Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Muttayan Chettiar v. *Sangili Vira Pandia Chinnatambiar, from the High Court of Judicature at Madras, delivered 10th May* 1882.

Present:

SIR BARNES PEACOCK.
SIR RICHARD COUCH.
SIR ARTHUR HOBHOUSE.

The Appellant in this appeal was the Plaintiff, and the Respondent the Defendant, in a suit, No. 13 of 1875, brought in the District Court of Tinnevelly. It appears that in an original suit, No. 8 of 1867, brought in the District Court of Tinnevelly, the late zemindar of Sivagiri, the father of the Defendant, put in a razinama, dated the 20th January 1868, whereby he acknowledged the sum of Rs. 55,872. 12 to be due, and agreed that the amount should be paid on the 31st December 1872, together with interest at one per cent. per mensem, by the instalments mentioned therein, and he thereby hypothecated certain lands therein specified, being part of the zemindari as a security for the payment of the principal and interest.

On the 4th September 1868, a decree was passed in accordance with the razinama. The money not having been paid according to the stipulations the property hypothecated was attached, in the lifetime of the late zemindar, for instalments Nos. 1 to 9 mentioned in the razinama. The Plaintiff Appellant, in his plaint in

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the suit now under appeal, alleged that the whole zemindari was on several occasions attached by other crediters, and that, subsequently to the death of the late zemindar, the Plaintiff again attached the hypothecated property on the 23rd of February 1874, for the tenth instalment of the razinama decree; that the District Court advertised that all the property in the zemindari would be sold in a lot on account of all the creditors; that the Plaintiff presented a petition to the said District Court praying for a separate sale of the hypothecated property mentioned in the decree, or for the sale of the whole zemindari subject to his hypothecation lien; that the Court dismissed the said petition, on the 23rd of February 1874, without any inquiry; that subsequently, on the 25th February 1874, the right, title, and interest of the late zemindar in the whole of the zemindari was sold by auction and purchased by Subramania Mudahar of Tinnevelly; that the Defendant presented a petition praying for the release of the attachment made by the Plaintiff for the last instalment, and that on the said petition an order was passed by the Court, on the 18th of April 1874, to the effect that the attachment ceased with the sale of the zemindary. The Plaintiff further alleged that by reason of the objections and measures taken by the Defendant the judgment debt remained unpaid, and that the Plaintiff had thereby sustained heavy loss.

The Plaintiff in his plaint also alleged that the zemindari was the self-acquired property of the late zemindar, and, moreover, that the debt acknowledged by the razinama was a just one, having been contracted by the late zemindar for the up-keep of the zemindari, for the liquidation of debts contracted on the liability of the whole zemindari before the birth of the Defendant, and for the benefit of the zemindar's

family, and he prayed that a decree might be passed cancelling the orders passed on 23rd February and 18th April 1874, and upholding the attachment made by Plaintiff in Suit No. 8 aforesaid, confirming his right to recover the judgment debt of the said Suit No. 8, on the liability of the said Sivagiri zemindari, and adjudging the sum of Rs. 88,062. 12, as per particulars given, to be recovered by the Plaintiff, with subseqent interest and costs from the Defendant and on the liability of the property hypothecated to the Plaintiff under the decree in the Suit No. 8, and specified in the schedule thereto, and of all other property that had devolved on him from the late zemindar, and granting such other relief as the Court might deem proper and necessary in the case.

In the particulars given, the sum of Rs. 88,062. 12 was made up of Rs. 79,574. 13 for principal, and Rs. 8,487. 9 for interest due under the decree according to the terms of the razinama.

The property mentioned in the schedule to the plaint was the same as that hypothecated by the razinama.

No written statement was put in by the Defendant.

The case was tried by the District Judge of Tinnevelly, who, on the first hearing, was of opinion that, as the only basis of the plaint was the razinama decree in original Suit 8 of 1867, on which the Plaintiff had already taken out execution and received partial satisfaction, the plaint must be thrown out.

On appeal, however, the High Court reversed that judgment, stating that " the questions " raised in this suit are the liability of the " property in the hands of the present zemindar " to satisfy the decree obtained by the Plaintiff " against the late zemindar. . . . The question

" of liability and of its extent being one of very " considerable difficulty . . . a suit regularly " conducted was the most appropriate method " of determining it." The case was, therefore, remitted for trial on its merits, and was heard again.

On the hearing, after the remand, the contention of the Defendant was, first, that the suit was not legally maintainable; secondly, that the nature of the debt was not proved to be one legally or morally binding upon the present zemindar; and, thirdly, that the late zemindar had no power for this debt to encumber any portion of his estate beyond his own tenure of the property.

The Counsel for the Plaintiff sought to show—

1st. That the debt which is the basis of the suit was one incurred before the birth of the present zemindar;

2ndly. That it was a *bonâ fide* debt for absolute necessity and not for mere extravagance;

3rdly. That the entire zemindari was the self-acquired property of the late zemindar, and could be alienated at will by him, and, therefore, that the hypothecation created by him was enforceable.

It was stated by the District Judge in his judgment that though no issues were settled, the above points were virtually the issues to which both parties at the final hearing addressed themselves.

The following is the history of the zemindari as found by the District Judge, and concurred in by the High Court:—

" The zemindari of Sivagiri was an ancient polliem of the district of Tinnevelly, and was converted into a zemindari with a permanent peishcush by the Government in the year 1803, and the then poligar was granted a sannad-i-milkeut istimrar, and was created first zemindar of Sivagiri. He died on the

21st February 1819, and, having left no male heir, his only daughter was created second zemindar of Sivagiri (Exhibits E 1 and E 2). She died in 1835, and was succeeded by her elder son Varaguna Rama Pandia Chinnatambiar (Exhibit E 7), the third zemindar. During his time a new sannad was applied for, in consequence of the original being lost, and was issued to him in October 1841. Exhibits E 11 to E 19 give the history of the sannad, a copy of which is Exhibit 18. It is in the usual form and concludes with the words 'you are hereby 'authorized and empowered to hold in perpetuity to your 'heirs, successors, and assigns at the permanent assessment 'herein named the zemindari of Sivagiri.' This man died 27th September 1873, and has been succeeded by his son Sangili Vira Pandia Chinnatambiar, the fourth zemindar, the Defendant" (Respondent).

In the course of his judgment the District Judge, speaking of Suit No. 8 of 1867, made the following observations. He said:—

"This suit ended in a razinama by which the zemindar pledged himself to pay Rs. 55,872 with interest, and he pledged a certain tank in the village of Sivagiri as security for the amount.

"It was while that suit was in course of execution that the whole zemindari was attached by this Court, and for three years taken into this Court's management for the liquidation of the judgment creditors, and these Plaintiffs received their shares in the rateable distribution from the produce of the whole estate, viz.,—

"Rs. 7,452. 13. 7 on the 1st July 1872,
" ,, 4,230. 5. 9 on the 21st November 1872,
" ,, 7,609. 10. 10 on the 29th January 1874, and
" ,, 3,777. 3. 5 on the 14th April 1874,

in all, Rs. 23,070. 1. 7 in payment of this razinama A 2.

"This suit is brought for the balance of that razinama debt, and the whole arguments of the Plaintiff's Counsel have been directed to show that the claim is due from the whole estate. Even under the razinamah A 1, which is the basis of this suit, the lien could have only been against the land therein named, viz., certain lands under one tank, but, under the provisions of Section 271, the Plaintiff as mortgagee, if he wanted to hold his lien upon this one tank, cannot, of course, partake in the rateable distribution, and he would have to reimburse, with its accumulated interest, the Rs. 23,070 which he has received before he could seek to exercise his right as a mortgagee under Section 271. This principle has been maintained by this Court with regard to other of the judgment creditors who shared in this distribution, and who, like this Plaintiff, having benefited by the attachment of the whole estate and shared in its produce, although he had merely an interest in a fractional portion thereof like this Plaintiff, also sought to get an interest

which, if he ever possessed it, he had waived by taking part in the distribution."

He then after examining the evidence as to the receipts, the peishcush, and the expenses of the estate, proceeded as follows:—

"I find, therefore, upon the record as it is now before the Court, that this Plaintiff cannot succeed in the present suit,—

"1st. Because this claim is based upon a debt which is covered by a decree now in course of execution. This ground has, however, been reversed by the High Court in their judgment.

"2ndly. I find that he cannot succeed as, having taken his share of the rateable distribution of the proceeds of the whole estate, he is legally prevented by the proviso of Section 271 from still enforcing his share over his mortgage property. This opinion, before stated, has been confirmed by the High Court in appeal in Civil Miscellaneous Regular Appeal, No. 260 of 1876.

"Further, though the Plaintiff's Counsel urged the Plaintiff's lien over the whole estate, there is no foundation whatever upon the record for such a plea.

"He sought to establish that the debt was one of family necessity. I find it not to be so established. . . . .

"The Plaintiff says that this debt is one which the son is legally bound to pay for his father. I find that it is not so. . . . .

"The Plaintiff has urged that the zemindari was the self-acquired property of Varaguna Rama Pandia Chinnatambiar, the Defendant's father, and that he could therefore alienate the whole of it at will without reference to his sons, and that it is to be governed strictly by Hindu law. I find that it was not his self-acquired property, although it came to him through his mother, but as ruled in his case by the Sudder Court in Appeal Suit, No. 90 of 1851, wherein the whole of the Plaintiff's present argument was advanced and disposed of. I therefore find that the late zemindar had power only to alienate his life interest for his debts, and not to alienate his son's reversion, and moreover that, in point of fact, he did not attempt so to alienate it for the present Plaintiff's debt.

"For all these reasons I find that the estate now in the hands of the zemindar (Defendant) is not liable to satisfy the Plaintiff's judgment claim against the late zemindar, and further that the Plaintiff is, as above stated, legally debarred from bringing this suit.

"I therefore dismiss this suit."

Their Lordships think it right here to remark that there was great irregularity in the District Judge's proceeding to a final hearing without issues having been settled, so that the parties might

before the trial know to what points they would have to address themselves, and also in his having, in direct opposition to the judgment of the High Court, held in his judgment, after the remand, that the Plaintiff was legally debarred, as above stated, from bringing his suit.

The Plaintiff appealed from the decree of the District Judge to the High Court upon the following grounds, viz. :—

1. That the Plaintiff was entitled to a decree for the amount claimed.
2. That the zemindari of Sivagiri came to the Defendant burdened with the debts of his father, whether incurred before or after Defendant's birth, and having assets of his father in his possession he was liable for his father's debts to the extent of the assets.
3. That the District Judge was in error in holding that the Hindu law did not apply.
4. That the zemindari was the self-acquired property of the Defendant's father, or at all events it was not property in which the Defendant acquired any rights by reason of his birth. The Defendant merely succeeded to the estate left on his father's death and had no independent rights in the property.
5. That if the zemindari should be held to be ancestral property in which the Defendant acquired rights by his birth. the Plaintiff was still entitled to charge his debt upon the zemindari, the Plaintiff's debt having been incurred in circumstances which would make it a binding charge upon the estate.
6. That the Plaintiff was not precluded, as the Judge held, from maintaining the suit.

Upon that appeal the High Court, after adverting to the nature of the suit and to the contentions of the Plaintiff and Defendant respectively, proceeded as follows:—

"The lower Court originally held that the suit was not maintainable, but on appeal it was decided by this Court that the question of the liability of the estate in the hands of the Defendant to satisfy the decree against his father was one of considerable difficulty, and that a regular suit was the most appropriate mode of determining it. The history of this zemindari, in so far as it is necessary for the purpose of this suit, is sufficiently set forth in paragraph 8 of the judgment appealed against. In his revised judgment the District Judge considers that, as the second zemindar was a woman, the third zemindar would, under the ordinary Hindu law, have held the zemindari as his self-acquired property, but that he had not held it as such by reason of its being an impartible estate, held exceptionally under a sannad (Exhibit E 18) from the Government. The first question for decision is whether the Hindu law is not applicable in this case. It seems to us that the sannad only rendered permanent the peishcush or assessment, which had varied from time to time, changed the character of the estate, which had till then been that of a southern polliem, into that of ordinary Hindu property, and recognized the ordinary Hindu law as governing the succession to it in order to determine the right of interference exercised by Government on the ground of tenure, without prejudice to impartibility or any other special incident which had already attached to the estate by the custom of the family, originating no doubt in the ancient tenure. We are therefore of opinion that the zemindari, though impartible by custom, is doubtless governed by the Hindu law, subject, as observed by the Privy Council in 9 Moore, I. A. C., 685, to such modifications as flow from its impartibility.

"This view brings under our consideration the next question, whether, when the zemindari vested in the Defendant's father, it became his self-acquired property. In support of this contention it is urged for the Appellant, 1st, that the second zemindar was a woman; 2ndly, that she took an obstructed heritage; and, 3rdly, that when it passed into her son's possession it ceased to be ancestral property in which his son (Defendant) had ownership by birth.

"For the reasons mentioned in our judgment in the Shivaganga case, we think that though a daughter, inheriting to her father, succeeds as heir, and does not take, as is at times stated, merely a life estate, still she takes but a qualified heritage, which, under the text of Catyayana, passes upon her death to her father's in preference to her own heirs. Her succession being thus rather a case of obstruction or interposition than of regular inheritance for herself and her own heirs, and the estate taken by her being, moreover, as observed in that

judgment, not her sridanan, her intervention as heir does not, in our opinion, alter what was originally ancestral into self-acquired property. According to all the texts of the Hindu law of which we are aware, the absence of paternal or maternal property or of any aid from it is a necessary ingredient in the conception of self-acquired property, and the author of the Mitakshara defines it as property which has been acquired by the coparcener himself without any detriment to the goods of the father or mother (Mitakshara, Chapter 1, Section IV., C 2). We think it is clearly erroneous to say that property inherited through a mother is self-acquired as between her son and grandson.

"It may not be ancestral in the sense in which property inherited by the father from the *paternal* grandfather is liable to partition under the Mitakshara law at the instance of the son, but it is not self-acquired property on that ground for purposes other than those of partition."

The High Court then, after considering the question whether the restriction as to the alienation of ancestral property, imposed upon a father by the Mitakshara law in regard to property descended from his father or paternal grandfather extended to property descended from his maternal grandfather, expressed their opinion that the contention of the Plaintiff that the zemindari should be treated for the purpose of alienation as if it had been self-acquired by the father was not well founded.

They then proceeded thus :—

" The next question for decision is whether the debt sought to be recovered, which though in part improvident is neither immoral nor vicious and which 'is further partly secured by a 'mortgage,' is binding on the present zemindar, 'the Defen-'dant in the suit and the Respondent in the appeal, who was 'born when it was contracted.' "

In determining that question they say :—

"As to the contention that a debt may not have been incurred for family necessity and may still be binding on the son, provided that it is neither immoral nor vicious, we do not clearly see our way to uphold it. According to the text of Yagnyavalcya, the alienation of immoveable property without the son's consent is forbidden and, according to the text of Virhaspati, the father can only alienate it where there is a family necessity. It is then argued that, as observed by the Judicial Committee, in Kantulal Girdaralal *v.* Muddun Thakoor, 1 I. L. R. 321, the son is under a pious obligation to

pay the father's debt where such debt is neither immoral nor vicious.

" There can be no doubt that it is the pious duty of a son to pay his father's debt. Narada says that fathers desire male offspring for their own sake reflecting ' this son will redeem ' me from every debt due to superior and inferior beings.' Therefore, a son begotton by him should relinquish his own property and assiduously redeem his father from debt lest he fall into a region of torment. If a devout man or one who maintained a sacrificial fire die a debtor, all the merit of his devout austerities or of his perpetual fire shall belong to his creditors. (1 Dig. Higg. Edition 202.)

"If this text is to be enforced as imposing a legal duty, we shall have to compel sons who have inherited no property from their father, either ancestral or self-acquired, to pay the father's debt, for the text directs him to pay it from his own property. Again, this pious obligation is confined to the son and grandson, and does not extend to the great grandson, and in the case of the grandson it is limited to the payment of the principal. Vrihaspati says, ' the sons must pay the debt of their father, ' when proved, as if it were their own, or with interest; the ' son's son must pay the debt of his grandfather, but without ' interest, and his son or the great grandson shall not be com- ' pelled to discharge it unless he be heir and have assets."

" Vishnu observes likewise, ' If he who contracted the debt ' should die, or become a religious anchoret, or remain abroad ' for twenty years, that debt shall be disharged by his sons or ' grandsons, but not by remoter descendants against their will.' (1 Dig. Higg. Edition 185.)

" Thus, the obligation does not depend on the relation as partakers of the same funeral cake, and is not co-extensive with the capacity to inherit.

" Consequently, if there are sons, grandsons, and great grandsons, the obligation must be held to be valid to the full extent of the debt as against the first, to the extent of the principal as against the second, and not at all as against the third. Again, the allusion in the text of Narada to ' every ' debt due to superior and inferior beings ' would seem to favour the view that pious duties were enforced by Hindu tribunals in the exercise of their jurisdiction over matters which are purely spiritual. When the learned Advocate General is pressed with these difficulties in recognizing the son's pious obligation as a legal obligation, he argues that though it is not to be enforced as such where no assets are inherited, still the son's ownership in ancestral property is subordinate to that of the father, and the father's predominant interest gives it the character of a legal duty with respect to the alienation of ancestral property. But in Chapter 1, Section VI., 9, the author of the Mitakshara says, ' The grandson ' has a right of prohibition, if his unseparated father is making ' a donation or sale of effects inherited from the grandfather, ' but he has no rights of interference if the effects were *ac-*

'*quired* by the father. On the contrary, he must acquiesce 'because he is dependent.' In p. 10 he states, 'Consequently 'the difference is this: Although he has a right by birth in 'his father's and grandfather's property, still, since he is de- 'pendent on his father in regard to the paternal estate, and 'since the father has a predominant interest *as it was acquired* '*by himself*, the son must acquiesce in the father's disposal of 'his own acquired property; but since both have indiscrimi- 'nately a right in the grandfather's estate, the son has a power 'of interdiction (if the father be dissipating it).' According to Vignyanesvara Yoga, the author of the Mitakshara, the son's ownership in ancestral estate is not subordinate but co-ordinate, and it is dependent only where the father himself acquires the property. The course of decisions in this Presidency from the date of the case cited in M. H. C. R. 47 has been to recognize equal ownership by the son in the grandfather's estate, though it may not be divided between the father and the son, and to uphold the father's alienation only to the extent of his share, though in Bengal it has been held that an undivided share is not alienable. This difference in the view of the two High Courts is referred to by the Judicial Committee in Deen Dyall Lala *v.* Jugdeep Narrainsing, IV. I. L. R., 252.

" In these circumstances, it is not easy to conclude that the Lords of the Judicial Committee intended to vary the course of decisions in this Presidency. In the decision in Kantu Lal's case there are remarks which show that the father and son were probably acting in collusion with one another against the purchaser, and that the suit was not brought till 10 years after the sale was completed.

" The pious duty of a son may be a foundation for presuming the son's concurrence in the alienation by the father when, with the knowledge of it, the son elects to remain in co-parcenery with the father, and takes no step to set aside the alienation, until the father becomes destitute after a considerable lapse of time, when, acting in collusion with him, he tries to upset a transaction in which he may be fairly presumed to have acquiesced in the special circumstances of the case. Furthermore, the property now in litigation is an impartible zemindari, in which the son cannot protect his interest as in ordinary property by electing a division. The only question then which remains to be considered is, whether the debt now in dispute was incurred under family necessity. The Court below holds that there was no necessity for contracting the debt. Though we concur in the view that, under more prudent management, the arrears of peishcush in 1853 might have been avoided, still we think that, in so far as the plaint debt was applied to the liquidation of debts which had been contracted for paying the assessment, it is binding on the Defendant. The original lender advanced the money to relieve the zemindari from attachment for arrears of peishcush, and he was bound only to look to the immediate pressure on the

estate and the benefit accruing to it from the advance. There is nothing in the evidence to lead us to the conclusion that this was a fraudulent contrivance between the late zemindar and the creditor to enable him to apply the income from the estate to purposes other than those warranted by the law. To this extent we think that the debt is binding upon the zemindari.

We shall, therefore, vary the judgment appealed against so as to adjudge to the Plaintiff Rs. 26,049. 4. 7, with proportionate costs on the security of the zemindari, and otherwise confirm it."

Upon that judgment the following decree was recorded :—

" This Court, in variance of the revised decree of the Lower Court, doth order and decree that the Plaintiff do recover the sum of Rs. 26,049. 4. 7, with proportionate costs in this Court and in the Lower Court on the amount now adjudged; and this Court doth further order and decree that the zemindari of Sivagiri shall be liable for the satisfaction of the decree amount and costs now adjudged, and that the decree be in other respects confirmed."

From that decree a petition of review was presented by the Plaintiff.

The Defendant also applied for a review of judgment upon the ground that the calculation upon which the decree was based was erroneous, and that the amount decreed was too high.

The reviews were admitted and in delivering his judgment the learned judge, Mr. Justice Muttusami Aiyar, before whom the reviews were heard declared that he still adhered to the principles on which the decision, passed by the late Chief Justice, Sir Walter Morgan and himself, rested and confined himself in dealing with the petitions of review to errors of calculation and to those matters which showed that the decree had not been drawn up in conformity with the judgment, and then after dealing with the errors in calculation and declaring that the error should be corrected in the mode indicated, proceeded,—

" It is also from oversight that the decree contains no provision for payment of interest at 6 per cent. per annum until date of payment. The Respondent has no objection to the amount decreed being held to be a special charge on the village

mentioned in the plaint. The decree should be amended in this respect also."

The first decree of the High Court was accordingly amended, and the final decree passed on review was entered as follows :—

"This Court, in variance of the revised decree of the lower Court, doth order and decree that the Defendant do pay to the Plaintiff the sum of Rs. 35,132. 11. 9, with further interest at 6 per cent. per annum upon Rs. 32,284 from 22nd February 1875, the date of the plaint, till date of payment, and that the zemindari of Sivagiri be liable for the satisfaction of the decree amount and costs now adjudged. And this Court doth further order and declare that the said amount forms a valid charge over the property mortgaged to the Plaintiff and described in the schedule hereunto annexed. And this Court doth further order and decree payment of proportionate costs incurred both in this Court and in the lower Court upon the amount allowed and disallowed respectively. And it is hereby ordered that the Defendant do pay to the Plaintiff Rs. 1,692. 6. 6, being the amount of nett costs as admitted by both parties due to Plaintiff after deducting the costs due by him to the Defendant.

"*Schedule.*

"Rasingaperikulam, consisting of 589 kotas 4 merkals and $\frac{1}{8}$ measure seed, wet land, inclusive of maniam lands, in the cusba village of Sivagiri, in the Defendant's zemindari."

From that decree the present appeal was preferred. The Defendant did not appear or file any cross appeal.

It was contended on the part of the Plaintiff, first, that the zemindari, having descended to the Defendant's father from his maternal grandfather, was his self-acquired property, or at any rate that he was not as regards his son under the same restrictions as to the alienation or hypothecation of the property as he would have been if it had descended to him from his father or paternal grandfather; secondly, that the whole zemindari, or at least the interest which the Defendant took therein by heritage, was liable as assets by descent in the hands of the Defendant, as the heir of his father, for the payment of his father's debts. Their Lordships are of opinion that the Appellant is entitled to succeed upon

the second ground, and they therefore think it unnecessary to express any opinion upon the first. Indeed, as the case has been argued before them on one side only, and the same question may hereafter be raised in some other case, they consider it right to abstain from expressing any opinion upon it, except that they concur with the High Court in holding that the property was not the self-acquired property of the Defendant's father.

As to the second ground, they consider that the case is governed by the case of Girdharee Lall *v.* Kantoo Lall, 1 Law Reports, Ind. Appeals, p. 321. The doctrine there laid down was not new, but was supported by the previous cases therein cited. The principle of that case was adopted by this Board in the case of Suraj Bunsi Koer, 6 Law Reports, Ind. Appeals, 104, and has been very properly acted upon in Bengal, in Bombay, and in the North-West Provinces, and although it was not acted upon by the High Court in Madras as it ought to have been in the case now under appeal, it has since been acted upon in a full bench decision by all the Judges of that Court, except two who dissented, of whom Mr. Justice Muttusami Aiyar was one, in Pomeappah Pillai *v.* Puppuviengar, decided 1st April 1881.

The reasons given in the judgment of the High Court in the present case constitute no ground for the opinion that the case of Kantoo Lall does not apply to the Madras Presidency. It was said in the judgment in that case: "There is no sug-
" gestion either that the bond or the decree was
" obtained benamee for the benefit of the father,
" or merely for the purpose of enabling the father
" to sell the family property and raise money for
" his own purpose. There is nothing of the sort
" suggested and nothing proved." That statement certainly did not justify the assertion of the High Court, which was clearly a mistake, that

" in that case there were remarks which show " that the father and son were probably acting " in collusion with one another against the " purchaser."

One of the grounds relied upon by the High Court for considering that the case of Kantoo Lall was not applicable to the Madras Presidency was that the course of decisions in the Madras Presidency had been to uphold the father's alienation to the extent of his own share, though it was said to have been held in Bengal that an undivided share is not alienable, a difference referred to by the Judicial Committee in Deen Dyal Lal's case, 4 Ind. Law Reports, 252. Assuming without admitting that the difference exists (*see* the remarks in 6 Law Reports, Ind. Appeals, 102) it is impossible to see how the father's power to alienate his own share could constitute a valid reason for supposing that where that law existed the son's share taken by heritage from the father was thereby exempted from liability for the payment of his father's debts. The fact of the zemindari being impartible could not affect its liability for the payment of the father's debts when it came into the hands of the son by descent from the father. Their Lordships are of opinion that no order ought to be made for cancelling the orders of the 23rd February and 18th of April 1874, or for upholding the attachment made by the plaintiff in Suit No. 8. By such a decree, the rights of other creditors and those of the purchaser under the sale of the 25th February 1874, might be affected, and none of them are parties to this suit. Those orders and that attachment do not affect the rights of the Plaintiff as against the Defendant. It would seem from the proceedings in the District Court of Tinnevelly, of the 18th April 1874 (Record, p. 21), and the statement in the 10th paragraph of the plaint taken

together, that the life interest of the late zemindar, the father of the Plaintiff in the whole zemindari, including the part hypothecated, have been sold to a *bonâ fide* purchaser. That sale cannot be affected as to whatever legally passed under it by any decree in this suit. The learned Judge of the High Court who heard the case in review, and who declared in the decree that the amount decreed forms a valid charge over the property mortgaged to the Plaintiff did not allude to the decision of the District Judge as to the abandonment by the Plaintiff of his lien under the hypothecation by partaking of a rateable distribution with the other creditors of the father, nor did he intend to affect nor could he affect by that declaration the rights of persons not parties to the suit, nor did he intend to nor could he by declaring that the zemindari of Sivagiri should be liable for the satisfaction of the decree amount and costs affect the rights of the purchaser under the sale admitted by the Plaintiff in the 10th paragraph of his plaint. The Defendant is liable for the debts due from his father to the extent of the assets which descended to him from his father, and all the right and interest of the Defendant in the zemindari which descended to him from his father became assets in his hands, and that right and interest, if not duly administered in payment of his father's debts, is liable as against the Defendant to be attached and sold in execution of the amount that may be decreed against him.

Their Lordships will therefore humbly advise Her Majesty to reverse the decrees of the High Court and of the District Court respectively, and to decree and declare that the Defendant, as the son and heir and legal representative of Varaguna Rama Pandia Chinnatambiar, deceased, the late zemindar of Sivagiri, do pay to the Plaintiff, out of the property which was of

the said Varaguna Rama Pandia Chinnatambiar, deceased, and which came to the Defendant by heritage, the amount due on the 2nd of March 1875, under the decree of the 4th of September 1868, mentioned in the plaint filed in the Suit No. 13 of 1875 in the District Court of Tinnevelly, together with interest on the amount so due, at the rate of 6 per cent. per annum, from the 2nd March 1875 to the time of realization, and, further to declare that, so far as the Defendant is concerned, all the right, title, and interest which descended to him from his father and came to him by heritage, as well in that part of the zemindari of Sivagiri which was hypothecated by his father, as in that part thereof which was not hypothecated, are liable, so far as they have not been administered in payment of his father's debts, to be attached and sold in execution of the amount for which it shall be declared that the Defendant is liable, together with such interest as aforesaid, after giving credit for any portions thereof, if any, which since the said 2nd day of March 1875 have been paid or satisfied; and, further, that the case be remanded to the High Court, with directions to ascertain and determine what amount was on the said 2nd day of March 1875 due under the said decree of the 4th of September 1868, and whether any and what portion or portions thereof has or have been satisfied or discharged since the said 2nd day of March 1875, and to pass a decree in accordance with the above directions, and awarding costs both in the District Court and in the High Court in proportion to the amounts decreed and disallowed respectively.

And it is hereby ordered that the costs of this appeal be paid by the Respondent.