

MADRAS RECORD OFFICE.

Government of Madras.

Political **DEPARTMENT.**

G.O. No.	298	Press ~~Mis.~~
Dated	4. 5. 19	1838

Not to be folded or roughly handled

3-12-20

Fort Saint George, Political Consultation, 4th May 1858.

No. 20. From CLEMENT DALE, Esq., Government Pleader, Sudr Udalut; to HENRY FORBES, Esq., Acting Secretary to Government, Fort Saint George, dated 27th April 1858, No. 41.

SIR,

Para : 1. I do myself the honor to acknowledge receipt of an Extract from the Minute of Consultation noted in the margin; and to enclose the form of Petition for presentation to the Civil Court of Combaconum, against so much of the Decree passed by the Subordinate Judge of that Zillah, as adjudged the Defendants to pay the costs of the Suit. I also return the copy of the order which accompanied.

2. I abstain from offering observation on many parts of this order, as they do not affect the question as at present under consideration; the Right Honorable the Governor in Council may however expect my opinion on the following points.

3. I am of opinion that the Subordinate Judge was not justified in directing that the case should be tried *ex parte*, doubtless the Government Vakeel at Combaconum did not display much acumen or activity. The Subordinate Judge appears to have totally misapprehended the defence set up by the answer, so that the Government Vakeel may probably be excused for not possessing more intelligence than his European Superior, but he might have solicited and obtained information and assistance, which (so far as I have been informed) he never did. This want of zeal and activity on the part of the Vakeel, however, does not afford grounds whereon the Subordinate Judge can support his Acts. Assuming that Mr. Innes was wrong in pursuing the course he did, the hardship (if any) of the Plaintiff having thrown upon him the burden of proving that the Court had jurisdiction, was caused by the Subordinate Judge's wrongful course of proceeding, and not by any act of the Defendants.

4. As regards Mr. Innes' exposition regarding the alleged revival of the 15th Section of Regulation 2 of 1802, I am unable to offer any opinion, as the Regulation 3 of 1809 is not published in any of the Codes which I have been able to get; but it is unnecessary to consider that subject further, (at any rate at present,) I may however remark that the defence is not rested on that Regulation, but on much broader principles, which Mr. Innes has either not comprehended or overlooked.

5. In the 4th Sheet (the paragraphs are not numbered, but the first para : from the top) Mr. Innes appears to have expressed an opinion on the merits of the case, when speaking of the land having been attached under the orders of Mr. Forbes, he makes use of the expression "all was conducted, *however mistakenly or wrongfully*, in pursuance" &c. The last para : but one on that sheet appears also to express his opinion that the Plaintiff has suffered an injury; of his remedy for which in the Courts, he, the Plaintiff, is not debarred; these may be mere loose modes of expression, but I submit that if any further proceedings should be necessary in this Suit, the Civil Judge should be moved to call the case up from Mr. Innes' file. It has appeared to me that throughout the case Mr. Innes has displayed a strong bias against the Defendants' case.

6. With reference to the last para : on that sheet I would suggest, for the consideration of His Lordship in Council, that the act complained of does not come within the purview of the 15th Section of Regulation 2 of 1802, even if now in operation.

No. 21. ORDER THEREON, No. 298; dated 4th May 1858.

Ordered that copy of the foregoing letter and the Draft Petition of Appeal received with it be forwarded to the Commissioner and Acting Collector of Tanjore with reference to Extract Minutes of Consultation of the 5th Ultimo, No. 237, and that his attention be directed to the suggestion of the Government Pleader in para : 5.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. J. A. Wilson.

No 228

Ordered that copy
of the foregoing letter and the
Draft Petition of Appeal received
with it be forwarded to the
Commissioner & Acting Collector
of Tanjore with reference to Ex.
hibit of Court of the 5th ultimo 1857,
and that his attention be di-
rected to the suggestion of
the Joint Pleader in para 5.

To the Pleader
4 May 1858-3

J.P.

To the Commissioner
& By Collector of Tanjore.

with a draft Pet. & Ex. & duplicate thereof.

Disput.