M.R.O. 1—39,060—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Political DEPARTMENT.

G.O. No. 636 Press ~~Mis~~

Dated 17- 8- ~~19~~ 1857

Not to be folded or roughly handled

No. 636.

Extract from the Minutes of Consultation under date 17th August 1857.

From CLEMENT DALE, Esq., Government Pleader, Sudr Udalut; to EDWARD MALTBY, Esq., Acting Chief Secretary to Government, dated Madras, 11th August 1857, No. 79.

SIR,

M. C. 30th July 1857, No. 590, Political Department.

Para. 1. I have the honor to acknowledge receipt of Extract from the Minute of Consultation noted in the margin.

2. I have considered the "intimation made by the Subordinate Court at Combaconum, in respect of the answer filed in the Suit brought by Ramakistnyen, against the late Acting Collector, Mr. Cherry, and others," of which the Commissioner of Tanjore enclosed a copy in his letter to Government under date the 22nd Ultimo, No. 197. The Commissioner does not state specifically whether this "intimation" be an order passed by the Subordinate Judge, I however conclude that it is, and, if I be correct in that conclusion, I advise that it be appealed against to the Civil Court, and if necessary to the Sudr Udalut.

3. Assuming this to be an order passed by the Subordinate Judge, I have the honor to state, for the consideration of the Right Honorable the Governor in Council, that the Judge has assumed to himself a power which he does not possess.

4. Regulation III of 1802, Sections 3 and 5, provide for the manner in which pleadings are to be prepared. This was followed by regulation 14 of 1816, in Section 9 Clause 1 of which, the Vakeels are enjoined not to file any pleading "without previously ascertaining that such pleading "has been duly prepared, in conformity with the Regulations; that it contains no unnecessary "repetitions of former pleadings, no terms of personal abuse or reproach against the opposite party, "his Vakeels, witnesses, or other persons; and no groundless imputations on any Court of Justice, "or public Officer, but that it contains such matter only as is apparently material and relevant to "the Suit:" while in Clause the 3rd, the Courts are directed carefully "to point out to the "notice of the Vakeels such parts of the pleadings as are irregular, irrelevent, or otherwise ob-"jectionable; and shall record their censure of any Vakeel whose conduct, in opposition to the "preceding rules, may in any particular instance demand such animadversion."

5. The rules of Civil procedure passed by the Court of Sudr Udalut under date the 1st July 1855, further shew the object of Pleadings and the mode in which they should be prepared.

6. The Answer in the Suit under consideration, which I had the honor to submit to Government, and which was approved by them, has been prepared in conformity with the Regulations; it does not contain any mention of former pleadings; nor any terms of personal abuse or reproach; nor any imputations on any Court of Justice, or Public officer; and it contains no matter, which is not material and relevant to the Suit.

7. The Subordinate Judge's "intimation" amounts in reality to a dictation of the defence which he conceives the Government should set up, and the manner in which such defence should be shaped. In all British Courts this is left to the discretion of the Suitor, and the Judges have no power to interfere, so long as no rule of pleading or procedure is transgressed. In Courts of Equity a Defendant is allowed to set up any lines of defence which he considers may operate as a bar to the Plaintiff's claim, or that he thinks he can support; and he is not precluded from setting up as many lines of defence as he has; while, on the other hand, he is not allowed to adduce evidence on points not raised in the Pleadings; so that it is necessary that all grounds of defence should be raised.

(Signed) CLEMENT DALE,
Government Pleader.

To be communicated to the Acting Collector of Tanjore, who will take the course advised by Mr. Dale in para. 2; basing his appeal on the grounds stated by the Government Pleader.

(True Extract and Copy.)

Acting Chief Secretary.

To the Collector of Tanjore.
" Government Pleader.

Exd. H. Morgan.

No. 636.

To be communicated to the Acting Collector of Tanjore, who will take the course advised by Mr. [illegible] in [illegible] [illegible] his appeal on the grounds stated by the Government Pleader.

Fort St. George,
17th August, 1857.

Copy to the Collector of Tanjore, with copy of letter — Dispd. 17th.
Copy to the Gov. Pleader — Dispd. 19th.