

MADRAS RECORD OFFICE.

Government of Madras.

Police DEPARTMENT

G.O. No.	237	Press ~~Mis~~
Dated	5-4	19/8.3.8

Not to be folded or roughly handled

Fort Saint George, Political Consultation, 9th April 1858.

No. 15. From H. D. PHILLIPS, Esq., Commissioner of Tanjore; to T. PYCROFT, Esq., Chief Secretary to Government, Fort Saint George, dated 29th March 1858, No. 234.

SIR,

Adverting to the correspondence marginally noted, I have the honor to transmit a copy of a decision by the Sub Judge at Combaconum from which it will be observed that the claim of Ramakistnien against the late Acting Collector, Mr. Cherry, has been dismissed, but that the costs of the unsuccessful Plaintiff have been saddled on the winning party.

2. The grounds taken for this unusual proceeding are, I submit, wholly untenable and exhibit assumptions which it is quite out of the power of the Sub Judge to support by facts. More delay in filing the answer of the Defendant may have occurred than ordinarily takes place in an action where a Government Collector is not a party, but that there has been any wilful impediment to the progress of the action or that any attempt has been made to interfere with the fair conduct of the litigation, I most distinctly deny.

3. The Government are, however, aware of the various steps taken in the matter, which has been in the hands of the Government Pleader, Mr. C. Dale, from its commencement. It is not clear to me whether the decision of the Sub Judge is intended to be a formal decree or a mere diary order. Any how, I apprehend the Government will deem it advisable to appeal against it to the Civil Court, if the object to be gained by such a course be mere relief from the imputations so improperly and causelessly cast on the Defendant by the remarks of the Sub Judge. But if as appears to have been the case, the order or decree, whichever it may be styled, was pronounced in any other than the public formal way required by law, there seems fair reason for contending that it is null and void *abi initio*. I make this observation with reference to the information laid before me by the Government Vakeel in one of the enclosures to this communication, from which it seems that the Sub Judge's order was given on a day when no Civil Court was held and that owing to that circumstance he (Government Vakeel) did not hear of the dismissal of the Suit till the third following day which was a Monday, the result being that much time was lost, the period fixed for the Appeal being, as a remote consequence, exceeded.

4. I had at first determined to apply to the Civil Court for an extension of the period to which the Appeal is limited, but on further consideration it appeared to me, as the Government Pleader has prepared the original pleadings, that to him also should be referred the point whether such Appeal is likely to be successful.

5. I am impelled, however, to place before Government the very unsatisfactory explanations of his carelessness which have been offered by the Government Vakeel, whom I consider from his general correspondence and what I saw of him when I was examined as a witness in the Suit, to be illqualified for the post he fills and the trust it is necessary to repose on him.

6. The Government Pleader, Mr. Dale, has already condemned his proceedings in this action and I am inclined to believe that a continuance in his hands of the responsibility attaching to the Office of Government Vakeel is scarcely prudent. I would therefore beg to recommend its transfer to some younger and more able man.

7. That the Government may judge of the delay that occurred up to the 5th Instant when the Appeal time came to a close, I beg to enter below a Memorandum of the several steps taken.

5th February 1858.—The Suit was rejected by the Sub Judge.

10th	"	Government Vakeel reported the circumstance.
13th	"	His report reached me.
14th	"	He was ordered to procure a copy of the Sub Judge's order, which he ought to have done at once of his own accord.
17th	"	My order as above is said to have reached him.
25th	"	Copy of the order granted by the Sub Court.
28th	"	It reached my Cutcherry at Trivalore on Sunday.
2nd March	"	Sent in by an oversight to the Sarishtadar's Office.
5th	"	Appeal time expired.

Fort Saint George, Political Consultation, 9th April 1858.

Translation of an Urzies No. 12, dated the 15th and 22nd March 1858, from SOOBIAH, Government Vakeel at Combaconum; to H. D. PHILLIPS, Esq., Acting Collector of Tanjore.

I beg to acknowledge the receipt, on the 11th Instant, of your order of the 10th, observing, with reference to the dismissal on the 5th February last, of the original Suit, No. 29 of 1856, on the file of the Sub Court, that I had not immediately obtained a copy of the order of dismissal and forwarded it to you. Copies of such final orders are usually granted after they have been compared and recorded in the Diary. Therefore the Court did not immediately furnish me with a copy of the order in question, moreover it is the practice of the Volunteers in the Court to prepare Copies of papers after their hire is paid to them, I already applied to you, in my Urzy of the 10th February last, for money for payment of the hire. In your order of the 14th, received on the 17th, you required me to submit a General Statement of all the expenditures incurred on account of the Suit, inclusive of the above said hire, promising to order the payment of the total amount afterwards. I accordingly moved the Court on the 17th, for an English copy of the order, and my request was granted, I then advanced 10 Annas out of my own pocket. The copy was received from the Court on the 25th, on which date, I forwarded it to you. As it is a matter of course that the term of Appeal against every Diary order expires after one month from the date thereof, I did not mention it in my Urzy. Your order, dated the 10th Instant, and received on the 11th, stated that an Appeal would have to be made against the order of the Court in question, and that I should obtain and forward to you a copy of it on stamp paper; on the 11th I produced five Rolls of stamp paper of 8 Annas value each, and as they were stated to be insufficient, I produced another on the 13th. To day the Court furnished me with an authenticated English copy of the order, and I herewith submit it to you.

I beg to forward to Statements, one shewing the cost of hire to the copyists, and the other the value of stamp papers, and the Vakeel's Fees; and request that the amount of the first, paid by me, may be transmitted to me.

As directed in your order of the 19th Instant, which reached me at 3 p. m., on the 20th, I beg to forward herewith draft of a brief Petition, appealing from the Sub Court's Diary order dismissing the Suit, No. 29 of 1856, on its file.

I am also called upon, in the order under reply, to state.

- 1st. Why I did not report to you the dismissal of the suit on the very day that the Diary order was passed, viz. the 5th Ultimo.
- 2nd. Why there occurred in that respect a delay of 5 days from the 5th to the 10th.
- 3rd. On what date was the Diary order sealed and signed.
- 4th. When does the time for Appeal expire and on what date was the order publicly announced.
- 5th. Why I failed to report the matter to you on the day of the announcement.

In reply to the first two questions, I beg to state that as on the 5th Instant, no Civil Court was held, I learnt the above proceeding only on the 8th Idem, on which day a Civil Court was held. My Urzee to you was prepared on the 9th and despatched on the 10th. If, under these circumstances, the delay of five days is regarded as attributable to me, I beg to be excused.

As regards the 3rd query, Diary orders under which Suits are dismissed, are not sealed and signed on a separate day, like decrees.

As regards the 4th and 5th, orders for the dismissal of Suits are recorded only in the Diary and are not separately announced.

I shall file the accompanying Petition in the Civil Court, as soon as it is returned to me after your honor's perusal. I beg also that the copy of the English Diary order on stamp paper, which I had the honor of furnishing you with, may be returned to me in order to its being filed with the above Petition and the stamp Agent directed to furnish me with the stamp papers required for the Petition.

Fort Saint George, Political Consultation, 9th April 1858.

I could not send the Draft in question by the man, a Peon, No. 3, attached to Koottalum Talook, named Ramen, who brought your order under reply, as he failed to attend me as soon as it was prepared.

No. 16. ORDER THEREON, No. 237; dated 5th April 1858.

Ordered that the above letter and its enclosures be forwarded to the Government Pleader for the early preparation of an Appeal from the order of the Subordinate Court saddling the Government with costs, and that the Commissioner and Acting Collector be directed to make immediate application to the Civil Court for time, to present the Appeal, under the circumstances stated in the 7th Paragraph of the letter above recorded, and in consideration of the necessity of referring to Government for orders.

(Signed) H. FORBES,
Acting Secretary to Government.

Exd. J. A. Wilson.

15-16
 1858-1859
 1858-1859
 1858-1859

Ordered that the above letter and its
 Enclosures be forwarded to the Govt.
 Pleader for the early preparation of
 an appeal from the order of the District
 Court saddling the Govt. with costs, and
 that the Compt. and Ag. Collector be
 directed to make immediate

In 1858-1859
 1858-1859

From
 The Commissioner
 Tanjore
 To The Chief Secretary
 to Government
 Dated 29th March
 1858 3 April 3 1858

At 284
 Encl: Three
 At 230

Submits copy of a
 decree of the Sub
 Judge in the
 case of "Mama"
 Prothonary

1858-1859

application to the Civil Court for
 leave to present the appeal, under
 the circumstances, stated in the
 7th paragraph of the letter above
 recorded, and in consideration
 of the necessity of referring to
 Govt. for orders.

Encl: 3
 5 April 1858

R. S.

Cy to the Comr. Mysore
 with an orig. Encl. (Ref. 6)
 to the Comr. Tanjore