NOTES.

[I. BARRISTER—DISQUALIFICATION OF—TO ENTER IN TO CONTRACT WITH CLIENT.

This disqualification applies to an English or Irish Barrister practising in India :—(1903) 25 All. 509 F. B.

II. BARRISTERS CANNOT BE SUED FOR RETURN OF FEES FOR NON-ATTENDANCE:—

(1903) 25 All. 509 F. B ; *Robertson* v. *Macdonogh*, **(1880) 6 L. R. Ir. 433** ; *Mulligan* v. *M'Donagh*, (1860) 2 **L. T. 136** ; **Halsbury's Laws of England**, Vol. II, p. 392—394.]

[3 Mad. 141.]

APPELLATE CIVIL.

The 22nd April, 1881.

PRESENT :

SIR CHARLES A. TURNER, KT., CHIEF JUSTICE, AND MR. JUSTICE MUTTUSAMI AYYAR.

Vira Rayen, Cheria Raja of Pudia Kovilagom, Calicut, and another.......(Defendants), Appellants

versus

The Valia Rani of Pudia Kovilagom, Calicut...........(Plaintiff), Respondent.*

Zamorin Rajas of Calicut, custom in family of—Property in possession of member, presumption as to.

According to the custom obtaining in the family of the Zamorin Rajas of Calicut, property acquired by a stanom-holder and not merged by him in the property of his stanom, or otherwise disposed of by him in his lifetime, becomes, on his death, the property of the kovilagom in which he was born, and, if found in the possession of a member of the kovilagom, belongs presumedly to the kovilagom as common property.

THE plaintiff, as the head of the *Pudia Kovilagom* (one of the houses or divisions of the family of the *Zamorin* Rajas of *Calicut*), instituted this suit to remove the first defendant from the manage-**[142]**ment of 186 parcels of land

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services. It cannot, however, have been the intention of the Legislature that the agreements referred to should have reference to other than a fixed payment altogether irrespective of the result of the cause ; for to suppose that any other course was contemplated would involve the recognition of a practice tolerated in no other Courts, and which, in the inducements it would hold out to false and vexatious litigation, and the temptations to dishonesty it would afford to the Pleaders by giving them an undue interest in the result of the causes in which they might be engaged, is obviously calculated to prove most injurious to the administration of justice.

3. With a view to the more effectual prevention of the practice referred to, the Court of Sudder Adalut resolve to direct that in every case in which a Vakil may be employed, he shall certify on the back of his Vakalutnamah that no agreement has been entered into by him with his client in contravention of Circular Order No. 129-A.

NOTE.— The Attorneys Act, 1870, Section 11, forbids stipulations for payment only in event of success.

An agreement by a Solicitor with his client to get 10 per cent. of the value of the property recovered is 'pure champerty'—L. R. 1 Ch. D., 573.

If the agreement is made after engagement with a Pleader it is *nudum pactum*—L. R. 2 Bom., 362.

* Appeal No. 59 of 1879 against the decree of the Subordinate Judge of South Malabar, dated 28th March 1879.

and parambas belonging to the *Pudia Kovilagom*, and to recover from him Rs. 4,000 collected by him from the said landed property for religious ceremonies which had never been performed.

The first defendant denied that the property in dispute was the property of the *Pudia Kovilagom*, and that he had ever collected rent as agent for the kovilagom, and alleged that all the property in dispute had been acquired since 1859 with the money of his mother, the second defendant, through her uterine brother the *Munarpad* Raja, who died in 1867; that the property had been managed by the *Munarpad* Raja, who died in 1867, till his death, and subsequently by himself, not under the kovilagom, but independently thereof, on behalf of the second defendant and her issue; consequently, he contended, the suit was barred by *Limitation*.

The Subordinate Judge found that the property in dispute belonged to the *Pudia Kovilagom* inasmuch as it had been purchased from time to time since 1831 by members of the *Pudia Kovilagom*, who held the stanoms of *Zamorin*, *Munarpad* and *Eralpad*, and had always been managed by some member of the kovilagom: that it was impossible to trace the sources from which the purchase-money had been derived; and held that, as in this family the established rule was that property acquired by stanom-holders descends after their death to the family to which they owe their birth, whether the property was purchased by the acquirer's own funds or with the funds of the kovilagom, the presumption was that the property in this case had descended to the kovilagom; that the evidence supported this presumption; and lastly, that the burden of proof lay on the defendant, and that there had been no proof of possession hostile to the kovilagom for twelve years. He accordingly gave a decree for the plaintiff except as to 4,000 rupees, and ordered each party to bear their own costs.

The defendant appealed to the High Court on the ground that the burden of proof was on the plaintiff, who had given no proof of the enjoyment of the income of the property in dispute within twelve years.

T. Rama Rau for the Appellant.

A. Ramachandrayyar for the Respondents.

The Court (TURNER, C.J., and MUTTUSAMI AYYAR, J.) delivered the following

[143] Judgment:—The parties to this suit are members of the family of the *Tamuri* Rajas or *Zamorins* of *Calicut*. The family comprises three kovilagoms or houses—the *Pudia*, *Padinjara* and *Keyakc Kovilagoms*. Of these, each has its separate estate, and the senior lady of each kovilagom, known as the *Valia Tamburatti* of the kovilagom, is entitled to the management of the property of the kovilagom. There are five stanoms or places of dignity with separate properties attached to them, which are enjoyed in succession by the senior male members of the kovilagoms. These are in order of dignity—(1) the *Zamorin*, (2) the *Eralpad*, (3) the *Munarpad*, (4) the *Edatharapad*, and (5) the *Nadutharpad*; and it would seem that, at the beginning of the century, there was also a sixth stanom known as the *Ellearadi Tirumapad* (*Buchanan*, page 83), but as no mention is made of this stanom in the present proceedings, it may be that it has ceased to exist.

The senior lady of the whole family, who is known as the *Valia Tamburatti*, also enjoys a stanom with separate property; this stanom is termed the *Ambadi Kovilagom*.

In the management of the properties of the three kovilagoms, the senior ladies are often assisted by the males or rajas who in time may pass out of the kovilagom and attain one of the separate stanoms.

There are no family names, and the stanom-holders are distinguished after their deaths by the name of the year in which they respectively died. All property acquired by the holder of a stanom, which he has not disposed of in his lifetime, or shown an intention to merge in the property attached to the stanom, becomes, on his death, the property of the kovilagom in which he was born. Property acquired by any member of the kovilagom is, in accordance with the principle recognized in the case of the joint Hindu family, presumed to be the common property of the kovilagom, unless proof is given that it has been acquired otherwise than with the aid of the common funds: and as in other *Malabar* families, properties are sometimes entrusted to the possession of a member, who is not by the customary law entitled to their management, either for the purposes of management or as an assignment for maintenance. Such arrangements are made at the pleasure of the *Valia Tamburatti* of the kovilagom, who can also at her pleasure resume any properties which have been so **[144]** dealt with. Lastly, it is not an uncommon practice that sale-deeds for properties purchased by the kovilagom should be taken in the name not of any member of the kovilagom, but of the deity under whose protection the kovilagom has assumed to place itself, or in the name of agents of the kovilagom. The explanation offered of this circumstance is that formerly ladies were averse to obtaining deeds of sale in their own names, lest it should be supposed they had acquired the funds wherewith to make the purchases by dishonourable means; and with respect to purchases in the name of the tutelary deity, a more probable reason is suggested that religious scruples would interpose additional reasons for preserving it in the tarwad.

It is admitted that a considerable portion of the property claimed by the *Pudia Kovilagom* has been in the hands of the first appellant. Of these properties, some were acquired by or through the agency of male members of the tarwad who subsequently succeeded to, or were at the time in the enjoyment of, stanoms. In the case of such properties there is no evidence to show out of what funds the purchases were made, but it is proved that at the time these members were conducting the direct management of the affairs of the kovilagom. In nearly every instance the sale-deed has been taken in the name of the deity or of an agent of the kovilagom, and it is not disputed that all the properties claimed belong, if not to the appellant, to the tarwad.

The appellants' case is that they were purchased by the second appellant's brother on her behalf. To prove this case they produced a document which the Court of First Instance pronounced to be spurious, and which was not seriously pressed as genuine in appeal. It is not shown that the second appellant, who was at the time of the purchases little more than a child, had any means of her own wherewith such acquisitions could be made, while there is no proof of any intention on the part of the purchaser to dispose of the purchased properties, if the purchases were made wtih his own moneys, as gifts to his sister.

It appears that, at a somewhat earlier date than was originally suggested by the respondent, the management of a portion, and at a later period of a still larger portion, of the property of the kovilagom was conducted by the first appellant personally or through his agents. There is no proof that he set up any adverse **[145]** title to these properties until shortly before suit. It is undoubtedly true that no accounts were produced by the respondent to show in what manner the incomes of these properties have been enjoyed by the kovilagom, but on the other hand no accounts are produced by the first appellant to show how they have been enjoyed or expended by him, while such of the title-deeds as he has produced make against the claim set up by him.

On the two points urged in appeal, that the burden of proof lay on the respondent and that the absence of specific proof of enjoyment of the incomes of the properties at any time within twelve years showed an ouster for which the respondent failed to seek a remedy within the time allowed by law, we agree with the Court of First Instance. It lay on the first appellant, who being a member of the kovilagom is found in possession of property, to prove a separate title to it; and, in order to make the plea of limitation available to him, it lay on him to prove an adverse possession; and on both these points he has failed. The respondent failed to establish the liability of the appellants to account for the mesne profits claimed. We therefore dismiss the appeal and disallow the objection of the respondent and affirm the decree of the Court below. The appellants will bear the costs of both parties incurred in this Court in respect of the appeal and the respondent the costs of the objection.

NOTES.

[SELF-ACQUISITION—MALABAR TARWAD—

Self-acquisition of a member of a Malabar Tarwad lapses to the Tarwad and not to the Tavazhi, *i.e.*, brothers, sisters and their descendants :—(1899) 10 M.L.J. 57 ; (1909) 19 M.L.J. 350=32 Mad. 351. F. B. where all the authorities on the point are collected.]

[3 Mad. 145.]

APPELLATE CIVIL

The 22nd April, 1881.

PRESENT :

MR. JUSTICE KERNAN AND MR. JUSTICE MUTTUSAMI AYYAR.

Kotta Ramasami Chetti and another............(Plaintiffs) Appellants.

versus

Bangari Seshama Nayanivaru and others............(First, Second, Third, Fourth and Eighth Defendants) Respondents.*

Polygar, de facto, *debts incurred by—Movable property acquired by savings from income and borrowed money—Assets in hands of successor—Duty of lender dealing with Polygar and with Manager of Hindu family—Application of loan to payment of paramount charges on estate, effect of, when the income is ample—Acquiescence of* de jure *Polygar in possession of Poliem by* de facto *Polygar—Effect on third parties lending money.*

[146] *Per* KERNAN, J.—A simple loan and an express charge require the same foundation to bind the family and estate of a Polygar.

The position of a Polygar differs from that of a manager of a Hindu family in this incident amongst others, *viz.*, that *prima facie* he borrows on his own personal credit (where there is no mortgage) and not on the credit of the family estate, and the rule requiring a lender to satisfy himself of the existence of family necessity or of the family benefit which justifies the manager in borrowing would not be sufficiently complied with by similar inquiries in the case of a Polygar borrowing money. To entitle a creditor obtaining a charge

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*Appeal No. 40 of 1878 against the decree of C. G. Plumer, District Judge of North Arcot, dated 12th April 1878.