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likely to be at a disadvantage, and this inequality between the contending parties is, as I understand it, the reason for the practice in question. In the present case it is alleged by the petitioner, and not denied, that she has no property, and I consider therefore that she is entitled to have some provision made for her costs. The order will be that petitioner's costs up to and including taxation and including the costs of this application be taxed as between attorney and client, and that respondent do pay the amount of such costs when so taxed to petitioner or her Solicitor, and further that the respondent do pay into Court the sum of Rs. 200 to meet the costs of the petitioner of and incidental to the hearing, and that such costs be taxed *de die in diem*, and when so taxed be paid to petitioner or her Solicitor out of such sum to be paid into Court by the respondent as aforesaid.

Solicitor for plaintiff: *P. B. Gordon.*

Solicitor for defendant: *Biligiri Ayyangár.*

APPELLATE CIVIL—FULL BENCH.

Before Sir Charles A. Turner, Kt., Chief Justice, Mr. Justice Kernan, Mr. Justice Muttusámi Ayyar, Mr. Justice Hutchins, and Mr. Justice Brandt.

1885. April 24.

VÉDANTA AND OTHERS (PLAINTIFFS), APPELLANTS,

and

KANNIYAPPA AND OTHERS (DEFENDANTS IN THE SEVERAL CASES), RESPONDENTS.*

Muhtarafa—Trade-tax, Zamíndár's right to collect—Regulation XXV of 1802, s. 4—Regulation XXV of 1832.

The right of collecting the muhtarafa or trade-tax from artisans in his zamíndárí has not been delegated by Government to the zamíndár of Karvaitnagar and cannot be legally exercised by his assignees.

Quære: Whether it was competent for Government to delegate the collection of the muhtarafa to zamíndárs for their own use.

APPEALS from the decrees of D. Buick, District Judge of North Arcot, reversing the decrees of C. Ranga Ráu, District Múnsif of Tirupati, in suits Nos. 725—734 of 1881.

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* Second Appeals 587—596 of 1883.

These cases were referred to a Full Bench by Turner, C.J., and Muttusámi Ayyar, J., in November 1883, and were adjourned from time to time to enable the zamíndár of Karvaitnagar and the Government of Madras to apply, if they should think fit, to be made parties, so that the question at issue might be finally decided. Neither the zamíndár nor the Government were made parties.

The facts and arguments appear from the judgment of the Court (TURNER, C.J., KERNAN, MUTTUSÁMI AYYAR, HUTCHINS, and BRANDT, JJ.).

Hon. *Rámá Ráu* for appellants.

Mr. *Branson* for respondents.

JUDGMENT.—The appellants (Vedantácháryalu and four others) are inamdárs of Yekambara-kuppam, a village in the zamíndárí of Karvaitnagar: they brought this suit to recover from the respondents (Kanniyappa Mudali and nine others), weavers, the muhtarafa tax claimed as due on their looms for Faslis 1285 to 1290 (1875-76 to 1880-81).

The respondents, in their written statements, pleaded that the appellants were not entitled to collect the tax from them; that the suit was barred by limitation; and that they had not held the number of looms on which the tax was assessed.

The Court of first instance held that the appellants were entitled to collect the tax, inasmuch as they were inamdárs under the zamíndár, and the tax had been always collected in the village; and held the suit was not barred by limitation because, although the appellants had not enforced their right of collecting the tax for twelve years prior to suit, this inaction was due to an order of the Collector, who had prohibited its collection.

On appeal, the District Judge adverted to the judgment of this Court in Special Appeal 747 of 1873,(1) wherein two learned Judges (Innes and Holloway, JJ.) had held the zamíndár entitled to collect the muhtarafa tax, the Chief Justice, Sir Walter Morgan, dissenting; and by reason of this dissent the District Judge appears to have considered himself at liberty to regard the question as still an open one. We may observe that the judgment of this Court by a majority is binding on the Courts until it is overruled by the Court itself: at the same time it is quite within the

(1) Not reported.

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province of a Judge who sees reason to doubt the propriety of a judgment of this Court, while accepting and applying it, to indicate the grounds on which, if the matter were *res integra*, he would have formed a different opinion.

The Judge rightly apprehends the nature of the tax or toll which the appellants assert their right to levy; it was a tax on artificers, in this case weavers, which under native rule was collected on behalf of the sovereign power, although, where the revenues of a district were farmed by a zamíndár, it was collected by him.

The Judge doubted the opinion expressed by Mr. Justice Innes that the right to collect the muhtarafa tax was enjoyed by the zamíndár as a common-law right: he held that if it was legal, it was legal by virtue of the delegated authority of the State, such delegation being manifested by the omission in the sanad to prohibit the collection of this tax. He, however, points out that under the Regulation XXV of 1802 the Government was entitled at any time to exercise its discretion and to withdraw from its deputy, the zamíndár, the privilege of collecting the tax, and that it was competent to it to do so by a mere order of Government, without resorting to legislation: he then goes on to inquire whether, although the Government has not finally and definitely issued such an order, the privilege has been cancelled by the Legislature in any other way. The Judge observes that the muhtarafa tax was collected, as sanctioned by law and custom, up to 1832: he regards the effect of Regulation V of that year as abrogating the authority derived from custom and substituting an authority derived from legislation; the sanction of custom, he says, was superseded by the sanction of the Legislature.

Act XVIII of 1861, the first License Tax Act, repealed Regulation V of 1832, and the Judge considers its effect was to abolish the muhtarafa tax wherever it was collected in the provinces directly administered by the Government of India, and that it could have had no other effect in the zamíndárís; and whereas Act II of 1862 simply repealed Act XVIII of 1861, without reviving Regulation V of 1832, the Judge considers that the right to collect the muhtarafa tax was not revived in the Karvaitnagar zamíndárí any more than it was in any raiyatwárí district in the Presidency: he admits that the repeal of Act XVIII of 1861 may have had the effect of reviving the common-law liability of

subjects to pay the tax to the Government, and of reviving in the Government the common-law right of imposing it; but he considers that to entitle the zamíndár to collect it there must have been a fresh delegation of authority, and that an order of the Government, dated 26th November 1865, did not amount to such a delegation: the portion of the order quoted by the District Judge (paragraph 26) is in the following terms: "It appears to Government that they are not called upon to insist on the resumption of this item of revenue from the zamíndárs of Venkatagiri, Karvaitnagar or Kálastri, and the Collectors will accordingly understand that the prohibition against their collecting muhtarafa according to custom is withdrawn so far as Government are concerned: the zamíndárs will be responsible for keeping within the law." But whether or not this order operated as a delegation, the Judge considers that since 1862 there had been at best nothing but a liability at common-law on the part of the raiyats of the zamíndárí to pay the muhtarafa tax, and he expresses his belief that the British Government has never revived a fiscal liability, which has been in abeyance for the shortest period, without having recourse to the Legislature: in the result he holds that in the absence of any such legislation the common-law right, which was abrogated by Act XVIII of 1861, has not been revived.

Again, adverting to the fact that the sanad of the zamíndár of Karvaitnagar, while it expressly prohibited the collection of the other sources of revenue mentioned in s. 4 of Regulation XXV of 1802, omitted mention of the muhtarafa (which the Judge considers tantamount to an exclusion of the prohibition), and adverting also to the s. 3 of the Regulation above quoted, which declares that "Sanads and kabuliats are to contain the conditions and articles of tenure on which the lands should be held," and required the Courts "In all cases of disputed assessment to give judgment in conformity with the conditions in the particular case," the Judge considers that, so long as the muhtarafa tax continued a legal exaction, and the Government had abstained from exercising its power to abolish it, the zamíndár enjoyed the right to levy it; but that in 1861 the Legislature interposed and deprived him of that right.

On these grounds, the Judge reversed the decrees of the Court of first instance and dismissed the suits; but he also expresses a doubt whether it is competent to the zamíndár to delegate the

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power of collection to others, as to the plaintiffs in this suit, inámdárs, and holds that no more than three years' arrears of taxes could in any case have been decreed.

We must recognize the care and ability with which the Judge, Mr. Buick, has dealt with the very difficult question on which he felt it his duty to enter.

The Hon. Mr. *Rámá Ráu* for the appellants naturally relied upon the previous ruling of this Court, and supported the reasons recorded by the learned Judges who in the appeals of 1873 upheld the legality of the collection of the tax; and it is not without protracted and anxious consideration that we arrive at a different conclusion.

Mr. *Branson* in a very exhaustive address supported the decree of the Lower Appellate Court, as well on the grounds mentioned by the District Judge as on other grounds which we proceed to consider.

His argument, which he supported by copious references to authorities, was as follows. He relied on the decision of the Sadr Court in Case No. 6 of 1807 (M.S.D., vol. I, page 9); in that case the Rájá of Vizianagaram sued the Collector to recover 50,000 rupees as compensation for the loss sustained by him in consequence of his having been prevented by an order of that officer from collecting muhtarafa tax. The Sadr Court held that not only was the zamíndár not entitled to levy the tax, but that, in conformity with the conditions of his tenure, the privilege in question was held entirely at the discretion of Government, expressly to his exclusion; that the custom owed its existence to the arbitrary will of the zamíndár at a time when the Government did not exercise its right of restraint over him, and that "It was evident from the very nature of the tax that the custom of collecting it could not have been continued (continuous), but that its regular realization had been prevented by frequent interruptions; that it had not been acquiesced in by the parties from whom it was taken, but had been the subject of contention and dispute as well on account of its unreasonableness in itself and in its consequences as on account of its variableness and uncertainty;" that "The custom was therefore wanting in all the requisites necessary to make a custom good, and on this ground alone might have been relieved against, apart from a distinct reservation" in the Regulation "which showed that the intention of Government

was expressly to protect the subject against the imposition of any tax not originating from the land, the propriety of which had not been previously investigated and discussed." The learned Counsel also called our attention to passages in the Fifth Report, vol. 2, pp. 10, 54, 76, 162 and 356, which supported the opinion of the Sadr Court as to the origin and nature of the tax, and as to the reasons which induced the Government to prohibit by legislation its collection by subjects and to retain it under its immediate management.

It was further contended that, assuming that the muhtarafa was such a tax as could legally be collected by Government, when the Government converted its tax-gatherers into landowners, it expressly, by s. 4 of Regulation XXV of 1802, deprived itself of the power of conferring on them the right to collect it. Adverting to the sanad, it was contended that, even if the Government had the power to delegate the right of collection, the omission of reference to the muhtarafa could not be construed as an authority to collect it; that no pecuniary burden can be imposed upon the subject except upon clear and distinct legal authority established by those who seek to impose it; and that the Courts must always lean against a construction which imposes a burden on the subject. He cited in support of his arguments *Gosling* v. *Veley*,(1) *Partington* v. *The Attorney-General*,(2) and *Holloway* v. *Smith*.(3)

The right of the sovereign power to collect taxes on trades and professions is of extreme antiquity in India. In the Code ascribed to Manu an enumeration of the king's duties is followed by an enumeration of the revenues he is entitled to collect: among these we find taxes on goods, on income, and on labour—ch. VII, ss. 127, 130, 132, 137 and 138. There can be little doubt that these taxes were collected under Hindú sovereigns, though not perhaps continuously or universally; the Muhammadans availed themselves of the system of revenue they found established, and their collectors or farmers exacted dues which had long been customary, or revived dues which, though obsolete, were not unwarranted by Hindú law.

It will be seen, however, that these dues were not exigible by the owners of land as such, but by the sovereign. The zamíndárís

(1) 12 Q.B., 407. (2) L.R., 4 H.L., 122. (3) 2 Strange, 1171.

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of Southern India are, it may be admitted, in some cases held by families who enjoyed at one time more or less completely the rights of sovereignty; in other instances the present zamíndárs represent military commanders on whom jágírs were conferred: again in other instances collectors or farmers of revenue have been recognized as zamíndárs. But whatever the origin of their title, there can be no question that the Government intended to treat the zamíndárs with whom it effected a permanent settlement of the land revenue as landed proprietors, and to ignore any rights which conflicted with its own sovereignty, except in rare instances, in which it still conceded to a royal house, by express treaty or other engagement, some of its ancient privileges.

Such a large proportion of the Crown revenues of India was derived from the land, directly or indirectly, that it was difficult for the early British administrators to separate with precision the revenue which could conveniently be collected by the Crown from that the collection of which could more conveniently be left to those subjects who had exercised the functions of collection under native rule. There were, however, some sources of revenue which could, it seemed, be collected directly, and which it was considered desirable to retain under the immediate management of the administration. The double functions of the East India Company rendered its servants particularly jealous of all taxes "Which might clog the beneficial operations of commerce," nor were they without solicitude for the comforts of the people at large.

The Committee in the Fifth Report observe "That under the head of 'Sáyar' revenue was included a variety of taxes, indefinite in their amount and vexatious in their nature, called motarfa; these consisted in imposts on houses, on the implements of agriculture, on looms, on merchants, on artificers and on other professions and castes" (vol. 2, p. 10): and it appears that it was considered that Government had fixed the assessment on each zamíndárí exclusively of these items, except in a few instances, where these taxes were included among the assets on which the assessment was calculated (*ibid*, p. 54).

Madras Regulation XXV of 1802 was enacted to carry out the policy we have indicated. The primary object was to settle in perpetuity the land revenue, but the Regulation went on to deal with the other sources of revenue which, though arising in some cases indirectly from land, Government had before resolved to

keep entirely under its own control. The fourth section of Regulation XXV of 1802 is as follows:—

"The Government having reserved to itself the entire exercise of its discretion in continuing or abolishing, temporarily or permanently, the articles of revenue included according to the custom and practice of the country under the several heads of salt and saltpetre, of the sáyar or duties by sea or land, of the abkári or tax on the sale of spirituous liquors and intoxicating drugs, of the excise on articles of consumption, of all taxes personal and professional, as well as those derived from markets, fairs, or bázárs, of lákhiráj lands (or lands exempt from the payment of public revenue), and of all other lands paying only favourable quit-rents, the permanent assessment of the land tax shall be made exclusively of the said articles now recited."

Two questions are raised on the construction of this section: firstly, whether the Government, in declaring that it had reserved to itself the entire exercise of its discretion to continue or abolish temporarily or permanently the "articles of revenue" mentioned in the section, intended to declare that it reserved the right as a right to be exercised by itself, or whether it reserved the right as a right it might concede to or withdraw from those with whom the permanent settlement was made; and secondly, whether if the settlement officers disobeyed the injunction and included these articles of revenue in the land assessment, the landowner with whom the settlement was made thereby acquired a legal title to collect them.

It is desirable to consider what the Government was engaged in doing. It was dealing with its revenues. It had theretofore farmed them in block for a term of years. It now determined to make in perpetuity a farm of the revenue arising from land. To enable it to do so the Regulation XXV of 1802 was passed.

Except where it had granted its revenues for an unexpired term or in perpetuity, it was clearly open to the Executive Government to deal with them as it pleased; and it was competent to the Legislature to authorize the Executive Government to resume even the revenues which had been granted for an unexpired term or in perpetuity. Of course justice suggests that in such cases compensation should be paid, but the omission to provide for compensation would not affect the operation of an enactment abrogating, or authorizing the Government to abrogate, the rights

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of private persons—*Nasarvánji Pestanji* v. *The Deputy Commissioner of Customs*.(1)

Looking to the legislation which had taken place in Bengal, there are strong grounds for concluding that the Government of Madras intended to reserve the right to continue the collection of the articles of revenue other than the land revenue as a right to be exercised by itself.

On 11th June 1790 the Governor-General had published a rule that in Bengal no landowner or other person of whatever description should be allowed thereafter to collect any tax or duty of any denomination, but that all taxes and duties should thereafter be levied on the part of Government by officers duly appointed for that purpose. On 11th July 1790 the Governor-General announced that the privilege of imposing and collecting internal duties had been resumed from the landholders and taken exclusively into the hands of Government for the purpose of reforming abuses in these collections, and thereby affording benefit to the commerce of the country as well as general ease to its inhabitants. These rules were incorporated in Regulation XXVII of 1793. In the Proclamation of the permanent settlement in Bengal, Behar and Orissa, which was enacted in Regulation I of 1793, the Governor-General, adverting to the resumption of the "sáyar" under the rules mentioned, declared that, if he should thereafter think it proper to re-establish the "sáyar" collections or any other internal duties, and to appoint officers on the part of Government to collect them, no proprietor of land would be entitled to any participation, or be entitled to make any claims for remission of settlement on that account—Bengal Regulation I of 1793, s. 8.

Similarly, on re-enacting the rules for the decennial settlement of the public revenue payable from the lands of the zamíndárs and others in Bengal, Behar and Orissa, it was enacted that the assessment should be fixed "exclusive and independent of all duties, taxes and other collections known under the general denomination of 'sáyar.'"—Bengal Regulation VIII of 1793, s. 33.

In 1789, in contemplation of the introduction of a permanent settlement in the province of Benares, the Resident arranged that the "article," spirituous liquors, and the tax upon shopkeepers,

(1) 2 Bo.H.C.R., 75.

dealers and weavers, should be separated from the collections of the renters, and realized by the ámils of the respective districts—Bengal Regulation II of 1795, s. 13—and took engagements from the renters stipulating *inter alia* that they should not levy or receive any of the articles of the abolished 'sáyar'—*ibid*, s. 14. These arrangements were made under order of the Governor-General dated 26th December 1787, and by Bengal Regulation XXVII of 1795, s. 5. Referring to those orders, the Governor-General made a declaration reserving the right to re-impose the 'sáyar' and collect it for the Government in the province of Benares similar to that which he had made on the introduction of the permanent settlement in Bengal.

In like manner it was ordered that engagements for the land revenue in the Ceded Provinces should be exclusive of 'sáyar' duties—Bengal Regulation XXVII of 1803, s. 53, cl. 13—and the Governor-General declared the reservation by the Government of its right to re-impose them in those districts and to appoint officers on behalf of Government to collect them for its own exclusive benefit—Bengal Regulation XXV of 1803, s. 35. To the same effect are the provisions of Bengal Regulation IX of 1805, s. 25, which was passed for the settlement of the conquered provinces.

Looking then to the legislation in Bengal which preceded, was contemporaneous with, or immediately followed the legislation in Madras respecting the introduction in this Presidency of a permanent settlement of the land revenue, there are at least strong grounds for believing that the provision we are considering was intended to declare that the Madras Government had resolved to retain the right to impose or discontinue the collection of the articles of revenue which it excepted from the permanent settlement of the land revenue, and that it contemplated their collection, when imposed, for its own exclusive benefit and through its own officers.

It is true that neither the declaration nor the Regulation in terms prohibited the collection of the 'sáyar' by the landholders, but the Government was at the time re-arranging the collection of its revenues with them, and it was sufficient that the Regulation should declare that the settlement it then effected had relation only to the land revenue, and that it should enjoin the settlement officers to exclude the other articles of revenue from the assessment of that revenue.

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Indeed, as has been well observed by Mr. Justice Brandt, inasmuch as the Government expressly declared that the continuance or withdrawal of the tax was left to its discretion, the tax could hardly have, with any propriety, been made the subject of a permanent assessment; there was no provision that the peshkash should be increased or diminished according as the collection of the 'sáyar' was permitted or prohibited; indeed such a provision would have been hardly compatible with a permanent settlement; and this is a strong argument that it was not the intention of the Government that its collection should be left to the zamíndárs. It is at least clear that it was the intention of the Government of Madras to adopt the policy that had been pursued by the Government of Bengal, and to separate the other articles of revenue from the land revenue; such a separation does not necessitate the conclusion that it was the intention of the Government that the collection of the 'sáyar' should be retained in its own hands, but it makes it highly probable that this was the intention of the Government.

The provisions of Regulation V of 1832 point to the same conclusion. That enactment recites that, whereas persons exercising certain arts, trades and professions were by the law and custom of the country liable to the muhtarafa tax, and that doubts had arisen whether certain persons liable to the tax who had up to that time or for some period not been charged with it, might not plead that fact *in bar to the right of the Government to levy it*, it was declared that the tax was payable by all persons who exercised professions which by the custom of the country rendered them liable to the tax, and that they could not plead its discontinuance in bar of the collection; and it was directed that the collection should be made in the same manner as the collection of the land revenue, and that the Collector should have power to employ the same coercive processes for its recovery as he had for the collection of land revenue. It will be observed that the right to collect the tax is described as inherent only in the Government, that the processes authorized for its collection are only such as are authorized for the collection of land revenue, and that the Collector is the only person who is empowered to employ them.

But, assuming that it was competent to the Government to commit the collection of this branch of the revenue to the zamíndárs and for their own benefit—and we need not hold that it was

not competent to the Government to do so—the question is, did the Government delegate the right of collecting it to the zamíndár of Karvaitnagar?

The Regulation XXV of 1802 was passed in July 1802. The sanad was issued to the zamíndár in August 1802, and the zamíndár must rely on the Regulation as giving him a title to that permanency of assessment which it may be assumed he would be reluctant to abandon. It has not been argued in this Court that the zamíndár had a right to collect the tax independently of his sanad.

If that argument had been advanced, it appears a sufficient answer to it that the Government was re-arranging its fiscal relations with the zamíndár, and that we must look to that document only to ascertain whether it made a composition with him in respect of all sources of revenue or only in respect of some.

It cannot be denied that in sanads issued in virtue of the Permanent Settlement Regulation the Government dealt ordinarily only with the land revenue.

The insertion in sanads issued by the Government of Madras of a clause repeating the declaration contained in the Regulation as to the exclusion of items of revenue other than the land revenue was surplusage. The Regulation declared that the assessment was to be confined exclusively to the land revenue. Had the clause been omitted, it could not have been contended that the zamíndár was entitled to collect revenue other than the land revenue, because of its omission. The Regulation declared the law in terms which are unambiguous. The omission of any mention of the muhtarafa in the sanad granted to the zamíndár of Karvaitnagar may or may not have been intentional. There is nothing to show that was so. But, however this may be, the Legislature had declared that the assessment should not include the muhtarafa, and if the Government had power and intended to sanction the continuance of, or to authorize the collection of, the tax by the zamíndár, it should have done so as a separate arrangement and in express terms.

It could not have been the intention of the Government that the collection of the tax should be partial; that only persons resident in certain areas should be subject to it. It was a tax payable to the State, and, if justly leviable at all, was to be levied from all persons under liability to pay it in all parts of the terri-

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tory, and this is recognised in Regulation V of 1832 and is implied in the declaration in Regulation XXV of 1802. It may be admitted that up to that time its collection might not have been universal, but if it had been the intention of the Government that the collection of the tax should be sanctioned in particular places only, the persons liable to the tax were entitled to clear notice of the intention of the Government that it should be so collected.

It must then be held that the tax was not, because it could not legally have been dealt with as, a recognised source of income to the zamíndár in the future, when fixing the peshkash payable under the sanad of permanent settlement; and that the sanad confers on the zamíndár no right to collect the tax.

But if the Government was still at liberty to depute to the zamíndár the collection of the tax, it remains to be considered whether by any subsequent order it has done so, and here again we must observe the well known rules of law on which the learned counsel has insisted, and hold the persons from whom the tax is claimed liable only if the right has been granted to the zamíndár in express terms. The proceedings of the Board of Revenue of the 8th July 1816, to which reference is made in the judgment of Innes, J., in S.A. 747 of 1873, do not appear to us to have any direct bearing upon the question immediately before us, and, even if they were in terms sufficient to do so, could convey no sanction.

The order of the Government of 25th November 1865, No. 2906, Revenue Department, certainly has not the effect of a sanction. It is desirable to quote other passages from that order in addition to that given in the judgment of the District Court.

After giving a summary of the history of this and three other zamíndáris and of certain official correspondence connected therewith, it is observed in paragraph 15 that "What may be the legal rights of the zamíndárs in the matter of muhtarafa in the present condition of the law on the subject, is a question on which the Government is not competent to pass an authoritative decision."

In paragraph 17 it is said: "If under the present condition of the law the demand on the part of the zamíndárs is not legal, it will be for their sub-tenants to resist it. The question may then be judicially considered and authoritatively decided."

The Government may have deemed it unnecessary to "insist on the resumption" of a right which it had not deputed, but they warned the zamíndárs that the legality of the collection of this tax

by them was more than doubtful, and that if they determined to collect it, they must beware that they should do nothing which they were not legally entitled to do, and were careful to express that the prohibition against the collection of the tax by the zamíndárs named was withdrawn only "so far as Government are concerned."

The notification published by the Collector of North Arcot in the District Gazette of the 21st April 1866, purporting to set forth briefly the intention of the order of Government quoted, was worded in terms which went beyond the spirit and intention of that order, and cannot have the effect which in argument it was sought to attach to it.

It has not been shown how the amount of the peshkash was settled in the case of the Karvaitnagar zamíndárí. It is stated, and probably correctly, that the zamíndárí was held under an obligation to supply troops and that the peshkash was not fixed in reference to the former assets of the estate, but to the assumed cost of the performance of the service attached to the tenure. It may be said that thus indirectly all items of revenue were taken into account in fixing the assessment; and if the result of our decision be to deprive the zamíndár of a source of income on which his peshkash was, though indirectly, calculated, that may give him an equitable ground to ask compensation from the Government, but it cannot justify the Court in imposing a burden on the weavers in the zamíndárí which is not shown to be legally binding on them.

In the result the appeals must be dismissed with costs.

APPELLATE—CIVIL.

Before Mr. Justice Muttusámi Ayyar and Mr. Justice Hutchins.

VENKATAGIRI RÁJÁ (PLAINTIFF), APPELLANT,
and
PITCHANA (DEFENDANT), RESPONDENT.*

Rent Recovery Act, s. 11, cls. i. iii. iv—Improvements effected by tenant—Enhancement of rent—Sanction of Collector.

The sanction of the Collector required by the proviso to cl. iv., s. 11 of the Rent Recovery Act as a condition precedent to the enhancement of rent when the landlord has improved the land or has had to pay additional assessment to Govern-

* Second Appeals 697—707 of 1884.