notice of the application for the transfer of the case and the learned District Magistrate seems to have thought that he had no power to revise his own order. It cannot be said that an order of transfer is a final order. If sufficient grounds are shown, the case once transferred can be re-transferred to the same Magistrate or transferred to any other Magistrate who in the opinion of the District Magistrate would be the proper person to try the case. On the sole ground that the accused had no notice of the application for transfer, I set aside the order of the District Magistrate. It is open to him to transfer the case back to the Subdivisional Magistrate of Mayavaram or to transfer the case to the Additional District Magistrate or to any other Subdivisional Magistrate who in his opinion should try the case.

B.C.S.

PRIVY COUNCIL.*

1928, June 14.

SECRETARY OF STATE FOR INDIA IN COUNCIL (DEFENDANT), APPELLANT,

v.

VALARPURAM KANDADAI RAMANUJACHARIAR AND OTHERS (PLAINTIFFS), RESPONDENTS.

[On Appeal from the High Court of Madras.]

Land Revenue—Madras Presidency—Enhancement of rate—Settlement of 1910—Achukattu lands—Conversion from dry to wet—Construction of Settlement Notification.

Prior to the thirty years' settlement of 1910 in the Madras Presidency certain ryots in the Chingleput District had constructed round lands of which they were the pattadars, bunds

* *Present*: VISCOUNT SUMNER, MR. AMEER ALI and SIR JOHN WALLIS.

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(called achukattus) which retained rain water and so enabled a wet crop to be produced. Some of these achukattu lands were near Government irrigation tanks and interfered with the supply of water thereto. At the settlement those achukattu lands which were not open to that objection were registered as manavari (rain-fed) and were accordingly assessed at a rate higher than the dry rate and lower than the wet rate. The objectionable achukattu lands were retained as dry, and pattas issued at the rate appropriate thereto. The intention was to impose upon them a water-cess under Madras Act VII of 1865, which was the then existing practice. As, however, the Board of Revenue regarded that practice as illegal, the lands in question were charged after the settlement with an enhanced assessment bringing the rate up to that for wet lands.

Held, that the raising of wet crops by the pattadars, although it had commenced before the settlement, was a conversion of the land from dry to wet within the meaning of clause 36 of the Settlement Notification, and accordingly that the Government could charge the enhanced rate without any breach of the terms of the settlement.

CONSOLIDATED APPEALS (No. 128 of 1926) from six decrees of the High Court (August 27, 1924) affirming six decrees of the District Judge of Chingleput, which affirmed six decrees of the District Munsif.

The suits giving rise to the present appeal were instituted by the respondents in the Court of the District Munsif. They each claimed a declaration that the appellant had no right to levy enhanced assessment upon lands settled with them respectively, recovery of sums collected, and an injunction.

The facts appear from the judgment of the Judicial Committee.

The judgment of the High Court (DEVADOSS and JACKSON, JJ.), affirming the decrees made in the lower Courts, is reported in I.L.R., 48 Mad., 282.

Dunne, K. C., and *Kenworthy Brown* for the appellant.

Abdul Majid for the respondents.

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The JUDGMENT of their Lordships was delivered by

SIR JOHN WALLIS.—The plaintiffs, who are ryots in the Chingleput District of the Madras Presidency, instituted these six suits, which were tried together, against the Secretary of State in Council, in the Court of the District Munsif of Poonamallee, to recover certain assessments which had been levied on them by Government in addition to the dry rates which had been assessed on their lands at the thirty years' settlement of 1910. The District Munsif allowed the suits, and his decision was affirmed on appeal by the District Judge of Chingleput and on second appeal by the High Court of Madras. The defendant then applied to and obtained from the High Court certificates that the cases were fit for appeals to His Majesty in Council, as, though the actual sums in dispute were small, the decision affected the right of Government to considerable revenue and involved a question of general and far-reaching importance, the appellant undertaking at the same time not to claim costs against the respondents in the event of the appeals being successful.

The plaint in each case alleged that the plaintiff had been holding the suit land paying the assessment as fixed by the Settlement Officer in the resettlement of 1909; that the lands had been classified during the said settlement as achukattu lands in consequence of the high ridges that surrounded them to facilitate paddy (rice) cultivation with the aid of rain water that may be stored on them during the rainy season, and that Government had assessed them at a higher rate than is usually paid for lands of similar quality in the neighbourhood, but without such facilities. It was further alleged that in faslis 1324 and 1325 Government illegally levied an additional water-cess on the lands and collected it by coercive process in the years 1915 and 1916; that the

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Board of Revenue on the plaintiff's appeal ordered the water-cess so levied to be refunded as illegal and unauthorized, but at the same time apparently authorized the revenue authorities to collect the same amount under the head of enhanced assessment, and that the plaintiff was compelled to submit under protest to the amount of the refund being applied in satisfaction of the fresh claim. This so-called enhanced assessment, it was alleged, was practically the levy of a fresh tax to which the defendant was not entitled in law, and the plaintiff was entitled to hold the land with reference to the usual settlement rate fixed with reference to the situation of the land and the facilities of cultivation existing at the date of the settlement. Further, no additional facilities of irrigation or cultivation had been effected since the settlement either by the Government or by the plaintiff himself. Lastly, it was alleged that the achukattus in question were not objectionable as they in no way obstructed or delayed any flow of water to any Government source of irrigation, and that these facilities had been enjoyed by the plaintiff and his predecessors for more than sixty years and recognized by Government in their classification of the lands in the last settlement. The plaintiff accordingly sued to recover the enhanced assessment already mentioned, as well as a further sum collected for fasli 1326, and also prayed for a permanent injunction restraining the defendant from levying enhanced assessment on the plaint lands for future faslis.

The defendant filed a written statement, of which the most material portions were as follows :—

"4. The averments in paragraphs 3 to 5 of the plaint are incorrect. Whatever view may be taken with reference to the question of proprietary interest in land as between a ryotwari pattadar and Government, there can be no dispute as to Government's right to impose such assessment as they consider reasonable

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and proper on lands included in the holding of such a pattadar. The imposition of the assessment and its increase or decrease cannot be questioned by means of a suit and the Court has no jurisdiction to question the legality or validity of the imposition. Even supposing the lands were enjoyed as achukattu lands for a very long period, an allegation which this defendant does not admit and which the plaintiff will have to prove, that circumstance would not take away the right of Government in their sovereign capacity to levy additional assessment on the lands at any time. The State can claim a share in any crop grown on ryotwari land by impounding the rain water which falls on the land. The Government are entitled to charge wet assessment on the land in lieu of claiming a share of the wet crop. The rate of assessment that may be fixed on such lands cannot be questioned by the Courts. *Vide* section 58 of the Madras Revenue Recovery Act II of 1864.

"5. The allegation in the plaint that the Government cannot vary the assessment imposed at the time of settlement is incorrect. Such right is recognized in paragraph 33 of the Settlement Notification in respect of such lands as those in the suit.

"6. The achukattus in question were objectionable and were considered to be so, as they had the effect of cutting off the supply of water to tanks lower down.

"9. The levy of enhanced assessment is legal and valid with reference to all the faslis in question."

The defendant also pleaded that as regards fasli 1326 the suit was bad for want of notice, that it was barred by limitation, and that the plaintiff was not entitled to the injunction sought for.

On these pleadings the Court framed the following issues :—

"I. Has this Court no jurisdiction to question the legality of the levy in question?

"II. Is this suit within time?

"III. Is this suit bad to the extent of the collection made in fasli 1326 for want of notice?

"IV. Are the plaint mentioned achukattus objectionable?

"V. Is the collection complained of illegal?

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"VI. Is the defendant's right to levy the tax in question barred by limitation under Article 149 of Schedule I of the Limitation Act?

"VII. Is the retrospective effect given to the levy *ultra vires*?

"VIII. Did the plaintiff make the payments in question voluntarily?

If so, is he entitled to claim a refund of the same?

"IX. To what relief is the plaintiff entitled?"

No oral evidence was called on either side. The plaintiffs contented themselves with putting in the Notification of June 1st, 1910, of the Special Settlement Officer, Exhibit A, stating the conditions on which the resettlement was to be effected, and the defendant filed certain Proceedings of the Board of Revenue and Government Orders showing the way in which the question of achukattus had been dealt with prior to the settlement, and also the Board's Proceedings directing the refund of the water-cess levied on the plaintiff and the levy on him of an enhanced assessment for his wet achukattu cultivation, which was to be "the corresponding wet assessment minus the dry assessment already levied".

On the main issue the District Munsif held that Government was bound to respect the solemn pledge given in the proclamation, Exhibit A, that the rates of assessment at the resettlement should remain unchanged for a period of thirty years except under the circumstances mentioned therein, which he held not to have arisen, and he found this and the other issues in favour of the plaintiff.

On appeal the District Judge, Mr. R. A. JENKINS, I.C.S., held that the terms of the resettlement were binding on the Government, and that section 58 of the Madras Revenue Recovery Act, 1864, was no bar to a suit to recover enhanced assessment not in accordance

with the terms of the settlement. On the question whether the terms of the Notification Exhibit A of June 1st, 1910, reserved to Government the right to levy enhanced assessment for wet cultivation on the suit lands by achukattus, he held that the provision in the Notification that lands on which wet crops were raised by achukattus if they are "situated so close to the foreshore of a Government irrigation work as materially to interfere with its supply" were to be retained as ordinary dry, and were to be "dealt with by the Collector in accordance with the practice obtaining in the district," did not reserve any right to alter the assessment during the period of thirty years, but that "the object of leaving the lands to be dealt with according to the district practice was to compel the ryots to remove the objectionable ridges by imposing a heavy rate."

The rate fixed at resettlement could not, he held, be raised during the period of the settlement "except as expressly reserved—such as by conversion from dry to wet or manavari". He did not, however, deal with the question whether the subsequent raising of wet crops on lands registered at the settlement as dry did not amount to such a conversion within the meaning of the reservation. He held it unnecessary to decide whether these achukattus were objectionable or not, but otherwise affirmed the findings of the District Munsif and dismissed the appeal.

The cases then came before the High Court on second appeal, when JACKSON, J., who delivered the judgment of the Court, dealt with the reservation in the Notification as to objectionable achukattu cultivation as follows:—

"The defendant contends that the provision in the Notification Exhibit A 'will be dealt with by the Collector in

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accordance with the practice obtaining in the district' allows a large discretion. The practice, no doubt, was to charge water-rate if a paddy crop was raised; but since such charges are not rightly leviable under the Irrigation Cess Act, an enhanced assessment practically amounts to the same thing, and can be described as 'in accordance with the practice obtaining in the district.' The short answer is that such practice never did obtain nor could obtain. Once a settlement has been duly notified by Government, the Collector acting under the orders of the Board of Revenue cannot vary the rates of assessment."

He also held that the reservation as to "lands which may be converted from dry to wet" referred to physical conversion and did not mean that Government reserved to themselves the right at any time to convert the classification of a land as dry to one of wet. If that were so, he observed, there would be no settlement. He, again, did not deal with the question whether there had been such a conversion. After finding other issues in favour of the plaintiff, he directed the decrees to be varied by omitting the injunction and otherwise dismissed the second appeals.

The three Courts before which these cases came in India agreed in holding that the imposition of these additional assessments was not in accordance with the terms of the settlement of 1910, that Government was not entitled to vary the terms of that settlement so long as it continued in force, and that the Civil Courts are not barred of jurisdiction to afford redress.

With these last two contentions it is unnecessary for their Lordships to deal, because Mr. Dunne, who appeared for the defendant and disclaimed on the part of the Government any desire to depart from the terms of the settlement, refrained from arguing them before their Lordships and elected to stand or fall upon the question whether these additional assessments were in breach of the settlement.

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To explain the nature of this question and show how it arose, their Lordships will refer in the first instance to the letter of Mr. G. A. D. Stuart, I.C.S., Special Assistant Settlement Officer, of 30th September 1907, asking for instructions and making suggestions in paragraphs 5 to 7 of the letter as to how "manavari lands," "achukattus," and "wet under waterspread" were to be dealt with in the new settlement. "A peculiarity of this district," he observed, "is the large extent of paddy (rice) grown on low-lying lands without any regular irrigation. Low bunds are raised round the lands to retain rain water, and lands also often get the benefit of percolation from neighbouring wet fields, small ponds or *tangals*, springs at the base of low hills, etc. Such lands are termed manavari (rain-fed). At the last settlement all manavari lands that received regular irrigation from a Government source were treated as wet, and the rest treated as dry, but assessed at special rates, which were usually one, but sometimes two or three tarams higher than the rates applied to other dry lands in the same block." For reasons which he gave, the Settlement Officer recommended that in the new settlement these lands in future should not be classed either as wet or dry, but should be put into a new class of manavari (rain-fed) lands, and this recommendation was accepted by Government. He then proceeded to deal with achukattu cultivation, and stated that since the last settlement a large extent of dry land had been brought under manavari cultivation by raising bunds about 2 feet high, called achukattus, round the fields and so holding up sufficient rain water after heavy rain to grow a paddy (rice) crop. Where such lands were situated near the foreshore of a tank, he was of opinion that the supply of the tank was interfered with, and that this interception might become serious when

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every field in the catchment area of a small tank was bunded. It is of course obvious that interference with the customary water supplies of a tank might injuriously affect ryots holding wet lands under it and raising one, or even two, wet crops every year by the aid of tank water, and might so affect their ability to pay the high rates of assessment which had been imposed on them in consequence of these facilities for raising valuable crops.

It had been the practice, Mr. Stuart stated, to impose water-rate on this achukattu cultivation whenever it was considered that the supply to any tank had been interfered with. Water-rate here means "a separate cess" leviable for water taken from a Government source under Madras Act VII of 1865 which came under the consideration of this Board in *Prasad Row* v. *Secretary of State for India*(1). The view of the Madras Government was that they were entitled to impose this water-cess at such rates as would effectively deter the ryot from persisting in this method of cultivation. Mr. Stuart now proposed that it should be decided once for all which were the lands on which achukattus could be raised "and which the lands on which the raising of achukattus should be penalized."

In a subsequent Board's Proceeding of the 11th September 1908, these proposals of Mr. Stuart's are referred to as being that achukattu lands situated close to the foreshore of a tank should be entered in a special list to be furnished to the Revenue Department "*in order that their cultivation may be put down by the imposition of a penal water-rate.*"

These proposals were adopted at the settlement. Achukattu cultivation which was unobjectionable was

(1) (1917) I.L.R., 40 Mad., 886 (P.C.); 44 I.A., 166.

not entered as wet or dry, but in the new manavari or rain-fed class already mentioned, while lands included in the list of objectionable achukattus were retained in the class of dry, that is to say, as bearing dry crops and with lighter rates of assessment, it being intended to prevent the ryots from raising wet crops on them by putting up achukattus and so interfering with the tank water-supply. Had they been classed at the settlement either as wet or manavari and so rated as growing wet crops, there would have been no case afterwards for imposing the statutory water-cess upon them unless they acquired some fresh source of supply and there could have been no case at all for imposing penal water-cess for the purpose of putting down this sort of cultivation.

In the light of these observations their Lordships will now proceed to consider the terms in which this achukattu cultivation was dealt with in paragraph 23 of the Settlement Notification, of which the following are the material portions :—

"23. *Achukattus.*—In addition to the fields registered as 'Manavari' at the settlement there are numerous dry fields which have since been converted into 'Manavari' by the erection of high bunds or achukattus, which store up rain water and obstruct surface drainage. The Government have decided that such lands should be transferred to 'Manavari' and assessed at manavari rates, unless they are situated so close to the foreshore of a Government irrigation work as materially to interfere with its supply. Lands of the latter description will be retained as ordinary dry and will be dealt with by the Collector in accordance with the practice obtaining in the district."

As has been already shown, the practice obtaining in the district was to endeavour to check this sort of cultivation when deemed objectionable by imposing a water-rate in addition to the assessment under Madras Act VII of 1865. The wording of the Notification is

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taken from the Government Order of 14th August 1909, dealing with the general proposals for the resettlement, and directing that these objectionable achukattu lands should be entered in a special list and left to be dealt with by the Collector in accordance with the existing district practice, as embodied in G.O. No. 593, Revenue, dated 24th June 1905. That order, which deals with "the question of charging water-rate for wet cultivation raised with the aid of water collected by means of achukattus, or bunds temporarily erected to intercept drainage from dry lands," states the practice as follows :—

"2. The correct procedure for the treatment of such cultivation is laid down in G.O. No. 852, dated 30th August 1887, as explained by G.O. No. 205, dated 9th March 1888, viz., that water-rate should be charged if the achukattu by means of which water is collected intercepts water which would otherwise flow into a Government tank or other irrigation work. This rule should be strictly followed."

In their Lordships' opinion, the lower Courts have not given sufficient consideration to the direction in clause 23 that lands of this description should be "retained as ordinary dry," that is to say, with the incidents of land registered as dry. The earlier clauses 12 to 14 had provided for lands registered as dry being transferred in certain cases to wet, and wet lands to dry, and for assigning to them a soil classification suitable to their new registration. Obviously these transfers were to be made at the time of the settlement with a view to the imposition of the appropriate assessment. Clauses 29 and 30 provided that at the resettlement, pattas were to be issued to the ryots showing, in accordance with the new registers, "the description of the land, e.g., Government dry, wet, manavari, single crop, double crop, baling, etc., the registered source of irrigation, *and the assessment which will hereafter be levied*

on the land." It may, therefore, be taken that pattas were issued to the plaintiffs showing that in the new registers their lands were registered as dry and showing also the assessment which was to be thereafter levied on the land.

After the new settlement had come into force, the Collector proceeded to deal with this achukattu cultivation which had been found objectionable, as directed in the Notification, according to the practice obtaining in the district, that is to say, he imposed upon them in addition to the assessment a separate cess under Madras Act VII of 1865, with a view of putting down wet achukattu cultivation by the imposition of a penal water-rate. The plaintiffs appealed to the Board of Revenue, who apparently were advised that the imposition was illegal and directed it to be refunded. They went on to observe: "The achukattus in question are objectionable and, therefore, although water-rate under the Irrigation Cess Act is not leviable, the lands concerned are, in accordance with the orders of Government, liable to enhanced assessment; an appropriate enhancement in the present circumstances would be the difference between the wet and dry rates. The water-rates levied will be refunded, but an enhanced assessment will be charged for the wet achukattu cultivation, and this should be the corresponding wet assessment *minus* the dry assessment already levied."

The only question for their Lordships' decision now is whether these orders can be supported under the terms of the Notification, that is to say, whether the revenue authorities, having at the resettlement registered the suit lands as dry and imposed assessments upon them on that basis in the belief apparently that by the imposition of the statutory water-cess they could

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prevent them from being used for wet achukattu cultivation, were entitled under the terms of the Notification, when this method failed them, to depart from the terms of the pattas and impose wet rates of assessment on the lands. This question, in their Lordships' opinion, depends on the effect of clause 36 of the Notification, which is as follows:—

> "36. The resettlement will remain in force for the usual period of thirty years and the rates of assessment now sanctioned will remain unchanged for that period. Government reserve to themselves the right to revise on the expiry of the said thirty years the assessment on land in such manner as may then seem just and proper . . . The thirty years' limit does not apply to lands the irrigation of which may be improved by Government subsequent to the resettlement nor to lands which may be converted from "dry" to "wet" or "manavari." Modifications may also be made in the case of lands in the waterspread of tanks."

For the appellant, reliance was placed on the stipulation that the thirty years' limit is not to apply to lands which may be converted from "dry" to "wet" or "manavari."

It has been held by the lower Courts that these words cannot mean that Government reserves the power to transfer any lands it pleases from dry to wet. As already pointed out, the Notification had provided for the transfer at the time of the settlement of certain dry lands to wet and certain wet lands to dry in the settlement register, and to say that after the settlement had come into force Government could transfer at will dry lands to another class and assess them accordingly, would, in the opinion of the High Court, be tantamount to saying that, at any rate in the case of lands registered as dry, there would be no settlement at all. They were therefore of opinion that the reservation could not have that effect. Now so long as lands registered as dry

were cultivated with dry crops it would obviously be unfair and opposed to the whole scheme of the settlement that their assessments should be enhanced. On the other hand, there would be nothing harsh or unreasonable in providing that, if during the period of the settlement the pattadar should raise valuable wet crops on lands registered as dry, that is, as bearing the much less valuable dry crops, he should be called upon to pay at the higher rates. In their Lordships' opinion, the reservation as to lands which might be converted from dry to wet or manavari was inserted for the purpose of meeting such a case, and they will assume, as held by the High Court, that conversion meant conversion by the pattadar and only reserved a power to increase the assessment where there had been such a conversion.

The only question, then, is, has there been any such conversion by the pattadar-plaintiffs in this case? In the Courts below it appears to have been considered that because they had raised wet crops on their lands prior to the settlement by means of achukattus, the fact that they went on doing so after the settlement had come into force would not amount to a conversion within the meaning of the reservation. In their Lordships' opinion the fact that wet crops may have been raised on these lands prior to the settlement is not the governing consideration. It is no doubt the fact that when at the settlement these lands were registered as dry and assessed accordingly, the revenue authorities knew that wet crops had been raised upon them by means of achukattus, but for reasons already given they regarded this method of cultivating this particular land as objectionable, and thought that they were in a position to check it and make the pattadars revert to dry cultivation by dealing with them in the manner referred

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to in the Notification, that is, by imposing the statutory water-cess, probably at increasingly penal rates. That method was found to be illegal and the water-rate so levied was refunded. The fact, however, remained that on lands which had been ordered to be retained as ordinary dry, and which had been registered as dry and assessed accordingly, the plaintiffs had raised wet crops. In their Lordships' opinion this raising of wet crops on land registered at the settlement as dry was a conversion within the meaning of the reservation. So long as they cultivated the land as dry, the pattadars were entitled to hold the lands for the whole period of the settlement at the rate assessed on them as such, but when they proceeded to raise wet crops upon them they effected a conversion and justified the revenue authorities in imposing upon them "corresponding wet assessment" by which their Lordships understand the appropriate wet rates.

For these reasons their Lordships are of opinion that the fresh imposition of these wet rates minus the dry rates already paid did not give the plaintiffs any cause of action, and that, therefore, the decrees of the lower Courts should be set aside and the suits dismissed but without costs, and there will be no order as to the costs of this appeal. Their Lordships will humbly advise His Majesty accordingly.

Solicitor for appellant: *Solicitor, India Office.*

Solicitor for respondent: *Chapman-Walker & Shephard.*

A.M.T.