[illegible] ([illegible]) Department.

PRESS SERIES.

G.O., No. 508-509.

Dated 29th June 1897.

[Despatch Abstract.]

The Landholders' Association.

Ordering that a letter be despatched to the Govt of India regarding the memorial of —.

__Letter.__ Forwarding to the Govt of India for the favourable consideration, two memorials from the Land-holders' Association, Madras, praying for a legislative enactment declaring the impartibility and inalienability of ancient Zamindaries and for a similar enactment for the relief of encumbered estates in this Presidency

[illegible] 7310/98
[illegible]

Ch.

Revenue

Urgent.

Legislative (1897) Department.

CURRENT No. [illegible]

GOVERNMENT OF MADRAS
10 FEB 97
REVENUE DEPARTMENT

2

From H. A. Sim Esqre I.C.S.
Ag Private Secretary to
H.E. the Governor.

No.

Dated 6th February 1897.

Received 10th

Registered 10th

Enclosures 5

Spare copies "

A. Lister

SUBJECT.

Transfers a petition dated 5 February 1897, from the Rajah of Venkatagiri, President, Madras Landholders' Association soliciting that the Association's petition praying for legislation to regulate the succession to Zemindaries, may be forwarded to the Secretary of State for India.

(By order)
[illegible]
Ag Private Secretary

BACK PAP

G.O.	No.	Department.	
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Oudh Taluqdari act I of 18			

FURTHER PAP

G.O.	No.	Department.	D

PETITION

0120

REVENUE DEP

To

His Excellency the Right Hon'ble

SIR ARTHUR ELIBANK HAVELOCK, G.C.M.G., G.C.I.E.,

GOVERNOR AND PRESIDENT IN COUNCIL,

FORT SAINT GEORGE.

May it please Your Excellency,

I, as the President of the Madras Landholders' Association, beg to request that Your Excellency will be graciously pleased to forward to the Right Hon'ble the Secretary of State for India in Council the accompanying Appeal Memorial of the Association against the G. O., No. 606, dated 10th July 1893, on the Memorial of the Association—praying for legislation to regulate the succession to Zemindaries after the manner of the Oude Taluqdars' Act I. of 1869—with enclosures. I earnestly pray further that in doing so Your Excellency will support the humble petition of the Memorialists with all the weight of Your Excellency's recommendation, in order to prevent the serious evils that have been keenly felt by all wise Statesmen from the days of Sir Thomas Munro. For this act of kindness I shall ever feel obliged to Your Excellency.

I beg to remain,

Your Excellency's most Obedient and Humble Servant,

Venkatagiri Town.
February 1897.

V. R. Krishna Yachendra

Rajah of Venkatagiri,
President,
on behalf of the
Madras Landholders' Association.

UNDER SEC'Y. TO GOVT. REVENUE DEPT.
2[illegible] JUL 1[illegible]

To

THE RIGHT HONORABLE

THE SECRETARY OF STATE FOR INDIA IN COUNCIL.

The Humble Memorial of

The Madras Landholders' Association.

WITH the utmost respect and feelings of the deepest loyalty Your Lordship's humble Memorialists, representing the "ancient Zamindars" of the Presidency of Madras, desire to invite your Lordship's earnest attention to their present legal position, in the hope that your Lordship may see fit, by suitable legislation, to avert the evils anticipated by your Memorialists, and check the disruption of ancient Zamindaries and other large proprietary estates of the like nature.

2. Your Memorialists, on 5th December, 1890, and 8th March, 1892, humbly addressed His Excellency the Honourable the Governor of Fort St. George in Council, upon the matters forming the ground of the present Memorial. These Memorials were referred by His Excellency to the Board of Revenue for remarks, under orders dated 22nd January, 1891, and 23rd March, 1892. The Board of Revenue, in its Resolution dated 23rd August, 1892, No. 459, dealt with these petitions in a comprehensive and sympathetic spirit, admitted the disadvantages under which your Memorialists labour, and concurred with their suggestions as to the legislative remedies to be adopted. Unfortunately, however, these proposals did not commend themselves to His Excellency the Governor of Madras in Council, who, in an order dated 10th July, 1893, No. 606, decided that, except with reference to the passing of an Encumbered Estates Act, the request of your Memorialists could not be granted.

3. Your Memorialists respectfully request that your Lordship will be pleased to read along with this Memorial the other documents enumerated in the preceding paragraph, and in particular the Resolution of the Board of Revenue. The Board of Revenue is composed of the most experienced and able Revenue officials in the service of Government, while, in this instance, the care they have devoted to the investigation of the historical side of the question and their clear appreciation of the legal difficulties involved should, your Memorialists humbly submit, invest their opinion with exceptional weight. For convenience of reference the papers referred to are submitted with this Memorial.

4. The disadvantages of which your Memorialists complain, have their origin in the times when the ancestors of your Memorialists first became subjects of the British power, and are due partly to the absence or imperfection of legislation, and partly to the uncertainty of judicial decision. Your Memorialists are, as will appear from the sequel, very peculiarly the victims of case-made law. The peculiarity of a substantive law, based upon judicial decisions, is, as pointed out by Sir H. S. Maine, (*Ancient Law*, pp. 31, 32), that while by a legal fiction the law remains in form intact and unaltered, it may be in substance most seriously modified and changed. The result may be healthy development, or may be destructive

deterioration; and your Memorialists regretfully have to submit that in their case the consequences have been disastrous, and are certain to be fatal unless the strong hand of Government intervenes.

5. The first legislation affecting the class of proprietary estates termed, somewhat incorrectly, as will be seen, "ancient Zamindaries," is Regulation XXV. of 1802,—a Regulation the object of which was to introduce, into the territories subject to the Governor of Fort St. George, a Permanent Settlement similar to that established in Bengal by Lord Cornwallis. The meaning and effect of this Regulation, as explained by Regulation IV. of 1822, has formed the subject of much judicial investigation. Elaborate discussions of it will, for example, be found in the *Zamindar of Salur's Case*, reported in III., M. H. C. R., 5, and in the Privy Council's decisions in the cases of the *Zamindaries of Guntamanaikanur* and *Marungapuri*, reported in L. R., I., I. A., 268, at pp. 305 *seqq*. It is not necessary for the present purpose to deal further with the matters therein treated, because the result of the decisions has been to confirm the natural meaning of the explanatory Regulation IV. of 1822, and establish the principle that "there is nothing in the Regulations relating to the Permanent Settlement showing an intention to affect rights of property in existence at the period of their being passed" (III., M. H. C. R., 153). In this the Regulation differed from Bengal Regulation XI. of 1793, which formulated an intention on the part of the Legislature to extend the law of partibility to Zamindaries. It was not so in Madras. The question of succession was left perfectly open, and the Privy Council's decision, just referred to, declared that there was no distinction in this matter between settled and unsettled estates. "The existence of a proprietary estate in *pollicms* or other lands not permanently assessed, and the tenure by which it has been held, are, in our opinion, matters judicially determinable on legal evidence, just as the right to any other property." (VI., M. H. C. R., 208, quoted and approved, L. R., I., I. A., 312.)

6. The Board of Revenue, in the above-mentioned Resolution of 23rd August, 1892, to which reference is here craved, briefly summarises the history of the Zamindaries of this Presidency, and points out how the difficulties arise with reference to the so-called "ancient Zamindaries." All, or nearly all of these, lay claim to be exempt from the ordinary Hindu Law of succession and partition, alleging the succession to be by primogeniture, and the estate consequently to be impartible. These Zamindaries—the word itself is a modern importation from Bengal—were either principalities or *Rajiyams*, of which primogeniture and impartibility are necessary incidents, or estates *of the nature of a Raj*, that is, either military fiefs or properties of farmers-general of the revenue which had, by custom and lapse of time, acquired the legal incidents of a principality. This process was described by the High Court of Madras in a suit in connection with the Zamindari of Parlakimedi, the point in dispute being whether personalty followed the law of primogeniture and impartibility applicable to realty. There it is said by the Court, (V., M. H. C. R., 31)—

"The established rule which takes ancient Zamindaries out of the established law of partition and succession is, we think, strictly limited to the *corpus* of the land and other immoveable property forming the estate of the Zamindari, and such moveable property as by customary descent may have become an heritage appurtenant thereto. The exemption arose, as Sir Thomas Strange observes, in his treatise on Hindu law, Vol. I., p. 198, and as is recognised in the judgment in *Gunesh Dutt Sing* v. *Maharajah Mohashun Sing*, VI., Moo. I. A., 189, from the nature of the estate. When from being, as they seem originally to have been, managers of the revenue of sovereign States, Zamindars assumed the rights of proprietors and some of the powers of independent ruling princes and chiefs over extensive tracts of country, those tracts, forming their Zamindaries, came to be enjoyed as regalities or principalities, and, usage at length obtaining the force of law, such Zamindaries were by analogy brought within the special rule which exempted the power and property of sovereign princes from the general law of succession and partition. In its very inception then the exemption appears to have related strictly to the property constituting each ancestral Zamindary estate."

A full historical discussion of this point will be found in the judgment of the High Court of Madras, in the *Marungapuri Zamindari Case*, already alluded to (VI., M. H. C. R., 208). It will thus be seen that the grant of a *sanad milkyat-i-istimrar*, under the Regulation of 1802, neither created the Zamindari to whose holder the *sanad* was granted, nor confirmed or even recognised any particular form of descent or tenure. The *sanad* made the settlement permanent and laid down provisions intended to ensure the due payment of the Government demand,—provisions which incidentally involved important consequences to the Zamindars.

7. It is unfortunate that so favourable an opportunity was not seized by the ruling power for settling a question, certain, if left open, to let in a flood of litigation with all its disastrous consequences. The Government of Bengal acted differently with the holders of permanently settled estates. Bengal Regulation XI. of 1793 recognised that impartibility had theretofore been the rule, but decreed that, for political reasons, partibility should be the rule in future. The political reasons that weighed with the Bengal Government probably did not apply with such force among the more independent, warlike, and widely scattered fief-holders of the south; but in declining to declare their fiefs partible, the mistake was committed of failing to declare them impartible. The evil effects of this policy did not escape the experienced and astute eye of Sir Thomas Munro. Very soon after his return to Madras as Governor, we find him dealing with the subject in a Minute, dated 19th September, 1820. (*See Minutes, &c., of Sir Thomas Munro, by Sir A. J. Arbuthnot, New Edition, p.* 118.) The following passages may be quoted:—

"Our code of regulations has, in a great measure, broken down the entail by which the estates of different classes of Zamindari and of official servants were protected from division, and descended entire to a single heir. So much injury, both to the public and to individuals, has been occasioned by the change, that I have long thought that we ought to revert to the ancient usage and confirm it by law. Our departure from it has already ruined many ancient families. It encourages dissension among all those which still exist. The members of each family are continually instigated by needy adventurers to apply to the courts for a division of the estate. Neither the Zamindars themselves, nor their relations, ever know much of business; and the results of such suits is generally, whether successful or not, to leave them overwhelmed with debt, occasioned partly by the expense of carrying them on, and still more by usurious interest on money borrowed for that purpose, or for bribes which their agents assert to have been paid to the vakils, or officers of the court. By these means, while the family of the Zamindar falls into distress and disgrace, the character of the Government suffers, and more than one rebellion has been the consequence." . . .

"Our regulations were originally intended to protect all classes of our native subjects in all their rights; but they have not done this with respect to Zamindars. On the contrary, by extending to them the general Hindu laws of succession, they have already destroyed many of th and are hastening to ruin those that remain. Our regulations protect, as far as they can protect, all rights of the people; but they are too much calculated to facilitate the minute division of property, and the descent of society to its lowest level. This effect was counteracted under the native Government by the lands of every public officer, from the head of a village to that of a province, descending undivided to a single heir; by the possessions of all petty Rajahs, Zamindars, and Poligars following the same rule; by frequent new grants of lands to numbers of civil and military officers, sometimes for life, sometimes for a longer term, and by these officers remaining in their respective districts mixed with the inhabitants, and not retiring with their wealth to a distant country, like the European servants of the company who have succeeded them." . . . .

It was further proposed to hand over to the Zamindars the charge of the police in their Zamindaries. This suggestion was received with little favour by the Zamindars, many of whom also looked upon the whole measure as a mere device for in time ousting them from their estates. *Timeo Danaos et dona ferentes* was the too common attitude of the Zamindar to his foreign conqueror in those days. Writing on 23rd February, 1823, the Governor thus minutes regarding his proposed Regulations, the objects of which were "to preserve the hereditary possessions of ancient Zamindars in their families; to preserve the respectability of such Zamindars; and to secure the country from being disturbed by family dissensions regarding the division of property, or by disputed claims to the succession to the Zamindari, and the Zamindars from ruinous litigations in the courts of judicature."

"The measure of entailing the ancient Zamindaries by a regulation has now been above two years before the Board. The heads of the proposed regulation were sent to the Collectors, in order that their opinions and those of the Zamindars regarding it might be obtained before it should be passed into a law. The answers have been received. Those of some of the Zamindars are in favour of the regulation, but those of more are against it. The reasons urged against it are various, the difficulty which, it is said, will be found in borrowing when the land is no longer liable for the debt and the consequent danger of the Zamindari being resumed in unfavourable seasons, from the Zamindar being unable to raise funds to discharge the Government revenue; the wish of the Zamindar to retain the power of transferring or dividing his possessions; his aversion to taking charge of the police, from the fear of penalties and of degradation to the rank of a police officer, and his suspicion that further changes may be intended, which may lead to the loss of the Zamindari.

"Those objections, however, may in a great degree be removed by making the acceptance of the regulation optional, and in the sketch which I now submit this is provided for, and the points which were deemed most objectionable in the former draft are either modified or omitted. It is probable that some of the Zamindars will agree to the amended draft at first, and that most of the rest will follow their example, when they perceive that it is calculated to secure the possession of their Zamindaries to their descendants."

8. Sir Thomas Munro's attention was at this conjuncture diverted by the famine of 1824 and the Burmese War; and subsequently his untimely death took place before the proposed Regulation could be passed into law. It is true the Governor of Madras in Council "has no doubt that, if Sir Thomas Munro were now alive, he would not consider that legislation, such as he then contemplated, is either necessary or desirable in the present day." Your petitioners are unfortunately not able to contradict this statement on the authority of Sir Thomas Munro himself; but they feel sure that in any public presentment of his change of views, Sir Thomas Munro would have communicated the reasons leading him to alter his opinion. These reasons must be weighty, seeing that much of the evil he predicted has occurred, and is indeed the direct cause of the present Memorial. It is respectfully suggested, therefore, that the Government of Madras should supplement its statement by publishing the reasons, which, in its view, would cause so experienced a statesman to abandon his carefully-formed opinion.

9. The evils of the uncertainty in which questions of succession are involved, and the ruinous consequences of the litigation rendered inevitable by that uncertainty, were succinctly summarised by Sir Thomas Munro in the passage quoted above (*para.* 7) and are set forth by your Petitioners in para. 5 of their Memorial, dated 5th December, 1890. That presentment has not been traversed by the Government of Madras, and indeed cannot be impugned. The whole mischief springs, not from the incident of impartibility or from that of partibility, but from the incident of uncertainty; and the dictum of Lord Teignmouth (then Mr. J. Shore) as to Settlement is equally applicable here;—"It is allowed that a considerable degree of inequality is a less evil than a very great degree of uncertainty" (Bengal Cons., Nos. 1 to 3, 21st December 1789, p. 1). In the present case, the uncertainty is aggravated by the impossibility of laying down any fixed criteria by which the result of a possible law-suit may be anticipated. It has been ruled once and again that each case must be decided on its own facts and merits, and the more superficial study of the decided cases will show how little, either of fact or of law, causes the balance to swing one way or the other. In each new case, the best efforts of the Judges are devoted to endeavouring to reconcile apparently irreconcilable previous decisions. The result is to make the majority of succession suits nothing better than huge gambling speculations, the only certain result being the permanent crippling, if not the complete ruin, of the unfortunate Zamindar. An example of this uncertainty in law will be found in the cases where it is alleged that interference by the Government has changed the estate of the successors from one of inheritance to one of purchase—(for terms derived from English real property law are freely introduced)—and thereby has determined the incident of impartibility in favour of partibility. In the Madras Presidency, alarm, amounting almost to panic—a feeling fully justified by subsequent events,—was aroused by the decision of the Privy Council in the *Nuzvid Case* (L. R., VII., I. A., 38). In the words of Mr. Justice Holloway, "encouraged by observations casually made in former proceedings, this suit has been brought, and the argument there proceeded on the ground that the impartibility must in every case be made out by evidence. It was treated as a *privilegium*. This in our opinion is not the correct view." But although both Subordinate Courts held the Zamindari to be impartible, the Privy Council decided otherwise. It was held that down to 1793 "indivisibility and impartibility and descent to a single heir were the ancient nature of the tenure." But in that year the estate was resumed by Government for arrears of Revenue, and in 1802 it was divided into two portions, one of which, called by the old name of Nuzvid, was granted by *sanad* in 1802 to the second son of the former owner. Their Lordships held that this grant created the modern Zamindary for the first time; that there was no presumption that the Government intended to continue or renew the incident of impartibility; and that the Zamindari was not descendible otherwise than according to the ordinary rule of the Hindu Law. In giving this decision their Lordships thus referred to and distinguished a leading Bengal case, which had been relied on by the Zamindar. "In the *Hunsapoor Case* (XII., Moo. Ind. App. 1) the Zamindary was an impartible *raj*, which by family usage and custom descended to the oldest male heir, according to the rule of primogeniture, subject to the obligation of making *babooana* allowances to the junior members of the family for maintenance. It was seized and confiscated by the British Government in 1767, in consequence of the rebellion of the Rajah, who was expelled by

force of arms. The Government, having kept possession until 1790, granted it in that year to a younger member of the family, on whom subsequently they conferred the title of Rajah. There was no fresh *sunnad*, and the only question raised was, what was the nature of the estate granted; whether it was a fresh grant of the family raj with its customary rule of descent, or merely a grant of the lands formerly included in the raj, to be held as an ordinary Zamindary. In that case, the estate while in the hands of Government had never been broken up, and it was held that it was the intention of the Government to restore the Zamindari as it existed before the confiscation, and that the transaction was not so much the creation of a new tenure as the change of the tenant by the exercise of a *vis major.* There the estate was transferred in its entirety, but in this case the estate was divided into two distinct Zamindaries, and a new sunnad granted allowing the same to be alienated in part or in whole, and making it inheritable by a person and his heirs and assigns for ever, that person being one who had never held an estate descendible to his eldest male heir. The word '*heirs*' used in the sunnad must, in their Lordships opinion, be construed to mean the heirs of the grantee according to the ordinary rules of inheritance of the Hindu Law." This decision, as has been remarked, introduced the utmost confusion and uncertainty into what had hitherto been considered settled law, and led to a flood of litigation of a highly speculative character. It is unnecessary for your Memorialists to follow its deceptive and tortuous course. It will suffice if reference be made to the recently decided cases with reference to the *Zamindari of Devarakota* (L. R., XVII., I. A., 134) and to the *Zamindari of Merangi* (L. R., XVIII., I. A., 45). In the former the principle of the *Hunsapore Case* was held applicable, and the estate declared impartible; in the latter the *Hunsapore Case* was distinguished, and the estate declared partible.

10. The second matter to which your Memorialists would crave leave to refer, has reference to the inalienability of estates deemed or decreed to be impartible. As to this there has been an unbroken current of decisions based upon the 8th section of Regulation XXV. of 1802. The important clause of this section, for present purposes, is that which enacts that transfers by sale, gift, or otherwise, of the proprietary right in the whole or any part of the Zamindary shall, if carried out in a certain way, be valid, "provided they shall not be repugnant to the Mahommedan or to the Hindu laws." The rule has been that the co-parcenary rights of the members of the Zamindar's family are not extinct but dormant or suspended, and that therefore alienations by a Zamindar can be made only under conditions identical with those binding the managing member of a Hindu united family. In this Presidency the Mitakshara law prevails, this forbids alienation except under certain specified circumstances; hence to support an alienation by a Zamindar as against his heirs and successors, it must be shown either that those specified circumstances exist, or that there is a custom of alienability special to the family. A reference to the more important cases will confirm and illustrate the above statement. Such reference your Memorialists feel it incumbent on them to make with some fulness, as it is evident from the reply of His Excellency the Governor of Madras to their previous petition, that the matter is imperfectly understood and requires elucidation.

11. The first reported case directly in point is No. 6 of 1821, (I., *Sel. Decrees*, 284). In this case the Court remarks:—

> "The plain intent of the restriction imposed on the plaintiff by the *Cowle* No. 19, was to protect the interest of Government in the Zamindary, and to prevent its resources from being impaired while the plaintiff should hold the lease. It went no further than to declare that Government would not recognise alienations of any description made during the lease, unless their consent should previously be had and obtained. A similar restriction in the permanent cowle afterwards granted to the plaintiff, had the like object, but more extended in its effect, inasmuch as it went to secure the descent of the Zamindary in perpetuity to the heirs and successors of the original grantee, without an authorised incumbrance by any of the holders; *and provisions of the Regulation XXV. of* 1802 *are confirmatory of the restriction.* Section 8 provides for the payment of the public assessment on all separated portions of a Zamindary by a grantee, if the transfer be regularly made, and if otherwise by the grantor; and as a protection to the heirs, the validity of the transfer is made to depend upon its being conformable to the law of the parties and the Regulations of the Government; and by section 12 Zamindars are declared absolutely incompetent, without the previous consent of Government, to make any appropriations intended for the purpose of effecting a permanent reduction of the public assessment on their Zamindaries.
>
> "The clear and obvious intent of the restriction in question, as well as of the corresponding legislative enactments, being to defeat improper alienations to the prejudice of the rights of the Government *or of the successor to the estate*, it follows by a common rule of construction that such alienations are voidable on the determination of the interest of the person who makes them."

The Court, in its anxiety that there should be no misunderstanding on this point, then refers to and explains App. 1 of 1804 (unreported), under which a similar grant had been set aside, though on somewhat different grounds. It says:—

> "There can be no doubt that the judgment in that case was substantially correct, inasmuch as it went to set aside a grant similar to the present, the continuance of which was claimed from the successor of the original grantor. On the principle stated above, the grant to the plaintiff in that case was clearly voidable when the interest of the defendant's predecessor terminated by death or otherwise."

This decision is followed by others to be found among the Sudder Adawlat decisions, and appears to be supported (*vide* III., M. H. C. R., p. 15 per *Frere*, J.) by the Judgment of the Privy Council in *Niladri Row* v. *Venkatapathy Row*, reported in III., *Knapp*, 23, where this judgment is quoted at length in a note by the Editor as a decision "of general importance to the natives of India."

12. The point first came before the Madras High Court in the case of *Subbarayulu Nayak* v. *Rama Reddi* (I., M. H. C. R., 141), where the law was thus laid down by Sir Colley Scotland, C. J.:—"There can be no doubt that the force and effect of law must be given to these regulations as embodying the provisions intended to govern and preserve the proprietary rights *thereby* vested in Zamindars and other landholders, their heirs and successors, as well as to secure to the Government a fixed public land Revenue. Regulation XXV. more particularly defines the nature and extent of the proprietary rights conferred; and when sections 8 and 12 are considered with its other provisions and the subsequent regulations, it is clear that a restriction upon the alienation of proprietary rights, except in the manner therein specially provided, is strictly imposed, and so as to invalidate the legal effect of a disposal or transfer of such proprietary rights as against the Government and the heirs and successors of the proprietor making the disposal or transfer." The Chief Justice then referred with approval to the decision in Case No. 6 of 1821 (quoted *supra*), and the Court in its decision carried the principle to its utmost

limits. "In the present case there is no ground whatever for saying that the permanent lease is brought within any of the exceptions or enabling provisions contained in the regulations: and we think that a lease so affecting the permanent proprietary rights of the heir and successor in the land, must be considered quite as much within the operation of the regulations as an absolute transfer by gift or sale, and, therefore, that any title or interest that the plaintiff had under it, has altogether ceased." The same principle was followed in many cases, of which only a few need here be quoted. In *Narayana Devu* v. *Harischendana Devu* (I., M. H. C. R., 455), a grant of a perpetual annuity was held not to be binding on the reversioner. "It is quite clear on these facts that the deceased Zamindar could no more charge a perpetual income upon the income of the Zamindari than alienate the corpus. That he could not so alienate has been frequently decided." In a case brought against the *Vijianagram Raja* (II., M. H. C. R., 128) the ruling is very clear. "The vakil for the appellant quoted numerous cases, all disallowing the right of any Zamindar under the permanent settlement to alienate for any period beyond his own life; but sought to distinguish them on the ground that this was a grant for a valuable consideration. Independently of the fact that several grants set aside by these cases were on account of marriage, which is a valuable and not merely a good consideration, the *ratio decidendi* of all the cases down to the two latest (I., M. H. C. R., 148 and 455) clearly is that the Zamindar has really an estate analogous to an estate tail, as it originally stood upon the statute *De Donis*. He is the owner, but can neither encumber nor alienate beyond the period of his own life. If he had sold, the sale would be inoperative beyond his life and would amount merely to an alienation of his life-interest."

13. The meaning and effect of the regulation was fully discussed, particularly in connection with the *dicta* of Lord Kingsdown in *Venkateswara Naik* v. *Alagu Muttu* (VIII., Moo. I. A., 327), but the previous Madras decisions were upheld. On the authority, however, of the Privy Council decision just quoted, the High Court in *Kondappa Naik* v. *Kondappa Chetty* (IV., M. H. C. R., 396) held that the decision in I., M. H. C. R., 143 *supra*, was over-ruled so far as regards *perpetual leases*, but even this decision was subsequently qualified as referring to beneficial leases (I. L. R., IV., Mad., 140).

14. The connection between inalienability and impartibility is very clearly enunciated in the case of *Govindevamma* v. *Ramandora* (VI., M. H. C. R., 93, at p. 105):—"In the present case there is simply the admitted governing usage of succession to the possession and enjoyment of the estate as a Raj by a single heir by primogenitureship; the ordinary well-recognised usage of succession of Zamindaries of this Presidency; and we apprehend it to be clearly the law that such a usage does not interfere with the general rules of succession further than to vest the possession and enjoyment of the corpus of the whole estate in a single member of the family, subject to the legal incidents attached to it as the heritage of an undivided family—that being all that the purpose of the usage, namely, the preservation of the estate as an impartible *raj* renders necessary. The unity of the family right to the heritage is not dissevered any more than by the succession of co-parceners to partible property; but the mode of its beneficial enjoyment is different. Instead of several members of the family holding the property in common, one takes it in its entirety, and the common law rights of the others, who would be

co-parceners of partible property, are reduced to rights of survivorship to the possession of the whole, dependent upon the same contingency as the rights of survivorship of co-parceners *inter se* to the undivided share of each; and to a provision for maintenance in lieu of co-parcenery shares." This doctrine is fully approved in a judgment reported in I. L. R., IV., Mad., 148. "Assuming that the position of a stanom-holder is analogous to that of a Zemindar, the true view of that position to be followed in this Presidency is that to be found in VI., M. H. C. R., 105. A Zemindar has only a life-interest in the property. But he is also manager for the family for the time being; and if he grants a lease or makes an alienation to enure beyond his lifetime, which is for the benefit of the family, that will be upheld, as on the other hand, any such transactions, if prejudicial to the family, will be set aside." In other words, in Hindu families in this Presidency the Mitakshara Law is not abrogated simply because the right of partition is suspended and the possession of the whole property vested for life in the manager. "Where, from the nature of the property, possession is left with one co-parcener, the others are not divested of co-ownership. Their necessary exclusion from possession imposes on the co-owner in possession two obligations to his co-parceners in virtue of their co-ownership—the obligation to provide them with maintenance and the obligation to preserve the corpus of the estate" (I. L. R., IV., Mad., 266).

15. The law thus stated remained in force unquestioned in the Madras Presidency until the decision, in 1889, of the case of *Beresford* v. *Ramasubbiah* (I.L.R., XIII., Mad., 197). The Judges, in deciding that case, felt themselves bound to follow the Privy Council Rulings in the cases of *Sartaj Kuari* v. *Deoraj Kuari* (I.L.R., X., All., 272, and L. R., XV., I. A., 51) and *Raja Udaya Aditya Deb* v. *Jadab Lal Aditya Deb* (I. L. R., VIII., Cal., 199). The latter case had indeed been decided so far back as 1881, and laid down that the onus lay on the claimant to *establish* a custom of *inalienability*. It had been considered, however, that as the property to which the litigation related was situated in Lower Bengal, and consequently as the parties were subject to the Dayabhaga and not to the Mitakshara law, the decision was applicable only in parallel circumstances.* Under the Dayabhaga alienations are permitted, and hence it was for those who denied the right to establish a custom of inalienability that would override the general law. This distinction was expressly pointed out by the

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* In dealing with questions of succession in connection with Zamindaries in the Madras Presidency, it must be remembered that the Mitakshara of Vijnaneswara is the governing legal authority in Southern India, the most important works that supplement it being the Smriti Chandrika, the Daya Vibhaga, the Sarasvati Vilasa, and the Vyavahara Nirnaya. In Bengal, on the other hand, the Daya Bhaga of Jimuta Vahana and the writings of his followers are the recognised authorities and where the Mitakshara differs from the Daya Bhaga the former is, in Bengal, of no authority. These two works "differ in the most vital points and they do so from the conscious application of completely different principles" (*Mayne, Hindu Law, par.* 35). As regards succession, the Daya Bhaga "wholly denies the doctrine that property is by birth, which is the corner stone of the joint family system. Hence it treats the father as the absolute owner of the property and authorizes him to dispose of it at his pleasure. It also refuses to recognize any right in the son to a partition during his father's life." Further "it considers the brothers, or other collateral members of the joint family, as holding their shares in quasi severalty, and consequently recognizes their right to dispose of them at their pleasure, while still undivided." Strictly speaking, there is no such thing as succession properly so called in an undivided family under Mitakshara law. There co-parcenership, that is, joint tenancy with right of survivorship, is by operation of law. Hence under the Mitakshara law, unlike the Daya Bhaga law, absolute, independent, and unrestricted power of alienation over ancestral joint property does not exist in the father. He has no independent voice in its disposal otherwise than for indispensable acts of duty and purposes governed by Hindu texts. Therefore alienability is not an incident of joint or co-parcenary property under Mitakshara Law. These distinctions must be kept in mind in perusing the judgments quoted or referred to.

Judges of the Allahabad High Court in the case of *Sartaj Kuari* v. *Deoraj Kuari* above referred to; and the law declared to be applicable in the North-West was identical with that so long recognised in Madras. "In the case before us," say the learned Judges, "the Mitakshara law is the law of the parties; and if we have correctly held that the Mahauli Raj estate is joint family property, then, save for urgent or necessary expenses of the family, no one member, even though he stands in the position of father or manager, can alienate it or any part of it without the consent of all. Such at least is the view of the Hindu law that has been always recognised by this Court in a long and, as far as we know, unbroken series of decisions from which we should hesitate to depart" (I. L. R., X., All., p. 277). The Privy Council placed the problem on a wider basis. It quoted its dictum in the *Tipperah Case* (XII., Moore I. A., 542), "where a custom is proved to exist, it supersedes the general law, which, however, still regulates all beyond the custom," and continued:—"It is admitted that the raj is impartible, and that there is a custom of succession by primogeniture. The question how far the general law of the Mitakshara is superseded, and whether the right of the son to control the father is beyond the custom is one of some difficulty." It will be sufficient to give the answer to the questions in the words of the Judges of the Madras High Court, to whom it fell to interpret and apply this decision in the Southern Presidency. In that case Muthusami Aiyar, J., after quoting Madras cases above referred to, said:—"Thus the principle which has hitherto guided the Courts in this Presidency as supported by the observations of the Judicial Committee has been this—that when an estate has been shown to be impartible by custom, the general law is superseded only to the extent of excluding the right of partition and of joint enjoyment, and the Mitakshara law governs the disposing power of the co-parcener in sole possession over the *corpus* of the estate. But this view of the law was overruled by the Privy Council in the case of *Sartaj Kuari* v. *Deoraj Kuari*. There, the High Court at Allahabad held that unless alienability was shown to be sanctioned by custom, the general Mitakshara law restricted the power of alienation possessed by the co-parcener in sole possession of an impartible *raj*. Their Lordships of the Privy Council held that the eldest son, when the Mitakshara law prevails and there is the custom of primogeniture, does not become a co-sharer with his father in the estate, that the inalienability of the estate depends upon custom which must be proved, or, it may be in some cases, upon the nature of the tenure. The grounds of their decision are (i) that the son's right by birth under the Mitakshara is so connected with the right to demand partition of the estate that it does not exist independently of the latter right; (ii) that when there is no right to demand partition and when the estate descends by custom to the eldest son by primogeniture, as if the property were held in severalty, that mode of succession cannot be reconciled with joint ownership which under the general law is the cause of the restraint on alienation; and (iii) that inalienability is not to be inferred as a matter of law from impartibility, but that it may be specially proved by custom . . . . . We are concluded by the authority of the Privy Council, and the lease in dispute cannot be set aside on the ground that under the general Mitakshara law it is not binding on the first respondent. The Privy Council decision, however, does not operate to render alienable an impartible estate inalienable by custom or by the nature of its tenure, but it is an authority only to the extent that inalienability is not to be inferred as a matter of general Mitakshara law from

impartibility." And the decision of Wilkinson, J., is as unequivocal. "These decisions are in direct conflict with the principle upon which the whole series of decisions in this Presidency as to the right of a Zamindar to alienate depends. It has been invariably held that acts and alienations by the holder of an impartible Zamindari made to enure beyond his lifetime will, if otherwise than *bonâ fide*, and if prejudicial to the family, be set aside. The grounds on which the decisions have proceeded are that the Zamindar, though absolute owner, has only a life interest; that he is the manager of the family for the time being; that his co-parceners have right of survivorship to the possession of the whole estate; and that the law of the Mitakshara by which each son has by birth a property in the ancestral estate, though it cannot apply so as to enable them to insist on partition, at least applies so far as to enable them to claim maintenance. But we are bound by the decisions of the Privy Council and must hold that the alienation complained of in this suit must be upheld, unless the plaintiff can make out that there exists some family custom in restraint of alienation."

16. Few words are required to point out how far-reaching are the effects of this decision—a decision as important as *Taltaram's Case*, which, by judicially recognising the fictitious action of "recovery," nullified the statute *De Donis* and rendered English estates tail completely alienable. The Revenue Board, indeed, "is very far from admitting that this is the true state of the law, or that the above decision may not be altered when a well-got up case again comes before the Privy Council." But, while it stands, the decision must be accepted as law, and the situation is not improved by the reflection that the supposed uncertainty of the law must present an additional temptation to litigation. The logical outcome of such a conclusion was clearly formulated by the High Court of Allahabad (in *Sartaj Kuari* v. *Devraj Kuari*, supra). "To recognize such a power in a Hindu father would defeat the first principles of the Hindu law of inheritance and render the continuance of the joint family system impossible. We put it to the counsel for the appellant in the course of his argument that, if he carried it to its logical conclusion, a Raja might dissipate the whole of his ancestral estate, and of his own free will extinguish the Raj; and he frankly admitted that he did not shrink from going that length. If for a moment we can entertain questions of policy, we doubt the expediency or propriety of allowing any such doctrine to go abroad." The decisions, indeed, appear to safeguard rights of maintenance and succession, but it is difficult to see upon what grounds some of the incidents of joint property can be retained while others are discarded as inconsistent with several possession. It seems as if, for instance, a claim for maintenance could be supported, if at all, only by some legal fiction or quibble similar to those which characterised English real property law for so many centuries. Further, even if the right of joint succession be upheld, it may be asked what could prevent a proprietor from successfully evading the law by the devices of uses and settlements, so producing in an intensified degree the very abuses which the Government of Madras seems so much to fear, and leading to evils such as in England called for the Statute of Uses and the Settled Estates and Lands Acts.

17. Nor is this the last word on the matter. In a suit recently decided as to the Zamindari of Kalahasti before the Sub-Court of Nellore, it is contended on behalf of the defendant that the principle of the above decision can be extended logically to enable a Zamindar to alienate his ancestral estate by

Will to any one he pleases, even to a perfect stranger, to the utter exclusion of his son or other co-heirs. The following is the argument of the leading counsel for the defendant, before the Sub-Court of Nellore, as summarised in the *Madras Mail* (16th April 1896).

> "That it had now been decided by the highest judicial tribunal (I. L. R., X., Allahabad, 272) that the custom of impartibility was inconsistent with the *Mitakshara* doctrine of right by birth and that, therefore, unless a family custom of inalienability was established, the sole ownership of the father was not converted into joint ownership with his eldest or other sons on their birth, and that the father's right of alienation was not restrained by birth of sons.
>
> "That on the death of the holder of the impartible estate, it descended by primogeniture to his eldest son to the exclusion of his younger sons, if any, or the eldest of any other class of heirs to the exclusion of other members of that class, and consequently such heirs by primogeniture had sole ownership in the impartible estate.
>
> "That in regard to an impartible estate, whether it be ancestral or self-acquired, the son succeeded the father only as heir, as he would if the estate were the separate estate of the father. It was only when the holder of an impartible estate died, leaving no male issue, that it did not devolve as his separate property, and for the purpose of succession to it, it should be deemed as if it were joint family property. This rested only on a general custom recognised by a course of decisions extending over a long period.
>
> "That the holder of an impartible estate being thus its sole owner, his power of disposition over it was absolute and unrestrained.
>
> "That though the ancient Hindu law may not have contemplated or sanctioned disposition by Will, yet by long usage and course of decisions, it was now conclusively settled that a Hindu may exercise his power of disposition not only by Act *inter vivos*, but also in the form of a Will.
>
> "That there being nothing in the Hindu law which distinguished between properties which could be diposed of *inter vivos* and such as can be transferred by Will, we must look only to the substantive Hindu Law of gifts *inter vivos* and apply the same law to testamentary gifts.
>
> "That under Hindu law, whatever property was exclusively owned by an individual might be disposed of by him by gift *inter vivos* and therefore by Will.
>
> "That in determining the validity or otherwise of testamentary dispositions of property by Hindu law, it was impossible to suggest any test other than that applicable to voluntary gift by a Hindu *inter vivos*.
>
> "The testamentary dispositions of the estate by the late Rajah was sought to be upheld as only applying the Hindu Law of gifts and not by pushing to its logical consequences any innovation engrafted upon the Hindu law."

The same line of argument was pursued by the same counsel in the Madras High Court, in a suit brought to recover possession of the Zamindari of Pittapur, by the adopted son of the late Rajah. The view was accepted by a Divisional Bench of the High Court, and the estate decreed to the beneficiary designated in the Will set up against the adopted son. The Judgment (as yet unreported) is printed with the papers accompanying this memorial; but it should be added that the claimant has appealed to the Privy Council. It will be seen what a vast vista of litigation is here opened up. It may be said that the whole fabric of his ancient personal law—dear to the heart of every Hindu—is for the Zamindar crumbled into dust; while the future existence of his name and house depends on the most precarious tenure.

18. The question is further complicated by the difficulty experienced in proving the existence of a family custom of this kind at variance with the general law. As remarked by Mr. J. D. Mayne (*Hindu Law, 4th Edition, par.* 51): "In the

case of a single family, and especially a family of no great importance, there will of course be very great difficulty in proving that the usage possesses the antiquity and continuousness, and arises from the sense of legal necessity as distinguished from conventional arrangement, that is required to make out a binding usage." The difficulty is enhanced in the case of what may be called a negative custom such as the present. The criterion of proof laid down by the Privy Council seems almost hopeless of attainment. "Their Lordships have to see whether it is proved that there is a custom of inalienability. The fact that there is no evidence of a sale of any portion of the estate is in the plaintiff's favour, but this is not sufficient. The absence of evidence of an alienation without any evidence of facts which would make it probable that an alienation would have been made cannot be accepted as proof of a custom of inalienability." What is the nature of the facts and what the amount of probability deemed requisite under the latter dictum, are most problematical. It may also be at least doubted whether a single owner could not by his own voluntary alienations determine any custom of inalienability which might be shown to have existed in previous generations. The Privy Council in the case of *Ramkishen* v. *Ramjoy* (I. L. R., I., Cal., 186) said, "their Lordships cannot find any principle or authority for holding that in point of law a manner of descent of an ordinary estate, depending solely on family usage, may not be discontinued so as to let in the ordinary law of succession. Such family usages are in their nature different from a territorial custom, which is the *lex loci* binding all persons within the local limits in which it prevails. It is of the essence of family usages that they should be certain, invariable, and continuous; and well-established discontinuance must be held to destroy them. This would be so when the discontinuance has risen from accidental causes; and the effect cannot be less *when it has been intentionally brought about* by the concurrent will of the family. It would lead to much confusion and abundant litigation, if the attempted to revive and give effect to usages of this kind after they had been clearly abandoned, and the abandonment had been as in this case long acted upon." In the case which gave rise to these remarks, members of a family had treated an estate of the nature of a Raj as joint family property for a period of only twenty years, and the Privy Council considered this sufficient to put an end to its impartible character. May not a sole owner by alienating over a period of years,—for which no consent is necessary, as co-parceners do not exist—thereby *ipso facto* destroy any custom of inalienability that may have existed previously? Again a custom of alienation may be set up from circumstance governed by purely religious considerations. When a Zamindar donates a piece of land during funeral obsequies, or for charity, or in return for services rendered, the successor will not object to the alienation, believing that to do so would be to sin against the precepts of *sastras*. Yet such tacit consent would, to prove the custom, be put on the same footing as large alienations for insufficient cause or unnecessary or even immoral purposes.

19. Your petitioners need hardly point out what a potent stimulus to litigation is afforded by this new statement of the law. Not only will the Zamindar be assailed by members of his family desiring partition, and so determined to try the question of impartibility, but he will also be attacked by alienees anxious to have the estate declared impartible, in which event their alienations will, where based on contracts otherwise lawful, be declared binding on the estate.

20. It has been deemed necessary to pursue these points at some length and in detail, because, as your Memorialists have already ventured to point out, their previous petitions failed to present them with adequate lucidity. This is clear from the comments of the Madras Government, to which your Memorialists must now respectfully advert. In para. 3 of its Order (dated 10th July, 1893, No. 606, Revenue) that Government says: "they (the petitioners) further request that as a mere declaration of impartibility will not, under the present law regarding alienation, save an estate from dismemberment unless due provision is made against arbitrary alienations thereof by the proprietor, the Government should also legislate to preserve the hereditary possession of impartible estates in the families of their proprietors, in the manner contemplated in the Entail regulation which Sir Thomas Munro intended to introduce in 1821." A reference to the extracts quoted in para. 7 *supra* will show that the object of Sir Thomas Munro's Entail regulation was not to make provision against arbitrary alienations, but to protect estates from division among co-parceners and so ensure their descent entire to a single heir. That being ensured, inalienability followed as a necessary incident of the personal law to which the parties were subject, and which was preserved by express enactment in the Regulation of 1802, as interpreted by the Law Courts of this Presidency until 1889. These facts render it difficult to understand the further remarks of the Madras Government in para. 5 of the same Order, where it is stated, "The Regulation of 1802 did not contemplate the imposition of any special restraint on alienation; and it is doubtful whether, as a matter of custom, any estate has been inalienable since 1802." Apart from special restrictions imposed for Revenue purposes, what the Regulation did was simply this,—it placed impartible and partible estates on the same footing as regards alienability; and the Law Reports are full of cases in which alienations (of impartible estates), not permitted by the personal law of the parties, have been set aside. The "strong reason" therefore on which your Memorialists base this claim is merely their desire to be restored to the position in which they stood from at least 1802 to 1889. No suggestion had been made during all these years that their position caused injustice to others, was contrary to public policy, or was even peculiar in any way. That position was altered, not by an Act of State or by the matured decision of the Legislature, but by an unexpected and much disputed judgment of the Privy Council. The Government says that it is "precisely in the interests of justice" that it is averse to legislate with the view of restoring the *status quo ante;* but your Memorialists find it difficult to discover, in the absence of reasons stated, what interests of justice are served by maintaining the law in its present condition. The interests referred to cannot be the preservation of the rights of the co-parceners and heirs of the owners of impartible estates, for these are by this decision completely annihilated.

21. In para. 6, the Madras Government with truth states that "the main ground on which the Board recommends the measures which it proposes, is that they are dictated by sheer justice," and proceeds to make the comment that "it is precisely in the interests of justice that the Government is averse to legislation on the lines proposed." It will be gathered from what has been said above, that "the interests of justice" for which such anxiety is thus expressed, are strongly conflicting. In the interests of co-parceners, the annihilation of whose rights is involved in a declaration of impartibility (para. 4 of Order), Government objects to one-half of the legislation requested; but it does not disclose in whose interests it objects to the other half, which would correct an innovation whereby the rights of heirs and co-parceners alike are annihilated.

22. Your Memorialists find it difficult to follow the reasoning of the Madras Government in para. 4 of the Order. The objections raised may, it appears to your Memorialists, be thus classified:—

(*a*) No fixed date of prescription or limitation should be enacted by law, because any such date must be "arbitrary."

(*b*) If any date were to be so fixed, 1802 would not be a satisfactory date, because some of the estates that could thereupon claim impartibility would be estates of the "Revenue farming class" rather than true *rajiyams*, military fiefs, or "ancient Zamindaries."

(*c*) A special tribunal, if such were constituted, would be as costly as and less efficient than the ordinary Courts of Law.

(*d*) The decisions of such a tribunal would be *ex parte,* and therefore unjust to co-parceners.

These objections will be briefly dealt with separately.

23. With reference to (*a*) Government says: "The question, *therefore,* whether an estate is partible or impartible cannot be determined with reference to *any* arbitrary date, such as that proposed by the Board, but must depend, as has been held by the Courts, mainly on family usage and local custom." The word "therefore," it may be remarked incidentally, is here superfluous, as there is nothing in the preceding sentences which could possibly constitute premises to the conclusion quoted. The Courts have indeed held that this question must be decided in each case by family usage; but they have never held that the period of such usage must not be determined by an arbitrary date, were such date prescribed by law. As a matter of fact, in the absence of a legal period of prescription for the usage or custom, the Courts are compelled to fix an arbitrary date in each case; for a family usage of descent must, like any other usage, be not only clearly defined, but continuously existent through some unbroken previous period of time. Uncertainty as to periods of prescription or limitation, is an unmistakable index of immaturity and weakness in the legal organism. The more scientific a system of jurisprudence becomes, with the greater precision does it lay down limits—arbitrary but not therefore capricious—of prescription and limitation. Prescription and limitation constitute indeed the supreme instance of the violation or annihilation of private rights by public law; and are consequently looked on with disfavour by supporters of the doctrine that might is right, forgetting that the rights violated or annihilated are themselves the creation of law. Under the existent *regime,* the Court, in the absence of a legal date or period, has in each case to fix such a date for itself. This date is in each case perfectly arbitrary, and is of no legal authority in any other case; though doubtless the principles prompting its adoption, being of general application, may lead to approximately like results in quite independent decisions.

24. It may not unusefully be added that the tendency of all legislation, when it reaches that scientific stage where legal fictions are discarded in favour

of statutory enactments, is not only to fix but to shorten the period of legal prescription; for the law, when it really deserves the name, "always favours the quieting of titles and the termination of strife." In England the period of prescription was that "whereof no memory is to the contrary." This exceedingly indefinite era was held in the common law to commence from the first year of the reign of Richard I. The selection of the date was perfectly arbitrary, but was considered convenient, because by the Statute of Westminster such had been enacted, also arbitrarily, as the time of limitation in a writ of right. The inadequacy of so distant an epoch became more apparent as years rolled on, and so early as the reign of Henry VIII., the period of limitation for a writ of right was fixed at sixty years. In other directions certainty was more tardily attained, and resort was necessary to fictions of a sort that fail to harmonize with modern ideas of jurisprudence. A conspicuous instance is to be found in the law of easements; it was not until 2 and 3, Will. IV., c. 71, that the law fixed their ordinary period of prescription at twenty years. In the words of Baron Martin,—"The occasion of the enactment of the Prescription Act is well known. It had been long established that the enjoyment of an easement as of right for twenty years was practically conclusive of a right from the reign of Richard I., or, in other words, of a right by prescription, except proof was given of the impossibility of the existence of a right from that period; and a very common mode of defeating such a right was proof of the unity of possession from the time of legal memory. To meet this the grant by lost deed was invented; but in progress of time a difficulty arose in requiring a jury to find upon their oaths that a deed had been executed which every one knew never existed; hence the Prescription Act" (*Mounsey* v. *Ismay*, 3 H. & C., 486). The Courts of Equity, indeed, thinking, like the Government of Madras, that the principle involved in periods of prescription and limitation was contrary to the law of nature and against conscience, were slow to recognise such as of right; but even their notions came to be deemed antiquated, and the common law rules were in time applied generally. Statutory periods, when enacted, were of course of universal application.

25. The Indian Government has not been backward in recognising this great principle, of which its Statute book affords numberless instances. It has adopted the English period of twenty years for the acquirement of easements by prescription, and its Code of Limitation is perhaps the most virile and stringent among modern systems of jurisprudence. Could there be a greater interference with private rights than a law enacting that adverse possession for more than twelve years of immoveable property not only bars the remedy and extinguishes the right of the true owner, but also confers a good title on the trespasser? Nor has Government shrunk from interfering with the law of devolution of property, as evidenced by the Parsee Succession Act and the Indian Succession Act; while the provisions of the Oudh Taluqdars Act go far beyond any thing requested or even contemplated by your Memorialists. Your Memorialists therefore humbly submit that the enactment of a period of limitation or prescription, the passing of what old lawyers most expressively termed a "Statute of repose," is not only an act of justice to your Memorialists, but is demanded in the interests of the law itself; and they feel justified in endorsing the unqualified opinion of the Board of Revenue that "all Courts, from the Privy Council downwards, would hail an enactment which would put an end to the existing uncertainty." (Resolution No. 459, para. 19.)

26. Assuming (*b*) that some date is to be fixed, the reason assigned by the Government for objecting to 1802 begs the whole question. It objects because that date might let in estates of the Revenue-farming class. But it is just on account of the impossibility of going back into the remote past and deciding with certainty the original tenures and incidents of estates, that it has become a legal necessity to fix a backward limit beyond which research would be useless and is prohibited. But apart from this, why should Government object to the incident of impartibility attaching to estates "the creation of Revenue-farmers"? These estates have in course of time acquired the character of true *rajiyams*, because their creators and their immediate successors assumed and maintained the position of semi-independent nobles. They not only collected revenue but preserved order, they rebelled and made alliances; and as, to take a concrete example, the history of the Northern Circars shows, their support and friendship were as much competed for by English and French, as was the assistance of the true military chieftains. No men could possibly differ *more* in character and status "from the class of men who would now buy estates brought to sale." But all this is really beside the question, because the Courts of Justice, "the most competent tribunals to decide such questions," draw no distinctions of this nature. It is a matter of indifference to them whether an estate originated as an independent raj, as a military fief, as the creation of a Revenue-farmer, by simple purchase, or by robbery, provided the custom of impartibility be proved to have existed during such period of time as the Court arbitrarily considers sufficient.

27. What the date or period should be, your Memorialists are quite content to leave to the decision of your Lordship. Though necessarily arbitrary, in the sense of being made not according to any law or scientific rule but at the unfettered choice of authority, the selection need not, as already pointed out, be arbitrary in the sense of being capricious and made at mere haphazard. Your Memorialists suggested sixty years, at present the extreme period in both English and Indian Law. The Board of Revenue suggested 1802, and there has undoubtedly been a tendency for the Courts to look upon that date as at least one of some importance. Immediately succeeding more than half a century of war and tumult, it certainly marks a point of time at which rights and titles began to be investigated and made the subject of legislation. No one could reasonably object to a judicial declaration in favour of a family custom proved to have existed for 94 years, during the whole of which period peace and order have been fully established and British Courts of justice open for the vindication of rights infringed or titles usurped. In the recent *Devarakota Case* (L. R., XVII., I. A., 134) their Lordships of the Privy Council held that it was unnecessary to go beyond the period of British rule and declined to consider evidence as to events occurring before the Northern Circars were definitely annexed to the empire. It may be here mentioned that this Zamindari was undoubtedly and admittedly the creation of a Revenue-farmer.

28. With reference (*c*) to the objection of the Government of Madras to a special tribunal, your Memorialists would in the first place point out that it is no necessary accompaniment of the legislation suggested. The mere settlement of the law, without the creation of a new forum *ad hoc*, would do much to lessen and expedite legislation. Fewer litigants would resort to the Courts, if by judicious

legislation the gambling element were in so great measure eliminated. Were the uncertainty of the law and the delays and expense incident to ordinary legal procedure to continue, doubtless a special tribunal would be no advance on the ordinary Courts. But where special legislation has to be administered, it cannot be controverted that the work can be done most quickly, most efficiently, and most economically, by a special tribunal, formed originally of experts, becoming more expert by practice, solely devoted to one class of case, and working under a procedure specially designed to ensure rapidity and simplicity. That this is true, is fully established by the experience of civilized countries. In Great Britain may be cited the Inclosure Commissioners, the Railway Commissioners, and the Irish Land Courts; in India, the principle has been recognised in the Court for administering the Dekhan Relief Acts, and indeed in the whole system of Settlement by Commission.

29. The fourth objection (*d*), that such declaration of impartibility would be made *ex parte*, is valid, if correct. But no such suggestion has been made either by your Memorialists or by the Board of Revenue. The argument seems to be based on the curious supposition that a suit for a declaratory decree is conducted and decided *ex parte*. Your Memorialists need hardly remark that such is not the case. All that the Zamindar requests is that, instead of being compelled to wait until he or his successors are made defendants in a suit brought by an actual claimant, he may as plaintiff sue for a declaratory decree against each and every possible claimant.

30. Having thus endeavoured, they hope with some measure of success, to show that the legal objections raised by the Government of Madras can be easily overcome, and are in no case of sufficient magnitude to be allowed to overbalance the great advantages certain to spring from the legislation proposed, your Memorialists would respectfully and briefly allude to the more general remarks of Government in paras. 7 and 9 of their Order. These remarks are not very complimentary to the Zamindars of the Madras Presidency, and your Memorialists are disposed to hope that that Government would not on reconsideration be prepared to apply them to the full extent of their meaning to the members of your Memorialists' Association. They are, moreover, hardly germane to the issue. They might be apposite were Government deliberating the introduction of a measure to render primogeniture and impartibility illegal, or to confiscate all Zamindari estates. Further, they are hardly generous. Their gist amounts to this. The Zamindars have a bad record, and should be got rid of; we are afraid to order them for execution, but we shall put every temptation in their way to commit suicide. Again, it is assumed that the Zamindars are asking a boon or favour. This is not so; they merely ask for justice, the justice which their fellow citizens possess, of being subject to certain and equal laws. Your Memorialists might therefore hope to be excused if they pursued this aspect of the subject no further, but they feel it incumbent on them to make a very few remarks.

31. It is said by Government that "the past history of the Madras Zamindars does not encourage the hope that agricultural interests would be in any way benefited by their maintenance." No arguments are adduced in support of this broad and irrelevant proposition, and your Memorialists do not propose to enter on any discussion of the wide and weighty problems suggested by it; but they desire respectfully to point out that the unfortunate position of many of the Zamindaries of the present day—which may be presumed to have suggested and to give point to the remark—is due to the very evils from which relief is now sought. There is small encouragement to a Zamindar to be economical, much less to improve his estate, in face of the possibility, nay the probability, which no effort of his can avert, that it will on his death be thrown into the legal arena. Government further remarks, "as to their being leaders of society, it does not appear that, as a class, they have yet done any thing to deserve to be regarded as possible promoters of any desirable social reform." This seems merely a play upon words, hardly worthy of a State document. History does not teach us that what are euphemistically called "desirable social reforms" are as a rule inaugurated by "leaders of society," but in spite of them. Assuming, however, that the remark is intended to have a serious meaning, your Memorialists would venture to submit, that in supporting great modern social movements, among which they would instance the spread of education, both male and female, improvements in sanitation, and the supply of medical aid to women, the Zamindars of this Presidency have proved themselves to be, as a class and according to their means, in no way behind the noblemen of other Presidencies and Provinces.

32. Your Memorialists must also respectfully decline to enter into any discussion of the large and difficult politico-economic problems, suggested rather than stated in para. 9 of the Order. Their settlement has nothing to do with the settlement of the simple questions at issue. One remark, however, calls for comment. It is said that "if the present landowners cannot be trusted to keep their estates unless deprived of the power of alienating them, they stand condemned as unfit to hold them." This, your Memorialists humbly submit, is a most unfair presentment of the case, and may be applied with equal cogency to the holders of settled or entailed estates in every country. It is not the landowners as a class or as a family that require the restraint. It is the one prodigal in three or five or ten generations for which the coercion of the law is necessary. It is the certainty that his estate will be preserved intact at his death and handed down with his name from generation to generation of successors, that encourages the owner not only to keep that estate intact but to improve and enrich it. It is the uncertainty as to what will happen at his death that makes the owner careless to improve and often reckless to preserve. There is probably no single great estate in England that has not had a spendthrift and prodigal as one in its long line of proprietors. With no law of entail or settlement, few estates in England would now remain at all, and fewer still would remain intact, in the hands of the family of their original owners. Why should your Memorialists be measured by a different standard of humanity? or why should their request for an ordinary safeguard be construed into an admission of universal weakness? Your Memorialists would only further suggest that the fact of the estates of Zamindars being permanently settled, may contribute more than the arguments adduced to produce the complacency with which the breaking up of large estates is admittedly contemplated by the Madras Government.

33. The Madras Government having intimated its readiness to introduce a Bill dealing with Encumbered Estates, your Memorialists do not consider it necessary to advert to the subject. They would only submit that any such Bill should contain a provision enabling estates which, without being actually encum-

bered, are yet in an impoverished condition, to raise money, by sale of portions of the estate or otherwise, for purposes of permanent improvement.

34. Your Memorialists would in conclusion once more humbly request that the earnest and early consideration of your Lordship may be bestowed upon the prayers of this petition. These in brief are—

(1) A legislative declaration of the impartibility of ancient Zamindaries and estates of the like nature which have descended as impartible continuously since 1802, and of which no partition since that date can be proved.

(2) A legislative declaration that, as regards alienability, such estates are subject to the personal law of the proprietors, that is, as regards Hindus are inalienable except for legal necessity or for beneficial purposes, any judicial decision or alleged evidence of usage to the contrary notwithstanding.

It is believed that the latter declaration would sufficiently conserve the rights of co-parceners to maintenance, but a special assertion and definition of such rights may, if deemed advisable, be made in connection with the declaration of impartibility.

Your Memorialists are further of opinion that, if a period of prescription for impartibility be enacted as prayed, the objects of such enactment may be best attained by the appointment of a special tribunal to which suits for decrees declaratory of impartibility, or for partition of estates alleged by the holders to be impartible, may be referred. The constitution, status, procedure, and duration of such a Commission are not matters as to which suggestions are called for from your Memorialists or of which discussion would be here apposite.

35. In the fullest confidence that this Memorial will be received by your Lordship in a spirit of sympathy and considered with that single-minded desire to do justice which characterises Her Most Gracious Majesty's rule,

Your Memorialists, as in duty bound, will ever pray.

5-2-1897.

President, on behalf of the
Madras Landholders' Association.

PRINTED BY H. PLUMBE AT THE LAWRENCE ASYLUM PRESS, MADRAS—1807.

PRECIS OF THE ACCOMPANYING PAPERS.

I. Petition from the Rajah of Venkatagiri, President, Madras Landholders' Association, to H. E. The Governor of Madras in Council, dated 5th December 1890.

I.(A.) Petition from the same to the same correcting *para* 8 of above Memorial, dated 8th March 1892.

The above petitions were forwarded by Government to the Board of Revenue for remarks on 22nd January 1891 and 23rd March 1892, respectively.

II. Resolution of Board on above, dated 23rd August 1892.

III. D.O. Letter from Honorable P. Chentsal Rao, to the Chief Secretary to Government, dated 6th December 1892, enclosing.

III.(A.) Letter from the Rajah of Venkatagiri, to the Honorable P. Chentsal Rao, dated 30th November 1892.

IV. Government Order, No. 606, Revenue, dated 10th July 1893.

V. Judgment of the High Court, Madras, in A. S. No. 33 of 1895. (The Pittapur case).

VI. List of the Members of the Madras Landholders' Association.

Memorial to the Secretary of State from The Rajah of Venkatagiri on behalf of the Madras Landholders' Association, dated 1897.

In the Petitions I. and I. (A), (which are to be read together, I. (A) being substituted for paragraph 8 of I.), the Madras Landholders' Association, through its President, the Rajah of Venkatagiri, desires to call the attention of Government to "certain circumstances and disadvantages" injuriously affecting the prosperity of the landed interests of the country, and detrimental to the welfare of the tenants in landed estates. Estates held by ancient tenure in the Presidency are mainly of three kinds (Para 2).

1. Those of the nature of ancient Principalities or *rajiyams*.
2. *Palaiyams* held on military tenure.
3. Zemindaries held under *sannad milkyat-i-istimrar*, granted by Government in accordance with Regulation XXV. of 1802.

The original status of the proprietors of *rajiyams* and *palaiyams* has been transformed into that of mere farmers of land; while as to the last, though permanent property in the land was secured, the absence from the Regulation of any provision for securing impartibility has placed the proprietors in a position of great uncertainty and danger (Para 3).

Sir Thomas Munro recognised the necessity for an "entailing" regulation and had one in contemplation at the time of his death (Para 4); the absence of such a law has led to an immense amount of litigation, which, whatever the result, inevitably draws in its train many and great evils (Para 5). When the result is partition, the prestige and influence of the Zemindar is lost; the ancient aristocracy of the country is in time extinguished; and the resulting infinitesimal subdivision of landed property conduces to the growing poverty of the country (Para 6). These evils have been pointed out with force by the Famine Commission in its Report (Para 7).

A further and most serious danger arises from the decision of the Madras High Court (following a judgment of the Privy Council in an appeal from the Allahabad High Court) in a recent case in connection with the Kangundi Zemindari, whereby the Hindu Law of *inalienability* is held inapplicable to *impartible* Zemindaries (Para 8 and I.(A).

It is submitted that there can be no serious objection to averting these dangers by legislation, for the purpose not of introducing change but of preventing innovation and safeguarding what has existed from beyond legal memory. The Government has ample precedent for legislative interference in this direction, as witness the Parsee and Indian Succession Acts, and the Oude Talukdars' Act (Paras 9 and 10).

It is therefore prayed that an enquiry be made concerning succession to Zemindaries and other proprietary estates, and a list prepared on the plan of the "Oude Estates List"; that, after the example of the Oude Talukdars, the holders of estates found partible be given the option of adopting the rule of primogeniture; and that a statutory period—say sixty years—be adopted for limiting the custom of primogeniture (Para 12).

The Memorialists conclude by pointing to the marked improvement of the landholders in education and enlightenment, causing them to be a still more powerful factor in the stability and prosperity of the Empire (Paras 13 and 14).

The foregoing Memorial having been referred by Government to the Board of Revenue for remarks, the Board passed the Resolution II., in which it points out, first, that Madras Zemindaries are (A) Ancient, and (B) Modern.

As to the latter, more properly called Mittas, and formed since 1802, the Mittadars have never laid claim to impartibility and there is no reason to legislate in their behalf (Para. 14).

The former class comprises (*a*) Military fiefs, being either *rajiyams* or *palaiyams*, held by the real "ancient Zemindars" (rajas or poligars), of which impartibility was a necessary adjunct; and (*b*) the estates of Revenue farmers, into which impartibility was introduced in imitation of the Military tenures. The decision of the Privy Council in the Devarakota case has put it beyond doubt that impartibility may become a legal incident of these estates, no less than of the Military fiefs (Paras. 3—11).

With regard to these ancient estates the Board considers that there is neither "reason nor justice" in withholding the legislation necessary to prevent each property being forced "through the ruinous ordeal of the Courts"; and suggests that a Commissioner may be appointed to prepare a schedule of the ancient estates, which should now be declared impartible. A few doubtful cases may alone be left to be settled by litigation (Paras. 12—13).

As to alienability, the Board admits that the law has been unsettled by the decision referred to in the petitions, but considers that that decision may be altered when a well-got-up case again comes before the Privy Council (Paras. 16—18); at the same time every one would hail an enactment putting an end to the present uncertainty, by declaring that the law is what it was understood to be before the decision referred to; that is, that the incident of impartibility does not prevent an estate from being otherwise governed by the Hindu Law of Property (Paras. 19—22).

On the question of general policy, the Board holds that the extinction or wholesale impoverishment of the ancient landed nobility of India would be nothing short of a calamity (Para. 23). Zemindars of the present day are far more enlightened than heretofore, and as a body are calculated to be a source of strength to the Government, politically, socially, and agriculturally. But be that as it may, their maintenance has been decided on by the Government of India and the Secretary of State; that being so, the suggested legal definition of their status is dictated by sheer justice. (Paras. 24—26).

The Board in conclusion suggests that Government should obtain power to deal with encumbered estates, as the Government of India has already done in the case of Bengal, Act IV. of 1892 (Para 27).

III. and III. (A) contain an assurance of support by the Madras Landholders' Association in the endeavour made by the Hon'ble P. Chentsal Rao to obtain the extension of Act IV. of 1892 to Madras, as suggested by the Board of Revenue (in II. Para. 27 Supra.)

Government in its Order (IV.) deals with the foregoing papers (Paras. 1—3).

As to the question of a period of limitation for impartibility, the date 1802 is objected to because "there is no real difference in regard to the incidents of Zemindari tenure between estates created in 1802 or since, and those in existence prior to that date". The question "cannot be determined with reference to any arbitrary date," but must depend "mainly on family usage and local custom." Such questions are best decided by courts of law; and no short cut on an *ex parte* application ought to be permitted to "annihilate the rights of coparceners." The first proposal is therefore rejected (Para. 4).

As to the second question, Government considers that "the Regulations of 1802 did not contemplate the imposition of any special restraint on alienation; and it is doubtful whether, as a matter of custom, any estate has been inalienable since 1802." Government is therefore not satisfied that reasons exist strong enough to justify the proposed legislation (Para. 5).

Though such legislation is recommended by the Board as "dictated by sheer justice," Government is averse to such Legislation "precisely in the interests of justice." (Para. 6).

On the ground of general expediency, also, Government is of opinion that legislation is unadvisable. It cannot hope that agricultural interests would be in any way benefited by the maintenance of the Madras Zemindars; nor can it see that they have done anything to promote desirable social reforms (Para. 7). Government further considers that were Sir Thomas Munro now alive he would hold a different view from that expressed by him in 1821 (Para. 8).

The Government is well aware that this decision may lead to the breaking up of large estates into small portions held by speculative purchasers; but, if the present landholders cannot retain their estates without legislative support, they are unfit to hold them at all; and there is no reason why the new owners should be worse than the old. Any tendency to rack-renting is properly prevented, not by the maintenance of the present Zemindars, but by an amendment of the tenancy law (Para 9).

In conclusion Government approves of the proposal to pass an Encumbered Estates Act and will initiate legislation with that object (Paras 10—11).

V. The Judgment of a Divisional Bench of the Madras High Court, following the principle of the Privy Council decision already quoted, recognises the absolute right of the holder of an impartible Zemindari to alienate it wholly and absolutely by will (*vide* Memorial, Para. 17).

The Memorial to the Secretary of State submitted herewith is in the nature of an appeal or petition against the Order of the Government of Madras summarised above (IV.) After setting out the short object of the Memorialists, *viz.*, to check by suitable legislation the disruption of ancient Zemindaries and other large proprietary estates; and enumerating and requesting perusal of the documents set out above (para 1-3); the Memorialists point out that the evils complained of are due "partly to the absence or imperfection of legislation and partly to the uncertainty of judicial decision" (Para. 4). The first legislation affecting ancient proprietary estates is Regulation XXV. of 1802, explained by Regulation IV. of 1822, the meaning and effect of which have been discussed in many reported cases (the more important of which are referred to in detail in the Memorial); the result being to establish the principle that "there is nothing in the Regulations showing an intention to affect rights of property in existence at the period of their being passed." The process by which revenue farms came to acquire in law the incidents of a genuine *rajiyam* or *palaiyam*, is exemplified from the cases in connection with the Zemindaries of Parlakimedi and Marungapuri; which further show that the grant of a *sannad* under the Regulation of 1802 neither created the Zemindari, nor confirmed or recognised any particular form of descent or tenure (Paras. 5 and 6).

Sir Thomas Munro quickly perceived the evils arising from the failure to declare these ancient holdings impartible by statute, and meditated an "entailing regulation," an intention frustrated by his death. Government believes that were that Statesman now alive he would see good reason to change his views; but it is difficult to discover what ground he would have for doing so, inasmuch as the very evils he anticipated are those now complained of. The Memorial quotes from the writings of Sir Thomas Munro with sufficient fulness to establish this assertion (Paras. 7 and 8). The evils of uncertainty and the ruinous consequences of litigation are set out in the passages quoted from Sir T. Munro and in para. 5 of the Petition (I.), and Government has not attempted to impugn these statements. No fixed criteria can be drawn from the cases as to the possible result of litigation, so that a succession suit is seldom other than a huge gambling speculation, the Zemindar being permanently crippled in any event. The application, with varying results, of the Privy Council Judgment in the Bengal case of the *Hunsapoor Raj* has caused the utmost alarm and confusion in this Presidency, as illustrated by the cases in connection with the Zemindaries of Nuzvid, Devarakota, and Merangi. It is for this reason that the Memorialists prefer their first request, for a legislative declaration of impartibility dating from a fixed period of limitation (Para. 9).

The order of Government (IV.) shows that the Memorialists failed in their first petition to put their case as to *alienability* with sufficient clearness; it is therefore expounded at some length. It is established, by reference to the reported cases, that down to 1889, the rule in this Presidency, where the Mitakshara Law prevails, was that the coparcenary rights of the family of the holder of an impartible estate were not extinct but dormant, and that consequently alienations made by the life-tenant were not binding on his co-parceners, unless made in accordance with the conditions under which alienations are permitted to be made by the managing member of a Hindu joint-family, governed by Mitakshara Law (Paras. 10—14). But in 1889 the Madras High Court came to the conclusion that two comparatively recent decisions of the Privy Council, when correctly interpreted, compelled it to hold that the law is now different, and that alienations must be upheld as against co-parceners, unless it can be shown "that there exists some family custom in restraint of alienation" (Para. 15).

The logical effect of this decision is far reaching and disastrous; in the words of the High Court of Allahabad, "a Raja may dissipate the whole of his ancestral estate and of his own free will extinguish the Raj" (Para. 16). And further, it follows logically that he can devise it by will to the disinherison of every member of his family. This has recently been decided by the Madras High Court in the Pittapur case (V.) (Para. 17). The difficulty of proving a family custom is admittedly very great; and in the present case the difficulty is aggravated by a *dictum* of the Privy Council, that mere proof of non-alienation is insufficient; that there must be proof of non-alienation under circumstances which make it probable that an alienation would have been made. Further, the Privy Council has held that such a custom can be intentionally discontinued, ruling in the circumstances of that particular suit that intentional discontinuance for twenty years was sufficient; so that it appears to follow logically that even the custom may disappear at the will of a single holder of the estate. It is plain that these decisions afford a potent stimulus to litigation (Paras. 18-19).

The Memorialists then point out that Government has in its Order misunderstood the effect of Sir Thomas Munro's proposed entailing regulation. The entailing regulation would not have prevented alienations, these were prevented by the Hindu Law applicable to the parties. It is also evident that the effect of Regulation XXV. of 1802 has not been clearly apprehended in the Order. Moreover the views of Government as to justice are rather conflicting. It objects to a legislative declaration of impartibility as being unjust to coparceners, while it supports the new law as to inalienability, which sweeps aside co-parceners altogether (Paras 20-21).

The more substantial objections of Government appear to be these.

(a) *No fixed date of prescription or limitation should be enacted by law, because any such date must be "arbitrary."* The fallacy of Government consists in supposing that "arbitrary" means capricious. The present system might justly be called capricious because it leaves the period of limitation to be fixed in each individual case at the will of the Court. Such uncertainty as to limitation is a sign of an imperfect legal system; the more highly organised jurisprudence becomes, the more precise, and the shorter, are the limits of prescription and limitation. This is illustrated at length from the history of English and Indian law (Paras 23-25).

(b) *If any date were fixed, 1802 would not be satisfactory, because some estates of the "Revenue Farming class" could claim its benefit.* There seems no reasonable ground for this objection, especially in view of the fact that it has never been considered to possess any validity in the Law Courts. The Devarakota Zemindari, recently declared impartible by the Privy Council, admittedly originated in a Revenue Farm. Though a period of limitation is in a sense arbitrary, it is selected not at haphazard but by the balance of convenience. The year 1802 appears to possess the highest claims to selection as the fixed point from which limitation shall commence to run (Paras 26-27).

(c) *A special tribunal would be as costly as, and less efficient than, the ordinary Courts of Law.* Such a tribunal is not an absolute necessity. Were the gambling element removed by legislative enactment, speculative suits would be comparatively few. But at the same time special legislation is most efficiently administered by a special tribunal, as abundantly evidenced by the work of special land Courts in both England and India (Para 28).

(d) *The decision of such a tribunal would be ex parte and therefore unjust to co-parceners.* This objection rests on a misapprehension, no request has been or is made for any *ex parte* adjudication (Para 29).

Passing to the general remarks of Government, the Memorialists consider them to be neither just nor generous. They proceed, too, on the mistaken assumption that the Zemindars are asking for a boon or favour, whereas they merely pray for the justice of being subject to certain and equal laws. Assuming that the opinion of Government is justified by facts, the Memorialists submit that the unfortunate position of many Zemindaries at the present day is directly due to the evils which it is now desired to correct. They also venture to believe that in supporting great social movements the Zemindars of this Presidency are in no way behind those of other Presidencies. As to the statement that landholders admittedly unable to retain their estates without legislative support are unfit to hold them at all, it is pointed out that legislation is required not for the many but for the few, not for the family but for the prodigal. This is the very basis of the whole law of settled and entailed estates, and it is not clear why landholders in Madras should be measured by a standard of humanity different from that applied to landholders in other countries, England not excluded (Paras. 30-32).

It is on the grounds thus summarised that the prayers formulated in paragraph 34 of the Memorial are respectfully submitted by the Memorialists.

5-2-1897.

B

Revenue (1897) Department.

CURRENT No.

1

Order

From The President of the Madras Landholders' Association

No.

Dated 3rd March 1897
Received 6th March 1897
Registered 6th March 1897
Enclosures
Spare copies

SUBJECT.

Requesting that the accom-ing Appeal Memorial of the Association, praying for an enactment for the relief of encumbered estates, may be forward to the Govt. of India.

BACK PAPERS.

G.O.	No.	Department.	Date.
10	6068	10-7-93	
"	5172	d 16-12-	96

FURTHER PAPERS.

G.O.	No.	Department.	Date.

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4 MAR 97

CHIEF SECRETARY
4 MAR 1897
GOVERNMENT OF MADRAS

PETITION

REVENUE DEP

To

HIS EXCELLENCY
SIR ARTHUR ELIBANK HAVELOCK, G.C.M.G., G.C.I.E.,
GOVERNOR AND PRESIDENT IN COUNCIL,
FORT ST. GEORGE.

May it please Your Excellency,

I, as the President of the Madras Landholders' Association, respectfully beg to request that Your Excellency will be graciously pleased to forward to His Excellency the Viceroy and Governor-General of India in Council the accompanying Appeal Memorial of the Association praying for an enactment for the relief of encumbered estates. I earnestly pray further that in doing so Your Excellency will support the humble petition of the Memorialists with the weight of Your Excellency's recommendation agreeably to the views entertained and expressed already by Your Excellency's Government. For this act of kindness I shall ever feel obliged to Your Excellency.

I beg to remain,
Your Excellency's most Obedient and Humble Servant,

V. R. Krishna Yachendra

Rajah of Venkatagiri,
President,
On behalf of the Madras Landholders' Association.

Madras,
3rd March 1897.

308
29-6-97

C. No 1244.

For orders:

The Current read above is a Memorial from the Madras Landholders Association to the Right Hon'ble the Secy of State for India praying for a legislative enactment declaring the ancient Zemindaris in this Presidency impartible and inalienable. The Memorial is virtually an appeal against the decision arrived at in G.O. No 606 Revenue d/ 10th July 93 to the notes under which a reference is solicited. This decision has not only been the result of recent discussion during Lord Wenlock administration it is also in accord with the views recorded in G.O. No 10 Revenue d/ 8th January 1884. It has therefore been thought that a despatch may go to the Secy of State in accordance with these views.

A Draft is accordingly submitted for approval.

AK
26/3/97

The Hon. Mr Grose C.I.E.
The Hon. Mr Bliss C.I.E.
H.E. the Governor.

I cannot agree to this Draft. I was a member of the Board wh. submitted the Pro $\frac{459}{28.8.92}$ in wh. the Bd pronounced strongly in favour of a legislative declaration of the impartibility of zemindaris in existence prior to 1802, & of their inalienability except when alienation was made necessary by law or effected for beneficial purposes. These Pro. came before Lord Wenlock's Govt., & that Govt expressed the opinion, now appealed against, that the declaration shd not be made. After considering that G.O., & making further inquiries between that time & this, I remain of the opinion stated by the Bd, & if my Hon: colleagues agree with me, we must say that Govt., as at present constituted, recommends the memorial. Prior to 1889 the law about zemindaris was universally believed throughout the Presidency to be that zemindaris descended by primogeniture & that no alienation of any part of a zemindary by a zemindar was valid unless made in accordance with the conditions under which Hindu law allows alienation by the managing member of a joint family. In 1889 it was decided that what the people had believed was the law was not so, & that the [illegible] discarded [illegible] whether the [illegible] of [illegible] any part of [illegible] is affected in any way must be decided according to the evidence of custom & usage in [illegible] excited great surprise and was regarded by the people as contrary to tradition. Since then the doctrine has been followed out to its logical conclusion [illegible] that [illegible] impartible [illegible] at any moment alienate it wholly to outsiders by gift or will [illegible] considered [illegible] objections to [illegible]

Circ

Seniors

N.

6/4/97

I fully concur. But, would it not be better to send both appeals together to the Govt. of India, rather than one to the Secy of State and the other to the Govt. of India? I would suggest a G.O. setting out the case and the recommendation

with both Memorials of this Govt. — to be forwarded to the Govt. of India, for their decision.

26.4.97

G.O.

Ordered that the following letter be despatched to the Right Hon'ble the Secretary of State for India

the Right Hon'ble the Secretary of State for India,

My Lord, II

We have the honour to forward herewith a memorial from the Madras Landholders' Association, praying for a legislative declaration of the impartibility and inalienability of the ancient Zemindaries and other large proprietary estates in the Madras Presidency. The memorial is in the nature of an appeal against the order of the Madras Govt. No 606, Rev., dated 10th July 1893. A brief statement of the circumstances under which that order was passed is given below.

2. There are two distinct classes of Zemindaries in this Presidency, viz,

I. Ancient Zemindaries which were originally —
   (a) military fiefs, or
   (b) properties which had become heritable in the hands of official sanad holders from Native Governments — farmers general in fact.

II. Modern Zemindaries created by the British Government under Regulation XXV of 1802.

3. In the year 1802, the Govt. of Madras, in pursuance of the policy directed by Lord Cornwallis resolved to introduce a Permanent Settlement of the Land Revenue ~~and to~~ vesting the proprietary right in the soil in the Zemindars or other proprietors of land and in their heirs and lawful successors for ever" and gave a fixity to a revenue demand which had been variable

^ So as to bind his co-parceners, except for purposes beneficial to the family.

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partible [illegible] Governments.
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272 in which it [illegible]
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A letter from to [illegible] Secretary of State [illegible] correspondence

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Instruments
the uncertainty
this state of the
the ~~consequent~~ inevitable consequences arising therefrom,
~~of ancient Zemindaries,~~
ers Association
two Memorials dated
1890 and 8th March 1892.
for a legislative declaration
partibility and inalienability
mindaries of this Presidency.
Board of Revenue in
ing upon these petitions,
which

variable and capricious unde
the preceding Native Governmen
Before the passing of Regulatio
XXV of 1802, these Zemindar
who were no others than the
holders of the old military
fiefs had a heritable prope
in their estates which mus
have possessed the character
impartibility as the necessi
of their existence depending
as it did on the supply of
troops and their maintenance
demanded that they should
belong to one man and n
be subject to partition.
4. In the case of holders o
assigned revenue was on
different footing. They w
nothing more than farme
general appointed by the
power, owing to the unc
of their tenure, the char
of impartibility was gra
introduced in imitatio
the ancient military
5. The modern Zemin
created by Regulation X
1802 were formed by p

out certain districts into permanently settled estates which were put up to auction in 1802. Most of these estates had disappeared before 1809 and had been repurchased by Govt. Their owners have never laid any claim to impartibility and the estates are admittedly subject to the ordinary law of inheritance.

6 - Until recently, the received opinion was that all ancient Zemindaris were impartible. But the decision of the Privy ouncil in the Nuzvid case (2 Madras 128) and the view ubsequently taken (in the Devarakota case) by the Courts × 13 Madras 406 in this Presidency, in consequence the ruling laid down in at decision, have upset received opinion. The ivy Council has held that question as to whether a ticular Zemindari is an artible or partible one should ided in each case with rence to evidence of custom, eneral rule being that tes which are of the nature of

which were forwarded to it with at Remarks, strongly supported both the requests of the Memorialists on the following grounds:—

That the impartible character of the ancient Zemindaris which had been in existence prior to 1802 came to be regarded as a matter of course by the Zemindars themselves as testified to by their replies to Sir Thomas Munro in 1820-22; that that statesman contemplated the introduction of an entail Regulation; that in the case of certain estates it had been recognised by the Law Courts in this Presidency and by the Privy Council; that in regard to the remainder the same view was confirmed by their history; that it had been admitted by the sovereign power as evidenced by Bengal Regulation XI of 1793 which, however, for political reasons declares partibility for the future; that the decision come to in I.L.R. 10 Allahabad 272 does not represent the true state of the law and that it may be altered when a well prepared [illegible] before the Privy Council; that, in the prevailing uncertainty of the law, the public have a clear right to have an authoritative statement of it on the part of the Legislature; that, on grounds of general policy the extinction or wholesale impoverishment of an ancient landed nobility is nothing less than a calamity in a country situated as India is at the present day; that on political grounds no allegations have been made that Zemindars have been a source of weakness to Govt. in the past but that on the contrary they may in the hands of an educated and advanced aristocracy be a source of considerable strength in the future; that the maintenance of Zemindars is most desirable in view of their influence chiefly in matters social and agricultural; that the policy of maintaining a native aristocracy of birth has already been decided on by the Govt. of India and the

Secretary

1) Letter from the Govt. of India, Home Dpt., to the Govt. of Bengal, No. 3171 d/ 11th Dec/80
2) Letter from the Govt. of India, Legislative Dpt., to the Govt. of Bengal, No. 1430 d/ 2nd Sept. 1890
3) Secretary of State's Despatch No. 42 d/ 13th Nov. 1890.

Secretary of State in the correspondence noted in the margin; and that the proposed legislation is dictated by simple justice in view to the removal of hardships which have been produced by the [illegible] of obscure British law which the Courts have been compelled to interpret as best they could in the absence of the assistance from the Legislature which they had a right to look for.

9. The Board at the same time recommended that a Commissioner should be appointed to prepare a schedule of the ancient estates and that such estates should be declared to be impartible. It also expressed the opinion that there was no necessity to legislate on behalf of the estates created in 1802 by Regulation XXV of that year for reasons stated in para 5 supra.

10. This Govt. did not take the same view of the matter as the Board did. In its order No. 606 Rev. dated the 10th July 1893 the Govt. held:-

(1) that the question of partibility or impartibility of ancient estates could not be determined with reference [illegible] to

State

not prescribe any date such as that proposed by the Board; but must depend as has been held by the Courts, mainly on family usage and local custom;

(2) that if the work of investigation of such questions was to be as well done by the proposed Commissioner as it would be by the regular Courts, the cost would not be less than if resort were had to the Courts;

(3) that a declaration of impartibility involves the annihilation of the rights of coparceners and ought not to be made on the ex parte application of a proprietor;

(4) that the Regulations of 1802 did not contemplate the imposition of any special restraint on alienation and that it was doubtful whether as a matter of certainty any estate had been inalienable since 1802;

(5) that the Madras Zemindars as a class had not done anything to deserve to be regarded as possible promoters of any desirable social reform; and

(6) that there were no clear indications on the part of the Zemindars of the present day in that direction,

(6) that the past history of the Madras Zemindars did not encourage the hope that agricultural interests would be in any way benefited by their maintenance;

(7) that Sir Thomas Munro, if now alive, would not consider legislation such as he contemplated in 1821 either necessary or desirable, whether on political grounds or on grounds of general expediency; and

(8) that it was in the interests of justice that Government was averse to legislation on the lines proposed.

These views were also in accordance with the views of the Board as expressed in its Proceedings No 2789 of 17th September 1883 and concurred in by the Madras Government in 1884.

G.O. No 10, Revenue, of 8th Jany 84
(Sir H Stokes [illegible] Rev.
[illegible]

11. While holding the views set forth above, this Government expressed the opinion that particular cases might arise in which it might be desirable for Government to intervene and by good management to help to extricate an encumbered proprietor.

12. The present memorial is, as

stated above, virtually an appeal against the views contained in the G.O. of 1893 ~~[illegible]~~ above. The first ~~17~~ nineteen paras contain a precis of the past correspondence on the subject, a statement of the memorialists' case and the purport of the legal decisions bearing upon it. In the remaining paras, they criticise the views of this Government as set forth in its order last referred to above. Some of the statements made in the memorial are based upon a misapprehension of the views of Government and some are inaccurate and misleading, as will be seen from what follows:-

13. Para 20 of the Memorial: Under Section 8 of Regulation XXV of 1802, proprietors of lands are at liberty to transfer by sale, gift or otherwise their proprietory right in the whole or any part of their Zemindaries provided such transfers are not repugnant to the Mahomedan or the Hindu Laws or to the Regulations of the British Government. It has been held that the powers of a Zemindar ~~were~~ are, therefore, the same as those of a manager of a Hindu family holding property in Coparcenary under the ordinary law, with the exception that partition could not be claimed by the junior members of the family who ~~were~~ are only entitled to maintenance out of the income of the estate. The Zemindar, it was declared, could like the manager of an ordinary Hindu family alienate the property out of legal necessity or in satisfaction of debts incurred for necessary family purposes. The chief causes, therefore, which tend to bring about dismemberment of landed estates are,

(1) Sale of portions of estates by Government for arrears of Peishcush;

(2) Sale of portions of estates by Civil Courts in execution of decrees; and

(3) alienations made for the maintenance of members of the Zemindar's family.

These observations on the Memorial seem to me quite inconclusive.
J.G.
5/4/97

Unless Government is prepared to pass an entail Regulation, as advocated by Sir Thomas Munro, no impartible estate can long escape dismemberment as pointed out by the Board of Revenue in para 4 of its Proceedings No 2789 d/17th September 1883.

G.O. No 10, Revenue, d/ 8th Jan y/1894

14. Para 21 of the Memorial:- Memorialists take exception to the statement of Government in para 6 of its order that "it is precisely in the interests of justice that the Government is averse to legislation on the lines proposed" and point out that the above decision

will apply only as regards the request of the Association for declaration of impartibility but not in respect of its request regarding inalienability, as the right of free alienation possessed by the Zemindar for the time being, under the recent ruling of the Privy Council, will affect the right of the coparceners prejudicially. In para 4 of its order, Government has stated distinctly that "a declaration of impartibility involves the annihilation of the rights of coparceners" and the statement to which the ~~memorial~~ memorialists object must therefore be held to apply to such a declaration alone, as in para 5 of the order, where Government assigns its reasons for holding that impartible estates are not necessarily inalienable, no reference whatever is made to "interests of justice". There appears to be, however, some force in the contention of the memorialists that in the present state of the law the rights of coparceners will suffer, as there is no check on the powers of a Zemindar in possession in regard to alienation. While in the case of ordinary ancestral property the power of alienation by the managing member

member

w. rg? JG

[illegible]

member is generally restricted only to his fractional share of the property, there is no such limit in the case of an impartible Zemindari; and consequently the dismemberment of impartible estates is ~~more~~ likely to be brought about more quickly than the dismemberment of properties to which the ordinary rule of inheritance applies.

15. Paras 23 and 24 of the Memorial:— As stated in para 4 supra impartibility was not an essential adjunct of properties in the hands of holders of assigned revenue but it was gradually introduced in imitation of the ancient military feudatories. There is, therefore, no real difference in the incidents of Zemindari tenure between such properties and those created subsequent to 1802. The question whether an estate is partible or impartible cannot, therefore, be determined with reference to any arbitrary date. The word "therefore" in the sentence "the question, therefore whether an ~~estate~~ estate is partible or impartible cannot be determined &c" in para 4 of the G.O. ~~appears~~ appears to be misplaced. It would be invidious to declare by an

Act of Legislature one of two Zemindaries held on like tenure to be impartible simply because it was in existence prior to 1802, while in the other case impartibility would have to be established by resort to the Courts. The Memorialists themselves admit that the principles, prompting the adoption, in each case, by the Courts of a date from which the continuousness of family custom in regard to impartibility must be proved, being of general application, may lead to approximately like results in quite independent Cases. ~~decisions~~.

16. Para 25 of the Memorial:- The measures for the relief of the Oudh Talukdars were dictated by political considerations. The circumstances of this Presidency in which the Zemindars have for upwards of a century been deprived of military power and civil and criminal jurisdiction are entirely different in this respect from Sindh, Oudh and other provinces of India which ~~within~~ up to the middle of the present ~~the memory of the~~ century ~~existing generation~~ were governed by petty independent chiefs. In the case of the Parsees, they sought to be exempted from the then impending legislation as to the right of females to share equally with males in succession to intestate property and the law as to succession to such property was thereupon regulated by India Act XXI of 1865. There can be no objection to undertaking legislation as requested by the memorialists provided the preservation of ancient Zemindaries is considered desirable. But the Government came to the conclusion that such preservation was not necessary or desirable.

17. Paras 26 and 27 of the Memorial The memorialists rightly point out that the Courts of Justice are not loath to declare the impartible nature of the estates held by Revenue farmers also provided the custom be proved to have existed during such period of

time as the Court considers sufficient. This, however, does not affect the question, as the other objections raised by Government to ~~the~~ prescribing ~~of~~ the test proposed by the Board and the memorialists are still formidable.

18. Para 28 of the Memorial.

The Association attempts to refute the objection of Government to the establishment of a Special Tribunal. The remarks of the Memorialists are beside the point as the observations of Government apply to the establishment of a Tribunal prior to legislation and not after it. The memorialists themselves do not now ask for the establishment of such a Tribunal.

19. Para 29 of the Memorial.

The memorialists contend that the Govt. is not correct ~~implied~~ implied in its implication ~~implied statement of Government in~~ ~~to~~ the effect that the declaration of impartibility as prayed for by them involved the passing of orders on ex parte applications of proprietors, ~~is not~~ ~~correct~~; but their argument in support of this contention is not sound. Declaratory decrees are at present passed only in the exceptional cases provided for in Section 42 of the Specific Relief Act I of 1877 ~~(addition)~~. Under Section 43 of that Act such decrees are binding only on the parties to the suit, persons claiming through them and where any of the parties are trustees, on the persons for whom, if in existence at the date of the declaration, such parties ~~are~~ would be trustees. But this is evidently not what the memorialists want. They wish to have decrees probably in the nature of judgments in rem which, however, are restricted to the four kinds of cases referred to in Section 42

of

the Indian Evidence Act (I of 1872) viz, judgments in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction. Were a Commissioner appointed to prepare a Schedule of the ancient estates as suggested by the Board, he would have to depend on the materials placed before him by the Zemindars themselves and upon official reports. It is highly improbable that all the other parties interested in the Estates ~~will~~ be represented. The result of such an investigation ~~must~~ ought not to bind all the world and must be in the nature of an ex parte judgment.

Paras 31 and 32:- The oard's remarks in paras 4 and 6 of its Procgs printed in G.O. No. Reve. of 8-1-94 will show at the Government was justified in making the observations to hich the memorialists take xception.

Para 33:- The Memorialists quest that provision may be

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be made in the Encumbered Estat Bill for the sale of a portion of an estate for purposes of permanent improvement. Draft of a Bill for taking encumbered estates in the Madras Presidency under Govt management was forwarded to the Govt of India with a request that steps ~~may~~ might be taken to pass it in the Supreme Legislative Council. But that Govt stated that such a measure was unnecessary. It suggested that the relief of encumbered Zemindars could be attained by the insertion in the Court of Wards Regulation (V of 1804) of a provision under which an indebted proprietor would be enabled, by a declaration that he is disqualified from managing his estate, to bring himself under the protection of the Regulation. The revision of the Court of Wards Regn is under the consideration of this Govt, and is awaiting the reply of the Govt of India to a communication addressed to it. ~~and the~~ request of the memorialists will receive

Letter to Govt of India No. 959 of 7th Nov. 1893

Letter from Govt of India No 467-359 of 15th Feby/94

whic

[illegible] attention [illegible] conversation
[illegible] Bill [illegible]
[illegible] conclusion we have
no recommendation to make
on behalf of the [illegible]

[illegible]

8th
26/3/97

I dis[illegible]
5/4/97

538 - 539
29-6-97.

5/4/97

6/4/97

Please see my Note on C. No [illegible]
26.4.97

C. No 2031

G.O. No

Ordered that the following letter be despatched to the Govt of India.

To
The Secretary to the Govt of India
Rev. & Agri. Dept.

29/6/97

Sir,

I am directed to forward the accompanying memorial from the Madras Landholders' Association praying for an enactment for the relief of encumbered estates. It will be remembered that a Bill to secure this object was forwarded to the Govt of India with Mr Gibson's letter No 959 dated the 7th November 1893 for introduction in the Supreme Legislative Council, but that the Govt of India in its letter of the 15th February 1894 No 467-359 sta[illegible] that it was not prepared to int[illegible] the Bill in question but sugge[illegible] tha[illegible]

The circumstances under which

ut the relief of embarrassed — zemindars could be attained by the insertion in the Courts of Wards Regulation of a provision under which an indebted proprietor would be enabled, by a declaration that he is disqualified from managing his estate to bring himself under the protection of the Regulation. A draft Bill to amend the Court of Wards Regulation has been engaging the attention of the Govt. since June 1894 but the introduction of the measure in the Legislative Council is delayed pending receipt of the reply of the Govt. of India to Mr Gibson's letter no 646 dated the 24th Sepr. 1895. The Memorialists point out that the insertion of the contemplated provision in the Court of Wards Regulation would not afford the same far reaching and effective relief as a special encumbered Estates Act and request a reconsideration of the orders of the Govt. of India.

1/4/97

Note.

I think it is sufficient

5/4/97

A.H.
26.4.97

Note.

It is presumed that the above draft is sufficient seeing that the Local Govt. supports the introduction of a special enactment. It is for the Govt. of India to consider whether it is prepared to reconsider its decision arrived at in 1894.

1/4/97.

aik
29/3/97

1803. The circumstances under which

... Records from the charge of the Record-keeper.

Regular
Miscellaneous No. of 189 .

For what Current.		To whom given.	When taken out.
No.	Year.		

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6 / 7

Hon. Mr. Gen. C.A.L.
Hon. Mr. Blis. C.A.L.
H. E. the Govr. Print room
~~with~~

the Govt. as then constituted
JG
7.7.

Issue as amended
28/6/97

The present Govt. is not of the same opinion as the Govt. of 1893 and consider it necessary to discuss the subject at some length
JG
7.7.

New para
JG

508

Read C.Nos.1244 & 2031 of 1897.

Order: No. 508 d/ 29th June 1897

In the memorial first read above, the Landholders' Association, Madras, appeals to the Secretary of State against the orders of ~~this Govt.~~ contained in G.O.No.606,d/10th July 1893 and reques that a legislative enactment may be passe declaring that the ancient zemindaries and other large proprietary estates in this Presy.are impartible and inalienable.

The modern zemindaries created by Regulation XXV of 1802 were formed by parcellin out certain districts into permanently settled estates which were put up to auction in 1802. Most of these estates had disappeared before 1809 and had been repurchased by Govt. The owners of the surviving estates have never laid any claim to impartibility and the estates are admittedly subject to the ordinary law of inheritance. No reference is therefore made to them in the memorial which sets out the case of zemindaries and proprietary estates which were in existence pr to 1802. The circumstances under which

11.6.15/7/17

order ~~quoted above~~ was passed will be briefly noticed.

of 1893

2. Ancient zemindaries in the Madras Presy. are of two classes, viz., those which were originally

(a) military fiefs, and

(b) properties which had become heritable in the hands of official sanad holders from Native Govts. — farmers general of revenue in fact.

Before the passing of Regulation XXV of 1802, the holders of the military fiefs who are the ~~xxxxx~~ real "ancient zemindars" had a heritable property in their estates which must have possessed the character of impartibility, as the necessity of their existence, depending as it did on the supply of troops and their armament, demanded that they should belong to one man and not be subject to the accidents of partition. The case of holders of assigned revenue was on a different footing. They were nothing more than farmers-general ~~of xxxxxxx~~ appointed by the ruling power. Owing to the incidents of their tenure, the character of imparti-

, however,

lity was gradually introduced in imitation of the ancient military feudatories.

It may be said here fore that ancient zemindaries were true impartible & inalienable.

A.H.H.

of the description

A.H.H.

3. Out of a total number of 849 permanently settled estates covering an area of 27½ million acres, there are 135 estates covering an area of 15½ million acres which, until some years ago, were ~~supposed~~ to be held under the law of primogeniture and to be impartible. But the decisions of the Privy Council in the Nuzvid[x] and Devarakota[o] cases have ~~upset the received opinion~~. The rule of primogeniture and impartibility has been declared by the Privy Council not to attach necessarily to ~~the property on grounds of public policy~~ but is ~~to be treated as a~~ family custom liable to be annulled with the mutual consent of the members of the family. The question whether an estates ~~was~~ governed by the law of primogeniture or the ordinary law of equal division ~~was~~ thus made to depend upon the facts of each case and the conduct of the parties, there being no certain criterion laid down to determine the point in any particular case without resort to protracted litigation. It was also ~~supposed~~ that the holders for the

believed

A.H.H.

completely altered that status

A.H.H.

any estate

only the result of

A.H.H.

is

A.H.H.

is

A.H.H.

during a long series of years

A.H.H.

believed by all interested in the matter

A.H.H.

[x] 2 Madras 128

[o] 13 Madras 400

time being of impartible estates had only a life interest in them, that they could not alienate or encumber the properties so as to have effect beyond their own life time, that acts and alienations so made ~~could~~, if ~~otherwise than~~ not made bona fide and if prejudicial to the family, could be set aside and that their powers were the same as those of a manager of a Hindu family holding property in co-parcenary under the ordinary law, with the exception that partition could not be claimed by the junior members of the family who were only entitled to maintenance out of the income of the estate. But This idea was held to be erroneous by ~~to the great surprise of the public, the Madras High Court, following~~ the decision of the Privy Council in 10 Allahabad 272, in which it was ruled ~~in 1890 in the Kangundi case~~ that ~~a 13 Madras 197~~ the zemindar of an ancient and impartible estate is absolute owner and can dispose of it as he pleases, the property being impartible only in the sense that it is not divisible among the members of the family, unless inalienability depends on custom, which must be proved, or on the nature of the tenure. These changes in the

and this decision has, to the dismay of all Zemindars, been followed by the Madras High Court in the Kan
case (13

(vide Enclosure II to the memorial)

A

In [illegible] the Madras High Court decided last year ~~that~~ the Raja could alienate his estate or any part of it or bequeath ~~Estate~~ it to any outsider even if he ~~had~~ has a son.

JG 8.9.11

and alienations having been made & contested

JG 8.9.11

that it was impossible to fix any date before which all zemindaris were impartible, & this must depend

JG 8.9.11

law, or at all events, in what was believ to be the law by all the parties interest in the question in this Presy: has led to a great amount of litigation, the junior members in the case of several estates which had been supposed to be impartible having instituted suits for partition.

4. Apprehending that these changes and the uncertainty involved in the state of the law would lead to the rapid extinction of their estates and the decay of the influence and the importance of their famil ~~which~~ which it was the intention of the rule of primogeniture to conserve, the zemindars of the Presy. through their association submitted two memorials dated 5th Decr. 1890 and 8th March 1892, invoking the aid of the legislature to declare the ancient zemindaries impartible and inalienable. The then Govt. declined to comply with the request of the memorialists on the following grounds:-

(1) ~~That the partibility or imparti-~~ bility of ancient estates could not be determined with reference to any arbitrary date but must depend, as has been he ey fu

~~the courts, mainly~~ on family usage and local custom; ^ which can best be determined by the ordinary procedure of the Civil Courts

df(2)

A.S.H.

~~(2)~~ that a declaration of impartibility would involve the annihilation of the rights of co-parceners and ought not to be made on the exparte application of a proprietor;

~~(3)~~ that the Regulation of 1802 did not contemplate the imposition of any special restraint on alienation and that it was doubtful whether as a matter of custom any estate had been inalienable since 1802;

df(3)

Jg A.S.H.

(I think this may be altogether omitted. It is part of the argument about the impossibility of fixing any date)

Jg A.S.H.

~~(4)~~ that the Madras zemindars, as a class, had not done anything in the past to deserve to be regarded as possible promoters of any desirable social reform and that there were no clear indications on the part of the zemindars of the present day of any movement in that direction;

~~df(4)~~

A.S.H. Jg

~~(5)~~ that the past history of the Madras zemindars did not encourage the hope that agricultural interests would be in any way benefited by their maintenance;

df(5) A.S.H.

~~(6)~~ that Sir Thomas Munro, if now alive, would not consider legislation such as he contemplated in 1821 either necessary or desirable, whether on political grounds or ath eral grounds of expediency, and

df(6)

That though Sir Thos Munro had contemplated legislation to the effect desired by the Memorialists in 1821, he would not think it desirable if he were living now

A.S.H.

(This shd be altogether omitted. It is not an argument, but a deduction.)

Jg A.S.H.

(7) ~~that in the interests of justice~~ Govt. was averse to legislation on the lines proposed. ~~While holding these views, which~~ These views were generally in accordance with the views held by Govt. as constituted in 1884, ~~Govt. expressed the opinion that particular cas cases might arise in which it might be desirable for Govt. to intervene and by good management to help to extricate an encumbered proprietor.~~

5. Memorialists now appeal to the Secy. of State against the orders of this Govt. set forth above. The first nineteen paragraphs of their memorial contain a precis of the past correspondence on the subject, a statement of their case and the purport of the legal decisions bearing upon it. In the remaining paragraphs they criticise the views of Govt. contained in its order referred to above.

I do not think the recapitulation of the Memorial is necessary. It adds volume to a voluminous despatch & therefore weakens it. I wd omit the whole of para 6. The arguments in para 4, however, need a definite answer, so I wd

6. The substance of memorialists' criticisms is as follow :-

The Courts have no doubt held that the question whether an estate is ~~ps~~ partible or impartible must be decided in each case by family usage but they fu never held that the period of such usage must not be determined by an arbitrary date were such date prescribed by law. At present the Courts have to fix an arbitrary date in each case, there being no period of prescription, continuousness of the usage during which must be proved. The tendency of ~~thx~~ modern legislation is not only to fix but also to shorten the period of legal prescription. This principle has been recognised by the Indian Govt. in passing the Limitation Act. Govt. objects to declaring estates in existence in 1802 impartible, because that date might let in estates of the revenue farming class; but the Courts draw no distinctions of this nature and there is nothing to prevent them from declaring such estates impartible provided they consider it necessary to have proof of impartibility dating from the last century and such proof is forthcoming. The creation of a special tribunal for deciding questions of partibility or impartibility of ancient estates is no necessary accompaniment of the legislation prayed for, where special legislation has to be tered the work can be done most quickly, efficiently and cheaply by such a tribunal.

In making the statement that a declaration of impartibility would annihilate the rights of co-parceners Govt. has ignored the fact that, under the present law regarding alienation, the interests of co-parceners and heirs alike would be annihilated. The objection that a declaration of impartibility, if made, would be exparte is invalid, as all that is prayed for is that a zemindar may, as plaintiff, sue for declaratory decree against each and every possible claimant. Cases of interference on the part of Govt. with the law of devolution of property are not uncommon as evidenced by the Parsee Succession Act and the Indian Succession Act, while ~~in passing~~ the provisions of the Oudh Talukdars' Act ~~Govt. has~~ go~~ne~~ far beyond anything requested or contemplated by Memorialists.

Apart from special restrictions imposed for revenue purposes, the Regulation of 1802 placed impartible and partible estates on the same footing as regards alienability and the Law Reports are fu

Substitute for para 6 the following —

6. With regard to the arguments against the declaration summarized in para 4 it is observed that the question what zemindaries are partible or not is might be quickly settled by a Commission, & that this would prevent the ruinous litigation which must attend on an examination of family usage & local custom in each case by the Civil Courts; that the rights of coparceners wd be strengthened by a declaration of inalienability which would leave them entitled to a maintenance from the estate, whereas under the present law it may be alienated entirely to outsiders; that the zemindars are steadily improving; & that present circumstances give no ground for supposing that Sir Thos Munro wd alter his decision if he were living now.

of cases in which alienations of impartible estates, not permitted by the personal law of the parties, have been set aside. Memorialists desire to be restored to the position in which they stood from at least 1802 to 1889.

In supporting great modern social movements, among which may be instanced the spread of education, both male and female, improvements in sanitation and the supply of medical aid to women, the zemindars of this Presy. have proved themselves to be as a class and according to their means, in no way behind their brethren in other Presidencies and Provinces.

The object of Sir Thomas Munro's entail regulation was not to make provision against arbitrary alienations of an estate as implied in the statement of Govt. in para 3 of its order, but to protect estates from division among co-parceners and so ensure their descent entire to a single heir ~~[illegible]~~. The statement in para 9 of the order that "if the present land-owners cannot be trusted to keep their estates unless deprived of the power of alienating them,

82

they stand condemned as unfit to hold them may be applied with equal cogency to the holders of settled or entail estates in every country, and with no law of entail or settlement few estates in England would now remain at all and fewer still would remain intact, in the hands of the family of their original owners. There is, therefore, no reason why memorialists should be measured by a different standard of humanity or their request for an ordinary ~~saf~~ safeguard be construed into an admission of universal weakness.

Memorialists do not ask for any favo but only pray for justice which their fel low citizens possess of being subject to certain and equal laws.

7. Govt., as at present constituted, considers that the contention of the memorialist is in the main well founded and that the have made out a case for the interventio of Govt.

the

JG A.5.14

Since ~~1889~~ 1890, the change in the l law adverted to in para 3 above has been followed out to its logical conclusion and last year it was ruled that ~~[illegible]~~ when a zem

This is noted above & need not be repeated

JG A.5.14

dari is impartible the zemindar may at any moment alienate it wholly to outsiders by gift or will. The apprehension of the memorialists that the unrestricted powers of alienation thus allowed to ~~them~~ will lead to the rapid extinction of their estates and the decay of the influence and importance of their families seems well founded; for while in the case of ordinary ancestral property the power of alienation by the managing member is restricted only to his fractional share of the property, there is no such limit in the case of an impartible zemindari and consequently the dismemberment of impartible estates is likely to be brought about ~~on~~ more quickly than the dismemberment of properties to which the ordinary rule of inheritance applies. This result could not have been contemplated, whatever theory is adopted in regard to the origin of the rule of primogeniture, i.e. whether the object of the rule is taken to be the maintenance of the dignity and influence of ~~certain~~ official position or the maintenance of the dignity and influence of certain ancient families

for to secure the object in view, the estate must be inalienable from the office in the one case and from the family in the other.

8. As pointed out by the Board in its Progs. disposed of in the G.O. quoted above, the impartible character of the ancient zemindaries had ~~come to be~~ been regarded as a matter of course by the zemindars themselves, as testified to by their replies to Sir Thomas Munro in 1820-22, and has been admitted by the sovereign power, as evidenced by Bengal Regulation XI of 1793 which, however, for political reasons declared partibility for the future. It has been recognised by the Privy Council in respect of certain of the estates which were in existence prior to 1802. ~~and their history confirms the same view in regard to the remainder.~~ ~~There is~~ ~~every~~ no reason to suppose that, ~~were it not~~ but for his untimely death, the legislation meditated by Sir Thomas Munro on the subject would not have become accomplished fact.

This shd be omitted.

So should this. It has been stated above.

Now done

9. In these circumstances Govt. does not consider it ~~will not feel~~ justifi ~~in~~ to withhold~~ing~~ legislative sanction to

what is in equty "an unassailable position".

In the prevailing uncertainty of the law, the public have a clear right to have an authoritative statement of it on the part of the Legislature.

^ The present state of the law is so uncertain that

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a.s.h.

10. The policy of maintaining a native aristocracy of birth has already been decided on by the Govt. of India and the Secretary of State.* On political grounds no allegations have ever been made that zemindaries have been a source of weakness to Govt. in the past. On the contrary, they may in the hands of an educated and advanced aristocracy be a source of considerable strength in the future. There is in this Presy. a very strong body of educated opinion in favour of the retention of its old aristocracy. It is believed that they supply a useful link between Govt. and a people almost entirely agricultural, and, as education penetrates more and more, as it is rapidly doing, into their ~~[illegible]~~ homes, the zemindar class is becoming more and more a political force. The uneducated masses of this Presy. have a great respect and reverence for what is old, for what their forefathers did and knew. When then they see their ancient land marks swept away by the action of the laws as administered by the British ~~Indian~~ Courts, they are astounded at and condemn a Govt. which permits such results.

*(1) Letter from the Govt. of India, Home Dept., to the Govt. of Bengal No. 3171 dy 11th Dec. 1888

(2) Do do Legislative Dept. to the Govt. of Bengal No. 1430 dy 2nd Sept. 1890

(3) Secretary of State's Despatch No. 42 dy 13th Nov. 1890

11 ~~10.~~ The chief influence of ~~ancient~~ zemindars may be taken to be social and agricultural. It would not be fair to judge of the future usefulness of the class of ^ zemindars from what they have done in the past. Their present ~~[illegible]~~ position is due to the circumstances by which they have been surrounded. They were most of them in possession of unrestrained power in the beginning of the century, and the necessities of orderly and civilized Govt. in the then existing state of the country required that they should be deprived of all power and influence and relegated to the position of landholders. [illegible]. The conditions also of farming in this country were not such as to render high cultivation profitable. Brough[t] up in the old traditions with no public career open to them in which they coul[d]

^ These nobles

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a.s.h.

^ ancient

usefully employ themselves they have hitherto with some notable exceptions formed an idle, dissipated class. There are clear indications, however, that a change is coming over them. Several of them are being educated and the proceedings of the Landholders' Association, from which the memorials under consideration has emanated, and a list of the members of which is appended there to ~~the first of the memorials read above~~, shows clearly that they have at least begun to realise the situation and to feel that if they do not keep pace with the times they will lose all social influence and importance, and will be annihilated. An aristocracy of birth in touch on the one hand with the Govt. and in sympathy on the other with agricultural interests would have an influence which an aristocracy of wealth would not possess, would render possible the much needed intercourse and acquaintance between the European and the Native and would lead society in the path of advancement and reform. Their position as proprietors of large estates, with good incomes and ample leisure fits them to undertake the lead in agricultural experiment and

will rapidly
A.S.H

Last
A.S.H.

Omit
A.S.H

Omit
A.S.H

The number of ~~these aristocrats~~ is already small and
A.S.H

A.S.H

fall in with this.

a return to ~~their~~ former status and to
A.S.H

Omit
A.S.H

necessity for which is increasingly made patent by the great increase in populations and the expansion of ~~an~~ export trade, and in the management of industrial enterprizes which peasant proprietors cannot be expected to undertake. The highest political expediency requires that the ancient zemindaries should not be dismembered and allowed to fall into the hands of money-lenders who will merely look upon the lands which they acquire as an investment returning a certain percentage upon their outlay. The landed nobility of this presy. is fast decaying ~~and if the list of such nobles which is already small is to be reduced no further~~, decided steps should in the opinion of this Govt. be taken to arrest their extinction.

12 ~~11~~. Apart from political or other considerations, the legislation prayed for is dictated by simple justice in view to the removal of hardships which have been produced by the interpretation of Hindu Law by British Courts. ~~It is simply a question of defining the law and thus preventing costly and ruinous litigation.~~ ~~There~~

usefully [illegible]

of the zemindars or their possible usefulness in the future have little or nothing to do-with-the-decision-to-be arrived at.

~~12~~13 From the foregoing considerations Govt. deems it expedient to declare by legislation, as prayed for by memorialists,

(1) that ancient zemindaries and estates of the like nature which have descended as impartible continuously, from some date to be fixed, and of which no partition since that date can be proved, are impartible; and

(2) that the powers of the holder of the estate for the time being shall be those of the managing member of a Hindu family governed by the ordinary law of succession as they were understood to be before the recent Privy Council decision.× Memorialists suggest a period of limitation of 60 years but the Board recommends that the character of impartibility and inalienability should be declared to attach to all proprietary estates which were in existence prior to 1802, the year in which the permanent settlement was introduced. ~~The Board's recom~~mendation will be adopted, as 1802 marks a point of time at which rights and titles

× 13 Madras 197

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of landed estates began to be investigated. As a preliminary to legislation, it will be necessary to appoint a Commissioner to prepare a schedule of ancient estates. As pointed out by the Board in para 13 of its Progs. referred to above, the Commissioner will have little difficulty in accomplishing this task. Before, however, taking any steps in the matter, the Govt. of India will be addressed in view to ascertaining whether it is agreeable to legislation being undertaken on the lines proposed. The memorial will ~~accordingly~~ be forwarded to the Govt. of India instead of to the Secretary of State as ~~in the event of that Govt. being willing to grant the prayer of the memorialists~~, reference to the Secretary of State ~~would~~ be unnecessary.

Omit
JG
A.S.H

the considerations involved affect other Provinces as well as this, & if the Govt of India consents to legislate in the desired direction.

JG A.S.H

will
JG
A.S.H

14 ~~13~~. While holding that neither of the requests of the memorialists could be entertained, the Govt. of 1893 was of opinion that particular cases might arise in which it might be desirable that Govt. should be empowered to step in and by good management help to extricate an

encumbered proprietor. A Bill for the relief of encumbered estates in this Presy. was accordingly forwarded to the Govt.of India with Mr.Gibson's letter No.959,d/ the 7th November 1893 for the introduction in the Supreme Legislative Council. ~~but~~ The Govt.of India in its letter of the 15th February 1894, No.467-359 stated that it was not prepared to introduce the Bill in question but suggested that the relief of embarrassed zemindars could be attained by the insertion in the Court of Wards Regulation of a provision under which an indebted proprietor would be enabled, by a declaration that he is disqualified from managing his estate, to bring himself under the protection of the Regulation. A draft bill to amend the Court of Wards Regulation has been engaging the attention of Govt.since June 1894, but the introduction of the measure ~~in~~ the Legislative Council was delayed pending ~~the~~ receipt of the reply of the Govt.of India to Mr.Gibson's letter No.640 dated the 24th Septr.1895. The reply which was received on the 6th st.has been referred to the Board of Revenue for

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remarks. In the second memorial read above which is addressed to the Govt.of India, the memorialists point out that the insertion of the contemplated provision in the Court of Wards Regulation would not afford the same far reaching and effective relief as a special encumbered Estates Act and request that Govt. to reconsider the orders contained in its letter of 15th Febry.1894. This memorial will also be forwarded to the Govt.of India.

15 ~~14.~~ Ordered that the following letter be despatched.

14/6/97.

I assent to the Draft with the alterations noted above.

19/6/97

This seems to me to be a good draft. The subject is most important.

26/6/97.

A.S.K. 26.6.97

To the Board of Revenue
" Legislative Dept
80/3
Desd. 22-7-97

LETTER

14/6/97

LETTER No 509
29-6-97

1410

misc: Rec. 24-7-97

To

The Secretary to the Govt. of India

Rev. & Agri. Dept.

Sir,

I am directed to forward the accompanying memorials, dated 6th. Febry. and 3rd March 1897, from the Landholders' Association, Madras, praying for a legislative enactment declaring the impartibility & inalienability of ancient zemindaries and for a similar enactment for the relief of encumbered estates in this Presy. It will be observed that the first memorial is addressed to the Secretary of State. It is in the nature of an appeal against the orders of this Govt. contained in G.O. No. 606, d/10" July 1893 on two memorials presented by the Association in 1890 and 1892. For reasons fully set forth in the accompany ing G.O., this Govt., as at present const tuted & differing from its predecessors, is of opinion that the request of the memorialists is deserving of considerat The subject is practically a particular phase of the larger question regard

29 / 11 '97

19/6/97

A.SH 26.6.97

the transfer of land from the agricultural to the non-agricultural classes referred to in Mr.Ibbetson's Confidential Circular letter No.34/75-1, d/ 26th October 1896. The observations in paras 4 and 5 of that letter apply with equal force to the unrestricted power of alienation which ancient zemindars are now held to possess. I am to point out that in the event of the Govt.of India sharing the views of this Govt. in regard to legislation being undertaken on behalf of the memorialists it will be unnecessary to transmit the memorial to the Secy.of State. The memorial is accordingly forwarded to your Govt.and I am to commend it for favourable consideration.

2. The circumstances under which the second memorial is forwarded are stated in para 14 of the G.O.last referred to above.

14/6/97

50/2

Government (1897) of Madras.

REVENUE.

Recd. 1897. Enclosures

Regd. Spare copies

G.O., No. 508, 29th June 1897.

JUNE.

The Landholders' Association, Madras.

Ordering that a letter be despatched to the Government of India regarding the memorial of—.

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

Read—Endorsement of H. A. SIM, Esq., I.C.S., Acting Private Secretary to His Excellency the Governor, dated 6th February 1897.

Abstract.—Transferring a petition, dated 5th February 1897, from the Rajah of Venkatagiri, President, Madras Landholders' Association, soliciting that the association's petition praying for legislation to regulate the succession to zemindaries may be forwarded to the Secretary of State for India.

Read—Memorial from the President of the Madras Landholders' Association, dated 3rd March 1897.

Abstract.—Requesting that the accompanying appeal memorial of the association, praying for an enactment for the relief of encumbered estates, may be forwarded to the Government of India.

Order—No. 508, Revenue, dated 29th June 1897.

Miscellaneous.

In the memorial first read above, the Landholders' Association, Madras, appeals to the Secretary of State against the orders of the Government as then constituted contained in G.O., No. 606, dated 10th July 1893, and requests that a legislative enactment may be passed declaring that the ancient zemindaries and other large proprietary estates in this Presidency are impartible and inalienable. The present Government is not of the same opinion as the Government of 1893 and considers it necessary to discuss the subject at some length.

The modern zemindaries created by Regulation XXV of 1802 were formed by parcelling out certain districts into permanently settled estates which were put up to auction in 1802. Most of these estates had disappeared before 1809 and had been repurchased by Government. The owners of the surviving estates have never laid any claim to impartibility and the estates are admittedly subject to the ordinary law of inheritance. No reference is therefore made to them in the memorial which sets out the case of zemindaries and proprietary estates which were in existence prior to 1802. The circumstances under which the order of 1893 was passed will be briefly noticed.

2. Ancient zemindaries in the Madras Presidency are of two classes, viz., those which were originally—

(*a*) military fiefs, and
(*b*) properties which had become heritable in the hands of official *sanad* holders from Native Governments—farmers-general of revenue in fact.

Before the passing of Regulation XXV of 1802, the holders of the Military fiefs who are the real "ancient zemindars" had a heritable property in their estates which must have possessed the character of impartibilty, as the necessity of their existence, depending as it did on the supply of troops and their armament, demanded that they should belong to one man and not be subject to the accidents of partition. The case of holders of assigned revenue was on a different footing. They were nothing more than farmers-general appointed by the ruling power. Owing to the incidents of their tenure, however, the character of impartibility was gradually introduced in imitation of the ancient military feudatories. It may be said therefore that ancient zemindaries were then impartible and inalienable.

3. Out of a total number of 849 permanently-settled estates covering an area of 27¼ million acres, there are 135 estates of this description covering an area of 15¼ million acres which, until some years ago, were believed to be held under the law of primogeniture and to be impartible. But the decisions of the Privy Council in the * Nuzvid and † Devarakota cases have completely altered that *status*. The rule of primogeniture and impartibility has been declared by the Privy Council not to attach necessarily to any estate but is only the result of family custom liable to be annulled with the mutual consent of the members of the family. The question whether an estate is governed by the law of primogeniture or the ordinary law of equal division is thus made to depend upon the facts of each case and the conduct of the parties during a long series of years, there being no certain criterion laid down to determine the point in any particular case without resort to protracted litigation. It was also believed by all interested in the matter that the holders for the time being of impartible estates had only a life interest in them; that they could not alienate or encumber the propertie [illegible] effect beyond their own life time; that acts and alienations so made if not made *bonâ fide* and if prejudicial to the family could be set aside; and that their powers were the same as those of a manager of a Hindu family holding property in co-parcenary under the ordinary law, with the exception that partition could not be claimed by the junior members of the family who were only entitled to maintenance out of the income of the estate. But this idea was held to be erroneous by the decision of the Privy Council in 10 Allahabad 272, in which it was ruled that the zemindar of an ancient and impartible estate is absolute owner and can dispose of it as he pleases, the property being impartible only in the sense that it is not divisible among the members of the family, unless inalienability depends on custom, which must be proved, or on the nature of the tenure and this decision has, to the dismay of all zemindars, been followed by the Madras High Court in the Kangundi case (13 Madras 197) and in the Pithápuram case (*vide* enclosure V to the memorial) in which the Madras High Court decided last year that the Rajah could alienate his estate or any part of it or bequeath it to any outsider even if he had a son. These changes in the law, or at all events, in what was believed to be the law by all the parties interested in the question in this Presidency has led to a great amount of litigation, the junior members in the case of several estates which had been supposed to be impartible having instituted suits for partition and alienations having been made and contested.

* 2 Madras 128.

† 13 Madras 406.

4. Apprehending that these changes and the uncertainty involved in the state of the law would lead to the rapid extinction of their estates and the decay of the influence and the importance of their families which it was the intention of the rule of primogeniture to conserve, the zemindars of the Presidency through their association submitted two memorials, dated 5th December 1890, and 8th March 1892, invoking the aid of the legislature to declare the ancient zemindaries impartible and inalienable. The then Government declined to comply with the request of the memorialists on the following grounds:—

That it was impossible to fix any date before which all zemindaries were impartible, and this must depend on family usage and local custom which can best be determined by the ordinary procedure of the civil courts; that a declaration of impartibility would involve the annihilation of the rights of co-parceners and ought not to be made on the *ex parte* application of a proprietor; that the Madras zemindars, as a class, had not done anything in the past to deserve to be regarded as possible promoters of any desirable social reform and that there were no clear indications on the part of the zemindars of the present day of any movement in that direction; that the past history of the Madras zemindars did not encourage the hope that agricultural interests would be in any way benefited by their maintenance and that though Sir Thomas Munro had contemplated legislation to the effect desired by the memorialists in 1821, he would not think it desirable if he were living now. These views were generally in accordance with the views held by Government as constituted in 1884.

5. Memorialists now appeal to the Secretary of State against the orders of this Government set forth above. The first nineteen paragraphs of their memorial contain a précis of the past correspondence on the subject, a statement of their case and the purport of the legal decisions bearing upon it. In the remaining paragraphs they criticise the views of Government contained in its order referred to above.

6. With regard to the arguments against the declaration summarized in paragraph 4, it is observed that the question what zemindaries are partible or impartible might be quickly settled by a Commission, and that this would prevent the ruinous legislation which must attend on an examination of family usage and local custom in each case by the civil courts; that the rights of coparceners would be strengthened by a declaration of inalienability which would leave them entitled to a maintenance from the estate, whereas under the present law it may be alienated entirely to outsiders; that the zemindars are steadily improving; and that present circumstances give no ground for supposing that Sir Thomas Munro would alter his decision if he were living now.

7. Government, as at present constituted, considers that the contention of the memorialists is, in the main, well founded, and that they have made out a case for the intervention of Government. The apprehension of the memorialists that the unrestricted powers of alienation thus allowed to their class will lead to the rapid extinction of their estates and the decay of the influence and importance of their families seems well founded, for while in the case of ordinary ancestral property the power of alienation by the managing member is restricted only to his fractional share of the property, there is no such limit in the case of an impartible zemindari and, consequently, the dismemberment of impartible estates is likely to be brought about more quickly than the dismemberment of properties to which the ordinary rule of inheritance applies. This result could not have been contemplated, whatever theory is adopted in regard to the origin of the rule of primogeniture, *i.e.*, whether the object of the rule is taken to be the maintenance of the dignity and influence of official position, or the maintenance of the dignity and influence of certain ancient families, for to secure the object in view, the estate must be inalienable from the office in the one case and from the family in the other.

8. As pointed out by the Board in its Proceedings disposed of in the Government order quoted above, the impartible character of the ancient zemindaries had been regarded as a matter of course by the zemindars themselves, as testified to by their replies to Sir Thomas Munro in 1820—22, and has been admitted by the sovereign power, as evidenced by Bengal Regulation XI of 1793, which, however, for political reasons, declared partibility for the future. It has been recognized by the Privy Council in respect of certain of the estates which were in existence prior to 1802.

9. In these circumstances, Government does not consider it justifiable to withhold legislative sanction to what is in equity "an unassailable position." The present state of the law is so uncertain that the public have a clear right to have an authoritative statement of it on the part of the Legislature.

10. The policy of maintaining a native aristocracy of birth has already been decided on by the Government of India and the Secretary of State.* On political grounds no allegations have ever been made that zemindaries have been a source of weakness to Government in the past. On the contrary, they may, in the hands of an educated and advanced aristocracy, be a source of considerable strength in the future. There is, in this Presidency, a very strong body of educated opinion in favour of the retention of its old aristocracy. It is believed that they supply a useful link between Government and a people almost entirely agricultural; and, as education penetrates more and more, as it is rapidly doing, into their homes, the zemindar class is becoming more and more a political force. The uneducated masses of this Presidency have a great respect and reverence for what is old, for what their forefathers did and knew. When then they see their ancient land-marks swept away by the action of the laws as administered by the British Courts, they are astounded at and condemn a Government which permits such results.

* (1) Letter from the Government of India, Home Department, to the Government of Bengal, No. 3171, dated 11th December 1868.
(2) Letter from the Government of India, Legislative Department, to the Government of Bengal, No. 1430, dated 2nd September 1890.
(3) Secretary of State's despatch No. 42, dated 13th November 1890.

11. The chief influence of these nobles may be taken to be social and agricultural. It would not be fair to judge of the future usefulness of the class of "ancient" zemindars from what they have done in the past. Their present position is due to the circumstances by which they have been surrounded. They were, most of them, in possession of unrestrained power in the beginning of the century, and the necessities of orderly and civilized Government in the then existing state of the country required that they should be deprived of all power and influence and relegated to the position of landholders. The conditions also of farming in this country were not such as to render high cultivation profitable. Brought up in the old traditions with no public career open to them in which they could usefully employ themselves they have till recently with some notable exceptions formed an idle, dissipated class. There are clear indications, however, that a change is coming over them. Several of them are being educated and the proceedings of the Landholders' Association, from which the memorial under consideration has emanated, and a list of the members of which is appended thereto, shows clearly that they have at last begun to realize the situation and to feel that if they do not keep pace with the times they will lose all social influence and importance. An aristocracy of birth in touch on the one hand with the Government and in sympathy on the other with agricultural interests would have an influence which an aristocracy of wealth would not possess, would render possible the much needed intercourse and acquaintance between the European and the Native and would lead society in the path of advancement and reform. Their position as proprietors of large estates, with good incomes and ample ~~elisure~~ Leisure. fits them to undertake the lead in agricultural experiment and improvement, the necessity for which is increasingly made patent by the great increase in population and the expansion of trade, and in the management of industrial enterprizes which peasant proprietors cannot be expected to undertake. The highest political expediency requires that the ancient zemindaries should not be dismembered and allowed to fall into the hands of money-lenders who will merely look upon the lands which they acquire as an investment returning a certain percentage upon their outlay. The landed nobility of this Presidency is fast decaying. The number of this important class is already small and decided steps should, in the opinion of this Government, be taken to arrest its extinction.

12. Apart from political or other considerations, the legislation prayed for is dictated by simple justice in view to a return to former status and to the removal of hardships which have been produced by the interpretation of Hindu Law by British Courts.

13. From the foregoing considerations Government deems it expedient to declare by legislation, as prayed for by memorialists,—

(1) that ancient zemindaries and estates of the like nature which have descended as impartible continuously, from some date to be fixed, and of which no partition since that date can be proved, are impartible; and

(2) that the powers of the holder of the estate for the time being shall be those of the managing member of a Hindu family governed by the ordinary law of succession as they were understood to be before the recent * Privy Council decision.

* 13 Madras, 197.

Memorialists suggest a period of limitation of 60 years, but the Board recommends that the character of impartibility and inalienability should be declared to attach to all proprietary estates which were in existence prior to 1802, the year in which the permanent settlement was introduced. As a preliminary to legislation, it will be necessary to appoint a Commissioner to prepare a schedule of ancient estates. As pointed out by the Board in paragraph 13 of its Proceedings referred to above, the Commissioner will have little difficulty in accomplishing this task. Before, however, taking any steps in the matter, the Government of India will be addressed in view to ascertaining whether it is agreeable to legislation being undertaken on the lines proposed. The memorial will be forwarded to the Government of India instead of to the Secretary of State, as the considerations involved affect other Provinces as well as this, and if the Government of India consents to legislate in the desired direction, reference to the Secretary of State will be unnecessary.

14. While holding that neither of the requests of the memorialists could be entertained, the Government of 1893 was of opinion that particular cases might arise

in which it might be desirable that Government should be empowered to step in and by good management help to extricate an encumbered proprietor. A bill for the relief of encumbered estates in this Presidency was accordingly forwarded to the Government of India with Mr. Gibson's letter No. 959, dated the 7th November 1893, for introduction in the Supreme Legislative Council. The Government of India in its letter of the 15th February 1894, No. 467—359, stated that it was not prepared to introduce the Bill in question, but suggested that the relief of embarrassed zemindars could be attained by the insertion in the Court of Wards Regulation of a provision under which an indebted proprietor would be enabled, by a declaration that he is disqualified from managing his estate, to bring himself under the protection of the Regulation. A draft bill to amend the Court of Wards Regulation has been engaging the attention of Government since June 1894, but the introduction of the measure in the Legislative Council was delayed pending receipt of the reply of the Government of India to Mr. Gibson's letter, No. 646, dated the 24th September 1895. The reply which was received on the 6th May 1897 has been referred to the Board of Revenue for remarks. In the second memorial read above, which is addressed to the Government of India, the memorialists point out that the insertion of the contemplated provision in the Court of Wards Regulation would not afford the same far reaching and effective relief as a special encumbered Estates Act and request that Government to reconsider the orders contained in its letter of 15th February 1894. This memorial will also be forwarded to the Government of India.

15. Ordered that the following letter be despatched.

(True Extract.)

(Signed) G. STOKES
Ag. Secretary to Government.

To the Board of Revenue.
" the Legislative Department.

Exd. T. K. Narayana Aiyangar.

80 Copies.

1897.

REVENUE AND AGRICULTURAL DEPARTMENT.

From

The Government of Fort St. George.

Recd.	1897.	*Enclosures*
Regd.		*Spare copies*

Letter, No. 509, 29th June 1897.

JUNE.

Forwarding to the Government of India, for favourable consideration, two memorials from the Landholders' Association, Madras, praying for a legislative enactment declaring the impartibility and inalienability of ancient zemindaris and for a similar enactment for the relief of encumbered estates in this Presidency.

REVENUE DEPARTMENT.

From

The Honourable Mr. G. STOKES, I.C.S.,
Ag. Secretary to the Government of Madras,

To

The SECRETARY to the GOVERNMENT of INDIA,
Revenue and Agricultural Department,

Dated Ootacamund, 29th June 1897.

Sir,

Miscellaneous.

I am directed to forward the accompanying memorials, dated 6th February and 3rd March 1897, from the Landholders' Association, Madras, praying for a legislative enactment declaring the impartibility and inalienability of ancient zemindaries and for a similar enactment for the relief of encumbered estates in this Presidency. It will be observed that the first memorial is addressed to the Secretary of State. It is in the nature of an appeal against the orders of this Government contained in G.O., No. 606, dated 10th July 1893, on two memorials presented by the Association in 1890 and 1892. For reasons fully set forth in the accompanying Government Order, this Government, as at present constituted and differing from its predecessors, is of opinion that the request of the memorialists is deserving of consideration. The subject is practically a particular phase of the larger question regarding the transfer of land from the agricultural to the non-agricultural classes referred to in Mr. Ibbetson's confidential Circular letter, No. 24/75-1, dated 26th October 1895. The observations in paragraphs 4 and 5 of that letter apply with equal force to the unrestricted power of alienation which ancient zemindars are now held to possess. I am to point out that in the event of the Government of India sharing the views of this Government in regard to legislation being undertaken on behalf of the memorialists, it will be unnecessary to transmit the memorial to the Secretary of State. The memorial is accordingly forwarded to your Government and I am to commend it for favourable consideration.

2. The circumstances under which the second memorial is forwarded are stated in paragraph 14 of the Government Order last referred to above.

I have the honour to be,
Sir,
Your most obedient servant,

(Signed) G. STOKES,
Ag. Secretary to Government.

Exd. T. K. Narayana Aiyangar

50 Copies.