M.R.O. 14—10,000—21-4-22.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 646 — Press — Mis.

356. 357

Dated 19 . 3 . 1861.

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department,
19th March 1861.

No. 356. Read the following Proceedings of the Board of Revenue, dated 2nd March 1861, No. 1,201 :—

Read letter from the Government Pleader, dated 2nd March 1861, No. 41.

(In Cons. 2nd March 1861, No. 1,332.)

1. Ordered to be communicated to the Collector of Madura, who will instruct the Government Vakeel to move the Civil Judge to reconsider his order on the grounds stated in the enclosed Memorandum.

2. The Collector will desire the Vakeel to follow Mr. Dale's instructions in paragraph 8 closely and especially to secure proof of his having urged these objections to the Civil Judge's order.

3. The Collector will report the result of the motion as soon as possible.

Ordered that a copy of these Proceedings be submitted for the information of Government with reference to their Order, dated 10th April 1860, No. 552, Revenue Department.

(A true Extract.)

(Signed) J. D. SIM, *Secretary.*

No. 357. ORDER THEREON, 19th March 1861, No. 646.

The Board's order is approved.

(Signed) J. D. BOURDILLON,
Secretary to Government.

Memorandum

Motion

With reference to the Order of this Court dated 22nd February 1861 Petitioner begs to submit the following objections for the Courts consideration

I That by no Law or Rule of Evidence can 2nd Defendant be called upon to prove a negative. as in this case directed Vizt. to prove that 1st Defendant has no heirs.

II That even if the Pain has heirs, the point is now premature and not raised by Plaintiff.—

III That it is premature to require 2nd Defendant to prove his right to order an Escheat, seeing that 1st Defendant is in actual and recognised possession. It will be time enough for 2nd Defendant to be called upon to support such an act when the act is effected.—

IV That the right of 1st Defendant, in the absence of heirs, to make any asignment of the Estate is a question

of

— — of Law which must be argued — when the case is at issue and the real status of each party, properly before — the Court, is shewn by evidence adduced in the Cause.—

V. That Plaintiff should be required to prove the legality of his alleged adoption, instead of 2d Defendant alone being required to prove its illegality.—

On these grounds Petitioner begs the Court to reconsider and cancel its — Order of the 22d February 1861, whereby — Plaintiff is relieved from the onus — of proving his case and the whole burden of proof is thrown on 2d Defendant.—

Revenue Board Office
Fort St. George
2nd March 1861.

/ Signed / J. D. Sim
Secretary

/ True Copy. /

J D Sim
Secretary

Comps
C Burton

No 41

From
Clement Dale, Esq.
Government Pleader, Sudder Udalut.

To J. D. Sim, Esq.
Secretary to the Board of Revenue.

Sir,

I have the honor to acknowledge the receipt of the Proceedings of the Board of Revenue under the dates and numbers noted in the margin, and to report for the information of the Board that in my opinion the Civil Judge is wrong in passing the order of the 22d February 1861 whereby he calls on the Collector to shew first that there are no heirs to the present Ranee of Ramnad, Secondly his right to order an Escheat of the property on the death of the present Ranee, thirdly in the event of there being no heirs (I suppose he means to the Ranee) his (the Collectors) right to prevent her making any assignment of the property she may think fit during her life time and fourthly to prove the illegality of the alleged adoption.

Proc.s of the Bd. of Rev.
1st March 1861 No. 1154
do. 1st March 1861 No. 1155.

2. By the case put forward by the Collector he does not raise any issue which should properly relieve the Plaintiff from proving his own case and which throws the whole burden of proof on the Collr. The Civil Judge is therefore in error in thus relieving the Plaintiff from proving his case, the effect of which may, and in all probability will be that any Decree which may be passed (if this order stands) will not be founded on the strength of the Plaintiffs Title, but on the supposed weakness of the Collectors case.

3. By the first point, the Civil Judge requires the Collector to prove a negative, a position not recognized by any Law or rule of evidence moreover even the Ranees heirs could claim the estate, the point is now premature.

4.

The second point is also premature; I am not aware that the Collector or Government have ordered an escheat. It will be quite time enough for the Crown to be called upon to support such an act when it has been adopted.

5. The third point is a question of Law which must be argued when the case is at issue, and the legal status of each party properly before the Court, is shewn by evidence adduced in the cause.

6. The fourth point might have been unobjectionable if the Civil Judge had given the Plaintiff a point to prove the legality of the adoption, and at the same time had given to the Collector a point to disprove its legality.

7. No appeal lies from the orders at present stage of the Proceedings, see Act VIII of 1859 Sec 363 irregularity may be taken advantage of hereafter.

If is very perplexing to know how to deal with such eccentric proceedings, as that under consideration, and the time allowed for reflection is short. The best course however which I (as at present advised) can suggest is, that the Government Vakeel at Madura should submit to the Civil Judge for his consideration and review, that his order is irregular on the grounds I have mentioned. If he prepares his objection in writing it will prevent the Vakeel being misunderstood and if the Civil Judge should refuse to receive the paper as part of the record and requires the Vakeel to address his objections orally he may state or read from his paper his objections. The Vakeel should be prepared to show hereafter that he submitted these points to the consideration of the Civil Judge and keep a Copy of the paper he prepares

If

9. If the Civil Judge refuses to amend his order and determines to proceed upon it, Sadhe be permitted to pursue his own course; it would be most unfair that the Collector should not expose his case before the Plaintiff has been called upon to take a single step for the support of his own.

10. Neither can I attempt to advise any other step for the future, as it is impossible to calculate on what course the Civil Judge may adopt, if any other course be adopted by the Civil Judge I can then advise upon it.

Madras,
2d March 1861

I have &c.
(signed) C. Dale
Govt Pleader

True Copy

Secretary.

Compd
J. Burton

1861 Depart.

Enclosure 1.ni Proceed.
-ings of the Board of Re.
-venue to the Secretary to
Government R. D. dated
7th. March 1861 No. 1201.

R 599/61.

Letter from the Govt.
Pleader to the Board of
Revenue dated 2d. March
1861 No. 41 regarding Suit
on the Pannad adoption

19th Mar 61 - 356/7