M.R.O. 1—39,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Political DEPARTMENT.

G.O. No. 356 Press ~~Misc~~

Dated 10 - 8 - ~~1~~1861

Not to be folded or roughly handled

26-1-31

Read the following papers :—

No. 18. From W. M. CADELL, Esq., Government Agent of Tanjore ; to T. PYCROFT, Esq., Chief Secretary to Government, Fort Saint George, dated 27th July 1861, No. 251.

Political Department.

From the late Commissioner to Government, 17th April 1858, No. 292.
From Government, 22nd May 1858, No. 327.
To do. 13th Augt. ,, ,, 310.
From do. 24th Augt. ,, ,, 551.
To do. 21st Octr. ,, ,, 327.
From do. 5th Novr. ,, ,, 719.
To do. 4th Novr. ,, ,, 332.
From do. 12th Novr. ,, ,, 739.
From do. 25th Novr. ,, ,, 778.

With reference to the correspondence marginally noted, I have the honor to report for the information of Government that the suit therein referred to, has, on the 27th May last, been decided by the Sub-Court in favor of the Plaintiff, and the sum of Rupees 416-10-7 awarded to be paid to him by the 1st Defendant, as Commissioner, with interest from the date of the Decree and the costs incurred by him in defending the suit. A copy of the Decree passed by the Sub-Judge is herewith enclosed.

2. The Government have already been fully made aware of the circumstances under which the said suit was instituted, and it seems therefore unnecessary for me to go over the same ground. It will therefore suffice to remark that my predecessor, Mr. Phillips, was included as 1st Defendant in his capacity both as Commissioner and Collector ; as Commissioner, because he was bound to give effect to the agreement made by the officers of the Raj with the Plaintiff ; and as Collector, because he refused to place the Plaintiff in possession of the lands which were claimed and actually in the possession of the Porakudis or tenants, while, however, he enforced the payment of the stipulated rent, thus rendering himself responsible for the damages sued for.

3. From the judgment now passed, it will be seen that Mr. Phillips as Collector, as also the Porakudis have been altogether exonerated, the former on the ground that he was not required by Law to give the Plaintiff possession of what he previously had not, and that he (Collector) was justified in realizing the rent from the Plaintiff, as the party who had taken up the rent, independently of any claim which the Porakudis might, or might not have to be the cultivators of the land.

4. In my judgment, I do not, however, think that the grounds on which the Commissioner has been rendered liable in the sum claimed, are altogether tenable. If as stated in the Decree (paragraph 27), the other Defendants (Porakudis) had a permanent right to cultivate the lands, the Commissioner would certainly not have been justified in ousting them and making possession thereof over to the Plaintiff, and to hold one responsible for not doing an act which he could not legally do, would seem therefore unjust. In this view of the case the officers of the Raj could have leased out to the Plaintiff only the right to the Landlord's share of the produce, and in therefore granting the lease of this only, nothing further could be required of them. If then, the Plaintiff were prevented by the Porakudis, or under-tenants, from enjoying the rights of which he thus became possessed in virtue of his lease, and thereby subjected to any loss, the cause of action would appear to lie against the Porakudis only, and not against the officers of the Raj or the Commissioner.

5. I beg therefore to submit a draft of the appeal Petition which, with the permission of Government, I propose to present to the Civil Court, as successor to the late Commissioner ; and should the Government be prepared to sanction the measure, I beg to solicit their sanction for conducting the appeal at the expense and on behalf of Government.

6. If, however, the Government be not disposed to take any further steps in the matter, I beg to request permission for paying into the Court the amount of the award made in the Decree against the Commissioner with interest accruing thereon up to the date of payment.

7. The Government are aware that the time allowed for preferring an appeal by the new Civil Procedure Act,* is only thirty days, which in this case expired on the 26th ultimo. The Decree, although dated the 27th May last, however, only reached me on the 1st instant as, owing to certain formalities of the Court, the Government Vakil was not able to

* *Vide Sec. 333, Act VIII of* 1859.

obtain a copy thereof till the 25th June. As, however, the new Act does not admit of an extension of term being applied for and obtained, the cause of delay in preferring the appeal, will, in the event of the same being preferred, have to be explained in a Petition to be presented with the appeal.

Memorandum of Appeal O. S. No. 11 *of* 1858, *on the file of the Sub-Court.*

1. Bhushanam Narrayana Sastri..
2. Lota Subramania Sastri..... } Plaintiffs.

1. H. D. Phillips, Esq., Commissioner of Tanjore, and 9 others. } Defendants.

W. M. Cadell, Esq., Government Agent and successor to the 1st Defendant above named, appeals to the Civil Court at Combaconum against the Decree of the Sub-Court in the above suit, dated the 27th May 1861, for the following reasons, namely :—

1st. The Sub-Court has decreed the sum of Rupees 416-10-7 to be paid to the 1st Plaintiff by the 1st Defendant as damages on the ground that he (1st Defendant) failed to give to the Plaintiff possession of the lands leased to him by the officers of His late Highness the Raja.

2nd. In paragraph 27 of the Decree, however, it is declared that the other Defendants (the Porakudis) had a permanent right of cultivation to the Nunjah land.

3rd. If they (the Porakudis) had such right, the 1st Defendant could certainly not have been justified in ousting them, and making the possession over to the Plaintiff, and to hold one responsible for not doing an act which he could not legally do, is contrary to reason and justice.

4th. What the Officers of the Raj could have leased to the Plaintiff was simply the right to the Landlord's share of the produce, and they having, by the very fact of their having granted a lease to the Plaintiff, virtually and formally transferred such right to him, nothing further can be required of them or of the 1st Defendant as representative of Government who have succeeded to the Estates and Effects of the Raja.

5th. If, after becoming possessed of such right to the Landlord's share, the Plaintiff failed in realizing such share from the other Defendants (the Porakudis), the cause of action clearly lies against them only, but neither the Officers of the Raj, nor the 1st Defendant who succeeded to their place, can in law or equity be held liable for the loss sustained by the Plaintiff.

6th. The undersigned therefore, in his capacity as Government Agent, and successor to the 1st Defendant, prays that the Decree of the Sub-Court may be reversed, and the Plaintiff non-suited with costs.

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

ORIGINAL SUIT No. 11 OF 1858.

Decree.

BEFORE THE SUBORDINATE JUDGE OF TANJORE.

1. Bhushanam Narrayana Sastri.
2. Lota Subramania Sastri, living in Teroovasa Nallur, Combaconum Taluq. } Plaintiffs.

Vers.

1. H. D. Phillips, Esq., Collector, Resident and Commissioner of Tanjore.
2. Moorooga Pillay, living in Teroovasa Nallur, Pundara vadai.
3. His son Appa Pillay.
4. Sedumbaram, supplemental 4th Defendant.
5. Samoo Pillay.
6. Ramasamy Pillay.
7. Sabapadi Pillay.
8. Kailasa Pillay.
9. Saminada Pillay.
10. Sabapadiya Pillay. } Defendants.

1st Defendant's Vakeel, Ramier.

3rd, 4th and 5th Defendants' Vakeel, Rengiengar.

For the recovery of Rupees 459-10-7, being the amount of lease and interest due thereon.

To be paid to Plaintiff by Commissioner.—The 1st Defendant.

	RS.	A.	P.	RS.	A.	P.
Amount of the Plaint	416	10	7			
Value of Stamp paper	46	8	0			
Peon's batta	9	2	0			
				472	4	7
To be paid to 2nd, 3rd, 4th and 5th Defendants by Plaintiff.						
Value of Stamp paper	5	8	0			
Peon's batta	4	2	0			
Vakeel's fee	22	15	2			
				32	9	2
To be paid to 8th Defendant by Plaintiff.						
Value of Stamp paper	0	12	0			
Peon's batta	1	11	0			
				2	7	0
Costs to be borne by 1st Defendant.						
Value of Stamp paper	2	4	0	2	4	0
Costs to be borne by 7th Defendant.						
Value of Stamp paper	0	4	0	0	4	0
			Total Rupees...	509	12	9

27th May 1861.

Appeal time expires on the 26th June 1861.

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

ORIGINAL SUIT No. 11 OF 1858.

Judgment.

1. Plaintiffs sued Defendants from 2 to 8 inclusive for Rupees 459-10-7, being the amount of the loss sustained by them by their having been deprived for two years, by the unlawful acts of the Defendants of their enjoyment of certain Nunjah and Punjah land and topes, also by their forcibly having taken away certain cut crops; and 1st Defendant, as Collector of Tanjore and Special Commissioner, for the same amount as Collector for unlawfully interfering and supporting the other Defendants, and as Commissioner for not placing Plaintiffs in possession of the land according to the agreement made between 1st Plaintiff and the administrators of the Pagoda lands on behalf of the late Raja of Tanjore.

2. The 1st Defendant objected in answer that he was not amenable to the jurisdiction of the Court, and after denying generally the truth of all the matters set forth in the Plaint denies specially :—

First, that the Plaintiffs ever were in the possession of any of the lands mentioned in the Plaint, and that he or other Defendants carried away unlawfully any crop.

Secondly, that either as Collector or Commissioner he did interfere in the cultivation of the land; and that the crops on any of the land was harvested by him or by the Tahsildar under his orders.

Thirdly, that he had any authority as Collector or Commissioner to give Plaintiffs possession of the land.

Fourthly, 1st Defendant pleads that he was justified in causing a Notice as Collector to be served upon the 1st Plaintiff to pay the balance of rent due upon the lands mentioned in the Plaint for the two years ending in February 1858.

3. 2nd, 3rd, 4th, 5th and 7th Defendants answered that the extent of the land was wrongly estimated by Plaintiffs.

Secondly, that they have an hereditary right to cultivate the Nunjah land, that Plaintiffs unlawfully endeavored to oust them, of which matter they complained and obtained an order from the Tahsildar in their favor; but they did not forcibly enter upon the occupation of the said Nunjah, and that they did not forcibly carry away any crop.

Thirdly, that they have no claim over the Punjah land and topes, and that the Nunjah land is one crop and not two crop land.

4. The 6th Defendant did not answer; the 7th Defendant put in a Razeenamah. The 8th Defendant answered that he had no concern or interest in the land and that he had done nothing as stated in the plaint.

5. The reply and rejoinder do not require notice here.

6. The Plaintiffs filed twenty documents.

From A to C. Petitions of July and August 1857, to the Revenue Board, with the Board's endorse.

D. Endorsement of the 17th November 1857, by 1st Defendant as Collector referring Plaintiffs to a Civil Suit.

E. Notice to 1st Plaintiff by the Tahsildar of the 8th February 1858, for payment of arrears of Revenue, Rupees 188-9-4 for Fusly 66 and 67.

F. An acknowledgment of A. D. 1825, taken by the Dewan of the Raja of Tanjore from the 2nd Defendant and other cultivators of this Nunjah land, that they had in some former time given the land as Dharmam to the Pagoda, and that now they had no title to it.

G and H. Harvest accounts of the year 1833 filed to show that then, not these Defendants, but one Kristnapadyachy cultivated the land.

I. Harvest accounts of the year 1825 to show that the land was then cultivated by one Ramasamipadyachy.

J. An agreement executed to the Pagoda in 1836, by one Saminada Pillay a Meerasidar of the village to cultivate the disputed Nunjah land at a fixed rate of 57 kalam of grain per annum, or in case of the whole produce being less than 50 kalams in one year then to receive $\frac{1}{4}$ of that amount only.

K. A security bond by Annamala Pillay for the above Contractor.

L. Petition of 14th November 1858, by Plaintiff to Collector against the proceedings of the Tahsildar in making the attachment.

M. Contract by one Annasastry 1854, to the Pagoda for the grass growing on the Punjah land mentioned in the plaint.

N. An agreement to cultivate the disputed Nunjah land in the year 1841, as a "Porakudi" executed by 7th Defendant to the Pagoda.

O. An agreement entered into in 1841, by 2nd and 3rd Defendants to cultivate the Nunjah land upon receipt of 25 kalams per cent. the said percentage being Porakudi Varam.

P. and Q. Yadasts of July 1856, from the authorities of the Raja to the Tahsildar of Combaconum to put the Plaintiffs in possession.

R. Contract given by the 2nd Defendant in 1853 to the Pagoda for the enjoyment of the Cocoanut topes mentioned in the plaint.

S. Moochilika given by 5th Defendant in 1853 to the Pagoda to cultivate the Nunjah land and to pay annually to the Pagoda 70 kalams.

Proceedings of the Madras Government, Political Department,
10th August 1861.

T. (Moochilika) Rent bond executed by 1st Plaintiff to cultivate the land mentioned in the plaint given to the authorities of the Raja of Tanjore, dated April 1856.

7. The 1st Defendant filed Exhibit II.

The Order of Government dated 16th January 1857, appointing him Commissioner.

Exhibit III.

An Extract from the diary of Petitions (without date) presented to the Commissioner referring Plaintiffs to a Civil Suit.

8. The 2nd Defendant filed—

(1.) An Extract from the Pymaish accounts of Fusly 39 to show that at the date of the survey in that Fusly, certain of the Nunjah lands belonging to the Pagoda were entered with the names of the individuals having the plough right (Ulavadai), the sort of right contended for by Defendants as distinct from the Porakudi right.

IV. Copy of a deposition given by 1st Plaintiff before the Tahsildar of Combaconum of 9th December 1859.

9. Plaintiffs' 1st witness deposed that he was formerly the accountant of the Pagoda of Shre Yaga Nada Swamy in Teroovesanallore village, and that a contract was given by the Amin of the late Tanjore Raja, agreeing to let 1st Plaintiff 8 mas 85 goolies of Nunjah land, also some topes for a term of three years for 215 Rupees 8 Annas per year, and that the 1st Plaintiff accepted it and paid an advance of Rupees $112\frac{1}{2}$.

That after the execution of the contract, the Defendants from 2 prevented the Plaintiff from entering upon it that is upon the Nunjah land, but that Plaintiff enjoyed the tope and other land for 15 or 16 months, but that afterwards on Defendants claiming to have the right of watching the topes which Plaintiff refused, thefts increased and the Plaintiff gave up the tope also. That the money due under the agreement by Plaintiff fell into arrears, that he reported the same to the Amin who ordered him to bring the Plaintiff which he did; also deposes that one day in Nala, the Plaintiff went to see the contracted Nunjah land, that the Defendants Appavupilly and Ramasami Pillay objected; also knows that one day when the Plaintiffs were pulling Cocoanuts in the tope, the Defendants' people, the tope watchmen, Veera Badran and Aran, came and took away the Cocoanuts which had been picked, that a quarrel took place which was complained of to the Magistrate.

Plaintiffs' 2nd witness deposed that he had frequently seen the Plaintiffs bringing Cocoanuts from the topes, and therefore concluded that they had the contract.

Plaintiffs' 3rd witness deposed that from Pungune of Rakshasa for 15 months, he has observed Plaintiffs enjoying the produce of the topes, but that Plaintiffs did not gain possession of the Nunjah, but were prevented by Defendants; that the Nunjah land is two-crop land. That he knows the Nunjah land will produce 100 kalams of grain in a good year after deducting the under cultivator's share.

Plaintiffs' 4th witness, Tahsildar of Nannilam Taluq, deposed that he can only remember that Plaintiffs' property was attached for 60 Rupees and cannot remember upon whose order it was attached, that is by an order from the Collector or not but that he could find out from the records.

Plaintiffs' 5th witness deposed that there was a balance against the 1st Plaintiff of Rupees 180 (after two years) that, of that sum, 120 Rupees were collected from the produce of the topes under Cirkar management, that for Rupees 60 the Plaintiff's (1st Plaintiff presumably) property was collected, that the former contract having expired, the land was given on a three years' term to 1st Plaintiff; also, that Defendants, in 1856, entered upon Plaintiff's contract land of which circumstance he made a report to the Tahsildar and to the Palace authority over the Pagoda department; that the topes were in Plaintiffs' possession for 15 months, but that they did not enjoy the Nunjah. But before this contract, a contract was given to Murooga Pillay.

First joint witness, Chokalinga Pillay, Government Accountant, deposed that he was sent to take the measurement of the crop of the 67 Fusly, that he went with the Peshkar and put the crop in the charge of Murooga Pillay, that the crop amounted to 82 kalams $6\frac{5}{8}$ marakals; that

Murooga Pillay is a cultivator and Mirasidar of the village, but does not know whether he is Mirasidar of the land in question.

Second joint witness deposed that he had been a Kurnum in the village since 1858, that in that year he was ordered to *zuft* the produce of the Cocoanut topes which he did, but that he does not know any thing of the Nunjah and Punjah.

10. Defendants' 1st witness, Aya Toraisastry, deposed that he does not know upon what right Defendants claimed to cultivate the land, but that 2nd Defendant has cultivated half of the whole of the Pagoda lands, and the 4th Defendant half for 15 years.

Defendants' 2nd witness, Subramanya Pillay, deposed that the 2nd Defendant's father and 4th Defendant's father and the 5th, 6th and 7th Defendants have, since the land came to the Pagoda, enjoyed the right of cultivating, and that they and their heirs did so; that he has known this for 40 years; that the Pagoda land was Defendants' ancient land; that being an under-cultivator of the Village, he knows the circumstance; also that Defendants have got a right to cultivate the Punjah land belonging to the Pagoda.

For 8th Defendant, 1st witness' evidence is of no use.

Second witness deposed that, one day in Rakshasee in the month of Vyasy, the 4th Defendant called the 8th to object to the Plaintiff's entering upon the land which he (8th Defendant) declined to do.

11. The points to be determined are, first, whether 1st Defendant, as Commissioner, was bound to give effect to the agreement between the authorities of the Raja of Tanjore and the 1st Plaintiff by putting Plaintiff in possession of the land.

Secondly.—Whether, as Collector, he ought to be responsible in the amount sued for enforcing payment of the rate stipulated in the Moochilika (counter agreement) given by 1st Plaintiff.

Thirdly.—Whether the other Defendants were justified in keeping Plaintiff out of possession of the land.

12. The order of the Civil Court of the 31st December 1858 upon the summary appeal in deciding that there was cause of action against the 1st Defendant, as Commissioner and Collector, must also be taken to have determined, that in his former capacity, 1st Defendant was amenable to the Court, moreover the suit had gone on to even the final hearing before the late Sub-Judge without any thing on the record to show that the plea of non-amenability had been accepted.

13. Public Officers as Collectors of Customs and of Revenue and Magistrates are only liable to be sued in the Courts for acts done without power or against their powers as laid down by Regulations.

14. But the Commissioner for settling the affairs, consequent upon the death of the Raja of Tanjore, acts according to the immediate will of the Government, and no rules by which he is to be guided are known.

15. It having been decided that he is amenable to the Court, the rule as applicable to any other heirs or successors must be applied, and as such the 1st Defendant would be bound to pay all lawful debts and to carry out the agreements entered into by his predecessor to the extent of property inherited.

16. This is an action for damages; Plaintiffs would have realised Rupees 459-10-7, by the enjoyment of the land for two years, and their estimate with the exception of a certain 40 Rupees for horse-gram said to have been taken away has not been controverted. 1st Plaintiff contracted for three years excepting the Cocoanut tree topes which he enjoyed for one year, 1856; he did not get possession of the Nunjah at all, but the full amount for two years, 1856 and 1857, of the Moochilika he gave to the authorities of the Raja has been collected from him under penalty of his property being attached.

17. The 1st Defendant as Commissioner and in that capacity as successor to the Raja of Tanjore is decreed to pay to Plaintiffs 459-10-7 less Rupees 43, Rupees 416-10-7 with interest from this date.

Proceedings of the Madras Government, Political Department,
10th August 1861.

18. When the Estates of the Raja of Tanjore were taken charge of by the Commissioner on the part of Government, it appears to have devolved upon the 1st Defendant as Collector to collect, as any other Revenue, the Revenue from this land for the use of the Pagoda, for though belonging to the Raja of Tanjore its fruits had been granted to the Pagoda. Plaintiffs would stand in the same place as land-owners with the Revenue Pattahs in their name, the Collector would look to them for the payments of the assessments although they might have sub-let the land to tenants who would not pay them.

19. The Collector was not required under any regulation to give Plaintiffs possession of the land, he was only bound to reinstate them if dispossessed and usually for deciding possession occupation is looked to, more than title.

20. Before this Court it has not been proved that Plaintiffs ever got possession of the Nunjah land, but the evidence, that they did enter upon and enjoy the Cocoanut tree topes and the arable land either under or having the name of an old oil tree tope is consistent.

21. It does not appear from the record what complaint Plaintiffs made to the Collector. A B, and C are petitions to the Revenue Board against the Commissioner, reference in A is made to some order of the Commissioner, but no copy of it has been filed.

22. D is an endorsement by the 1st Defendant as Acting Collector upon these petitions referring Plaintiffs to a Civil Court, apparently after some enquiry into the case; but the Collector is not to be made a Defendant in a civil suit in order that the correctness of his judgment may be tested. The 1st Defendant, as Collector, is exonerated and the suit as against him dismissed.

23. As to the 3rd point laid down for decision, there is very little oral evidence. The Plaintiffs' witnesses have said nothing about it, they without referring to other matters only know that 1st Plaintiff newly took the contract for the Pagoda land and got possession of the Punjah and topes, but was opposed when trying to cultivate the Nunjah; of the joint witnesses one, the Accountant, might have been expected to know something of the respective rights of the Pagoda authorities and Defendants, but he states that he does not.

24. Defendants' 1st and 2nd witnesses know that the 2nd and 4th Defendants have for a long period (the 1st says for fifteen, the 2nd for forty years) cultivated the land, and that they were the ancient proprietors of it.

25. Of the exhibits for Plaintiff, exhibits from F to K and O have not been proved, and they are not documents of that public nature to be admitted without proof; the objection was brought to the notice of the Court by the Defendant's Vakeel at an after hearing for explanation and argument with Plaintiff present; all the proceedings having been closed before the present Sub-Judge took up the suit, but it also appears from a note made by the late Sub-Judge on the hearing paper that this fact was before noticed.

26. Vakeel for 1st Defendant urged that it having been admitted by Defendants 2 to 8 that the land belonged to the Raja of Tanjore, the burthen of proof of their peculiar title of permanent tenancy lay upon Defendants, but this is doubtful; if it is so common a thing for land to be said to belong to one man yet for another to have rights over it is inconsistent with a full ownership, that it appears to be as much the business of Plaintiffs to make out a right to eject old occupants.

27. As the evidence stands, the Defendants have proved long occupation, and from this in the absence of counter-proof their permanent right of cultivation of the Nunjah may be presumed.

28. As to the Punjah and topes there is the difference, that Defendants have not claimed any right over them while it is proved that Plaintiff occupied them for some time and it is asserted by them that they were forcibly ejected. It is clear that they gave them up probably because they could not also get the Nunjah land, but that they were disturbed in their enjoyment by Defendants is only stated generally by one witness, the first.

29. The 7th Defendant had before given a Razinamah as against Defendants from 2 to 6 and against Defendant 8, this suit is dismissed with costs as also it is against Defendant as Collector, but 1st Defendant, as Commissioner, is decreed to pay Plaintiffs Rupees 416-10-7 with the costs incurred by his having been made Defendant.

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

27*th May* 1861.

(Copy.)

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

Forwarded to the Government Pleader for *early* report as to the advisability of appealing and the sufficiency of the proposed petition. If Mr. Dale arises an appeal, he will modify the petition in any way he deems necessary.

(Signed) J. D. SIM,
Secretary to Government.

31*st July* 1861.

No. 19. From CLEMENT DALE, Esq., Government Pleader, Sudder Adálat; to J. D. SIM, Esq., Secretary to Government, Fort Saint George, dated 6th August 1861, No. 141.

Para. 1. I have the honor to acknowledge the receipt of the Order of Government under the date and number noted in the margin; and to report for the information of the Honorable the Governor in Council that after perusing the papers connected with the Original Suit No. 11 of 1858, on the file of the Subordinate Court of Tanjore, I advise an Appeal should be preferred to the Civil Court against the Decree passed by the Subordinate Judge.

31*st July* 1861, *No.* 343.

2. I observe the amount of damages given is small; and I do not suppose acts of the Commissioner are likely to be again impugned: I did therefore consider whether an Appeal should be preferred, but after consideration it appeared to me desirable that the Decree should not be permitted to stand unimpugned.

3. In passing Act No. VIII of 1859, (see Section 189 and subsequent Sections) the Legislature contemplated that Decrees of the Mofussil Courts should be simplified, and rendered intelligible, unfortunately in the Decree under consideration, the Subordinate Judge has not complied with the requirements of the Act. It is of very little avail the Legislature passing Acts if Judges set the enactments at nought.

4. I have not seen the Order passed by the Civil Court, under date the 31st December 1858, referred to by the Subordinate Judge in paragraph 12 of his Decree, but looking to the Order passed by the late Mr. Grenfell, under date the 5th of October 1858, on the preliminary hearing of the Original Suit No. 11, I cannot suppose the Civil Judge would there decide the question of the 1st Defendant being amenable to the jurisdiction of the Court; I presume the Civil Judge did not agree with Mr. Grenfell's view, and merely ordered the Original Suit to be restored to the file of the Subordinate Court, to be disposed of on the merits. I have therefore inserted the non-amenability of the 1st Defendant as one of the grounds of Appeal.

5. I have also incorporated the substance of Mr. Cadell's objections, in those which I have prepared.

6. If His Excellency in Council should determine on preferring the Appeal, it will be desirable that Mr. Cadell should satisfy himself that any facts to which I refer are correctly stated; I have nothing but the Pleadings and Decree before me, I may therefore have drawn erroneous conclusions as to the effect of the evidence, &c.

7. I enclose a Memorandum of Appeal; and return all the papers received with the Order of Government noted above.

Proceedings of the Madras Government, Political Department,
10*th August* 1861.

No. 20. ORDER THEREON, 10th August 1861, No. 356.

In accordance with the advice of the Government Pleader that the Decree passed by the Subordinate Judge in the Suit referred to should not be permitted to stand unimpugned, the Government resolve to forward to the Government Agent at Tanjore, a copy of Mr. Dale's letter, with the original Memorandum of Appeal which accompanied it, and to authorize him to prefer an Appeal accordingly against the said Decree and to conduct the same at the expense and on behalf of Government. In presenting the Appeal Petition to the Civil Court, the Agent will satisfy himself that the facts referred to in Mr. Dale's Memorandum are correctly stated.

(Signed) J. D. SIM,
Secretary to Government.

Exd. T. O'Connor.

put in a Razeenamah. The 8 Defendant answered that he had no concern or interest in the Land and that he had done nothing as stated in the Plaint.

5 The reply and rejoinder do not require notice here.

6 The Plaintiffs filed twenty documents

Exhibits From A to C. petitions of July and August 1857 to the Revenue Board, with the Board's endorse

D Endorsement of the 17 November 1857 by 1st Defendant as Collector referring Plaintiffs to a Civil Suit.

E Notice to 1st Plaintiff by the Tasildar of the 8 February 1858 for payment of arrears of Revenue Rupees 188-9-4- for fasly 66 & 67.

Exhibits F An acknowledgement of AD 1825 taking by the Diwan of the Rajah of Tanjore from the 2d Defendant and other cultivators of this Nunjah land, that they had in some former time given the land as Dharmam to the Pagoda and that now they had no title to it.

not proved as yet 1st Sept? See par 25

G & H. Harvest accounts of the year 1833 filed to show that then, not these Defendants but one Kristnapady=acky cultivated the land.

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not proved See par 25

Do? J. An agreement executed to the Pagoda in 1830. by one Saminada pillay a Maarafeedar of the Village to

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to cultivate the disputed Nanjey land at a fixed rate of 57 Kalam of Grain per annum, or in case of the whole produce being less than 50 Kalams in one year then to receive ¼ of that amount only.

III A Security bond by annamala pillay for the above contractor

II Petition of 14th November 1858 by Plaintiff to Coll.r against the Proceedings of the Tasildar in making the attachment.

IV Contract by one Annasamy 1854 to the Pagoda for the grass growing on the Nanjey land mentioned in the Plaint.

N An agreement to cultivate the disputed nanjey land in the year 1841 as a "Purakudy" executed by 7th Defendant to the Pagoda

O An agreement entered into in 1841 by 2d & 3d Defendants to cultivate the Nanjey land upon receipt of 25 Kalams per cent the said per centage being Purakudy Varam

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3

the Pagoda for the enjoyment of the Cocoanut topes mentioned in the Plaint.

S Moochilika given by 5 Defendant in 1853 to the Pagoda to cultivate the Nanjah land and to pay annually to the Pagoda 70 Kalams.

T (Moochilika) Rent bond executed by 1st Plaintiff to cultivate the land mentioned in the Plaint given to the authorities of the Rajah of Tanjore dated April 1856.

7. The 1st Defendant filed exhibit II

The order of Government dated 16 January 1857.

Appointing him Commissioner

Exhibit III

An Extract from the diary of petitions (without date) presented to the Commissioner referring Plaintiffs to a civil suit.

8 The 2d Defendant filed

1. An Extract from the pymaish account of Fasly 39 to show that at the date of the survey in that Fasly certain of the Nanjey lands belonging to the Pagoda were entered with the names of the individuals having the plough right (Ulavadai) the sort of right contended for by Defendants as distinct from the Purakudy right.

IV Copy of a deposition given by 1st Plaintiff before

the

that for Rupees 60 the Plaintiffs (1st Plaintiff) presu= !!!
=mably) property was collected that the former contract
having escpired, the land was given on a three years contract not pro
term to 1st Plaintiff, also that Defendants, in 1856,
entered upon Plaintiffs contract land of which cir=
=cumstance he made a report to the Tasildar and to 3 in (4)
the Palace authority over the Pagoda department that
the topes were in Plaintiffs possession for 15 months
but that they did not enjoy the Nanjey. But before this
contract, a contract was given to Muroogapillay.

1st Joint witness, Chokalingapillay Government 1st joint wit
accountant, deposed that he was sent to take the
measurement of the crop of the 67 fusly that he went 1855
with the Peshkar and put the crop in the charge of
Muroogapillay that the crop amounted to 82 kalams
6 5/8 Marakals, that Murugupillay is a cultivator &
Mirasidar of the village but does not know whether
he is Mirasidar of the land in question.

2d Joint witness deposed that he had been
a kurnam in the village since 1858 that in that
year he was ordered to Zuft the produce of the
cocoanut topes which he did, but that he does not
know any thing of the Nanjah and Punjey.—

Defendants

Zft 2

10 Defendants 1st witness, Aya Torai=
=sastry, deposed that he does not know
upon what right Defendants claimed
to cultivate the land, but that 2nd De=
=fendant has cultivated half of the whole
of the Pagoda lands, and the 4th De=
=fendant half for 15 years.

Defendants 2d witness, Subrama=
=nya Pillay, deposed that the 2nd De=
=fendants father and 4th Defendants
father and the 5th 6th and 7th Defend=
=ants, have, since the land came to the
Pagoda, enjoyed the right of culti=
=vating, and that they and their heirs
did so, that he has known this for
40 years, that the Pagoda land was

Defendants

Defendants ancient land, that being
on under cultivator of the Village, he
knows the circumstance, also that De:
fendants have got a right to cultivate
the Punjah land belonging to Pagoda.

For 8th Defendant, 1st witness' ∴ 1st Deft's
evidence is of no use. Evidence

2d witness deposed that, one day in
Rakchasse in the month of Vyasy, the 4th De:
:fendant called the 8th to object to the Plaint:
:iffs entering upon the land which he (8th De:
:fendant) declined to do.

The points to be determined are first Issues.
Whether 1st Defendant, as Commissioner, was who 1st Dept
bound to give effect to the agreement between the
authorities of the Rajah of Tanjore & the 1st Plaintiff

by

10c

by putting Plaintiff in possession of the land

Secondly. Whether, as Collector, he
ought to be responsible in the amount sued for
enforcing payment of the rate stipulated
in the Moochilika (counter agreement) given
by 1st Plaintiff.

Thirdly. Whether the other Defendants
were justified in keeping Plaintiff out of
possession of the land.

The order of the Civil Court of the
31st December 1858 upon the summary appeal
in deciding that there was cause of action
against the 1st Defendant, as Commissioner
and Collector, must also be taken to have
determined, that in his former capacity, 1st
defendant was amenable to the Court
moreover the suit had gone on to even the
final hearing before the late Sub Judge
without any thing on the record to show that
the plea of non amenability had been ac:
cepted.

13. Public officers as Collectors of
Customs and of Revenue and Magistrates
are

are only liable to be sued in the Courts for acts done without power or against their powers as laid down by Regulations -

14 But the Commissioner for settling the affairs consequent upon the death of the Rajah of Tanjore acts according to the immediate will of the Government and no rules by which he is to be guided are known -

9 Act T. Note 1?

15 It having been decided that he is amenable to the Court, the rule applicable to any other heirs or successor must be applied, and as such the 1st Defendant would be bound to pay all lawful debts and to carry out the agreements entered into by his predecessor to the extent of property inherited -

16 This is an action for damages; Plaintiffs would have realised Rupees 459 - 10 - 7 by the enjoyment of the land for two years and their estimate with the exception of a certain 40 Rupees for horse gram said to have been taken away has not been controverted. 1st Plaintiff contracted for 3 years excepting the cocoanut tree topes which he enjoyed for one year

what law?

1st does not been proved -

year, 1856, he did not get possession of the Nansey at all but the full amount for two years, 1856 & 1857, of the Moochilika he gave to the authorities of the Rajah has been collected from him under penalty of his property being attached -

decree

17 The 1st Defendant as commissioner and in that capacity as successor to the Rajah of Tanjore is decreed to pay to Plaintiffs 459 - 10 - 7 less Rupees 43 Rupees 416 - 10 - 7 with interest from this date -

18 When the estates of the Rajah of Tanjore were taken charge of by the Commissioner on the part of Government, it appears to have devolved upon the 1st Defendant as Collector to collect, as any other Revenue, the revenue from this land for the use of the Pagoda - for though belonging to the Rajah of Tanjore its fruits had been granted to the Pagoda - Plaintiffs would stand in the same place as land owners with the revenue Pattahs in their name the Collector would look to them for the -

how to?

when?

payments of the assessments although they might have sub let the land to tenants who would not pay them.

19 The Collector was not required under any regulation to give Plaintiffs possession of the land, he was only bound to reinstate them if dispossessed and usually for deciding possession occupation is looked to more than title.

20 Before this Court it has not been proved that Plaintiffs ever got possession of the Nansey land, but the evidence, that they did enter upon and enjoy the cocoanut tree topes and the arable land either under or having the name of an old oil tree Tope is consistent.

21 It does not appear from the record what complaint Plaintiffs made to the Collector, A, B, & C are petitions to the Revenue Board against the Commissioner, reference in A is made to some order of the Commissioner, but no copy of it has been filed.

not proved

22 D is an endorsement by the 1st Defendant as Acting Collector upon these Petitions referring Plaintiffs to a Civil Court.

the business of Plaintiffs to make out a right to eject old occupants.

27 As the evidence stands the Defendants have proved long occupation and from this in the absence of counter proof their permanent right of cultivation of the Nansey may be presumed.

11 28 As to the Nansey and Topes there is the difference, that Defendants have not claimed any right over them while it is proved that Plaintiff occupied them for some time and it is asserted by them that they were forcibly ejected. It is probably clear that they gave them up probably because they could not also get the Nansey land but that they were disturbed in their enjoyment by Defendants is only stated generally by one witness. the first.

29 The 7th Defendant had before given a Razinamah as against defendants from 2 to 6 and against Defendant 8, this suit is dismissed with costs as also it is against Defendant as Collector, but 1st Defendant,

4 of 1st Defts. 2 to 6 Res

& 1st Defts as Coll. his wages but as found.

as Commissioner, is decreed to pay Plaintiffs Rupees 416-10-7 with the Costs incurred by his having been made Defendant-

27th May 1861.

/Signed/ R. B. Swinton
Sub Judge

/Copy/

Government Agent.

6/

11 apparently after some enquiry into the case, but the Collector is not to be made a defendant in a Civil Suit in order that the correctness of his judgment may be tested - The 1st Defendant, as Collector, is exonerated and the suit as against him dismissed.

as to 1st exempted

23. As to the 3rd point laid down for decision, there is very little oral evidence. The Plaintiffs' witnesses have said nothing about it, they without referring to other matters only know that 1st Plaintiff newly took the contract for the Pagoda land and got possession of the Punsey and Topes, but was opposed when trying to cultivate the Nansey, of the Joint witnesses the Accountant might have been expected to know something of the respective rights of the Pagoda authorities and Defendants but he states that he does not.

does not affect Plffs

24 Defendants 1st and 2nd witnesses know that the 2nd and 4th Defendants have for a long period (the 1st says for 15 the 2nd for forty years) cultivated the land and that

this.

they were the ancient proprietors of it -

25 Of the exhibits for Plaintiff exhibits from A to K and O have not been proved, and they are not documents of that public nature to be admitted without proof, the objection was brought to the notice of the Court by the Defendants Vakeel at an after hearing for explanation and argument with Plaintiff present, all the proceedings having been closed before the present Sub Judge took up the suit but it also appears from a note made by the late Sub Judge on the hearing paper that this fact was before noticed. Exhibits not proved

26 Vakil for 1st Defendant urged that it having been admitted by Defendants 2 to 8 that the land belonged to the Rajah of Tanjore, the burthen of proof of their peculiar title of permanent tenancy lay upon Defendants, but this is doubtful if it is so common a thing for land to be said to belong to one man yet for another to have rights over it is inconsistent with a full ownership, that it appears to be as much work

Order 31st July 1861. 146

Forwarded to the 1st Pleader for early report as to the advisability of appealing and the sufficiency of the prefixed petition. If Mr Dale advises an appeal, he will furnish the Petr in any way he deems necessary.

J B Norton

To The 1st Pleader

Secy to Govt

Rec 27 April 58 - No 21025
28 March - 12913
24 April - 384-46047
5 May - 879
16 " - 19016
30 " - 304

Political Department

1861

Jan 30 S.C. No 365.

The Government Agent
Tanjore

The Chief Secretary
to Government
Fort St. George

Dated 27 Jan 1861
Rec'd 31 Jan 1861

No. 251.
Enc: 2
No. ~~1249~~ 351-

Reporting the circumstances connected with a Dacoity reported in Dy No 11 of 1858 & requesting orders in the subject

William Elder

18

Extract
28

Political Dept. 8

Proceedings of the Madras Govt.

Read the following letters:

From the Govt. Agent at Tanjore (Dated 27 July 1861 - No 257)

From the Govt. Pleader Sudder A dálat (— 6 August — No 141.)

Order thereon — 10 August 1861. No 356.

In accordance with the advice of the Govt. Pleader that the decree passed by the Subordinate Judge in the Suit referred to should not be permitted to stand unimpugned, the Govt. resolve to forward to the Govt Agent at Tanjore a copy of his Dated letter with the original Memorandum of Appeal which accompanied it, and to authorise him to prefer accordingly an appeal against the said decree, and to conduct

conduct the same at the expense, and on behalf of Government. In presenting the appeal Petition to the Civil Court, the Agent will satisfy himself that the facts referred to in his Daily Memorandum are correctly stated.

J. D. S

To the Govt Agent at Tanjore.
with original Memo of Appeal } 12/8.
a Govt Pleader.

D. W. S.

Political 1861 Departt.

No. 356.

Proceedings of the
Madras Government
Dated 10th August 1861.

18C20