Revenue (1897) Department.

PRESS SERIES.

G.C., No. 1033

Dated 10th December

[Despatch Abstract.]

Receiving B.P. duplicate for the information of Govt. the Madras High Court's judgment in the suit of the Pattadar in Kunnathy District to the land on which the trees stand and sanction the payment of a fee of Rs. 200/- to the Government Pleader.

BACK PAPERS.

| G.O. | No. | Department. | Date. | G.O. | No. | Department. | Date. |
|---|---|---|---|---|---|---|---|
| | | | | | | | |

FURTHER PAPERS.

| G.O. | No. | Department. | Date. | G.O. | No. | Department. | Date. |
|---|---|---|---|---|---|---|---|
| | | | | | | | |

Ans 4781 6/12/98

REVENUE

# Public (1897) Department.

**CURRENT No.** 4328

SECRETARIAT RECD. 14 NOV 97

*From*

The Board of Revenue,
Land Revenue,
Madras.

No. 4329 Dis.

*Dated* 15th November 1897.

*Received* 19

*Registered* 20

*Enclosures* 3.

*Spare copies*

## SUBJECT.

Submitting for the information of Govt. the Madras High Court's Judgment regarding the rights of tree pattadars in Tinnevelly District to the land on which the trees stand and sanctioning the payment of a fee of Rs.50 to the Govt. Pleader.

Order No. 1033 of 10th Dec. 1897.

Recorded. 9/12/97

To the Board of Revenue (L.R.) with duplicate
To the Collr of Tinnevelly.
with Copy of Judgment.

## BACK PAPERS.

| G.O. | No. | Department. | Date. |
|---|---|---|---|
| | | | |

## FURTHER PAPERS.

| G.O. | No. | Department. | Date. |
|---|---|---|---|
| | | | |

2/50

Government Pleader's Office,

No. 981. High Court,

Madras 8th November 1907.

From

H.H.Powell, Esquire,

Government Pleader,

Madras.

To

The Secretary to the Board of Revenue,

Land Revenue.

Sir,

In continuation of my letter No.714, dated the 7th September last, I have the honor to forward herewith copies of the decree and judgment in second appeal No.156 of 1905 on the file of the High Court and to request that you will be so good as to obtain the Board's sanction for the payment of Rs.50/ being my fee for opposing the same.

I have the honor to be

Sir,

Your most obedient servant,

/signed/ H.H.Powell

Government Pleader.

/True Copy/

Secretary.

Md.P.H.

$\frac{D}{4}$ 1,000—8-4-97.

REVENUE DEPARTMENT.

No. 10,020

From

Dated 189 .

**FOR ORDERS.**

G.G 1033
10-12-97

The Board of Revenue submits judgment of the High Court for the formation of Govt. and draws its attention to an important ruling contained therein on the subject of ri of tree-pattakars in Sirsevelly to the lands on which the trees stand.

2. The following abstract shows the points calling for attention:

The plaintiffs held a pattah for certain palmyra trees on a fie of land which has been classed as Govt.waste land and for which no r was ever paid, their content was that the trees formed a defini group and that for this reason the were the owners of the land and en title to the ~~te~~ ground on which pals for it. The District Munsiff gav judgment for the plaintiffs, which was however reversed by the Sub-Ju In the High Court the case before Justice Subrahmanya Ayyar and Mr.Just Parson, were divided on different questions on the point at issue. M. Justice Parson's judgment

**FOR ORDERS.**

…ance to enclosure with that of the Anti-Fusion appellant against previous order of Estick Ms. of Co. Clerk, Fry … land, Jr. Justice Benson held that the plaintiffs never owned and a patent for the land the grant was of theirs to show that they were entitled to a patent, and that they failed to prove it. This was also the conclusion of the Dist. Juneiff, for that officer held that a contract in favour of the plaintiffs might be implied from a long continued course of dealings and conduct between them and Govt. in reference to two points in particular the first is the practice of making groups of trees [illegible] lots and sell, and this, Mauriff contends, implied an assertion of exclusive ownership. Mr. Justice Cutraney a ayyar also attaches importance to this point. But Mr. Justice Benson disposes of the argument by the remark that the object of the land walls was to define the limits of the groups of trees sold by the various tree pattadars, that they were useful for confining the goats which trespassed on, as he says, and at the erection of such walls was not an act which does injury to Govt., and that it is therefore not peculiarly objected to by Govt. and that it cannot be learnt [illegible] from its effects upon its … conclusion to assert the … to test the trespasses without

9/12/97

special permission from the Revenue authorities plants trees on the land and in time sets a tree patta for them. Mr. Justice Benson points out that a pattadar of scattered trees does precisely the same thing that a man without a tree patta at all may also do the same, and that such persons plant trees with the full knowledge that they have no right to the land, but in the hope that Govt. would raise no objection.

The result is, as pointed out by the board, that the claim of the pattadar of a group of trees standing on assessed waste land to be entitled, ipso facto the owner of the land and to be entitled to a patta for it the land has been denied. It is submitted that the current may be reversed.

KO
3/12/97

Ld.

Yes.

This is a very important judgment.

Under the Letters Patent there may be an appeal to a Full Bench, but we have not heard the case against Ld. Attorney Connelly & Co the defended & the defence which the

# Government (1897) of Madras.

## REVENUE.

*Recd.* } 1897. *Enclosures*

*Regd.* } *Spare copies*

**G.O., No. 1033, 10th December 1897.**

## DECEMBER.

---

**Second Appeals Nos. 158 and 159 of 1895.**

Recording Board's Proceedings submitting, for the information of Government, the Madras High Court's judgment in — regarding the rights of tree pattadars in the Tinnevelly district to the land on which the trees stand.

GOVERNMENT OF MADRAS.

## REVENUE DEPARTMENT.

Read—the following Proceedings of the Board of Revenue (Land Revenue), Mis. No. 4329, dated 15th November 1897:—

*Read*—the following letter from E. B. POWELL, Esq., Government Pleader, Madras, to the Secretary to the Board of Revenue (Land Revenue), dated 6th November 1897, No. 986:—

In continuation of my letter, No. 744, dated the 7th September last, I have the honour to forward herewith copies of the decree and judgment in second appeal No. 158 of 1895 on the file of the High Court, and to request that you will be so good as to obtain the Board's sanction for the payment of Rs. 50 being my fee for opposing the same.

Enclosure.

*In the High Court of Judicature at Madras, Tuesday, the seventh day of September, One thousand eight hundred and ninety-seven.*

Present:

The Honourable Mr. Justice Subrahmania Aiyar, C.I.E.,
and
The Honourable Mr. Justice Benson.

Second Appeals Nos. 158 and 159 of 1895.

1. Theivu Pandithan, and
2. Velayudam Pandithan,

} *Appellants in both cases (Plaintiffs).*

The Secretary of State for India in Council represented by the Collector of Tinnevelly,

} *Respondent in No. 158 (1st Defendant).*

1. Chinnakannu Pillai,
2. A. Subramania Pillai,
3. Subramania Pillai,
4. Perianayaga Kurukkulier,
5. Ariamuthu Pillai (died),
6. Muthia Pillai (died),
7. Shanmugam Pillai (died),
8. Namasivayam Pillai (died),
9. Nellayappa Pillai,
10. Somasundaram Pillai,
11. Andiappa Pillai,
12. Muthukumarasamia Pillai,
13. Jesuvadiya Ferdinand,
14. Arunachellam Pillai,
15. Sivagurunatha Pillai,
16. Govindam Pillai,
17. Thiru Subramania Pillai,
18. Kuppaniengar,
19. Patcha Perumal Pillai, and
20. Isvara Murthia Pillai,

} *Respondents in No. 159 (2nd to 10th, 12th to 17th and 19th to 21st defendants and legal representatives of the 8th defendant).*

} legal representatives of the deceased 7th respondent—*vide* order on C.M. P. No. 776 of 1896, dated 14th August 1896,



Second appeals against the decrees of the Subordinate Judge's Court of Tinnevelly in appeal suits Nos. 289 and 264 of 1892 presented against the decree of the Court of the District Munsif of Srivaikuntam in original suit No. 233 of 1891.

These second appeals coming on for hearing on Thursday and Monday, the 1st and 5th days of April 1897, and the cases having stood over for consideration till this day, the Court delivered the following

Judgments.

*Subrahmania Aiyar, J.*—The question raised in these cases is one of considerable importance to a large class of persons who plant and grow, as they are permitted to do by the rules of the Government applicable to the Tinnevelly district, palmyra trees on assessed Government sandy tracts, which abound in some parts of the district and which, though scarcely suited for any other kind of cultivation, are well adapted for the growth of the palmyra palm. The question is when a person grows on a piece of assessed Government land such trees in sufficient numbers and fairly closely over the land, so as to form, in the language of the people accepted by the Revenue authorities themselves, a '*tope*' (paragraphs 3 and 9, Extract, M.C., 31st May 1855, No. 655, and paragraph 7, Extract from the Proceedings of the Board of Revenue, 6th May 1858, No. 1617, in Exhibit XXXIX), what right does the planter acquire in that piece of land by so planting therein? It is not the case of either party that, when one is allowed to grow such a tope, any express agreement is entered into between the Government and the planter with reference to the rights of the latter in the soil. The solution of the question depends upon implications arising from a few unquestionable facts connected with this kind of plantations, coupled with the conduct of the parties concerned.

To understand the matter easily, let us confine our attention first to so much of the land as is visibly covered by each tree in the tope. Now, by the very fact of the man being allowed to grow the trees, has not the site of each tree been virtually granted to him for plantation purposes? What the proper answer to this question should be would become at once apparent by putting a further question, viz., suppose some of those trees or all of them are blown away or they otherwise cease to exist; would not the planter thereof or his assign be at liberty to plant other trees on the sites of the extinct ones, and go on thus planting as long as he is inclined so to act? It would be absurd to reply to this latter question in the negative and an affirmative reply involves the conclusion that the sites of the trees which have disappeared had from the very first become vested for such plantation purposes in the planter of the dead trees. Otherwise how could he have had a right to replace them by other trees? Such being the necessary conclusion with reference to the ground visibly covered by the trees, is the case different with reference to the inter spaces between the trees forming the tope? Now, of course, though on the surface of the land, the space covered by each full-grown palmyra tree does not generally exceed a few feet in circumference, yet, it is scarcely necessary to add, the soil really required for the due growth of the tree is much more. Moreover, in order to promote the growth of the trees and to make them productive, it is usual for the planter of such a tope occasionally to plough up the soil lying between the trees, and in doing so, to take advantage of the ploughing to raise on the land crops of gram or other dry grain. These acts on the part of planters of topes are, of course, among those most common acts indicative of possession and of an assertion of right to land. Nay, there is one more piece of evidence in the case which is perhaps even clearer on the point, viz., the almost invariable practice, on the part of planters of these topes, of enclosing the lands forming the sites of the topes including of course the spaces between the trees. It is scarcely necessary to say that the obvious object of forming such enclosures is to assert an exclusive right to the land. While such are the principal facts concerning plantations of the description in question and the conduct of planters of topes, what has been the conduct of the Government, the other party concerned? If the contention, stated in the written statement and persisted in that, notwithstanding the existence of a palmyra tope on a piece of assessed Government land, the land is virtually unoccupied property at the disposal of Government, were well founded, one would expect Government would have taken care to have it unequivocally intimated to planters of topes that they were labouring under a serious and a very unfortunate mistake in thinking (as in the absence of such intimation they were entitled to do) that the *land* on which they were expending labour and money in growing the trees was in no way vested in those persons. Nobody ever thought of doing so and even the very significant practice of enclosing was not forbidden. The explanation for the course thus pursued by the Government is manifest. The Government was naturally desirous that its waste lands should be occupied and used for the purpose for which they were best fitted, viz., the growth of palmyra trees, and to have told intending planters that any land taken up by them, though covered with trees grown by them, was still at the disposal of the Government, would surely have completely frustrated the beneficial end the Government had in view and practically stopped all further plantations of this description. It is not, therefore, surprising that the Government did not stir in the matter even though the precise question, now under consideration, was broadly raised and distinctly decided more than twenty years ago against the Government in original suit No. 53 of 1873 by the Subordinate Court of Tinnevelly and the decision was upheld on appeal by the District Court, and became final (Exhibits K and L). In these circumstances, as will be seen from the observations made in the case of Lord Advocate *versus* Lord Blantyre (4 App. C. 770) by Lord Blackburn at pages 791 and 792 and by Lord Hatherey at pages 797 and 798,

the various acts, mentioned above, of exercise of right on the part of planters of topes must be taken to be most cogent evidence against the view that the sites of such topes are unoccupied Government property and they strongly support the contention that such sites are entirely held by the planters of topes under the Government, subject, no doubt, to all the legal incidents attaching to holdings of that kind.

The principal arguments urged in favour of the Government have now to be noticed. The main arguments was based on the allegation that holders of palmyra topes in Tinnevelly pay no revenue to the Government for the occupation of the land on which the topes stand. This allegation, however, is destitute of any real foundation. To show that that is so, it is necessary to advert to the system of taxation in force in Tinnevelly and to that prevailing in the other parts of the Presidency in respect of palmyra plantations, as well as to the reason for the existence of two such different systems in the Presidency.

The system in force in Tinnevelly is to collect so much per tree after it has attained a certain growth; while in almost all the other districts, Government demand is fixed solely with reference to the extent of land on which the topes stand. How and why palmyra plantations in Tinnevelly came thus to be exceptionally treated is shortly this: Up to 1853 the system throughout the Presidency, not only in respect of palmyra plantations but also in respect of plantations of many other descriptions of valuable fruit trees, was what still prevails in Tinnevelly in the case of palmyra plantations. But that mode of assessing Government revenue operated so harshly on the holders of topes that large number of persons relinquished their topes to the Government and people generally refrained from planting taxable trees anew. In 1853, the Government therefore ordered the abolition of so oppressive a system of assessing revenue and directed the substitution of the system of charging on the extent of land planted with trees of various kinds including palmyra trees, assessments charged being according to "tarm" rates, *i.e.*, rates fixed for various descriptions of soils with reference to their capacity to produce grains. This order of the Government was at once carried out in Tinnevelly as well as in other districts. But about three years later the Collector of Tinnevelly submitted to the Government a representation on the subject. He pointed out that the sandy tracts in the district, on which palmyra trees were grown so plentifully, not being well suited for the cultivation of any of the important species of grains usually grown in the country, the rates of assessment fixed in the case of these tracts were extremely low, while the tax fixed for palmyra trees growing thereon amounted annually to a large sum which was collected with ease, that consequently in giving effect to the Government Order of 1853, a considerable amount of revenue thus derived had been given up and that such sacrifice of revenue was altogether uncalled for inasmuch as experience had shown that, so far as this particular district was concerned, the system of taxing each tree had not in any way discouraged the industry in question.

This representation induced the Government to order the re-introduction in the district of the old form of taxation in so far as palmyra trees alone were concerned. This was done accordingly. The reason therefore for the existence in Tinnevelly of what since 1858 has been an exceptional mode of taxing plantations of palmyra trees, is the peculiar fitness of the soil there for such cultivation and which fitness enables the inhabitants of the locality to grow such trees with profit to themselves in spite of their having to pay a tax upon each tree. How then can it be said that a person that grows palmyra trees on assessed Government land in Tinnevelly does not pay for the occupation of the land? If his payment per tree is not for the use and occupation of the land forming the site of the tope, what does he make such payment for? There can be no doubt therefore that the payment in question is made solely for the use and occupation of the land, though in this particular instance the amount of revenue is arrived at in a mode different from that adopted with reference to similar plantations elsewhere.

In thus holding the allegation that planters of palmyra trees in Tinnevelly do not pay revenue for the occupation of lands on which such trees are grown to be unfounded, a circumstance on which much stress was laid on behalf of the respondents, has not been overlooked. That circumstance is that, if on a piece of land on which a palmyra tope stands any grain also is grown by the planter, separate assessment under the head of *Sivayjama* or extra revenue is collected by the Government for the additional cultivation. The imposition of separate assessment for such additional cultivation is, however, perfectly consistent with the view that the payment per palmyra tree is equally for the use and occupation of the land. For when any grain is grown in addition to trees of that kind, the Government treats the land as used for two distinct purposes for which the State is justified in claiming separate payments (see paragraph 6 of the Board's Proceedings, dated the 20th March 1871, No. 1206, embodied in the Government Proceedings of the 23rd August 1872, Exhibit XXXIX). It is evident therefore that the fact that lands on which palmyra trees are grown receive in Tinnevelly an exceptional treatment at the hands of the Government in the matter of revenue assessments, is due to the special policy pursued by the Government in the matter as already explained and not to any established notion, as was suggested on behalf of the respondents, that planters of topes containing such trees are not occupants of the sites of the topes.

The next argument urged on behalf of the respondents was rested on the nature and description of some of the entries in certain revenue accounts, and in pattas periodically issued to ryots which latter are but extracts from one of those accounts. It is true that in those



documents planters of to[illegible]es are not referred to, in terms, as occupants of the lands containing the topes. But the reason is plain. The primary object in view in preparing these accounts is the recording of such information as is necessary for the ascertainment and collection of the revenue due to the Government by the ryots. Now, as the amount of the liability of the ryots who own palmyras in the district in respect of Government revenue, depends, as already stated, solely on the number and age of the trees irrespective of the extent of land on which they stand, particulars connected with the former matter alone are entered in the accounts without any reference being made to the latter matter. As to the suggestion based on the character of the entries in pattas, it is scarcely necessary to say that the legal relation between the planter and the Government is not created by the grant of any specific patta, but comes into existence from his occupation which takes place long before what is known as a tree-patta is first issued, and which could be given only when the trees are about ten years old and fit to be assessed for revenue. Nor is it necessary to point out that the so-called land-pattas but show that in cases in which such are issued, Government revenue is calculated upon the extent of the land occupied, while tree-pattas show that the revenue charged for the occupation is reckoned with reference to the number of trees on the land, and consequently this distinction between the two classes of pattas has no real bearing upon the question of the nature of the right acquired by the occupation.

Another argument on behalf of the respondents was based upon the fact that instances were to be found in which palmyra trees standing on a piece of land were entered in the revenue accounts in the name of one man while the land itself was entered in the name of another. But such entries were explained by Mr. Puckle, a former Collector of the district, in a report submitted by him to the Revenue Board in 1871, during the progress of the present Revenue Settlement of the district, thus: "The origin of the anomaly of a double patta is two-fold; in some cases lands already partly planted with trees have been granted by the Collector on patta without due inquiry or priority of option being accorded to the tree owners to take up the land on which the trees stood and in others the landholders themselves have voluntarily resigned a percentage usually from one-third to one-half of the trees on their lands to certain palmyra climbers on condition that the latter attended to the entire stock of trees on the land and they have further permitted these climbers to get tree-pattas made out in their names for the percentage of trees thus resigned" (Exhibit XXXIX). Entries arising from such exceptional causes or from the others referred to in the judgments of the Lower Courts and which are similar to the second of the causes mentioned by Mr. Puckle cannot affect the validity of the conclusion already arrived at as to the nature of the interests possessed by those who plant palmyra topes on Government assessed lands.

Before leaving this point it is perhaps not superfluous to remark that it would be easy to avoid confounding the case of tree-pattadars, who have become such under arrangements like those referred to by Mr. Puckle entered into with the owners of the land containing the trees, with the case of persons allowed to plant and grow topes on Government land, if one would but distinctly bear in mind the vital distinction which exists between the two cases. Now, in the former the right transferred is obviously to only specific standing trees. The grantee thereof would no doubt be entitled to enjoy them while they exist and for that purpose to exercise over the land other rights necessary for the due enjoyment of the trees. Subject to this, the land continues to belong to the grantor of the trees. If the grantee of the trees cuts and removes them, he has no right to grow others in lieu of those cut. In short, he can no longer enter upon the land, the planter's right to which has (by the trees which had been granted away ceasing to exist) become freed from the limitation imposed upon it by the transfer of the trees. Now, turning to the second case the transfer there is not a right to standing trees but a right to use the land without limit of time for bringing into existence new trees and this right, as has been shown before, can be nothing else but a transfer of the land itself for plantation purposes.

A further argument urged on behalf of the respondents was in effect as follows:—Suppose on a piece of Government land measuring, say, an acre or two a man grows on one spot therein a few palmyra trees. He is treated by the Revenue authorities as the owner of scattered trees only and as it is conceded for the appellants that such a person does not thereby become the occupant of the *whole* piece of land, the planter of a tope should likewise be held not to be an occupant of the entire site of his tope. But this argument is unsound. That there is a real difference between the two cases is too plain to require lengthened discussion. In the former case it would be manifestly unreasonable to imply that by planting a few isolated trees on one little spot on the land, the planter intends to, and does, occupy the whole plot, capable of growing many more trees; but in the latter case the only fair and just conclusion, for reasons already stated in the early part of this judgment, is that planters of topes do possess the entire sites of the topes. Whether in a particular instance the planter holds but scattered trees without possession of the whole plot of land on some small portion of which they stand or whether he is the planter of a tope and an occupant of the whole of the site thereof, cannot certainly be difficult to determine. It is only necessary to add that in dealing with such a question it would be well to bear in mind the following observations of Baron Bramwell in

Coverdale *versus* Charlton made with reference to what would amount to *de facto* possession in circumstances not altogether dissimilar to what are just under consideration. The learned Baron said :—"If there were an enclosed field and a man had turned his cattle into it and had locked the gate, he might well claim to have *de facto* possession of the whole field ; but if there were an unenclosed common of a mile in length and he turned one horse on one end of the common, he could not be said to have a *de facto* possession of the whole length of the common." (4 Q B D., at page 118).

The only other argument requiring notice was that there was no distinction between the case of trees planted on *poramboke* and that of trees planted on assessed land. This clearly confounds well known differences which exist with reference to the two cases. Now, the very object of classifying land as *poramboke* is to take it out of the category of cultivable land so as to prevent the cultivation thereof without express permission. That is why penal assessment is imposed if trees are planted on such land. That is also why the trees so planted are taken to vest entirely in the Government. But it is otherwise with reference to assessed land. For as stated in the opening part of this judgmentt, the Revenue rules allow any one without obtaining previous permission to plant upon such assessed land and recognise the planter's right to trees grown therein. No doubt if such trees die, the property is shared equally by the Government and the planter. That however is because the Government as the owner of the *Melvaram* right are co-owners. (See S.A. 766 of 1896). Nor is this inconsistent with the rule which enables the Government to mulct a planter in a fixed sum if he improperly cuts the trees, for he thereby violates one of the implied terms of the holding and thus unquestionably commits waste.

Before concluding, however, it is necessary to say a few words with reference to a view of the case which I have hitherto refrained from considering. The view in question is that when under the rules of the district a man plants palmyra trees on a given piece of land so as to form a tope he does so subject to the Government being at liberty to allow another man to occupy and use the same land for purposes not detrimental to the rights of the palmyra planter. This view, no doubt, is not absolutely inconceivable. But it is difficult to believe that any of the parties concerned could have intended such a state of things to be for a moment possible. First, as to the palmyra planters, I do not at all believe that they thought that anybody else could hold possession of the land simultaneously with them. Secondly, as appears from its own orders filed as exhibits here, the Government was strongly and consistently opposed to the anomalous practice of issuing a patta for the trees standing on a plot of ground to one individual and a patta for the plot itself to another. These same orders show that local officials were repeatedly told that it was extremely desirable by some arrangement or other to put an end to the objectionable state of things that came into existence in certain villages owing to the causes explained by Mr. Puckle in the passage already quoted. Moreover, it being admitted that the planter has the right to plant again if the existing trees die, is he to plant fresh trees on the sites on which the dead trees stood or on the land occupied by the land-pattadar ? In the former case it would be a costly and troublesome process to dig up and remove the roots of the dead trees which penetrate several feet under ground. Even if the roots are removed, fresh plants would not, for obvious reasons, grow so well on the spots on which the old trees stood as they would on spots not so used up. And the lands of the description in question not being so well fitted for any other kind of cultivation, the Government itself would be a loser. If, on the other hand, the planter were to plant the new trees in the land occupied by the land-pattadar, nothing but confusion and inconvenience to all the parties concerned would result. Take for example a not improbable illustration. After a man has planted on a plot of ground the maximum number of palmyra trees that could, consistently with the requirements of good husbandry, be planted therein, a land-patta for the ground is given to another man. This land-pattadar uses the spaces between the palmyra trees for growing casuarina trees and does such acts as are necessary thereto. Suppose now, the palmyra trees for some reason or other die and the palmyra planter wishes to plant again. Though he may plant on the old sites, yet he would naturally avoid using such sites. If in such circumstances he wants to plant on the portion utilised by the land-pattadar, is the former to be at liberty to insist upon the latter cutting down the casuarina trees ? If the palmyra planter is entitled so to insist, would not that be seriously injurious to the planter of the casuarina trees and would he have taken up the land had he been aware that such would be his position ? If on the other hand the palmyra planter is not entitled to insist as stated above, what becomes of the hypothesis that, by the introduction of the land-pattadar, it was not intended to affect the rights of the palmyra planter? Now passing from the hypothetical case to the actual case before us, let us see what the effect of the Revenue officer's order which the appellants pray may be declared invalid would be. If it were upheld, would not the position of the appellants be worse than if only a land-patta had, as supposed in the above illustration, been issued ? The order in question directs that the land be classified as *poramboke* for a threshing floor. And since, as stated before, trees on *poramboke* vest in Government, is the order complained of to be treated as depriving the appellants of their right to the existing trees ? Is that why in the Secretary of State's written statement the appellants' right to the land is denied



*in toto* and the land is claimed as absolutely belonging to Government ? Suppose next that the appellants' title to the existing trees is not affected by the order in question, could the appellants consistently with the classification directed by that order to be carried out and the rules relating to the cultivation of *poramboke*, plant in future any trees on such spots of the land as are or become hereafter available for such planting ? Now as all cultivation on poramboke of any kind is strictly prohibited by the rules just referred to and as for the infringements thereof the Revenue authorities assert that they have power to impose penal assessments to any extent they please, must not the appellants' refrain from growing any more trees ? If on behalf of the Government it be conceded that the order does not touch either of the abovementioned rights of the appellants, what is the use of the order declaring the land to be *poramboke* ? Even if it were taken that the appellants' right to hold the existing trees as well as the right to plant fresh ones is not prejudiced by the above order, would not the appellants be clearly subjected to material inconvenience in the enjoyment of their rights inasmuch as during the whole time the threshing operations are carried on, in order to prevent the numerous persons that resort to the land for those operations from improperly interfering with the trees and particularly the produce thereof, the appellants would be obliged to take special measures and precautions ? If the order in question is right, it will be easy to suggest many other purposes for which the Revenue officials could allow such lands to be used and which though not necessarily injurious to the trees will be highly inconvenient to the planters in the cultivation and enjoyment of their trees. It is, however, unnecessary to pursue this further as a very slight consideration ought to convince one that to constitute two persons with different interests, holders of the same land—however sound such a holding may seem in theory—would not and could not but result in practice in friction and dispute between the two holders. And I confess I cannot persuade myself that anybody of reasonable men would have intended so highly questionable a form of holding. Certainly not the Government that has repeatedly protested against and prohibited the extension of the preposterous practice of granting the tree-patta to one man and the land-patta to another. There can be no stronger confirmation of the correctness of the above conclusion than that the extraordinary view of the holding under consideration is not only not set up in the Secretary of State's written statement but is quite inconsistent with the plea therein raised which, as already stated, is that the land is Government property and that the appellants have no right whatever thereto.

For all the above reasons I would hold that the conclusion of the District Munsif is right, that the Subordinate Judge was in error in reversing the Munsif's decree and that the proper view is that land on which a man plants a plmyra tope is in his exclusive occupancy and possession as a ryot of Government subject of course to his liability to pay any assessment or assessments which the Government may from time to time be entitled to impose and subject also to all other lawful incidents attaching to a holding of this description.

I would consequently allow the appeals, reverse the decrees of the Subordinate Judge and restore that of the District Munsif with costs in the Lower Appellate Court and in this Court.

*Benson, J.*—In these cases the plaintiffs hold a patta for certain palmyra *trees* in survey No. 587-D in a certain village in Tinnevelly. They sued for a declaration that they were *ipso-facto* entitled to an ordinary ryotwari patta for the land on which the trees stood. The first defendant is the Secretary of State for India in Council. The other defendants are certain villagers who allege that the land is used by them as a common threshing ground.

The District Munsif decided in favour of the plaintiffs, but, on appeal, the Subordinate Judge reversed the decree and dismissed the suit.

Against this dismissal the plaintiffs urge this second appeal.

In my opinion the decree of the Subordinate Judge is right.

In Tinnevelly, as in other East Coast districts, land is classified in the Revenue accounts as—

(1) *Nanjah* (*i.e.*) occupied irrigated land.
(2) *Punjah* (*i.e.*) occupied unirrigated land.
(3) *Anathi* (*i.e.*) unoccupied waste land that is cultivable and assessed.
(4) *Poramboke* (*i.e.*) unoccupied waste that is not cultivable or assessed.

For *Nanjah* and *Punjah* Government grants pattas to the occupiers and claims nothing more than the right to assess and levy a suitable revenue. In Anathi, Government claims the proprietary right It is called *assessed* waste because it is land which at the time of settlement (which in Tinnevelly took place in 1874) the Revenue officers thought was suitable for cultivation and might be granted on patta in accordance with the rules for the grant of waste lands and subject to the assessment which they then fixed as appropriate.

The *poramboke* is land required for village-site, threshing floors, roads, banks of tanks, channels, &c. This is land which the Revenue officers at settlement considered was required for these public purposes, and which should not, therefore, at any time, be granted on patta, and on which it was for this reason useless to fix any assessment.

This classification of land existed long before the settlement, but the registers and assessments were then systematically revised and correct areas, as ascertained by survey, were entered and all private claims against Government were, as far as possible, enquired into and settled.

It is to be observed that in all the East Coast districts from very early times, Government was in the habit of granting pattas for fruit trees including palmyras growing on both *Anathi* and *Poramboke*. The patta might be for a single tree or for any number, and the trees might form a definite group or be scattered about anywhere in the waste. In a field with a dozen trees there might be a different pattadar for each tree or they might be all held by a single pattadar. Admittedly the pattadar had the exclusive right to the produce of the trees, but, as we shall see hereafter, he was not allowed to cut them down, and if they fell from natural causes, the Government took half the sale-proceeds if the tree was on *Anathi* and the whole if it was on *poramboke*. It is conceded that in the Tinnevelly district the Government ordinarily has the proprietary title in wholly unoccupied waste land.

The land now claimed by the plaintiffs had always been classed as Government waste land (Anathi) and no patta for it had ever been issued, but the plaintiffs held a patta for certain palmyra trees on it and the plaintiffs' contention is that these trees form a definite group and that they are, for this reason, the owners of the land and entitled to demand an ordinary patta for it (*i.e*) what we may for brevity call a land-patta as opposed to a tree-patta.

Plaintiffs never having had a patta for the land the *onus* rests on them to show that they are entitled to demand a patta.

The Government contends that the tree-patta evidences no right to the land, save such as is necessary to enable the tree-pattadar to enjoy the produce of the trees in his patta, and that subject thereto the proprietary right in the land remains with the Government and may be alienated by Government to whomsoever it pleases. This is the case as it now stands before us for decision, but originally it was very different. No distinction was then made between the alleged rights of tree-pattadars whose trees formed defined groups, and of those whose trees were scattered. The question first agitated before the District Munsif was largely as to the right of Government to charge an assessment on the land in addition to the tree-tax. The points which the District Munsif set before himself for determination were—

(*a*) Whether in the Tinnevelly district, the Revenue authorities can, while getting assessment on trees standing on assessed waste, charge assessment for the land also separately and treat the assessment on the trees as having nothing to do with the assessment on the land, especially when the assessment obtained by taxing the trees is greater than the assessment on the land?

(*b*) Whether the pattadar who has got trees on unassessed waste and who pays a larger assessment for his trees than what is fixed for the land is also *ipso facto* entitled to the ownership of the said land or can the Revenue authorities treat the land as at their absolute disposal subject only to a right of way in the pattadar through the land to his trees?

The District Munsif at first decided both these questions in favour of the plaintiffs, and gave them the declaration sued for.

The Subordinate Judge on apneal considered that the issues had not been correctly framed and that this led to a dearth of evidence as to the custom of the district without which it was impossible to arrive at a correct decision. He, therefore, remitted the following issue for a finding :—"Whether in this district the pattadar of palmyra trees is *ipso facto* the pattadar of the land underneath such trees and whether by assessing and issuing pattas for such trees, the proprietary right of the Government in such land ceases and determines and the pattadar becomes the owner of the land."

It will be observed that in this issue also there is no reference to *groups* of trees, nor is there any suggestion that a distinction is to be drawn between them and scattered trees. In the evidence of the many additional witnesses on both sides who were examined on this issue, I find only one, and he a wholly unimportant witness, who draws any distinction between the two cases. The witnesses were not even questioned with a view to elicit the existence of any such distinction. I think that this fact is of great importance, because it shows that no such distinction was present to the minds of the parties, their pleaders or witnesses, and that, in fact, no such distinction really exists. Yet it is on this distinction alone that the plaintiffs now rely, and ask us to give a decree in their favour. They do not now contend that they have any right to demand a patta for land on which scattered trees stand. They limit the claim to land in which the trees form a defined group. The distinction appears to have first suggested itself to the District Munsif when writing his finding on the issue remitted to him. He then drew a distinction between palmyra trees standing (1) on *unassessed* waste land, (2) in a *scattered* manner on *assessed* waste, and (3) in a *definite group* on *assessed* waste, and came to the conclusion that the holder of a tree-patta in the two former cases had, as such, no right to the land itself; but that in the third case he had such right, that is to say, that he had the same right as an ordinary land-pattadar. The idea of the distinction, though unknown to the parties,



has evidently been suggested by certain proposals made by Government in 1855 and afterwards in 1872 by Mr. Puckle at the settlement with a view to encourage the more extensive planting of trees (see the file of papers marked Exhibit XXXIX). It was then proposed that where trees in unoccupied lands formed a defined group or tope and were held on patta by one pattadar the land should be assessed and a patta issued for the land, including the trees, tree-pattas being continued only in the case of single or scattered trees. The experiment was tried in 1855 but at the end of three years it was abandoned and the former system reverted to, pending the regular settlement which took place in 1874. No patta was issued for the plaint land in 1855 or at the settlement; whether this was because the trees were regarded as only scattered trees, or whether it was because the land was used as a common threshing floor, or for some other reason, does not appear. In 1881, however, the plaintiffs' brother, who was then the manager of the family, made a darkhast or application (Exhibit III) for the "*grant of the land to him for cultivation*" on the ground that he was the pattadar for the palmyra trees on it; and was the *adjacent landholder*, and afford to pay the usual land-tax in addition to the tree-tax which he was then paying. Enquiry was made by the Revenue officials, and the application was refused on the ground that the land was used as a common threshing floor by the villagers. This application does not, of course, estop the plaintiffs from setting up their present claim to ownership, but it is certainly a strong piece of evidence that their claim is an unfounded one and that at that time the plaintiffs' predecessor in interest understood and admitted that his holding of a patta for the trees gave him no legal right to demand a land patta, though it might give him a preferential claim in the eyes of Government if others applied for the same land. With regard to Exhibit XXXIX which contains a mass of correspondence between Government and the Board of Revenue and the Collector of Tinnevelly in 1855—58 and 1872, the important thing to note is that all through it a distinction is drawn between the trees on patta land (nanjah and punjah) and those on unoccupied waste lands, and all through there is not a single expression to indicate that these various authorities, who had special knowledge of the subject and were anxious to make rules for the benefit of the tree-pattadars, regarded the tree-pattadars in *unoccupied waste* as persons entitled as of right to the land beneath the trees, nor is there a single expression to show that they regarded Government as having when it issued tree-pattas given up anything more than the right to take the produce of the trees. Indeed, the right of Government as in some cases the real owner of the trees themselves, and in other cases as a kind of co-owner is constantly referred to.

Thus "in some districts large topes of palmyras, and sometimes of other kinds on totally unoccupied and waste and jungle lands, are *rented out*. * * * This is seen particularly in * * * and Tinnevelly"—E M. C. No. 655, dated 31st May 1855. This *renting out* of the topes was in some places annual and implies that they were Government property. It was to get rid of the necessity for renting them out that Government was then anxious. Again, the Board of Revenue in its Proceedings, No. 1617 of the 6th May 1858, paragraph 12, referring to the proposals of Government, say that the taluks where palmyras abound are not yet in a fit state for receiving the orders of Government "for forming groups of trees on unoccupied ground into topes and *giving them away* to parties who agree to pay the land-tax." Again, Mr. Puckle in his letter to the Board printed in P. M. G. R. D., 23rd August 1872, says that any general application of the Government Order of 1858 "would *have given away* without reason millions of valuable trees." Further on he refers to "the impossibility of enforcing the right of Government to a share in the value of every tree cut down." Lastly, in paragraph 8 of Board's Proceedings No. 3364 of the 9th August 1871, it is stated that Rs. 15,000 were derived from the felling of such trees each year.

It is important to notice this because it has been assumed by the appellant's vakil that the holder of a tree-patta must necessarily have planted the trees himself. It is notorious that palmyras and other fruit trees, such as tamarinds and mangoes often spring up spontaneously on waste land. Defendant's 12th witness mentions the spontaneous growth of palmyras in his enjoyment. It would seem then that the assumption that scattered trees, or even topes held under tree-pattas must have been grown by the pattadar or his ancestors is erroneous. In the present case the evidence does not show whether the trees were originally grown by the plaintiffs' predecessors, or were spontaneous. The earliest patta (Exhibit III) shows that in 1825 the plaintiffs' father had a patta for ten palmyras only. The number had increased in 1841 (Exhibit II2) and again in 1874 (Exhibit II3) and is now 87. Probably the plaintiffs planted the additional trees (though there is no evidence of this) but the trees only, not the land, are mentioned in these pattas of 1841 and 1874. The patta of 1874 contains an exact statement of the acreage and assessment of all the plaintiffs' *lands*, but with regard to the palmyras, no land is mentioned. The sum of Rs. 14-11-0 is merely entered at the foot of the patta as the miscellaneous tax payable for palmyras and the land on which they grow is not named or referred to in any way.

Moreover, there was formerly another person who had a tree-patta in the area now in question and his interest was acquired by the plaintiffs. There was, of course, nothing in the way of an assignment by Government of any area in which the plaintiffs were to plant trees or of any agreement, express or implied, with the local Revenue officials that the plaintiffs should

be allowed to plant trees in any particular area. All that we find is that the plaintiffs originally had a patta for ten trees and that the number gradually increased partly by purchase of another tree-pattadar's interest and partly by the growth of fresh trees, and that the number of such trees is now 87.

Let us now see what is the evidence as to the rights which are locally understood to belong to the tree-pattadar as such. The district munsif did not attach much weight to the oral evidence on either side, with the exception of that given by Mr. Krishnier (6th defence witness) the Tahsildar of Tenkarai, where the lands are situated. Both the Lower Courts regarded him as a thoroughly competent and trustworthy witness. As sub division Sheristadar for eight years and afterwards as a Tahsildar for twelve years, he had special knowledge of the subject. This is what he says as to the general custom of the district: "The mere tree-pattadar is not entitled to the land underneath the trees as of right. He is only given a perpetual right to get patta for the land underneath the trees when such land has been assessed waste. The Government is not bound to issue patta to the tree-pattadar for the land underneath the trees. According to the usage prevailing in this district, Government has a right to collect tax on palmyra trees and a separate tax on the land underneath the trees. The land is assessed separately from the palmyra trees on it and both taxes are recovered from the respective pattadars, if the pattadars are separate individuals and from the same individual if he has got patta for the land as well as the trees. If assessed waste underneath the patta trees is brought into cultivation, the land assessment is charged to the cultivator. If the land underneath is poramboke land, prohibitory assessment is levied from the person cultivating it. The assessment charged to the cultivator of assessed waste underneath trees is called Sivayajama assessment. The land belongs to Government though covered with patta trees The land is given on patta. There is no substitution in Tinnevelly district of the palmyra tree tax for the land tax and both are collected except in the special cases of terai land. Even in the cases of terai land, there is no substitution of the tree tax, but favourable rates are charged against both trees and land."

Nothing could be plainer than this evidence and it is altogether against the plaintiffs' contentions. The only sentence that seems to support the plaintiffs is the second sentence where the witness says: "He (the tree-pattadar) is only given a perpetual right to get patta for the land underneath the trees when such land has been assessed waste." This sentence must be understood in connection with the rest of the evidence in which he repeatedly states that Government is not bound to give a patta for the land. What he means is that under the rules framed by Government for the disposal of applications for grant of waste land on patta (Darkhast rules) preference is given to the holder of a patta for trees on the land. This is made clear in his cross-examination where he says: "The tree-pattadar has a *preferential* right under Darkhast rules to get patta for the *anathi* land underneath the trees." In other words, the tree-pattadar has a right as against other applicants, not as against Government itself.

It has, however, been held and the decision is clearly correct, that these Darkhast rules do not convey any rights enforceable against Government in the Civil Courts (I.L.R., 1 Mad., 205). Again, in the case reported in I.L.R., 6 Mad., 303, Turner, C. J., referring to the question whether the plaintiff could claim to enforce an alleged preferential right under the Darkhast rules said: "A Civil Court cannot, however, compel the Revenue authorities to make settlement with a particular person. In that matter the discretion of the Revenue authorities is uncontrolled."

It is necessary to bear these rulings constantly in mind, for both in the district munsif's judgment and in the evidence of the witnesses there is a recurring confusion between rights enforceable by law against Government and so-called rights or rather preferences which Government, by its rules and practice, secures to the tree-pattadar against third persons, where both lie more or less for something which Government has to give.

Indeed, the district mu[illegible] paragraphs 24 to 27 of his "finding" takes the Revenue authorities roundly to task for having "carried out speedily in an earnest spirit" what he considers was the policy of Government for the settlement of the district. Such remarks in any case would be out of place in the judgment of a district munsif, but they are especially so in the present case where the Government is itself the defendant, and supports the action of the local Revenue authorities in accordance with its policy and orders.

To return, however, from this digression. The witness having stated the general rules in the language above quoted proceeded to illustrate by six examples the kind of rights which Government had over assessed waste lands in which tree-pattas were held by private persons.

The illustrations are as follows:—

(1) "For the eight years, the Forest department have been enclosing as Forest Reserve Government assessed waste lands on which palmyra trees belonging to ryots and in the patta of ryots standing, merely allowing the tree-pattadars access to the trees.



(2) In Korkai village an embankment was constructed on Government assessed waste on which palmyra trees of ryots stood and no compensation was given to the tree owners for the lands.

(3) Pattas have been granted by me to other than the owners of the trees for the assessed waste underneath in several cases, but the owners of the trees did not want the land in these cases.

(4) In one or two cases where the trees were held by three or four persons under tree-pattas and each of them applied for the whole land underneath the trees, I have rejected the applications of all but one of the tree pattadars and granted the entire land to the said one pattadar whom I preferred. I disposed of these applications under the Darkhast rules.

(5) When patta trees are felled or fall down one-half the sale-proceeds is taken by Government and half is given to the pattadar.

(6) The tree-pattadar cannot fell the trees without permission of Government, and, if he does so thirty years' assessment is levied from him."

and in cross-examination he added "If one pattadar has ten trees and another two trees, and the whole land underneath the twelve trees is applied for separately by each, the land is granted to both jointly or to either of them at the discretion of the Revenue Officer according to convenience and circumstances."

Not the slightest attempt was made to break down this evidence in cross-examination; nor strangely enough was there any attempt to call counter-evidence of an independent character as to the custom or practice of the district.

The district munsif attaches importance to the witness's statement that he was not aware of any cases in which land underneath trees held on tree-patta had been granted to any one other than the tree pattadar when the tree-pattadar was willing to take up the land on patta, but this only shows how faithfully the Revenue authorities gave effect to the standing orders that the tree-pattadar was to have the preference in case of contest. The witness, however, says that in some cases where the tree-pattadar did not want the land patta, he had given the land patta to a stranger. Moreover, Mr. Puckle (Exhibit XXXIX) in reporting to the Board of Revenue on the origin of the anomaly by which pattas for the trees and the land were often held by different persons states as the first and principal reason the fact that the Collector had granted the land pattas without due inquiry or priority of option being accorded to the tree owners. The fact that these grants of land pattas were so generally acquiesced in by the holders of pattas for trees on the land shows that the growing of the trees, and the cultivation of crops on the land were, in the opinion of the parties concerned, separate rights which might be granted separately by Government though Government preferred to grant both rights to the same person. As, however, Government by its rules gave the tree-pattadar a preferential claim to a land patta, if he desired it, it is not surprising that there are but few cases in which Government did actually grant a land patta to a third party contrary to the will of the tree-pattadar. Exhibit XXIX, however, evidences a case of that kind and in Exhibit XXVII Government refused to grant a land patta to the tree-pattadar who applied for it, and in many cases the Tahsildar exercised a discretion between rival applicants. A very few such instances are sufficient to show that Government retained the power to refuse a patta, though ordinarily willing to grant it. The only witness on the plaintiff's side who gives general evidence as to the custom is their first witness who is the monigar of the village, and he distinctly says "Government have right to grant the waste land on which patta trees stand (excepting the sites occupied by the trunks of the trees) for cultivation to others." This was his evidence in cross-examination and no attempt was made in re-examination to explain away or minimize the force of so complete an admission of the Government case.

This witness was in no sense a hostile witness to plaintiffs. On the contrary, he gave evidence stoutly in their favour in regard to the point he was called to prove, viz., that the land was not a common threshing floor. There was practically no evidence adduced by the plaintiffs to contradict the evidence of this, their own witness, who, as an elderly man and monigar of the village, must know well the respective rights of Government and the tree-pattadars as understood in his village. The Tahsildar of the taluk, who has had twenty years' experience in the posts where he could best gain a general or comprehensive knowledge of such rights as they are understood not merely in the village but in the wider area of the district, and whose evidence is on all hands admitted to be trustworthy, is equally distinct in favour of the Government case. As already observed no question was asked of either witness to suggest that any distinction existed between the rights of holders of pattas for scattered trees and groups of trees. The standing orders of the Board of Revenue make no such distinction and no such distinction was made in the pleadings or issues even when the case was remanded.

The district munsif found that the Government contention was true and correct so far as scattered trees were concerned, and there is no contention before us that the district munsif was wrong in that finding. The evidence, whether oral or documentary, does not set up, much less does it establish, any distinction in regard to trees in a defined group. It follows, in my opinion,

that no distinction can properly be drawn and that the plaintiffs' case fails just as much in regard to groups of trees as it does in regard to scattered trees.

In the course of the argument, I asked the appellants' Vakil at what stage in the course of planting up an area of land would the holder of a patta for scattered trees on it become, *ipso facto*, entitled to a land patta. He could only suggest that it was as soon as the tax on the trees equalled the land tax, but this (though at first adopted by the district munisif) is a criterion which has nothing at all to support it. The two taxes are, as the district munsif eventually admitted, cumulative. The tax for cultivation of the land is levied in addition to the tax for the trees and without any reference to the amount of the tree-tax. If a pattadar of scattered trees has not a right to a patta for the land on which each tree grows, it is impossible to see how or at what stage as he increases the number of trees he acquires the rights of a land pattadar. No doubt as Government issues a patta for each new tree it increases the interest of the tree-pattadar in the land, and diminishes the interest which remains in itself, but the interest of each party remains throughout of the same *kind*. The *quantum* of interest varies, but its *quality* does not vary. If, however, the district munsif's distinction is to be maintained, we must hold that at some point of time the admitted limited interest of the holder of a patta for scattered trees developes *per saltum* into the wholly different kind of interest which a land pattadar possesses. Thus, in the present case, the plaintiffs had originally a patta for only ten trees. These would clearly have been regarded as scattered trees and would according to the finding of the district munsif and the admissions of the plaintiffs before us, carry with it no right to a land patta. The trees gradually increased in number and now it is claimed that the plaintiffs have acquired the wholly different *kind* of interest in the land which a land pattadar admittedly has. This seems to me an illogical conclusion and one which we cannot reasonably admit.

The district munsif freely admitted that the plaintiffs had failed to prove the custom alleged by them or its acceptance by Government, but he held somewhat inconsistently, as it seems to me, that there was a long continued course of dealings and conduct on both sides from which an implied contract, as between landlord and tenant, might be inferred. The Subordinate Judge has carefully analysed the evidence on which the district munsif relied and has found it to be altogether insufficient, and I have no hesitation in agreeing with the Subordinate Judge. I need not go through all the evidence, but I notice a few leading points. The district munsif first relies on the fact that in several cases the holders of tree pattas have purported to sell the land under the trees as well as their rights in the trees. Some of these documents the Subordinate Judge has found to be not genuine, some he has found to have been executed collusively in order to get up evidence, some profess to sell the trees only, some profess to sell Government *poramboke* land, in which it is admitted the vendors can have no right; and in all cases the transactions were behind the back of Government and were never accepted by Government officers as giving any title to the lands. It is impossible to hold that Government is bound by these transactions or that they indicate any general consciousness on the part of the community that the legal right to the land vested in the vendors. As well might it be argued that the prevalence of theft in a community was good evidence of a consciousness on the part of the community that there was no such thing as a legal right to private property. Again, the District Munsif finds that the practice prevails of enclosing groups of trees with low mud walls and thinks that this implies an assertion of exclusive ownership. As regards this, the Subordinate Judge observes that the evidence shows that the object of the mud walls was to define the limits of the groups held by the various tree pattadars. They were also useful for confining the goats whose manure is used for the trees, to the particular trees or groups of trees which belong to the owner of the goats. The erection of such walls is an act which does no injury to Government and is, therefore, ordinarily not objected to by Government, but this cannot, I think, be taken to derogate from the rights of Government when it has occasion to assert them. In the case of the plaint land the evidence is that such enclosing as took place was of very recent date and was of a very temporary character. The District Munsif also relies on the fact that the tree pattadar without special permission of the Revenue authorities plants fresh trees on the land, and in due time gets a tree patta for them. This, at first sight, would seem to be a strong argument, but it loses its force when we see that a pattadar of scattered trees does precisely the same thing, and, in fact, a man without a tree patta at all may do it. Nay more, the plaintiffs' own 12th witness says that this is done even in *poramboke* land. He says "Ryots plant palmyras even on *poramboke* land without Government permission and enjoy the same. The Kanakkan will enter in accounts, and then tax will be levied." For such land patta *cannot* be given, and no suggestion is made that by such planting the planter does, or can, acquire a right to the land. He plants the trees with the full knowledge that he has no right to the land, but in the hope that Government will raise no objection. If the planting does no harm to the bund or channel Government will ordinarily, on the trees coming to maturity, give a patta for them to the planter; but this surely cannot be taken as evidence that the Government thereby admits the planter's right to the land. The patta is issued subject to locally well known limitations. The pattadar is allowed to take the produce, but he has not even the ownership of the tree, still less of the land. If the tree



is felled or falls down, it belongs to Government. In the same way, when a holder of a tree patta plants fresh trees on Government assessed waste, he does so subject to locally well known incidents as stated by the Tahsildar and the plaintiffs' own witness, the Village Munsif. Government will ordinarily give him a patta for the trees, but even then the trees do not belong wholly to him. If they are felled without leave, he has to pay assessment on them for 30 years. If they fall down Government gets half their sale-proceeds and the evidence shows that *Government remains the owner of the land.*

I have dwelt on this matter in order to show that the rights of the parties are not to be judged by *a priori* principles or what may seem to be *a priori* principles, of natural justice, but rather by the known existing conditions which govern the relations of the parties and by the inferences which may reasonably be drawn from such known conditions with regard to other matters regarding which evidence is uncertain.

The District Munsif has, I think, been too much influenced by regard for these *a priori* principles, or, as he puts it, by "a broad view of the facts and evidence" and by what he considers to be "for the real and permanent benefit of both parties." He has also, I think, attached undue importance to Mr. Carr's judgment in appeal suit No 456 of 1874 (Exhibit L), and to the fact that no appeal against it was made by Government. The Collector and the Board of Revenue, however, at once declared that the decision was incorrect, but no evidence as to the custom of the district had been given and the case was therefore thought to be an unsuitable one on which to obtain a final decision by the High Court (see Exhibit XL). The decision itself was based almost entirely on Dalyell's note on S. O. No. 5 of the Revenue Board. The note, not the order itself, is to the effect that in Tinnevelly the tree-tax is "*substituted* for the land assessment instead of being an addition to it." Such a note expressed merely the opinion of the editor, and, in the absence of special knowledge on his part, can carry but little weight with it. The statement is, in fact, incorrect, as is clear, not only from the protest of Mr. Comyn, the Collector, who had special knowledge (exhibit XL), but, what is more important, from the evidence already quoted of Mr. Krishnier in the present case, and from a mass of other evidence which shows that the land-tax is levied *in addition* to the tree-tax when the land under the trees is cultivated, except in the terai tract where it may, perhaps, be correct to say that the tree-tax is substituted for the land-tax. The land in the present case, however, is admittedly not in the terai tract, and is not subject to the same incidents. Mr. Dalyell's note seems to have been a generalization from what he understood to be the case in the terai tract. The fact that 30 years' assessment is charged if patta trees are cut without permission is a clear indication that the tree-tax is not *substituted* for the land-tax. The two taxes are for two distinct uses of the land. The one use does not materially interfere with the other use.

If trees are planted on the land Government charges so much for each tree for such use of the land, and if crops are also grown on the land it charges a separate sum on the crop so grown.

If the two uses are made by the same person, Government charges him the two taxes; if by different persons, the Government charges each according to the use made by him. Thus the permission to plant trees implied by the grant of a tree patta does not include the right to the use of the land for every purpose, and until such right has been assigned it remains in Government and can be alienated by it, provided the doing so does not derogate from the customary right of the tree pattadar in regard to the enjoyment of the trees. Mr. Carr's decision therefore seems to me of very little importance, since it was based on an incorrect assumption and without evidence as to the custom of the district in respect of tree pattas. The only importance of the case lies in the fact that it shows that a claim similar to the present claim was made in the courts some 20 years ago, but it is remarkable that this appears to be the *only* case in which such a claim has ever been made in any district though the system of tree pattas has been in existence from the earliest times in two-thirds of the districts of the Presidency. If such a claim as the plaintiffs now make was well founded I should have expected that it would have been established by some judicial decision other than that of Mr. Carr above referred to. The District Munsif, however, seems to think that the tree pattadar's right to "physical possession" of the land is established by the ruling of the Full Bench of this Court reported in I.L.R., 12 Mad., 207. That was a reference under the Forest Act, and the question was whether the holder of a tree patta was a "known occupier of land" within the meaning of the Forest Act so as to entitle him to notice under section 6 when the Government proposed to reserve as forest the land on which the trees in the patta stood. The Full Bench observed that the Collector of Salem, Mr. McWatters, who made the reference, was "of opinion that a tree patta gives the pattadar at any rate an *interest as occupier in the site on which the tree stands*," and added "It appears to us that the view of the Collector is correct" * * the tree pattadar "has an interest *during the continuance of his patta* in the tree itself, and in all that is necessary for the growth of the tree including the soil in which it grows. Such interest, *though far inferior to the interest of the owner or lessee of the soil*, is still an interest in the land." Now the interest of an ordinary land pattadar in the land in his patta is admittedly much greater than that of a mere lessee, yet the Full Bench held that the tree pattadar's interest in the soil was "far inferior" to that of a lessee. It follows that it is still more inferior to that

of a land pattadar. Moreover the Full Bench seems to have considered that the tree pattadar's interest lasted only "*during the continuance of his patta*" and extended only to the *sites* on which the trees stood (not to the inter-spaces between trees) and so far only as was necessary for the growth of the trees. It has never been contended that the growing of crops under palmyra trees is injurious to the trees. It is rather beneficial by reason of the opening up and manuring of the soil which accompanies it. The words "during the continuance of the patta" are of importance as showing that there was no grant of a *permanent* right of occupancy even of the *sites* of the trees. If all the trees were to die or be swept away by a storm I take it that the interest of the tree pattadar would *ipso facto* cease, and the land would be again absolutely at the disposal of Government. It seems to me that the observations of the Full Bench, far from supporting the plaintiff's claim, lead very distinctly to the conclusion that their claim is in excess of their real interest in the land. I think that those observations correctly indicate the limits of the tree pattadar's interest in the soil, and if this is so, the plaintiffs' claim to demand a land patta for the land must be dismissed. The mistake made by the District Munsif and by the appellants' vakil seems to be in the assumption that land on which patta trees stand must either be absolutely at the disposal of Government, or absolutely the property of the tree pattadar. The evidence in the present case and the observations of the Full Bench show that neither of these extreme views is correct. Each party has certain rights in the land. As the number of the trees in the patta increases the *quantum* of the planter's rights increases, and the *quantum* of the Government rights which remains is diminished *pro tanto*, but the *quality* of the rights belonging to each party remains unaltered. If the Government has the right (as it admittedly has) to grant the spaces between scattered trees for cultivation, it has equally the right to grant for cultivation the spaces between trees forming a group, but in each case the grantee of the right to cultivate must exercise his right without infringing the pre-existing right of the tree pattadar to enjoy the trees in the customary manner. Whether any particular act is an infringement of the right is a matter for judicial determination. It is argued that such a joint interest is, in practice, inconvenient. No doubt that is so like all joint interests, and it is in consequence of this inconvenience that Government has from time to time been anxious to give land pattas to the holders of tree pattas, but the existence of the inconvenience is no proof of the non-existence of the joint interest, and I can find nothing in the Revenue history and practice of the district, in the evidence adduced in the case, or in the nature of things, to show that the Government is bound to grant a land patta for land on which a group of trees are held on tree patta.

Some expressions in the District Munsif's judgment would seem to show that he regarded the action of the Revenue authorities in refusing a land patta in the present case as an act of oppression. There is no foundation for this idea. The patta was refused solely because the Revenue authorities, after due enquiry, came to the con clusion that the land had long been used by the villagers in common as a threshing floor. The same conclusion has been arrived at by the Subordinate Judge on the evidence recorded in the case. He finds that the plaintiffs' attempt to take exclusive possession began in 1885 but that the villagers had been using it as a "public common threshing floor from a time anterior to 1881." This is a finding of fact which we must accept in second appeal and it shows that the refusal was no high handed departure from the ordinary rule which Government has made for the disposal of applications for land on which patta trees stand, but was strictly in accordance with those rules and was in the interest of the villagers generally against an attempted encroachment on their rights. I may add that the plaintiffs were granted a patta for a portion of the land on which they had (without permission) built a house with yard, &c. The patta was refused for the remainder only, but no interference with the customary enjoyment of the trees was attempted. It seems to me; therefore, that whether we look to the facts of the particular case, as found by the Subordinate Judge, or deal with the rights of the tree pattadars in the abstract, the plaintiffs have failed to make out any case for interference on their behalf.

I would, therefore, confirm the decrees of the Subordinate Judge and dismiss the second appeals with costs allowing a pleader's fee of Rs. 50 in each case.

---

Under section 575 of the Civil Procedure Code, the judgment of Mr. Justice Benson prevails.

The second appeals are dismissed with costs.

(By the Court.)

(Signed) J. T. GILLESPIE,
Acting Deputy Registrar,
Appellate Side.



*Resolution*—Mis. No. 4329, dated 15th November 1897.

The High Court's judgment received with the letter read above will be submitted for the information of Government as it contains an important ruling on the subject of the rights of tree pattadars in Tinnevelly to the lands on which the trees stand. The High Court has held that a pattadar of a group of trees standing on assessed waste is not *ipso facto* the owner of the land, and is not entitled to a patta for the land. It is requested that the judgment may be forwarded direct to the Collector of Tinnevelly when done with.

2. The payment of a fee of Rs. 50 to the Government Pleader is sanctioned.

(True Extract.)

(Signed) R. C. C. CARR,
Secretary.

To the Secretary to Government, Revenue Department,
with copies of judgment and decree and with letter.
" Collector of Tinnevelly, with letter.
" Government Pleader, Madras.
Copy to the Accountant-General, Madras, with letter.

---

Order—No. 1033, Revenue, dated 10th December 1897.

Miscellaneous. Recorded.

(True Extract.)

(Signed) G. S. FORBES,
Ag. Secretary to Government.

To the Board of Revenue (Land Revenue), with decree.
" the Collector of Tinnevelly, with copy of judgment.

Exd. A. F. Eccleston.

40 Copies.

First copy sent to Press

Returned for signature.

Despatched in print.