Privy Council Appeal No. 63 *of* 1939

The Secretary of State

v.

Srimath Vidhya Sri Varada Thirta Swamigal and Others

The Secretary of State

v.

R.S.S. Narayana Ayyar and Others

(*Consolidated Appeals*)

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 18TH DAY OF DECEMBER, 1941

Present at the Hearing:

LORD ATKIN
LORD THANKERTON
LORD ROMER
SIR GEORGE RANKIN
SIR SIDNEY ABRAHAMS

[*Delivered by* SIR GEORGE RANKIN]

This case comes from the Ambasamudram taluk in the west of the Tinnevelly district of Madras. In this taluk are the principal sources of the Tambraparni river, and its irrigation system is both ancient and extensive. Numerous anicuts or dams cross the Tambraparni and its affluents, supplying channels and tanks in a manner which is acknowledged to reflect the highest credit upon the skill and energy of the ancient governments who constructed them.

The two suits out of which this appeal arises were brought in the Court of the District Munsiff of Ambasamudram against the Secretary of State for India in Council for recovery of certain sums paid as water cess under the Madras Irrigation Cess Act (Madras Act VII of 1865). Both suits had reference to the village of Vagaikulam in Tinnevelly, and the plaintiff in each case was a lessee from the head of a math situated in Mysore which claims to have held the village ever since 1753. The first suit was numbered 412 of 1921 and was brought on 21st December, 1921, by the math's lessee for the years 1912 to 1921 to recover Rs.584-5-6 paid for the year 1920. The second suit was numbered 383 of 1924 and was brought on the 26th November, 1924, by the math's lessee for the years 1922 to 1931 to recover Rs.707-3-8 paid for the year 1923. These sums had been levied on the footing that the plaintiffs are entitled to free irrigation of the village lands only in respect of the extent recognised as wet at the inam settlement of 1864; hence that water cess is payable in respect of wet land on which two crops have been raised where one only was raised in 1864, and also where a wet crop has been raised on land which was dry land in 1864. The figures of 1864 are: dry land, 67.91 acres; wet land, 329.60 acres.

Save that in the first suit, the head of the math was added as a second plaintiff, the only parties are his lessees on the one hand and the Secretary of State in Council on the other. No ryots or other cultivators of the village lands were at any time before the Court as parties.

The suits succeeded before the District Munsiff who heard them together, and on 21st December, 1925, made decrees negativing the Secretary of State's contention as to the measure of the plaintiffs' right and ordering him to refund the monies paid with interest. The Subordinate Judge of Tinnevelly dismissed the Secretary of State's appeals on 10th November, 1927, and on second appeals being brought to the High Court at Madras these also were dismissed on the 29th March, 1935.

Vagaikulam village is irrigated by water drawn from the Tambraparni into a channel called the North Kodai Melalagion Kal ("the N.K. channel"). The water is drawn from the river into this channel by a dam or anicut of ancient date—not a permanent or masonry structure but one erected by Government each year by means of palmyra posts and logs—and the water so led into the channel is regulated by a sluice which Government control. The channel is known to have been in existence in the seventeenth century. It leaves the river at a point which is said to be some ten miles from the village of Vagaikulam and it runs northwards until it comes to the western boundary of the village. It crosses the boundary and runs for a considerable distance within the confines of the village but alongside the western boundary. Thereafter its course takes it into a Government village called Manarkoil where it ends in a tank. From that part of its course, both inside and outside the village, where it runs along or is near to the western boundary of Vagaikulam, several branch channels with open heads lead water into the interior of the village. Either directly or by means of tanks the water is then taken to irrigate the lands of this village and of other villages as well; so that Vagaikulam must be regarded as bound in respect of these channels to pay respect to the rights of riparian owners lower down the stream. The Government village of Manarkoil, which gets its water from the N.K. channel after this channel has in its northward course recrossed the western boundary of Vagaikulam, has in the past shared the water of the channel with Vagaikulam village by a system of turns (murai). According to this system Vagaikulam has taken all it can get for three days, and Manarkoil for two days has taken all it can get save that a small fixed quantity of water is allowed to flow into Vagaikulam—the month being thus divided into 18 days for the Inam and 12 for the Ayan (Government) village. The plaintiffs make this murai system a separate ground of objection to any claim for water cess, saying that they are entitled by custom to the quantity of water which they have been enjoying irrespective of the extent of cultivation for which it has been used. Their Lordships do not find it necessary however to deal with this contention.

The right of Government to charge the inamdar with water cess in these circumstances depends upon the terms of the Madras Irrigation Cess Act VII of 1865 as amended by later Acts. By the first section of that enactment as it now stands the inamdar is *prima facie* chargeable in such a case as the present, subject to two provisoes, of which the first is of substantive importance for the present appeal:—

> Provided that where a zemindar or inamdar or any other description of landholder not holding under ryotwari settlement is by virtue of engagements with the Government entitled to irrigation free of separate charge, no cess under this Act shall be imposed for water supplied to the extent of this right and no more.

The plaintiffs have therefore to make out an engagement between Government and the inamdar entitling the latter to water free of separate charge; but as it is not contended by Government that water cess can be charged in respect of wet crops taken into account at the inam settlement of 1864 the disputed question between the parties is not whether there was

any such engagement but what that engagement was—in other words. What is the measure of the right to water which the inam title confers upon the math?

The plaintiffs say that the principles applied by the Board in the *Urlam* case, *Kandukuri Balasurya Row* v. *Secretary of State* [1917], L.R. 44, I.A. 166, are applicable to this case notwithstanding that Urlam was a zemindary vested in the zemindar as his permanent property by the Permanent Settlement Regulation XXV of 1802, whereas Vagaikulam is an inam village. They contend that the N.K. Channel so far as it lies within the village boundary is vested in the inamdar, as also are the subsidiary channels from which the water is taken to irrigate the village lands: hence that the limit or measure of the inamdar's right to water is not the extent of land cultivated as wet, but is set by the physical conditions such as the size of the channels and the nature and extent of the sluices or weirs, if any, governing the amount of water which enters the channels. This is the view which has been unanimously accepted by the Courts in India.

In reply to it the arguments skilfully advanced by Mr. Tucker and Mr. Pringle on behalf of the Secretary of State may be summarised in their Lordships' view as four—first, that the inamdar has no right in the village lands save as a mere assignee of the Government's right to the revenue or part thereof; secondly, that in any case the inamdar has no title to the N.K. Channel or any part thereof or to the subsidiary channels because these are really wet or river poramboke and poramboke is not covered by the inamdar's title and was not recognised as his at the inam settlement of 1864; thirdly, that in any event having regard to the importance of the N.K. Channel and the subsidiary channels in the irrigation system which Government had set up and was working an exception of them must be read by implication into any grant of the village as a whole; fourthly, that Government having control of the dam by which alone water is made to enter the N.K. Channel the inamdar is not within the meaning of the proviso " entitled to irrigation " even if he be found entitled to use such water as Government may choose to allow to flow into the N.K. Channel or its subsidiaries.

It may here be observed that none of these contentions is intended as maintaining that the N.K. Channel or any other water channel with which this case is concerned belongs to any cultivator or cultivators, the claim of the defendant being, as his written statement and the issues show, that they belong to Government. He denies the title of the inamdar and claims title in himself. Their Lordships have not before them a claim by a cultivator to have such an interest in the land as is now commonly referred to as the kudivaram right. The burden which such a claimant would have to discharge, the principles applicable to his claim and the special considerations which arise where the inamdar is a math were all dealt with by the Board in the Tanjore case, *Namapillai Marakayar* v. *Ramanathan Chettiar* [1923], L.R. 51, I.A. 83, as well as in *Suryanarayana* v. *Patanna* [1918], L.R. 45, I.A.209, and *Upadrashta Venkata Sastrulu* v. *Divi Seetharamudu* [1919], L.R. 46, I.A. 123, which were cases from the Northern Circars. But the present issue is between the grantor and grantee of the inam right and has reference to the year 1753 which was the date of the inam grant. It is to be determined on the basis of the grant and on the evidence afforded by the documents which came into existence when the grant was confirmed by the inam commissioner in 1864. The ultimate question is whether the math is owner of the lands in such sense that by its inam title it has an " engagement " with Government entitling it to take without separate charge such water as the channels within the village boundaries may receive from time to time according to the state of the upper water. This may or may not be the same as the question: What is the inference to be drawn from the documents as to the existence in 1753 of cultivators having permanent right in the lands of this village? But an answer to the latter question must be given first.

The inamdar's title is derived from an admitted grant made by the Mahomedan ruler in 1753. The written instrument itself is not in evidence

or any copy of it, but a copy of it is proved to have been produced to the inam commissioner or his officers in 1864. In exhibit A which is an extract from the inam register then compiled it is described as a *parwana* a word which was applied to written orders of different types and which of itself throws no light upon the matters now in dispute. This register shows that the inam had been put forward and accepted as such on various occasions in documents of 1801, 1804 and 1820, and in an inam register previously compiled or attempted in 1814. It had stood all along in the name of the math and there was no difficulty whatever in establishing fifty years' enjoyment of the inam, which was sufficient under the rules to make a good title apart from the deed of grant itself. From 1816 to 1828, it is recorded, the village had been placed under attachment for arrears of jodi or quit-rent. In the register of 1814 it had been described as " granted on kattuguthagai tenure for the support of Vyasaraya matam " that is, of the math in Mysore State. In the column of the register which describes the liability to tax or revenue the word kattuguthagai is followed by the words " or fixed jodi " which their Lordships take to be a correct equivalent of its immediate meaning, as the trial Judge in the present case has so considered it. The word " guthakai " will be found used in the sense of rent or revenue in the Tanjore case already mentioned (see page 85 of the report in L.R. 51 I.A. 83) and is probably connected with the word " gutta " or " guta " which occurs in more than one language and in Wilson's Glossary is said to mean " farm, lease or rent." In the Tanjore case it was used with a prefix " rokka " signifying money and in the present case the prefix " kattu " is from a word of which the root meaning is to " bind." Etymology however is one thing and the meaning of the word as used may be another. In column 14 of the register of 1864 the word " *bil-mukta* " is given as an equivalent; this seems to mean " according to agreement " " stipulated " or " fixed " and is sometimes applied to the tenure as well as to the rent or revenue. A bil-mukta inam according to Wilson's Glossary is " a grant of land at a low fixed rent." On the face of the register this inam was a whole village inam—" a whole kattuguthagai village " is the expression in column 21. There are entries which show that there had been no encroachment within the previous fifty years requiring any further imposition to be made—the total area of the village being the same as in 1801. The area of dry and wet poramboke was deducted for the purpose of computing the assessment of the village. Two minor inam areas were added to this inam the total jodi or quit-rent being raised in this way from 1974.13.6 to 1981.3.8 by adding the jodi borne by them, but in truth the old jodi was retained for this village. The " extent for title deed " of this whole village inam is calculated at the figures upon which Government now relies as providing the measure of the inamdar's right to water free of separate charge, viz.: dry, 67.91 acres, wet 329.60 acres. The assessment is put at Rs.3,091.6.2 the village being described as in a flourishing condition. The decision of the deputy collector of the inam commission is dated 1st June, 1864—" to be confirmed under Rule III cl. (1) jodi Rs.1974.13.6." This refers to the Inam Rules of 1859 which governed the commission and which contained directions as to the terms upon which the different kinds of inams should be recognised according as they were for charitable purposes or were personal grants, grants for services no longer of value or village service grants. In some cases the inams were only continued upon the terms of a jodi or an additional jodi being imposed, in others they were continued only for a life or lives. But the Vagaikluam village being a religious inam—in column 2 *dharmadayam* is the entry—it came under the third Rule and fell to be continued to the holders and their successors without any further interference and permanently so long as the institutions were maintained in an efficient state and the services continued to be performed. The title deed was granted on the 27th July, 1865, in these terms:—

> " Title deed granted to the manager for the time being of Vyasarayaswami matam.
>
> 1. On behalf of the Governor-in-Council of Madras I acknowledge your title to the Religious Endowment Inam village of

Vagaikulam, in the taluk of Ambasamudram, in the district of Tinnevelly claimed to be of acres sixty seven (67.91) of dry land and acres three hundred and twenty nine (329.60) of wet land held for the support of the above matam in Sosalai in Mysore Territory.

This includes the assessment of two minor inams.

2. This inam is confirmed to you and your successor subject to the existing quit rent of Rupees 1,981.3.8 per annum to be held without interference so long as the conditions of the grant are duly fulfilled.

3. If you should desire to commute the quit rent for the payment of a sum of money, once for all, equal to (20) twenty years' purchase of the quit rent you will be at liberty to do so.

(Signed)
Officiating Inam Commissioner.

Coimbatore
27th July, 1865.

Rs.3,091.6.2. The seal of the Inam Commissioner, Madras."

This deed was issued pursuant to Rule XXX of the Inam Rules which required a title deed to be " at once furnished to the inamdar acknowledging his title to the inam on its present tenure and specifying the terms upon which this tenure may be converted into a freehold." The form was that numbered 6 in Appendix H to the Rules which was the form applicable to religious inams but was not adapted to the particular case of " whole village " inams. For the case of whole village inams it was sometimes as reported cases show [*Venkataratnammah* v. *Secretary of State*, I.L.R. 37 M. 364; *Secretary of State* v. *Raghunatha Tathachariar*, I.L.R. 38 M. 108], adapted or made clearer by the addition in writing in the margin of the words " besides poramboke ": since the area specified as " claimed " could not be the whole area of the village inamdars and officials might well think that an inappropriate form needed to be made as plain as possible. In the present case as in most cases the inamdar never attempted to commute the quit-rent and their Lordships say nothing as to other parts of the form which were directed to the right of commutation.

The true inference from these materials as to the character of the inam right granted in 1753 is not much affected by the Madras Acts IV of 1862, IV of 1866 and VIII of 1869. Some time in 1867 it was discovered that inamdars who had no rights save in the revenue of lands were attempting to evict the proprietors on the strength of the title deeds which had been granted to them by the inam commission. These deeds and certain expressions in the Inam Rules and in the Acts of 1862 and 1866 led Government to repent of having used phrases such as " freehold ", " absolute freehold " and even of the use of the words " land " and " lands " in connection with inams. Government also discovered that the title deeds and indeed the scheme of the inam settlement were fundamentally invalid. They had proceeded without legislative sanction and by agreement between the inamdar and the Government under the minute of Sir Charles Trevelyan dated 13th May, 1859, issued at once upon his taking office as Governor. But the lands were not vested in the Government of Madras but in Her Majesty and could only be disposed of in the name of the Secretary of State in Council. To remove this last difficulty an Act of Parliament was required and thus was passed the statute 32 and 33 Victoria cap. 29. To remove the difficulties created by the ill-advised language of the Rules, Acts and title deeds, Madras Act VIII of 1869 referred in its preamble to

> " the rights and interests which other persons may have in lands from which the inams are derived or drawn in cases where inamholders do not possess the proprietary right in the soil but only the right of receiving the rent or tax payable to Government in respect of the inam land as transferees of the Government."

It provided as follows:—

> " Nothing contained in any title deed heretofore issued to any inam-holder shall be deemed to define, limit, infringe or destroy the rights of any description of holders or occupiers of the lands from which any inam is derived or drawn or to affect the interests of any

person other than the inam-holder named in the title deed; and nothing contained in Madras Act IV of 1862 or in Madras Act IV of 1866 shall be deemed to confer on any inam holder any right to land which he would not otherwise possess."

It is perhaps sufficient for the purposes of the present case to observe that no point whatever need be made or reliance placed on Madras Act IV of 1862; but that the title deed and the entries in the inam register are evidence of the true intent and effect of the transaction of 1753 and of the character of the right which in 1864 was being recognised and continued. The Act of 1869 creates no presumption that the view entertained by the inam commission was unfounded, and unquestionably in many cases the inam right does comprise the proprietary right in the soil. While the Act extends a certain protection to holders and occupiers of the lands it contains no provision entitling Government to derogate from its own grant or from the grant which it has recognised and confirmed. On the other hand if once it appear that the grant of 1753 carried no right to the land but only a right in the revenue from the village the proceedings of the inam commission will have no effect to change its character or to vest in the inamdar a subject-matter not belonging to him (*Secretary of State* v. *Srinivasa Chariar* (1920) L.R. 48 I.A. 56, 67). That, however, is the very question for decision.

In these circumstances as the entries in the register speak of kattuguttagai tenure and of the inamdar as kuttuguttagaidar the first effort must be to ascertain whether these terms can be shown to import a right to the land itself or an interest limited to the revenue. In the Glossary of Judicial and Revenue Terms which was published in 1855 by Professor Horace Hayman Wilson kattuguttagai is explained as meaning " land held in farm at a permanently fixed money rent which is usually light." It has been contended on behalf of the Secretary of State that this supports the suggestion that the inamdar in the present case was a mere farmer of the revenue or person interested in a profit rental—in much the same position as the ijaradar of Bengal who is called a " farmer of rents " in the Bengal Tenancy Act (s. 22 (3)). This seems to their Lordships to mistake the meaning of Wilson's definition and it may be as well to ascertain what the words " in farm " mean in the Glossary of 1855 which has been of such great assistance to their Lordships and to all the Courts of India. Professor Wilson held the chair of Sanskrit at Oxford and was librarian to the East India Company, but his Glossary was compiled pursuant to a resolution of the Court of Directors from materials derived from all parts of India as well as from the stores of his own immense erudition. No reader of his Preface will have any doubt that many of his definitions or explanations date back in point of language to the early years of the nineteenth century. It is probably true that for almost a hundred years the verb " to farm " has been obsolete or infrequent in colloquial English in the sense of holding land from another or letting it out to another. It is now more commonly employed as meaning " to take fees, proceeds or profits of an office or tax on payment of a fixed sum." But neither in Wilson's Glossary nor in the sources from which he drew was the old meaning obsolete. The ancient operative words of an English lease were " demise, lease and to farm let." The term lease as used in English law is indeed almost as inapt in parts of India as the word " freehold " was found to be. For example a lease cannot (apart from statute) be made to endure in perpetuity yet permanent tenancies of one sort or another are almost universal in India and are often without any written instrument of demise. For whatever reason " to hold land in farm ", " farmers of land " and similar words were constantly employed and were employed by Wilson in his Glossary in connection with land held of another person. For illustration the word *swami-bhogam* may be taken. In a note written in 1816 by Mr. Francis Whyte Ellis, Collector of Madras, and a great authority on Southern India, its languages, and its land tenures as well as upon Hindu law (cf., page 40 of " Replies to Seventeen Questions . . . Relative to Mirasi Right " Madras, 1818, republished in " Three

Treatises on Mirasi Right " ed. by C. P. Brown, Madras 1852) will be found this explanation of " swami-bhogam ": " the rent paid for land held in farm from the mirasidar for a fixed period." In Wilson's Glossary the word is defined in the same language. " In the Tamil country it means the share of the produce or the rent which is paid to the mirasidar or hereditary proprietor by the tenant cultivator holding the land in farm for a fixed period." The words " holding in farm " are there applied to the actual cultivator and their meaning cannot be mistaken. Wilson's exposition of such words as " ijara," " thika," " gutta " shows that to him a " farm of land " or " farm of cultivation " is as natural an expression as " farm of revenue or rent ".

It so happens that within a few years of the publication of the Glossary the case of *Venkataswara Yettiapah Naicker* v. *Alagoo Moottoo Servagaren* [1861] 8 M.I.A. 327 came up to the Board on appeal from the Sudder Dewanny Adawlut of Madras. Like this it was a case from Tinnivelly. The plaintiff established before all the courts that before the defendant's predecessor had been given his zemindary under the Permanent Settlement Regulation XXV of 1802, the plaintiff's ancestors had held the suit lands (fifteen villages) in regard of services of a semi-military nature by a tenure known as *cuttoogootaga* or *java-tha*—that is, at a light fixed jumma; also that in 1805 his father had arranged to take from the zemindar the same lands on a cuttoogootaga lease—a permanent lease of the land at a certain rent entitling him to use the land himself or let it out to others. The defendant's story which was rejected as false, was that the plaintiff had only come upon the land under a temporary lease or ijara of 1814, but it is not quite clear how the word " ijara " was intended to be understood. In the Case lodged by the defendant as appellant there comes, in the same words as Wilson's Glossary had used, the explanation " The term cuttoogootaga means land held in farm at a permanently fixed money rent." Again it is not clear that this was thought to assist in showing that the plaintiff was a mere farmer of rents. But in any view it was held by all the courts who dealt with the case that the plaintiff had full right in the villages as he claimed. As the Zilla Court had held " The right claimed by the plaintiff is of the nature of a dependant talookdaree tenure expressly recognised by the Regulations." The Sudder Court held it to be " a fixed rent tenure." The word which appears in the judgment of the Board as " java-tha " and elsewhere in the record as " jeevitha-porooppoo " means a grant of lands for maintenance at a fixed rent. Mr. Mayne from this decision collected that " *cuttoogootaga* " is a term indicating a perpetual tenure at a low rent for past military services (Hindu Law and Usage 6th ed., page 514, para. 398) but as the present case illustrates and as the inam commission disclosed this form of tenure may be granted for divers purposes.

The matter does not rest there. The question is as to the meaning of kattuguttaga in this Tinnivelly village inam register. Now the inam commissioner Mr. G. N. Taylor and his successor Mr. W. T. Blair have provided their own dictionaries. Mr. Taylor had to take the orders of Government before settling the inams of this district and his proposals are to be seen in a minute dated 27th February, 1863. This was not put in evidence—perhaps because the contention as to the meaning of kattuguttagai was not placed before the trial Court. In any case their Lordships refer to this minute only as a dictionary though in fact it was rather more. " Kattuguttaga " Mr. Taylor explains " consists of lands held upon a fixed favourable assessment." He goes on to state that in Tinnivelly 87 kattuguttaga villages are whole inam villages and to show the different descriptions of kattuguttaga inams according to their purpose, *e.g.*, pagoda, village goddess, mosque, water pandal, math, etc., and the numbers of each type. At or towards the end of the labours of the commission Mr. Taylor's successor Mr. Blair made a final report dated 30th October, 1869, on the entire operations and appended to it a long Glossary or descriptive list of inam tenures of the Madras Presidency. *Kattugutta* as the name of a tenure is described thus " Lands

held on a fixed rent less than the full assessment. They have been treated as jodi inams." *Rokka guita* are " villages held on a fixed money rent the amount of which is somewhat lower than the standard assessment of Government lands." *Jodi* is said to be " an inam subject to a quit-rent." *Jivitam* is accounted for as a Madura term meaning tenures granted by zemindars to relatives or dependants either for subsistence or on condition of performing feudal service. *Poruppu* is said to mean wet or dry lands held on a favourable assessment paid in money. *Bilmakta* means " lands held at a fixed rent below the usual standard."

Lastly, their Lordships find that a recent case before Wallace J. in the Madras High Court raised the present point. *Medai Delavoi Thirumalayappa* v. *Karuppayi Ammal* A.I.R. 1928 Madras 375. The question arose on the issue whether the inam village was an estate within the Madras Estates Land Act, 1908, and the suit was between tenants of the village and the inamdar. The tenants relied on the description of the village as kattuguthagai and persuaded the District Judge that this implied that the inamdar was only a renter or farmer of the melvaram right from Government. Wilson's Glossary was cited by Wallace J. who held that " kattuguthagai was in essence a lease or grant of land at a favourable rent . . . there was nothing in the term itself from which one is entitled to infer that what was handed over was only the melwaram." That is the exact point now before their Lordships whose examination of the matter leads them to the same conclusion.

Without undertaking to decide what would be the effect upon the present question of proof that in 1753 cultivators with permanent rights of occupancy were upon the lands of the village and without purporting to determine whether a kattuguttagai grant could be made or was ever made in such circumstances as to take effect upon melvaram only, their Lordships are of opinion that the evidence in the present case which consists in substance of the proceedings of the inam commission is strong to show that the right of the math was a right to the land and to the whole land of the village. Indeed it is both handsomely and sensibly conceded that this is the *prima facie* effect of the inam commission's acts and words. There is no such evidence direct or indirect as would justify a court of law in cutting down the effect of the title deed of July, 1865, or in refusing to give full effect to the statements in the inam register exhibit A. Of the state of the village in 1753, and the motive of the grant in favour of this Mysore Hindu institution their Lordships are without information. The conditions of 1753 are not directly ascertainable and an imaginative reconstruction, if it were permissible, is rendered both difficult and valueless by the troubled character of the times. Save that the right of the math has been recognised throughout, the history of this matter is a blank from 1753 until the end of the century, when British authority succeeded that of the Nawab of Arcot. From that time there are the materials mentioned in the inam register as relating to the years 1801, 1804, 1814, 1820 and the attachment from 1816 to 1826 for " arrears of jodi." That attachment is said by learned counsel for the plaintiffs to have been made under Madras Regulation ~~XVIII~~ of 1802 a Regulation of which the language is taken from Bengal Regulation XIV of 1793. It provides for attachment of lands as a means for the recovery of revenue from two classes of persons whom it calls (1) actual proprietors of land, (2) farmers of land holding farms immediately from Government. The math would not seem to be a " farmer " in this sense and the plaintiffs' argument that it was treated as an " actual proprietor " may well be right; but as the entry in the inam register gives no particulars as to the authority for the attachment and as the language of Regulation ~~XVII~~ may not be altogether apposite to the Madras conditions their Lordships do not further pursue this line of argument. There is no evidence showing that in later years cultivators have established permanent right in the land as against the math. It does not seem to their Lordships to be in doubt that the inam right extended to all the village lands. It was a whole village inam like many others—a " kattuguthagai village "—in the *olugu* (or account kept of village fields) of 1801 and in the language of the case which came before the Board in 1861; a " whole kattuguthagai village " in the

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language of the inam register of 1864. In these circumstances it would be unreasonable to attach the smallest weight to the circumstance that the words " beside poramboke " had not been inserted into the title deed made out in 1865 upon a form not specially adapted to the case of whole village inams.

Upon the whole, therefore, the first two of the appellant's arguments as summarised in a previous passage of this judgment do not in their Lordships' view succeed and the math must be taken to have shown title to the lands of the village as a whole.

But it is necessary to give separate consideration to the contention that the inamdar's right in the lands of the village is subject to an implied reservation of the bed of the N.K. channel in that part of its course which takes it within the western boundary of the village. It has been contended for the appellant that a reservation must also be implied as regards subsidiary channels although within the village, because they too are part of a Government irrigation system. This question is quite unaffected by the provisions of section 2 of the Madras Land Encroachment Act (Madras Act III of 1905) which saves the rights of inamdars. The subsidiary channels do in some cases carry water which serves to irrigate the lands of other villages so as to give them *prima facie* at least some rights as lower riparian proprietors. Even so, however, their Lordships think it quite impossible to imply any reservation of the beds or banks of these subsidiary channels, having regard to their number and distribution throughout the village and to the tanks within the village which are connected with them. So to treat them would alter fundamentally the character and value of the grant. It was pointed out in the Urlam case that if any part of the water carried by the channels was to be specially safeguarded in the interest of some other Government village it would be enough to imply a reservation of water rights; and that a reservation of the channels would raise questions as to the liability of Government for their upkeep and possibly for their management.

There is more to be said for implying in favour of Government a reservation of the N.K. channel itself. In these suits only a few bare facts about this channel have been given in evidence. A reference made in another case *Ambalavana Pandara Sannathi* v. *Secretary of State* [1905] I.L.R. 28 Madras 539 to a boundary mentioned in a grant of 1614 is the proof of this channel's antiquity. No attempt has been made to show the condition of this village or this channel in 1753. The history of the management of the channel is very sketchy if it can be said to have been attempted by either side. From certain remarks made in the judgment of Varadachariar J. in a previous case between the present parties *Secretary of State* v. *R.S.S. Narayana Ayyar* A.I.R. [1937] Madras 523 a few more facts may be gathered, e.g., " After flowing through a number of ayan villages and inam villages this channel at its tenth mile enters the Vagaikulam village and after flowing through that village for three quarters of a mile it enters the Government village of Manarkoil and finally empties itself into certain ayan tanks." But at the moment their Lordships have not even the assistance of accurate or sufficiently detailed maps of this channel or proper evidence in explanation of them by a surveyor or engineer with knowledge of the locality. The ownership of this channel has been disputed between Government and the math for a number of years and the question has cropped up and narrowly escaped decision more than once—always it would seem in connection with some small money claim thus coming before the High Court on second appeal as in this case. It was very carefully handled by Varadachariar J. in the highly instructive judgment above mentioned. The trial Court in the present case has held that the N.K. channel belongs to the inamdar and this has not been reversed on appeal. Their Lordships have some hesitation in the circumstances in touching that finding but as they have arrived at the conclusion that a decision of this question is not necessary to the disposal of this appeal, the matter may still be left open.

Assuming without in any way affirming that the N.K. channel belongs to Government, their Lordships consider that this appeal of the Secretary

of State should be dismissed. They think that the same principles as were applied in the Urlam case apply upon that footing to the village of Vagaikulam. Upon this important question of principle they agree with the decisions of the Madras High Court in *Yahya Ally Saheb* v. *Secretary of State* A.I.R. 1928 Madras 97 and *Serugan Chettiar* v. *Secretary of State* A.I.R. 1928 Madras 261, which were followed by the High Court in this case. In one part of the Board's judgment in the Urlam case Lord Parker dealt with it on the basis that the river Vamsadhara belonged to Government and that the zemindar had a grant from Government of contiguous land through which passed a channel constructed for irrigation and supplied with water from the river. He showed how when the head sluice and initial portion of a channel were situate in the zemindar's estate, the right or easement of taking water from the river is limited only by the size of the channel and the nature of the sluices and so forth. It is measured by the physical conditions of the channel (cf. L.R.44 I.A. at p. 182). In the case of Vagaikulam the channels which lead out of the N.K. channel have open heads, but the same reasoning covers all the channels which take off from the N.K. channel in that part of its course which is within the village. It is understood however that some water in some of the subsidiary channels is taken from the N.K. channel at points which are near to but not within the village, and flows first, if only for a short distance, through channels in land belonging either to Government or to some other proprietor. It may be that very little water is obtained by Vagaikulam in this way since none of the Courts in India has specifically dealt with the matter upon this footing nor is it specifically raised by the appellant's Case as a separate matter. But if water be so obtained by Vagaikulam village the inamdar of Vagaikulam has by virtue of his engagement with Government—that is by virtue of the title granted to him in 1753 and confirmed in 1864—rights analogous to those of a lower riparian owner on a natural stream and any rights which can be claimed as continuous and apparent easements. His position is not materially different from that of the Urlam zemindar in respect of water which came into his estate through the other zemindaries from the Vamsadhara assuming the river to belong to Government. That position is dealt with specifically in the judgment of the Board (cf. L.R. 44 I.A. 166, at 183) which need not be repeated here. The physical conditions of the channels at the village boundary would provide the measure of the water to which the math was entitled by virtue of its inam grant.

It appears therefore unnecessary to determine the proprietorship of the bed of the N.K. channel and the only remaining question is upon the construction of the first proviso to section 1 of the Madras Irrigation Cess Act, 1865. The point taken by Mr. Tucker for the appellant is that unless it be shown that Government is obliged by means of the dam across the Tambraparni river to direct water into the N.K. channel and obliged to direct more than is necessary to supply the " mamul wet " of 1864, the inamdar of Vagaikulam is not " entitled to irrigation " within the meaning of the proviso. In strictness of language, what the inamdar is entitled to is water and he needs no authorisation from others to use for irrigation such water as is his. In the years 1920 and 1923 or at any other time he has done no more than use the water which came into his channels, directly or not quite directly, from the N.K. channel. As their Lordships construe the proviso he is entitled to this irrigation without separate charge if he has a right to the water by virtue of his inam and as one of the rights covered by the jodi which it bears. In the Urlam case it was said by the Board of the zemindari rights that they arose under and were dependent upon engagements with Government embodied in the sanads granted at the permanent settlement and that payment for them was included in the jammas. When it is said that the inamdar's or zemindar's right to water is measured by the physical conditions at the channel heads it is not of course intended that at all seasons he is entitled to a volume of water amounting to the full capacity of the channels. It is only meant that up to the measure of that capacity he is entitled to such water as can flow into them, the condition of the " river " or " upper channel " being what it is from time to time.

The math's right, if any, to require that Government shall do or refrain from doing some act in order that the upper channel shall not run dry is a distinct though a closely connected matter. It seems improbable that Government should desire to put the N.K. channel into disuse or to discontinue any practice upon which generations have relied for their sub sistence, especially as it is not denied that Vagaikulam has some right to water and Manarkoil is an ayan village. Their Lordships gather that many dams in Madras even if partly made of masonry require works of one sort or another to be done at certain seasons of each year in order that they may perform their function. In the case of inam lands which from long before 1862 have had the right to obtain water from ancient Government systems of irrigation the policy and effect of the first proviso to section 1 of Act VII of that year may be that such rights as they had should continue without separate charge. If so it is a matter for consideration whether this can or ought to be defeated in the particular case of dams which do not function automatically and without some seasonal control. If however such a course of action on the part of Government is properly to be contemplated as a matter of legal right, the right can neither be affirmed nor negatived upon this appeal.

The decree under appeal is really that of the District Munsiff which the other Courts in India have affirmed. It orders refund of water cess paid for the years 1920 and 1923, and it declares that Government is not entitled to levy cess "for cultivation that might be made by the plaintiffs in excess of the extents shown in the inam title deed . . . with the quantity of water that has been flowing and that would flow through the present ventage of the branch channels." In their Lordships opinion the plaintiffs' right to this relief has been fully made out independently of the question whether the N.K. channel belongs to the math or to Government. They have been much assisted by the clear and thorough judgment of the trial Court whose presentation of the facts and law has facilitated their task and that of the appellate Courts in India.

They will humbly advise His Majesty that the appeal should be dismissed. The appellant must pay the costs as between solicitor and client of the legal representative of the first respondent in the first appeal, who alone appeared.

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In the Privy Council

THE SECRETARY OF STATE

v.

SRIMATH VIDHYA SRI VARADA THIRTA SWAMIGAL AND OTHERS

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(*Consolidated Appeals*)

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