid to the 1st widow of the deceased on account of the "minor until he attains majority; while, on the other hand, "Unhamma, niece of Tular Chendaya Shetti, claims to be "entitled to the Tasdik on the ground that the decree passed "by the Mukhtesars of the 12 Maganis attached to the Chouter's "country, under the orders of the late Collector Mr. Vyvyan, "dated 1860, has declared her to be entitled to the puttah "and property held by the deceased."

"This being a question of heirship the Collector will not "interfere. Both parties must have recourse to a civil "action without loss of time and produce a decree, and a "recommendation will be made to the Board for payment "of the amount in question to the party that may be declared "by that decree to be the real heir, and until that time the "amount of Tasdik will be kept in deposit."

28. The above order of Mr. Whiteside, Your Petitioner conceives, was a most proper order to be passed at the stage at which the case then was. For as it would be extremely

anomalous and unreasonable that on the one hand the Collector should by a fiat of his own, award to one person the Government allowance attached to the dignity (and which as being a substitute for hereditary lands resumed was quite as much part of the deceased Chauter's hereditary estate as any other portion of his property) and that on the other hand the regular Courts which alone could comprehensively decide the question of representation to the deceased Chauter, and the succession to his general estate, should hand over all the rest of his estate to another person as the legally constituted representative of the deceased. Mr. Whiteside naturally thought that the grant of the Government allowance should abide the decision by the regular Courts of the question of status which had been raised before him, viz., who had the best right of representation to the deceased Chauter and to succeed to his property generally.

Subsequent Judicial Proceedings in accordance with the above order of Mr. Whiteside.

29. Petitions Nos. 265 and 266 of 1867 were thereupon presented to the Civil Court by Unhamma under Acts XIX of 1841 and XXVII of 1860 for the purpose of contesting with Your Petitioner the right of representation to the deceased Chauter.

30. In these Petitions she once more set up her alleged adoption by Chandraiya Bellala and Siddamma, which adoption she had through her Vakeel formally denied in her answer to question 10 in the deposition marked as Exhibit III in the record of these Judicial Proceedings. (Vide ante para 24).

31. Your Petitioner at the same time presented Civil Petition No. 277 of 1867 in support of her own case.

Evidence adduced before the Courts by Your Petitioner.

32. In the course of the proceedings had in the Civil Court upon the petitions aforesaid, Your Petitioner filed eight Exhibits and called six witnesses.

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33. The following is a list of the eight Exhibits thus filed by Your Petitioner:

I. Authenticated copy of a deposition made before the Tahsildar of the Barkur Talook by the Vakeel of the deceased Chanter, dated 26th May Fusly 1262. (Extracts from this are given in para. 19 hereof.)

II. Authenticated copy of the Report of the Magane Community to the Tahsildar, dated 1st February 1867, communicating the installation of the deceased Chanter's grandson as successor to the deceased. (This document is set out in para. 22 hereof.)

III. Authenticated copy of the deposition made before the Tahsildar of Mangalore by Unhamma's Vakeel on the 4th, 20th and 21st March 1867. (Portions of this document are set out in para. 24 hereof.)

IV. Pedigree (admitted to be correct in the last mentioned Exhibit III and Extracts from which pedigree are given in para. 4 hereof.)

V. Mr. Acting Collector Whiteside's order dated 18th April 1867, referring the parties to the Regular Courts. (This document is set out in para. 27 hereof.)

VI. Authenticated copy of the answer, dated 3rd April 1824, filed in the late Zillah Court of Canara in Suit No. 134 of 1824 by a former Chanter (the 13th) and certain members of the Magane Community, alleging that the dignity has been descending according to the law of Makkala Santana or the Law of Descent in the male line as distinguished from the law of Nepotism. (Referred to ante para. 4.)

VII. Authenticated copy of the Rejoinder, dated 7th April, filed in the same suit and to the same effect as the last mentioned document.

VIII. Authenticated copy of a statement of Inam, submitted by the Collector to the Board of Revenue in Fusly 1262 (columns 17 and 18 of this document are set out in para. 20 hereof.)

34. Of the six witnesses called by Your Petitioner, the first five are some of the persons by whom the ceremonies relating to the installation of Your Petitioner's grandson were actually performed, and whose right to make such installations has not been disputed. One of these witnesses Canta Setti is the chief of all the masters of the ceremony of installation. The 6th witness is another leading member of the Magane Community. These witnesses deposed in detail to the previous history of the family, to their right of electing successors to the Chanter's dignity immediately after the death of each occupant of the dignity, to several past successions having occurred in the direct male line of the last holder, *i. e.*, according to the law called Makkala Santana,—to some of them having personally known and even taken part in the ceremony of installation on the occasion of a previous succession,—to their having performed the ceremony of installation in this present instance in the presence of nearly 1,000 people, and made the Report Exhibit II aforesaid, &c., &c.

Evidence adduced before the Courts by Unhamma.

35. Unhamma in support of her case filed four Exhibits marked, respectively, A, B, C and D and called 9 witnesses.

36. These witnesses[1] for Unhamma, admitted that according to established custom the corpse of the deceased Chanter could not be removed without appointing a successor to the deceased, and that it is a fact that Your Petitioner's grandson has been installed in this manner as successor to the deceased Chanter; that the first five of Your Petitioner's witnesses are among the persons entitled to make the installations; that Your Petitioner's witness Canta Setti is the chief of these persons; that all their knowledge is

[1] Vide for instance her 6th witness Chinna Buggu Setti.

successions shown above, cover a period of

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hearsay; that they (Unhamma's witnesses) have not personally known any circumstances connected with any previous succession, and that Unhamma *has always lived apart* from the Chauter's family.

37. Unhamma's witnesses while admitting the fact of installation of Your Petitioner's grandson by the proper parties impeached the validity thereof on three grounds. The first ground of objection was that the dignity should descend according to the Law of Nepotism and not according to the general Hindu Law of descent in the male line called the Makkala Santana Law. This objection is negatived by the very deposition of Unhamma's Vakeel already commented on (ante para. 24) admitting the correctness of the pedigree produced by Your Petitioner (ante para. 9) which shows no less than six successions according to the Makkala Santana Law as distinguished from the Law of Nepotism (Vide also Your Petitioner's Exhibits marked by the Civil Court VI and VII, Sudder Decisions for 1853, pp. 27, 28 and 29 and do. for 1854, p. 63, and the depositions of Your Petitioner's six witnesses examined by the Civil Court.) The admission in the said depositions, and the recognition in the said decisions, of the Magane Community's right to appoint a successor is likewise fatal to the above objection. Vide also Civil Court's order in the present case post para. 54 (1), wherein the Civil Judge observes that "it is admitted on both sides that the right of nomination rests with the Magane Community."

38. The 2nd and 3rd grounds of objection to the installation of Your Petitioner's grandson were that the Pattabhisheka dignity cannot be conferred on a minor, and that unless a certain ceremony called Pattabhisheka (or enthronement) alleged to be performable on the 17th day after the appointment of a successor was actually performed, such successor's right is not complete. That these objections are equally untenable with the 1st is shown by Unhamma's own

[illegible]

[illegible]

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exhibit D in which the now deceased Chikkaraya Chauter's right of succession is recognised although as it is admitted therein he was a minor at the time, and the ceremony of Pattabhisheka (or enthronement) of the said Chikkaraya Chauter[d] which had been already delayed for 18 *months* after his appointment by the Magane Community, is still further postponed.

the age of seven years was not performed on the child.

[d] The 26th Pattandar now deceased.

39. Of the four exhibits filed by Unhamma, she herself failed to make any reference to those marked A to C, these having no bearing whatever upon the case. She thus rested her whole case on her exhibit D which is said to be the decision of a Panchayet, dated 11th March 1835, convened by the Tahsildar by order of the then Collector. That this document is utterly fraudulent and void will be clear from the following considerations:—First, neither the Collector nor the Tahsildar had any power to convene such a Panchayet under any Law or Regulation in force at the time. The only Regulations relative to Panchayets are Regulations XII of 1816 and V of 1822 (Vide C. O. B. R. 18th May 1856, page 13 cited in note 6, page 305 of Mr. Sloan's Judicial and Land Revenue Code,) and neither of these Regulations can, in the remotest degree, apply to the matter purporting to be decided by this Panchayet's decision. For, this decision purports to determine that Unhamma and her descendants shall on the death of the Chauter, then installed (the 26th Chauter now deceased) have the *right* of succession to the estate and dignity of the Chauter's family. That no Collector could call upon a Panchayet to pronounce such a decision on a question involving the substantive right of prospective succession has been conclusively determined by the Sudder Court and the Board of Revenue as will appear from the following Extracts from their Rulings on the Panchayet Regulations XII of 1816, and V of 1822 (Sections 15 and 18.)

"This[1] Regulation (XII of 1816) does not apply to claims "involving rights of possession. It was enacted to protect "'occupancy' and left disputes relative to rights of pro"perty to be settled as before by regular suit in a Court of "Udalut." (S. U. Pro., 18th Sep. 1837 on M. P. Nos. 146 and 155.)

"3. Reg.[2] XII of 1816 cannot be extended to the suits "referred to in Sec. XV. Reg. V of 1822 (namely, 'disputes "respecting arrears of rent or revenue or respecting rates "of assessment in money or kind, or of division in kind as "well as all questions of the right of occupancy or posses"sion of lands or crops). S. U. Pro., 27th Jany. 1837."

"4. A[3] decree passed by a district Panchayet under this "Section, on evidence given before the Tahsildar without "any further evidence is invalid, the proceedings being "with reference to Section IV, Regulation VII of 1816, "irregular." (Pro. S. U., 26th September 1836.)

"5. It[4] does not appear that this Regulation confers "authority to refer to a Panchayet any dispute not cog"nizable by a Collector."[5] (S. U. Letter to Government, 31st March 1831, C. O. B. R. I., 137.)

40. No reference is made in this Panchayet's decision to any Law or Regulation.

41. If the Panchayet had been assembled under either of the Regulations abovementioned, the numerous provisions prescribed by those Regulations and Regulations V and VII of 1816 touching the mode of reference and procedure would have been followed. In the present instance, if we test these proceedings by one of these Regulations such as Regulation VII of 1816 relating to district Panchayets (under which description alone the Panchayet who passed this decision can possibly be represented to come), Your Excellency's Government will find the following state of things. It does not appear for what purpose the Pan-

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[1] Vide Mr. Sloan's Judicial and Land Revenue Code, page 364, Note 1.

[2] Ibid, page 365, Note.

[3] Ibid, page 365, Note.

[4] Ibid, page 365, Note.

[5] Clearly disputes as to the [illegible] or rights in the [illegible] are [illegible] cognizable by the Collector.

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chayet was assembled, what the terms were of the applications of the parties to the authorities or of the orders of reference, whether it was a Village or a District Panchayet, whether the Panchayet was duly summoned in writing, who the members so summoned were, or where they met, whether an agreement was executed by the parties to abide by the Panchayet's decision, who the Vakeels for the parties were, on what authority such Vakeels appeared, how the members of the Panchayet were allowed to exceed the prescribed number of eleven, and why an even number (viz. 16) which is prohibited was chosen, whether there was a plaint, an answer, the filing of exhibits and the examination reduced to writing according to Law of witnesses on both sides, why no exhibits or witnesses are referred to in the decision, whether both parties or their Vakeels were in attendance, whether copies of the decision were delivered to each party, and, if they were delivered, why the fact of delivery was not endorsed upon the decision, why the decision does not bear the signature of the District Moonsiff or of the Collector acting in the capacity of a District Moonsiff, &c., &c. (Vide Regulation VII of 1816.)

42. The subject of dispute between the parties was not "occupancy or possession of land or crops" within the meaning of any of the Regulations abovementioned, but a substantive right of prospective succession.

43. The greatest of all the patent defects in the decision of the Panchayet is that it is therein admitted that Chikkaraya Chauter therein mentioned and now deceased, was a minor at the time, and that *his* adoptive mother Akkaiya is the elder sister of Unhamma's alleged adopters Siddamma and Chendraiya Bellala, and yet neither the said Akkaiya nor any other guardian is referred to as having appeared on behalf of the minor. On the contrary the decision sets forth that the minor himself consented, which consent therefore even if true is utterly void.

44. Looking at the signatures to the decision, Your Excellency's Government will find that signatures to the number of twenty are huddled together, in the midst of which appear the names of Siddamma, Chandraiya Bellala and Chikkaraya Chauter. How Chikkaraya Chauter the admitted minor could have been called upon to sign, does not appear. Why any signatures from the parties were taken at all[1] is equally unexplained. Chandraiya Bellala is further stated to have been "a person of weak understanding incompetent to manage his affairs," and it is not stated who appeared as his guardian.

45. The said decision dated as it is the 11th March 1855, was never produced on any former occasion. It was for the first time produced before the Tahsildar late in February 1867. It was not brought forward or any reference made to it in 1858 in which a "Statement of Brahmadayam Inam in force at the end of Fusly 1262" was prepared by the Revenue Authorities and in which the deceased Chauter's wives and family are alone mentioned as those in whom the interest in his estate would survive after his decease. Nor was this document produced at the only time at which according to Unhamma's own admission an appointment of a successor to the deceased should have been made, viz. the time intervening between the death of the deceased Chauter on the 21st January 1867 and the following day on which his corpse was removed. It is not even pretended that she was not aware of the Chauter's death at the proper time, for, she expressly admits in her deposition[2] that she was present at the time of the deceased Chauter's death at his residence.

46. Even granting that the said decision is genuine, and was *bona fide* come to, and that it can be considered as evidence on any point whatever, it is absolutely invalid and worthless for any purpose. For it is not binding on either of the parties to it. It is not binding on Chikkaraya

[illegible]

Chauter, because he was an unrepresented minor. It is not binding on Chandraiya Bellala, because he was an unrepresented "person of weak understanding incapable of managing his affairs."

47. It is not binding on the Magane Community so as to bar their admitted discretion and right to make election of a successor because the body of electors as such was not duly made parties to the proceeding before the Panchayet.

48. It is not binding on Akkaiya because she was no party to it. Akkaiya, as Your Excellency's Government will observe from the pedigree, was the *elder* sister of Unhamma's alleged adopters Chandraiya Bellala and Siddamma and therefore even according to the Law of Nepotism relied on by Unhamma was entitled to exercise the power of adoption (which she did in favor of the deceased Chauter[3]) in preference to either Siddamma or Chandraiya Bellala, the latter of whom was besides, (as is also admitted by Unhamma herself) adopted away into another family, and therefore had no right to the Chauter's house at the time of the adoption of Unhamma by him (ante p. 7 answer of Unhamma's Vakeel to question 22.) Unhamma's Vakeel further admitted that "Akkaiya had the power" of adoption. (Ibid p. 6 answer to question 9.)

49. The said Panchayet's decision is further void because the wives of the deceased Chauter's predecessor Dharanappa alias Channaraya Chauter are stated by the Panchayatdars themselves to have been induced to marry the said Channaraya Chauter upon a promise made to them that the succession should be confined to their family. These wives have since died having left as the only surviving members of their family the descendants of their husband's brother, the now deceased Chikkaraya Chauter; and the boy now installed is as already stated the daughter's son of the said Chikkaraya Chauter. If therefore the Panchayetdars desired to alter the course of succession contrary

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[1] While the [illegible]

[2] [illegible]

[3] The deceased Chauter's adoption by Akkaiya is admitted in Unhamma's own Exhibit D (Post middle of p. 14.)

to the arrangement previously made in this respect, the widows of Channaraya Chauter ought to have been made parties to their decision.

50. Chandraiya Bellala having been adopted away into the Padubidray family and succeeded to the dignity of this family, the decision of the Panchayet awarding the Chauter's dignity to his adopted daughter or niece Unhamma who can succeed only to her adoptive father's or uncle's dignity, is opposed to the established usage of the District having the force of law, therein which lays down that the same person cannot have a right to two Pattas or dignities.[1]

51. The main reason assigned by Mr. Thomas, the present Collector, for recommending the grant of the Government allowance to Unhamma, in preference to Your Petitioner's grandson, appears to be that Your Petitioner's husband the deceased Chauter was an alien to the house of the Chauters into which he was adopted, and that Unhamma was of the same Gotra with the Chauters. As to this, Your Petitioner submits that Unhamma herself nowhere suggested that Your Petitioner's husband was such an alien or ever raised any argument based on such allegation. The decision D mentions no such thing, and Unhamma has not adduced any other oral or documentary evidence on this point.

52. Again, the vague allegation that Unhamma was of the "Gotra" of Chandraiya Bellala and Siddamma is perfectly unmeaning. What is meant by the term "Gotra" is thus explained by Mr. Justice Strange (Manual of Hindu Law, 1st Edition, Section 46) "Brahmins are divided into "155 Gotras (Dasanernayam, on text of Aupastambha), the "head or root of each Gotra being some particular Rishi or "sage; some families of Cshatriyas trace from the Rishis of "the Brahmins. The rest and all the Vysayas follow the "Gotras of their Purohitas, or family priests. The descent "in these several Gotras is in the male line exclusively, and

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[1] Sudder Decisions for 58, pp. 27 and 30; Ibid for 1854 page 16.

"females after marriage are transferred to the Gotras of "their husbands (Nirnaya Sindhu). Intermarriage in their "own Gotra has been prohibited to these three classes "(Mono. III. 5.)" The family of the Chauters has been represented to belong to the caste of Jain Cshatriya. Now, first of all it is clear that Unhamma being a married woman has by virtue of her marriage been transferred to the Gotra of her husband and cannot therefore be said to belong to the Gotra of either Chandraiya Bellala or Siddamma. 2ndly, It is equally clear that Unhamma cannot under any circumstances belong to the Gotra of both Siddamma and Chandraiya Bellala inasmuch as Siddamma was herself a married woman and was thus transferred to the Gotra of her husband, which is necessarily different from the Gotra of her birth (vide closing sentence of the passage of Mr. Justice Strange's Manual quoted above,) and Chandraiya Bellala is admitted to have been adopted away from the family of the Chauter's into that of the Bellalas. Thirdly, Unhamma does not state to what particular Chauter's Gotra she belongs and this omission is the more remarkable, inasmuch as there has been a change in the Chauter's Gotra almost at every succession, for it is an admitted fact that nearly 20 successions to the dignity of Chauter were regulated according to the Law of Nepotism under which each nominee was necessarily a person of a strange Gotra to that of his predecessor. The 21st Chauter's Gotra was also a different Gotra from that of his predecessor (the 20th). So, likewise was the Gotra of the 25th Chauter different from the Gotra of the 24th Chauter.

53. Lastly, the very point which is alleged to be established by this decision, viz., the fact of Unhamma's adoption by Chandraiya Bellala can in no way be made out by it, for *it does not speak of Unhamma's adoption at all.* To enable Your Excellency's Government to be at once satisfied on the point, Your Petitioner begs to annex a

true translation of this curious document. It runs as follows :—

"The award drawn up by the Moktasers of the 12 "Maganes of the Chauter's country on the 11th Palkuna "Sudha of Jaya (being the) 11th March 1835, Fusly 1244, "corresponding to the auspicious year of Salivahana 1756."

"With reference to the dispute relating to the palace "rights of the Chauter's Pattaia (dignity) between the "plaintiff Chikkaraya Chauter the alleged present holder of "the Chauter's Patta (dignity) of the Pattiga Magane and "these two defendants, viz., (1) the lately deceased Channaraya Chauter's uncle Chandrai Bellala, and (2) the "latter's and Channaraya Chauter's mother's younger sister "Siddamma ;—the said Chikkaraya the alleged present "holder of the Pattam (dignity) has presented a Petition to "the Huzur that he will abide by what may be decided, if "the Moktasers of the 12 Maganas of the Chauter's country "should be present and effect a compromise between himself "(on the one hand) and Chandraiya Bellala and Siddamma "(on the other) admitting (or upholding) the fact of adoption "of the said Chikkaraya Chauter the alleged present holder "of the Pattam (dignity) and bring about an amicable "arrangement also of what should be done in future. And "whereas these two people, viz., Chandrai Bellala and "Siddamma have presented a writing to the circar that they "would also agree if the said Moktasers of the 12 Maganes "should be present and effect a compromise between them "(and the said Chikkaraya Chauter) and whereas in pursuance hereof orders have been issued to us from the Huzur, "and the Tahsildar has sent us with instructions to go to "Mudabidry and decide the Chauter's case."

"We therefore have all met together here, and after "consultation made the following decision :—

"Owing to the admission of the adoption of the said

"Chikkaraya Chauter who is alleged to have been installed "in the Pattam (dignity), the Pattabhisheka and all other "ceremonies should be regularly performed and the privileges and honors due according to the ancient custom of "the said Samastanam (state) should be accorded to this "Chikkaraya Chauter. As to other things besides, such as "taking loans, &c., from outsiders or giving loans, &c., to "outsiders and all other matters, the said Chikkaraya "Chauter should act with the concurrence of both Chandraiya Bellala and Siddamma so long as they are alive "and should do nothing without their consent. Moreover, "if any extraordinary Cattalays (ceremonies) have to be "performed in the palace, it should be done after giving "notice to the people of the 12 Maganes attached to the "palace. As it is necessary to keep up the line of the "Chauters in future, and as there are no descendants from "the family of the above Chauter other than Chandraiya "Bellala and Siddamma and as the said Chandraiya Bellala "and Siddamma consented to us of the 12 Maganes to "Unhamma the niece of Todara Chandraiya Setti of Mudubidri from their Balisala or Gotra,[1] the said Unhamma "and her descendants are entitled after the Chauter (now "stated to have been installed in the Pattam) to the said "Pattam of Chauter, the palace, the personal property, &c. "Moreover, Chandraiya Bellala and Siddamma and Chikkaraya Chauter who has been installed in the Pattam "should live with unanimity and cordiality and without "mutual ill-feeling. Moreover in the Arzi addressed by us "regarding the dispute between the Chauter now installed "in the Pattam and Chandraiya Bellala and Siddamma "when we were sent for pursuant to the order of the "Huzur in February, Fusly 1245, we stated that the girls "brought by us on account of the deceased Chandrasekara "Channaraya Chauter, had been pointed to as being entitled to the palace rights."

[1] So in the original.

"Now, to their heirs (relatives) the gold (jewels) caused "to be made and worn from this palace and which was in "the possession of both persons to the value of 50 pagodas "each; to their relatives, the said girls and the gold and "silver jewels that were on their persons, have been return-"ed and their claim of right satisfied. Therefore the two "girls aforesaid should be taken by the heirs (relatives) of "these girls. Moreover as Alkaiya of the palace brought "in adoption, the said Chikkaraya Chanter now stated to "have been installed in the Pattam from Konda Munjappa "Setti, neither the elder nor the younger brothers and "sisters born of the same womb with the said Chikkaraya "Chanter, nor the said Munjappa Setti, nor the descendants "of these are entitled to any rights of his palace."

"As Chandrasekhara Chikkaraya Chanter now stated to "have been installed in the Pattam is a minor, and Sid-"dammia is a female, and Chandraiya Bellala is a simple man "and devoid of ability to manage affairs in person, we have "from among us appointed Kavaligay Poottappaya as ap-"peared proper to us and as agreed to by both (parties), in "order to keep in safe custody the palace property, &c., and "its income,—to exact from time to time from the servant "people in the palace the work allotted to them, and from "the amount of the stipend drawn from Government and "from the amount of the produce to manage all business "without waste or confusion,—to borrow money for the "palace and to clear debt—to pay the Government revenue "—and to get the income and expenditure kept by the "Sanaubogs (accountants) from time to time."

"Order should be issued that all the affairs of the "Chanter's palace be conducted through the said Puttap-"paiya."

54. All the judicial proceedings described in the preceding paragraphs were terminated by the final order of the Civil Court of Mangalore confirmed by the High Court.

The following are extracts from the order of the Civil Court thus confirmed by the High Court:—

(1) "It is admitted on both sides that the right of "nomination rests with the Magane Community, and"

(2) "That an installation accompanied by ceremonies "of some kind took place immediately after the death of "the late Chanter in the presence of some of the Moktes-"sars, the nomination of the minor grandson being duly "reported to the Revenue Authorities."

* * * *

(3) "In the present case it is clear that the grandson "of the deceased is *de facto* his successor by virtue of his "nomination to the Put by a portion of the Magane Com-"munity, which, it is admitted, possesses the right to elect. "Whether the election is valid in this particular instance is "a question which it appears to the Court ought not to be "entered into in a summary suit. It is sufficient that the "person in possession of the property has a *primâ facie* right "to hold it and that the possession is not clearly wrongful;"

55. Although the Civil Judge's order is brief and does not set out or dispose of all the various pieces of evidence and arguments detailed above, Your Petitioner begs leave to submit that it would not be considered unjustifiable in her to crave Your Excellency's Government in dealing with the weight of evidence to adopt the view upon which the High Court of Madras is accustomed to act in such cases and has actually acted in this particular instance, viz., that when a Lower Court has had all the evidence before it and has pronounced a decision, although comments upon all parts of the evidence are not actually embodied in such decision, the presumption is that the Court has considered and has been *influenced* in its decision by the whole of the evidence on record. If, therefore, Your Excellency's Government should be pleased to give Your Petitioner the benefit of this pre-

sumption, she will need no other argument in support of her case for she would thus be entitled at the hands of Your Excellency's Government to the benefit of a four-fold presumption of the right of Your Petitioner's grandson arising from :—

(1) The express wishes of the deceased Chanter in the absence of which alone all enactments providing for summary investigation upon successions are directed by the Legislature to be put in force.

(2) The public act of settlement within the meaning of Section XV, Regulation XIX of 1841, made by the Magane Community, admitted to be the body of electors duly constituted by the usage and law of the District with power to fill up vacancies in the Chanter's dignity.

(3) The order of the Civil Court of Mangalore come to after a lengthened investigation before itself and upholding the act of the Magane Community.

(4) The final order of the High Court upon the whole case conformably to the decision both of the Magane Community and the Civil Court of Mangalore.

Your Petitioner, therefore, humbly prays that the hereditary allowance which in lieu of domains resumed the British Government has been pleased to grant and continue to the Chanter's House and for the support of his dignity, and which has consequently been all along viewed as liable to the same laws of descent as all the rest of the estates attached to that dignity, may be ordered by Your Excellency in Council to be disbursed to Your Petitioner as guardian of the infant grandson and legal successor of the deceased Chanter by appointment of the local community and the established Courts of Law; that if Your Excellency in Council should on any points need fuller explanations than what are contained in this Petition, Your Excellency in Council will be graciously pleased to call for the same from Your Petitioner, favoring her with permission to obtain copies of all reports that may have been made against her case by the various Revenue Authorities, viz., the Tahsildar, the Collector and the Board of Revenue, together with the orders of Your Excellency's Government thereon.

And for this act of justice and mercy, Your Petitioner, as in duty bound, shall ever pray.

Recd. 974 17/7/74
Rev. 257/74

No. B. 1234–35

2/27

TO

THE RIGHT HONORABLE
HIS GRACE THE DUKE OF ARGYLL, K. G., M. P.,
HER MAJESTY'S SECRETARY OF STATE FOR INDIA.

The Humble Petition of MADANAMMA DEVI, *as Guardian and Senior Grandmother of* CHANDRA SEKARA CHANNARAYA CHAUTER, *an infant* PATTAMDAR *or holder, of a dignity residing in Mudbidry, in the Taluq of Mangalore, in the District of South Canara.*

Dated 6th July 1874

RESPECTFULLY SHEWETH,

That, aggrieved by the order of the Local Government, contained in their order dated 14th November 1867, No. 2695, your Petitioner begs to appeal on the following grounds :—

1st. That, notwithstanding Chandra Sekara Channaraya Chauter has been lawfully adopted and installed by the Magany Community as the sole legal heir and successor of Chandra Sekara [illegible]

2nd. That the allowance now discontinued was granted and has been continued in consideration of the resumption of domains, consisting of twelve Maganies or sub-divisions of a Taluq in South Canara, once ruled over by the house of your Petitioner.

3rd. That the Civil Court have declared that your Petitioner has a *primâ facie* right to hold the property attached to the dignity of Chauter, observing that, in the present case, it is clear that the grandson of the deceased is *de facto* his successor by the virtue of his nomination to the *Pat* by a portion of the Magany Community, which it is admitted possesses the right to elect.

4th. That Unhamma, to whom the Local Government have sanctioned the payment of the allowance, was not, from her own statements before the local authorities, justly entitled to it.

2. That on the death of the last Pattam holder, when enquiries were being instituted by the Taluq Authorities, the said Unhamma put in a petition claiming to be heir by adoption, and on a report to the Huzur, Mr. Whiteside, the then Collector, issued orders to hold the allowance in deposit until the parties should obtain through the Regular Courts a Certificate for the deceased Chauter's property. But before such a Certificate was issued, his successor, Mr. Thomas, supported Unhamma's claim for the allowance [illegible] paid to her.

3. His recommendations in favour of Unhamma were based on the following grounds :—

1st. That, according to a decision of a Punchayet, dated 11th March 18[illegible], Unhamma was declared to be the successor of the deceased Chauter.

2nd. That the deceased Chauter was an alien to the House of the Chauters into which he was adopted.

3rd. That Unhamma was of the same Gotra with the Chauters.

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4. These arguments in her favor are of no avail, for it will be seen from a perusal of the papers connected with the case, and paras 39 to 52 of the enclosed copy of a petition addressed to the Madras Government, that the decision of the Punchayet is utterly fraudulent, that Unhamma nowhere stated that your Petitioner's husband, the deceased Chauter, was an alien to the house of the Chauters, and that the fact of Unhamma belonging to the same Gotra is clearly without meaning; for, according to the Hindoo Law, a married woman takes the Gotra of her husband, and that, therefore, Unhamma cannot be said to belong to the Gotra of the Chauters in which she was born.

5. A reference to Gentlemen, such as those named in the margin, who were for a series of years employed in the District, and who are well acquainted with the Chauter's family and the laws and peculiarities of the District, will, your Petitioner trust, satisfy your Grace of the justice of the Chauter's cause.

Messrs. A. McWebster and J. Sturrock of the Madras Civil Service.

6. The Chauter being a minor, and your Petitioner an uneducated female without the aid of men who would give her sound counsel on matters affecting the minor's rights, she was prevented from urging her claims before his Grace at an early opportunity.

7. In conclusion, your Grace's Petitioner most earnestly prays that the Chauter's case will be taken into your Grace's consideration and justice rendered to the Petitioner by the issue of instructions to disburse to the Petitioner the allowance of which the Petitioner was unjustly deprived for the last seven years.

[illegible]

SHALL EVER PRAY.

[illegible]

1974
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[illegible]
13/7/74

2/977

To

The Chief Secretary
to Government Fort St. George
Madras.

The Humble Petition of Madanamma Devi, as
guardian and senior grand mother of Chandra
Sekara Channaraya Chauta, an infant Pattamda
or holder, of a dignity, residing in Mudabidri in
the Taluk of Mangalore in the District of Sou
Canara, Dated 6th July 1874.

Respectfully Sheweth,

That your Petitioner most respectfully requests that your Honor wi be pleased to transmit the accompanying Memorial in triplicate with en-closures to the Most Noble the Secretary of State for India in Council with such recommendations as the Right Honorable the Governor in Counci may deem proper on her behalf.

For which act of kindness your Honor's Petitioner, as in duty bound,
shall ever pray.

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Rec. 2587/74

Ind. 1974 of /74.

3 Augt. [illegible] No. 977
[illegible] No. 3[illegible]

Rev. Dept.

~~Petition~~

C. No. 2587

No. 1974 of 1874 d/ 6th July 1874

Recd 13th

From Madanamma Devi, guardian and Senior grandmother of Chandra Sekara Channaraya Chauter an infant Pattamdar residing at Moodabidri, Mangalore Taluq South Canara

Prays for the transmission to the Secretary of State of the enclosed Memorial praying for the payment of the allowance of which the petr. has been unjustly deprived for the last seven years.

~~977~~

Order No. 977 3 Augt.

The Petr. is informed that her Memorial has been received and will be forwarded to the Secretary of State.

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No. 2587.

Revenue 1874 Dept.

Government of Madras.

Revenue DEPARTMENT.

P ~~etition No. 1977. of 1874.~~

From Madanamma

Devi, guardian and

senior grand mother

Occupation. of Chandra Sekara

Channaraya Chanter

an infant Pattandar

Village. residing at

Mudabidri

Talook. Mangalore

District. South Canara

Dated 6th July } 1874.
Received 13th Do }

Enclosures. 2 p.

2 S. Copies thereof.

ABSTRACT.

G.O. No. 977 – 3 Aug. 74

Prays for the transmission

to the Secretary of State

of the enclosed Memo-

-rial

Memorial praying for

the payment of the allow-

ances, of which the

pets. has been unjustly

deprived for the last

seven years.

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Copd. 8th July/74. Rd. 8th Aug/74