APPELLATE CIVIL.

Before Sir W. Morgan, C.J., and Mr. Justice Holloway.

ERAVANNI REVIVARMAN (PLAINTIFF) SPECIAL APPELLANT *v.* ITTA'PU REVIVARMAN (DEFENDANT) SPECIAL RESPONDENT (1).

1876. October 2.

ITTA'PU REVIVARMAN (DEFENDANT) SPECIAL APPELLANT, *v.* ERAVANNI REVIVARMAN (PLAINTIFF) SPECIAL RESPONDENT (2).

DHA'THRI VALIAMMA AND ANOTHER (PLAINTIFFS) APPELLANTS *v.* ITTA'PU REVIVARMAN AND ANOTHER (DEFENDANTS) RESPONDENTS (3).

Malabar Law—Removal of Káranavan from office.

Where a káranavan was found to have made perpetual grants of certain lands belonging to his tarwád for other than family purposes, and to have made demises of certain other lands belonging to his tarwád for unusual periods on no justifiable ground,—*Held* that this did not constitute sufficient ground for removal of the káranavan from his office, his conduct not having been such as to show that he could not be retained in his position without serious risk to the interests of the family.

The position of a káranavan is not analogous to that of a mere trustee, officer of a corporation, or the like. The person to whom the káranavan bears the closest resemblance is the father of a Hindu family. He should not be removed from his situation except on the most cogent grounds (4).

The solution of the difficulties which the state of families and property in Malabar will always create will not be assisted by bringing in the anarchy and insecurity which will always follow upon any attempt to weaken the natural authority of the káranavan.

These appeals to the High Court, which came on for hearing and disposal together, arose out of two suits, No. 10 of 1874, and No. 18 of 1875, brought in the Court of the Subordinate Judge of South Malabar. In Suit 10 of 1874 the defendant was the káranavan of the family to which all the parties in both suits belonged, and the plaintiff, who was the only anandravan

Special Appeals 413 (1) and 537 (2) of 1876 from the decree of the District Judge of South Malabar, dated the 12th January 1876.

(3) Regular Appeal No. 34 of 1876 from the decree of the Subordinate Judge of South Malabar, dated the 18th January 1876.

(4) A similar observation was made by Holloway and Kindersley, JJ., in *Elaya Thamburatti* v. *Valia Thamburatti* (R. A. No. 24 of 1876) a case heard on the 1st September 1876.

1876. October 2.

ERAVANNI REVIVARMAN v. ITTA'PU REVIVARMAN.

who had attained majority, sued to have the defendant removed from the káranavanship on account of mismanagement and physical incapacity. Suit 18 of 1875 was brought by the eldest female member of the family, the 1st plaintiff therein, and her younger sister and only other female in the family, against the káranavan and the anandravan (respectively defendant and plaintiff in Suit 10 of 1874) to have the káranavan removed from his office, to have it declared that the anandravan was incompetent to succeed to it, and to have the 1st plaintiff (the elder female) appointed to it.

In Suit 10 of 1874 the Subordinate Judge found that the káranavan was not physically incapable, but he found him to be "guilty of the following wrongful acts, *viz.*:—I. Of making perpetual grants of lands Nos. 1, 2, and 3 (in the plaint schedule) for other than family purposes. II. Of making demises of lands Nos. 4 to 12 (in the plaint schedule) for unusual periods on no justifiable ground whatever." "The above are," (said the Subordinate Judge in his judgment) "I think, good grounds for deposing a káranavan; but before attempting the performance of that painful duty at once, I should, I am of opinion, wait to give full consideration to the plea set up by the defendant that the plaintiff in this case is a spendthrift and wholly unqualified for the office of káranavan.

"I have carefully gone through the record, and I am extremely sorry to say that much graver charges than those proved against the defendant are brought home to the plaintiff." After specifying what these charges were the Subordinate Judge proceeded thus: "Plaintiff does not ask by his suit to nominate him to the office of káranavan. He only seeks the dismissal of the present incumbent. A decree in his favour would certainly entitle him to succeed the defendant, and the first step he would take would be to wreak his vengeance upon the females in his house, at whose instance he was criminally punished. I do not, therefore, think that it would be advisable to remove the defendant from his káranavanship and to place the family at the mercy of an unprincipled man like the present plaintiff. * * * I cannot for a moment believe that their tarwád would be safer in the hands of the plaintiff than in those of the defendant. The demises made by the defendant are undoubtedly all illegal. He has no authority to make such demises, but the evil can be remedied by suits brought for the

1876. October 2.

ERAVANNI REVIVARMAN v. ITTA'PU REVIVARMAN.

purpose either by plaintiff himself or by the females in the house." He therefore dismissed the suit.

The plaintiff (the anandravan) appealed to the District Court, which Court remanded the case to the Subordinate Judge's Court to try an issue whether the tarwád interests would be safer in the plaintiff's hands than they were in the defendant's. K. Kunjan Menon, who had succeeded the Subordinate Judge who first tried the case, (1) found, upon this issue, concurring with his predecessor, that the plaintiff was unfit to be káranavan, and dismissed the suit. The plaintiff again appealed to the District Court, and his appeal resulted in a decree in accordance with the following judgment: [After briefly recapitulating the previous history of the case, the Acting District Judge (2) proceeded thus] :—

"I have ascertained from the vakils engaged for the appellant and respondent that, with the exception of children, plaintiff and defendant are the only surviving male members of the tarwád, and that the female members consist of two daughters of defendant's sister aged 25 and 18, of whom the eldest has three sons (minors). The vakils agree to the appointment of a Receiver for the management of the property, and it seems to me that this is the proper course to adopt. I understand that another suit is pending in the Sub-Court by the female members of the family to depose defendant and to place the property under their control, as they allege plaintiff is unfit to manage. I do not think that it would be for the interest of the tarwád to allow young married females to manage the property, and their interest will be amply protected by the course I propose to adopt."

"I shall reverse the decree of the Lower Court and decree that defendant be removed from the office of káranavan so far as regards the management of the tarwád property, and that a fit and proper person be appointed as Receiver with full powers to manage the property of the tarwád, to preserve and improve the same, to collect the rents and profits thereof, and after paying a suitable sum for the maintenance and support of the defendant and of the plaintiff and of the female and minor members of the tarwád, to invest the yearly balance in Government securities, and I further decree that annual accounts be submitted by the Receiver to this Court of all

(1) I. K. Ramen Nair. (2) Mr. H. Wigram.

1876. October 2.

ERAVANNI REVIVARMAN v. ITTA'PU REVIVARMAN.

sums received and disbursed by him, and that no alienation of tarwád property be made without the sanction of this Court, and I further order that plaintiff and defendant do each bear his own costs of suit in this and the Lower Court."

Against the decree passed in accordance with this judgment a special appeal to the High Court was preferred both by the plaintiff (1) and by the defendant (2); by the former because the District Judge had appointed a Receiver instead of simply removing the defendant from the káranavanship, and by the latter because as well of his own removal as of the appointment of a Receiver.

In the other Suit, No. 18 of 1875, the Subordinate Judge (3) found that the plaintiffs, as well as the defendants, were unfit to be entrusted with the management of the tarwád property, and held that the appointment of a Receiver was "the only safe and proper remedy which the Courts could give in the case of this family, and" that "this the District Judge, Mr. Wigram, having already granted," he (the Subordinate Judge) had "simply to dismiss this suit." Against the decree passed in accordance with this decision the plaintiffs appealed to the High Court (4).

The *Advocate-General* appeared for the special appellant in Special Appeal No 413.

Mr. *Handley* for the special appellant in Special Appeal No. 537.

Mr. *Shephard* and *A. Rámachandráyyár* for the appellants; and Mr. *Handley* for the 1st respondent in Regular Appeal No. 34.

The High Court delivered the following

JUDGMENT:—The litigation by which it has been sought to remove the káranavan from his position has terminated in a finding that no one of the persons who seek to depose him is better qualified than he for the office, and the Judge has handed over the management of the tarwád to a person called a Receiver.

These proceedings show very clearly the mischievous extension of the doctrine as to the removal of káranavans.

It is a kind of litigation which is of recent growth, has been fostered by the sympathies of Judges who are themselves anandravans, and, as in a case which recently came before us, it has been exercised on the mistaken principle that a man can properly be

(1) Special Appeal No. 413 of 1876.
(2) Special Appeal No. 537 of 1876.
(3) K. Kunjan Menon.
(4) In Regular Appeal No. 34 of 1876.

1876. October 2.

ERAVANNI REVIVARMAN v. ITTA'PU REVIVARMAN.

removed whenever a single departure from his duty to act equally for the benefit of all can be proved against the káranavan.

In such a state of property and family relations as that of Malabar there must be a constant conflict of interest with duty. This, however, throws upon the Courts in case of such conflict the duty of checking acts referable to interest of that character, but it by no means justifies the treatment of the káranavan as a mere trustee, officer of a corporation, or other person to whom he has been likened. The law in this case, as in so many others, has suffered from the pressing of a false analogy. The person to whom the káranavan bears the closest resemblance is the father of a Hindu family. Like him, his situation as head of the family comes to him by birth. He should certainly not be removed from his situation except on the most cogent grounds. The office is not one conferred by trust or contract, but is the offspring of his natural condition. Expediency speaks the same language as the law. Benefit seldom accrues to a family or an institution from removing one man and putting in another. It is generally the substitution of the empty leech for the full one. The belief that this removal will take place on slight grounds has led in this very family to a long course of litigation which must have caused much of the expenditure complained of. It is stirring up family quarrels throughout the district, and no more striking instance than the present of the inexpediency of such a course could be given. The plaintiff in the regular suit is really the Brahmin paramour of one of the women, (1) a by no means desirable manager of a Malabar family. The plaintiff in the other suit is a greater spendthrift than the káranavan. The grounds given for the káranavan's removal would certainly

(1) The finding of the Court below on this point is expressed in the following passage of its judment: "The grant for 62 years made under these documents" (just before specified)" by plaintiffs in favor of 1st plaintiff's husband Raghunátha Pattar (Court witness) is wholly unjustifiable and presumably without valuable consideration as transactions of this nature between a husband and wife are always open to suspicion. The attempt of this Pattar, who is the karistenas well as husband of the 1st plaintiff, is clear from these documents. He tries to benefit himself and his son by his lawfully married Brahmin wife at the expense of the property of his concubine who, he says, the 1st plaintiff is. His present disclaimer of the benefit of the enhanced term under this grant is merely a subterfuge in order to secure success for the plaintiffs in this suit, which will virtually make him, and not the plaintiffs who are merely tools in his hands, the head of this big tarwád, and thereby enable him to defraud it with still more success and advantage.

1876. October 2.

ERAVANNI REVIVARMAN v. ITTA'PU REVIVARMAN.

not have satisfied us of the propriety of taking that course. The question is not merely whether a man is unworthy of his position, for that is not the ground for removing him, but whether the removal will benefit the family.

We certainly can see no case which could justify any Court in saying that his conduct has been such as to satisfy it that he cannot be retained in his position without serious risk to the interests of the family; still less can we see ground for the revolutionary remedy of the District Judge.

Compelled to choose between introducing a stranger and leaving the management in the hands of him to whom law and custom assign it, there can be no doubt on the facts of this case that we ought to choose the latter course. The state of families and property in Malabar will always create difficulties. Their solution will not be assisted by bringing in the anarchy and insecurity which will always follow upon any attempt to weaken the natural authority of the káranavan.

In all these cases the order of this Court will be to dismiss the original suits. There will be no costs throughout.

APPELLATE CIVIL.

Before Mr. Justice Holloway and Mr. Justice Innes.

1876. October 9.

G. D. LEMAN, PRESIDENT OF THE MUNICIPAL COMMISSION FOR THE TOWN OF GUNTU'R, (DEFENDANT) APPELLANT *v.* V. DAMODARÁYA (PLAINTIFF) RESPONDENT (1).

Tax on profession illegally levied—Madras Act III of 1871*—Construction of Statutes.*

Section 85 of Madras Act III of 1871 is not a bar to a suit to recover money wrongfully levied as a tax because such so-called tax had no legal existence.

There is no provision in that Act for levying any tax described in section 57 of the Act at all otherwise than by the prescribing of the machinery for its levy in sections 58—61. If that machinery is not applied, no liability to pay such tax can arise.

Where the Municipal Commissioners of a town had not determined on the imposition of a tax of that description till 22nd April of the official year for which such

(1) Regular Appeal No. 53 of 1876 from the decree of the Acting District Judge of Kistna, dated the 23rd March 1876.