Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Naragunty Luchmedavamah v. *Vengama Naidoo, from the Sudder Dewanny Adawlut of Madras; delivered* 5*th December*, 1861.

Present:

LORD KINGSDOWN.
LORD JUSTICE KNIGHT BRUCE.
LORD JUSTICE TURNER.
SIR JOHN TAYLOR COLERIDGE.

SIR LAWRENCE PEEL.
SIR JAMES W. COLVILE.

TWO questions were argued before us in this case:

1st. Whether the Plaintiff in the suit had established his claim.

2nd. Whether his suit was commenced within such a period after the accruer of his title, that the Court was warranted in entertaining his demand.

The subject of dispute is a Polliam called Naragunty, in the District of Chittoor in the Province of Madras.

In order to make the facts of the case and the bearing of the evidence more clear, it may be convenient to state what is the nature of a Polliam.

A Polliam is explained in Wilson's Glossary to be "a tract of country subject to a petty Chieftain." In speaking of Polygars, he describes them as having been originally petty Chieftains occupying usually tracts of hill or forest, subject to pay tribute and service to the paramount State, but seldom paying either, and more or less independent; but as having at present, since the subjugation of the country by the East India Company, subsided into peaceable landholders. This corresponds with the account read at the Bar from the Report of the Select

Committee on the Affairs of India in 1812. A Polliam is in the nature of a Raj: it may belong to an undivided family, but it is not the subject of partition; it can be held by only one member of the family at a time, who is styled the Polygar, the other members of the family being entitled to a maintenance or allowance out of the estate.

The Polliam in dispute, at the time when the East India Company acquired the sovereignty of the District in 1802, was held by a family of the name of Naidoo. Possession of this and of several other Polliams in the same neighbourhood was assumed by the Company, and held by them for several years. They ultimately, however, restored the Polliam Naraguntу to the Naidoo family, different members of which were at different times Polygars, and in 1837 Vencatappa Naidoo died in possession of the property.

He died without male issue, and the present Appellant, who was his widow, entered into possession, asserting title as heir of her late husband.

The present suit was instituted by the Respondent and by his father, Kooppy Naidoo, who is since dead, for the purpose of recovering possession of the Polliam from the widow.

The case which they made, was that the Polliam was ancestral property, that it belonged to the family of Naidoo, that the family was undivided, and that on the death of the last possessor the right to it vested in the next male heir of the family in preference to the widow, and that they (the Respondent's father and the Respondent) were such male heirs, Kooppy Naidoo being next male heir.

The Pundit consulted by the Court as to the rule of Hindoo Law on the assumption that the Plaintiffs had established their allegations by evidence, was of opinion that they were entitled to succeed. This view was adopted by the Court below, and no objection to the decision upon this point has been urged at our Bar.

Both parties went into evidence as to the facts; and the Zillah Court first, and the Sudder Court afterwards upon appeal, were of opinion that the Plaintiffs had sufficiently proved their case, and no difference of opinion existed amongst the Judges below.

It is not the habit of their Lordships, unless in very extraordinary cases, to advise the reversal of a decision of the Courts of India merely on the effect of evidence or the credit due to witnesses. The Judges there have usually better means of determining questions of this description than we can have, and when they have all concurred in opinion it must be shown very clearly that they were in error in order to induce us to alter their judgment; but in this case we think that the Courts could have come properly to no other conclusion than that at which they arrived.

The points to be established by the Plaintiffs were that the Polliam of Naragunty was an ancestral property; that it belonged to a family of which they (the Plaintiffs) were members, of which the Respondent's father was the next male heir; and that the family was undivided.

The Appellant by her answer had stated, "that it was unknown whether any relationship existed between the ancestors of the Plaintiff and those of the Respondent's husband, and even if it did exist it might have become extinct in course of time; but that one thing was certain, that the Plaintiff and the Defendant's late husband were not members of an undivided family."

The Plaintiffs, amongst other evidence, produced a document which, if it be genuine and correct, establishes beyond doubt that the Plaintiffs and the Appellant's husband were members of the same family; that the property was ancestral, that it had been enjoyed at different times by members of the elder branch to which the Appellant's husband belonged, and by members of the younger branch to which the Plaintiffs belonged, and that the family at the date of this document was an undivided family; we allude, of course, to the document at p. 84, No. 124, professing to be a copy of a paper in the custody of the Collector of Chittoor, sent to his office in Fusby 1211, corresponding with 1802 of our era.

It cannot be doubted, and was indeed hardly disputed by the able Counsel for the Appellant, that if the statement contained in this paper is to be taken as true, it goes very far towards establishing the case of the Respondent; but it was said that it was a mere loose paper, the possession of which by the Collector was not satisfactorily accounted for; that

the original had not been produced; that it did not appear to have any signature attached to it, and that it ought not to have been treated as of any authority.

But on inquiry it turns out that the circumstances under which the paper was lodged in the Collector's office are such as to give it the very highest authority.

When the East India Company took possession of these Polliams, as we have mentioned, in the year 1802, they made allowances out of the proceeds to the families of the Polliagars, and contemplated the restoration at a future time, when order should have been established in the country, of the property so seized, to its owners.

They thought it advisable, in order to give effect to these views, to procure and forward a statement of the particulars of the property so seized, and of the names and families of the existing Polliagars.

They required, therefore, Returns to be made by the Polliagars of these particulars. The paper in question purports to be a copy of the Return made on this occasion by Anantappa Naidoo, who then held the Polliam. The Appellant, in her petition of appeal to the Sudder, admits that such a genealogical table may have been given, but denies that there is any evidence that such table was the same as to its contents with the one filed by the Plaintiffs.

But the accuracy of the copy so produced, and the genuineness of the document, are made out beyond all controversy.

It was not brought forward by surprise, nor received by the Court without full investigation.

On the 5th of January, 1855, the Plaintiffs made a motion to the Court in the following terms:—

"No. 121.

"To the Civil Court of Chittoor.

"Motion presented by Vencatacharry, Vakeel on behalf of the Plaintiffs, in Original Suit No. 24 of 1850.

"The Plaintiffs being the legal heirs to the Polliam, have brought this suit for the recovery thereof, with mesne produce. The Defendant utterly denies in her Answer that they are in any way connected with the family. Soon after the country was brought under the British rule, there was a Circular Order issued, requiring all Zemindars to present Genealogical Tables, showing

which of their ancestors held their zemindaries. In compliance with this requisition, the Plaintiffs' ancestor also sent to the Collector of Chittoor, in Fusly 1210 or 1211, a statement of the above description; and this document is now on the records of the Collector, and it is material to the Plaintiffs' case. In the same office there is also a statement, showing the average income of the Polliam for ten years, prepared when the Paishcush thereof was fixed by Government.

"The Plaintiffs pray that the Court will be pleased to grant a certificate requiring the production of those documents, in order that they may submit them, with their application, to the Collector, for copies thereof.

"5th January, 1855."

Having procured a copy of this document, authenticated by the signature of the Collector of Chittoor, they submitted it to the Court on the 30th January, 1855.

The Native Courts of India, in receiving evidence, do not proceed according to the technical rules adopted in England, and they would, by their usual practice, admit a copy of a public document, authenticated by the signature of the proper officer, as *primâ facie* evidence, subject to further inquiry if it were disputed.

The accuracy of this copy was disputed by the Respondent, and on the 13th of March, 1855, she made a motion in the following terms:—

"No. 125.

"To the Civil Court of Chittoor.

"Motion presented by Varathacharry, Vakeel on behalf of the Defendant, in Original Suit No. 24 of 1850.

"1. The Plaintiffs, with their Motion No. 58, presented a copy of an alleged Genealogical Table, in which the name of the first Plaintiff is inserted as a member of the family. This is a document concocted by the Plaintiffs themselves, and introduced into the Collector's Record. For if this were a genuine voucher, the Defendant's father-in-law would not have declared, in an Arzee addressed by him to the Collector when he adopted the Defendant's husband, that he had neither uncles nor uncles' sons. Moreover, the said genealogical tree neither bears the signature of the party who addressed, nor is attested by the then Collector.

"The Defendant prays that the Court will, on a consideration of these objections, reject the above document, and pass a just Decree.

"13th March, 1855."

Hereupon the Court directed a letter to be sent to the Collector on the 31st March, 1850, "requesting

him to send up to this Court his Record-Keeper with the original record with which the Genealogical Table of which the Plaintiffs produced a copy may be connected, or the book out of which the said copy might have been furnished."

On the 7th April the Collector sent an answer by the Record-Keeper, " intimating that, with reference to the letter received from this Court on the 31st ultimo, the Record-Keeper was ordered to appear with the papers required ;" and on the same day the Record-Keeper attended accordingly. He was examined and cross-examined (p. 85), and fully established the authenticity of the document, and the accuracy of the copy furnished. He must have had the original in Court, though it does not appear to have been called for. Moreover, there is documentary evidence in confirmation of the accuracy of several of the statements contained in this paper.

Their Lordships, therefore, have not the least doubt that this paper is what it purports to be, and that it established the case of the Plaintiffs, unless it can be made out that the family, undivided at that time, became afterwards divided.

Now the parol evidence of the Plaintiffs, if it is believed, clearly shows that there never was any division. The presumption is that a family remains undivided, and the onus is in the Appellant to prove division. Her evidence is rather directed to show that the Respondent was a member of a different family. At all events, it is quite insufficient to establish a division, when opposed to the evidence produced on the other side.

It is unnecessary to advert to the proceedings in the suit to set aside the adoption further than to say that in that suit, which was instituted as early as 1831, Kooppy Naidoo insisted on the same facts and the same title which, in concurrence with his son, he asserted in the present suit. The Court was of opinion that the adoption was good, and would prevail against the Plaintiff's title, assuming it to be made out in point of fact, and therefore no decision was pronounced upon that point.

On the whole we may state that if the question on the effect of the evidence in this case had come before us now for the first time, and not by appeal, we should have arrived at the same conclusion with the

Courts below, though in that case it would have been necessary to go more in detail into the particulars of the evidence on both sides than it is requisite or proper to do when we have merely to state our concurrence in the Judgment already pronounced.

There remains the question whether the Plaintiff's suit is barred by the regulation for the limitation of actions.

That Regulation (Regulation 2 of 1802, Section 18, paragraph 4) provides "that a suit shall not be entertained which is commenced more than twelve years after the right accrued;" but this is subject to exceptions, one of which is, if the complainant can show by clear and positive proof that he directly preferred his claim within that period for the matter in dispute to a Court of competent jurisdiction or person having authority, whether local or otherwise, for the time being, to hear such complaint, and to try the demand, and shall assign satisfactory reasons to the Court why he did not proceed in the suit, or shall prove that either from minority, or other good and sufficient cause, he was precluded from obtaining redress.

Here the Sudder Court (for the objection does not seem to have been taken in the Zillah) has held that the suit was actually commenced in 1848, and, if so, the Plaintiff's title not having accrued till September 1837, the time could not expire till the 16th September, 1849, and, of course, the suit would have been commenced in sufficient time not to fall within the Regulation.

With respect to this the facts stand thus:—

In 1847 the Respondent's father presented his petition to the Civil Court for liberty to sue *in formâ pauperis* for the recovery of this estate.

The Court was of opinion that, under Regulation 4 of 1831, he could not be permitted to sue without first obtaining the authority of Government.

In May 1848 he obtained the requisite authority, and on the 5th October, 1848, he and his son, the present Respondent, presented a petition for leave to sue *in formâ pauperis*, and at the same time presented their plaint in this suit.

The rules of the Court require that for the purpose of obtaining such order the Plaintiff must make an affidavit of his circumstances, add a list of

all his property, and produce a certificate of a vakeel that he has a good cause of suit.

All the necessary documents accompanied the Petition, and on the 13th of November, 1848, the following Order was made by the Court :—

" 1848, 13th November. On a perusal of the pauper plaint and its accompaniments put in by Kooppy Naidoo and another, petitioners in Miscellaneous Petition 631, and on taking from them the prescribed affidavit, the said bill of plaint, &c., were ordered to be filed."

At this time, therefore, an Order was made that the plaint to which an answer has since been put in, and upon which all the proceedings subsequently have taken place, should be received by the Court and put upon record. There seems strong ground for contending that this was the commencement of the suit; and the Court below, which must be the best judge of its own forms and practice, has held that it was so.

The practice is stated by Mr. McPherson, at p. 85 of his valuable treatise, in these terms :—

" The period of limitation ends on the day when the plaint is duly lodged by the complainant in a Court of competent jurisdiction, not on the day when the suit is placed by the Sudder Court upon the file of the Court which they deem most proper to try it, nor upon the day when the plaint is numbered and sent for decision; for if there be any delay in that process, it is the delay of the Court, and not of the Plaintiff."

But if the preferring of the plaint with the Order of the Court of the 13th November, 1848, be not the commencement of the suit, these facts clearly bring the case within the exceptions found in the Regulation.

There seems reason to suppose that the proceedings adopted by the Court on the 13th November, 1848, were irregular, and that on that day it ought, according to the Regulation 7 of 1818, to have ordered immediate service of the Petition and of the Plaint on the Appellant, and to have fixed a day for her to show cause, if she could, why the Plaintiffs should not be allowed to sue *in formâ pauperis*.

If this course had been adopted on the 13th of November, 1848, the Order, which was actually made on the 1st of March, 1850, which the Appellant

contends must be treated as the commencement of the suit, might, and probably would, have been made long within the prescribed period.

The Order for service of the Petition and Plaint on the Appellant, and requiring her to show cause, if she could, why the Plaintiff should not be allowed to sue *in formâ pauperis*, was not actually made till July 1849. Service was made in August, and no cause was shown. The case, therefore, stood in this position on the 16th of September, 1849, when the twelve years expired: the Plaintiffs had preferred this claim within the prescribed period to a Court of competent jurisdiction, and had been prevented from commencing their suit in proper time (if, in point of fact, it was not commenced in proper time) by no neglect on their part, but by the irregular proceedings of the Court to which their claim was preferred.

It would be contrary to all reason and justice to hold that, under such circumstances, Plaintiff's suit could be barred by the Regulation.

We must humbly advise Her Majesty to affirm with costs the Decrees complained of.