M.R. O. 1—32,000—16-10-26.

MADRAS RECORD OFFICE.

Government of Madras.

Political DEPARTMENT.

G.O. No. 291 Press ~~Mis.~~

Dated 24—6—~~10~~ 1861

Not to be folded or roughly handled

No. 35. Read the following letter from W. M. CADELL, Esq., Government Agent of Tanjore; to T. PYCROFT, Esq., Chief Secretary to Government, Fort Saint George, dated Negapatam, 5th June 1861, No. 203.

I have the honor to request that you will be good enough to submit for the consideration and orders of Government, the following circumstances connected with a suit which has been brought and decided in the Subordinate Court of Tanjore against the Sirkele of the late Tanjore Raj.

2. From Mr. Phillips' letter* of the 18th October 1858, No. 326, addressed by him as Commissioner, the Government will be aware, that in the case of the jewels belonging jointly to the fifteen junior widows of His late Highness the Raja, and which, with the permission of nine of them, were abstracted from their place of custody by their Agent one Bábé Row Appa, that individual was prosecuted in the late Criminal Courts of the Raj, by the Sirkele in his official capacity and as head of the Palace Establishment. Those Courts having been abolished under Act XXXII of 1858, before the proceedings in the case could be brought to a close, the individual above named was committed to the Zillah Court at Combaconum by the Head of Police. He was, however, there released by the Sub-Court.

**Paragraphs 5 to 15.*

3. While the case was under investigation before the late Tanjore Courts, an individual by name Venkataramaiyan and who was then in the service of the Raj, was employed by the Sirkele as Kanast or Agent for conducting the prosecution, but his situation having been abolished on the 24th October 1858, during the general reduction of the State Establishments which then took place, the said Venkataramaiyan claimed special remuneration for his services in acting as Prosecutor. The matter was referred by the Sirkele to Mr. Phillips, and under that gentleman's orders, his services were directed to be remunerated by a special allowance of 8 Annas a day. To this, however, the individual in question did not agree and his services were accordingly dispensed with on the 9th December, and another, by name Govindarama Naick, appointed to carry on the duties of the prosecution. Such being the case, the former Agent, Venkataramaiyan, on the 28th February 1859, instituted a suit in the Sub-Court at Combaconum against the Sirkele for the sum of Rupees 5,000, and on the plea that a verbal agreement was made by that Officer for the payment of that sum as his remuneration for conducting the Criminal prosecution against Bábé Row Appa or at the rate of 5 per cent. on the estimated value of the property abstracted by the last named party. Process was, in due course, served on the Sirkele, and in March 1859, this was brought to my notice by the Sirkele with a request for instructions as to how he should act in the matter.

4. From the facts of the case as above stated, it was clear that the Sirkele was in no way personally connected with the proceedings out of which the suit arose, and as from the preposterous nature of the claim brought by the Plaintiff, there was every reason to believe that it could not for a moment, hold good either in Law or equity; it appeared to me that the only course open to me was to authorize the Sirkele to defend the suit, and he was accordingly directed to defend himself, and to pay, out of the Palace funds, such charges as it might be found necessary to incur on account of stamped paper and the Vakeel's fee.

5. The suit, however, has, contrary to all expectations, been decided by the Sub-Court in favor of the Plaintiff, and on grounds which appear to me not a little extraordinary. A copy† of the Decree passed by the Court is enclosed for the information of Government, and the object of my present reference is to obtain the instructions of Government as to whether an appeal should be preferred therefrom or not.

† *Enclosure No. 3.*

6. The Decree, it will be observed, is based on what, in the absence of any real or substantial evidence, were considered by the Court to be the probabilities of the case, but these probabilities I conceive lie quite in the contrary direction; in the first place, it is simply impossible to believe that any person in this country would, in a case like this, where the amount of consideration at stake was so large as Rupees 5,000, remain contented with a mere verbal promise. Such a proceeding would be contrary to all usage, and *primafacie* render the

claim in the highest degree, improbable; secondly, looking to the position of the Plaintiff (he having been only a common Canakapillay or Curnam in the Scavenger Department on a monthly pay of Rupees 3-8-0), it is altogether impossible to believe that so large a remuneration would have been promised him. Further, it is to be observed that while the offer of 8 Annas a day made by the Sirkele to the Plaintiff on account of his remuneration, is clearly proved to have been made with the permission and under the orders of the Government Agent, it certainly exceeds the power of ordinary credence to believe that the Serkele would have, of his own authority and after soliciting instructions from his immediate superior, felt himself at liberty to offer the sum of Rupees 5,000 to the Plaintiff.

7. It is stated in the Court's Decree (paragraph 5) that the Defendant (the Sirkele) did not prove that at the time when the agreement was stated to have been made, Plaintiff was in the service of the Defendant. This point, I beg to state, the Sirkele was quite prepared to prove as he had stated in his written answer, but he was not called upon to do so, although his Vakeel declared his readiness to prove it at the time of hearing. There was indeed not the least difficulty in proving it inasmuch as the Defendant had before him the receipts obtained from the Plaintiff for the salary paid to him and which shew, beyond all doubt, that, during the whole period the Criminal prosecution in question was pending as also previous thereto, Plaintiff was employed in the Palace service as already mentioned and was actually in receipt of salary.

8. It was further urged by the Sirkele's Vakeel at the hearing of the suit that some of the witnesses for the Plaintiff who gave evidence as to the agreement alleged to have been entered into by the former, were known to be persons of bad character, and that the records of the Palace bore testimony to that fact.

9. As regards the question whether the suit in question should be defended by Government, I beg to state that, although no written order to that effect appears on the record, there would seem to be no doubt but that the prosecution of the Criminal charge against Bábé Row Appa and out of which this suit has originated, was commenced under verbal instructions given to the Sirkele by the then Government Agent, Mr. Phillips; that such was the case and that the proceedings were conducted under the general direction of that Officer, is apparent from the whole of the correspondence which has subsequently passed on the subject, as also from his report to Government above quoted in paragraph 2.

10. Under these circumstances, I beg to solicit the instructions of Government for preferring, at the expense of Government, the necessary appeal from the adverse Decree which has been passed by the Sub-Court, and which I confidently believe will be reversed by the Civil Court. A charge of Rupees 268-1-0 has hitherto been incurred by the Sirkele on account of stamped paper and Vakeel's fee in conducting the defence, and a further amount of Rupees 150 will have to be paid for the purchase of stamped paper for drawing up the appeal petition besides the Vakeel's fee; of the amount of Rupees 268-1-0 already incurred, Rupees 256, paid in the year 1859, have been included in the general expenses of the Palace, but the allowances of the several Members of His late Highness' family and the other items of the Palace expenses having subsequently been definitely fixed, and there having been no other funds from which the subsequent charge could have been met, it has been paid by the Serkele in advance. For this subsequent charge, therefore, *viz.*, Rupees 12-1-0, as also for the expenses to be incurred in conducting the appeal, I beg to request the sanction of Government. Translations* of the Plaint and answer filed in the suit are herewith submitted for the information of Government, together with a draft† of the appeal petition which is proposed to be presented to the Civil Court on behalf of the Appellant (the Serkele.)

* *Enclosures Nos.* 1 *&* 2.

† *Enclosure No.* 4.

11. In now bringing the circumstances of this case to the notice of Government, I feel that I am perhaps myself to blame for not having done so before. I could not, however, divest myself of the impression that such a claim could not be otherwise than non-suited and the expenses connected therewith recovered from the party who brought it and, under this view of the case, I purposely refrained from troubling Government on the subject.

Proceedings of the Madras Government, Political Department,
24th June 1861.

12. The Decree of the Sub-Court in question, though dated the 28th March last, only reached me on the 23rd April, and the pressure of more important business has hitherto prevented me from submitting this report earlier. The term of 30 days allowed for appeal according to the new Civil Procedure Act (Section 333, Act VIII of 1859,) expired on the 27th April, and as the Act in question does not allow of an extension of term being applied for and obtained from the Court, the course to be pursued in cases wherein any delay takes place from unavoidable causes is simply to offer an explanation thereof in the appeal petition when presented. I trust therefore that I may be furnished with the instructions of Government in the matter as early as possible.

Original Suit No. 6 *of* 1859.

JUDGMENT.

1. Plaintiff sued Defendant for Rupees 5,000, with interest from date of Plaint as due to him under a verbal agreement.

2. Defendant answered denying the contract.

3. Defendant filed.

I. A letter from the Agent for Government to the Sirkele of the late Darbar of Tanjore, dated 28th November 1858.

4. The point to be decided in this suit is whether or not a verbal agreement was made by which Defendant promised to pay 5,000 Rupees or 5 per cent. upon one lac of Rupees to Plaintiff, to engage Plaintiff's services as a Vakeel in the prosecution of a Criminal charge against Bábé Row Appa.

5. There seems nothing improbable in 5 per cent. being promised for the services which Plaintiff was required to perform, and Defendant has not proved that, at the time when the agreement was stated to have been made, Plaintiff was in the service of Defendant.

6. I am obliged to say that there seemed nothing improbable in the account given of the transaction by the witnesses for Plaintiff, there were no material contradictions, and Defendant's Vakeel (Government Vakeel) has been very supine in his defence both in the cross examination of witnesses, and in supporting his own defence. I have not that degree of certainty which is necessary for the conviction of a prisoner charged with a criminal offence that the agreement was made as stated, but as the case has been left, the probabilty is in favor of the agreement having been made. The Defendant is therefore adjudged to pay Plaintiff Rupees 5,000, with interest from this date.

(Signed) R. B. SWINTON,
Sub-Judge.

27th March 1861.

Costs inadvertently omitted—costs also to be paid by Defendant.

(Signed) R. B. SWINTON,
Sub-Judge.

28th March 1861.

(Copy of a Copy.)

(Signed) W. M. CADELL,
Government Agent.

Translation of Plaint filed in Suit No. 6 of 1859 on the file of the Sub-Court at Combaconum, by one VENKATARAMAIYAN against RY SUBBA RAU NILAKANDA RAU ZADHAU, conducting the duties of Sirkele in Tanjore Palace.

1. The Defendant, by a power of Attorney duly executed, appointed me as Agent for prosecuting in the Magisterial Court, one Bábé Rau Appa *alias* Rudraji Appa, Agent to the 15 new Bahisahibs and others, for having made away with property jointly belonging to those ladies, and valued at Rupees 1,00,000 (one lac), and on the 29th May 1858, and in the presence of competent persons promised to pay me a fee therefor at 5 per cent. on the value of the said property.

2. I accordingly conducted the prosecution against the said Bábé Rau Appa and others, first in the Magisterial Courts of the Raj, and then, after the assumption of their jurisdiction by the British Government, in the Office of the Head of Police of the Trivadi Taluq. Now the case has come for trial before the Criminal Zilla Court.

3. At the time when the case was so committed to the Criminal Court, I called upon the Defendant to pay me the fee as mentioned above, when he (Defendant) informed me that he no longer required my services. I have therefore several times demanded payment of the stipulated fee on Rupees 1,00,000 (one lac) *viz.*, Rupees 5,000, and although the Defendant has been saying that he would pay, he has hitherto not done so.

4. I therefore pray that the said amount may be adjudged to be paid to me by the Defendant, with interest at 1 per cent. per mensem from this date.

(Signed) VENKATARAMAIYAN.

28th February 1859.

(True Translations.)

(Signed) W. M. CADELL,
Government Agent.

Translation of the Defendant's answer in Suit No. 6 of 1859, on the file of the Sub-Court at Kumbakonum.

1. It is true that Plaintiff was for some time employed as Agent in the Criminal case mentioned in the Plaint, but I never engaged to pay him a fee therefor at 5 per cent.

2. According to the usage by which the servants on the Palace establishment were employed on all duties belonging to the Palace, this Plaintiff who held the post of a Conacapillai on a salary of Rupees 3-8-0 per mensem, was employed to speak in the Criminal case referred to. During the reduction of the Palace establishments, which took place on the 24th October 1858, the situation of Conacapillai held by the Plaintiff was abolished. There is thus no occasion for any fee whatever being paid to the Plaintiff up to that date.

3. Plaintiff, however, continued for some time longer, to conduct the duties of Agent, for which it was arranged that a fee of 8 Annas a day should be paid to him, but he not having agreed to it, his services were dispensed with, and another individual by name Govinda Rama Naik was, on the 9th December 1858, appointed to the duty and was entrusted with a Power of Attorney duly executed.

4. No agreement whatever was entered into as to the fee to be paid to the Plaintiff, and there is no rule of Law as to what remuneration should be paid to the private Agents of parties prosecuting in Criminal cases.

5. The Government Agent, in whom the general direction of the Palace affair is vested, having in his letter of the 28th November 1858, directed that the Plaintiff be paid at the rate of 8 Annas a day, I am prepared to pay him accordingly for the period from 28th October to 9th December.

(Signed) SUBBARAYAN,
Vakeel.

Proposed Memorandum of Appeal in Suit No. 6 of 1859, on the file of the Sub-Court of Tanjore.

Venkataramaiyan..... Plaintiff.

Subba Rau Nilakanda Rau Zadhau, Sirkele to the late Durbar at Tanjore..... Defendant.

Subba Rau Nilakanda Rau Zadhau, Defendant above mentioned, appeals to the Civil Court of the Zillah of Tanjore, against the Decree of the Sub-Court in the above suit, dated 28th March 1861, for the following reasons, namely:—

1st. That the Plaintiff's claim is wholly unsupported by any document.

2nd. That the Appellant was, and even now is, quite prepared to prove, by the receipts given by the Plaintiff for the salary paid him, that at the time when the agreement was alleged to have been made, he (Plaintiff) was in the service of the Tanjore Darbar, and that the Appellant did not prove it before the Sub-Court, because he was not called upon to do so, although he, through his Vakeel, declared at the hearing that he was ready to prove it.

3rd. That some of the Plaintiff's witnesses are men of bad character, a fact which can be substantiated from the Records of the Palace.

4th. That, as is proved by the Exhibit filed by the Appellant in the Sub-Court, a fee of only 8 Annas a day was, under the orders of the Government Agent, offered to the Plaintiff for the period subsequent to the abolition of his office on the Palace Establishment, and during which he was employed in the prosecution of the criminal charge referred to.

5th. That the property abstracted and for which the Prisoner, in that case, was prosecuted, was not removed out of the Palace, and even if it were, the guilt involved, could have had reference to only $\frac{6}{13}$ of the estimated value of the property abstracted and not to the whole of it, viz., a lac of Rupees.

6th. That the alleged agreement for the payment of Rupees 5,000 to the Plaintiff is in itself preposterous, and is altogether at variance with his position and the circumstances of the case.

(Signed) W. M. CADELL,
Government Agent.

No. 36. ORDER THEREON, 24th June 1861, No. 291.

Under the circumstances of the case brought to notice in the foregoing letter, the Government grant authority for preferring, on behalf of the Sirkele, the proposed Appeal from the Decree passed by the Subordinate Court at Combaconum in the suit referred to, the same being accompanied by a petition explanatory of the cause of delay. They also sanction the charge of Rupees (12-1) twelve and Anna one, being the balance of the cost of defending the original suit, and the further sum of Rupees (150) one hundred and fifty required for conducting the Appeal, the expense being borne by Government in the first instance.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. T. O'Connor.

The above petitioners had
before the Subordinate Court
a petition of Plaint by
the name of delay — It may
be added — the decree
is certainly Good

Vide

the proposed Appeal
from the Decree passed
by the Subordinate Court
at Combaconum in the
Suit referred to — the Decree
being accompanied by
a Petition explanatory of
the cause of delay —
They also sanction
the

Political Depart.

Proceedings of the Madras Government

Read the following
letter from the Govt. Agent
at Tanjore.

(Dated. 5 June 1861 - No 203)

Order thereon. 24 June 1861. No. 291.

Under the circum-
-stances of the case brought
to notice in the foregoing
letter, the Govt. grant
authority for preferring,
on behalf of the Sirkale,
the proposed Appeal
from the Decree passed
by the Subordinate Court
at Combaconum in the
Suit referred to - the same
being accompanied by
a Petition explanatory of
the causes of delay.
They also sanction
the

the charge of Rupees (12-1)
Twelve and Anna one,
being the balance of the
cost of defending the
original Suit, and the
further sum of Rupees
(150) One hundred and
fifty required for con-
-ducting the Appeal.
the expense being borne
by Govt in the first in-
-stance.

JP

To the Govt Agent
at Tanjore
" Civil Paymaster
dated 24th

Political 1861 Sept

No 291

Proceedings of the
Madras Govt

Rd 18/ 9/24 June 1861

Granting authority for preferring on behalf of the Sirkar of the late Tanjore Raj the proposed appeal from the Decree passed by the Sub Court at Combaconum in the Suit referred to. also sanctioning the Charge of Rs 12-1-. being the balance of the Costs of defending the original Suit and the further Sum of Rs 150/ required for the Conducting the appeal.

Rd 18/ 3357 of 1859

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