*Re* NAGAPPA THEVAN.

SADASIVA AYYAR, J.

As regards the conviction under section 269, Indian Penal Code there was no proof let in by the prosecution that the accused were guilty of any unlawful or negligent *act* likely to spread the infection of any disease, etc. Taking it that "act" includes illegal omission (section 32, Indian Penal Code) if the order of the Divisional Officer was illegal, the omission to comply with it is not an illegal omission.

I therefore, set aside the convictions and sentences and direct the fine, if levied, to be refunded to the second accused.

---

## APPELLATE CIVIL.

*Before Mr. Justice Sadasiva Ayyar and Mr. Justice Spencer.*

1913. September 17, 23 and 24 and October 9.

A. SURYANARAYANA (PLAINTIFFS NOS. 2 AND 3), APPELLANTS IN ALL,

*v.*

A. PATANNA AND EIGHT OTHERS (DEFENDANTS), RESPONDENTS.*

*Madras Estates Land Act (I of 1908), ss. 8 (excep.), 3, cl. 2 (d)—Inamdar—Right to kudivaram—No presumption in favour of Inamdar—No distinction between zamindar and inamdar as to presumption—Surrender or abandonment of holding, not an acquisition by landholder of right to kudivaram—Suit in ejectment—Jurisdiction of Civil or Revenue Court.*

The presumption is that an inamdar like a zamindar, is not the owner of the kudivaram right.

*Per* SADASIVA AYYAR, J.—Surrender or abandonment of the holding by the tenant, is not a case of acquisition of the kudivaram right by the landholder within the terms of the exception to section 8 of the Estates Land Act and such land does not therefore cease to be part of the estate; consequently the Civil Courts have no jurisdiction to entertain suits in ejectment brought by inamdars against the defendants who were tenants in possession, but the plaints should be returned for presentation to the Revenue Courts.

*Per* SPENCER, J.—A narrow interpretation should not be placed on the word 'acquired' in the exception to section 8, so as to exclude acquisition by an inamdar by surrender or abandonment of the kudivaram right by a tenant.

SECOND APPEALS against the decrees of F. A. COLERIDGE, the Acting District Judge at Masulipatam, in Appeals Nos. 472, 473

---

* Second Appeals Nos. 1205, 1207 and 1208 of 1912.

and 474 of 1911, preferred against the decrees of S. NILAKANTAM PANTULU, the Additional District Munsif in Original Suits Nos. 271, 272 and 275 of 1909, respectively.

SURYANARAYANA v. PATANNA.

These were suits in ejectment filed in the Munsif's Court by Inamdars and Agraharamdars against their tenants alleging that the latter had no occupancy rights in the lands.

The other facts appear from the judgment of SPENCER, J.

The Honourable Mr. *L. A. Govindaraghava Ayyar* and *P. Nagabhushanam* for the appellants.

*V. Ramesam* for the respondents.

SADASIVA AYYAR, J.—My learned brother has fully dealt with the facts and the points of law involved in these Second Appeals. I add a few words in my own language out of respect to the strenuous arguments advanced by the appellants' learned vakil.

SADASIVA AYYAR, J.

Having regard to the observations in *Bhadrayya* v. *Bapayya*(1) and *Lakshmi Narasimha Rao* v. *Seetaramaswami*(2), *Venkata Narasimha Appa Rao* v. *Subba Reddi*(3), *Narasimhacharyalu* v. *Ramabrahmam*(4), *Virabhadrayya* v. *Sonti Venkanna*(5), and to the judgment in *Venkataraghavayya* v. *Ramakrishnayya*(6) and *Nukanna* v. *Sanyasi Naidu*(7), I think that no distinction should be made between an inamdar and a zamindar as to the presumption to be raised in respect of the kudivaram right in lands of which the inamdar or the zamindar is the proprietor. In other words, the presumption ought to be that the inamdar or the zamindar is not the owner of the kudivaram. There are no doubt some observations in *Indety China Nagadu* v. *Potu Konchi Venkatasubbayya*(8) and *Marapu Tharalu* v. *Telukula Neelakanta Behara*(9) which favour the appellants' contention. But the authority of those cases can no longer be relied on, having regard to the uniform tendency of the later decisions. The distinction made in one or two cases between the presumption to be drawn where the jurisdiction of the Civil Courts will be ousted if the inamdar is held not to own the kudivaram, and the presumption to be drawn if no such question of jurisdiction arises in the suit,

---

(1) (1911) 21 M.L.J., 803.
(2) (1913) 24 M.L.J., 288.
(3) (1913) 24 M.L.J., 655.
(4) (1913) 24 M.L.J., 656.
(5) (1913) 24 M.L.J., 659.
(6) Appeal No. 137 of 1908.
(7) Second Appeal No. 168 of 1912.
(8) (1910) M.W.N., 639.
(9) (1907) I.L.R., 30 Mad., 502.

SURYANARAYANA v. PATANNA.

SADASIVA AYYAR, J.

seems to me (with the greatest respect) a little too fine and far-fetched.

The other contention of the appellants that an inamdar could acquire the kudivaram through abandonment or surrender by the tenant of the holding and that, when he so acquires it, the holding ceases to be a part of the inam estate, has caused me much more anxiety before I could arrive at a decision satisfactory to my mind. The exception to section 8 uses the general expression "the kudivaram interest has been or is acquired by the inamdar." Mr. Ramesam's argument is that, as it is an exception to section 8, the modes of acquisition mentioned in the preceding clauses of section 8 ought to be looked into to find out what the meaning of 'acquired' is as used in the exception. These preceding clauses speak of acquisition by transfer, succession or otherwise. And, according to the decisions of the Calcutta High Court on the corresponding section of the Bengal Tenancy Act [see *Badan Chandra Das* v. *Rajeswari Debya*(1) and *Muktakeshi Dasi* v. *Pulin Behary Singh*(2)], this does not include acquisition by mere abandonment or surrender. Again, section 6, clause 2 of the Estates Land Act is as follows:—"Where land held by a ryot with a permanent right of occupancy, is *surrendered or abandoned* or *save in the case falling within . . . the exception to section* 8, comes into the possession of the landholder." This shows that the exception to section 8 which relates to acquisition of the kudivaram right by the landholder is distinguished from the case where the landholder gets power to deal with the land through surrender or abandonment by the tenant—in other words a right got by the landlord through surrender or abandonment of a holding is put under a different category from a right to kudivaram acquired under the exception to section 8.

As the appellants' possession of some of the lands during an occasional year or two arose out of surrender and abandonment and not alienation or succession derived from the tenant, the exception to section 8 cannot be relied upon, and the contention that those lands ceased to be part of the estate therefore fails.

As these suits, ought, on the above conclusions, to have been brought in the Revenue Court, the plaints in the suits will be

(1) (1905) 2 C.L.J., 570. (2) (1908) 8 C.L.J., 324.

returned to the plaintiffs to be presented to the proper Court. The costs up to date must be paid by the appellants to the respondents.

SURYANARAYANA v. PATANNA.

SPENCER, J.—Seven items of lands are in dispute in these appeals: three are minor inams included in an Agraharam, and the others are ordinary agraharam lands. The District Munsif found on the second issue that the suit lands were not portions of an estate within the meaning of section 3, clause 2 (*d*) of the Estates Land Act. He placed the burden heavily on the defendants of showing that the village in question came within the definition and found that they had failed to discharge it.

SPENCER, J.

The District Judge, finding no evidence of an original grant of both varams and, adopting it as a legal presumption that both were not granted, found this issue for the defendants, and dismissed the suits owing to the want of jurisdiction in the District Munsif to dispose of them when the property concerned was an estate falling under section 3, clause 2 (*d*) of the said Act.

No deed has been produced to show the terms of the original grant. But it appears from Exhibits GG and EE2 that this agraharam was given by a Reddi Raja to agraharamdars of the Ivaturi family and that it is a sarva agraharam paying nothing to the circar. The plaintiffs were purchasers from the original grantees. The original grantees were Brahmans, and the District Judge finds that it was only in 1846 that one of the agraharamdars became a resident in the village owing to the difficulty of collecting rent at a distance.

Mr. Govindaraghava Ayyar for the appellants raises three contentions: (1) that the original grant was of both kudivaram and melvaram, (2) that the subsequent conduct of the parties must be traced to a legal origin, from which the original grant of both varams can be deduced, and (3) that the plaintiffs have acquired the kudivaram right even if they did not have it originally, and that by the nature of such acquisitions the exception to section 8 of the Estates Land Act takes the case out of the purview of the Act.

The District Judge expressed his inability to conclude from the evidence that both varams were granted in the first instance, and therefore he fell back on the legal presumption that the melvaram only was granted. We find no sufficient reasons for

SUBYANARAYANA v. PATANNA.

SPENCER, J.

not accepting the District Judge's finding on questions of fact. After a careful consideration of his judgment and a comparison of the conclusions drawn by him with the evidence on which they are based, we are not able to discover any misstatements of facts of any importance or any misconstruction of documents. The *pros* and *cons* of every argument have been considered by him with reference to the evidence on record in paragraphs 6 to 12 of his judgment, and we cannot see that the conclusions he comes to at the end are unreasonable or unsupported by evidence. On the first point for the appellants, great stress has been laid on the language in Exhibit EE7. This purports to be deed of gift confirming a prior grant of the agraharam in favour of a member of the Ivaturi family. It contains a clause permitting the grantee "to go on getting the lands cultivated extensively and to enjoy the produce thereof from generation to generation." It is a question whether this clause affected or was intended to affect the rights of the cultivating tenants. The District Judge declined to draw any conclusive inference from the words so used. He remarks that similar words might be used if the rights of melvaram alone were granted. He alludes to the fact of which he finds clear traces that the village was inhabited and cultivated at the time when the earliest grant came into existence and that the soap-nut trees were the special perquisite of the agraharamdars. We do not think that the grant is so expressed as to leave no doubt that the intention of the donor was to deal with the rights in the soil.

The expression 'to enjoy the produce of the land' appears to be not uncommon in grants of inams, and a similar expression has been interpreted in *Ravji Narayan Mandlik* v. *Dadaji Bapuji Desai*(1), as meaning only an alienation of the land revenue. In *Sriramulu* v. *Srinivasa Charlu*(2) (unreported) the expression 'to get cultivated and enjoy, was interpreted by the District Judge as implying that the grant was one of both varams and his finding was accepted, but in that case there were other reasons for considering that the lands were uncultivated previously. Here there is nothing to show that the suit lands were not cultivated previously, although there is some ground

(1) (1875) I.L.R., 1 Bom., 523. (2) Second Appeals Nos. 705 to 714 of 1909.

for thinking that the agraharam contained a considerable portion of unoccupied and waste lands at one time. In *Rajya* v. *Balkrishna Gangadhar*(1), it was assumed in a case where the sanad was not produced that the grant was one of the Royal share of revenue, and it was observed that, if owing to antiquity there was no evidence of the commencement of a tenancy, it might be presumed to be co-extensive with the duration of the tenure of the landlord. In *Lakshmi Narasimha Rao* v. *Seetaramaswami*(2), a presumption was raised that the Government did not intend to deal with the rights of the occupants when they made the grants, the ryots in that case being tenants of a mokhasa in a zamindari. The presumption is the same whether the grant of the inam was by Government or by a zamindar. So the fact that the grant in this case was made by certain Reddi rulers of that part of the country will make no difference.

In *Váman Janárdan Joshi* v. *The Collector of Thána and the Conservator of Forests*(3), the rule of English law as to the construction of grants to subjects by the Crown was held to be the correct rule to be applied by the Courts in India in construing grants by former governments. In that case, words to the effect that the grantees were to enjoy the inam grant of the village hereditarily without disturbance were held not to operate as an alienation of the soil of the village. The headnote in *Secretary of State for India* v. *Subbarayudu*(4) is quoted to show that a grant of land could not be split up into a grant of melvaram and a grant of kudivaram without words in the document to that effect, but the decision is one dealing with a case of archaka inam and applying section 4 of the Pensions Act, 1871. It cannot be taken as restricting the Court from putting the proper construction on the documents filed in the present case.

On the second contention, the District Munsif finds as a conclusion of fact on the evidence that all the defendants had only recent possession of the suit items, that the items concerned in Second Appeal No. 1207 were subject to changes in tenants, that one of them was home-farm in fasli 1305, that two were waste for a time, and that there was variation in rent in respect

(1) (1905) I.L.R., 29 Bom., 415.
(2) (1913) 24 M.L.J., 288.
(3) (1869) 6 Bom. H.C.R., 191.
(4) (1912) 23 M.L.J., 728.

SUBYANARAYANA v. PATANNA.

SPENCER, J.

of one. He also found that the tenant of the inams concerned in Second Appeal No. 1208 was ejected in 1883 and that it was home-farm land in fasli 1305. The District Judge also refers to the change in holdings evidenced by the amarakam accounts, to mortgages and sales of the land, not merely of the melvaram share in the land, to grants of inams by the agraharamdars, to cases of eviction, to conditions in the *khats* under which the tenants agreed to quit at the end of their tenancy, and to high prices at the sales of land. On the other hand, he finds that the agraharamdars were non-resident Brahmans not to be found in the village till 1846, and the District Munsif finds that many of the old cowles contained no stipulation to quit (*vide* Exhibit XIII series). In fact, the finding of both the Courts is that these tenants obtained possession of the suit lands recently and that some of them had been in the possession of some other tenants and some were allowed to lie waste.

In *Bhadrayya* v. *Bapayya*(1), failure on the part of ryots to prove permanent occupation of their predecessors, the fact of other ryots having no proved connection with the defendants cultivating in a few stray years, admissions by ryots of other inamdar's kudivaram right, past admissions by a holder of a portion of the plaintiff's inam of his right to eject, and want of uniformity in the rents were facts considered and held to be insufficient in the circumstances of that case to prove a right to eject.

In cases of change of possession the presumption applied in *Cheekati Zamindar* v. *Ranasooru Dhora*(2), must be applied to this case, viz., that when the new occupants are admitted to the enjoyment of waste or abandoned land, the intention is that they should enjoy on the same terms as those under which the prior occupants held, unless this presumption is rebutted by proving that the usual condition of things did not prevail in the particular estate or that particular contracts were made with the tenants.

Courts have now to be guided by the rules in sections 7 and 8 of the Madras Estates Land Act, which embody the presumptions formerly recognised in reported decisions. It is not the

(1) (1911) 21 M.L.J., 803. (2) (1900) I.L.R., 23 Mad., 318.

commencement of possession of the present tenants that is so important as the commencement of the tenancy, and neither the District Munsif nor the District Judge has been able to find the origin of the tenancy in each case. If in these Second Appeals we had a finding that the tenancy originated in leases containing definite terms that the tenants concerned in this litigation should vacate at the end of their term, the position might be very different.

Our attention has been called to some evidence of recent occupation, and the terms of the *khats* in recent years are in favour of such a finding. But there is no finding by the District Judge that the defendants are tenants at will or tenants from year to year. He says in paragraph 16, "All that this evidence shows is that defendants came into possession of the suit lands very recently and not as they alleged from time immemorial. But it is also clear that the lands had been continuously under the occupation of tenants with an occasional break for *banjar* and in some cases a year of cultivation by the plaintiff as *kamatam*. Therefore, it is certain that these lands are *seri* lands and not *kamatam* lands and therefore occupancy right exists in them. The evidence being inconclusive the District Judge finally gave effect to the legal presumption that there was no grant of kudivaram to the agraharamdars.

The presumption of occupancy rights in the tenants in zamindaris has been established by a long course of decisions before the introduction of the Madras Estates Land Act. In this connection, it is sufficient to refer to *Venkatanarasimha Naidu* v. *Dandamudi Kotayya*(1), as the Land Estates Act has now introduced a statutory presumption in favour of zamindar's tenants.

As regards agraharams and whole inams, which, if the agraharamdar or inamdar does not own the kudivaram, will now fall under section 3, clause 2 (*d*) of that Act, three of the most recent decisions dealing with agraharams in the Kistna district are reported, *Venkata Narasimha Appa Rao* v. *Subba Reddi*(2), *Narasimhacharyalu* v. *Ramabrahmam*(3), *Virabhadrayya* v. *Sonti Venkanna*(4). The appellants rely on the decisions in

(1) (1897) I.L.R., 20 Mad., 299.
(2) (1913) 24 M.L.J., 655.
(3) (1913) 24 M.L.J., 656.
(4) (1913) 24 M.L.J., 659.

SURYANARAYANA v. PATANNA.

SPENCER, J.

*Rajaram Rao* v. *Sundaram Iyer*(1), and in *Lingayya* v. *Venkataratnam* (unreported)(2), *Marapu Tharalu* v. *Telukula Neelakanta Behara*(3), and *Virabhadrayya* v. *Sonti Venkanna*(4), as being in their favour. In *Marapu Tharalu* v. *Telukula Neelakanta Behara*(3), it was held that the presumption in favour of zamindari tenants could not be extended to the case of inamdars, whose position materially differed from that of zamindars. The learned Judges who decided that case, BODDAM and WALLIS, JJ., stated reservedly that *as the case then stood* they were not prepared *necessarily* to apply the same presumption to persons becoming tenants to inamdars. The Estates Land Act must be taken to have altered the position as regards whole inams also and with all deference to the opinion of those learned Judges we think that this decision can therefore no longer be taken as an authority for the general proposition that there is a presumption that the tenants of inamdars have no occupancy rights. In *Indety China Nayadu* v. *Potu Konchi Venkatasubbayya*(5), an observation occurs that there is no presumption that an inam was granted to a person not owning the kudivaram, whatever may be said as to there being a presumption that the inam was only a grant of the land revenue. The onus was placed on the defendant to show that the village came within section 3, clause(*d*) of the Act. In *Venkataraghavayya* v. *Ramakrishnayya* (unreported) (6) the Court declared that there was no presumption that an inamdar was the owner of both kudivaram and melvaram rights in the inam. In this respect the decision in *Srinivasa Chetti* v. *Nunjunda Chetti*(7), was followed. That case related to a mittadar, and it was held that he must prove that he had kudivaram as well as melvaram before he could treat the tenancy as one from year to year. In *Venkatacharlu* v. *Kandappa*(8), in an ejectment suit the burden was thrown on the inamdar of proving that under the terms of his tenancy he had a right to eject his tenant. In *Narasimhulu* v. *Narsimhulu*(9), the principle was recognised with reference to section 13 (i), (ii) of Act III of 1895 and the preamble to Madras Act, VIII of 1869 that inams

(1) (1910) M.W.N., 566.
(2) Second Appeal No. 561 of 1908.
(3) (1907) I.L.R., 30 Mad., 502.
(4) (1913) 24 M.L.J., 659.
(5) (1910) M.W.N., 639.
(6) Appeal No. 137 of 1908.
(7) (1881) I.L.R., 4 Mad., 174.
(8) (1890) I.L.R., 15 Mad., 95.
(9) (1906) 16 M.L.J., 333.

are *primâ facie* to be taken as assignments of the melvaram right only. For the purposes of that Act the above-mentioned section contains a special proviso reserving the jurisdiction of Civil Courts over suits for the recovery of the land itself.

In *Narasimhacharyalu* v. *Ramabrahmam*(1), a presumption was said to arise that an agraharamdar who obtained his inam from the Nuzvid zamindar had only the melvaram rights. In *Venkata Narasimha Appa Rao* v. *Subba Reddi*(2), in the absence of evidence that the inam grant included the kudivaram or that the inamdar was himself the owner of the kudivaram at the time the inam was granted, it was held that an agraharam village was an estate within the meaning of section 3 of the Estates Land Act. The learned Judges observed that a Brahman was not likely to have been a cultivating tenant, an observation which applies to the present case. The decision in *Virabhadrayya* v. *Sonti Venkanna*(3), related to a sarva agraharam granted by a Nuzvid zamindar and treated as *lakkiraj* at the settlement and excluded from the zamindari and afterwards enfranchised at the inam settlement. On the facts of that case both the Courts came to a concurrent finding that kudivaram and melvaram rights had always belonged to the agraharamdars and their predecessors in title. The judgment admits the difficulty arising from the onus falling on different parties for different purposes. We feel no doubt that the burden of proving that the Court has no jurisdiction to try the suit will fall on the party which seeks to oust the Court's jurisdiction, but where in the absence of conclusive evidence one way or the other, neither side is in a position to show where the jurisdiction lies, the natural presumption which Courts have recognized about grants from the Crown being grants of revenue only, comes into play and will have the effect of shifting the onus to the party to whom it is disadvantageous. In *Suri Venkata Subbaraya Sastri* v. *Darappareddi Kiristnaiya*(4), the onus was placed on the plaintiff in a suit for ejectment by an inamdar to prove his title to eject. In that case the defendants (vendors) came into possession on condition of paying the arrears. In *Appa Rau* v. *Subbanna*(5), the presumption laid down by a course of decisions was

(1) (1913) 24 M.L.J., 656.
(2) (1913) 24 M.L.J., 655.
(3) (1913) 24 M.L.J., 659.
(4) (1910) 20 M.L.J., 526.
(5) (1891) I.L.R., 13 Mad., 60.

SUBYANARAYANA v. PATANNA.

SPENCER, J.

stated to be that a pattadar or ryot in a mitta was entitled to continue in possession so long as he regularly paid rent and had a saleable interest. In *Lingayya* v. *Venkataratnam* (unreported)(1) a presumption was raised, where the occupancy right was not found, that the tenancy was from year to year, but it does not appear from the judgment what was the nature of the holding. These three as well as the three decisions—*Narasimhacharyalu* v. *Ramabrahmam*(2), *Venkata Narasimha Appa Rao* v. *Subba Reddi*(3) and *Virabhadrayya* v. *Sonti Venkanna*(4)—are all cases from the Kistna district. Each of these authorities must be considered in the light of the facts and findings of the particular case. *Nukanna* v. *Sanyasi Naidu* (unreported)(5) was a case of a *Darmilla inam* (or inam granted by zamindar after permanent settlement) which was held to be part of an estate and it followed therefrom that the Civil Courts had no jurisdiction under the Estates Land Act. This, apparently, was a case falling under section 3, clause 2 (*e*).

In *Rajaram Rao* v. *Sundaram Iyer*(6) there is only a finding by the Subordinate Judge of Tanjore that the Tanjore Palace estate had ceased to be an estate within the meaning of the Act.

As regards minor inams in the agraharam, it is argued that as between the minor inamdar and the tenant none of the presumptions either in the Estates Land Act or otherwise apply. But we are clearly of opinion that the agraharamdar could not have granted more than what he had to give, and therefore if he did not possess the kudivaram, it follows that the minor inamdar also did not have it. This is pointed out in *Muddu Yerrayya* v. *Yadulla Kangali Naidu*(7), in these words; "If the plaintiffs' inam were in a zamindari they could not be in a better position as regards the right to eject the defendant than the zamindar who created the inam." Similar observations occur in *Sriramulu* v. *Srinivasacharlu*(8), to the effect that an inamdar stands in no better position than the zamindar if the inam is carved out of the zamindar's interest; also in *Bhadrayya* v. *Bapayya*(9). The position in this suit of the tenants under the minor inamdars appears to be stronger than that of the other

(1) Second Appeal No. 561 of 1908.
(2) (1913) 24 M.L.J., 653.
(3) (1913) 24 M.L.J., 655.
(4) (1913) 24 M.L.J., 659.
(5) Second Appeal No. 168 of 1912.
(6) (1910) M.W.N., 566.
(7) (1911) I.L.R., 34 Mad., 246 at p. 247; s.c., (1910) 20 M.L.J., 764.
(8) Second Appeals Nos. 705 to 714 of 1909.
(9) (1911) 21 M.L.J., 803.

tenants of the agraharamdars, and the inamdar must show that he let in the defendants as tenants at the beginning of their occupation [*vide Parvataneni Venkatramiah* v. *Parvataneni Narayudu*(1)]. On the whole we consider that the view taken by the District Judge of the legal presumptions arising in the case is correct.

On the third contention that the plaintiffs have acquired the kudivaram rights in these lands it was held in *Ganpatrav Trimbak Patwardhan* v. *Ganesh Baji Bhat*(2), that a saranjamdar or inamdar might acquire occupancy rights by cultivating unoccupied land himself or through tenants. This principle corresponds to the statutory provision in the exception to section 8. We are not prepared to accept the appellant's contention that section 6 (2) of the Estates Land Act was intended only to apply to zamindaris; nor am I disposed to place a narrow interpretation on the word "acquired" in the exception to section 8 so as to exclude acquisition by surrender or abandonment. The second clause of section 6 simply excludes that form of acquisition in whole inam villages for the purposes of that particular clause. In my opinion, this exception must be read with section 6, clause 1, where the word "acquired" occurs again, and with section 3 (7), which gives ten years for a land to be permanently uncultivated or let without occupancy rights as the limitation period which must elapse before rights can be thus 'acquired' by the landholder. An inamdar apparently may acquire kudivaram rights by transfer, succession or otherwise, *e.g.*, by purchase at any time, but a zamindar's acquisition by such methods is subject to the restrictions contained in clauses 1 to 4 of section 8. It does not appear from the findings on the facts of this case that the plaintiffs have thus acquired the kudivaram right in any particular holding concerned in these suits. The presumption, therefore, is that laid down in *Cheekati Zamindar* v. *Ranasooru Dhora*(3), that new occupants of waste or abandoned holdings enjoy on the same terms as those under which prior occupants held.

The result will be as stated in my learned brother's judgment.

(1) (1912) 12 M.L.T., 313.

(2) (1886) I.L.R., 10 Bom., 112. (3) (1900) I.L.R., 23 Mad., 318.