Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Venkateswara Iyan and another v. *Shekhari Varma, from the High Court of Judicature at Madras; delivered* 18*th June* 1881.

Present:

SIR BARNES PEACOCK.
SIR MONTAGUE E. SMITH.
SIR RICHARD COUCH.
SIR ARTHUR HOBHOUSE.

This appeal is presented in a suit (No. 1 of 1877) instituted by the Valiya Raja of Palghat in the Subordinate Court of South Malabar. The Plaintiff in that suit died after obtaining his decree; his immediate successor has also died, and the existing Raja has been substituted as Respondent by order of the High Court of Madras. He has not thought fit to appear, and the case has been argued by the Appellant alone.

It appears that in the families of the Malabar Rajas it is customary to have a number of palaces, to each of which there is attached an establishment with lands for maintaining it, called by the name of a stanom. The Palghat family have no less than nine stanoms. Each stanom has a Raja as its head or stanomdar. The stanomdar represents the *corpus* of his stanom much in the same way as a Hindoo widow represents the estates which have devolved upon her, and he may alienate the property for the benefit or proper expenses of the stanom. The Valiya Raja appears to be the first in rank

of the nine stanomdars, and to be the head of the Palghat family.

The Appellants, who represent the Defendants in the suit, are a branch of the Iyan family, and claim certain interests in land granted to members of that family by former Rajas of Palghat at intervals of time ranging from the the year 1832 to the year 1851.

Inasmuch as between the year 1832 and the present time there have been eight successive Rajas, all apparently bearing the same name, it will be convenient to distinguish them by numbers, beginning with Raja I. in 1832. It will also be convenient to state the previous dealings between the Appellants or their predecessors in title on the one hand and the Rajas on the other, before coming to the present suit, which is hardly intelligible without a knowledge of antecedent events.

In the year 1832 Raja I. executed to Chitambara Iyan a kanom of certain lands to secure the sum of Rs. 4,000. A kanom is a species of mortgage, and it has been stated at the bar that it is usually made to endure for a term of 12 years, at the end of which time the parties would enforce their remedies or make a new contract. On these lands there were prior encumbrances, which were paid off out of the Rs. 4,000 by Chitambara.

In the year 1833 Chitambara instituted a suit (No. 214 of 1833) against Raja I. and a number of other persons for recovery of the lands included in the kanom of 1832. Of the frame and effect of this suit it will be necessary to say more hereafter. At present it is sufficient to say that the Plaintiff substantially obtained the decree he asked.

In the year 1843 Raja II. executed to a trustee for Chitambara another kanom of other lands to secure another advance of Rs. 4,000.

The two kanoms in question comprise the whole of the lands which the Raja seeks in the present suit to recover from the Appellants. The documents themselves are not forthcoming, but their purport, at least to the foregoing extent, is shown, partly by the allegations of both parties in the litigations prior to the present suit, and partly by the register of Palghat Cutcherry. The land has been held by the Appellants or their predecessors in title in conformity with the title so conferred. Whether the advances were made to the Rajas for the expenses of the stanom is a question which does not appear to have been decided, or precisely raised.

On the 15th June 1851, Raja III. executed to Sivarama the son of Chitambara an instrument the validity of which has been the main question in this suit. It commences by stating that, including the transactions of 1832 and 1843, the sum of Rs. 12,000 (called 42,000 fanams) has been received. For this sum Sivarama is to hold for ever the lands described. The instrument continues thus:—

> "We executed to you a document on the 15th June 1851, ordering you and your anandravams to hold and enjoy the above lands . . . for ever, without being called on to surrender and without surrendering the same. Deducting out of the rent payable the interest due on your money, and the Government revenue, you should pay annually 200 paras of paddy for the pooja services of our Simhanada Bhagavathi (pagoda), and 64 paras of paddy on account of Annabishekam in the Neerathi-Kulangara Siva temple. In addition to what has been ordered above, we have also given our consent to water being taken, as required for purposes of cultivation, from our Simhanada Bhagavathi's tank."

It is not disputed that the lands comprised in this instrument are the same as those comprised in the two kanoms.

The precise nature of this instrument, whether it is to be called a kanom or by some other name, whether it confers upon Sivarama a redeemable or an irredeemable interest, has been

a good deal discussed, and in some views of the case the discussion would be very material. For the view now taken it is not material. The material points are: that on the 12th July 1851 the instrument was registered as a kanom in the Kanom Registry of the Subordinate Court of the Zillah of Calicut; that the Calicut Court gave notice of that fact to the District Moonsiff of Palghat; and that on the 20th August 1851 the Moonsiff registered the instrument thus:—

"Kanom document, dated 15th April 1851, creating a kanom of 42,000 new fanams over the Mangattiri Patam, and other lands in the Patham amshan of Palghat Talook, to be enjoyed without being caused to surrender and without surrendering."

The possession of the Iyan family in accordance with the prior kanoms, is also in accordance with the grant of 1851. The rent of 200 paras of paddy has without doubt been regularly paid to the Simhanada Bhagavathi Pagoda. There is dispute about the rent of 64 paras, which the Appellants allege to have been regularly paid to a pagoda called the Tharakat Siva Pagoda.

Raja III. died at some time not exactly ascertained, but it was not later than the year 1854. In the time of his two successors Rajas IV. and V., nothing took place to affect the title. Raja VI. acceded to the Stanom in the year 1862, and it is during his reign that the present disputes arose.

On the 1st April 1874 Raja VI. filed a plaint in the Court of the District Moonsiff of Palghat against the Iyan family and several other Defendants tenants of the Iyans. He sued for recovery of the lands comprised in the kanom of 1852 on payment of the Rs. 4,000 thereby secured, and of Rs. 50 for improvements. He took notice that the Iyans claimed what he calls "an irredeemable right for a large amount," and he sought to set that claim aside. The

lands he alleged to appertain to Mangattiri (the name of a district or estate), which again, in his words, "belonged to our Swarupam or Royal "Family." He complained that since his coming to the Stanom, and since 1038 (A.D. 1862–63), no rent had been paid. He alleged as the legal foundation of his case that "No one is entitled "to assign lands belonging to the Stanom on "large rights. Even if such rights have been "given, they cannot be valid: they cannot also "bind us."

The Iyans objected to the jurisdiction of the Moonsiff on the ground of value, contending that the suit, though in form only to redeem the kanom of 1832, was necessarily and in substance one to set aside the grant of 1851. They said that the Raja, having been inactive for 12 years though aware of that grant, was barred by limitation, and that possession had been held and the reserved rents paid in accordance with the terms of the grant.

The issues framed by the Moonsiff did not raise any question as to the precise nature of the grant. It is there called a perpetual lease, and one of the issues was whether it is valid and binding on the Plaintiff.

The Moonsiff dismissed the suit on the first ground of defence, viz., that it was beyond his jurisdiction, but the Subordinate Judge reversed that decision and remanded the suit.

On the 29th March 1876 the Moonsiff passed a decree to the effect that the Raja should redeem on payment of the Rs. 4,000 and the value of certain improvements. The ground of his decision was that the absolute alienation by a Stanom holder of Stanom property in such a way that it could not be redeemed is highly prejudicial to the Stanom. It appeared, he said, by the Defendant's evidence that the Rs. 4,000 advanced in 1851 was for the purpose of paying

off debts contracted for performing the late Raja's funeral ceremony, but that, he held, was not a special necessity and could not be permitted.

On the 1st of July 1876 Mr. Wigram, the District Judge of South Malabar, reversed the Moonsiff's decree. He refused to re-open the question of jurisdiction. The only question argued before him was whether the grant of 1851 was binding on the Stanom. It was not necessary to decide that. It was sufficient for the disposal of the case that the Defendant had in fact held under the grant ever since June 1851. Instead of suing to set aside the grant of 1851, of which Mr. Wigram held that the Raja was fully aware, the Raja sued to redeem only half the lands comprised in it. Mr. Wigram held that the whole lands were held under one title, and that they could not be recovered piecemeal without first setting aside the grant of 1851.

The Raja appealed to the High Court, but on the 8th December 1876 his appeal was dismissed. No written reasons appear to have been given on that occasion.

The suit of 1874 having thus failed, the Raja instituted the present suit on the 9th June 1877. In it he changes his point of attack, and prays for a wholly new kind of relief. He now alleges that the lands in question belong to four devaswams, or religious endowments, belonging to the Stanom, viz., Simhanada Bhagavathi, Mangattiri Ayappan, Neerat Ganapathi, and Shekharipuram Emur Bhagavathi. He contends that the Stanomdar cannot assign in perpetuity, or for an irredeemable interest, the lands of the devaswam, and that the grant of 1851 was not for devaswam purposes. He accounts for his inaction by saying that the grant was collusively obtained and fraudulently concealed, and that it

did not come to his knowledge till January or February 1874. He prays to recover the lands on payment of a small sum for improvements, and without paying what is due on the kanoms of 1832 and 1843. The Defendants named in the plaint are the Iyans and their tenants.

In answer to the Raja's new case, the Iyans deny fraud and concealment, and challenge the Raja's allegation of ignorance. They contend that the cause of action arose on the death of Raja III., which is there stated to have taken place in October or November 1853, and they plead the statute of limitations. They deny that the lands are devaswam property at all.

Among the issues framed by the Subordinate Judge are two to the following effect; whether the Plaintiff was by the fraud of the Defendants kept from the knowledge of the grant of 1851, and whether the land belongs to the devaswams or to the Stanom.

On the 1st of September 1877, the Subordinate Judge decreed that the grant of 1851 should be set aside and the lands recovered on payment of the amount secured by the two kanoms and of the value of certain improvements. Shortly stated, the grounds of this judgment are, that the land is devaswam property, and that the grant of 1851 was fraudulently obtained and concealed so as to exclude the statute of limitations.

From this decree both sides appealed, and after some intermediate proceedings, among which was an order for the production of some further evidence, the appeals were heard by the High Court of Madras on the 22nd July 1878. The Raja's claim to have the land without redeeming the kanoms seems to have been given up, and on the appeal of the Iyans the decree of the Subordinate Judge was substantially affirmed, but modified in favour of the Iyans on some

points of detail. Again no written reasons were given, but the views of the High Court are to be gathered from a memorandum made by Mr. Justice Kindersley on the 30th November 1879. From that it would seem that the High Court agreed with the Subordinate Judge that the land was devaswam property, that they did not agree that the grant of 1851 had been fraudulently concealed, but thought that the statute of limitations would not apply because the Iyans were not purchasers *bond fide* for value. From this decree the present appeal is brought.

The first question, and in the opinion of their Lordships the governing question, on this appeal, is whether or no the lands in dispute are devaswam property. The object of the Raja in contending that they are so is clear. In the suit of 1874 when all parties treated them as Stanom property, the kanoms and the grant of 1851 were defended on the ground that the advances were made for Stanom purposes. But if the land is devaswam property, the clearest proof of an advance for legitimate Stanom purposes would not avail to support the alienation. By the showing of the Iyans themselves the transactions would be void in their inception and could only now stand so far as each is protected by the lapse of time. On the other hand, the Raja, having elected to rest his case upon the character of the land as devaswam property, must stand or fall by that election. If the land is not devaswam property, the groundwork of his suit is cut away, and he cannot have any decree at all.

It is true that upon this question there are concurrent decisions of the Courts below. But though the question may be called in its result one of fact, its decision turns upon the admissibility or value of many subordinate facts, and involves the construction of documents and other questions of law. Such was the view taken by

the High Court of Madras when it granted leave to present this appeal. It is now necessary to examine the principal grounds on which the Subordinate Judge came to the conclusion that the property belongs to the devaswam. Whether or no they are the same grounds on which the High Court rested its opinion, their Lordships cannot tell for want of a written judgment.

He first says that the very old public documents, being certain pymash accounts of the years 1798–99 and 1805–6, most satisfactorily show that the lands are the jenm property of the four devaswams named in the plaint. But on looking at these accounts two observations at once occur. The first is that, putting them at the highest, they are only evidence of possession, having been rendered to Government for the purpose of informing them from whom they were to demand the revenue. The second is that they can hardly be said to be public documents at all; for on the face of them it is stated that they were never confirmed and never acted on. The person who made these returns may have believed that the lands were devaswam property, but his statement to that effect is a mere private opinion, unless and until it is affirmed or acted on in some public way. It is remarkable that in the suit of 1833 a copy of one of these accounts was refused to one of the litigant parties, on the very ground that the account had never been confirmed, and was only granted on its being discovered that a copy had already been given to his opponent. These documents should not have been treated as evidence.

The Subordinate Judge then goes on to say that in the suit of 1833 Chitambara Iyan admitted, and indeed maintained, that the land belonged to some devaswam. Now this suit was brought by Chitambara against a prior mortgagee and his tenants for redemption and recovery of

the land comprised in the kanom of 1832. Raja I. was afterwards added as a party, and he supported the Plaintiff. At a subsequent stage of the proceedings three other Defendants were brought before the Court. They represented the Simhanada Bhagavathi devaswam, and in the year 1834 they brought a suit against the Raja and Chitambara to enforce the claim of their devaswam to the lands. In the record are inserted the answers of the Raja and of Chitambara in the suit of 1834. It does not appear what was decided in that suit upon the devaswam question. Possibly the parties were satisfied with the issue of the suit of 1833, where the same question was raised after the representatives of the devaswam were made parties. It is clear that the two suits were considered, and must now be considered, in combination with one another.

Nothing can be plainer than that in both suits the Raja and Chitambara were in the same interest, and were opposing the claim of the devaswam. On the part of the devaswam it is alleged that the Raja "has no connection with the land." He on the other hand says that "the devaswam "does not own lands sowing even one para," and that its expenses are met by his own family funds. He sets forth several acts of ownership by the Rajas, including the kanom of 1832 and previous kanoms. Chitambara alleges that the devaswam itself belongs to the Raja, and that the lands are not jenm of the devaswam. Admitting that the devaswam is entitled to the rent of 200 paras of paddy under arrangements which the Raja made with a prior mortgagee, he contends that no claim whatever has thereby been created on the land itself.

Such being the tenor of the pleadings, it is difficult to understand how the Subordinate Judge comes to his conclusion that Chitambara maintained the title of the devaswam.

On the 30th January 1837 the Pundit Sudder Ameen passed a decree in the Suit of 1833 in favour of Chitambara. On the question raised by the devaswam, his view was that the devaswam itself belonged to the Raja, and that the Defendants specially claiming to represent it had no title to the land.

The result of these two suits is certainly not in favour of the Raja's present contention. It may not precisely decide that the land is not devaswam property. But it decides at least, this, that, as between the Raja's grantee on the one hand and the devaswam claiming independently of the Raja on the other, the Raja's grantee is entitled to hold the land. Its effect in binding the Raja is enhanced by the fact that in the year 1835 Raja I. died, and that Raja II. was then made a party, but did not suggest that his predecessor had done wrong, or raise any fresh case at all.

The Subordinate Judge next says that the admitted fact of the rent of these lands having been always made payable to the devaswams, and not to the Stanoms, is a piece of very cogent evidence in favour of the devaswams. The kanoms not being in evidence, their precise terms cannot be known. But what is made payable to the devaswams by the grant of 1851 is not *the rent*, but only the specified and comparatively small portion of it reserved by the Raja for the benefit of a family idol, and an idol of a neighbouring village.

Then it is said that in the suit of 1874 the Raja did not claim the land as belonging to his Stanom, but that, inasmuch as he styled it property belonging to Mangattiri of my royal family, and as Mangattiri is one of the four devaswams as whose trustee he now sues, he really claimed for those devaswams. Now the pleadings in that suit have been stated above,

and, except that the grant of 1851 produced by the Iyans shows the payments reserved to the Pagoda, they say nothing about any devaswam. In the issues and the two judgments of the Courts not a word is said about any devaswam. The property is treated as Stanom property throughout. Mangattiri is not a devaswam at all, but the name of a locality in which there appears to be a Pagoda of the idol Ayappan called in the plaint of 1874 the Mangattiri Ayappan devaswam.

The foregoing is the whole of the Raja's case, and it certainly does not bear or nearly bear the burden of proof which lies upon him. It is indeed suggested by the Subordinate Judge that if the kanoms were produced they would show something in the Raja's favour, and he draws very damaging inferences against the Iyans for not producing them. They excuse themselves by saying that the documents were given up to Raja III. when the grant of 1851 was executed. That seems a very unlikely proceeding. There is nothing to show why the owner of lands should not in Malabar as well as in England keep all documents of title. And if there were reason to suspect that these kanoms would disclose anything material in favour of the devaswams, there might be some justification for making presumption against the Iyans.

But there is no reason for any such suspicion. As regards the kanom of 1832 it is out of the question, for that document was the basis of the suit of 1833 when the Iyans got a decree against the claim of the devaswam. As regards the kanom of 1843, there is the notice of it in the Palghat Cutcherry, and the recital of it in the instrument of 1851, which simply point to it as a kanom or bond executed by Raja II. to Chitambara's trustee. It is to the last degree improbable that this kanom

should be materially different from the several other kanoms affecting the same lands and exhibited in this suit, or should show anything more favourable to the devaswams than the payments of paddy secured by the grant of 1851.

Moreover, the Rajas have not themselves been free from blame in destroying this evidence. Counterparts of the kanoms were executed to be kept by them, and Raja VI. is fain to excuse himself for not producing his counterpart in the suit of 1874, by alleging that when Raja V. died the documents of the Stanom were taken away by his nephews who had not given them back to him.

Even then if this were all, the Raja's case must fail, because the burthen of proof lies on him. But there is a considerable amount of evidence, though principally of a negative kind, bearing in favour of the Appellants' contention that the land is Stanom and not devaswam property.

Their positive evidence besides the suits of 1833, 1834, and 1874, consists of two sets of documents, one set showing that the Rajas have freely dealt with portions of the lands in dispute as Stanom property, the other set showing in the case of other undisputed Stanom lands that the Rajas have been in the habit of demising or granting them, with reservations of specific and limited payments to family pagodas. The Subordinate Judge seems not to have rightly apprehended the purposes for which these exhibits were produced.

Moreover in the year 1864 Sivarama Iyan's tenants were obstructed in taking water from the Simhanada Bhagavathi tank, a right granted by the instrument of 1851. Sivarama prosecuted the obstructors, and succeeded in his prosecution. He could hardly have done so without interference by the persons who repre-

sented that devaswam, if he was without title. It may be that the obstructors represented the devaswam, but, if so, Sivarama appears to have prevailed against it.

The negative side of the evidence is perhaps of more importance. The claim is made on behalf of four devaswams. But no attempt is made to show when, by whom, or in what way the land was dedicated to them, nor at what time they have had actual enjoyment of it. Nor is there even so much as a statement by the Raja of the shares or proportions in which they are entitled.

Above all it is clear that the Iyans were in possession of all the lands, at least from the month of June 1851 up to the suit of 1877, and that they paid nothing to the Raja, and nothing to the devaswams more than the specified quantities of paddy. During that period there were three descents of the Stanom. Even if Raja III. had colluded with the Iyans to alienate the property of the devaswams, it is inconceivable that Rajas IV. and V. and up to 1877 Raja VI., should do so too, or that they and all the managers and priests of the devaswams should keep silence if they were entitled to land sowing 575½ paras, out of which they were only receiving 200 or, at most, 264 paras of paddy. According to the only calculation on this point appearing in the record, the sowing para of land is said to yield rent at 7 paras of produce.

The foregoing reasons are sufficient to dispose of the case upon the first step in it. But if the view of the Courts below had prevailed here, it would have been necessary to decide whether the Iyans had fraudulently kept from the Rajas all knowledge of the grant of 1851, so that time should not run in its favour. Accordingly this question has, as regards both evidence and argument, been treated as fully as any other

point in the case, and their Lordships have full materials for a judicial decision upon it. And they think it right to pronounce one, because they find that the Subordinate Judge has pronounced upon this point against the Appellants' family, with a great deal of severity which appears to them to be undeserved; and because from the silence of the High Court it is by no means clear what view was there taken of the matter. They will not however travel so much into detail as would have been desirable if they decided that the property belonged to the devaswams, and that the Appellants could only keep it by help of the statute of limitations.

The main point relied on by the Subordinate Judge, if it suggests any fraud at all, points rather to fraud in the inception of the grant than in its concealment. He says that whereas by the grant 64 paras of paddy are made pay able to the Neerattu-Kulangara Siva temple, no such temple can be found to exist. The temple, he says, is described in the grant as the Raja's own temple, viz., "*my* temple." The Raja's family temple connected with Neerat is a Ganapathi temple, not a Siva temple. And though the Iyans gave evidence that they have regularly paid the 64 paras for the Annabishekam ceremony to a Siva temple in the village of Tharakat, situated some 200 yards from the Raja's Neerattu-Kulam tank, it is not to be believed because receipts are not produced. The Subordinate Judge holds that the whole introduction of this temple into the grant is a fraud concocted between the Iyans and the Raja's agent, which continued up to the time when Raja VI. discovered the grant, which according to his statement was in January or February 1874.

It is exceedingly difficult to understand what could be the object of such a fraud as the

insertion of a non-existent temple in the grant. But, object or none, there is not in this record sufficient evidence to support a proposition requiring clear proof. In the first place, the grant of 1851, as translated for the record which must be the guide here, does not correspond with the quotation by the Subordinate Judge. It refers to the Simhanada temple as the Raja's—"my" temple,—but when it speaks of the other temple, it is only called "the" temple. If any inference can be drawn from such language, it is that the second temple was not the Raja's. It seems clear that the Tharakat Siva temple was generally known by that name, and by no other. The payments of 64 paras for the Annabishekam ceremony in the Tharakat Siva temple are deposed to by the Appellant Venkateswara Iyan himself who was examined for the Raja, by Viswanath Pattar one of the Raja's karyastas, or agents, and by one Javanthi an inhabitant of Tharakat who was examined for the Iyans and says that he himself received and gave receipts for the paddy for the Annabishekam ceremony performed for his house's sake in the Tharakat Siva temple. Since the decree some documents purporting to be Javanthi's receipts have been produced. But Javanthi cannot tell what position or authority he had to entitle him to receive the paddy. No one is called from the Tharakat temple to deny receipt of the paddy. One of the Raja's witnesses, a priest in the Neerat Ganapathi Pagoda for nine years, says that 64 paras of paddy was paid yearly to him by Venkateswara Iyan. Upon this state of the evidence the difficulties felt by the Subordinate Judge are far from being cleared away; but it is too much to say that they stamp the transaction as fraudulent.

Whatever obscurity may hang over this portion of the case, the true question is, not

whether everything connected with the grant can be explained, but whether the grant itself has been so fraudulently concealed as to exclude the effect of time. Upon that point the Subordinate Judge thinks that the mention and registration of it as a kanom has been the means of concealment. But even if a kanom is a wrong appellation, it is not easy to see how that affects the Raja's knowledge of his right to sue. Whatever interest may be conferred upon the Iyans by the grant of 1851, if the land was devaswam land and was wrongfully alienated, the Raja had a right to set that grant aside.

The fact of registration seems to their Lordships to displace the theory of concealment. Registration at this period was not compulsory, and it is very difficult to suppose that a person desiring to conceal an instrument should lodge it in a public office within two months of its execution. The Subordinate Judge says that the registration amounts to nothing, because the place of registry was in Calicut, 100 miles from Palghat. But the fact is, as above stated, that on the 20th August 1851 it was registered in the Court of the District Moonsiff of Palghat, in pursuance of a notice from the Subordinate Court of Calicut.

Again in the month of July 1864 a question arose whether or no some lands claimed by the Government under an escheat were really lands included in the grant of 1851. Both the Raja, who was Raja VI., and the Iyans appeared by their vakeels before the Escheat Officer to maintain their claim. The instrument of 1851 was produced, and a copy taken to be kept in the Escheat Office. The Subordinate Judge says that there is no evidence that either the Raja or the Iyans had notice of the claims preferred by the other, and he thinks that each was acting behind the other's back. That is possible, though not

probable. But if it were the case it does not do away with the fact that the Iyans openly claimed under the grant of 1851 in a public court.

The same course was pursued by the Iyans in the dispute about the tank, which has been before mentioned. The instrument of 1851 was then produced in Court and initialled by the magistrate.

It is observable that in both these cases it would have answered the purpose of the Iyans equally well to claim under the previous kanoms, instead of claiming under the grant of 1851. If they had, as suggested, wished to appear to others as claiming only under kanoms while keeping a more absolute title in the background, it is incredible that they should have produced in public the evidences of that more absolute title.

Moreover the Raja has never given any evidence. In his plaint of 1877 he says that he discovered the grant of 1851 in January or February 1874. But he does not say, what in such a case is extremely important to know, what was the occasion of such discovery, or the circumstances which led to it. Nor in his plaint filed in April 1874 does he say a word about his then recent discovery or about any fraudulent concealment.

It is clear that ever since June 1851 at the latest the Raja or the devaswams or both have been kept out of a valuable property. Why did they not make inquiries about the cause of so disagreeable an occurrence? It is shown that they had only to step into the District Moonsiff's Court at Palghat, in order to find notice amply sufficient to guide them to the exact truth. But no word of explanation is given of this extraordinary inaction.

The result is that their Lordships agree with Mr. Wigram, and apparently with the High Court, in thinking that there was not only no

fraudulent concealment of the grant of 1851, but no concealment at all. They are of opinion that on this issue, as well as on the issue respecting the nature of the property, judgment should go for the Appellants. They will humbly recommend to Her Majesty that the decrees should be reversed, and the suit dismissed with costs in both the Courts below. And the Respondent must pay the costs of this Appeal.