Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Sri Veerabhadra Raju Bahadur Garu v. *Chiranjivi Raju Garu, from the High Court of Judicature at Madras ; delivered the* 16*th March* 1905.

Present at the Hearing :

LORD DAVEY.
LORD ROBERTSON.
SIR ARTHUR WILSON.

[*Delivered by Lord Robertson.*]

The Appellant is Zemindar of the Kurupam estate, and the Respondent is his first cousin. It had been finally settled by the High Court of Madras, so long ago as 1892, that these two persons belong to two distinct families, and that (apart from bequest) the Respondent has no legal claim to maintenance from the Appellant. The question raised in the present suit, when it came by appeal before the High Court of Madras, whose judgment is now under review, is thus stated by them. "The" Respondent "does "not in this Appeal claim any relief on the "footing that he is a member of the" Appellant's "family. He claims only as legatee "under the will of the late Zemindar." The contention of the Respondent at their Lordships' Bar was to the same effect.

Now the bequest thus claimed was made under very singular circumstances and is expressed in very special terms. The testator was the Appellant's father, Suryanarayana Raju, and the will was made at a time when there was actually depending the suit already referred

to as having been decided by the High Court of Madras in 1892. In this litigation the Respondent's father, Bhoja Raju, brother of the testator, and Nrisimha Raju his nephew (son of another brother), were seeking to oust the Zemindar from the sole and undivided possession of the Zemindari, and this action was in the sequel fought out through the Indian Courts. Now the clause of the will, which is dated 20th December 1890, is as follows :—

"Sri Silavamsam Bhoja Raju, who is my natural born "brother, and Nrisimha Raju, the son of my another natural "born brother the late Gajapati Raju, have, unnecessarily "and without right, filed a suit with the advice and help of "certain wicked persons, expecting share to them in my "Kurupam Zemindari. On account of the fact that I have "joined the family of Vairicherla Varu and have been taken "in adoption and have assumed their gotra and names, and "also on account of some other reasons, I have been unob-"structedly and continuously enjoying the Kurupam Zemindari "for a long time, the same having been transferred to me after "the dispute was so settled that no one else have anything to "do with it and after the permanent enjoyment was confirmed "by the Government. Under these circumstances, should "this suit which is brought by them under an illusion be "disposed of against them, and should they after the final "Court's decision humbly apply for subsistence, they should "be given either from my self-acquired lands or jirayati lands "fetching cist at Rs. 500, five hundred rupees per head per year "from that time (even though I am not in any way concerned as "regards the support and maintenance of my brothers, but out "of mercy and on account of the fact that they will become "degraded and that they are my blood relations). Separate "lands should be purchased for the amount, which is twenty "times the said amount, and given. It is arranged that cash "payments should continue to be paid until they are available, "and that those landed properties should be enjoyed as long "as there are male heirs and then revert to the Zemin. If it "should take place during the minority of my son, the "managers and then my son should give effect to this."

On the face of this clause, this much is palpable, that the theory of the testator is (what the Courts ultimately held) that the legal pretensions of the brother and nephew were unjust, and that anything the testator would do for them was of mere grace. The testator accordingly purports to make his bequest

contingent on two events, viz., first, the Court's decision being in his favour. and, second, the defeated litigants' humbly applying for subsistence. It cannot be said that the latter of these conditions was exacting or arrogant, or inappropriate to the situation. At the least, the words mean that the bequest is to go only to people who acknowledge that they have nothing to appeal to but the liberality of their successful adversary. Now the District Judge held that there was no proof that this condition had been complied with. The High Court, on appeal, reversed this decision and held that the condition had been complied with. Both Courts held the condition to be a condition precedent; but the High Court held that two documents, Exhibits C and D, are "humble requests" for the grant of maintenance, such as were contemplated by the testator. These documents are as follows :—

Plaintiff's Exhibit C.

"From the Plaintiffs' father to the Collector of Vizagapatam
"District.—To W. A. Willock, Esquire, Collector of
"Vizagapatam District.

"Sri Vyricharla Silavamsam Bhoja Raju Garu offers "salams.

"The late Zemindar of Kurupam is my natural born brother. "It was his duty to maintain us. But I brought suit No. 1 of "1889 for partition of the Taluk by virtue of my right as "daughter's son, but that suit was, after enquiry, dismissed. "We do not intend preferring an appeal again. The minor "Zemindar being our junior sister-in-law's son, we considered "it safer to be friendly to him than being inimical; so I "decided on continuing on friendly terms with my junior "sister-in-law and with the minor Zemindar, and I have been "on friendly terms with them. Ours is a large family. It is "difficult to maintain our family with small endowment. It "was written in the will that we should be paid at the rate of "Rs. 500 per annum, simply because of my having instituted "the suit; but his free will was not that only so much should "be paid. If we are granted Rs. 500 per month, it will be "sufficient for the maintenance of our family. Otherwise, we "will be obliged to undergo much hardship. I therefore pray "that you will be pleased to sanction to that effect. Our late "elder brother used from the beginning to celebrate the "Upanayanams, marriages, ceremony of initiation into letters,

" and other ceremonies that had to be performed in our family " only from the funds of the estate itself. I therefore pray " that you will accord your sanction for the expense being met " with from the estate funds according to mamool whenever " the respective festivals happen to be celebrated.

" 15th October 1892. (Initialled in Monogram.")

Plaintiffs' Exhibit D.

" From the First Plaintiff to the Collector and Agent of the " Court of Wards, Vizagapatam District, Vizagapatam. " —To W. O. Horne, Esquire, Collector of Vizagapatam " District and Agent of the Court of Wards.

" Arzi submitted by Sri Raja Silavamsam Vyricharla " Chiranjeevi Raja Bahadur Garu.

" According to the will executed by my senior paternal " uncle, the late Zemindar of Kurupam, a Thoujee (allowance) " at the rate of Rs. 500 per year has to be paid to our family " from the Kurupam Estate. But it is insufficient for us. " Regard being had to the public proceedings of the year 1878 " conducted between the late Zemindar of Kurupam and my " father, Sri Raja Bhoja Raju Bahadur Garu, it would be " suitable to our dignity if Rs. 500 per month is paid to us, our " family being a large one. We are largely in debt. The " said allowance has not been paid to us from the beginning. " Our father Silavamsam Vyricharla Bhoja Raju Bahadur " Garu died last year. Since then, the maintenance of our " family has been a very difficult matter. There is no property " whatever. We, therefore, pray that, considering our posi- " tion, the allowance that was to be paid to us from the " beginning may be ordered to be paid. We all depend only " on this allowance itself and we have no other means to " depend on. Recently we were removed from the fort. So, " sanction should be accorded in accordance with the applica- " tion in respect of a house. The famine at present is very " severe. I, therefore, request you will be pleased to order " payment of the full allowance considering the dignity of our " family. All this responsibility rests only with the Agent. " Please to issue early orders.

" Please to consider.

" 4—8—97.

" (Signed) Sri Raja Chiranjeevi,

" Raja Bahadur."

Of these two documents C is written by the Respondent's father. It will be observed, on the face of it, that it is addressed to the Collector of the District, who was in administration of the estate. What humility there is, therefore, is primarily addressed to this official, and not to the offended brother, who was now dead. But

when the substance of this document is examined, it is seen that there is no renunciation, but, on the contrary, a re-assertion of the Zemindar's duty to maintain the applicant; and the abstention from further appealing in the litigation is frankly ascribed to prudential reasons. Finally, the application is not for what was given in the will, but for twelve times as much. Their Lordships are entirely unable to find in this document either the language of humility, or, what is more important, the substance of a humble request for subsistence.

Exhibit D, apart from all other objections, is not a request (humble or otherwise) by either of the persons named in the will, but by a son of Bhoja Raju. It is, moreover, in substance a protest against the inadequacy of the bequest, and a demand for something "suitable to our "dignity."

It appears to their Lordships that, neither in substance nor spirit can either of these letters be taken as evidence of a humble request for subsistence in the sense of the will. Nor can it be forgotten that the suit which initiates the present proceedings does not even aver that any humble petition was ever made; and its primary claim was for an allowance, as of right, "suitable to their rank and the income of the "Zemindari."

The issues settled for the trial of the cause embrace many questions which were, in the view of the District Judge, as expressed in his Judgment of 20th December 1900, superseded by his decision on the matter of the humble request. The Judgment of the High Court on 10th February 1903, turned on the same question. Their Lordships prefer the decision of the District Judge.

Before their Lordships, the Appellant raised a question as to the validity of the bequest,

assuming the condition precedent to have been complied with, his argument being founded on the Tagore case. In the view which their Lordships take of the condition precedent, that question does not arise, and it does not seem to have been argued in either Court in India.

L.R. Ind. App. Suppl. (1872-73), p. 47.

Their Lordships will humbly advise His Majesty that the Appeal ought to be allowed, the Judgment of the High Court reversed with costs, and the Judgment of the District Judge restored. The Respondent will pay the costs of the Appeal.