judgment is that the female plaintiff Sundaram and the female defendant Mánikka Ammál are entitled in equal shares to an amount sufficient to produce the monthly sum of ten rupees.

1863. *June* 30. *Aug.* 4 & 7. *O. S. No.* 94 *of* 1863

NOTE.—Here follows the passage from Sir Thomas Munro's Minute to which the Chief Justice refers in the judgment last reported.

" *In Consultation, 15th March* 1822.

" In 1783 Azim Khán, Diwán of the Nawáb Wallaja, obtained a jágir, which was confirmed to him by a parwána, dated 29th July 1789, " by way of an áltamghá ina'am " of the Kámil Jamma of 64,000 chakrams 11 ánás. The grant is in the usual form,—" to be enjoyed by him and his descendants for ever, from generation to generation. " He is authorized to divide it amongst his descendants, and the local officers are required to consider the parwána " as a most positive peremptory mandate, and not to require a fresh sanad every year."

" The terms employed in such documents, "for ever, " " from generation to generation, " or in Hindu grants, " while the sun and moon endure " (*a*), are mere forms of expression, and are never supposed, either by the donor or the receiver, to convey the durability which they imply, or any beyond the will of the sovereign. The injunction with which they usually conclude,—" Let them not require a fresh sanad every year," indicates plainly enough the opinion, that such grants were not secure from revocation." Gleig's *Life of Sir Thomas Munro*, Vol. II, p. 314-5.

Regarding the law of succession to the self-acquired property of an undivided brother, see *Varadiperumal Udaiyan* v. *Ardanari Udaiyan*, infra, p. 412, and the recent case in the Privy Council, *Kattama Nauchear* v. *The Rajah of Shivagunga*, 30th November 1863.

APPELLATE JURISDICTION. (*b*)

Regular Appeal No. 20 *of* 1863.

KUMÁRADEVA MUDALI, and another ....*Appellants.*
NALLATAMBI REDDI, and others...............*Respondents.*

Lands held on the terms of an ordinary roytwary settlement with annual patta and left waste by the pattádár may be legally granted by the revenue authorities.

Special Appeals 55 and 69 of 1858, 101 and 482 of 1860 followed.

The ryot has an indefeasible right of occupation only so long as he pays the Government assessment.

1863. *August* 8. *R. A. No.* 20 *of* 1863.

THIS was a Regular Appeal from the decision of C. Collett, the Acting Civil Judge of Chitur, in Original Suit No. 14 of 1861. This suit was brought to recover certain lands in the ryotwary district of North Arcot which were possessed and cultivated by the plaintiff's father up to about the year 1850, as an ordinary pattádár. In 1850 and 1851 he voluntarily abandoned the lands, which were consequent-

(*a*) Compare Teutonic legal formulæ such as *also lang als diu sonne schint : so lange der wind weht, der hahn kraht und der mond scheint,* cited in J. Grimm's *Deutsche Rechtsalterthuemer* 2te Ausg. 38.

(*a*) Present : Phillips and Frere, JJ.

1863. August 8. R. A. No. 20 of 1863.

ly left waste. In 1852 the lands were granted to the defendant. The Acting Civil Judge delivered a decree from which the following is an extract :—

" Finding, then, the facts as above, the question of law arises whether, under these circumstances, the revenue authorities were justified in granting the lands to others and could and did thereby pass to and confer upon them an interest effective as against the plaintiffs. Now I confess that if this question were open to me for discussion, I should feel a great deal of doubt upon it ; but I think that I am concluded by authority on this point. There appear to have been numerous decisions of the Madras Sadr Court on the subject, and it has invariably been held that where there has been only abandonment of or omission to cultivate lands held under pattás, the revenue authorities are competent to grant the same to others and to issue pattás to them, and by so doing will confer a title good against the former occupants. In support of this position I will refer to the printed reports of the Sadr Court for 1858, pages 43, 152 and 160, for 1860, page 235 and for 1861, page 112. There was also a decision to the same effect so late as February last. I do not anywhere find the grounds of the Court's judgment stated at length, but in one case, that in the Reports for 1860, page 236, the authority of the Collector is stated to rest on Regulation 2 of 1803, Section 9, and Regulation 2 of 1806, Section 4. Now, with great respect, I do not observe that those regulations give any such authority as supposed. Another ground on which the law has been placed is perhaps more satisfactory, namely, the rules of the district and established usage (Reports for 1861, page 113). But the case of *Freeman* v. *Fairlie*, 1, Moore's I. A. C., 305 to 349, in which the nature of the interest conveyed by a pattá was so elaborately discussed, does not appear to have been cited in any of the above cases. There is so much in *Freeman* v. *Fairlie* that appears to me entirely applicable to pattás in the Madras as well as in the Bengal Presidency, that had I to decide the limit of the power of the revenue authorities to confer a good and indefeasible title under a pattá whenever land has been left waste, I should have felt great difficulty in fixing the limit, and in saying whether the present case would fall within the limit. But I am quite satisfied that

I am concluded by the authority of the dicisions I have cited of the Sadr Court, and according to those cases it seems to me quite clear that the revenue authorities were justified in 1851 and 1852, in granting the lands to the defendants, and that the pattás conferred on them a good title as against the plaintiffs. It follows therefore that the case for the plaintiffs has entirely failed, and it must be dismissed. The costs with interest thereon at 12 per cent. will follow the result."

Norton for the appellants, the first and second plaintiffs, contended :—

1. That the act of the revenue authorities conferred no vaild or legal title against the appellants.

2. That there was no regulation or legislative enactment which justified or legalized the act of the revenue authorities complained of.

3. That neither a course of legal decisions nor a custom or usage opposed to the law of the land could prevail to deprive the appellants of their legal rights.

4. That the course of decisions observed on by the Civil Court, though binding on that Court, was no bar to this Court if such course of decision should appear manifestly wrong.

5. That the rights of the ryot pattàdár had been considered and decided by the Privy Council in favour of the appellants' contention. *Freeman* v. *Fairlie* (*a*).

Sadagopacharlu for the respondents, the fourteenth and twenty-fourth defendants.

The Court delivered the following

JUDGMENT :—This was a suit for the recovery of nanjey and punjey lands in the district of North Arcot, said to be the property of the plaintiffs, which had been granted by the Collector to the defendants, and are now in their occupation.

The Acting Civil Judge observed that the lands in question were shown to have been formerly held for some years by the plaintiffs' father under the terms of an ordinary ryotwary settlement, with annual pattá in his name from

(*a*) 1, Moo. I. A. C., 305.

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the Collector of the district; but that they were left waste in the years 1850 and 1851, and subsequently granted to the defendants by the same authority. In accordance therefore with judicial precedent as established by the decisions of the late Sadr Court in Special Appeals 55 and 69 of 1858 (pages 152 and 161 of the printed decisions for 1858), 101 of 1860 (page 235 of the printed decisions for that year), 482 of 1860 (page 112 of the printed decisions for 1861), and others, the Acting Civil Judge held that the lands on being abandoned and left waste by the plaintiffs' father, were at the disposal of the revenue authorities, and that they had been legally granted to the defendants, the present occupants. He accordingly dismissed the plaintiffs' suit with costs.

The plaintiffs in this case claim in effect to be proprietors in fee simple of the lands in question, which are situated in the ryotwary district of North Arcot, and are confessedly subject to an annual settlement. We are not aware that such a claim has been at any time allowed or sanctioned by judicial precedent with respect to lands of this description in the Madras Presidency, while on the other hand, as observed by the Acting Civil Judge, the contrary doctrine has been at all times followed both as respects revenue practice and the decisions of the Courts of Law. The ryot in such cases has it is true by immemorial custom and usage, an indefeasible right of occupation so long as he pays the fixed Government assessment on the lands; but on his abandoning the lands and ceasing to make this payment, it has been constantly held that the Government possess the power of granting them to other ryots for the purposes of cultivation. We are consequently of opinion that the plaintiffs' claim to recover the lands in question is untenable and must be disallowed. We therefore affirm the decision of the Acting Civil Judge, and dismiss the present appeal with costs.

Appeal dismissed.