M.R. O. 1—30,000—15-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 479 Press ~~His.~~

180-181

Dated 20-3-1862 ~~19~~

11/4

Not to be folded or roughly handled

No. 180. Read the following letter from T. S. SMYTH, Esq., Advocate General; to the Honorable T. PYCROFT, Chief Secretary to Government, Fort Saint George, dated 14th March 1862.

I have the honor to acknowledge the receipt of the Order of Government, Judicial Department, No. 407, dated 11th March 1862 and of the papers forwarded therewith, and of the Order dated 4th March 1862, and the papers forwarded therewith, consequent upon my letter to you dated 5th February, paragraphs 13 to 25.

2. With respect to paragraph 8 of the letter of Mr. Brett, Collector of Salem, to the Secretary to the Board of Revenue, dated 28th February, I would wish to observe that I never intended to, nor am I aware that I did, make any complaint against the Collector. I still retain my opinion that it would have been desirable to furnish to me in the first instance the whole of the information alluded to in paragraph 16 of my letter; but I neither did nor do make any complaint whatever of Mr. Brett, with whom I never had any communication on the subject.

3. In paragraphs 5, 6, 7, and 8, Mr. Brett puts forward his views on the subject of the original and amended plaint in ejectment, as to which I need only say that he does not seem to apprehend their nature quite correctly.

4. Paragraphs 3 and 9 of his letter, and the Board of Revenue, paragraphs 4, 5, and 6 of their Order thereon, and the Civil Judge's letter dated 21st February, No. 10, to the Registrar of the Sudr Udalut, paragraph 6, appear to lay stress on my having used the term "private letter" in paragraph 23 of my letter of the 5th February.

5. It must however, I think, be sufficiently clear, even from that paragraph alone, much more so if read along with the preceding paragraphs 20 and 22, that I used the term "private letter" merely in contradistinction to such *public* documents as I then mentioned, viz., an attachment, injunction, or Order of Court.

6. The Board, the Collector, and the Civil Judge, all lay stress upon the Civil Judge's letter being an "official" letter; but paragraph 5 of the Civil Judge's letter shews that *he* perfectly understands the distinction which I meant to make, when he admits "it would no doubt "have been *more regular* to have issued *the same directions* in the *form* of an *order*." He further shews, paragraph 2, that his "*letter*" was written upon a mere "verbal application" (upon which no Court could have issued an Order under its seal) while he shews, in paragraph 9, that when he came to grant "an injunction under this Court's signature," it was "formally moved for, and *evidence* tendered"—shewing distinctly, as it appears to me, that a letter written by a Judge, whether it be called official or demi-official, is, and *is known to be* perfectly distinct in its character and effect from an Order of the Court.

7. What has been done may have been perfectly in accordance with Mofussil practice. My intention was not to criticise that practice, whether right or wrong, still less to complain of a Collector for acting on his *bonâ fide* belief that the Judge's letter was "equivalent to an Order."

8. What I wished to point out was that a Judge's letter and an Order of Court are two perfectly distinct things; that an *Order of Court* is a good, clear and sufficient defence, whereas—except perhaps in the Mofussil—I doubt if a *Judge's letter* ever was or will be held so; and that therefore, where the interests of Government or the Secretary of State are, or are likely to be, in question, it is very desirable, especially when there is a question, as here, of compliance or non-compliance with an authority like that of Probate from the Supreme Court, that before refusing to acknowledge a formal legal authority, a Collector should at least require to be furnished with a formal Order of Court for his protection and defence.

9. I have been obliged, in the Secretary of State's answer, to plead the Civil Judge's letter as an Order of Court; and can only hope that, with reference to Mofussil practice, the Supreme Court may view it as "equvalent to an order."

10 I have had a conference with Mr. Hudleston, Secretary to the Board of Revenue, who has furnished me with full information, particularly a very clear and complete report on all the proceedings in this case, *ab initio*, from Mr. Brett, dated 17th February 1862. I have thereon

prepared the answer of the Secretary of State, and when the Government Solicitor has had a fair draft made, I shall ask him to see the Secretary of the Board of Revenue on it once more, and perhaps to forward one paragraph of it to Mr. Brett, both to see if he has any suggestion to offer, and to be sure that it contains nothing that cannot be fully proved.

11. I see it is strenuously asserted that the alleged will of the deceased Vecramanee is a forgery; and I am also assured that the affidavit alleging that there was property of the deceased within the jurisdiction of the Supreme Court (without which Probate would not have been granted) was utterly false. If so, the present Poligar, who not only asserts the will to be a forgery, but also (and I think correctly) that it is null and void by Hindoo law, and also Peddoo Moodoo Veeramanee who I see has commenced a suit in the Salem Court, ought, I think, to be informed by the Collector that their plain and obvious course is at once to disarm Akkachee Ummanee, who has the Probate, by applying to the Supreme Court, citing her to bring it in, and to prove the will in solemn form, *per testes*.

12. Government cannot do this; they alone can do it and they ought. It is really their interests that Government is defending in this Equity suit, and I think they should be told that if they will not take the proper steps to defend themselves, Government will leave their interests to take care of themselves. If Akkachee Ummanee is allowed to retain the Probate, and gets a Decree in this Equity suit for the landed and personal property, they will find their proceedings in the Salem Civil Court of little use to them.

No. 181. ORDER THEREON, 21st March 1862, No. 479.

Referred to the Revenue Department.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. F. Cartledge.

2

K/81

No. 479 - 21st March 1862
Referred to the Rev:
Dept.

to Rev: Dept. Desp. 21st

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Pros: 17th Feby/62 Oct. 248.
" 1st March " Oct. 366.
" 11th " Oct. 407.

Extract of 20 March.

Judicial 1862 Dept B

Pros 6 March

From

The Advocate Genl

D/ 14th
Rd 17th March/62

No 542

Forwarding certain Observations & Suggestions in reference to Pros: of Govt No 407 of 11th Inst. communicating Rev: Pros: of Govt relative to the Lands & property of the deceased Poligar of Anthiyagiri

With an Order

1807-181