M.R.O. 1—38,000—16-10-20.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 1101 Press ~~Mis~~

480-485

Dated 23 April 1869

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department, 23rd April 1869.

Read again G. O., 30th June 1868, No. 1,821.

Read also the following:—

No. 480. Proceedings of the Board of Revenue, dated 19th August 1868, No. 5,998.

Read the following letter from the Acting Collector of the Kistna District, to the Acting Secretary to the Board of Revenue, dated Circuit Cutcherry at Bapatla, 14th July 1868, No. 212.

I HAVE the honor to forward, herewith, copy of a petition presented to the Civil Court at Guntoor, by Cavaly Venkata Narrainappa, praying for the restoration of Vissanapettah Estate, agreeably to the Decree of the Privy Council, dated 20th December 1867. The date fixed by the Court for the hearing of this petition is the 24th July, as reported by the Government Vakeel in his Arzi,* dated 8th idem.

* Translation sent.

2. I, therefore, request the Board will be pleased to inform me what measures are now to be adopted for redeeming the Zemindary, as suggested by the Board in their Proceedings to Government, dated 19th ultimo, No. 4,302. I also beg that a copy of the Privy Council's Judgment may be supplied to this office.

ENCLOSURE No. 1.

Under Section 212 *of Act No. VIII. of* 1859.

Memorandum of Civil Petition presented to the Civil Court at Guntoor.

Before the Civil Court of Masulipatam.

Original Suit No. 103 *of* 1855.

Before the Madras High Court, (on the file of the late Sudder Udalut.)

Appeal Suits Nos. 103 *and* 136 *of* 1857.

Before Her Majesty's Privy Council.

	In the Civil Court.	In the Madras High Court.	In Her Majesty's Privy Council.
The Collector of Masulipatam.	Plaintiff.	Appellant and Respondent respectively.	Respondent.
C. V. Narrainappa.	Defendant.	Appellant and Respondent respectively.	Appellant.

Cavaly Venkata Narrainappa, abovenamed defendant, in Original Suit No. 103 of 1855, on the file of the late Civil Court of Masulipatam, begs to prefer this petition to your Honorable Court, and prays as follows:—

1. That the possession of the Zemindary of Vissanapettah, (which was taken away from petitioner and put into the hand of the Collector of Masulipatam on the Decree of the High Court, dated 22nd January 1866, though petitioner had applied to stay execution pending the appeal to the Privy Council; now as the decision of the High Court, reversed by the decree of the Privy Council, dated the 20th December 1867,) be restored to petitioner; thereby making the *status* of the petitioner as it was before the Original Suit No. 103 of 1855, in question by the Collector of Masulipatam.

2. That the Collector of Masulipatam be directed to furnish an account of the mesne profits Zemindary during the time it was in his possession.

3. That the whole of the costs in the Original Court be ascertained.

4 That execution be issued for the payment by the Collector of Masulipatam to petitioner, the ascertained mesne profits and the costs in Rupees certified by Her Majesty's Privy Council : and the balance of costs both in the High Court and your Honorable Court.

5. For such further or other relief on the premises that your Honorable Court may seem meet

16th April 1868.

Filed in Court this 18th April.

(Signed) V. DAMODARAYYA,
Pleader.

(True Copy.)

(Signed) W. McQUHAE,
Acting Collector.

From T. PURUSHOTTAMAYA, Government Vakeel, to the Acting Collector of the Kistna District,
Arzi addressed by T. Purushottamaya, Government Vakeel.

I BEG to forward, herewith, copy of petition No. 522, presented by Cavaly Venkata Narrainappa, which, on my application, has been given to me to-day by the Court. On perusal, its particulars will be known.

2. If you are inclined to present a counter-petition on behalf of Government, I beg you will furnish me with a draft thereof, and a stamp paper of the value of 8 Annas for copying the same.

3. As the Court has fixed the hearing of the said petition for 24th instant, it is necessary that the counter-petition should be put in within that time. I, therefore, beg you will be pleased to send me draft of counter-petition and stamp-paper.

4. It appears by the said petition that the petitioner desires to take possession of the estate, and to recover the money hitherto collected by Government, together with costs of suit incurred.

5. As the future proceedings in the matter must be in accordance with the clear meaning of the decision of the Privy Council, I beg to state that, in the event of its being determined that Cavaly Venkata Narrainappa has a right to recover only the principal and interest of his debt, it will then be necessary to deduct from that amount the principal and interest of the money collected by him on the Moottah, while under his management, as well as the money paid to him through public Courts. On this point I request your early reply.

(True translation.)

(Signed) W. McQUHAE,
Acting Collector.

THE Acting Collector will not oppose this suit; but should intimate to the Court that the question of the redemption of the Zemindary is now under the consideration of Government.

2. A copy of the Judgment of the Privy Council, embodied in Proceedings of Government, dated 19th March 1868, No. 721, is herewith forwarded.

3. The great delay which has occurred in announcing the filing of this petition should be explained.

No. 481. Proceedings of the Board of Revenue, dated 31st August 1868, No. 6,220.

Read the following letter from the Acting Collector of the Kistna District, to the Acting Secretary to the Board of Revenue, dated Masulipatam, 30th July 1868, No. 218 :—

WITH reference to the Order of Government, dated 30th June 1868, No. 1,821, communicated with Board's endorsement, dated 10th July, I have the honor to report that the total amount due on the mortgage of Cavaly Venkata Narraianappa is Rupees 2,25,264-15-8, namely—

	RS.	A.	P.
Original debt on 20th April 1838	48,614	13	6
Interest thereon at one per cent. per mensem to the 31st July 1868	1,76,650	2	2
Total	2,25,264	15	8

2. I enclose a Statement showing the mesne profits received by the mortgagee while he was in possession of the estate, from 21st July 1855 to 28th July 1866. The net amount of his receipts is Rupees 1,25,773-13-0 ; interest thereon up to 31st July 1868 is Rupees 92,133-13-1. The set off claimable from the mortgagee is, therefore, Rupees 2,17,907-10-1, but from this something should be deducted on account of charges of collection, and we have no accounts showing the exact amount of such charges. If ten per cent. of the gross collections, or Rupees 17,952, be deducted on this account, the balance remaining due to Venkata Narraianappa is Rupees 25,309-5-7. He made no extraordinary repairs to tanks or other works while in possession of the estate, but it may be necessary to consider any claim he may make on that account.

3. In Fusly 1276, the estate was managed by the Revenue Officers. The demand in that year was Rupees 24,267-13-9, and the collections Rupees 24,201-0-3. Detailed accounts for Fusly 1277 have not yet been received, but the enclosed Statement shows the demand and collection for eleven years. The revenue of the estate is increasing, and will increase considerably if the irrigation works in it be repaired. The Circuit Committee estimated the rental of the estate at Rupees 7,329, and took two-thirds thereof, or Rupees 4,886, as peishcush in the year 1802, leaving to the Zemindar Rupees 2,443. The rental now shows an increase of 231 per cent. upon that valuation.

ENCLOSURE No. 1

Statement showing the mesne profits received from Cavaly Venkata Narraianappa during the time the estate was under his management.

Fusles.	Demand.	Deduct annual remissions.	Net Demand.	Collections. Current.	Collections. Arrears.	Total.	Deduct Peishcush.	Remaining surplus.	Interest on the surplus in Column 9, at the rate of one Rupee per cent. up to 31st July 1868.	Total Columns 9 and 10.	Remarks.
1	2	3	4	5	6	7	8	9	10	11	12
	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs.	Rs. A. P.	Rs. A. P.	Rs. A. P.	
1 1265	15,136 1 4	756 13 7	14,379 3 9	13,177 13 3	.....	13,177 13 3	4,886	8,291 13 8	12,033 2 5	20,314 15 8	
2 1266	17,886 2 9	598 15 6	17,287 3 3	11,324 2 8	796 6 1	13,120 8 4	4,836	7,284 8 4	9,621 14 7	16,856 6 11	
3 1267	9,098 10 10	413 11 4	8,684 15 6	6,016 11 7	5,655 0 10	11,671 12 5	4,856	6,785 12 5	8,210 12 7	14,996 9 0	
4 1268	18,928 7 5	854 7 0	18,574 0 5	10,971 9 6	2,242 8 10	13,214 2 6	4,886	8,328 2 6	9,077 11 1	17,405 13 7	The interest on the mesne profits is calculated from the commencement of the Fasly succeeding that in which they were collected. It is impossible to calculate interest from dates of collection, as the dates cannot be determined.
5 1269	13,555 0 8	409 12 2	13,145 4 6	8,102 13 5	6,756 9 8	14,859 7 1	4,886	9,973 7 1	9,674 8 10	19,647 10 11	
6 1270	11,692 4 0	155 0 9	11,537 3 3	8,585 1 1	4,589 9 8	13,174 10 9	4,886	8,288 10 9	7,045 5 11	15,334 0 8	
7 1271	18,842 7 5	88 8 6	18,753 14 11	17,241 5 10	2,316 6 1	19,557 11 11	4,886	14,671 11 11	10,710 6 0	25,382 1 11	
8 1272	16,309 8 8	.....	16,309 8 8	15,851 14 5	1,202 10 9	17,054 9 2	4,886	13,168 9 2	7,422 13 3	19,591 6 5	
9 1273	21,644 6 2	29 0 2	21,615 6 0	20,932 13 2	199 13 3	21,132 10 5	4,886	16,246 10 5	7,960 13 9	24,207 8 2	
10 1274	23,179 11 11	.....	23,179 11 11	20,683 5 1	373 7 7	21,056 12 8	4,886	16,170 13 8	5,983 3 1	22,153 15 9	
11 1275	21,804 5 11	.....	21,804 5 11	21,041 10 2	1,453 0 4	22,494 10 6	4,886	17,613 10 6	4,403 6 7	22,017 1 1	
Total...	1,87,977 3 1	2,806 5 0	1,85,170 14 1	1,53,039 3 11	25,590 9 1	1,79,519 13 0	53,746	1,25,773 13 0	92,133 13 1	2,17,907 10 1	

MASULIPATAM.
30th July 1868.

(Signed) W. McQUHAE,
Acting Collector.

SUBMITTED for the information of Government, with reference to paragraphs 5 and 6 of their Proceedings, dated 30th June 1868, No. 1,821.

2. The total amount due on the mortgage appears to be (including interest on the original debt) Rupees 2,25,264-15-8.

3. After deducting from this the net receipts of the mortgagee during his tenure of the estate, together with interest thereon, (*minus* probable cost of collection,) amounting in all to Rupees 1,99,955-10-1, there remains a sum of Rupees 25,309-5-7 necessary for the redemption of the estate.

4. Under these circumstances, the Board do not hesitate to renew their previous recommendation, that, on execution of the decree being obtained, measures be commenced for exercising the equity of redemption.

5. It appears from a letter from the Collector, dated 14th July 1868, that the mortgagee filed a petition in April, praying that the estate might be restored to him.

6. A copy of the Collector's letter and the petition are herewith forwarded for the information of Government.

7. The Board have meanwhile directed the Collector not to oppose the petition, as should it be granted by the Court, it will be open to Government to institute a suit to redeem the estate.*

* *Vide* paragraph 3 of letter from the Officiating Government Pleader, dated 19th March 1868, No. 53, embodied in Government Proceedings of 30th June.

No. 482. Proceedings of the Board of Revenue, dated 6th October 1868, No. 7,044.

Read the following letters :—

From the Acting Collector of the Kistna District, to the Acting Secretary to the Board of Revenue, dated Masulipatam, 5th September 1868, No. 259.

WITH reference to the Proceedings of the Board of Revenue, dated 17th April 1868, I have the honor to report that the Civil Court at Guntoor, on the 27th August last, ordered the Vissanapettah Estate to be made over to C. Venkata Narraianappa with mesne profits and costs. The Government Vakeel reports that he has applied for a copy of the Court's order and will send it when obtained.

2. A Statement of all sums already paid by Government to C. Venkata Narraianappa for his costs must now be laid before the Court in order that the balance of costs (if any) now payable to him may be correctly ascertained. From the accounts of this office, the amount paid appears to be Rupees 3,919-10-6 ; but this cannot be depended upon as accurate, because a great part of the records of this office was destroyed by the cyclone. On 22nd April 1868, the Government Vakeel was directed to prepare a Statement of costs paid by Government to Cavaly Venkata Narraianappa from the records of the Civil Court. Again, on the 6th May 1868, he was directed to examine the accounts of the Civil Court and to ascertain the exact amount paid. The Government Vakeel now reports that he is engaged in examining the records of the Court and preparing the necessary Statement.

3. As to the delay noticed by the Board in their Proceedings, dated 19th August 1868, the Government Vakeel explains that the petition of Cavaly Venkata

Narraianappa was filed on the 18th April, that the Court ordered it to stand over till after the recess, which commenced on the 26th April, and that after the Court re-opened, he applied for a copy of the petition and submitted it to the Collector on the 8th July. It arrived in this office on the 11th July.

From the same Officer, dated 12th September 1868, No. 269.

In continuation of my letter, No. 259, dated 5th instant, I have the honor to forward copy of the Proceedings of the Civil Court at Guntoor, dated 29th ultimo, ordering the Vissanapettah Estate to be made over to Cavaly Venkata Narraianappa.

Enclosure No. 1.

Abstract.—Proceedings of the Guntoor Civil Court.

Resolved, that the foregoing letters be submitted for the information and orders of Government.

2. In paragraph 2 of their Order, dated 19th March 1868, No. 722, Government declared that they had no desire to oppose the transfer of possession to the decree holder, and in paragraph 3 of their Order, dated 30th June, No. 1,821, they presumed that he was "now again in possession under the recent decree."

3. The Privy Council, from the latter part of their Judgment, appear to have been under the impression that he was in possession at the time this Judgment was passed, though this was not the case. This matter was, however, brought to the notice of Government by the Officiating Government Pleader, when the Order of 19th March, quoted above, was passed.

4. In their Proceedings, dated 31st August, No. 6,220, the Board recommended that Government should exercise the right of redemption.

No. 183. Proceedings of the Board of Revenue, dated 20th October 1868, No. 7,540.

Read the following letter from the Acting Collector of the Kistna District, to the Acting Secretary to the Board of Revenue, dated Masulipatam, 6th October 1868, No. 292.

To Board, 5th September 1868, No. 259.
" " 12th " " " 269.

With reference to the correspondence noted in the margin, I have the honor to forward copy of an extract from the Proceedings of the Civil Court of Guntoor, dated 30th ultimo, No. 197, and request the orders of the Board to deliver over to the appellant, Cavaly Venkata Narraianappah, or his agent, the estate of Vissanapettah.

Enclosure No. 1.

No. 197.

Extract from the Proceedings of the Civil Court of Guntoor, dated 13th September 1868.

In pursuance of the order made by this Court on the 27th August, upon the petition of Cavaly Venkata Narraianappah, by his Vakeel V. Damodarayya, of the 17th April 1868, claiming execution of the decree of the Judicial Committee of the Privy Council by the delivery to him of the estate of Vissanapettah, and praying that the Collector might be directed to furnish an account of mesne

profits of the Zemindary during the time it was in his possession; that the whole of the costs in the Original Court be ascertained; and that after the said mesne profits have been ascertained execution be issued for the payment of the amount by the Collector together with the costs certified by Her Majesty's Privy Council, and the balance of costs found due both in the High Court and this Court, the Collector of Masulipatam, the plaintiff in the Suit No. 3 of 1855, and respondent before the Judicial Committee of the Privy Council, is hereby directed (in the lieu of other process of Court) to deliver over to the appellant, Cavaly Venkata Narrainappah, or his agent, the estate of Vissanapettah within thirty days after the receipt of these proceedings, and further to furnish this Court with an account of mesne profits accrued during the time the estate was in his (Collector's) possession.

Ordered that extract from these Proceedings be sent to the Collector of Kistna District, for his information.

(True Extract.)

(Signed) R. SWINTON.

(True Copy.)

(Signed) W. McQUHAE,
Acting Collector.

The Collector will hand over the estate as directed by the Court's order.

No. 484. A brief Statement of CAVELLI VENCATA NARRAINAPAH'S case, anent the Vissunnapett Zemindary.

That the Zemindary of Vissunnapett was formerly the property of a Hindu Brahmin, Veragondah Ramanapah, which had been guaranteed by an Istimarar Moolkyet, or a solemn Deed of Conveyance granted by the British Government, (on their assuming charge of the Northern Circars from the Nizam,) subject to an annual payment of revenue of about Rupees 5,000, which is two-thirds of its value, signed and sealed by the Governor in Council, giving full powers and liberty to the holders thereof to dispose or alienate it freely telling in its 7th paragraph that—

"You shall be at free liberty to transfer, without the previous consent of "Government or of any authority, whomsoever you may think proper, either "by gift, sale, or otherwise, your proprietary right in the whole or in any part of "your Zemindary; and such transfer of your land shall be valid and recognised "by the Courts and Officers of Government."

That the said Zemindar, Ramanapah, died in February 1810, much involved in debt, and without issue, leaving a widow, Veragondah Lutchmee Davamah, who entered into possession of the said estate as his successor.

That the said Narrainapah's family, for a long series of years, had dealings with the said Zemindar so that one Cavelli Seetiah, half-brother of the said Narrainapah's father, was in the habit of advancing loans to the said Ramanapah during his life-time, and, after his death, to his widow, the said Lutchmee Davamah, for necessary purposes; for which, on an adjustment of accounts, took place in the latter end of 1810, a fresh Security Bond was executed by the said Lutchmee Davamah, mortgaging the said Zemindary of Vissunnapett.

That the said Narrainapah's father also assisted the said Lutchmee Davamah with advances of money after her husband's death, to meet demands on her for the said Zemindary, and became a transferee of the debt to the said Seetiah; that

similar advances continued to be made at various intervals up to the year 1838, when all accounts between them were adjusted, and a fresh Bond was executed in favor of Narrainapah's father for the balance then found due to him.

That the said Lutchmee Davamah having failed to observe the stipulations of the said Bond, the said Narrainapah's father proceeded against her in the Court and obtained a Decree in his favor.

That shortly after the said Decree, Narrainapah's father demised in May 1839. He, the said Narrainapah, sued for the execution of the said Decree when the Court ordered the Collector of the Zillah to sell the Zemindary in question, and send the proceeds to them to pay the said Narrainapah in satisfaction of the said Decree; but the Collector instead of doing so, by at once taking the steps directed in the Regulations, pressed the parties, *i.e.*, the said Lutchmee Davamah and Narrainapah, to enter into a compromise in any manner; and thus the said Narrainapah was compelled at last to come to an arrangement with the said Lutchmee Davamah, and filed a Razee, under certain stipulations in 1841, to discharge the debt with interest by eight annual instalments, and in failure the Zemindary to be made over to Narrainapah absolutely in lieu of the debt.

That no part of the said debt being discharged, the Zemindary, according to the conditions of the Razee, became the property of the said Narrainapah in the latter end of 1841, when it ought to have been delivered over to him. But such possession was deferred for more than fourteen years: the first eight of which by a suspension of the execution of the said Decree of 1838, *i.e.*, the Razee by the Court of Sudder Adawlut; and the latter six years by an unnecessary delay in enforcing the motion for possession made on the removal of the said suspension. In the meantime, the said Lutchmee Davamah demised in 1849 without heirs, when the Collector attached the said Zemindary, pending first the disposal of the claims of certain parties to the said property then before the Court, and turning round subsequently urged a claim for an escheat.

That after a long struggle the late Sudder Court, under date 13th February 1854, ordered the possession of the said Zemindary to be given to the said Narrainapah under the terms of the said Razee, and the Sudder Adawlut further directed that the proceeds of the estate be paid to the said Narrainapah up to the time he had been kept out of possession under the Suspension Order from 1841.

That thereupon the Collector applied to the Sudder Court demanding, on behalf of Government, that their Order, of February 13, aforesaid should be withdrawn in deference to the right which the Government asserted to hold the Zemindary as an escheat, which prayer was rejected on the 11th October following.

That upon this the Collector, on behalf of Government, instituted a suit in 1855, claiming, under the spirit of Hindu Law, the said Zemindary free of all encumberance as an escheat. The case came before the Civil Judge of Masulipatam, who decided that the terms of the Razee of 1841 should not be carried out. He decreed that the Judgment, which found the Razee of 1841, should be enforced by the sale of the Zemindary, and that any surplus of the proceeds that might remain after satisfying the debt should go to the Government as an escheat; and if the property failed to realise the sum decreed, the Zemindary itself should be made over to Narrainapah.

That Narrainapah and the Collector being both dissatisfied with the above decision, appealed to the Sudder Court, when the suit of the Collector was dismissed on the ground, that under Hindu Law, according to the declaration of Menu—namely, "that the property of a Brahmin shall never be taken by the King"—the Government had no right of escheat in respect of the Zemindary at issue which was the estate of a Brahmin.

That this Decree has been appealed against to the Lords of the Judicial Committee of the Privy Council, and was reversed telling: "In so dealing with the question, the Sudder Court was applying the actual or supposed Hindu Law, in derogation of the general right of the British Sovereignty". The suit was remanded to the Sudder Court for further consideration of the merits of the case therein contained.

That the suit came on to be heard by the Sudder Adawlut, when they again dismissed the suit of the Collector, declaring that "upon every ground above taken, the Court resolve, in reversal of the Decree below, to dismiss the suit with costs: first because the law of escheat does not give the plaintiff the power to question the assignment objected to; second, because the plaintiff acquiesced in the assignment when made; third, because the burden of showing cause against the assignment rests upon the plaintiff, had he been in a position to challenge the same, and no such cause has been shown by him or alleged".

That the Collector being still dissatisfied with the said Decree, appealed to the Privy Council which over-ruled the said points decided by the Sudder, and again remanded the suit for further trial, giving three issues for inquiry by calling for fresh evidences.

That the said issues having been referred by the High Court of Madras to the Civil Judge of Guntoor to inquire in its Original Jurisdiction, he, the Civil Judge, taking fresh evidences from Narrainapah and the Collector, found the whole of the three issues given by the Privy Council in favor of Narrainapah. To the first issue he decided that the alienation by the widow was for legal purposes sanctioned by Hindu Law, and that the right of the Crown, as next heir to her husband, was therefore absolutely defeated by the Razee in the pleadings.

That with regard to the second issue, the Civil Judge decided that, up to the date of the Razee filed in 1841, the amount due to Narrainapah, with interest, accumulated to Rupees 67,444-12-0. He had no data to go upon to enable him to fix any other amount than the above, as aggregate of sums really advanced by Narrainapah's father, with interest accruing thereon; or for declaring that they were advanced for other than legal purposes, as alluded to by him when considering the first issue.

That with regard to the third issue, the Civil Judge was of opinion that Veragondah Ramanapah died possessed of no other property available for any purpose, save and except the estate in dispute, which, at his death, was not unencumbered.

That from this decision the Collector appealed to the High Court, which, in the first instance, admitting almost all the facts of the claim of Narrainapah, lastly turning round in a contrary direction, passed their decision on the 22nd January 1866, upsetting the whole of the rights of Narrainapah, and quite contrary

to the evidences on the record, stating, among other things, "that, from the death of the Zemindar, in 1810, up to the year 1813, advances had been made to the widow by defendant's father for purposes for which, according to Hindu Law, the widow would have been entitled to alienate the estate as against the next heirs of her husband, if such there had been; and that, on the 18th May 1822, the balance due by the widow upon these advances with interest was about Rupees 20,000; that, in the year 1828, a further advance was made for similar purposes, Rupees 1,033-3-3; and that, at the time at which the advances beforementioned had been respectively made, the widow had not other estates of her husband sufficient to answer the purpose for which the advances were taken, and to which they were applied; that defendant has not shown what, at the date of advances last mentioned, was the debt upon the former advances, or whether any such former debt still subsisted; that no advances were made from this date to the date of the mortgage Deed (Exhibit XXI.) in 1838; that the defendant was bound to show, and has not shown, that the widow was in debt to the defendant's father at the date of the execution of Exhibit XXI, (the mortgage Deed,) for advances made for the purpose aforesaid; and that plaintiff, on the part of Government, is therefore entitled to take the estate by escheat, unencumbered by charges created in favor of defendant's father and defendant.

That from this Judgment, Narrainapah has appealed to Her Most Gracious Majesty in Council, who reversed the said decision of the High Court of Madras on the 20th December 1867, declaring that, "Her Majesty having taken the said report into consideration, was pleased, by and with the advice of Her Privy Council, to approve thereof, and to order, as it is hereby ordered, that the Decree of the High Court of Judicature of Madras of the 22nd June 1866 be and the same is hereby reversed, and that it be and it is hereby declared that, on the 20th of April 1838, there was due from the widow to the father of the appellant, in respect of advances for which she would have been entitled to alienate the estate as against the next heirs of her husband, if such there had been, the sum of Rupees 48,611-13-6; and further declared that Her Majesty is further pleased to order, and it is hereby ordered, as the consequence of the foregoing declaration, that the suit of the respondent do stand dismissed without prejudice to the right of the Crown (if it shall so think fit) to assert its equity of redemption in a suit properly framed for that purpose, and the costs of this appeal, as well as the general costs of the suit below, ought to be awarded in compliance with the terms of the Report."

That thereupon Narrainapah filed the above decision of the Privy Council in the High Court of Madras, praying to forward to the Civil Court of Guntoor for execution in its original capacity.

That, moreover, Narrainapah moved the Civil Court of Guntoor to enforce the said decision of the Privy Council, praying them to restore the possession of the Zemindary which was taken from him (Narrainapah,) and handed over to the Collector on the execution of the Decree of the High Court, which now stands dismissed, and to settle the question of the costs, etc., therein stated.

That whereupon the Civil Judge has restored possession of the Zemindary to Narrainapah as it stood before the suit of 1855, now dismissed by the Privy Council.

That having thus laid, in as small a compass as possible, a brief history of the case, it is desirable to submit also such observations as the merits of the case require for consideration, before coming to a conclusion on the question, whether, under all the circumstances of the case, the Government should further interpose with regard to Narrainapah's possession of the Zemindary of Vissunnapett, or direct another suit to be brought against Narrainapah to enforce an equity of redemption, and so to encumber him with further heavy law expenses, and to submit him to a continuation of litigation in his old age, of which he has had enough from 1839 to 1868.

That Narrainapah respectfully submits that his possession ought not to be disturbed for the following reasons:—

First,—It is now established that the debt incurred by the Zemindarnee was for such objects of necessity, (the payment of the Government peishcush, etc.,) as warrants even a widow to alienate the property permanently.

Because, in the Order of Her Most Gracious Majesty in Council, passed with the advice of the Privy Council on the 20th December 1867, it is declared, "that on the 20th of April 1838 there was due from the widow to the father of the "appellant, in respect of advances for which she would have been entitled to "alienate the estate as against the next heirs of her husband, if such there had been, "the sum of Rupees forty-eight thousand six hundred and eleven, Annas thirteen, "and Pies six."

Because, the law Officers of the late Sudder Adawlut, on being questioned by the Court in the suit in question, have declared that "the widow, referred to in "the question, has, under the Hindu Law, authority to transfer, by mortgage or "conditional sale, the real estate mentioned in the question on account of the "debt incurred for the purposes therein stated; such Deed of Transfer, emanating "as it does from an authorised person as stated above, is valid, and is therefore "binding upon her and her relations".

Because the alienation made by the widow, in 1841, is not repugnant to Hindu or Mahomedan Law, or to the Regulations and enactments of Government; and, moreover, such and similar alienations, as by the Deed of 1841, are common, and have been in existence from time immemorial in the land, and have also been sanctioned by the Judgments of the Courts of Judicature, passed both before and after the said Deed.

Secondly,—That the value of the Zemindary, at the time when Narrainapah would have sold it under the execution issued by the Court, was not enough to have satisfied his debt. He might have bought the estate at its value at that date, and have held it ever since.

Thirdly,—That Narrainapah was prevented from enforcing his execution solely by the interposition of the Collector of the day, whose action, though not binding on the Government, is a matter to be taken into consideration, as it has entailed on Narrainapah all the subsequent litigation.

Fourthly,—That when the Suit No. 103 of 1855 was instituted, the Government expressly directed that the pleadings should be framed so as not to open up the question of the *bona fides* of the Decree obtained by Narrainapah against the widow, the object being to obtain a decision as to the extent of a widow's right to

alienate, though not bound by the Collector's acts in 1841; the Government felt that his interposition had necessarily cast grave difficulties in Narrainapah's way, by possible dying out of evidences and the like. This fact was never known to the Privy Council; but when the suit was remitted back to this country, the Government was advised to open up that old Decree, and force Narrainapah to prove the whole consideration of the debt on which it was founded. Narrainapah presumes that the Order, directing the frame of the suit, could never have been brought before the Government when it sanctioned this opening up of the old Decree.

Fifthly,—That though the value of the Zemindary has increased of late, it could not, if sold, satisfy Narrainapah's demand with interest, as the account stands at the present day.

Sixthly,—That the policy of Government, as Narrainapah believes, has been of late years to encourage the growth of respectable middle-men, when opportunity for so doing has presented duly.

If hence the Government should be disposed to enforce the equity of redemption, Narrainapah trusts that there will be no further necessity for litigation; but that the amount of what is due to him may be ascertained in an amicable way by a reference to independent arbitration, or such other course as may be agreed to between the parties. The Privy Council evidently deprecate further litigation in a matter which has already been thrice before them. They say, in their last Judgment, that "this is the third appeal to Her Majesty in Council in this unfortunate case".

That, with the view of affording an insight into the claims of Narrainapah, he will proceed to state how he makes it out:

That from the date of the said Bond, dated April 1838, for Rupees 48,614-13-6, up to July 1855, when the said Zemindary was put in Narrainapah's possession in satisfaction of the debt thereon, there are three periods which may be fairly reckoned as adjustments:—

First,—The amount under the Razee, dated 5th April 1841, between Lutchmee Davamah and Narrainapah, for Rupees 67,444-12-0.

Second,—Amount, including interest on the above sum at twelve per cent. per annum, up to the 9th November 1849, when a movement was made for the enforcement of the terms of the aforesaid Razee, the operation of which was kept suspended by the interlocutary proceedings of the late Sudder Court, Rupees 1,27,025-0-4.

Third,—Amount, including interest, up to the end of June 1855, when the said Zemindary was put into Narrainapah's possession, after a delay of six years occasioned by the Courts, Rupees 2,29,191-6-4. Add amount of interest due upon the said amount up to June 1868, after deducting the net surplus of the Zemindary and other sources, Rs. 2,56,450-7-0, which makes a grand total of Rupees 4,86,241-13-4 due on the Zemindary, exclusive of all costs and charges, etc., thereon incurred, since 1841, for the purpose of defending Narrainapah's right.

The foregoing is submitted to equitable consideration for the ends of justice.

Decree of the Sudder Adawlut, enforcing conditional sale even without reference to an alleged inadequacy of price, in Special Appeal No. 69 of 1857, *dated 12th August* 1857.

PRESENT:—Messrs. HOOPER, W. A. MOREHEAD, and T. W. GOODWYN.

Special Appellant	*versus*	*Special Respondents.*
Coopparayen,		Coopoosawmiengar and another.

Special Appeal from the Decree of the Acting Assistant Judge of Combaconum in Original Suit No. 227 of 1853.

THE suit was instituted for the recovery of two mahs and fifty-five goolies of land, valued at Rupees 11, mortgaged by plaintiff's father to first defendant in 1835 with the stipulation that the mortgage should be redeemed in 1837, and for Rupees 135 due on account of value of produce, after deducting mortgage amount.

2. In his answer, first defendant states that the land was mortgaged to him by plaintiff's father in 1835; that by the terms of the mortgage, if not redeemed within two years, it was to become his (the defendant's property), as by right of purchase; that it was not redeemed, and consequently became his property in 1837, since which time it has been in his possession.

3. The Hindu Sudder Ameen finds, that the mortgage Bond, or Deed of conditional sale, filed by the defendant, is admitted by the plaintiff; that the consideration was paid; that by its terms the land was to become the property of defendant, if not redeemed in 1837; that it was not so redeemed, and did become his property at that time; and on these grounds dismissed plaintiff's claim.

4. On appeal, the Assistant Judge reversed so much of the original Decree as dismissed the plaintiff's claim for the land, on the grounds that, as the selling values of the land would appear, for reasons detailed, to have far exceeded Rupees 25, the sum advanced on its mortgage, this clearly showed that the Deed, on which defendant based his title, was a mere usufruct mortgage Bond giving no right of foreclosure; and that plaintiff had still the power of redemption; and decreed accordingly that the land should be made over to plaintiff on his payment of Rupees 25, the sum advanced on the mortgage, dismissing, however, his claim for value of produce.

5. A Special Appeal was admitted by the Court of Sudder Adawlut against this decision on the grounds:

I.—That the Acting Assistant Judge had omitted to notice that the Deed under which defendant claims, was stated to be a Deed of conditional sale, whereby the land mortgaged would become the mortgagee's property, if not redeemed in 1837.

II.—As the land is not alleged to have been redeemed, if foreclosure took place in 1837, from which time the law of limitation would run, which would now bar the plaintiff's claim.

III.—That the Acting Assistant Judge appears to have decreed in favor of plaintiff on account of the supposed inadequacy of price, which, even if proved, would be no sufficient reason for refusing to construe the document according to its terms and provisions.

No answer.

JUDGMENT.

The Court of Sudder Adawlut finds that the document No. 1, filed by the defendant and admitted by both parties, is a conditional Deed of sale, in virtue of which the land in question, not being redeemed within the stipulated time, became the property of the defendant in 1837, and that the Assistant Judge erred in refusing to construe this Deed according to its terms, on account of the supposed inadequacy of the price, for a vague estimation of the value of the land from the first defendant's admission of its produce, subsequent to the year 1837, can furnish no good grounds for refusing to construe the document by the terms and provisions therein appearing, especially as the Acting Assistant Judge, in paragraph 9, urges strong reasons for rejecting the plaintiff's plea of the full consideration not having been received. The Court accordingly reverse the decree of the Acting Assistant Judge, and confirm that of the lower Court, dismissing the plaintiff's claim with all costs.

No. 485.

ORDER THEREON, 23rd April 1869, No. 1,101.

Miscellaneous.

THE Government have carefully considered the recommendation made by the Board of Revenue in their Proceedings of 9th June 1868, and again repeated in their Proceedings of 31st August 1868, to the effect that the equity of redemption, expressly reserved to the Crown by the Decree of the Privy Council in the case of the Vissunnapett estate, should be asserted by a suit framed for that purpose. They observe that the Board estimate the cost of redemption at Rupees 25,309-5-7, whilst C. Vencata Narrainapah estimates it at Rupees 4,86,241-13-4. It is probable that the one estimate is as much too high as the other is too low; but on this point the Government do not wish to offer any opinion further than to remark that, under the circumstances, no amicable adjustment of the accounts would be possible.

Taking every circumstance of this (so aptly termed by the Privy Council) unfortunate case into consideration, the Government have arrived at the conclusion that a spirit of liberality should actuate them to decline further litigation, and to leave C. Vencata Narrainapah in undisturbed possession of the estate. They consider that it is far better to relinquish a small portion of the public revenue, than to incur the slightest imputation of having acted oppressively and in a grasping spirit.

2. The reasons which have induced this decision are mainly as follow:—

C. Vencata Narrainapah has now been engaged for nearly thirty years in legal proceedings regarding this estate. The Decree, obtained by his father in 1838, was bequeathed to the son in 1839, but, owing mainly to obstacles raised by the Government Officers, was not executed until 1855. Then followed the suit on behalf of Government, and, in framing the plaint, it was expressly decided that the "*bona fides*" of the loans, made by C. Vencata Narrainapah's father to the widow, was not to be impeached and that the legal question of the right of a Hindu widow to alienate, as against the Government claiming by escheat, was to be the only question raised. On appeal, the Sudder Court dismissed the suit on the preliminary ground that the estate of a Brahmin could not escheat to Government, and an appeal to the Privy Council was thereby necessitated. On 30th July 1860, the Privy Council reversed the Decree of the Sudder Court, and suggested, for the consideration of the parties, that some arrangement for the surrender of the Zemindary to Government, upon payment of what was due to the respondent for the advances actually made, would probably meet the real justice of the case, and save both parties from protracted litigation. Had the Government then agreed to pay the full amount of the advances made to the widow by C. V. Narrainapah with interest up to date, conditional on the surrender of the estate, a compromise would very probably have been effected, but various circumstances combined to prevent this result. The Order of the Privy Council came before the Sudder Court on 20th October, or little more than a month after the terms of it had been made known in this country, and the Sudder Court, without taking further evidence, again passed a Decree in C. V. Narrainapah's favor, negativing the right of the Crown to challenge the alienation made by the widow. Mr. Dale, who had at this time succeeded Mr. Norton as Government Pleader, advised an appeal to the Privy Council against this Decree as erroneous in law, and an appeal was accordingly preferred.

The result of the second appeal to the Privy Council was, that the suit was remanded for further evidence on 21st December 1861, and the position of the parties defined thus:

(1.) The Crown taking by escheat has the same right to impeach the alienation by the widow which the next heirs of the husband would have had.

(2.) The amount of the advances made to the widow, if any, are a proper charge upon the estate.

At this period Cavelli Vencata Narrainapah was willing to compromise, as is shown by his Petition, dated 13th February 1862, upon the terms of retaining the Zemindary, or of surrendering it on payment of the principal debt due to him, with interest. Acting, however, upon the advice of their Government Pleader, the Government of the day determined upon putting C. Vencata Narrainapah to proof of the amount of the debt due to him by the deceased widow, which involved transactions extending over a series of more than fifty years, and from this period, the suit entered upon a new stage. Viewing the Order of 5th August 1862, No. 1,659, by the light of subsequent events, the Government cannot but think that it was inconsistent to have acquiesced in the *bona fides* of C. Vencata Narrainapah's claim from 1855 to 1862, and then to have turned round and thrown the burden of proof on him at a period when evidence of this nature was much more difficult to obtain.

It is needless to follow the suit through its subsequent stages until the final Decree of the Privy Council last year. The result of the protracted litigation has doubtless been to mulct Cavelli Vencata Narrainapah very considerably in a pecuniary point of view, and has certainly not tended to represent the Government as a liberal land-lord.

3. It only remains to notice the expression made use of by the Board, in their Proceedings of 9th June 1868, to the effect that the position of the Mortgagee is merely that of Judgment debt holder, whose claim against the widow of the late Zemindar has, after a long course of litigation, been established against the estate. This can hardly be considered a fair view of the question at issue. The claim of the Mortgagee, as against the estate, was acknowledged in 1838, and was never questioned, except by Government intervening as third parties. There is, therefore, no question of creating a Zemindar, and enriching him by a large assignment of public revenue. Cavelli Vencata Narrainapah succeeded to the Zemindary by the terms of his mortgage, and Government could only claim, as heir-at-law of the late Zemindar, to pay off the mortgage and obtain possession.

4. The Government desire that the Board will convey to the Zemindar the expression of their hopes that he will conduct the duties, which devolve upon him in the management of the estate, in such a manner as not to cause the Government to regret that they have seen fit to deal liberally with him, and to refrain from exercising their just and legal rights.

(True Extract.)

Acting Secretary to Government.

To the Board of Revenue.

Exd. F. R. Bantleman.

Extract from the Proceedings of the Civil Court of Guntoor dated 27th August 1868.

Read Miscellaneous Petition No 522 of 1868 presented by Vadlamannaty Damodirayya Vakil on behalf of Kavaly Venkatanarayanapah, Appellant and Respondent in Nos 103, and 136 of 1857 respectively in the file of the late Sudder Court, on 17th & filed on 18th April 1868. Application was made to this Court on the 17th April 1868 to have executed the Order of Her Majesty's Privy Council dated 20th December 1867 based upon the Report of the Judicial Committee of the Privy Council in the case of the Appeal by Cavaly Venkata Narayanappa against the decision of the High Court of Madras of the 22d June 1866.

The Petitioner prayed that the Estate of Vadlamanna patta might be restored to his possession which had during the Appeal to Her Majesty in Council been taken out of his possession in execution of the above mentioned Decree of the High Court and made over to the Collector of Masulipatam; that the Collector might be directed to furnish an account of the mesne profits of the Zamindary during the time it was in his possession; that

1

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Govt. Press, 1869.

REVENUE.

2%

THE BOARD OF REVENUE

Dated April 1869

Read

Ord. No. 2 of April 1869, No. 1101

Encl.

Encl.

No. 459—455.

that the whole of the costs in the Original Court be ascertained; that after the said mesne profits have been ascertained, Execution be issued for the recovery of the amount by the Collector together with the costs certified by Her Majesty's Privy Council and the balance of costs found due both in the High Court and this Court: further for such other relief as might seem meet. This application was made a few days before the recess and was determined to be heard after it. On the 14th July, it was put for consideration for the 27th and, after some hearing, was further posted for the 21st August and eventually until this day. At the hearing on the 27th July the Petitioner objected to the appearance of the Government Pleader as he had not furnished himself with a Vakalutnama on a stamp paper but had appeared according to the olde practice under the authority of a Muchcha or order authorizing and directing him to appear; Act XXI of 1867 (Madras) was passed to repeal section 37 of Regulation XIV of 1816 which directed the appointment and mode of appearance of Government Pleaders and it was urged that the Government Vakil was not in Court not having been furnished with a Vakalutnama on a proper stamp. Though the mode of appointment of the Government Pleader had been

done away with, it appears from section 52 of the Civil Procedure Code that there is still such an functionary, he is in that section to be accounted the Agent of the Government for the particular purposes mentioned in that section & section 17 Clause 3d enacts that "persons being Ex Officio or otherwise authorized to act for Government in respect of any suit or Judicial Proceedings" are the recognized agents of parties by whom applications and appearances may be made, but from the after Expressed mention of the Government Pleader for Narrower purposes in section 52, I do not think that by virtue of his office, he can be said to be one of the recognized agents and section 70 required the Government Pleader to be furnished with authority in each case. Article 7 Schedule B Act XXVI of 1867 requiring with certain exemptions such power to be on a stamp (the exemption before enjoyed under Regulation XIV of 1816 being abolished) the authority though not filed must, if required, be presented; and therefore comes under the above Section. The only authority now presented is the order of the Collector on plain paper to abstain from further proceedings pending the orders of the Boards of Revenue. At the hearing on the 27th July, the Government Vakil was informed that this stamp seemed to be required, and upon

upon again considering the Regulations and facts concerned, it seems to be necessary —

Not having therefore been furnished with the authority to appear on a proper stamp, the Petition has been heard Ex parte — It should be mentioned however that the Government Vakil had opportunity to state during the discussion both on this date and before, the nature of his objection, if any — He petitioned for a request for further time, but this did not seem to have been made: he said his directions were to do nothing until the Collector had heard from the Board of Revenue — It seemed to me and does now, that the Petition stated both on the 27th July and now, that the main point was one (not turning upon the calculation of the Court accounts but upon the wider question / whether or not when the Privy Council had determined that the appellant was entitled to hold the Zamindary against the Crown as a security for so much of the said sum and of the interest thereon as now remains unpaid, it being not ascertained whether there would be any balance due after deducting the long arrear of Kavali Venkata Narayanappa, the Court could under that Decree enter in execution upon a calculation of the balance (if any) due and then only upon a balance being found due, direct its

its payment, or whether the Court was bound simply to have the parties placed in the same position in which they were before the execution of the Decrees of the High Court was carried out by the dispossession of Kavaly Venkata Narayanappa, I was inclined to the former course to avoid the again disturbance of interest and change of management of the estate, which again upon the equity of redemption being successfully maintained, might have to be restored to the Crown to whom it has been plainly determined, the Estate has escheated subject to this lien, but from a consideration of other parties of the Decree it seems to me to be effected by the order of Her Majesty in Council that the parties be placed in the position they were before the execution of what is now determined to have been a wrong Decree that of the High Court The only authority cited was on the part of the Petitioner that of a Decree of the Calcutta High Court in the case of Gowin Chun Bose v Byeantonath Acharjee reported in Page 293 of the Calcutta Revenue Civil and Criminal Reporter for 1866 Volume I — That was a mere case of a party having been put in possession of lands (upon his first and favourable decree) and being required to pay back mesne profits under execution when the Decree was reversed —

As

As far as I am able to see the Order must be made in the terms requested for the disposession of the Collector and the restoration of the Estate to Kaveely Venkata Rowrengamaffee and that the different costs and Mesne profits be ascertained &c.—

(True Copy as furnished by the Government Vakil)

W. W. Turbull
Acting Collector

1868 Post

In a letter from the
Acting Collector
of Kilrea District
dated 12th September 1868.

No 269

Rec: 3264-/68

Copy of Pro-
ceedings of the Civil
Court of Grantown

23 [illegible] 68

Enquired No 6/6 11317/68

[illegible]

From 23rd April/69 to 2. 182

Revenue Department

Memo on Visanampettah Zemindary case.

1810.

In 1810 the zemindar of Visanampettah died and his widow Varajon dah Lutchme Dava namma succeeded to the estate, there being no other heirs. It appears to have been encumbered with debt at the time, and gradually became more and more involved.

In 1830, the widow applied to the Collector to register the transfer of her zemindary to her brother's grandson Cavaly Vencata Rageswara Row, under Sec 2, Reg XXVI of

Collr's Memorial not produced

6. 62 Nov 1830 No 673

X

with the Court of the Privy Council here. Immediately disturb the Claimants now before in the Estate but secure it to him by every means in our power. In any case the judgment it is for better to abrogate a portion of the Public Revenue which we might technically claim than to run the slightest imputation of grasping policy.

N

of 1802. The question of the legality of the transfer, was referred to the Sudr Adawlut, it being matter of doubt whether a widow could alienate, to the prejudice of her husband's heirs, who in this case were the Government as escheators.

In 1831, the S. A. replied that the transfer was illegal, but that the Collector must act on his own responsibility in refusing to register.

M. C. 10th May 1831 No 167.

" In 1838, the widow mortgaged the greater part of the estate to Kavaly Venkatah Lutchmiah for Rs 48,614-13-6 to be paid by instalments, on failure of which, the whole estate, was to be forfeited

1838.

forfeited. This sum was a settlement of old debts on the estate - Nothing was paid - and in the same year K. Venkata Lutchmiah obtained an ex-parte decree against the estate -

In 1839 he died, and his son Kavaly Venkata Narayanapah the present claimant became decree holder.

1839.

In 1841 claimant obtained an order for execution but in the same year a Razinamah was agreed to through the Collector's influence for Rs 67,444-12- payable by instalments up to 1848. In default of one payment, claimant to enter on all the estate, except two

1841.

+ Original debt with interest

two villages reserved to the widow for her life. These also on her death to go to claimant. The Razinamah was not acted on, and the widow continued in possession of the whole till her death in 1849.

On her death the Collector attached the estate pending disposal of other claims to it. 1849.

In 1850 Government declared the estate an escheat leaving other claimants to prosecute claims in Civil Courts. M. C. 16th July 1850 No. 614

Claimant repeatedly applied for execution of the original decree, but the Civil 1851

M. C. 31st Augt 1855 No. 623.

* C.S 103 of 1855

* Vide Mr Norton's letter recommending this course but expressing opinion that Claimant had Hon hardly treated. M.C. 21st April 1853 No. 299.

M. C. 12th May 1857 No. 526.

Civil Court was of opinion that it had been obtained collusively and wished to set it aside. But in 1854 the S.A. directed the old decree to be executed.

In 1855 Govt submitted to order of S.A. but filed a suit in the Civil Court to recover the estate as an escheat.*

On 8th April 1857 the Judge of Masulipatam decided ~~gave decree~~ that the original decree of 1838 not the Razinamah must be carried out by sale of the estate, or so much as might cover the award in that suit. If it failed to realize the amount, the estate to be handed over to claimant. If it realized more, the title of Govt to the escheat was

Confirmed

confirmed subject to pay=
=ment of the balance due to
claimant on the mortgage.

In C. 22d June 1858
No. 896.

In the same year an
appeal* was made by the Collector to the S.A.
who dismissed it on the sole
ground that a Brahmin's
estate could not escheat to
Govt., and that therefore
the estate was properly liable
for the debt due to claim=
=ant.

* A.S. 133 and 136 of 1857.

In 1859 an appeal was
made by the Collector to the Privy Council.
On July 30th 1860 the P.C.
delivered judgment to the
following effect - The S.A
were wrong in declaring that
a Brahmin's estate could in
no case escheat to Govt.
The suit must be remand=
=ed for further investigation
as to the effect of the acts
of the widow during her
life time and of the
Collr's

In C. 31st Dec. 1859 No. 2376
Bro. Govt. 8th Oct. 1860
No. 1822.

S.A. 22d Oct. 1860.

Collr's action in 1841, the na=
=ture of the advances made by
claimant to father and the necessity
for them, the nature and
effect of the proceedings
by which execution of the
Razeenamah was suspended.
Their Lordships at the
same time suggested
a Compromise between
the parties.

On 22nd October
1860 the S.A dis=
=missed the original
and Appeal Suits
with Costs - without call=
=ing further evidence
on the following
grounds. 1st because
the

the law of escheat does not give plaintiff power to question the assignment of the estate made by the widow. 2nd because the plaintiff (Collector) acquiesced in that assignment at the time - 3d because burden of proof that the assignment was collusive lay on the plaintiff who has failed to establish it -

On

Pro. Govt. 26th April 1861 - 1944

* on the part of Government

Priv. Council 21st Dec 1861.

On the 17th April 1861 an appeal* to Priv. Council was registered in S.A. On that date their Lordships delivered judgment as follows:- 1st The Crown taking by escheat has the same right to dispute alienation by the widow as any other heirs would have, and is not stopped from asserting that right by the action of the Collr in 1841 - ~~2nd that~~ The Crown is not bound by the original decree of 1838 and the widow was not competent to alienate without the Crown's consent, except so far as she might

charte apel the Queen

might have done so without the consent of next heirs of her husband if there had been any - 3rd That the Respondent (Claimant) was entitled to a charge on the Estate for such amount as had been advanced to the Widow for purposes sanctioned by Hindu Law - The Suit was then remanded to the S.J. for enquiry - 1st whether the right of the Crown was absolutely defeated by the Regulation of 1841 & 2nd what advances, if any, were made to the Widow for

Pro. Govt. 5 Augt. 1862
P. 1659.

for purposes for which she would have been entitled to alienate the Estate as against the next heirs of her husband if there had been any - 3rd whether the Widow had other property of her husband's sufficient to satisfy the claims on the Estate -

On this date Govt. authorized their pleader to suggest a compromise to Claimant offering to repay him such sums as he could prove had been bonafide advanced to the Widow for legitimate purposes such as payment of Kist, &c -

On

Pro: Govt. 7th Oct 1862
No. 2149

High Court - Pro.
2nd May 1863.

On this date Govt: Records
Claimants request to
accede to the terms
offered -

On this date the High
Court directed the
following issues to be
tried by the Lower Court:
1st - Whether the right of
the Crown to Escheat
was absolutely defeated
by the Rajamanah of 1841 -
2nd - What advances were
made to the Widow
and how far were
they made for
legitimate purposes -
3 - Whether at the
time of these advances
the Widow had other
property of her
husband's sufficient
to meet the Claims
on the estate. On

Pro: Govt. 6th July 1863 -
No. 1240

On the 3rd June 1863, the
Govt. Pleader addressed
the Bd. of Revenue giving
instructions for the Collector
in conducting the Suit.
On the 7th Sept. 1863 the
Secy. of State approved
of the Compromise offered
to Claimant; which
however had been
previously rejected -
Next year the Civil
Court of Guntoor decided
the issues as follows:
1st The right of the Crown
to Escheat was defeated
by the Rajamanah -
2nd The amount of
legitimate advances
made to the Widow
was with interest
up to date of Rajamanah
Rs. 67,444. 12. 0 -

Pro: Govt. 15 Oct 1863.
No. 1881.

Pro: Govt. 28th July 1864
No. 1350 -

2nd

3rd That there was no other available property belonging to the Testator to meet the Claims on the Estate -

The Suit coming on for trial leaving on the High Court, the Judges framed the finding of the Lower Court on the 1st and 2nd issues & confirmed the finding on the 3rd With regard to the 2nd issue they held that though there had been previously legitimate advances made

High Court Ceylon
22nd Sept 1866

to the Widow, yet defendant (i.e. Claimant) had failed to show that there was any debt existing at the date of the Mortgage - Held therefore that Plaintiff (Collector) was entitled on part of Govt. to take the Estate by escheat-encumbered with charges for debts in favour of defendant (Claimant)

From this decree

Privy Council
20th Dec 1869 -

decree: Claimant-
appealed to the
Privy Council who
reversed the finding
of the High Court
and gave judgment-
to the following effect:
1st. That on the
20th April 1838 there
was due from the
widow to the
father of appel=
=lant (Claimant)
in

in respect of advances
for which he might
legally have alienated
the Estate as against
next heirs, if any, of
her husband Rs. 48,614-13-6
which sum was
duly charged on the
Estate by the Mortgage
of same date -
2nd That appellant
(Claimant) is
entitled to hold the
Estate in security
for the said
Mortgage -
3rd That equity of
Redemption is left
to the Crown -
4th That therefore
Respondents (Collectors)
suit

suit must stand dismissed without prejudice to the right of the Crown to redeem -

5th Appellant (Claimant) is entitled to all Costs except such as were occasioned by his contesting the right of the Crown to take by escheat -

The Court stated that they had no wish to oppose the transfer of the Estate to Claimant -

Claimant on 15th March 1868 presented a petition to the High Court -

Pro: Court 19 March 1868 No 773 -

Pro: Board of Revenue 31st August 1868. -

In reply to the said order, the Actg Collector on July/30/68 submitted a statement showing the balances due by Govt if they decide on redeeming the mortgage.

Original debt on 20th April 1838	Rs 48,614-13-2
Interest at 1 percent per mensem upto July 31st/68	176,650-2-2
Total	225,264-15-8

Setoff

Against this the mesne profits from 21st July/55 to 28th July/66 during which time claimant was in possession	125,773-13-1
Interest thereon upto July 31st/68	92,133-13-1
	217,907-10-1
From which deduct 10 p.c as estimated cost of collection	17,952-- --
Total setoff	199,955-10-1
Balance due by Govt to redeem the mortgage	25,309-5-7

The Board recommend that steps should be taken for exercising this equity of redemption. There are no grounds for assigning claimant a large portion of

of the public revenue, and the estate is believed to be in a flourishing condition, so that in a few years the outlay would be repaid. The above estimate it must be remembered is merely a rough calculation, and if Govt. bring a suit for redemption, the amount of set-off will of course be contested by the opposing party. On 17th October 1868 the Offg. Govt. Pleader stated in reply to an official memo that a suit for redemption of mortgages could be filed by Government at any time within 60 years from date of mortgages, i.e. from April 30th 1868.

Pro. Govt. 22nd Oct. 1868 No. 2686.

Govt 1838

Court-relative to Costs urging that guided P.C. decree he was to bear only his own costs relative to the question of Escheat and not also those of the Collector-

Pro. Govt. 15th April/68 No. 966

application on the 11th March 1868 the Hyth Court ordered that appellant (Claimant) was to bear respondents (Collectors) Costs relative

Relative to the
question of Escheat-
as well as his own
The Board of
Revenue recom-
=mended that steps
should be taken
to redeem the
Mortgage on
behalf of Govt.-
The Government
called for particulars
of Mortgage, mesne
profits &c

In

Pro. Govt. 30 June 68.
No. 1824

Pro: 13th of Revr
6th Octr 1868 No. 44

On the 6th October, the Board
reported that the Guntoor Court
had passed order to hand over
the estate to claimant pettin
30 days from date of Order
(Septr 13th 1868) and had direc-
=ted the Collector to furnish
accounts of mesne profits
during the time he had been
in possession i.e. from date
of High Court Decree in 1866
upto the present time - Costs
also to be ascertained. The
Board ordered the Collr to
hand over the estate as
directed -

The Privy Council in
passing Decree were under
the erroneous impression that
claimant was still in pos-
=session, and they stated there-
=fore that that Decree was
fatal to the Collrs claim
for immediate possession, but
said nothing about putting
claimant in possession - It
is a matter of doubt therefore,
whether

Pro: Bd: of Revr
Octr 20th 1868.
No. 7540.

whether the Guntoor Court was right in passing the order it did. Probably on appeal to the High Court that order would be reversed and claimant would have to go to the Privy Council again. But I apprehend that Govt would not wish to contest this point arising as it does from a simple error on part of the Privy Council.

I may add that the late Govt Pleader was of opinion that in bringing the suit for redemption, Govt would undoubtedly be entitled to set-off the mesne profits received by claimant during his tenure against the amount of the original debt and interest. The further sum of two years' mesne profits to be paid now to claimant under order of the Guntoor Court would, I presume, be also added to the amount of set-off in the re-demption suit, and supposing the Collector's estimate to be tolerably correct, the final amount payable by Govt for redemption would be reduced considerably below Rs 25,309-5-7.

The principal points for consideration therefore are

1st whether it would be advisable to appeal to the High Court against the order of the Guntoor Court, which is opposed to the letter though not to the spirit of the Decree.

2nd whether a Suit should be brought by Govt for redemption of the mortgage. It is unfortunate (with regard to this case) that Govt Pleader's resignation should have

have occurred, just now: as he was well acquainted with the whole history. Mr. Handley will probably require some time before he can safely give an opinion.

This case has often been under consideration in the Board of Revenue and, personally, I have always felt regret that the Govt should have asserted their right to this estate as an escheat, for the working of the Crown exercising, in this country, a right which is usually waived in England, has always to me seemed questionable. I observe from the papers that Mr Norton when Govt Pleader considered that the Mortgagee had been hardly treated, and also that the mortgagee's father was the grandson & nephew of the late Proprietor's widow. The Board do not consider that the Govt would be justified in alienating a considerable portion of the Govt Rev. to the Mortgagee, but on this side it might be urged that the alienation was made at the permanent settlement, and that in declining to exercise the equity of redemption, the Govt would only be waiving their right to an escheat in favor of a more relation of the late childless widow in possession who died in possession of the estate, a course by no means uncommon at home I believe.

? She had no right inherent in her and has not her brothers transition —

Mr. Webb.

S.D. Mitchell

any feelings in the matter are with those of the Board. I see no reason whatever for relinquishing in favor of the present claimant, any rights over the property which have devolved on the Govt. on a decision formerly given by Mr. Norton, that claimant had been hardly treated, ought not, in my mind, be permitted now to create sentimental feelings in favor of letting the claimant have every thing he desires. He knows very well indeed, how to hold his own, and, because he has fought about legally, and ultimately gained some of his points, is no just reason for abandoning to him the others. I would therefore direct the adoption of early measures for obtaining possession of the Estate on the expiry of the present lease.

In regard to appealing to the High Court against the recent order (erroneous order, no doubt) of the Civil Judge at Tanjore, which has caused the Collector to surrender to claimant possession of the Estate, I think the Govt Pleader should not delay being instructed: It may be that, subsequent to the Civil Judge's having taken cognizance and because of the transfer of the Estate is in the spirit of the Privy Council decree, may prejudice the Govt claim.

Should Mr Handley be of opinion that there is no chance of any prejudice to it, the order should direct him before any steps in appealing to the High Court without further reference to the Govt — both the Estate in our possession it is not unprobable that the claimant may come amicably into the fair terms which he would when they were offered to him on behalf of Govt

Mr. Webb.

Revenue Department

No. 1101

Proceedings of the Madras Government
Under date the 23 April 1869

Read again G.O. 30th June
1868 No. 1821.

Read also the following
Proceedings of the Board of Revenue
and Petition

Submitting for information letter from Collector of Kistna District reporting the total amount due on mortgage of Cavaly Venkata Narayanappa. — (Received 31st August 1868 No 6220. " 6 October 1868 No 7044 " 5 February 1869 No)

1. The Government have carefully considered the recommendation made by the Board of Revenue in their Proceedings of 9 June 1868 and again repeated in their Proceedings of 31st August 1868, to the effect that the equity of redemption expressly reserved to the Crown by the Decree of the Privy Council

in

in the case of the Vizianagrama Estate should be asserted by a suit framed for that purpose. They observe that the Board estimate the cost of redemption at £25,000. & 7. whilst Co. Vencata Narrainappa estimates it at £18,621. 18. 4. they say probable that the one estimate is as much too high as the other is too low but on this point the Government do not wish to offer any opinion further than to remark that under the circumstances no amicable adjustment of the accounts would be possible.

Noting every circumstance of this so aptly termed by the Privy Council unfortunate case into consideration, the Government have arrived at the conclusion

clusion that a spirit of liberality should actuate them to decline further litigation and to leave C. Vencata Narrainappa in undisturbed possession of the Estate. They consider that it is far better to relinquish a small portion of the Public Revenue than to incur the slightest imputation of having acted oppressively and in a grasping spirit.

2. The reasons which have induced this decision are mainly as follows:-

C. Vencata Narrainappa has now been engaged for nearly thirty years in legal proceedings regarding this Estate. The Decree obtained by his father in 1838, was bequeathed to the son in 1839 owing mainly ~~continued~~ to obstacles ~~objections~~

objection raised by the Govern-
ment Officers was not decided
until 1855. They so closed
the suit on behalf of Govern-
ment, and in framing
the plaint it was expressly
decided that the Confa-
fides of the loans
made by C.V. Venkata
Narrainappa's father
to the widow, was not
to be impeached and
that the legal ques-
tion of the right of a
Hindu widow to alien-
ate as against the
Government claiming
by Escheat, was to
be the only question
raised. On appeal
the Sudr Court dismissed
the suit on the preliminary
ground that the Escheat extends?
of a Brahmin ended in
not

not escheat to Govt, and an
appeal to the Privy Council
was thereby necessitated. [illegible]
On 30th July 1862 the Privy Council
reversed the Decree of the
Sudr Court, and suggested
for the consideration of
the parties that some ar-
rangement for the sur-
render of the Zemindary
to Govt upon payment
of what was due to the
Respondent for the advances
actually made would proba-
bly meet the real justice
of the case, and save both
parties from protracted li-
tigation - Had the Govt
then agreed to pay the full
amount of the advances made
to the widow by C.V. Narrainappa with
interest up to date, conditional
on the surrender of the estate,
a compromise would very pro-
bably have been effected, but
various circumstances combined

to

to prevent this result. The
order of the Privy Council
again before the Irish Court on
2d Feb. is little more than a
month after the terms of it
had been made known in
this country, and the Irish
Court without taking further
evidence again passed a decree
in Chichester's favor, negativing
the right of the Crown
to challenge the aliena-
tion made by the widow

The Duke who
had at this time succeeded
to the Barton as Earl of
Thanet, advised an ap-
peal to the Privy
Council against this
decree, as erroneous in law,
and an ap-
peal was accordingly
preferred

The

The result of the
second appeal to the Privy
Council was that the suit
was remanded for further
evidence on 21st December
1861, and the position of the
parties defined thus
(1) The Crown taking by
escheat has the same
right to impeach the aliena-
tion by the widow which
the next heirs of the husband
would have had.
(2) The amount of the
advances made to the
widow, if any, are a
proper charge
upon the estate.

A

At this period Cavelli Venkata Narrainappa was willing to compromise, as is shewn by his Petition dated 13th Feby/62, upon the terms of retaining the Zemindary, or of surrendering it, on payment of the principal debt due to him with interest. Had Mr. Norton been then the Legal adviser of the Govt. there can be little doubt that in accordance with his former views he would have recommended one of these courses being adopted, but unfortunately for C.V. Narrainappa, ~~the Govt. of the day acting~~ under the advice of Mr. Dale (who appears, without sufficient grounds, to have formed that C.V. Narrainappa's claim ~~to have formed that C.V. Narrainappa's claim~~ upon the Estate was fraudulent ab initio) ~~determined~~

Mr. Dale had succeeded Mr. Norton and Mr. Dale had formed a strong opinion that C.V. Narrainappa's claim upon the Estate was grandulent "ab initio." Acting upon his advice the Govt. of the day

determined upon putting C. Venkata Narrainappa to proof of the amount of the debt due to him by the deceased widow, which involved transactions extending over a series of more than 50 years, and from this period, the suit entered upon a new stage. Viewing the order of 5th August 1862 No. 1659 by the light of subsequent events, the

the Government cannot but think that it was highly unreasonable to have acquiesced in the bare fiction of Venkata Narrainappa's claim from 1855 to 1862, and then to have turned round and thrown the burden of proof on him. Such, of course, however much it may be justified by law, may wholly indefensible in morals.

It is needless to follow the suit through its subsequent stages until

Is it a correct course to pursue for a mandamus for them to institute the suit if the petitioner who complained a former fact? HDR

I doubt the propriety of this remark HDR

until the final decree of the Priy Council last year. The result of the protracted litigation has doubtless been to mulct Caveli Venkata Narrainappa in a pecuniary point of view, but has certainly not tended to represent the Govt as a likeral landlord.

3. It only remains to notice the expression made use of by the Bd in their Pro. of 9th June 1868 to the effect that the position of the Mortgagee is merely that of judgment debt holder, & have claim against the hindoo of the late Zemindar

Jemindar has after a long course of litigation been established against the Estate - This cannot be considered by any means a fair view of the question at issue - The Claim of the Mortgage as against the Estate is acknowledged in 1838 and has never been extended, except by Govt: intervening as third parties - There is therefore the question of treating a Zemindar and enriching him by large appointment of public revenue - Can the Venetian Nation afford to succeed to the

the Zemindary by the terms of his Mortgage, Govt: could only claim as heir at law of the late Zemindar, to pay off the Mortgage and obtain possession.-

4: The Govt: desire that the Bill convey to the Zemindar the expression of their hopes that he will conduct the duties which devolve upon him in the management of the Estate, in such a manner as not to cause the Govt: to regret that they have been fit to deal liberally with him and to refrain from exercising their just & legal rights -

14 To the Board of Rev. Dec 26 Dec

H.D.

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S.D. Mitchell

Reported to Congress
Feby 27 of 1809 Mun