Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Ramasawmi Chetti v. *the Collector of Madura, and Agent to the Court of Wards on behalf of Bhaskarasawmi Setupati, Zemindar of Ramnad, a minor; from the High Court of Judicature at Madras; delivered 8th May* 1879.

Present:

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

THIS was a suit brought by the Collector of Madura, acting for the Court of Wards on behalf of the minor Zemindar of Ramnad, against the Defendant to recover possession of the village of Selugai, and also to set aside a lease of that village, granted by the late Zemindar of Ramnad, the minor's father, in the year 1870. The learned Counsel on the part of the Appellant, the Defendant below, has not sought to impeach the judgments of the Courts below so far as they set aside the lease of 1870, but his contention has been directed to establish a former pottah which had been granted by the late Zemindar to the Appellant's father in the year 1867. It does not appear that the question which has been argued at the bar was the subject of decision in the High Court. The judgment of the District Judge of Madura proceeded upon the footing that the document of 1867 was inadmissible in evidence. It is an unregistered document made before the birth of the present Plaintiff. The District Judge also held that the lease of 1870 which was registered did not bind the minor Plaintiff, inasmuch as it was granted after his

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birth, and upon considerations which did not support it against his inchoate title. Their Lordships feel regret and some surprise that the Judges of the High Court have given no reasons for their judgment; none have been reported to their Lordships.

The sole question which is now before their Lordships is whether the document of 1867, in consequence of its not having been registered, is admissible in evidence and affects the estate; the point for decision being whether it is a document that falls within the General Registration Act No. XX. of 1866.

The argument having turned entirely upon the effect of this Registration Act, which refers to a Madras Act, and upon the construction of those two Acts as applicable to the instrument, it is unnecessary to go into the previous history of the case. It is sufficient to say that the late Zemindar of Ramnad was adopted by the widow of a former Zemindar; that his adoption was disputed, and great litigation was the consequence of that dispute. The case ultimately came before this tribunal upon appeal, and a decision was given, in May 1868, in favour of the adoption. Considerable expenses were necessarily incurred, and the Defendant's father, Arnachellum Chetti, and his partners, who appear to have been merchants and bankers, made very large advances to the Zemindar and his agents for carrying on the legal proceedings. In 1867, when the document in question was granted, the advances amounted to about a lac and a half of rupees; and at the end of the litigation the further advances and accumulated interest amounted to very nearly four lacs of rupees. The merchants who advanced the money took security for their advances, and in the end they received the whole of their money with compound interest, and several large sums by way of presents in addition to the interest.

The document on which the question arises is dated the 15th April 1867, and professes to be a lease from the late Zemindar to Arunachalam Chettiar. Its terms are these: "In consideration " of the assistance you have rendered to this " Samastanam (zemindari), you requested that " the Kasba (chief) village of Selugai, in Selugai " division in Raja-Singamangalam Firka, should " be leased to you for 40 years, fixing a favour- " able poruppu." "The aforesaid Selugai village" —describing it—" has been accordingly leased " to you for 40 years from this Fasli 1276 up to " Fasli 1315, fixing the poruppu at 400 rupees " per annum." It may be stated, in passing, that it is found that the value of this village was 1,700 rupees per annum so that it was obviously a favourable lease, which was intended to confer a valuable interest on the lessee. " You shall, there- " fore, raise the required crop and enjoy; and, " agreeably to the kararnama (agreement) you " have given, you shall continue to pay the fixed " poruppu according to the instalments of kist " year after year."

This lease was not registered. It is the document upon which the Defendant now relies to resist the claim to the possession of the village made on the part of the minor Zemindar; for, as has been already stated, it is not now contended that the judgments below with regard to the lease of 1870 can be impeached.

It is necessary to refer shortly to Act No. XX. of 1866, though the main question arises upon the Madras Act VIII. of 1865, to which reference is made in it. By the 17th section of Act No. XX. " leases of immoveable property for any " term exceeding one year " are required to be registered. The interpretation clause, (clause 2,) says of the word "lease," " 'Lease' includes a " counterpart, a kabulyat, an undertaking to " cultivate or occupy, and an agreement to

" lease, but not a putta or muchilka as respec-
" tively defined in section 3 of Act No. VIII.
" of 1865 of the Governor of Fort St. George
" in Council executed in the Madras Presi-
" dency." It is contended on the part of the Defendant that this document is a putta as defined in section 3 of this Act.

The preamble of the Madras Act is as follows: "Whereas it is expedient to consolidate " and simplify various laws which have been " passed relative to landholders and their " tenants, and to provide a uniform process " for the recovery of rent." Section 3 seems to be confined to the relation of tenants who are cultivating the land and their immediate landlords. The whole Act may not be confined to that class, but the intention appears to be by section 3 and the sections which specifically refer to it to regulate the relation of landlords and tenants of that description. This 3rd section, which is the one under which this document must be brought, if it is to escape the obligation of registration, is as follows: " Zemin-
" dars, Shrotriemdars, Inamdars, and persons
" farming lands from the above persons, or
" farming the land revenue under Government,
" shall enter into written agreements with their
" tenants, the engagements of the landholders
" being termed puttah, and those of the tenants
" being termed muchilka." It is said that this description embraces all cases where there is a landlord and a tenant. If that were the construction of the 3rd section as applied to the Registration Act, the consequence would be that in Madras all leases would be excluded from the beneficial operation of that Act. However large the premiums that may have been given on such leases, however small the rent, if there be a rent at all, according to the contention on the part of the Appellant, the lease

would fall within this 3rd section, and therefore need not be registered. One class of those who are described as landlords as distinguished from tenants are persons farming lands from Zemindars and others who are previously mentioned; but if the wide construction were to prevail, every lease from a Zemindar to any such person intermediate between the Zemindar and the ryots, would be a lease which need not be registered; and the mischief against which the Registration Act was intended to provide a remedy would exist in the case of all the valuable leases which are granted by Zemindars to intermediate holders.

The reference in the Registration Act is to a "puttah or muchilka as respectively defined in section 3." This section of the Madras Act does not strictly contain a definition, but a description only. It appears to provide for what shall be done where there is an existing relation of landlord and tenant, and requires that the landlord shall in that case enter into a written engagement with his tenant. Following the provisions of the Act, the remedies which are given in sections 8 and 9 can only be available where the relation of landlord and tenant, or a holding of some sort, already subsists, upon the basis of which the landlord or the tenant, as the case may be, may come into Court and claim to have a lease granted. Section 8 is, "When any of the landholders "specified in section 3 shall for three months "after demand refuse to grant such a puttah "as his tenant was entitled to receive, it shall "be lawful for the latter to proceed by filing "a summary suit before the Collector, who "shall try the case and direct a proper puttah "to be granted." Under section 9, the landlord may in like manner compel the tenant to accept a proper puttah. These provisions are made

upon the assumption that there is an existing relation which would warrant the application by either party for a written puttah. It cannot, of course, be contended that in this case the Zemindar was bound to grant the lease of 1867, or any lease to Arnachellum Chetti. The other provisions of the Act are consistent with this construction of section 3. Sections 5, 10, 11, and 12 refer specifically to the class of landlords described in section 3; whilst section 13 refers to other classes, showing that section 3 was not intended to apply to all cases of persons holding under others, but to a particular class of landlords and tenants only.

A further question was raised in the first instance before the District Judge, viz., whether, supposing the document of 1867 to be a puttah within the meaning of the Madras Act VIII. 1865, the proviso which is found at the end of section 11 would not nullify its effect as regards the Respondent, the "successor" of the grantor? There seems to be ground for the contention that this proviso is not limited to cases where suits are brought under the 8th, 9th, and 10th sections, although the commencement of the 11th section refers to such suits. The commencement is: "In the decision of suits "involving disputes regarding rates of rent "which may be brought before Collectors under "sections 8, 9, and 10, the following rules shall "be observed," and then come four rules. Three of them appear to apply to such suits, but it may be doubtful whether clause 4, which relates to waste lands, is so confined. Then the proviso referred to is, "Provided also, no puttahs "which may have been granted by any such "landholder at rates lower than the rates payable upon such lands, or upon neighbouring "lands of similar quality and description, shall "be binding upon his successor, unless such

" puttah shall have been *bonâ fide* granted for " the erection of dwelling houses, factories, or " other permanent buildings, or for the other " purposes mentioned in the proviso." It is difficult to suppose that the operation of this proviso was intended to be confined to cases in which suits are brought under sections 8 or 9; and it may be that it was intended to apply to all puttahs which come within the 3rd section. If so, the Appellant, assuming the Respondent to be a successor within the meaning of the proviso, would be placed in the difficulty which induced his advocates at the first hearing before the District Judge of Madura to take the opposite view from that which his Counsel has taken to-day, and to contend that this document was not a puttah within the meaning of the Madras Act, a view which was upheld by the Judge. It is not however necessary to decide this point.

On the whole, therefore, their Lordships are of opinion that this Appeal fails, and they will humbly advise Her Majesty to affirm the decrees of the Court below, with costs.