contributed to the death of the deceased. Though the object of all was no doubt to give the deceased a beating, the second and third accused neither instigated nor participated in the fatal blow dealt by the first accused. They cannot, therefore, be held responsible for the consequences of such act, and it is not easy to follow the reasons given by the Judge for holding these two persons also guilty of murder. We therefore alter the conviction of the second and third accused into one of voluntarily causing hurt under section 323 of the Penal Code and convert the sentence passed upon them to one of four months' rigorous imprisonment. The sentence passed by the Judge of 'penal servitude' for life on all the three accused was in itself illegal, as the punishment of 'penal servitude' is applicable only to Europeans and Americans, so that we must also alter the sentence passed on the first prisoner. In lieu of the sentence of the Judge we sentence the first appellant to transportation for life and dismiss his appeal.

APPELLATE CIVIL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Benson.

CHOCKALINGAM PILLAI AND OTHERS (DEFENDANTS 2 to 10, 13 AND 27 to 31), APPELLANTS,

1896. July 23, 24. August 13.

v.

MAYANDI CHETTIAR (PLAINTIFF), RESPONDENT.*

Landlord and tenant—Ulavadai Mirasidars—Permanent tenancy—Lease by temple trustee—Long possession—Necessity for lease presumed—Civil Procedure Code, s. 584—Inference to be drawn from documents, question of law.

In 1813 the manager of a temple gave a permanent lease of one-half of certain lands to C, the ancestor of the defendants 1 to 14, and the other half to N. In 1820 N transferred his half share to V, the son of C. In 1831 V and S, the ancestor of the other defendants, addressed a petition to the Collector, the then manager of the temple. In 1832 V and S executed a fresh lease and a security bond in favour of the temple, in both of which documents V and S were described as Ulavadai mirasidars, that is, persons with an hereditary right to cultivate. There was no evidence adduced to prove for what purpose the lease

* Second Appeal No. 689 of 1895.

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of 1832 was executed, but the defendants held possession as tenants from 1832 to date of suit:

Held, that the words 'Ulavadai mirasidars' used in the deeds of 1832 as describing the tenants denoted that they were persons with hereditary right to cultivate, and that the lease was therefore of a permanent nature:

Held also, that after the lapse of so great a period of time, the Court would presume under the circumstances, that the original grants were made for necessary purposes and were binding on the temple:

Held further, that the proper inference to be drawn from the terms of a document is a question of law within the meaning of section 584, Civil Procedure Code and can be considered in second appeal.

SECOND APPEAL against the decree of J. A. Davies, District Judge of Tanjore, in appeal suit No. 82 of 1894, confirming the decree of T. Ramasami Ayyangar, Subordinate Judge of Negapatam, in original suit No. 1 of 1893.

he facts of this case were as follows:—

The plaintiff, as trustee of the temple of Kayarohanaswami at Negapatam, has brought this suit to eject the defendants from the possession of certain land in the village of Vadagudi, belonging to the temple and for mesne profits from date of plaint to date of delivery.

The lands in dispute belong to the temple referred to in the plaint. On the 10th January 1832, when the management of the affairs of the temple was exercised by the Government Vriddhachala Pillai, the ancestor of the defendants 1 to 14, and Subbayyan, the ancestor of the defendants 15 to 26, executed a muchilika (exhibit A, a translation of which appears, in the judgment of the High Court) in favour of the then Collector of Tanjore undertaking to cultivate the lands from fasli 1241 and to pay annually to the temple Rs. 520-7-9½.

Plaintiff's case was that Vriddhachala Pillai and Subbayyan and after their death their descendants continued to pay the rent as reserved in the muchilika until fasli 1279, and from faslis 1280 to 1283, 205 kalams of paddy were paid every year in addition to the rent, and from faslis 1284 to 1292 the additional rent was raised to 350 kalams per annum, and it was paid together with the prescribed rent and subsequently the defendants allowed it to fall into arrears; that the lands are now capable of fetching an annual net profit of Rs. 1,500 to the temple; that on the 6th November 1889 a notice was given by the plaintiff to the defendants demanding the payment of arrears in full and execution of a fresh lease-

deed at an enhanced rate of rent, and intimating that, if the defendants did not agree to his proposal, they were to quit the lands at the end of the fasli, but they sent no reply, though bound to give up the lands on demand, and that plaintiff is not willing to leave the lands any longer in their possession. Defendants 27 to 37 are impleaded as being in possession of a portion of the lands sought to be recovered.

The principal defence was that the entire lands set out in the plaint had belonged to the defendants' ancestors, who had given their mirasi right to the temple of Kayarohanaswami two hundred years ago, but retained the permanent right of cultivation, which they and the defendants had enjoyed for a period of two hundred years, paying the Ayan and the Svamibogham rent to the temple, and they were not therefore liable to be ejected. It was further contended that the muchilika contains no stipulation for eviction, and they are not in arrears, having paid away the rent until the end of the last fasli; that no additional rent was ever paid by them, and that the notice given by the plaintiff is not a proper notice to quit. It is also contended that the revenue and the proprietary dues have been fixed in perpetuity.

The following issues, *inter alia*, were framed:—

Whether under the terms of the muchilika of the 10th January 1832 Virddachala Pillai and Subbayyan were tenants from year to year or acquired a right of permanent occupancy.

Whether defendants 1 to 26 allowed the rent to fall into arrears as alleged in paragraph 4 of the plaint.

Whether the defendants aforesaid are liable to be ejected for non-payment of the rent.

Is the plaintiff entitled to enhance the rate of rent.

Whether the notice to quit given by the plaintiff is a proper and legal notice.

To what relief is plaintiff entitled.

The Subordinate Judge held with regard to the first issue that the defendants had failed to prove that they had any title higher than that of cultivating tenants from year to year.

As to the second and third issues he held that there was no proof that the rent was allowed to fall into arrears by the defendants. Even supposing they were in arrears, they are not liable to

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be ejected, there being no stipulation in the muchilika that non-payment of rent should work a forfeiture of the lease.

As to the fourth issue he held that defendants' tenure being one from year to year, plaintiff was at liberty to enhance the rent (*Chockalinga Pillai* v. *Vythealinga Pundara Sunnady*(1) and *Thiagaraja* v. *Giyana Sambandha Pandara Sannadhi*(2)), and as to the fifth issue he said "that the notice given by the plaintiff contained "an intimation that defendants should pay the enhanced rate of "rent or quit the land at the end of the fasli. It is argued "for the defendants that notice to quit should not contain a "demand for enhanced rate of rent, and in support of the argu-"ment the ruling in *Mohumaya Goopta* v. *Nilmadhab Rai*(3) was "cited. In that case it was merely doubted if such a notice was a "good notice, and the question was not authoritatively settled in "one way or the other. But such a notice was held to be valid in "*Bokronath Mundul* v. *Binodh Rum Sein*(4) and *Janoo Mundur* v. "*Brijo Singh*(5). The issue must, therefore, be found in favour "of the plaintiff." He accordingly decreed that plaintiff was entitled to eject the defendants and recover the land sued for.

On appeal the District Judge agreed with the lower Court, and with regard to the first issue he held that the trustee of the temple in 1813 and 1820 had no power to grant a permanent lease of the temple lands. His judgment on this point is as follows :—

"Even assuming that Vriddhachala Pillai had been given a "permanent right under exhibits I and II and that his petition "(exhibit H) could be explained away, and it was in consequence "of that permanent right that he was granted the lease A, the "question arises whether the trustee of the temple for the time "being in 1813 and 1820 could have made a permanent alienation "of the rights of cultivation. In a Privy Council case *Maharanee* "*Shibessource Debia* v. *Mothooranath Acharjo*(6), it has been held "(p. 275) 'that to create a new and fixed rent for all time, though "'adequate at the time in lieu of giving the endowment the "'benefit of an augmentation of a variable rent from time to "'time, would be a breach of duty in' the trustee. That ruling as "pointed out in *Tayubunnissa Bibi* v. *Kuwar Sham Kishore Roy*(7), "is of course subject to the modification that such a permanent

(1) 6 M. H.C.R., 171. (2) I.L.R., 11 Mad., 77. (3) I.L.R., 11 Calc., 535.
(4) 10 W.R., 33. (5) 22 W.R. 548.
(6) 13 M.I.A., 270. (7) 7 B.L.R., 621.

"alienation might be made by a trustee under special circumstances of necessity. Now in this case the consideration stated for the grant of the permanent lease (exhibit I) is that the lessees should make the village prosperous by building houses in the said village and living therein and apparently effecting improvements on the land demised. These considerations would no doubt be good ground for the grant of a lease for a long term, but they are not adequate for granting a lease for all time. I must, therefore, hold that even if Vriddhachala Pillai had had a permanent right granted to him previous to the lease (exhibit A) and that exhibit A recognized that right and continued it, it was not a valid grant. If the previous permanent leases (exhibits I and II) are invalid, as I find them to be, the Collector also in the position of trustee had no power to create a permanent tenancy himself for the same reason which I have given in regard to the previous leases."

The appeal was accordingly dismissed with costs.

Sankaran Nayar for appellants.

Notice to quit was necessary before ejecting the defendants. *Abdulla Raoutan* v. *Subbarayyar*(1), *Subba* v. *Nagappa*(2), *Unhamma Devi* v. *Vaikunta Hegde*(3), *Mohamaya Goopta* v. *Nilmadhab Rai*(4). Transfer of Property Act, section 111(*h*). As to the power of the trustees to grant exhibits I, II and exhibit A, raised by the District Judge in the appeal, the question is barred by limitation under article 144, Limitation Act. *Sankaran* v. *Periasami*(5), *Nilmony Singh* v. *Jagabandhu Roy* (6), the question is also barred under article 134, Limitation Act. *Yesu Ramji Kalnath* v. *Balakrishna Lakshman*(7), and second appeal 613 of 1878 of this Court.

Ramachandra Rau Saheb for respondent.

Permanent tenancy under exhibits I and II was abandoned. Exhibit A is merely a tenancy from year to year. It is similar to the document in *Chockalinga Pillai* v. *Vythealinga Pundara Sunnady*(8), which was held not to create a permanent tenancy. The onus of proof that the tenancy is more than a tenancy from year to year is on the appellants and they have not discharged it.

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(1) I.L.R., 2 Mad., 346.
(2) I.L.R., 12 Mad., 353.
(3) I.L.R., 17 Mad., 218.
(4) I.L.R., 11 Calc., 533.
(5) I.L.R., 13 Mad., 467.
(6) I.L.R., 23 Calc., 545.
(7) I.L.R., 15 Bom., 583.
(8) 6 M.H.C.R., 164.

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Thiagaraja v. *Giyana Sambandha Pandara Sannadhi*(1), *Ranganasary* v. *Shappani Asary*(2), is distinguishable. All the pagodas in Tanjore were taken possession of by Government in 1812. *Ramiengar* v. *G. Pandarasannada*(3).

Sankaran Nayar in reply—If exhibits I and II were not surrendered under H, there is nothing in A to take away the perpetual tenure. *Chundrabati Koeri* v. *Harrington*(4). The inference to be drawn from the construction of a document is a question of law and the High Court in second appeal can therefore interfere with the construction put upon it by the lower Courts. *Ram Gopal* v. *Shamskhaton*(5). It is essential as part of the plaintiff's case to prove that proper notice to quit has been given, so the plaintiff cannot plead he has been misled by the defence. Exhibit A was executed because a money rent was not fixed under exhibits I and II.

JUDGMENT.—The plaintiff, as trustee of a certain temple at Negapatam, sued to recover from defendants certain lands which the plaintiff alleged they held under the temple as tenants, from year to year, under a lease (exhibit A). The defendants claimed to have a right of permanent occupancy in the lands, subject only to payment of rent to the temple.

Both the lower Courts have decreed for plaintiff.

Against those decrees the defendants now appeal.

The defendants claimed to have had permanent occupancy rights for the past two hundred years, but of this no proof was given. It is, however, clear from exhibit I that, so long ago as 1813, the then manager of the temple gave a permanent lease of one-half of the lands to Chokkanatha Pillai, an ancestor of the defendants 1 to 14, and of the other half of the lands to Nalla Pillai. It is also clear from exhibit II that in 1820 Nalla Pillai transferred his half share to Vriddhachala Pillai (the son of Chokkanatha Pillai), and that the manager of the temple then confirmed him as permanent lessee of the whole of the lands. On the 4th December 1831, this Vriddhachala Pillai and one Subbayyan, the ancestor of defendants 15 to 26, addressed a petition, (exhibit H), to the Collector of Tanjore, who was then the manager of the temple. It runs as follows:—

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(1) I.L.R., 11 Mad., 77. (2) 5 M.H.C.R., 375. (3) 5 M.H.C.R., 53.
(4) L.R., 18 I.A., 27. (5) L.R., 19 I.A., 220, 233.

"To N. W. Kindersley, Esquire, Principal Collector of "Tanjore—*Darkhast* presented by Vriddhachala Pillai and Subbayyan of Vadagudi, who are Purakudies of the Tarap land "situated in that village belonging to Kayarohanaswami of Negapatam attached to the Mahanam of Anthanapettai, Kivalur "taluk. We offer to cultivate for fasli 1241 the 20 velis, 5 mahs "and 40¾ kulies of nanja land and 6 mahs and 81 kulies of punja "land situated in the aforesaid village and to pay the Sircar kist "and 51 kalams of paddy as Svamibhogam to the temple for one "year, and also to furnish cash security for the payment. We "pray that darkhast izara may be granted to us for one year." No reply to this petition is on record, but on the 10th January 1832 exhibit A was executed by Vriddhachala Pillai and Subbayyan. It is an agreement by them to cultivate the plaint lands, and is in the following terms:—"We, Vriddhachala Pillai and "Subbayyan, Ulavadai (act of ploughing or right to cultivate "lands) mirasidars of Vadagudi, having agreed to cultivate the "said village Vadagudi according to the taram faisal (classification "of the lands) thereof, do hereby execute this taram muchilika to "N. W. Kindersley, Esquire, Principal Collector of Tanjore, "under date 10th January 1832. We have taken up for cultivation the following lands:—Nanja lands yielding one crop a "year, consisting of 107 numbers, comprising 134 acres 4⅝ kulies, "equivalent to 20 velis, 5 mahs and 40¾ kulies, and punja lands "consisting of six numbers, comprising 2 acres and 16 kulies "equivalent to 6 mahs and 81 kulies, the total of nunja and punja "lands being 20 velis, 12 mahs and 21¾ kulies. According to the "pymash settlement made in fasli 1238, we bind ourselves to pay "Sircar in the presence of the pattadar the sum of Rs. 520-7-9½ on "account of Ayan and Svamibhogam. If there should fall any "arrears in so paying, you shall realize the same by attaching and "selling our private property according to law. We shall never "pay to any one even a cash in excess of the said tirva fixed for "the lands mentioned in this muchilika. If the pattadar, the "village karnam and others should demand or collect from us any "sum in excess, we shall then and there lodge a complaint to the "huzur. If in any year we should plant betel, plantain trees, "sugar-cane or raise any garden products, such as tobacco, onion, "garlic, &c., with the Sircar water in the said village, we shall "furnish the Sircar with a true account of the same, and not only

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"pay the taram tirva fixed for so much of the land as is cultivated "with the said crops, but also pay tirvajasti in those years. If we "should cultivate waste and poramboke lands, &c., in addition to "those mentioned in the muchilika, we shall pay the taram tirva "fixed on such lands during the years in which they may be "cultivated."

(Here follow covenants to pay servants, execute repairs, &c.)

"If we should raise a second crop or the taladi in excess of the "second crop lands mentioned in this muchilika, we shall pay the "tirva thereof according to the rules of taladi. If perchance loss "should be occasioned in any fasli by drought or inundation "through accident, the Sircar should inspect the same and grant a "reasonable remission according to mamul. We shall pay the "melvaram of the nanja lands of the said village according to the "permanent taram tirva which has been fixed at $3\frac{1}{10}$ fanams per "kalam. If this price should either rise or fall, the gain or loss "thereby accruing is ours and the Sircar shall have nothing to do "with it. As the permanent tirva has been fixed, and as we have "assented thereto as stated above from fasli 1241, we shall pay to "the Sircar the taram tirva fixed on each numbervar field. Thus "do we execute this taram muchilika."

It is to be observed that in this document the executants are described as 'the cultivating mirasidars' of the village. On the day after exhibit A was executed, the executants executed a security bond (exhibit VII) in which they are again described as 'the cultivating mirasidars' of the village, and it is recited that they have taken the land permanently on 'Darkhast izara.' The rights of the parties admittedly depend upon the construction of these documents and the inferences that are to be drawn from them. The Courts below have held that exhibit H shows that for some reason or other, not now known, the defendants' ancestors had lost, or had abandoned, their rights under exhibits I and II, and that their rights now must be held to have originated with, and to depend solely on, the lease of 1832 (exhibit A). They held, on the authority of the decision in *Chockalinga Pillai's* case(1) that exhibit A was merely a lease from year to year, and might be terminated at the end of any fasli. The learned Judge of the Lower Appellate Court further held that, even if exhibit H could

(1) 6 M.H.C.R., 164.

be explained away, and if exhibit A were executed in consequence of the defendants' ancestors having the rights granted under exhibits I and II, still the latter would be invalid on the ground that a manager of a temple could not alienate temple lands by a permanent lease in the absence of proved necessity for such alienation.

We are unable to accept these conclusions; but, before discussing the documents, it is necessary to notice a contention that was strongly pressed upon us by the respondent's vakil. That contention is that both Courts have found that exhibit H shows that when it was written the defendants' ancestors had lost or abandoned their permanent rights under exhibits I and II, that that finding is one of fact, and that it is not open to this Court in second appeal to consider whether that finding is right or wrong. If the inference to be drawn from the document were, in truth, a finding of fact, we should consider ourselves bound in this second appeal by the finding of the Lower Appellate Court, however unsatisfactory it might be *Ramratan Sukal* v. *Mussumat Nandu*(1), but the finding as to the inference to be drawn from exhibit H is one of law, not of fact. It is not any fact that is in question, but the soundness of the conclusion drawn from the terms of the document. This is a matter of law, and, as such, it is a proper subject for consideration in second appeal *Ram Gopal* v. *Shamkhaton*(2).

The learned District Judge has pointed out that exhibit A in the present case is (with one important exception to be presently noticed) in exactly the same words as the document which this Court in *Chokkalinga Pillai's* case(3) held to be a lease from year year. That case has been repeatedly followed by this Court, and we do not question its authority, but in our opinion it is inapplicable to the facts of the present case. In *Chokkalinga Pillai's* case(3) the tenancy began under the lease, and all that that case decided was that, when a tenancy rests on contract only, the duration of the tenancy is regulated by the terms of the contract, express or implied, and that neither the Rent Act nor the Regulations operate to extend its duration *Krishnasami* v. *Varadaraja*(4). In the present case we think there are sufficient grounds for finding that the tenancy began not under exhibit A, but under exhibit

(1) 19 I.A., 1.
(2) 19 I.A., 231.
(3) 6 M.H.C.R., 164.
(4) I.L.R., 3 Mad., 354.

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I, that exhibit H is not sufficient to prove that the tenancy under exhibits I and II was ever determined, and, finally, that the transaction evidenced by exhibit A was not a new lease, but a confirmation of the lease under exhibits I and II, with a modification as to the mode of paying the rent.

We have already referred to the fact that exhibit A in the present case differs in an important particular from the corresponding document in *Chokkalinga Pillai's* case(1). The difference is this, viz., that in exhibit A the executants are described as 'Ulavadai mirasidars,' that is, as persons with an hereditary right to cultivate. The Courts below have said that this description is inapplicable to Subbayyan, as he was not a lessee under exhibits I and II, and they, therefore, treat the description as of little importance; but it seems to us that the description is applied to both the executants, because all the land dealt with in the lease was the subject of permanent rights of cultivation under exhibits I and II and when, Vriddhachala Pillai, who had those rights under exhibits I and II allowed Subbayyan to join him in executing exhibit A, the description was applied to him also in order to mark the character of the tenure on which the land was held. Turning now to exhibits I and II, it is to be observed that the very same description of the tenure occurs in the operative words of those documents by which the permanent tenure was created, "you, your sons and grandsons shall, for all time to come, enjoy "the land from generation to generation by 'right of Ulavadi "Kani.'" This right of 'Ulavadi Kani' originated in the grants evidenced by exhibits I and II, for prior to exhibit I, Chokkanatha Pillai was a resident in another village, but under exhibit I he was brought with a following of cultivators to the village of Vadagudi belonging to the temple to build houses there and cultivate the temple lands. When, then, we find that the right of 'Ulavadi Kani' was created under exhibits I and II, and that the grantees under those documents are, a few years afterwards, when executing exhibit A in regard to the very same lands, described as 'Ulavadi mirasidars,' the inference is strong that the tenure under exhibit A was intended to be the same as under exhibits I and II. Nor is this all. In the security bond (exhibit VII) executed the next day the same description

(1) 6 M.H.C.R., 164.

of the executants as 'Ulavadai mirasidars' is given and the transaction evidenced by exhibit A is recited as a taking of the land 'permanently on darkhast lease from fasli 1241.' Lastly, we find that for the next sixty years the defendants and their ancestors enjoyed the lands on the strength of those documents. The question then naturally suggests itself, what was the occasion for exihibits H and A if there was already an existing permanent tenancy under exhibits I and II. The answer is, we think, to be found in the fact that under exhibits I and II the rent was to be a share of the produce paid in kind, viz., 35 kalams in every 100 kalams nett, whereas in exhibit H an offer is made to pay not a percentage share of the crop, but a fixed quantity, viz., 51 kalams, and in exhibit A it is agreed that the rent shall be fixed permanently in money at Rs. 520 each year. It is well known that the English Revenue authorities always preferred a fixed rent to a share of the produce, and constantly aimed at obtaining a fixed rent paid, if possible, in money, rather than in kind. Exhibit H stands by itself, and we have not before us either the order passed upon it, or any correspondence which took place prior to it; but in exhibit VIII, dated the 14th February 1832, the Collector, in writing to the Tahsildar regarding this land, refers to a report of the Tahsildar, dated the 18th January 1832, in which that officer reported that Venkatachala Pillai and Subbayyan had 'according to order' applied to cultivate the plaint land for one year at a fixed rent of 51 kalams of paddy. It would appear from this that when the temple came under the Collector's management, he issued some order requiring or urging the tenants to agree to fix the rent on their lands instead of letting it depend on the varying outturn from year to year. Exhibit H appears to have been the proposal made by Vriddhachala Pillai and Subbayyan in reply to this order, but they carefully restricted their offer to one fasli, and wished still to pay in kind as they had been accustomed to do. What negotiations took place after this we do not know, but that some negotiations took place seems to be clear, for exhibit A cannot have been executed as a compliance with the proposal in exhibit H. All the expressions used in exhibit A indicate that the parties intended the arrangement to last for many years, whereas exhibit H contains a proposal for one year only, and the rent offered in exhibit H is in kind, while that finally agreed to

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in exhibit A, six weeks later, is a sum permanently fixed in money. Thus exhibits H and A do not indicate that the rights under exhibits I and II had been lost or abandoned, but rather that they had been confirmed with a modification by the substitution of a fixed money rent for percentage share of the crop. That the original grants remained in force is rendered almost certain from the fact that the original documents evidencing the grants have remained in the hands of the grantees, and there is not before us a trace of any evidence in the temple or revenue accounts or otherwise to suggest that the land has ever been in the possession of any one but the grantees during the eighty years which have elapsed since the date of the first grant. The Lower Appellate Court has, however, held that, even on the above finding as to the documents and the transactions evidenced by them, the defence must fail, inasmuch as the manager for the time being had no power to make a permanent alienation of temple property in the absence of proved necessity for the alienation. That no doubt is the ordinary rule, but in the present case there are special circumstances from which the propriety of the alienation may rightly be presumed. There is no suggestion that the grant under exhibit I was tainted with any fraud. It was made not to a member of the grantor's family, but to a stranger of different caste and from a different village. In consideration of the grant being permanent, the grantee was to come with a following of cultivators and build houses and cultivate the lands of the temple. It is well known that at the time when the grant was made the country was but slowly recovering from the depopulation and impoverishment resulting from centuries of internecine war, and the difficulty generally was not to provide land for the cultivators, but cultivators for the land. To cultivate wet lands, as these were, requires capital as well as labour, and these the grantees were to supply. It may well be that the trustee of the temple could not arrange for the cultivation of the temple lands on less onerous terms than those agreed to. That the terms were fair may be presumed from the fact that they were confirmed in 1820 (exhibit II) and again in 1832 (exhibit A) by the Collector, and have remained in force now for eighty years. In these circumstances, we do not think it is reasonable or equitable to throw on the defendants the onus of showing that the original grants were for a necessity binding on the temple. We think that, after so

great a lapse of time and under the circumstances which we find in this case, such necessity may rightly be presumed.

The result of our findings, then, is that the grants under exhibits I and II are valid and still in force, and that the plaint land is still held under those grants as modified by exhibit A.

On these findings the plaintiff's suit must fail, and it is unnecessary for us to discuss the pleas of limitation and want of notice raised by the appellants.

We reverse the decrees of the Courts below and dismiss the plaintiff's suit with costs throughout.

APPELLATE CIVIL.

Before Mr. Justice Subramania Ayyar.

NARAYANASAMI (PETITIONER), APPELLANT,

1896. March 30.

v.

KUPPUSAMI (COUNTER-PETITIONER), RESPONDENT.*

Succession Certificate Act—Act VII of 1889, s. 7—Joint certificate legal.

It is not illegal to grant a joint certificate to two persons who claim adversely to each other to be entitled to collect the debts due to the estate of the deceased under Succession Certificate Act, VII of 1889.

APPEAL against the order of T. M. Horsfall, District Judge of Tanjore, in civil miscellaneous petition No. 299 of 1895.

A petition was presented under the Succession Certificate Act (Act VII of 1889) by one Narayanasami Pillai, praying that a certificate might be granted to him to collect the debts due to one E. R. Sattaya Pillai deceased, the adoptive father of petitioner.

The petition was opposed by one Kuppusami, the alleged adopted son of one Nagalinga Pillai deceased, who was the undivided brother of E. R. Sattaya Pillai.

The District Judge ordered a joint certificate to issue in the name of both.

Petitioner appealed.

Sundara Ayyar for appellant.

Krishnasami Ayyar for respondent.

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* Appeal against Order No. 175 of 1895.