

MADRAS RECORD OFFICE.

Government of Madras.

Political **DEPARTMENT.**

G.O. No.	703	Press ~~Mis~~
Dated	28. 10.	1858

Not to be folded or roughly handled

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Fort Saint George, Political Consultation 29th October 1858.

No. 24. From CLEMENT DALE, Esq., Government Pleader, Sudr Udalut; to THOMAS PYCROFT, Esq., Chief Secretary to Government, Fort Saint George, dated 11th October 1858, No. 120.

SIR,

With reference to the order of Government, noted in the margin, I have the honor to state as my opinion, that the points given by the Subordinate Judge do not embrace all the material Issues of Law and fact raised by the Pleadings.

Order of Government, 18th September 1858, No. . On letter from Commissioner of Tanjore, to Chief Secretary, 14th September 1858, No. 318.

2. I am of opinion that the following issues are raised by the Pleadings, and should have been fixed by the Subordinate Judge, and points given on them,

Istly. Whether the Land claimed by the Plaintiff was Survamaniem.

2ndly. Whether Seevajee was such a Monarch, &c., exercising the rights, &c., alleged in the answer. (See 1st and 2nd paras :)

3rdly. Whether on the death of Seevajee, and consequent on the Acts of the British Government, the State of Tanjore had lapsed, and become part of the British Territories, &c., as alleged.

4thly. Whether the Rajah was possessed of property as is alleged in the answer. (See para : 4.)

5thly. Whether on the lapse of the State, the East India Company, acting in Trust for the British Crown, had the power to resume Grants made by former Rajahs of Tanjore as absolute Sovereigns.

6thly. Whether the property taken possession of by Mr. Forbes and the Defendants, did form part of the property which belonged to Seevajee as such absolute Sovereign at the time of his death, and whether the same had devolved upon the East India Company as alleged in the answer.

7thly. Whether the Act complained of, was an Act done by the Defendants in furtherance of Orders of the East India Company, In Trust for the British Crown, and under the Authority and directions, or with the sanction, of the Governor General of India or of the Governor of Madras in Council.

8thly. Whether the Acts, &c., of the Governor General of India in Council, and of the Governor of Madras in Council, in the answer mentioned were Acts done in their Public capacity, and in Exercise of the General Powers, &c., vested in the East India Company for the Government of India, and were Acts and matters of State, and

9thly. Whether the question of the right asserted by the East India Company to take possession, &c., is a question of State as alleged in the answer, (para : 13,) and whether for the reasons submitted in the answer the matters under which the Defendants justify can be enquired into by the Subordinate Court.

3. The first issue would lie on the Plaintiff, probably the Subordinate Judge intended in the proof given for the Plaintiff that he should prove the nature of his Tenure.

4. The remaining issues would lie upon the Defendants.

5. Unless these Issues are fixed by the Subordinate Judge, or points given to the same effect, much of the evidence which in my opinion should be put in so as to form part of the Record to be sent to a Court of Appeal, will be liable to be excluded if objection be taken, and therefore I advise that the attention of the Subordinate Judge be solicited to these points; If he declines to notice the application, I believe nothing further can be done in that Court for remedying the defect; but that the Defendants must wait until the case is brought before a Court of Appeal.

6. Whether the Subordinate Judge amends his points, or not, I should advise, that the following evidence be tendered.

1stly. The 3 Treaties of 10th of April 1787; the 11th of June 1793; and the 26th November 1799, or I believe the correct date is the 25th October 1799.

2ndly. The Despatches of the 16th April 1856, No. 17; the 11th June 1856, No. 3292; the 10th July 1856, No. 200; and the 8th September 1856, No. 4644; As also the Minute of Consultation of the 25th September 1856, No. 311, Political Department.

N. B.—I have not a copy of the Despatch from this Government to the Supreme Government, dated the 22nd August 1856, No. 261, acknowledged in Despatch of 8th September 1856, but I conclude it is of no importance, as it was not put in, in Kamatchee Boye's case.

3rdly. The Proclamation issued by Mr. Forbes, authorising the resumption of the Lands, &c., and shew in what manner the same was made public; and if it were brought to the direct notice of the Plaintiff, it would be as well to prove that fact; I should observe that I have never seen this Proclamation; and that I assume reference was made to it in para: 9 of the answer, as suggested by me.

4thly. The orders from Mr. Forbes to Mr. Cherry under which the latter acted.

5thly. It is important that (if any such are in existence), all letters from Mr. Forbes or Mr. Cherry to Government, reporting the attachment of the lands in question, with the replies from Government or Minute of Consultation thereon, approving of such attachment, should be given in evidence. From Mr. Forbes' letter of the 6th December 1856, I was led to conclude that his letter of the 18th October 1856, reported the attachment having been made, and that his proceedings had been approved of by the Minute of Consultation of 21st October 1856. But from the copy of Mr. Forbes' letter put in in Kamatchee Boye's Suit, I do not see that any reference is there made by Mr. Forbes to the attachment; indeed it is scarcely possible he could have done so, as Mr. Phillips reports that the lands were not attached till the 7th November 1856; he may however have issued the order previously to the 21st of October. I have looked carefully through all the papers in my possession, but from them I cannot find that such attachment was reported to Government; I should imagine that Mr. Forbes, or Mr. Cherry, would do so, and in all probability his Act was approved of by Government; I would therefore recommend that a careful search be made with the view of ascertaining if Mr. Forbes, or Mr. Cherry, made any such report to Government.

6thly. I have enumerated all the Documents bearing on the points in issue, so far as I have any knowledge of them; If there be any others, they should be given in evidence.

7thly. I am of opinion it would be desirable to give evidence of Mr. Kindersley's proceedings; as I assume he acted under orders of the late Rajah, or at any rate with his sanction, and that should be proved.

8thly. General Evidence of the Acts of the Rajah in Exercise of his Sovereign Rights.—His having Courts, and maintaining Troops, and any other Acts of that quality; also his recognition by the Government of India, and the tendering to him of the Honors due to a Sovereign friend and Ally of the British Nation; and that these continued to his death.

9thly. That the village in question belonged to the Rajah; and that the rents, &c., in common with his other property, was used and applied for supporting his State and Dignity, and formed part of the property taken possession of by Mr. Forbes and the Defendants, under the Orders of Government as alleged in para: 7 of answer.

7. With regard to the allegation, that the Rajah, as absolute Sovereign, had the right, and that the British Government on the Raj lapsing to them inherited such right, to resume Grants, that is an Issue of Law, and no evidence in the sense in which that term is commonly used can be adduced; The Vakeel may however submit that such position is supported by the case of Campbell *versus* Hall reported in the 1st Vol: of Cowper's Reports, page 205. As also by the case, where the Honorable Company Appealed to the Privy Council, against a decision of the Supreme Court at Madras, in favor of Syed Ally and others. This case has never been reported, but the Judgment sent out by the Privy Council was printed last year at the Government Press

and I would recommend that you sent one copy of that Judgment to be filed as an Exhibit in this case. In that case, the Government shortly after the Treaty with the Nabob of the Carnatic, had taken possession of a Jaghire in Arcot, which had been granted by the then late Nabob to Assim Khan in Altumgah Enam to him and his posterity for ever; but the Privy Council held (see last page of Judgment) that as the Government had, in exercise of the Sovereign Authority acquired by the East India Company, resumed the Jaghire, the Supreme Court had no Jurisdiction to question the propriety of such resumption.

8. The Vakeel should argue to the Court that the Act complained of, was an Act done under the orders of Government; That such orders were issued by the Governor General and the Governor of Madras in Council in their public Capacity, and in the exercise of the General powers, &c., vested in the East India Company for the Government of India as alleged in the answer; and that as such they were matters of State, and were not cognizable by any Court; In support of this the Vakeel may refer the Subordinate Court to the case before cited of the Honorable Company *versus* Syed Ally; To the case of Dufton *versus* Howell reported in Showers' Parliamentary Cases, page 24; also to the case of the Nabob of the Carnatic *versus* The East India Company reported in the 2nd Vol. of Reports by Mr. Vesey, Junior, page 56; Also to the case of Elphinstone *versus* Beder Chund reported in the 1st Vol. of Knapp's Reports of Cases in the Privy Council, page 316; and to the case of Buron *versus* Captain Denman reported in the 2nd Vol. of Cases in the Exchequer, page 167.

9. I fear these works may not be accessible to the Subordinate Judge; but I think it desirable they should be mentioned to him; for (even if he did not inform himself respecting them) it would prevent an objection, that in Appeal (if the case goes so far) matter was used not before the lower Court.

10. I presume that a portion of this evidence must be taken at Madras; when the issues are finally settled, if there be time, I think it would be desirable that I should prepare the Interrogatories; for that purpose I should require to see the Documents that are to be proved, as also the Witnesses who are to be examined under the Interrogatories.

No. 25. ORDER THEREON, No. 703; dated 28th October 1858.

Referring to Extract Minutes of Consultation, No. 646, dated 18th September last, Mr. Dale advises as to the course to be taken now that the Suit O. S., No. 29 of 1856, brought by Ramakistnyen against the late Acting Collector of Tanjore and others in the Sub Court of Combaconum, has been remitted to that Court by the Appellate Court for revision.

2. Mr. Dale is of opinion that the points for proof assigned by the Sub Court are not sufficient, and that nine others, which he specifies, are necessary, in order that the issues raised by the pleadings may be fixed. He advises that the attention of the Sub Judge be solicited to these points, and that, whether that authority, amends his order or not, certain evidence in support of them be at least tendered. Mr. Phillips, the Collector, will accordingly make the required application to the Court.

3. In respect of the evidence to be tendered, it is observed that the original Treaties and Despatches referred to by Mr. Dale, were filed as Exhibits in the Suit of Kamatchee Bhoys *versus* the East India Company, and are now retained in the Register's Office of the Supreme Court, pending the disposal of the Appeal instituted in the Privy Council, copies, however, can be sent from this Office. The late Commissioner's Proclamation and his orders to the Defendant, Mr. Cherry, the late Acting Collector, can be put in evidence by the present Commissioner.

4. It does not appear that the Commissioner reported the attachment of the Raj Enam lands to the Government. The Acting Collector reported* it, declaring himself under great difficulties in the matter, and Government referred his report to the Commissioner, but

* Dated 25th November 1856. without any expression of approval as to the course which the latter functionary had taken in attaching the lands, (Extract Minutes of Consultation, 1st December 1856, No. 473.) The Commissioner, however, previous to this correspondence, had, on the 18th October 1856, laid before Government the copy of a communication which on the 17th Idem he had addressed to the Sirkele, and in which he had announced his "intention to assume possession in the name of the British Government of all the late Rajah's Villages and Gardens," and had apprized that Officer that he had "requested the Collector to resume for the time all the Villages and Gardens, to give no-

Fort Saint George, Political Consultation, 29th October 1858.

tice to the Village Servants to produce their Accounts before him, and to warn the Meerassadars to pay their Kists only to the Government Officers." The proceedings of the Commissioner as thus reported were "quite approved" by Government, (Extract Minutes of Consultation, 21st October 1856.) In his letter of 27th February 1857, the Government Pleader stated that if the resumption was subsequent to that date, 21st October 1856, (as it proved to be, for the lands were attached on the 7th November 1856,) that order would be sufficient authority."

5. "Mr. Kindersley's proceedings" can be proved by the Commissioner, likewise the "acts of the Rajah in exercise of his Sovereign Rights." That the "Village in question belonged to the Rajah and that the rents, &c., were used and applied for supplying his State and Dignity, &c.," cannot be proved at all. The Village, in common with other lands, was granted by Rajah Toljajee in 1770 to his Purohit, and by him conveyed in Gift, not long afterwards, to certain Brahmins, under the representative of one of whom the present Plaintiff holds. The Village is held by 23 Meerassadars. It was attached by the Tahsildar under Mr. Forbes' Proclamation, and the Car crop was thrashed out by that Official in the presence of the Village Authorities, 22 Meerassadars agreed, in carrying off their shares, to abide by any decision Government might come to as to the grain. The 22nd and Plaintiff, who is the Paracoody of the 23rd, refused to take what belonged to them. It was accordingly left in the charge of the Monegar, and Plaintiff sues to recover the value of his proportion, which he estimates at Rupees 22 and 11 annas. The facts of the case are fully stated in Mr. Phillips' letters, dated 5th February and 3rd March 1857, copies of which were duly communicated to the Government Pleader. The Village was attached not as having been in the enjoyment of the Rajah but as claiming to have been conferred by grant from the Rajah's Predecessor and in view to the validity of such claim being tested. It was enquired into, the validity of the title established, and the Village released from attachment. The Plaintiff is a Paracoody of the Village and his grain, which forms the subject of the present Suit, would have been given up to him, but he had intermediately brought this Action. He subsequently offered to withdraw the Suit but would not reimburse the expenses up to that time incurred by the Defendant, and the Collector therefore declined his offer. The actual position and tenure of the Village and the grounds why it was attached, might be explained to the Sub Judge in reference to the first point that he has propounded for proof.

6. Paras: 7, 8, 9. The Collector will instruct the Government Vakeel to call the attention of the Court to the cases cited by Mr. Dale. A copy of the Decree of the Privy Council in the Case, East India Company *versus* Syed Ally, Jaghiredar, will be supplied from this Office.

7. Mr. Dale states in conclusion that, when the issues are finally settled, he should wish (as a portion of the evidence must be taken in Madras) to prepare the Interrogatories, for which purpose he must see all the Documents, and all the witnesses that are to be examined. The Collector will report when the issues are finally settled and what they are, when further communication will be made to Mr. Dale.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. J. A. Wilson.

*This map which has been mainly
prepared by Mr Carmichael appears
to say all that can be said in the
matter.*

*Mr Dale has continued to compli-
cate matters which was a simple
enough - and he has failed at
last to distinguish between lands
in enjoyment of the Rajah at the
time of his death and those parted
away by his predecessors posses-
sions before -*

*However the answer is long &
he must - I suppose - carry it out*

his own way.

J.P.

The order should be
sent to Commission
don

Chief Secretary.

Exd. J. A. Wilson.

Political Department

No 703.

Extract from the Minutes of Consultation
dated 28 October 1858.

Read the following letter from
the Government Pleader

/ Here enter 11th October 1858 M. 120/

Referring to Extract Minutes
of Consultation, No 46, dated 18th
September last, Mr. Dale advises
as to the course to be taken now
that the Suit D. S. No 29 of 1856
brought by Ramesh Kistayya
against the late Acting Col-
lector of Tanjore and others in
the Sub Court of Combaconam,
has been remitted to that Court
by the Appellate Court for re-

consideration.
Mr. Dale is of opinion
that the points for proof assign-
ed by the Sub Court are not
sufficient; and that nine
others, which he specifies, are
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issues raised by the pleadings may be fixed. He advises that the attention of the Sub Judge be solicited to these points, and that, whether that authority amends his order or not, certain evidence in support of them be at least tendered. Mr. Phillips the Collector will accordingly make the required application to the Court.

3. In respect of the evidence to be tendered, it is observed that the original treaties and Despatches referred to by Mr. Dale were filed as exhibits in the suit of *Namatchee Bhop* to the East India Company and are now retained in the Registrar's office of the Supreme Court pending the disposal of the Appeal instituted in the Privy Council. Copies, however, can be sent from this office. The late Commissioner's Proclamation and his orders

to

* 2/25th Nov. 1856.

to the Defendant, Mr. Cherry, the late Acting Collector, can be put in evidence by the present Commissioner.

4. It does not appear that the Commissioner reported the attachment of the *Raj Ena* lands to the Government. The Acting Collector reported it, declaring himself under great difficulties in the matter. Government referred his report to the Commissioner, but without any expression of approval as to the course which the latter functionary had taken in attaching the lands. E. I. C. 1st Dec. 1856, N^o 473. The Commissioner, however, previous to this correspondence, had on the 18th Oct. 1856 laid before Government the copy of a communication which on the 17th idem he had addressed to the *Sir*, and in which he had an-

unsuccessful

announced his "intention to
assume possession in the
name of the British Govt
of all the late Rajah's vil-
lages and gardens". and
had apprized that officer
that he had "requested the
Collector to resume for the
time all the villages and
gardens, to give notice to the
village servants to produce
their accounts before him,
and to warn the Meerassad-
dars to pay their Rists only
to the Government Officers".
The proceedings of the Com-
missioner as thus reported
were quite approved by
Govt. G. M. C. 21st Oct. 1856.

In his letter of 27th February
1857 the Government Pleader
stated that if the resumption
was subsequent to that date,
21st Oct 1856 - / as it proved to be
for

in G.O. 19 Col. 13th March 1857 for the lands were attached
on the 7th November 1856 / that
order would be sufficient
authority.
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can be proved by the Commis-
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the Rajah in exercise of his
sovereign rights". That the
"village in question belonged
to the Rajah and that the rents
there were used and applied
for supplying his state and
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6. Paras 7. 8. 9. The Collector
will instruct the Government
Vakeel to call the attention
of the Court to the cases cited
by Mr. Dale. A copy of the Decree
of the Privy Council in the
East India Company versus
Syed Ally, Saghiredar, ^{will} ~~can~~
be supplied from this office,
as desired.

7. Mr. Dale states in conclu-
sion that, when the issues
are finally settled, he should
wish (as a portion of the dis-
-service must be taken in
Madras) to prepare the In-
-terrogatories, for which
purpose he must see all
the Documents, and all the
witnesses that are to be
examined.

the

The Collector will report
when the issues are finally
settled and what they are,
when Mr. Dale will be pleased
to attend personally at the
~~Chief Secretary's office~~
further communication
will be made to Mr. Dale.

sd Pleader
Commissioner } Dep^d 30th
of Tanjore.

JF

The following documents were sent to the Com^r of Tanjore with
the above S.M.C.

3 Copies of the Printed Book containing Tanjore Amatis
A printed Copy of the Decree of the Privy Council in the Case E.I.C. vs. Syed
M.A. letter from Secy of India 11 June 1856 - with its Enclosure being
Despatch from Com^r N^o 17 of 1856.
M.A. letter to the Secy of India - 10 July 1856 N^o 200.

The letter from Secy of India 8 Sep 56 & the S.M.C. 25 Sep 56 alluded to in the
Govt Pleader letter (para 6) were communicated to the Com^r of Tanjore
with S.M.C. 19 Nov 1856 N^o 976.

Delivered to
of the "Young Men's
No. 3 of 1858 Am 5

James M. Cady

St. Louis.

Edward Smith, Pres.

Entered 28th October 1855

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