M.R.O. 1—30,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Political **DEPARTMENT.**

G.O. No.	327	Press ~~Mis.~~
Dated	22-5-	No 1858

Not to be folded or roughly handled

No. 12. From CLEMENT DALE, Esq., Government Pleader, Sudr Udalut; to T. PYCROFT, Esq., Chief Secretary to Government, dated 11th May 1858, No. 44.

SIR,

Minutes Consultation 26th April 1858, No. 276, Political Department.

Para: 1. I have the honor to acknowledge receipt of an Extract from the Minute of Consultation, noted in the margin, and in compliance with the orders therein contained, to report for the information of the Right Honorable the Governor in Council, that after perusing the Plaint filed against Mr. Phillips, and the draft of the Answer which he proposed should be put in, I am of opinion that the Plaint should be more fully answered than Mr. Phillips suggests.

2. It is a rule that matters alleged by a Plaintiff as facts, are taken as admitted by the Defendant to be true, unless such allegations are traversed or denied. Also that a Defendant is bound to apprise a Plaintiff by his answer, of the nature of the case he intends to set up; and that a Defendent cannot avail himself of any matter in defence, which is not stated in his answer, even though it should appear in his evidence.

3. I entertain no doubt as to what should be the decree in this Suit, and I have no right to surmise that the decree will not be correct; but in preparing a defence it is not safe to rely on preconceived notions of the justice and correctness of the Defendant's case, and of the untenableness of that put forward by the Plaintiff; provision should be made for the Plaintiff making out a stronger case than may be surmised (frequently that is accomplished by false evidence, &c.,) as also for error on the part of the Judge, and for the matter coming before a Court of Appeal. In the present case it is probable that the shorter answer proposed by Mr. Phillips would suffice in the Subordinate Court; but looking at the contingencies I have referred to, I deem it would be unwise to incur the risk of advantage being taken, should the opportunity present itself.

4. I have therefore, even at the risk of eliciting observation from the present Subordinate Judge, prepared the accompanying draft of Answer; which I have the honor to suggest should be forwarded to Mr. Phillips for his correction and amendment, agreeably to the facts of the case.

5. I am aware that it is not very usual in answers prepared in the Mofussil, to introduce admissions of such of the facts alleged in the plaint as are correctly alleged. The Plaintiff however is entitled to such admission, and I am of opinion that in Government cases, the rights of opponents should be scrupulously regarded. The practice moreover has its advantages, that it ensures a more critical consideration of the several allegations put forth by the Plaintiff, and of the manner in which the allegations are framed.

6. I believe I have embodied in this draft the whole of Mr. Phillips' proposed answer with the exception of his reference to the 15th Section of Regulation II of 1802; and claiming the protection of Act, No. 18 of 1850.

7. As regards that 15th Section, I am desirous of having it established by judicial decision whether that Section is or is not now in force as law, and would have raised the question in this Suit had I considered it practicable; but after carefully considering that Section, I am of opinion that it does not apply to the case under consideration. The Plaintiffs appear by their plaint to feel themselves aggrieved by Mr. Phillips on 4 grounds; 1st in para: 3, they include Mr. Phillips with the other defendants (probably by mistake) and charge him with bad cultivation, &c., and I collect that the Plaintiffs intend to rely on their allegation that the harvest was made under Circar superintendence; 2ndly, because Mr. Phillips referred them to the Civil Courts; 3rdly, because Mr. Phillips caused the rent to be demanded from them; and 4thly, because Mr. Phillips as a Government Officer ought to have investigated and redressed their alleged wrongs, &c. It is clear that the 1st objection (if true) could not be met under that Section; the Plaintiffs are not by such alleged Act aggrieved "under any established regulation" and such alleged Act was not "done pursuant to a special order" for that purpose, originating with Government, or, I imagine, the Board of Revenue. Similar observations apply equally to the 2nd and 4th objections, and as at present advised likewise to the 3rd, if any of the Acts were done

under special orders, I would advise that the draft answer be returned to me, with a Statement of what has taken place, and a copy of the order, with the view of my inserting a para: whereby the question would be raised.

8. As regards Mr. Phillips' claiming protection under Act No. 18 of 1850, a reference to the Act will shew that protection is given to the Officers there renumerated "acting judicially" for acts done by him "in the discharge of his judicial duty." From the papers sent to me I collect that Mr. Phillips was not "acting *judicially*" or "in the discharge of any *judicial* duty," and if that be the case his acts do not come within the purview of the Act.

9. I collect from the papers before me, that the 1st Plaintiff, after the late Rajah's death, agreed with the authorities who had been permitted by Government to remain in charge of the Palace, &c., to take the lands in question for 3 years at a rent of Rupees 215 per annum. That the 1st Plaintiff never obtained possession; but has been kept out by the other Defendants. That notwithstanding that the 1st Plaintiff has thus been deprived of all benefit from the law; he has been required by Mr. Phillips *as Collector* to pay his rent. If this be the true state of the case, a question may probably be raised how far the 1st Plaintiff was liable under such circumstances to pay the rent; and (if so) that in that way (it may be contended) the acts of Mr. Phillips in demanding the rent, &c., are properly cognizable by the Court.

10. Referring your attention to the 3rd para: of the answer, I have experienced considerable difficulty in framing that para; The Resident was formerly doubtless an Officer placed at the Court of the Rajah as the medium of communication between His Highness and the Government, in fact filling an office similar to a chargé d'affaires to European Courts, and in every respect a Political Officer; and if the Raj were still an independent State, the para: could be readily framed by stating the purposes for which the defendant was appointed by the Government as Resident; so far however as I am aware, all Political functions have entirely ceased, and in the cases of the nominations of Mr. Forbes and Mr. Phillips their appointment as Resident was merely in name. If I be correct in this supposition I would advise that the 3rd para: be omitted from the answer, but if Mr. Phillips still exercises Political functions after the words, "The Government of Madras," should be enumerated the functions for the performance of which he was appointed.

11. It does not occur to me that any further observation is required, except to request that care may be taken to state the facts correctly, and that the blanks may be supplied. For want of sufficient information, I may have been mistaken in some of the Statements. If such be the case Mr. Phillips will be good enough to make such amendments as may be required.

No. 13. ORDER THEREON, No. 327; dated 22nd May 1858.

Resolved that copy of the above letter and of the Draft Answer which accompanied it be forwarded to the Commissioner of Tanjore in reference to his letter of the 17th Ultimo, No. 292.

2. Mr. Phillips will put in the answer as revised by Mr. Dale with any alterations that may be necessary for setting forth the actual facts of the case. Para; 3 of the answer should be omitted, and Section IV will require to be modified, inasmuch as although the original deputation of Mr. Henry Forbes in Tanjore as Commissioner was sanctioned by the Right Honorable the Governor General in Council, the succession of Mr. H. D. Phillips to that Office has not received similar sanction.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. J. A. Wilson.

R&C Department.

21

No. 327.

Extract from the Minutes of Consultatoin

Dated 22nd May 1858.

Read the following letter from the Government of Madras in the Judl Court—

Recd in Cons. 12th May 58
No 441

Resolved that Copy of the above letter and of the draft Answer which accompanied it be forwarded to the Commissioner of Tanjore in reference to his letter of the 17th Ultimo, No 292

Mr

I Mr Phillips will
put in the Answer as
revised by Mr Gale
with any Alterations
that may be necessary
for setting forth the
actual facts of the
Case. P III of the
Answer should be
omitted - and Section
IV will require to be
modified in as much
as altho' the original
deputation of Lt. Henry
Yorke in Empire to
Commissioner was
sanctioned by the Right
Honble the Governor in
General in Council - the
succession of Lt. H.D.
Phillips to that office
has not received si-
milar Sanction.

In the Com[illegible] Papers with Draft Answer } Dispd 25
" for Pleader
filed.

Political 1858. Department.

No. 327

Extract Mins. Cons.

Dated 22d May 1858

Desired that the letter and the draft answer from the Govt Under in the Sudder Court relative to the Civil suits against Mr Phillips be for. warded to the Commissioner of Tanjore in reference to his letter of the 17th ultimo No 292

Madras:—Printed at the Government Press.