Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Strimathoo Moothoo Vijia Ragoonadah Ranee Kolandapuree Natchiar, alias Kathama Natchiar, and others v. *Dorasinga Tever, alias Gowry Vallaba Tever, from the High Court of Judicature at Madras; delivered Wednesday, February 10th,* 1875.

Present:

SIR JAMES W. COLVILE.
SIR BARNES PEACOCK.
SIR MONTAGUE E. SMITH.
SIR ROBERT P. COLLIER.

THIS is an Appeal against the decree of the High Court of Madras affirming a decree of the Civil Judge, of which the ordering part is in these words:—"The Court doth order and declare "that as between the Plaintiff and second "Defendant, Plaintiff be declared the next in "succession to the Shevagunga zemindary, "that Plaintiff's claim to maintenance and "apartments be dismissed, and that he pay so "much of his own costs as may be found due "thereon." There was no appeal to the High Court against the latter part of the decree dismissing the Plaintiff's claim for maintenance and apartments, and therefore that which is the subject of the Appeal must be taken to be the declaration of the two Indian courts that the Plaintiff is the next in succession to the Shevagunga zemindary.

The title to this zemindary was the subject of a very long litigation, which was finally closed by a judgment of this tribunal in the year 1863.

The points then decided were, *first*, that the zemindary was in the nature of an impartible raj, to be held by one member of the family; *secondly*, that the zemindary, having been granted by the Madras Government, after an escheat, to the Istimirar zemindar, was to be treated as his self-acquired property; *thirdly*, that the right of succession to it was to be determined, not by any particular custom, but by the general Hindoo law prevalent in that part of India, with only such qualifications as might follow from the impartible character of the subject. These propositions were, at least in the latter stages of the litigation, not much disputed. That which was really contested between the parties was that even if the Istimirar zemindar were, as he had been found to be, in the strict sense of the term, a member of an undivided Hindoo family, the succession to this zemindary, inasmuch as it was his separate self-acquired property, was to be determined by the rules which regulate the succession to the property of one separate in estate, and consequently, that his wife, daughter, and daughter's sons were entitled to inherit it in preference of a brother, a brother's son, or any more remote collateral in the male line. This last point had been first raised by the zemindar's last surviving widow, Angu Muthu Natchiar, in a suit commenced in 1845. It was decided against her by the judge of first instance in 1847. She appealed against his decree to the then Sudder Court of Madras, but died in 1850, before her Appeal was heard. Thereupon there ensued a very complicated and confused litigation amongst the descendants of the Istimirar zemindar, touching their respective titles to succeed to the right claimed by the deceased widow, and to prosecute her appeal. The claimants were first Kathama Natchiar, who is the first on the record of the present Appellants,

her sister of the whole blood, and her half sister, all of whom seem to have been daughters of the zemindar, then having or being capable of having issue; secondly, Sowmia Natchiar, a fourth daughter, who was a childless widow; and, thirdly, Moothoo Vadooga, a grandson of the Istimirar zemindar by a deceased daughter, and, as would appear by the pedigree admitted in this cause, an elder brother of the present Respondent, who is since dead. The final judgment of this Committee determined both the question of representation raised between these parties, and also the question of succession raised in the widow's suit, against the person claiming as nearest male heir in the collateral line of the Istimirar zemindar. It determined these questions by a declaration in these words: "We shall therefore humbly "recommend Her Majesty to reverse the decrees "and orders complained of by this Appeal; to "declare that the suit of 1856, which appears to "us to have resulted from erroneous directions "given by the Sudder Court,"—that was a suit brought by the widow as an original suit,—"ought to have been and ought to be dismissed; and in the suit of 1845, to declare "that Sowmia Natchiar and Mootoo Vadooga "were not, nor was either of them, but that the "Appellant and her sisters were, as against the "Respondent, entitled to prosecute the Appeal, "and to recover the zemindary; this declaration "to be without prejudice to the rights of the "Appellant and her sisters *inter se*." The sisters, as appears by the admitted pedigree in this cause, have since died. There is indeed a statement in Mr. Moore's report that they were dead at the time when the judgment was pronounced, but, however that may be, it is certain that under the order of Her Majesty, made in pursuance of that judgment, the first Appellant became the zemindar of Shevagunga, taking it

as the heir of her father next in succession to the widow.

That having been the state of things for some years, the present Respondent brought the suit out of which this Appeal has arisen. The first paragraph of his plaint claimed "to recover the "zemindary of Shevagunga for the Plaintiff as "the eldest surviving male heir of the Istimirar "zemindar." But this somewhat desperate attempt to re-open the question which had been closed by the judgment of this Board was shortly afterwards abandoned, and by a subsequent proceeding he withdrew the claim to any right to immediate possession and amended his plaint accordingly. The plaint then went on to pray in the alternative,—"First, to have a declaratory "decree passed, establishing the Plaintiff's right "to succeed to the said zemindary as next "heir after the death of the first Defendant, and "adjudging her to pay him rupees 60,000 "per annum for maintenance, and further "declaring him entitled to immediate possession "of a portion of the palace, No. 1, which was "occupied and enjoyed by his maternal grand-"mother and mother during their lifetime; "secondly, to declare him entitled to immediate "management of the devastanams, pagodas, and "choultries situated in the said zemindary, and "of the lands bestowed on them, to receive the "honours done by the said devastanums and "choultries, and to conduct the affairs thereof; "thirdly, to grant to him such further or other "relief as the nature of the case will admit of." The plaint then stated the title of the Plaintiff, which is in effect, that inasmuch as upon the death of the present zemindar the persons entitled to inherit and to succeed to the zemindary would, according to the ordinary course of Hindoo law, be the grandsons of the Istimirar zemindar if the estate were partible, he, being the eldest of

such grandsons, and the estate being impartible, must be taken to be, by right of primogeniture, the person next in succession to the zemindary. The plaint then raised a case of waste against the first Defendant (the zemindar). After mentioning certain leases which are no longer the subject of dispute, it went on to say,— "The first Defendant has not leased to the "sixth Defendant the punnai (cultivated by "the owner) and kolkriam (purchased) lands "belonging to the said zemindary which was "put in her possession by virtue of the Decree "of Her Majesty in Council, but she, notwith-"standing her being a widow, has alienated, "contrary to law, a great part of the said lands, "and pledged the state jewels, and incurred "debts so as to affect the permanent income of "the zemindary." It then stated some special grounds for coming into Court. It said,—"The "first, second, third, fourth, and fifth Defendants "and others have combined together to defraud "the Plaintiff of his right to the said zemindary, "and the third, fourth, and fifth Defendants "have executed an agreement to their brother, "the second Defendant, assigning to him their "interest in the said zemindary, which they "pretend to have on the death of the first "Defendant. The first Defendant has also "executed a document to one Ponnoosamy "Tever, whose daughter was lately married "to the second Defendant, authorising him "(the said Ponnoosamy Tever) to establish "the right alleged by the first Defendant "to be possessed by her son, the second De-"fendant, to succeed to the zemindary after "her death, and to exercise other powers in "prejudice to the Plaintiffs' interests in the said "zemindary." Then followed the case made for the relief prayed in respect of the management of the charitable institutions and for main-

tenance, which it is unnecessary to state in detail.

The Defendants to the suit appeared and set up various defences, the first and second Defendants impeaching the title of the Plaintiff upon several grounds; the third, fourth, and fifth Defendants setting up a case that the zemindary to which their mother had succeeded had either always been or had become her stridhanum; that according to the proper course of succession it would, upon their mother's death, devolve upon them, but that they had assigned and relinquished by deed their rights in favour of their brother, the second Defendant. Upon these pleadings the following issues were settled: —"1. Whether or not according to Hindoo "law petitioner is entitled to succeed to the "zemindary of Shevagunga at the death of the "present Ranee. 2. Whether or not petitioner "is entitled to succeed to the said zemindary at "the death of the Ranee by virtue of any "peculiar custom which obtains in that zemin-"dary. 3. Whether or not petitioner is es-"topped by this being '*res judicata*' from setting "up any peculiar custom. 4. Whether or not "petitioner is immediately entitled to the "maintenance claimed or what maintenance, as "such, or to apartments in the palace, and what "apartments. 5. Whether or not petitioner's "claim to maintenance and apartments is barred "by the law of limitation. 6. Whether or not "petitioner is entitled to the immediate manage-"ment of the devastanams and chuttrams in "the zemindary, and to the honours connected "with the said management. 7. Whether this "is a suit in which a declaratory decree can be "given at all."

From the judgment of the Court of first instance it appears that the second, third, and sixth of these issues were abandoned. That

judgment conclusively disposed of the fourth against the Plaintiff, and consequently made it unnecessary to adjudicate upon the fifth. But having decided the seventh issue, viz., whether the suit was one in which a declaratory decree could be given at all, in the Plaintiff's favour, it proceeded to decide the first issue also in his favour, and thereupon made the declaration which is the subject of this appeal. The questions raised by these issues were the only questions which were carried to the High Court, and that Court affirmed the decree of the lower Court upon both points.

Their Lordships, feeling that if the seventh issue has been improperly found in favour of the Plaintiff, and this is a case in which a declaratory decree ought not to be given at all, it would be wholly unnecessary for them to discuss the first issue, have in the first instance confined the argument to the first of these questions, and now proceed to give judgment upon it.

They at first conceived that the power of the Courts in India to make a merely declaratory decree was admitted to rest upon the 15th section of the Code of Civil Procedure, the effect of which has been so much discussed. Mr. Doyne, however, raised some question as to that, and suggested that the power was possessed by the Courts in the Mofussil before the Code of Procedure was passed, and had not been taken away thereby. No authority which establishes the first of these propositions was cited; and their Lordships conceive that if the Legislature had intended to continue to those Courts the general power of making declarators (if they ever possessed such a power), it would not have introduced this clause into the Code of Procedure, which, if a limited construction is to be put upon it, clearly implies that any decree made in excess of the power

thereby conferred would be objectionable, the words of the section being:—"No suit shall "be open to objection on the ground that "a merely declaratory decree or order is sought "thereby, and it shall be lawful for the civil "Courts to make binding declarations of right "without granting consequential relief." Nor does any Court in India since the passing of the Code seem to have considered that it had the power of making declaratory decrees independently of that clause.

The point, therefore, to be determined upon this Appeal is, what is the true construction and effect to be given to that clause. It has been broadly urged at the bar that the discretion given to the Courts is absolute, or at least controlled only by those reasonable considerations upon which Courts of Justice may be presumed to act in the particular case brought before them; and that in every case in which they think fit to make a declaratory decree under that clause they are competent to do so, subject of course to having the exercise of their discretion controlled by the appellate Court in cases in which the latter may think there are sufficient grounds for interfering with a discretion which the Legislature has vested in the lower Court. On the other hand, it is contended that the clause must be construed upon the principles and by the light of the decisions of the English Courts of Equity, upon the 50th section of the 15th & 16th Victoria, cap. 86, which is in precisely the same words, and that the true limitation of the power of the Courts is that a declaratory decree is not to be made unless there is a right to consequential relief, which, although not asked for, might, if asked for, have been given.

We have been referred to a vast number of authorities, some to show what has been the construction given to this clause in the Presi-

dency of Bengal, some to show what construction has been given to it in the Presidency of Bombay, and some to show that a contrary construction has been put upon it in the Presidency of Madras. We have also been referred to three decisions of this tribunal, which, if clear and explicit on the point, are of course binding upon us. Their Lordships think it will be sufficient as to the Indian cases to say that although the cases in Bengal are not uniform, and some of the judges there have occasionally used expressions which imply that the Courts have a wide discretion in this matter, still the balance of authority is in favour of the limited construction which the Appellants would put upon the clause. In Bombay that seems to be even more decidedly the case, although the Bombay decisions to which we have been referred are not so numerous as those of the Courts in Bengal. It is obvious that an enactment which is intended to apply to all the Courts in India, and which is also a modern enactment, ought to receive the same construction in all those Courts, and that no inconsistent course of practice should be allowed to spring up in any of the Presidencies. That construction must be governed by the decisions of this Board, and their Lordships in the course of the argument intimated an opinion that the three decisions which have been cited do in fact admit the authority and binding force of the decisions in England, and establish that, with such slight qualifications as may be required by the different circumstances of India and the different constitution of the Courts in that country, the application of the clause is to be governed by the same principles as those upon which the Court of Chancery proceeds.

In the first of these cases (that of *Sreenarayun Mittro*, decided on the 15th of January 1873), there is a distinct reference to the case of *Rook*

v. *Lord Kensington.* The learned judge who delivered the judgment of this Committee said:—
" It has been held that under the 15th and 16th
" Victoria, cap. 86, sec. 50, a declaratory decree
" cannot be made unless Plaintiff would be
" entitled to consequential relief if he asked for
" it. (Hook v. Lord Kensington, 2. K. and
" J. 756.) The 15th section, Act 8 of 1859, is in
" similar terms. The Plaintiff, upon the facts so
" found, is not entitled to any relief against the
" Defendant. It has been shown that, treating
" the documents as mere agreements between
" the Plaintiff and the father of the child, the
" Plaintiff could have no right to maintain the
" present suit." He no doubt afterwards observed,
—" It is not a matter of absolute right to obtain
" a declaratory decree. It is discretionary with
" the Court to grant it or not, and in every
" case the Court must exercise a sound judg-
" ment as to whether it is reasonable or not
" under all the circumstances of the case to
" grant the relief prayed for." It appears, however, to their Lordships that that paragraph is far from claiming an unlimited discretion. The earlier part of the judgment shows that the power is limited by the construction put upon an enactment in the similar words in *Rook* v. *Lord Kensington,* and what follows is merely to the effect that even in cases in which some consequential relief might, if prayed, have been granted, it would still be a matter of discretion whether the Court should make a mere declaration in the particular case.

The next case was that which has been shortly called the case of *Fyz Ali Khan,* decided on the 22nd of January 1873. Upon this point their Lordships then said,—" It must be as-
" sumed that there must be cases in which
" a merely declaratory decree may be made
" without granting any consequential relief,

" or in which the party does not actually seek
" for consequential relief in the particular
" suit; otherwise the 15th section of the Code
" of Civil Procedure would have no operation
" at all. What their Lordships understand to
" have been decided in India on this article
" of the Code, and in the Court of Chancery
" upon the analogous provision of the English
" Statute, is that the Court must see that the
" declaration of right may be the foundation
" of relief to be got somewhere. And their
" Lordships are of opinion that that condition
" is sufficiently answered in the present case
" even if it be assumed that no other con-
" sequential relief was in the mind of the party
" or was sought by him than the right to try
" his claim to enhance in the other forum in
" which he is now compelled by statute to
" bring an enhancement suit." The case there was that the Plaintiff had sought as zemindar to enhance the rent of a tenant. He was met by the objection that the zemindary right was not in him. He then had to go, as he could only go for a final determination of that question, to the Zillah Court, but the Zillah Court not having the power to give him the consequential relief in order to which he sought that declaration, namely, the trial of his right to enhance, could only make the declaration, leaving him to seek for his consequential relief in the Revenue Court.

The correctness or effect of this decision is not affected by the fact which Mr. Doyne pointed out, that the Plaintiff afterwards did go to the Revenue Court, and there, upon the merits of the question being tried, failed to establish his right to enhance.

The most recent case is that of the Rajah of Pachete, decided on the 15th of December 1874. The judgment then delivered contains this pas-

sage,—"Their Lordships do not think it necessary "to determine whether or not the High Court "were right in the conclusion they came to "as to the proof or the rebuttal of proof of "the bromuttur tenure, because in their Lordships' opinion the judgment dismissing the "suit is maintainable on totally different "grounds. This is in substance a suit for "a declaration of title, and it is a suit to set "aside, not any deed nor any act, but a mere "allegation of the Defendants that they had "a certain tenure. In their Lordships' view, "such a suit is not maintainable." After giving the words of the clause, the judgment proceeds,—"A similar clause in this country has been "held to give a right of obtaining a declaration "of title only in those cases where the Court "could have granted relief if relief had been "prayed for; and that doctrine has been applied to this clause in the Indian Act. Now "applying that test, in their Lordships' opinion "this suit is not maintainable. The Rajah "was not entitled to relief in the shape of an "order giving him possession, inasmuch as he "was in receipt of the rents and profits, and "he sought for and could obtain no other "description of possession than that which "he had." There is really no conflict between this decision and that which had been ruled in the case of *Fyz Ali*. In the case of *Fyz Ali* the Plaintiff sought to establish the zemindary title, which was properly triable in the Zillah Court, in order that on the title thereby established he might bring a fresh enhancement suit in the Revenue Court. In this case of the *Rajah of Pachete* the zemindary title was admitted by all the Defendants upon the proceedings; and the question which the Rajah sought to conclude by a declarator was that within his zemindary there was no such bromuttur tenure as that which

some of the Defendants alleged to exist in limitation of the right to enhance, which as a zemindar he would presumably have. In short, he wished to get a declaration, the effect of which would be to prevent the fair trial in the Revenue Court of the very question to be tried there; viz., the question whether he as zemindar was entitled to enhance the rents of his tenants or not.

It seems to their Lordships that these three cases do all more or less affirm that the Indian enactment is to be construed as the English Courts have construed the similar provision in the English Statute, but inasmuch as this question has been so fully discussed at the bar, and there treated as not concluded by those decisions, and as it is desirable to have an authoritative decision upon it, their Lordships think it right to say that if these three cases had not been decided, and if the question were before them as *res integra*, they would come to the above-mentioned conclusion, and I will state as shortly as I can the reasons upon which they would do so.

It is clear that very shortly after the passing of the English Statute, in fact in the course of the following year, the construction of its 50th section came in question in the Court of Chancery. The first decision of Vice-Chancellor Wood, which is reported in the appendix to the 10th volume of Hare's Reports, no doubt states somewhat broadly the discretionary power of the Court to make declarators under that enactment, but in the two other cases which were decided a month or two afterwards, namely, the case of *Greenwood* v. *Sutherland*, and *Garlick* v. *Lawson*, the learned Vice-Chancellor receded from that, and held that the powers of the Court were not so enlarged by the Statute as to enable him to make any declaration touching future interests

during the life of a tenant for life. In the case of *Garlick* v. *Lawson* he said,—"Now a "declaration in the lifetime of the tenant for life "with regard to the interests of the parties "entitled in reversion could not have been made "in a cause at the time that Statute passed, "and therefore could not have been made on a "special case. Then came the new Act, which "merely said that a suit should not be open to "objection on the ground that a merely declara-"tory decree or order was sought. It enabled "the Court, in its discretion, where it should "appear to be necessary for the administration "of an estate, or to the relief to which a Plaintiff "might be entitled to make a decree, notwith-"standing it should be merely declaratory. But "this was not a case in which it was necessary "to do so."

The question next came before Vice-Chancellor Kindersley in *Jackson* v. *Turnley*. At the close of his elaborate judgment on the particular case, the learned judge says,—"I am of opinion that "this question cannot be litigated; that the "representative of a deceased lessee cannot file "a bill against the lessor to litigate the question "whether, in the event of a breach of a covenant "taking place, the lessor would have a right "founded upon it, and I may observe that the "last branch of the section is not unimportant. "It says,—'It shall be lawful for the Court to "'make binding declarations of right, without "'granting consequential relief.' That seems to "imply that it contemplates a case in which the "Court is capable of giving consequential relief. "Here there is not merely no consequential "relief asked, but none is capable of being "given."

In the case of *Rooke* v. *Lord Kensington* Vice-Chancellor Wood also put the same construction upon the words of the clause. He

said,—" The form of that section of the Statute " implies that there is a consequential relief " which might be granted in each case when the " right has been so declared, but that the parties " are not to be compelled to ask for that relief, " and they may satisfy themselves by simply " asking a declaration of right, and not pursuing " the matter further."

That decision was followed shortly afterwards by the case of *Lady Langdale* v. *Briggs*, which is the more important, because there, as here, the question was whether the clause empowered the Court to declare future interests. Lord Justice Turner went at great length through the earlier cases, in order to show that it was against the general course and practice of the Court to do this; that that had not been altered by his own act, enabling the parties to state a case for the adjudication of the Court; and then he proceeded to deal with the argument which had been raised before him, to the effect that under the more recent Statute, the 15th and 16th Victoria, cap. 86, that power was given. He says,—" Some aid to the Appellant's argument on " this part of the case was also attempted to be " drawn from the 50th section of the 15th and 16th " Victoria, cap. 86, the Improvement of Jurisdic- " tion Act, but I take the same view of that enact- " ment as the Vice-Chancellor Wood seems to have " taken of it in *Garlick* v. *Lawson*—that it does " not extend the cases in which declarations of " right may be made, but merely enables the Court " to declare rights without following up the " declarations by the directions which, according " to the old practice, would have been necessarily " consequent upon them." Those directions which according to the old practice would have been necessary and consequent, would have involved consequential relief in one shape or another. There is, therefore, no ground for say-

ing that the judgment of Lord Justice Turner did not go to the full extent, as to the construction of the clause, of the judgments of Vice-Chancellor Wood in *Rook* v. *Lord Kensington*, and Vice-Chancellor Kindersley in *Jackson* v. *Turnley*.

What then has been the history of this clause in India? It appears that before the passing of the Code of Procedure it had been extended to India by Act VI. of 1854, the 19th section of which is in precisely the same words as the English enactment. I may remark that some of those who sat in the Supreme Court of Calcutta were always anxious that when an English Statute was extended to the Presidency Courts, it should be so extended in precisely the same words, in order that those Courts might have, on questions of construction, the advantage of the English authorities, and that it should not be open to counsel to make nice distinctions upon the varying language of the two Statutes. In this instance that principle seems to have been acted upon by the Legislature, and not long after the Indian Act was passed the question of its construction appears to have come before the Supreme Court in the cause of *Sreemutty Rajcoomaree Dossee* v. *Nobocomar Mullick and another* (*Boulnois' Reports*). That Court was bound to act upon the English authorities, and accordingly that portion of its judgment which dealt with this question is in these words :—
" One argument, which has been strongly pressed
" in support of this view, is founded on the 29th
" section of Act VI. of 1854. But that enact-
" ment only removes the objection to the suit,
" which consists in its seeking merely a declara-
" tion of right without a consequential relief. It
" leaves untouched the objection that may consist
" in the want of sufficient interest in the Plaintiff
" to maintain such a suit, or in the absence of

"material parties interested in the question. And "the cases cited by Mr. Advocate General show "that the Courts at home, neither under the "similar section in the English Statute, nor under "Sir George Turner's Act, will exercise their dis- "cretion in declaring rights where the parties "principally affected are not before them." The cases cited were the cases which had then been decided on the construction of the English Act. And this decision shows that the construction which had obtained in the Court of Chancery was adopted and acted upon by the Supreme Court of Calcutta.

Then came Act VIII. of 1859, or the Code of Procedure, in framing which the Legislature thought fit to pick out of Act VI. of 1854 the 19th section, and to embody it in the very same words in the new Code. It seems to their Lordships unreasonable to suppose that the Legislature did not mean to use the words in the sense which by judicial construction they had then obtained. Again, it is to be observed that when the Supreme Court of Calcutta ceased to exist, and the High Court was created, the charter of the new Court required that Court to be guided in its original jurisdiction by the principles which had governed the Supreme Court. Unless, therefore, the limited construction put upon the clause by the Supreme Court is to prevail generally in all the courts of India, we must come to the absurd conclusion that the same words are to be interpreted by the High Court in one sense when it is exercising its original jurisdiction or sitting on an appeal from a decree made under that jurisdiction, and in a different sense when it is sitting on an appeal from a Mofussil Court; and further that the Legislature has by the same form of words intended to make one law for the Mofussil Courts and another for those of the Presidency towns.

It appears, therefore, to their Lordships, that the construction which must be put upon the clause in question is, that a declaratory decree cannot be made unless there be a right to consequential relief capable of being had in the same Court or in certain cases in some other Court. They admit the qualification introduced by the case of Fyz Ally.

With respect to the course of decision in the Presidency of Madras, it is to be observed that some of the earlier cases decided there adopted the English construction. In others, the judges who claimed a wider discretion as to making declaratory decrees, have assigned as a reason for its exercise that there does not exist in India the power of entertaining a suit to perpetuate testimony. That reason does not apply to the present case in which there is no testimony to perpetuate, but in no case is it a satisfactory reason. The proper remedy for such a defect in the administration of justice, if it exists, is an Act of the Legislature. It cannot be supplied by putting an erroneous construction, or a different construction from that which prevails in other parts of India, upon a statute which has no reference to the subject. It may be observed further upon the Madras cases that the Courts there do not appear really to have claimed, as Mr. Doyne has claimed for them, an uncontrolled discretion in making declaratory decrees. The judgment of Chief Justice Scotland in this very case certainly does not go so far. He says,—
" It has been decided by this Court that the rule
" of the Equity Courts in England is not applic-
" able to declaratory suits here, and it is now
" settled that a suit praying nothing more than
" a declaration of title is maintainable under the
" 15th Section of the Code of Civil Procedure,
" although no consequential relief be grantable
" upon the declaration, if a good ground for

" seeking the protection of such a suit is shown " to exist." What I have already said on the part of their Lordships shows that they dissent from that position; but still the very proposition admits that there must be some special ground "for seeking the protection of " such a suit." He then refers to the last decided case, and the conclusion which he draws from the decision is this, "To support such a " suit there must appear to have been some act " done which had worked or was likely to cause " injury or serious prejudice to the Plaintiff's " alleged title, and in the present case I think " that ground does appear." Then he proceeds to consider the special grounds which exist in this case. Mr. Justice Holloway goes further, and says that the mere quieting of doubtful titles would be a sufficient reason and a better reason than the fact of alienations having been made. The principle so stated, if acted upon, would open the door to the determination of future interests whenever one party chose to think it desirable that a dispute as to title which might at any time afterwards crop up, should be determined by a declarator.

Having said thus much on the construction of the Act, their Lordships will now deal with the arguments which have been addressed to them to show that even upon the limited and strict construction of the enactment this decree may be maintained. The first point upon which it is desirable to observe is that of the claim to maintenance. Upon that it is only necessary to say that the suit must now be treated as if the claim to maintenance had never been put forward. There has been a final adjudication between the parties as to the right to maintenance. It was held by the Lower Court that even if the Plaintiff were unquestionably the next in succession to the zemindary, he would

have no right to claim present maintenance from the zemindar, and there was no appeal from that decision to the High Court.

It will be convenient to consider next the grounds which the High Court of Madras seems to have considered sufficient to justify the declaration. The Chief Justice says,—" It appears " that the first Defendant favouring the second " Defendant's title, and concerting with him in " opposition to the Plaintiff, had employed an " agent, and executed a power of attorney to " him, for the purpose of assisting the second " Defendant to possess himself of the zemindary, " and withhold possession after her death. This, " without reference to the other acts alleged, is " sufficient to show an extreme determination " of hostility towards the Plaintiff, and there " can be no doubt, I think, that serious injury to " the Plaintiff's right is the probable, if not " certain, result of the opposition thus begun." It appears to their Lordships that the Defendant, the zemindar, was perfectly competent to grant that power of attorney, and that there is nothing in it which would give the Plaintiff a right if he had brought a suit for that purpose to have it set aside. It can, from the very nature of the instrument, operate only during the zemindar's lifetime, and we are not to assume that any act will be done under it which the Plaintiff would have a right to impeach; but if any such act is done under it, as, for instance, if she were to devolve the succession upon her son, so that his interest might become absolute, or the like, their Lordships, by their decision upon the present question, would by no means preclude the Plaintiff from seeking to impeach that act, and to treat it as invalid. They do not prejudge any question of that kind which may arise. Mr. Justice Holloway, as before remarked, rested his judgment broadly on the necessity of quieting

titles, which their Lordships think is a ground far too wide for adoption, and one that cannot possibly justify the declaration in this case, because, independently of the construction of the statute, it appears to have been very reasonably ruled in India that the Court will not try questions of title as to future interests where neither claimant has a right to present possession, especially questions of title which, like the present, may never arise. *See Pranputty Koer, mother and guardian of infant Isreenundun* v. *Lall Futteh Bahadoor*, 8 *Sevestre* 277.

A further question is raised by the pleadings, which was hardly adverted to in the argument, namely, the title set up by the sisters and the grant of their interest to the second Defendant; but that cannot give the Plaintiff a right of action in this case if it does not otherwise exist. That transaction cannot affect the interests of the Plaintiff; if these ladies would have no title against him they cannot have given a better title than they had themselves to the second Defendant. It, at most, raises another point to be determined, should the title to this zemindary come, on the death of the existing zemindar, to be properly litigated between the Plaintiff and the second Defendant.

The point which, though not adverted to in the judgment of the High Court, has been mainly pressed upon their Lordships by the learned counsel for the Respondents, is, that the plaint originally made a case of waste, that it was necessary that the right of the Plaintiff as nearest reversioner should be ascertained in order to support such a suit, and that if the suit had been tried out as it was at first framed there would have been a case for consequential relief. The course the case took was that when it came before the judge for the settlement of issues, he

thought that the question of waste ought not to be tried in this suit. There was afterwards an application made to him to frame an additional issue, which he rejected; and the reasons for his coming to that conclusion are given at page 11. They are the following :—" At the settlement of " issues the Court was of opinion that the " question of alienation of the revenues of the " zemindary was not one which had any place in " the present suit, which should be confined as " much as possible to the real object in view, " which is to ascertain whether or not Plaintiff is " the proper person to succeed to the zemindary " at the death of the ranee. At present Plaintiff " has no title either in possession or expectancy, " and until he has established his right as " remainderman he is not in a position to " question anything that may be done in regard " to the disposal of the property by the present " proprietor. Moreover, it would be impossible " to frame an issue on this point, when the " property said to be alienated is not distinctly " specified, and when the parties who must " necessarily be in possession are not parties to " the suit. It is not contended that these " alienations can operate beyond the lifetime of " the present ranee, and therefore if Plaintiff is " successful in establishing his right to succession, " he will have ample opportunity in future of " preventing injury to the property. If, on the " other hand, he is unsuccessful, the disposition " of the property is a matter with which he has " no concern." The Plaintiff appears to have acquiesced in this interlocutory order. If he had thought it had improperly affected his case, he might have raised before the appellate Court the question of its propriety, under the section of the Code which enables him to do so, and that question would then have been regularly before us. Considering the frame of the suit, their

Lordships do not think the order was improper or unreasonable.

The arguments now under consideration are founded on the right of a reversioner to bring a suit to restrain a widow or other Hindoo female in possession from acts of waste, although his interest during her life is future and contingent. Suits of that kind form a very special class, and have been entertained by the Courts *ex necessitate rei*. It seems, however, to their Lordships that if such a suit as that is brought, it must be brought by the reversioner with that object and for that purpose alone, and that the question to be discussed is solely between him and the widow; that he cannot by bringing such a suit get, as between him and a third party, an adjudication of title which he could not get without it. Here if the Plaintiff had brought his suit to restrain the widow from acts of waste he might, no doubt, have had to prove, not merely the acts of waste alleged, but a title sufficient to give him a *locus standi* in Court. Their Lordships are not prepared to say that by showing that he was a grandson of the Istimirar zemindar, although a doubtful question might thereafter arise between him and the second Defendant as to which should succeed to the zemindary, he would not have established a sufficient *locus standi* against the widow, and the right to have her acts of waste restrained for the protection of the estate. This, however, would not necessarily give him a right to bring the second Defendant into Court in order to obtain a final adjudication of title against him.

It appears, therefore, to their Lordships that, even if the Plaintiff had proved acts of waste against the widow, which he has not done, that would not have given him a right as against the second Defendant to have the question which arises between them determined by a declarator.

Upon these grounds, their Lordships think

that both the Courts below have come to a wrong conclusion upon the seventh issue; and holding that, they conceive it would be improper for them to intimate any opinion as to the correctness or incorrectness of the very learned judgments given in India on the first issue. Consequently it will be their Lordships' duty humbly to advise Her Majesty, on the finding upon the seventh issue, to dismiss the suit of the Respondent, but without prejudice to any question of title to the zemindary which he may hereafter be entitled to assert on the death of the first Defendant, the zemindar. We think that as he brought a suit which he ought not to have brought, he must pay the costs of the suit in the Indian Courts and those of this Appeal.