V.E.

Revenue (1899) Department.

MISCELLANEOUS SERIES.

G.O., No. 1436

DATED 21st April 99

[Despatch Abstract.]

Ordering that a despatch be sent to the Rt Honble the Secy of State for India requesting that arrangements may be made for the conduct of the Tanjellamindi Privy Council appeal on behalf of the appellant, a Minor under the Ct of Wards of this Presy.

Despatch.—

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

Revenue (1899) Department.

CURRENT No. 2222.

From

The Secretary to the Court of Wards

Order

No. 394 Misc.

Dated 28th March 1899

Received 30 3.

Registered 30 3.

Enclosures in a Court of Wards cover.

Spare copies —

SUBJECT.

Submitting to Government certain papers relating to the Tangellamudi Privy Council appeal and requesting that the necessary action may be taken for the conduct of the appeal on behalf of the Tangellamudi minor.

BACK PAPERS.

G.O.	No.	Department.	Date.
GO. 1425	d	29-12-98	N.C.
fo	834	Rev	15-10-89
fo	250	Jud	7-2-96

FURTHER PAPERS.

G.O.	No.	Department.	Date.

Proceedings of the Court of the Wards.

Dated 28th March 1899, NO.394 Misc.

Read again Court's Proceedings NO.1485 Misc, dated 29th December 1898 recording pending receipt of memo for the guidance of counsel in England, letter from M.R.Ry.C.Ramachandra Rao Saheb regarding the Tangellamudi Privy Council appeal case.

Read also letter from M.R.Ry.C.Ramachandra Rao Saheb, Vakil, High Court, Madras, dated 20th February 1899, NO.51 forwarding a memorandum for the guidance of counsel in England in the Tangellamudi Privy Council appeal together with some papers and a bill for Rs.558-10-0.

Resolution.

Six copies of the printed transcript of records and of the local lawyer's memo for the guidance of counsel in England relating the Tangellamudi Privy Council appeal, will be submitted to Government with the request that the necessary action may be taken for the conduct of the appeal on behalf of the Tangellamudi minor, who was committed to the care of the Court under Government Order NO.834 Revenue, dated 15th October 1889.

2. Under the decree of the Sub-Court confirmed on appeal by the local High Court, the ward is entitled to the possession of only one village (Malakapuram); and as the financial condition of that village was not such as to admit of the cost of the appeal being met from its income, the Court of Wards was of opinion that unless aided by a grant from his natural father (The Rajah of Venkatagiri) the minor would not be in a position to file the appeal: on being addressed on the subject the Raja undertook to make an advance towards meeting the cost of the appeal, but at the same time proposed the following conditions:-

(a) That the amount should be refunded to him in the event of the appeal being successful.

(b)

(c) That the proceedings in the local High Court should be entrusted to a lawyer named by him(Mr.C.Ramachandra Rao Saheb)

(c) That Mr.J.D.Mayne and Messrs.Frank Richardson and Sadler should be retained as counsel and solicitors respectively to conduct the case before the Privy Council on behalf of the Tangellamudi minor(the appellant).

The Court of Wards accepted conditions (a) and (b):but stated with regard to (c)that under present orders,the engagement of lawyers in England was a matter entirely within the discretion of the Right Hon:the Secretary of State for India.The Court of Wards however undertook to strongly recommend that in the peculiar circumstances of the case the Raja's wishes should receive due consideration.The Raja has assented to this arrangement and has deposited the sum of Rs.10,000 with the Court of Wards;the charges of this appeal are being met from this deposit.The Court understands,however,that acting on his own responsibility,the Raja of Venkatagiri has already engaged Mr.J.D.Mayne to conduct the appeal before the Privy Council on behalf of his minor son.

3. A cheque for Rs.558-10-0 for Vakil's fee is enclosed.M.R.Ry.C.Ramachandra Rao Saheb is requested to acknowledge its receipt .

4. The Accountant-General is requested to sell Government pro-notes to the nominal value of Rs.500 out of the notes belonging to the Tangellamudi Privy Council appeal account and to remit the proceeds to this office.

(True Extract)

Lionel Davidson

Acting Secretary

To the Secretary to Government,Revenue Department with six copies of the printed records and of counsel's memo(in a cover)

To the Collector of Godavari with 5 enclosures as per list and 3 books and 3 copies of the memo.

To M.R.Ry.C.Ramachandra Rao Saheb with cheque (paras 1 and 3)

To the Accountant-General (para 4 only).

To the Raja of Venkatagiri.

C.M.N

Dr/

W.

Read Proc. of the Court of Wards No 394 Dt 28th March 99 (encl 2222)

To the Under Secy.

The Solicitor India Office, is to conduct all appeals in England on behalf of the Court of Wards, vide Despatch at p. 4 of Go No 250 Jud dt 7 Feb 96. But the Court of Wards recommends that in the present case the wishes of the Rajah of Venkatagiri (the natural father of the Tangellamudi minor) that Mr J.D. Mayne and Messrs. Frank Richardson and Sadler should be retained as Counsel and Solicitors, respectively may receive due consideration in view of the fact that the Rajah has made an advance of Rs 10,000 towards meeting the cost.

of

for

of the appeal. It would appear that the Rajah has on his own responsibility engaged Mr Mayne to conduct the appeal before the Privy Council on behalf of his minor son.

In the Pittapur case the retention of Sir Edward Clarke and Mr. Wadroffe as Counsel was recommended, but the Secy of State pointed out that the selection of Counsel to represent any Indian authorities in litigation in England must be left to his sole discretion. There seems to be no objection, however, to the recommendation of the Court of Wards being placed before the Secy of State for consideration.

Rel. stitched with f.p. No 4329 & 13-11-96. A

para 2 of the despatch in f.p. No 56 & 6-1-97 B

Please see draft submitted below

Secy's Office 19th Apl 99

Draft approved HWS 20-4-99

10/4/99. HWS

× Put into the under Secy's box on 15-4-99, the papers required to be made ready before being sent only on that day.

Please see draft below

Read Proc. of the Court of Wards No 394 dated 28 March 99 (C no 2222)

Draft sent HWS 20-4-99

Order Mis No 1436 dated 21st April 1899

Ordered that the following despatch be sent to the Rt. Hon'ble the Secy of State for India.

HWS 21/4 19th

No 3 dated 27th April 1899.

To

The Rt Hon'ble the Secy of State for India.

My Lord,

We have the honour to forward the records noted on the margin × relative to the appeal to the Privy Council in connection with the Jangellamudi estate in the Godavari Dt., and to request that arrangements may be made for

Despatched 27/4/99 Don't number

× 5 copies of printed records

& 5 " " " counsel's memo.

for the conduct of the appeal on behalf of the ~~minor~~ appellant who is a minor under the Court of Wards of this Presidency.

2. The financial condition of the estate does not being such as to admit of the cost of the appeal being met from its income, and the Rajah of Venkatagiri, the natural father of the minor, has advanced a sum of Rs 10,000 for the conduct of the appeal, and has requested that Mr. J. D. Mayne, and Messrs Frank Richardson and Sadler may be retained as Counsel and Solicitors respectively to conduct the appeal. The Rajah has been informed that the engagement of lawyers in England is a matter entirely within the discretion of your Lordships, but that his request will be brought to your Lordships

Revenue Department

Lordships notice. ~~He~~ accordingly request that in the circumstances of the case the wishes of the Rajah may receive due ~~consideration~~. We understand that, acting on his own responsibility the Rajah has already engaged Mr Mayne to conduct the appeal on behalf of his minor son.

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Revenue Dep

Re Copy of Counsel's Memo
in the Tanganyika Privy Council Appeal.

CONFIDENTIAL.

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IN G.O., No. DATED

CURRENT

ENCLOSURES TO C. No.

MBER OF GOVERNMENT	A	A	A	A	A	A	A	
ATURE OF GOVERNMENT.								
STATEMENT WITH DITTO.								
PERS NOT FILED UP, BEING MEANT FOR DESPATCH IN ORIGINAL.								

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y abstract only.
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CONFIDENTIAL.

Memorandum relating to the Tangellamudi Privy Council Appeal drawn up by M.R.Ry. C. Ramachandra Rao Saheb for the guidance of Counsel in England.

RE TANGELLAMUDI PRIVY COUNCIL APPEAL.

HIGH COURT APPEAL No. 34 OF 1896.

MEMORANDUM OF INSTRUCTIONS TO COUNSEL.

1. The relationship of the parties will appear from the pedigree on next page.

2. The mutta of Tangellamudi, consisting of eight villages, viz., Tangellamudi, Kalaparoo, Kokarapadu, Ponoocalloo, Comaduvole, Naguladevonypadu, Medinirowpalem, and Malakapuram *alias* Palagoodam, originally formed part of an ancient and once impartible estate.

Enclosure 6 to H (1), p. 92.

3. Narayya (No. I), who held the ancient impartible raj, rebelled against the British Government in 1783 and his estate was confiscated. It was re-granted to his eldest son, Venkata Narasimha (No. II in the pedigree) in 1784. The Government resumed it again in 1793 for arrears of revenue, and in 1802 two new zamindaries were carved out of it and granted to the two among the three sons of Narayya (No. I in the pedigree). Nidadavolu, the larger estate, was granted to Venkata Narasimha (No. II in the pedigree) and Nuzvid, the smaller estate, to Ramachandra (No. V in the pedigree). This so newly formed estate of Nuzvid was the subject of the decision of their Lordships of the Judicial Committee, wherein they declared the estate to be partible and subjected it to a partition among the six sons of Sobhanadri (No. VI).

7 I.A., 38.

4. Venkata Narasimha (No. II) died and was succeeded by his adopted son, Narayya Appa Row (No. III). The latter also died and his estate is now represented by Papamma Row (No. IV), who is the plaintiff in the case and the respondent before the Privy Council.

5. Raja Narasimha (No. VII) sued his brothers, Venkata Narasimha (No. II) and Ramachandra (No. V), for a partition and for recovery of his one-third share in the estates held by them.

6. He obtained a decree in the Court of First Instance, but his suit was dismissed by the Sudder Court. No appeal was preferred against the decree of the Sudder Court, which therefore became final.

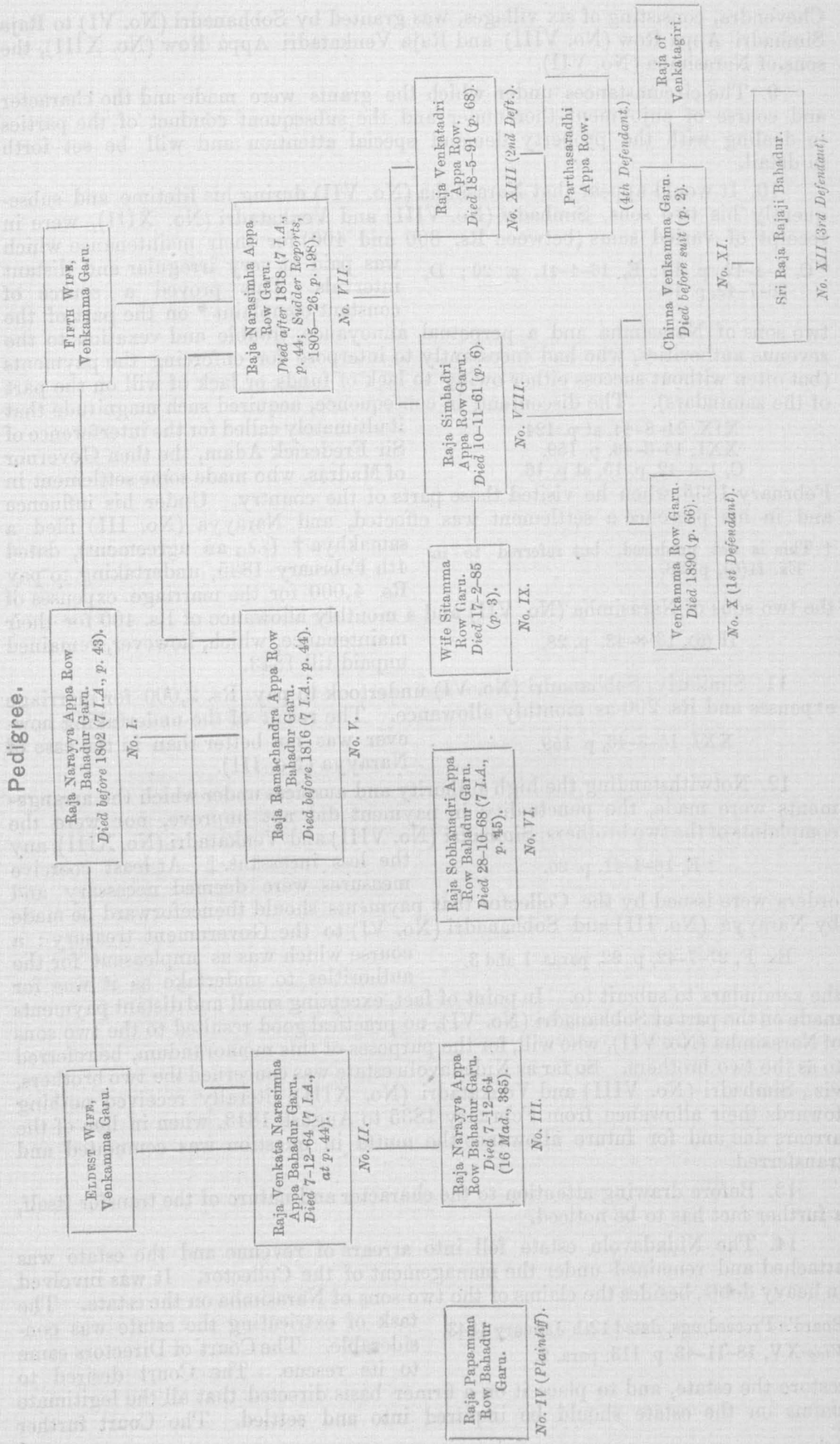
Sudder Reports, 1805—26, p. 198.

7. Narasimha (No. VII) died some time after the decree and an arrangement was made, by which Venkata Narasimha (No. II) and Sobhanadri (No. VI) settled an annual sum upon his family for their maintenance. This was afterwards commuted into a grant of land in full of all claims past and future.*

* L.R., 7 I.A., 38, at p. 44 (*vide* also 10 Mad., 15.

8. In the settlement so made by the two branches of Venkata Narasimha (No. II) and Ramachandra (No. V), the mutta of Tangellamudi, the subject of the suit, was granted by Raja Narayya Appa Row (No. III), while the mutta of

Pedigree.



Chevendra, consisting of six villages, was granted by Sobhanadri (No. VI) to Raja Simhadri Appa Row (No. VIII) and Raja Venkatadri Appa Row (No. XIII), the sons of Narasimha (No. VII).

9. The circumstances under which the grants were made and the character and course of enjoyment thereunder and the subsequent conduct of the parties in dealing with the property demand special attention and will be set forth in detail.

10. It would appear that Narasimha (No. VII) during his lifetime and subsequently his two sons, Simhadri (No. VIII) and Venkatadri (No. XIII), were in receipt of varied sums (between Rs. 800 and 400) for their maintenance which was paid at very irregular and distant intervals. This proved a source of constant complaint * on the part of the two sons of Narasimha and a perpetual annoyance, trouble and vexation to the revenue authorities, who had incessantly to interpose for enforcing the payments (but often without success either owing to lack of funds or lack of will on the part of the zamindars). The discontent, in consequence, acquired such magnitude that it ultimately called for the interference of Sir Frederick Adam, the then Governor of Madras, who made some settlement in February 1835 when he visited those parts of the country. Under his influence and in his presence a settlement was effected, and Narayya (No. III) filed a samakhya † (*i.e.*, an agreement), dated 4th February 1835, undertaking to pay Rs. 4,000 for the marriage expenses of the two sons of Narasimha (No. VII) and a monthly allowance of Rs. 400 for their maintenance, which, however, remained unpaid till 1843.

* C, 1-4-42, p. 15; E, 16-4-41, p. 20; D, 26-7-42, p. 18.

XIX, 24-8-44, at p. 124.
XXI, 15-3-46, p. 159.
C, 1-4-42, p. 15, at p. 16.

† This is not produced, but referred to in Ex. H(6), p. 28.

H (6), 13-8-43, p. 28.

11. Similarly, Sobhanadri (No. VI) undertook to pay Rs. 2,000 for marriage expenses and Rs. 200 as monthly allowance. The result of the undertaking however was not better than in the case of Narayya (No. III).

XXI, 15-3-46, p. 159.

12. Notwithstanding the high authority and auspices under which the arrangements were made, the punctuality in payment did not improve, nor were the complaints of the two brothers, Simhadri (No. VIII) and Venkatadri (No. XIII), any the less incessant. ‡ At least coercive measures were deemed necessary and orders were issued by the Collector that payments should thenceforward be made by Narayya (No. III) and Sobhanadri (No. VI) to the Government treasury: a course which was as unpleasant for the authorities to undertake as it was for the zamindars to submit to. In point of fact, excepting small and distant payments made on the part of Sobhanadri (No. VI), no practical good resulted to the two sons of Narasimha (No. VII), who will, for the purposes of this memorandum, be referred to as the two brothers. So far as Nidadavolu estate was concerned the two brothers, viz., Simhadri (No. VIII) and Venkatadri (No. XIII), literally received nothing towards their allowance from February 1835 to August 1843, when in lieu of the arrears due and for future allowance the mutta in question was commuted and transferred.

‡ E, 16-4-41, p. 20.

Ex. F, 27-7-42, p. 22, paras. 1 and 3.

13. Before drawing attention to the character and nature of the transfer itself, a further fact has to be noticed.

14. The Nidadavolu estate fell into arrears of revenue and the estate was attached and remained under the management of the Collector. It was involved in heavy debts, besides the claims of the two sons of Narasimha on the estate. The task of extricating the estate was considerable. The Court of Directors came to its rescue. The Court desired to restore the estate, and to place it on a firmer basis directed that all the legitimate claims on the estate should be inquired into and settled. The Court further

Board's Proceedings, dated 12th January 1843.
Vide XV, 18-11-43, p. 113, para. 2.

directed that the estate should be sold for arrears of revenue and bought in by the Government itself, and that, thereafter, on effect being given to the arrangements made by the authorities in settlement of the claims, the estate should be re-granted to Narayya (No. III).

15. The sale of the zamindari for arrears of revenue was effected some time before the *7th April 1843* and the estate was in the possession of the Government in *their own right*, and its restoration to Narayya Appa Row was purely an act of grace.

XV, 18-11-43, p. 113, para. 3.
XII, 4-4-50, p. 107.

16. The settlement regarding the Tangellamudi mutta was made in August 1843, and in pursuance of the same the two brothers were placed in possession in August 1844 * and the *remaining portion alone* was made over to Narayya (No. III) as will hereinafter be more particularly noticed.

* Ex. XVII, 7-8-44, p. 120.

17. When the arrangements regarding Tangellamudi were made and the two brothers were placed in possession, *the Government were sole masters of the situation and Narayya (No. III) had strictly no legal rights in him.*

18. In considering the nature of the transaction, therefore, it would be important to note not only what Narayya and the two brothers thought of the matter but also what the Government thought and how they viewed it.

19. It here becomes important to notice the several claims which were recognized by Government and how a settlement was effected in regard to each of them, so that the nature of the settlement in respect of the Tangellamudi estate may be seen in prominent relief.

20. The claims that were recognized by the authorities were five in number—

	Rs.	A.	P.
(1) Zamindar of Nuzvid	† 4,28,000	0	0
(2) Birjee Mohen Doss	‡ 59,500	0	0
(3) Velluri Venkatareddi Naidu	‡ 18,885	0	0
(4) Simhadri and Venkatadri, being marriage expenses and arrears of past maintenance	‡ 44,757	2	2
(5) Lakshmikantamma	‡ 11,400	0	0

† Ex. XIX, 24-8-44, at p. 125.
‡ Ex. H(1), p. 79.

[*N.B.*—It may be stated once for all that Ex. H together with its enclosures (pp. 25 to 30) is the same as and does exactly correspond to Ex. H(1) together with the enclosures to the latter (pp. 78 to 93)].

21. Upwards of four lakhs of rupees were due by Narayya to the Nuzvid estate. In the embarrassed and indebted condition of Nidadavolu, it was found impossible to satisfy the claims of the creditors otherwise than by transfer of portions of the zamindari to the several claimants, either temporarily or permanently, according to the nature of the settlement with each claimant. So far as the claims of Nuzvid were concerned, it had been arranged, under the sanction of the Court of Directors and the consent of Narayya and Sobhanadri, that three taluks, viz., Pentapadu, Gundugolanu and Chevendra, which appertained to the Nidadavolu, should be severed from it and permanently transferred to Sobhanadri after effecting a sub-division of the portion so to be transferred with a separate assessment fixed thereon.

Ex. XIX, 24-8-44, pp. 124 and 125.

22. Before Narayya was restored to possession, the aforesaid three taluks were placed in the possession of Sobhanadri (with a provisional arrangement for payment of assessment based on a rough calculation), though the sub-division itself was effected later on, along with that of the mutta of Tangellamudi which had also been permanently transferred to the two brothers, as will presently appear.

Ex. H(1), p. 78. „ XIII, p. 110. | Ex. XVII, p 120. „ XIX, p. 126.

23. There still remained the other claimants, whose claims had to be satisfied.

24. The claims of Birjee Mohen Doss amounted to Rs. 76,438-9-9. A settlement was made with him, whereby he had to relinquish Rs. 11,913-9-9, and for the balance of Rs. 59,500 (after deducting Rs. 5,025 paid in cash) the village of Woondrajavaram was to be given over to him for his enjoyment for a period of ten years without reference to the profit or loss arising out of the transaction.

* Enclosure No. I to H(1), 8-10-43, p. 83.
† Enclosure No. II to H(1), 8-10-43, p. 84.
‡ Ex. H(1), 18-11-43, p. 78.

Two arzis were addressed to the Collector by Narayya * and the creditor Birjee Mohen Doss † on the same date, and the Collector forwarded these along with his own letter ‡ to the Secretary to the Board of Revenue, reporting the arrangements which he made regarding all the creditors of the Nidadavolu estate and soliciting the sanction of the Board and Government to the arrangements thus effected under his directions.

25. As regards the claim of Venkatareddi, a sum of Rs. 19,885 was found to be due. According to the settlement made with him, also under the direction of the Collector, he was to relinquish Rs. 1,000 and to get Rs. 18,885, for which he was to enjoy the village of Gomparoo for a term of six years and to bear the profit and loss arising from the transaction.

Enclosure No. III to H(1), 8-10-43, p. 86.
Enclosure No. IV to H(1), 8-10-43, p. 88.

26. The next claimant was Lakshmikantamma, the adoptive mother of Narayya Appa Row. She was entitled to a monthly sum of Rs. 200 for her maintenance. A sum of Rs. 11,400 had fallen into arrears, and the arrangement was that she should relinquish Rs. 10,900 and the remainder Rs. 500 should be paid to her by Narayya in ready money. In lieu of the future maintenance, the village of Tadaparru was to be enjoyed by her during her lifetime and she should not alienate the same.

Enclosure No. VII to H(1), 6-9-43, p. 93.

27. Now comes the important subject we are more immediately concerned with, viz., the nature of the arrangements effected between Narayya Appa Row on the one hand and the two brothers, *i.e.*, the two sons of Narasimha, on the other. It is contended that the arrangement effected with the two brothers, the sons of Narayya, resulted in an absolute and permanent alienation in their favour of the mutta of Tangellamudi, consisting of the eight villages, viz., six *seri* villages, Malakapuram, otherwise called Palagoodam, Tangellamudi, Comaduvole, Ponoocalloo, Kalaparoo and Kokarapadu, and two mokhasa villages, viz., Nagulapadu and Medinirowpalem (*vide* exhibit XV).

Eight villages appear in Ex. XI, p. 106, and Ex. XII, p. 107.

Vide Ex. XV at p. 114, para. 9.

28. The claims of the two brothers for arrears from February 1835 to August 1843 amounted to Rs. 40,757-2-2, which together with Rs. 4,000 due for marriage expenses came to Rs. 44,757-2-2, and the village of Malakapuram *alias* Palagoodam was assigned in perpetuity in satisfaction of the arrears, and the remaining seven villages were assigned permanently in lieu of the future allowance.

Enclosure No. VI to H(1) at p. 92.

29. Before pursuing the subject further, it may be desirable to make a brief reference here to the contentions of the parties and the points arising for decision in the case. The plaintiff's co tention is, that the grant of Tangellamudi to the two brothers was personal to themselves and to such of their descendants who were entitled to maintenance from them and out of the estate, that there was also a grant by Sobhanadri to the two brothers of the estate of Chevendra, that there was a partition between the two brothers in which Tangellamudi fell to the share of Simhadri, by virtue of which Venkatadri's right in Tangellamudi ceased, that Simhadri died in 1861 and that the estate was since then enjoyed by his widow, Sitayya, till her death in 1885, that after her death the cause of action a crued to plaintiff for the recovery of the estate.

30. The main defence was, that the grant was absolute, that even according to the plaintiff's own case plaintiff had no right to sue so long as Venkatadri and his line still existed, that the estate was openly enjoyed by Simhadri and after his death by his widow absolutely, and that the plaintiff's suit was therefore barred by limitation.

Sub-Judge's judgment, p. 176, para. 6.

31. The following are therefore the main points for consideration, viz.—

(1) The nature of the grant (which is comprised in issue II).

(2) Whether the plaintiff has a right to sue (*vide* issue III)?

(3) Whether the suit is barred by limitation (*vide* issue V)?

32. It is unnecessary to draw special attention to the contentions of the parties regarding the alienations made by Sitayya in favour of her daughter, or to those raised in connection with plaintiff's adoption. Issues I, VI and VII have become unnecessary as stated by the Sub-Judge in paragraph 10 of his judgment.

Vide p. 176, para. 10.

6 Moore's Indian Appeals, 17.
23 Indian Appeals, 64.
II Agra Reports, 150.
21 Weekly Reporter, 119.
4 Indian Appeals, p. 223 (227).
12 Indian Appeals, p. 205 (214).
Broom's 'Legal Maxims,' 682.
Drummond *v.* Attorney-General, 2 H.L.C., at p. 861.

33. It is submitted that where several contemporaneous documents have been reduced to writing to evidence a single transaction, the contemporaneous statements and conduct of persons interested and taking part in the transaction must all be looked at as a whole in determining the legal character of the transaction.

34. The Collector was in a sense an arbiter and in fact he brought about the transaction. The settlement was come to at his mediation, with his advice and in his presence. In writing about it, he observes that "after frequent conferences "between Narayya Appa Row and the "above-mentioned parties in my pre-

Ex. H(1), p. 78 (79).

"sence, an adjustment has been effected, of which the following is a brief summary "and which, I trust, will, upon consideration, be deemed by the Board to be "satisfactory . . . the eight vil-

Ex. H(1), p. 79 (80), para. 9.

"lages, viz., Tangellamudi, Kalaparoo, "Kokarapadu, Ponoocalloo, Comaduvole, Nagulapadu, Medinirowpalem and Malaka-"puram *alias* Palagoodam, *shall be permanently alienated to Simhadri and Venkatadri*, "they paying the peishcush. This cession, it will be observed, is proposed "not only in full satisfaction of the whole amount of arrear of the amount due "for the marriage expenses and the monthly allowance of Rs. 400 due up to "this period, but also in lieu of all "further payment on account of the "monthly allowance."

Ex. H(1), pp. 78 (79), 80, 81.

35. The Collector sent translations of the arzis or petitions addressed to him by the two brothers and Narayya with his letter to the Board, asking for sanction of the arrangement.

36. That the two brothers viewed the transaction in the same light and that they accepted the arrangement on the basis of a permanent alienation in their favour of the eight villages, now forming the Tangellamudi mutta, cannot for a moment be doubted. They say in their arzi (enclosure No. VI to exhibit H(1), p. 91): "In lieu of the "amount of Rs. 40,757-2-2, being the "arrears of the allowances due to us "by him (Narayya) from 4th February 1835 up to July 1843 at Rs. 400 per month "as well as Rs. 4,000 on account of marriages, making in all Rs. 44,757-2-2, "he (Narayya) will alienate to us a village, called Malakapuram *alias* Palagoodam, "appertaining to Ambarpet mutta in the Nidadavolu zamindari; that in lieu of "the monthly allowance, which should be continued to us from the month of "August, he will give up to us seven villages, viz., Tangellamudi, Kalaparoo, "Kokarapadu, Ponoocalloo, Comaduvole, Nagulapadu, Medinirowpalem, apper-"taining to the said mutta, making in all eight villages with their sevars or "subordinate hamlets . . . that *these eight villages shall be separated and made "over to us* at the time when the Nidadavolu and Baharzally parganas as well

Enclosure No. VI to H(1), p. 91, at p. 92, para. 4.
Vide also Ex. X, 25-11-46, p. 105 (letter by Simhadri stating that he got Tangellamudi as permanent zamindari).

"as Ambarpet shall be given to him by the Honourable Government and the "separate cowle should be obtained in *our name for these villages fixing the Circar "peishcush* thereon distinctly in proportion to the other parganas according to the "sub-division accounts which may be performed by the Circar and that we may "(after the villages are made over to us) continue to pay ourselves the Circar "peishcush which may be fixed thereon and take receipts for the same *enjoying "the fruit thereof in perpetuity as long as our posterity continues*; moreover that "*Narayya Appa Row or his heirs, etc., shall never at any time advance any claim regard-"ing the villages in question*, nor shall ourselves nor our heirs, etc., bring any claim "hereafter regarding the allowances aforesaid."

37. The Board accepted the arrangement as on the permanent basis and solicited the sanction of Government on the same footing which was accordingly granted, and the eight villages were placed in the possession of the two brothers and sub-divided and separately assessed in their names.

Ex. XVI, 4-1-44, p. 118.
Ex. H, 4-1-44, p. 25.
Ex. XVII, 7-8-44, p. 120.

38. It is important to bear in mind that the Collector had to deal with three kinds of claims—(1) that of simple creditors, (2) that of a widow liable to be maintained for life, (3) that of the two brothers relating to their maintenance under the samakhya which is not forthcoming and the exact terms of which are not known.

39. The three claims have been treated on a different basis—by granting villages for a term of years in the case of simple creditors and by granting a life estate to the widow, while the transfer to the two brothers was to be perpetual and permanent.

40. The circumstances preclude every suggestion that the grant to the two brothers was intended to be treated either by the parties or by the ruling authorities as on the same footing as that made to the widow (adoptive mother of Narayya Appa Row), viz., to enure to their benefit only during the period of their natural lives.

41. The reason assigned by the learned Judges of the High Court* is the language of H(5) which they observed (it is submitted erroneously) is the only document that should be looked at for the purpose of ascertaining the real nature of the transaction.

* Page 198, lines 28 to 30.
Enclosure V to H(1) at p. 90 (*vide* also enclosure V to H at p. 27).

42. It must be here observed that H(5) as also H(6) is only an English translation, the original being in the Telugu language and not forthcoming. The admission of the document was objected to. However, assuming for the present that it is admissible, it is submitted that its language in no way negatives the contention of the third defendant. In H(5) Narayya says: "Raja Simhadri "and Venkatadri having in your (Collector's) presence agreed and presented petition "relinquishing all their claims regarding the payment of arrears of their allowance "due up to end of July 1843 and of the Rs. 4,000 payable to them for marriage "expenses on condition of receiving in lieu thereof a village (Malakapuram) . . . "and in lieu of the monthly allowance of Rs. 400 payable to them hereafter "from the month of August 1843 to receive five zeroyaty villages, viz., Tangel-"lamudi, etc. . . . together with two mokhasa villages . . . making "in all seven villages continuing themselves to pay separately the peishcush "which may hereafter be established and enjoying themselves the fruit and loss "thereof; further *that no claims of whatever nature may hereafter be for ever advanced "either by them for the payment of the said allowance or by us regarding the said "villages*. I also give my assent and agree to abide according to the aforesaid "conditions and humbly solicit you will therefore be pleased to forward our "petitions with your recommendation to the Honourable Government and to the "Board of Revenue, and, at the time when the Nidadavolu and Baharzally parganas "as well as Ambarpet mutta may be made over to me by the Circar, allow the "*aforesaid eight villages* in the Ambarpet mutta to be taken possession of by the

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"said Simhadri Appa Row and Venkatadri Appa Row and continue the aforesaid "conditions in force."

43. In construing the document, the following matters must be borne in mind:—

(1) It is not a formal document in itself, but only a letter written to the Collector intimating the arrangement.

(2) The nature of the arrangement and the details of it were fully known to the Collector himself and actual reference is therefore made in it to the arrangement being made in his presence.

(3) Although the words "heirs" or "from generation to generation" or any other words of the like character are not particularly used, clear reference is made to H(6) wherein such expressions are used by the two brothers. The two documents being contemporaneous, they must be read together and especially when H(5) makes special reference to H(6). Hence * every expression contained in H(6) must be imported into H(5) especially as these petitions were executed in the presence of the Collector and presented to him personally (as expressly referred to therein).

* Fitzmaurice *v.* Bayley, 9 H.L.C., 78 (99)—Per Crompton, J.

(4) Both Courts concede that the grant of Malakapuram in lieu of arrears of maintenance, etc., is absolute and permanent and no intelligible reason is suggested why the grant in lieu of the future maintenance should not be regarded as a permanent one.

(5) The language of the document makes no distinction between the two grants and is precisely similar. Only one sub-division of the eight villages is solicited and the eight villages are dealt with together as a single transfer, while Narayya in H(5) solicits the sanction of Government and prays for possession being transferred over. They were accordingly sub-divided as one lot and formed into a single estate.

Ex. XX, 30-3-49, p. 129 (para. 1), 135, 137, 151, 155.

17 Mad., 150 (156).

(6) If, as suggested by the learned Judges of the High Court, a life estate only was intended in the case of the seven villages, then it is nearly certain that Malakapuram alone would be sub-divided and separately assessed, while the remaining seven villages would be treated on the same footing as in the case of the village granted to Lakshmikantamma. It would not be out of place to draw special attention to the careful expressions used and the provisions made by Narayya while creating a life estate in favour of the widow. These are—(*a*) She shall enjoy during her life and the property is to be taken possession after Lakshmikantamma's demise. (*b*) She shall not alienate or transfer or make over the village to any other.

Enclosure 7 to H(1), p. 94.

44. If, as the learned Judges consider, Narayya intended that the seven villages should be enjoyed by the two brothers only during their lifetime, he would not only have avoided treating them on the same level as Malakapuram, but would have distinctly stated that it is to last only during their lifetime, and that they should revert to him after their death, and provisions prohibiting alienation, etc., would have been made just in the same manner as in the case of Tadaparru granted to Lakshmikantamma. Further, the conduct pursued by the revenue authorities in respect of the seven villages (surmised by the learned Judges to be granted for life only), as contra-distinguished from that pursued by the parties towards the grant of Tadaparru to Lakshmikantamma, clearly marks the distinction that was made by all the parties concerned in respect of the two grants.

45. Narayya never contemplated a complete sub-division as contemplated by Madras Regulation XXV of 1802 of Tadaparru, the village granted to Lakshmikantamma. A sub-division in a modified form, for which there was no sanction of law, was suggested by Narayya, but the Government, as it appears from the result, did not accede thereto.

Ex. H(1) at p. 80 and enclosures VII and VIII to H(1), pp. 93 to 96.

46. In the final sub-division made consequent upon the settlement of the affairs of Narayya, Tadaparru granted to Lakshmikantamma never finds a place.

Ex. XX, 30-3-49, p. 129.
Ex. V, p. 52.

47. It is submitted that the observation of the High Court,* that "there can be no doubt that *primâ facie* such a disposition of property made in favour of parties entitled to maintenance does not avail beyond the time during which the obligation to maintain exists," is not a necessary presumption under the law. No doubt in the case of widows or other persons entitled to maintenance for life, a grant of land made for the purpose of future maintenance may well be regarded as a grant made for life; but that presumption must be limited to the case of a person who takes only a limited estate under the law. Such presumption has been recognized in the cases of a grant made by a husband to his wife and in the cases of a grant by a person to any female relation, such as a daughter. But even in such cases where the circumstances show that a contrary intention was intended, an absolute estate was held to pass as in the case of a gift to a married daughter likely to have issue.† But where the grant is made to a person who ordinarily does not take a life estate and who is not known to belong to that class of persons who take only a limited estate such presumption ought not to be recognized.

* Page 198, lines 34 to 36.

† 16 Mad., 466, at p. 467.

L.R., I.A., Sup. Vol. I., 47 (65). (Gift to a man simply will carry an absolute estate.)

48. No doubt Mr. Mayne, in his book on 'Hindu Law' (5th edition), says in para. 425: "As a general rule property "allotted for maintenance is resumable "at the death of the grantee, the presumption being that the income only was "granted and not the body of the fund." But it is submitted that this view is incorrect as a general rule of Hindu law and moreover the authorities relied on by him do not bear out the position he takes up.

Mayne, p. 522.

49. The first case cited by him is the case in 22 Weekly Reporter, 225. In that case it was found, as a matter of fact, a custom to resume a maintenance grant on the death of the grantee existed and the defendants themselves (grantees' heirs) admitted the existence of such a custom (*vide* page 227). At page 226 the learned Judges, who decided that case, stated "it was the duty of the plaintiff "to prove the custom to resume." So, far from its being held that it was the general rule of Hindu law that a maintenance grant is resumable at the death of the grantee, it was held in this very case (22 W.R., 225) that the grantor must prove that he had a right to resume by custom.

22 W.R., 225.

22 W.R., 227.

50. The next case relied upon by Mr. Mayne is I.L.R., 4 Mad., 193. The grant in this case was made by the Devarakota zamindar to his paternal grandmother, a widow, in lieu of her claim for maintenance. As was already stated, a grant to a widow would only enure during her lifetime unless there are circumstances (or expressions) showing a larger estate was intended. The grandmother's contention in this case was that she was entitled to hold the property for her life. She never contended that the grant would enure to her absolutely. Therefore no question could arise as to the grantor's right to resume the estate after the death of the grantee. The respondent (grantor) contended, among other things, that the grant could enure only during the lifetime of the grantor. The learned Judges, in discussing that contention, observe: "In the absence of express "words to the contrary, a grant for a specific object will enure from its nature until "the object fails. Ordinarily a grant for maintenance will enure so long as the "grantee is entitled to be maintained provided the grantor is entitled to make it ". . . The proposition, therefore, that a grant by a zamindar does not enure "beyond his life is confined in its operation to grants which, if made by a manager "of an ordinary Hindu family, would not bind the family." These observations

I.L.R., 4 Mad., 193.

must be taken to refer to the position of the grantee in this case, who was, as already stated, a widow. The very same observations would show that in the case of males, who ordinarily will have issue and who under the general law do not take a life estate simply, a grant for maintenance in their favour should enure for them and their heirs. No doubt the learned Judges, who decided the case later on, observe: "As a general rule, property allotted for maintenance is resumable at the death of the grantee, the presumption being that the income only was granted and not the *corpus*." The observation is based upon the decision in 22 W.R., 225, which, as has already been remarked, does not bear out the position for which it was cited.

I.A., Sup. Vol., 47 (65).

22 W.R., 225.

51. The third case relied upon by Mr. Mayne is the one reported in I.L.R., 5 Calc., 113. The case proceeded upon a special custom with reference to impartible raj in Chota Nagpur. The decision is based on 5 Moore's Indian Appeals, p. 82, which was a case also arising in Chota Nagpur and in which counsel and the party admitted that a grant for maintenance ceases with the life of the grantor.

I.L.R., 5 Calc., 113.

52. The last case relied upon by Mr. Mayne is the one reported in I.L.R., 10 All., 462. This case is no authority for the proposition enunciated by Mr. Mayne. The Judges do not lay down any rule of Hindu law that a grant for maintenance should cease with the life of the grantee. The grant was made to a widow in this case and the lower Courts found that the grant was made to her only during her lifetime and for her maintenance. The question arose whether it was her stridhanam or whether the grantor had any reversionary right which was capable of being attached. The learned Judges held that the grant being limited to an interest for life, it was not her stridhanam.

I.L.R., 10 All., 462.

53. Further, where a money allowance has been fixed and subsequently is commuted into a grant of land, it is submitted the presumption is the other way, viz., that the land was given in quit of all demands for maintenance. This was so held even in the case of widows * and other persons who would take only a life estate, and the argument would apply with greater force to males and to the case of these two brothers. Even if the presumption, if any, could exist that a grant for maintenance only enures during the lifetime of the grantee, still the peculiar circumstances under which the grant in question was made totally destroys such presumption.

9 Moore's Indian Appeals, p. 55 (65).

* 23 I.A., 37.

54. Further, we must bear in mind the circumstances † under which the commutation took place. There were many complaints by the two brothers about the irregularity or more strictly speaking the continuous withholding of the allowance. All parties including the Government would naturally desire to put a stop to such state of things and it is but natural that the two brothers should prefer a permanent arrangement which would save them, their sons and grandsons coming after them from the same kind of worry and privation. Such descendants of the two brothers would be clearly entitled to be maintained out of the estate, as at the time when this arrangement was made Nidadavolu was regarded as an impartible estate.

† 12 I.A., 205 (214).

L.R., 20 I.A., 9.

55. The matter is left not merely for surmise or suggestion. The two brothers actually say in H(6) that the arrangement was to enure to the benefit of themselves and their heirs, and it is submitted that Narayya should be taken to have said the same when he assented to the arrangement by specially ‡ referring to H(6) in his letter H(5) to the Collector.

‡ Fitzmaurice *v.* Bayley. 9 H.L.C., 78 (99).

56. It may at once be stated here that Narayya by his subsequent conduct and treatment of the property has himself shown beyond all shadow of doubt that the grant was an absolute and a permanent one to the two brothers and their heirs as will be shown further on; but before doing so, it will be necessary to notice the transfer of Chevendra granted by Sobhanadri's branch to the two brothers. One further observation of the learned Judges has to be noticed. They observe that the village of Malakapuram was granted to satisfy the claims of the two brothers for arrears of maintenance, while the seven villages were given for enjoyment of the two brothers in lieu of the future maintenance allowance of Rs. 400, and that thus a distinction has been clearly maintained between the two objects.

* 4 I.A., 223 (227).
12 I.A., 205 (214).
Broom's 'Legal Maxims,' p. 682.
Drummond *v.* Attorney-General, 2 H.L.C., at p. 681.

57. It cannot be denied that a single disposition or grant for the combined objects of arrears and of future maintenance would have been the simpler method, where without distinction the grant is to be absolute and permanent in favour of the grantees. The utmost that could be said against the appellant (third defendant) is, that the separate mention of the purposes demands a scrutiny as to the nature of the grant in respect of each purpose. It is submitted that the above fact alone cannot conclude the nature of the grant itself. No doubt the two purposes are mentioned and the villages are apportioned in respect of each, but still all the villages (the whole eight) are treated alike and given as a single disposition † to be held and enjoyed under the same title. That a more cumbrous method was employed instead of a simple one cannot destroy its character.

† 17 Mad., 150 (156).

58. That the parties were not particularly mindful about simplicity of methods in settlement will appear from the settlement made with the other claimants. Birjee Mohen Doss and Venkatareddi were to hold certain villages for a term of years in full satisfaction of whatever was due to them. It was not necessary to say what amount was due to each, what amount was relinquished and what was still due, while the term of years might be simply stated to be in satisfaction of all their claims till then due.

59. The grant of Chevendra three years later (1846) by the Nuzvid branch of the family, the terms of the grant and the subsequent manner in which it was dealt with and the intimate connection of Narayya are of considerable importance. It will be seen from the genealogy that the father of Sobhanadri and the father of the two brothers were uterine brothers. Under the settlement made by Simhadri with the two brothers, Sobhanadri had to pay Rs. 200 per month for maintenance and for marriage expenses.

See para. 11 *supra*.

60. In lieu of the past arrears and marriage expenses and in lieu of the future allowance, the mutta of Chevendra, consisting of six villages, namely, Chevendra of Vinnakota pargana, Penjendra of Gudivada pargana, Gonnooru of Kalidindi pargana, Gannavaram of Khittarujhalli, Tadigudapa, Penamakuru and the village of Meduru, was granted under exhibit XXI, page 159, called a farikhat,‡ to the two brothers to be enjoyed by them permanently as their zamindari from son to grandson and so on in succession.

Ex. XXI, 15–3–46, p. 159.
Vide also Plaint, p. 3. 2, para.

‡ Or a deed of partition.

61. The High Court concedes, and it is not possible to doubt it, that this grant is absolute and permanent. The High Court, conceding it to be so, point to it as a circumstance against the defence as affording a contrast as to the nature of the disposition evidenced by exhibit H(5), but it will be presently pointed out that Narayya's connection in subsequent dealings relating to this property is one of the strongest circumstances in favour of the defence as disclosing the conduct of

Narayya, the grantee himself, as to how he viewed the transaction relating to the grant of Tangellamudi mutta under exhibit H(5). Exhibits VII and XXII are petitions in which the two brothers asked for sub-division of Chevendra mutta permanently in their names as per exhibit XXI, and exhibits VIII and XXIII are petitions by Sobhanadri consenting to such division upon the absolute and permanent basis. Exhibit XIII is the letter by the Collector recommending such sub-division which would prevent all further complaints which had been repeatedly preferred to him before. The Board in its letter recommended it to Government by exhibit XIV.

XXII, 15-3-46, p. 161.
VII, 27-3-46, p. 90.
Page 159.
XXIII, 15-3-46, p. 164.
VIII, 4-4-46, p. 101.
XIII, 21-4-46, p. 110.
XIV, 15-5-46, p. 111.

62. Soon after the acquisition of Chevendra mutta by the two brothers, they entered into a partition between themselves on 7th August 1846 by exhibit I. Narayya Appa Row was invited to mediate and upon his mediation the immovable property owned by the two brothers was separated and divided into two lots.

I, 7-8-46, p. 32.

63. The first lot consisted of the eight villages of Tangellamudi mutta. The second lot consisted of the six villages of Chevendra mutta granted to the two brothers under exhibit XXI as aforesaid and of two villages which the two brothers directly acquired under Government, viz., the jaghire village of Ravicherla and the zamindari village of Sriramavaram. Of the two brothers, Raja Simhadri Appa Row was to take only the Tangellamudi mutta, while Venkatadri was to take the Chevendra mutta and the two jaghire villages.

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64. As recited in the document * it was settled that Raja Simhadri Appa Row should allot shares through and in the presence of Raja Narayya Appa Row Bahadur Garu and that Venkatadri Appa Row should take the share he may choose. The document recites at page 32: "*The zamindar of Nidadavolu having* "*given Tangellamudi and seven other villages* attached to the mutta of Ambarpet in "that zamindari for the money payable by him and the *zamindar of Nuzvid the* "*six villages of Chevendra* mutta attached to Pentapadu zamindari for the money "payable by him, *to be enjoyed by us both from son to grandson and so on in succession*, "arranging that there shall not be disputes of any kind at any time between us "and them, and presented arzis also to the Collector." The document then goes on to say at page 33: "I, Raja Simhadri Appa Row, received of my free will "the nine villages of Tangellamudi, etc. . . . As we both have each taken a "share in the said manner and received the documents pertaining to the share of "each respectively and as therefore the profits and loss pertaining to the share of "each of us should go to him respectively, each should continue to cultivate largely "his villages, pay the peishcush payable to the Circar every year on his respective "villages according to the kists (instalments) *and enjoy from son to grandson and so* "*on in succession the villages pertaining to his share respectively*. We need, therefore, "never lodge claim of any kind against each other saying that there is excess or "deficiency in regard to shares or that the documents pertaining to the share of "one are with the other. Further as we both are born of one and the same womb, "the villages pertaining to the share of us both shall pass only to the sons and "grandsons of us both and their descendants in future, but they shall not pass to "any others. If considering the fact that the said lands . . . for us both "... are small ... the Honourable Government be graciously pleased "to provide us with any other income, whether in the shape of lands or cash, that "also shall go to both of us in equal shares. We have this day submitted to the "Collector of Masulipatam district an arzi together with a copy of this farikhat, "requesting that the muttas of each individual may be registered in his name *to be* "*enjoyed permanently from son to grandson and so on in succession* in accordance with the

* Ex. I, 7-8-46, p. 32.

"terms aforesaid. *We both will, and our sons and grandsons and so on in succession* "*shall, therefore, enjoy the said villages happily* henceforward so that neither we nor "our descendants shall have claim of any kind against each other at any time." Raja Narayya Appa Row has attested the document signing his name along with the executants (the two brothers).

65. It is submitted that it is not possible to conceive that Narayya would have mediated or attested or in any way connected himself with the partition * if he did not himself believe the grant of Tangellamudi was an absolute and a permanent tenure. When Chevendra was to go to Venkatadri for himself and his heirs, Simhadri was to take Tangellamudi absolutely for himself and his heirs (from son to grandson and so on in succession) as their respective shares on partition. It seems to be absurd to suppose that, while one brother Venkatadri was to take absolutely and for ever the villages granted by the Government and Chevendra mutta, which admittedly were absolute and permanent grants, the other brother Simhadri was to take only the Tangellamudi estate, which, if the High Court's view should be right, was held on a precarious tenure and given for the personal benefit only of the grantees, to be resumed by the grantor at the termination of the lives of the grantees. Special attention is requested to the terms of exhibit I relating to the Tangellamudi mutta.

* Ex. I, 7-8-46, p. 32.

Para. 64 *supra* (wherein is quoted paras. 3 and 5 of exhibit I at p. 33).

66. That Narayya was fully aware of exhibit I and the terms thereof is shown beyond all doubt not simply from the fact of his signature, but also from the fact that he was in a certain sense responsible for the transaction, being himself the mediator as shown in the recitals of exhibit I.

5 C.L.R. (P.C.), 439, at p. 447.

67. A possible objection that may be urged, which however was not relied on by the plaintiff in the Courts below, is that the estate of Tangellamudi must be taken to be bigger and more valuable than the Chevendra mutta, inasmuch as the former was granted in lieu of the allowance of Rs. 400 a month, while the latter was given in lieu of the allowance of Rs. 200 a month and that a permanent interest in Chevendra might be equal to a limited interest in Tangellamudi; but this objection is of no avail as in point of fact the mutta of Chevendra seems to be nearly as large as that of Tangellamudi as observed by the Subordinate Judge at page 181, lines 24 to 27, and accordingly we find that Chevendra with the other two villages was granted for the share of one brother (Venkatadri), while Tangellamudi went to the share of the other (Simhadri).

Vide also Ex. XX, 30-3-49, at p. 157.
Ex. V, p. 52.

68. The several sub-divisions which were in contemplation in connection with the settlement of Narayya's affairs were still not completed and carried out. The sub-divisions originally proposed were that (1) Pentapadu, Gundugolam, and Chevendra villages were to be given to and sub-divided in favour of Nuzvid; (2) Tangellamudi to be given to and sub-divided in favour of the two brothers; (3) the remaining zamindari of Nidadavolu to be given to and sub-divided in favour of Raja Narayya Appa Row, the Government in the meanwhile being in possession of the whole and entitled to the same by virtue of their own right of purchase for arrears of revenue.

Ex. XV, 18-11-43, p. 113, and paras. 14 and 15 *supra*.

69. The Government subsequently put the three villages, viz., Pentapadu, Gundugolam and Chevendra, in the possession of the Nuzvid Zamindar and the mutta of Tangellamudi in the possession of the two brothers. In consequence of exhibit XXI and exhibit I further variations had to be made and thus in result the estate of Nidadavolu had to be sub-divided into four portions—

Vide Ex. XV, p. 113.

(1) Pentapadu out of the three villages originally granted to Nuzvid was to be sub-divided in favour of Nuzvid (Raja Sobhanadri Appa Row), Chevendra having been given away to the two brothers under exhibit XXI.

(2) Chevendra mutta in favour of Venkatadri under exhibits XXI and I.
(3) Tangellamudi in favour of Simhadri under exhibits H(5), H(6) and I.
(4) The remainder of Nidadavolu in favour of Narayya Appa Row.

70. In all the correspondence between the parties and the Government authorities (as from the Collector to the Board and from the Board to the Government), the first three sub-divisions were treated on an equal footing as permanent and absolute alienations and the sub-divisions were effected accordingly. Exhibits V and XX explain the sub-divisions ultimately effected.

Ex. XX, pp. 129 (paras. 1 and 2), 130, 151, 155, 157.
Ex. V, p. 52.

71. It is submitted that it is but a fair presumption to make that Narayya must have known of the assertion of title which the two brothers were making with reference to these properties as their freehold and as appertaining to them absolutely and permanently. That he must have been equally cognizant that the Government authorities were dealing with the properties on the same footing will clearly appear from the numerous documents to which reference has already been made. That he was taking an active part in these sub-division proceedings is likewise abundantly clear (*vide* exhibit XII at pages 107 and 108) and further he was the last to be placed in possession of the estate by the Government (exhibit XVII, page 120, at page 121, paras. 3 and 5).

Ex. XII, pp. 107 and 108.
Ex. XVII, p. 120 (121), paras. 3 and 5.

72. Not merely is there a presumption raised as aforesaid, but on the contrary the strict rules of interpretation [of the documents H(5), H(6) and I] would seem to lay down that Narayya could not be heard to say that he was ignorant or unaware of what was contained in exhibit H(6) while he himself expressly referred to it in exhibit H(5) and of what was contained in exhibit I.

Fitzmaurice *v.* Bayley, 9 H.L.C., 78 (99).
Per CROMPTON, J.—"By referring in a document signed by the party to another document, the person so signing in effect signs a document containing the terms of the one referred to according to the maxim, *Verba relata in esse videntur*."
5 C.L.R., (P.C.), 439 (447).

73. Apart from all presumption in the circumstances of the case, exhibit XII, page 107, which is an arzi from Narayya himself, not only brings home to him that he had knowledge of the sub-division proceedings, but also contains his own admission that Tangellamudi is to be treated as the property of the two brothers just in the same manner as Pentapadu and the other had become the permanent, absolute and indefeasible property of Sobhanadri.

Ex. XII, 4-4-50, p. 107.

74. Hence it is impossible to conceive any right of reversion which can serve as the foundation for the plaintiff's claim.

75. The observations above made were based on the supposition that exhibit H(5) is admissible in evidence; but it is submitted that it is not admissible in evidence. The Subordinate Judge finds that the original of exhibit H(5) is not forthcoming and has been destroyed in the flood of 1864. Granting it to be so, under section 64 a copy as mentioned therein is the only secondary evidence admissible, but a translation submitted by some clerk cannot be regarded as admissible secondary evidence. No doubt the marginally-noted cases * will show that such translations are admissible in evidence; but it is submitted they are erroneous and not based on the right principle and there has been no final authoritative ruling on the point.

Evidence Act, section 64.
* The Sub-Judge relies upon a case in 25 W.R., 68; but this decision is only an authority for holding that a razinamah filed in court, being a public document, can be proved by a certified copy from court. A more direct authority is the case in 14 Mad., 431.
Objection taken before the Sub-Judge, p. 178, para. 13.
Additional grounds to High Court, p. 192.

76. It may no doubt be said that if exhibit H(5) is to be excluded H(6) will also have to be rejected. Still the residue that is left, it is submitted, amply show the absolute and permanent character of the grant to the two brothers. The recital of Narayya's letter in exhibits H and H(1), wherein the Collector and the Board state the net result of the grant and its nature, would be admissible in evidence under section 35 of the Evidence Act as being statements made by public officers in the course of their official duty.

Ex. H, p. 25, para. 3.
Ex. H, p. 27, para.
Ex. H(1) p. 78 at 79, and p. 81, paras. 9 and 13.
Vide also Ex. XV, p. 113, para. 9.
Ex. XVI, p. 118, para. 3.
1 I.A., 209 (238).
18 Mad., 266 (275).

77. Again, the recitals in exhibit I, wherein Narayya practically states that Tangellamudi should go to Simhadri and his sons and grandsons and so on in succession, would be admissions on his part of the character of the grant.

78. The importance of these documents and their bearing on the case has already been referred to.

Vide paras. 34 and 64 *supra*.

79. Before leaving the subject as to the nature of the grant to the two brothers, one observation has to be made.

80. The extreme view taken by the High Court that the grant was personal was not the view taken by the plaintiff herself of her own case or by the Subordinate Judge who tried the case in the first instance.

81. Both the plaintiff and the Subordinate Judge evidently construed the expressions "posterity" and "heirs" appearing in exhibit H(6), which is expressly referred to in H(5), as words of limitation—an error not uncommonly made, as observed by the Privy Council,* where similar expressions have been used as "generation to generation," "son to grandson," which are erroneously construed as confining the enjoyment of the estate to the grantees and their descendants. The plaintiff only placed a most stringent interpretation upon the expression "posterity" so as to include only such descendants or posterity as would have a claim for maintenance upon the grantees and the estate. In this restricted view, the first defendant, who was only a married daughter of Simhadri, and the third defendant, who was only a daughter's son of Simhadri, were not members entitled to maintenance upon the estate, though they both were undoubtedly included in the expression "descendants" or "posterity" (when taken in the ordinary and grammatical sense). Hence it was that plaintiff stated her cause of action to have accrued to her upon the death of Sitayya on 17th February 1885. This view was accepted by the Subordinate Judge as he held † that Sitayya, as a widow of Simhadri, had a claim for maintenance upon Simhadri and the estate.

* *Vide* 9 M.I.A., 55.
5 I.A., 138 (147).
Vide also 17 Mad., 150 (157).

Plaint, p. 3, para. 9.

† Page 182, lines 30 to 34.

82. It will be necessary to advert to the subject again (when I have to deal with the other points in the case), but attention is solicited for the present to the fact that the extreme view taken by the High Court as to the limited nature of the grant, viz., its being personal and confined solely to the grantees themselves, was not, as pointed out already, the view taken up by the plaintiff or by the Subordinate Judge himself.

Paras. 80 and 81 *supra*.

83. Before going to the other points in the case, a few more facts have to be noticed. Simhadri died on 10th November 1861. Venkatadri, the survivor of the two brothers and the present second defendant, commenced an action against Sitayya upon the ground that exhibit I was only an arrangement for convenient enjoyment, that the coparcenary was maintained till Simhadri's death, that he became entitled to the whole by right of survivorship, and that Sitayya was not

entitled to Tangellamudi as the same passed to him by survivorship. Venkatadri was vanquished and his suit dismissed by the District Court and High Court which became final. It was held that Simhadri and Venkatadri divided by virtue of the partition deed (exhibit I), that Tangellamudi had become the absolute separate property of Simhadri, and that, upon his death, the estate devolved upon Sitayya, his widow, in preference to Venkatadri.*

District Court's judgment (Innes)—Ex II, 24-9-63, p. 35, at p. 38, paras. 9, 10 and 11.
O.S. 3 of 1863, p. 39, paras. 12 and 15.
High Court's judgment (Phillips and Frere, JJ.)—Ex. III, 28-5-64, p. 43.

* When the estate was transferred by Sitayya to her daughter and the latter wanted to get the estate registered in her favour a fresh litigation ensued, which went up to the Privy Council, and again Venkatadri pressed the contentions which he raised in O.S. 3 of 1863, but these were overruled throughout.

84. It need hardly be observed that, if the grant of Tangellamudi was absolute, the first defendant in the suit, who was the daughter's son, would be entitled to maintain his possession both against Venkatadri and the plaintiff.

District Court judgment—Ex. A, 16-3-83, p. 9.
High Court judgment—Ex. B, 26-2-84, p. 14.
10 Mad., 15 (P.C.).

85. Plaintiff's case is that by reason of the partition (exhibit I) and the severance of the coparcenary interest of the two brothers as found and declared by the judgments (II and III) such interest as Venkatadri and his branch had in Tangellamudi had ceased to exist; that consequently the plaintiff's right to resume the estate would accrue to her despite the existence of Venkatadri and his branch. This contention was accepted as sound by the Subordinate Judge (page 182, para. 21, lines 6 to 16). In that view of the case, the plaintiff's right to resume would accrue to her upon the death of Simhadri, in 1861, unless the interpretation sought to be placed by her upon "posterity" could be accepted as correct. Such interpretation is not warranted. Ever since the death of Simhadri, Sitayya was claiming the estate as the absolute property of her husband.

This contention was, however, overruled by the previous Subordinate Judge in the old judgment, p. 62, para. 31.

86. *Second point—Whether plaintiff has a right to sue (vide issue III).*—The next point is as to the plaintiff's cause of action. It is submitted that, according to the plaintiff's own showing, plaintiff had no cause of action for the institution of the suit. According to the plaintiff's own case and according to the construction placed by the Subordinate Judge upon the grant, it was to enure to the benefit of the two brothers and their posterity even though in a restricted sense. If that view were correct, no suit could be maintained at any rate so long as one of the grantees and his branch, viz., the second defendant and his line, are alive. The Subordinate Judge's view that, as under exhibit I the second defendant gave up his rights and became divided from Simhadri and as he was defeated by the judgments (II and III), Venkatadri's interest in Tangellamudi ceased and that the plaintiff therefore gets a cause of action against the third defendant and can recover the estate from him is upon the face of it unsound and unsustainable. Any arrangement which the two brothers might make between themselves in adjustment of their rights cannot enure for the benefit of Narayya and his representatives, and it cannot by any means accelerate the rights of the plaintiff, if any existed. The observation † of the Subordinate Judge that the validity of the objection depended upon its being taken or abandoned by the fourth defendant is clearly unsound. Third defendant would be entitled to take it and defend his possession, and the Subordinate Judge ought to have thrown out plaintiff's suit upon the ground that plaintiff had no right to sue. Even upon the narrower construction placed by the High Court upon the grant, viz., that it was personal to the two grantees, still the plaintiff would have no cause of action, as one of the grantees, viz., Venkatadri, was alive at the date of suit.

Para. 31 *supra*.

† Para. 21 of the Subordinate Judge's judgment, pp. 182 and 183 (lines 12 to 16 in p. 183).

87. The objection was taken in the written statement, page 6, para. 2, and it was the subject of the third issue. The Subordinate Judge deals with the issue in para. 21, page 182, wherein he says: "They (the two brothers) effected a "complete sub-division under exhibit I. The plaint eight villages . . . fell "to the share of third defendant's maternal grandfather (Simhadri) . . . As "regards the second defendant he gave up his rights to the plaint villages "completely under the deed exhibit I . . . Again in vain he attempted to "recover the plaint villages and was defeated under the judgments (II and III) " . . . His son is brought in as his legal representative and is placed as the "fourth defendant; but the fourth defendant makes no plea . . . The objec-"tion on the part of the third defendant that plaintiff cannot resume though "Simhadri's line became extinct, simply because the other line of Venkatadri is "not extinct, is not, in my opinion, sound. If the fourth defendant takes this objec-"tion, it is a nice question for consideration." In the tenth ground of appeal to the High Court (*vide* page 191, also page 197), the objection is taken to that portion of the decision of the Subordinate Judge referring to it in almost the same language as that used by the Subordinate Judge himself.* Under these circumstances it is a matter for disappointment and regret that the High Court should have observed † that the ground was not taken by the appellant in his memorandum of appeal.

* Page 182, para. 21

† Page 199, lines 9 and 10.

88. It is therefore submitted that the plaintiff's suit ought to have been thrown out on the preliminary ground that, upon plaintiff's own showing, she had no cause of action (no right to sue).

89. *Third point—Whether the suit is barred by limitation (vide issue V).*—The bar of limitation arises in this way. Simhadri died in 1861. Upon his death Sitayya, his widow, entered upon possession of the estate claiming the same as the absolute property of her husband by right of succession. The litigation of Venkatadri set forth in detail in paras. 83 and 84 *supra* will clearly show the character of Sitayya's enjoyment and the rights which she was asserting. This possession will be clearly adverse unless the plaintiff's contention were correct that, on Simhadri's death, she was not entitled to take possession of the estate by reason of the fact that his widow was entitled to be maintained out of it. It is submitted that the right of Sitayya's maintenance and the measure and rate of maintenance to be adopted would be entirely different from those applicable to her husband. Sitayya being only entitled to maintenance as the widow of Simhadri, would have no right to enter upon possession of the estate and enjoy the same.

Para. 31 *supra*.

90. Supposing an undivided brother of a family should die possessed of family property, which his widow claims as his self-acquisition and enjoys during her lifetime with open assertion of her title as the separate property of her husband, it is submitted that the claim of the surviving undivided brother to recover the property from the possession of the widow during her lifetime would be barred by limitation, and the property acquiring such separate character would retain its character even on the widow's death, and the daughter or daughter's son of the husband of the widow would be entitled to claim the property.

MADRAS,
20th February 1899.

C. RAMACHANDRA RAO SAHEB,
High Court Vakil.