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Revenue Department

Minutes of Consultations

30th June 1857

Back Numbers 22-23

Order No 647 dated 26th June 1857

பரத்தாய்வு பிரிவு

செப்பனிடுபவர் பெயர்

செப்பனிடுவதற்காக எடுத்துக் கொள்ளப்பட்ட நாள்.

செப்பனிட்டு முடித்த நாள் 7/1/07

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மேற்பார்க்கும் முதல் மு. நி. பொ. எ. கையொப்பம்

சரிபார்க்கும் உ. நி. பு. எ. கையொப்பம்

தலைமையாசிரியர் உதவியாளர் கையொப்பம்

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REVENUE DEPARTMENT.

No. 617.

Extract from the Minutes of Consultation under date the 26th June 1857.

Read the following letter from the Government Pleader.

Submtting his opinion in regard to a suit referred to in Extract Minutes Consultations 14th and 19th May 1857. (Here enter 3d June 1857, No. 54.)

In this letter, the Government Pleader submits his opinion on Suit No. 3 of 1857, on the file of the Subordinate Court of Salem, as required in Minutes Consultation dated 14th May 1857, No. 452. The suit is against the Collectors and District Engineers of Salem and Trichinopoly, and its object is to prevent the excavation of a channel from the Curvauttaur, above the recently restored Andipoorum annicut in the Salem District, for the better supply of the Moorungay Coluttoor tank in Trichinopoly.

Ex. M. C. 14th May 1857, *No.* 452.

2. The Board, in their Proceedings dated the 27th April, took exception to the plea introduced in the draft answer submitted by the Collector of Trichinopoly, "that he is in no way liable for the acts of the Engineer Department." They have adduced good reasons for giving the Collector a prominent position in the defence of such suits, but the Government Pleader gives it as his opinion that "the patty by whom the act complained of has been performed, should be the defendant" and that, "in suits against officers of Government, none should be made parties, excepting those that are really answerable for the act." Mr. Dale has satisfactorily explained the difficulties which would have to be overcome in attempting to pursue the course proposed by the Board, and the Government therefore concur with him in the view he has taken of the subject, but they direct that whether a party to the suit or not, the Collector shall always render every assistance in his power in the conduct of suits, in which the interests of Government are involved.

3. The Board next urge that the Government possess an absolute right over rivers and streams, and make it a ground in the draft answer for requesting the Court to dismiss the suit. Mr. Dale thinks it prudent not to raise the question, as it should be settled by Legislative enactment. The point has already been adverted to in para. 5 of Mr. Secretary Bourdillon's letter to the Madras Member of the Legislative Council dated 9th August 1856, and it was resolved in para. 2 of Extract Minutes of Consultation of the same date, that it should receive consideration with the separate draft Act providing for the liability of Zemindars and others to a share of the cost of Government improvements by which they benefit, which was then under preparation by the Board of Revenue. The Board have submitted the draft with their Secretary's letter of the 5th Instant, and it will be brought on record hereafter; and the subject of the right in rivers and streams will in connection with that draft be laid before the Legislative Council. The Government are disinclined to raise the question in a Court of law at present.

4. The other point to be noticed in connection with the suit is the injunction issued by the Salem Subordinate Court against the progress of the work connected with the channel in question. The Board remark that no such injunction ought to have been issued on the mere application of the Plaintiffs, and without any previous enquiry, as was apparently done. Mr. Dale explains the law of injunctions at some length, and remarks that the present case is a further illustration of the want of a Circular Order defining the terms on which injunctions are to be granted. Mr. Dale will be good enough to point out the course it will be advisable to pursue in order to procure the issue of a Circular Order of the description alluded to, and to obtain some limit to the grant of such injunctions.

5. In regard to the injunction issued in the case immediately under notice, Mr. Dale suggests that Lieutenant Ryves, the District Engineer of Trichinopoly, be consulted, whether the stoppage of the works is likely to lead to injury, and if he is of that opinion, Mr. Dale would advise that an appeal to the Civil Court be preferred in the same manner as was done in suit No. 98 of 1852, on the file of the Subordinate Court of Madura; an official copy of the order of the Civil Court of that District, passed in the suit alluded to, withdrawing an

Vide Bd.'s letter dated 16*th May* 1857, *No.* 1605.
Ex. Min. Consultation 19*th May* 1857, *No.* 473.

injunction of a similar nature, being laid before the Court at Salem, as an authority for the Civil Judge's guidance. The Government observe from para. 6 of the Board's Proceedings of 27th April 1857, that the channel from the Curvauttaur was almost completed before the injunction reached Lieutenant Ryves. The Board will however ascertain through the Collector, and report, whether the work has been altogether completed, and if not, whether the injunction will prove injurious in any respect. If completed fully, it will be unnecessary that the Civil Court should be moved to remove the particular injunction.

6. Mr. Dale proposes that the District Engineer of Trichinopoly alone should put in a defence on the merits, and that the other defendants should plead points of law, viz. that the Collector and District Engineer of Salem should plead that the channel in question is not in that District, and that therefore they had and could have nothing to do with it, and that the Collector of Trichinopoly should urge that the Salem Court can have no jurisdiction in the matter, as the cause of action arose in Trichinopoly, and he himself resides there. Mr. Dale also submits drafts of answers to be filed by these officers severally. The Right Honorable the Governor in Council approves them, and grants authority for the defence of the suit in the first instance at the public expense; but will determine when a copy of the decree is furnished whether the costs, if any be adjudged against any of the public officers included in the suit shall be borne by them or by the Government.

7. In the Postscript to their Proceedings, the Board request to know, 27th April 1857. with reference to Minutes Consultation of 24th April 1857, No. 775, whether, under the explanation afforded in their Proceedings, the suit shall be defended by the Collector of Trichinopoly, or left to the Collector of Salem, as directed in the above order. The Government did not intend, by the order in question, to give Mr. Brett any prominence in the defence of the suit. It was thought that it would give facility for the conduct of the defence if it were entrusted to the Collector of the District in which the Court is situated. Now that separate answers are to be filed, it will be sufficient for the Defendants severally to give a Vakalutnamah to the Government Vakeel, with instructions to file the answers above approved of, and to conduct the suit.

8. A copy of Mr. Dale's letter will be furnished to the Board of Revenue for their information.

(A true Etxract.)

(Signed) H. FORBES,
Acting Secretary to Government.

In the Court of The Subordinate Judge of Salem

3t

In Original Suit No. 3 of 1857 wherein

1 Appoorien
2 Narasanien
3 Sashien
4 Baulavien
5 Venkatachella Reddy
6 Verama Reddy
7 Arnachella Reddy
8 Coondanacharry
9 Ramanacharry
10 Nullamaroothun
11 Caumalcheegounden
Ryots of the Village of Anda-poorum in the Namkul Talook

are the Plaintiffs

1 J. Sherry Esquire lately Acting Collector of Salem
2 Lt. Lyahaghan The District Engineer of Salem
3 J Bird Esqre Collector of Trichinopoly — And
and 4 Lt. J. Ryves District Engineer of Trichinopoly

are the Defendants

The Answer of John Bird Esquire the Collector of Trichinopoly and one of the Defendants above named to the plaint preferred by the said Plaintiffs and presented on his behalf by Vakeel

I. This Defendant not confessing or acknowledging all or any of the matters or things to be true as in and by the said Plaint are mentioned and set forth and reserving to himself all right of Exception to the said plaint saith as follows

II This Defendant submits that this Court ought not to have or take further Cognizance of this Suit, as against this Defendant, because he saith that the supposed causes of Action in the Plaint mentioned, and each and every of them (if any such have accrued to the said Plaintiff) accrued to the Plaintiff beyond the limits of the Zillah of Salem (that is to say) at

This blank inserted

~~Salem (that is to say)~~ at, within the limits of the
Zillah of Trichinopoly, and this the Defendant is
ready to verify as this Honorable Court may direct

III And this Defendant further Submits
that this Court ought not to have or take further
Cognizance of this Suit, as against this Defendant,
because he saith that at the time when this
Suit was commenced, he this Defendant did not
reside as a fixed Inhabitant within the limits of
the Zillah of Salem; but that at that time, he
this Defendant resided, and still does reside, as a
fixed Inhabitant at a place called
within the limits of the Zillah of Trichinopoly, and
this he is ready to verify wherefore he prays the
Judgment of this Honorable Court whether this Court
Can or will take further Cognizance of this Suit

IV And this Defendant further Submits
that he is not a proper or a necessary party to
this Suit, for he says that the Order & Cat the
Channel in the plaint mentioned, was not given
by this Defendant, nor had, or has, he any Control
over the same, or over the Acts of the Engineer —
Department; nor has he interfered in the Cutting
thereof in any manner whatsoever; wherefore he
Submits that, as against him, this Suit ought
to be dismissed with his Reasonable Costs and
Charges in this Suit sustained.

V And this Defendant Submits that there is not
any other matter in the said plaint Contained, material
or necessary for him to make answer unto, and not herein
well and sufficiently Answered or denied. And he prays that
the said Suit may be dismissed out of your Honorable
Court with Costs.

Salem
June 1854

Sub. Court - Salem

O.S. No. 3 of 1857

Approver
& others

vs

J.M. Cherry Esq.re
& others

Draft
Answer
of
3rd Defendant

John Bird
Esquire

2 R 652/57

Dale
Govt. Pleader S.A.

5K

In the Court of The Subordenate Judge of Salem

In Original Suit No. 3 of 1857. wherein

1 Appoovien
2 Narasanien
3 Sashien
4 Baularien
5 Venatachella Reddy
6 Verana Reddy
7 Arnachella Reddy
8 Coondanacharry
9 Ramanacharry
10 Nellamoothun
11 Casinatchey ounden Pyte of the Village of Anda poram in the Nambul Talook

are the Plaintiffs

and

1 J W Cherry Esquire lately Acting Collector of Salem
2 Lt. Gahagan The District Engineer of Salem
3 J Bird Esquire Collector of Trichinopoly — And
4 Lt. J G Ryves District Engineer of Trichinopoly

are the Defendants

The Answer of Joseph Gore Ryves Esquire The Engineer in charge of the District of Trichinopoly and one of the Defendants above named to the Plaint preferred by the said Plaintiffs and presented on his behalf by Va Reel

I This Defendant not confessing or acknowledging all or any of the matters or things to be true as in and by the said Plaint are mentioned and set forth, and reserving to himself all right of Exception to the said plaint saith as follows.

II This Defendant submits that this court ought not to have or take further cognizance of this Suit, as against this Defendant, because he saith that the supposed Causes of action in the plaint mentioned, and each and every of them, (if any such have accrued to the said Plaintiff) accrued to the Plaintiff beyond the limits of the Zillah of Salem, (that is to say) at, * within the limits of the Zillah of Trichinopoly - and this the

* Insert here the name of the place -

Defendant is ready to verify as this Honorable Court may direct.

III. And this Defendant further submits that this Court ought not to have or take further Cognizance of this Suit as against this Defendant because he saith that at the time when this Suit was commenced he this Defendant did not reside as a fixed Inhabitant within the limits of the Zillah of Salem but that at that time he this Defendant resided, and still does reside, as a fixed Inhabitant at a place called within the limits of the Zillah of Trichinopoly and this he is ready to verify wherefore he prays the Judgment of this Honorable Court whether this Court can or will take further Cognizance of this Suit

file in this Court

IV But if this Honorable Court should consider that the suit ought to be proceeded with on its merits then this Defendant further submits to the Judgment of the Court as a question of law that Judgment should be awarded against the said Plaintiffs because he saith that they state themselves to be Ryots of the Village of Indapoorum, and claim this Court's interference on the ground that they have a prescriptive Right (Mamool) to the supply of water to their Village by means of the Anicut mentioned in their plaint, and this Defendant submits that to entitle themselves to claim under a prescription (Mamool) the Plaintiffs must prove that the Anicut they refer to, has been enjoyed by them, in the state that the same is now in for a sufficient length of time to give to them a prescriptive Right, whereas this Defendant avers, that the Anicut to which the Plaintiffs refer, has not been enjoyed by them in the State in which the same is now for

more than 2 years; for this Defendant says that in the year 1855 the said Amicut was greatly altered by the 2nd Defendant, under Orders, or with the sanction, of Government for the purpose of improving the supply of water to the Village of Andapoorum.

V By means of such alteration a very large proportion of the water from the River Caravattaur is turned by into that Amicut; and flows into the Tank of the Village of Andapoorum, and even after that Tank is full, the water continues to flow from the River above the Amicut, and Evaporating over the Calingala of the Andapoorum Tank runs to waste. Moreover by means of such alteration the supply of water to the Village of Moorooga Kolluttoor has been greatly impeded, and large portions of the land in that Village have been thrown out of Cultivation; and it was for the purpose of Remedying the injury thus inflicted on the Villagers of Moorooga Kolluttoor and restoring to them their just rights of which they had been deprived by the alterations before mentioned as made by the 2nd Defendant to the said Amicut, that it was proposed to cut the Channel in question; and by which Channel, if completed, no injury would have accrued to the Plaintiffs, care having been taken to regulate the supply of water to the Tank of the Village of Moorooga Kolluttoor, so as to ensure an abundant and Equitable supply of water to the Tank of the Village of Andapoorum.

VI The Plaintiffs do not allege that they have sustained any injury by the cutting of the Channel, nor do they shew in what manner any injury could arise to them.

VII And this Defendant submits that there is not any other matter in the said Plaint contained, material or necessary for him to make Answer unto, and not herein well and sufficiently

Answered

Sub. Court Salem

Q. S. No. 3 of 1854 10 ✝

Answered or denied. And he prays that the said suit may be dismissed out of your Honorable Court with Costs. And this Defendant further prays that this Court will be also pleased to punish the Plaintiffs for frivolous litigation.

Salem
Since 1854

Q ✝

Sub.t Court Salem

O.S. No. 3 of 1854 10K

Appoorvien
& others

Vs.

J. W. Cherry Esq.re
and others

Draft
Answer
of
4.th Defendant

Lt. & Sl.
Ryves

3 R 652/54

Date
Gov.t Pleader S.C.

In Original Suit No. 3 of 1857 wherein

1 Appoovien
2 Narasamien
3 Sashien
4 Baulavien
5 Venkatachella Reddy
6 Veerama Reddy
7 Arnachella Reddy
8 Coondamacharry
9 Ramanacharry
10 Nullamaroothen
11 Cannatheegounden
Ryots of the Village of Anda
poorum in the Nam Rul Talook
are the Plaintiffs

And

1- J M Cherry Esquire late
Acting Collector of Salem
2d Lt Gahagan the District
Engineer of Salem
3d J Baird Esquire Collector
of Trichinopoly — And
4 Lt J G Pynes District
Engineer of Trichinopoly
are the Defendants

The joint and several answer of John Wm Cherry Esquire who was lately Acting as the Collector of Salem, and Theodore Emelius Gahagan the Acting District Engineer of Salem, Two of the Defendants above named to the Plaint preferred by the said Plaintiffs and presented on their behalf by Vakeel

I. These Defendants not confessing or acknowledging all or any of the matters or things to be true as in and by the said Plaint are mentioned and set forth and reserving to themselves all Right of Exception to the said Plaint say as follows-

II. They submit to the Judgment of this Honorable Court that they are not proper or necessary parties, nor is either of them a proper or necessary party, to this Suit; because they say, that the Channel referred to in the said Plaint, is not situated within the limits of the Zillah or District of Salem, but such Channel is situated at within the limits of the Zillah of Trichinopoly and therefore such Channel is out

This Stamp must be properly filled

of the District and beyond the power of these Defendants and the order to cut the said Channel was not given by these Defendants, or either of them, nor had, or have they, or has either of them, any control over the same; or over the acts of the 4th Defendant; nor have they, nor has either of them, interfered in the cutting of the said Channel, in any manner whatsoever, wherefore they submit that, as against them, this Suit ought not to be further maintained or prosecuted

III And these Defendants submit that there is not any other matter in the said Plaint contained, material or necessary for them to make Answer unto and not herein well and sufficiently answered or denied. And they pray that the said suit may be dismissed out of your Honorable Court with Costs. And these Defendants further pray that this Court will be also pleased to punish the Plaintiffs for frivolous litigation.

Salem
June 1854

Sub^n. Court – Salem

O.S. No. 3 of 1857

13K

Appooven
& others

vs

J Mcherry Esq^r.
& others

Draft
Answer
of
1^st & 2^nd
Defendants

J Mcherry Esq^r.
&
Lt. Gahagan

R 6-2/57

Dale
Govt. Pleader S&C

No. 54

14

From Clement Dacle Esquire Government Master Sudr Udalut

To Henry Forbes Esquire Actng. Secretary to Government

Madras 2nd June 1859

Sir

Para 1 I have the honor to acknowledge

M/C 14th May 1859 No. 452 Revn. Deptt. receipt of the extract
" 19th May 1859 No. 473 Revn. Deptt. from the Minutes of

Consultation Noted in the Margin

2. The great difficulty I have experienced has been regarding the Officer who ought properly to be made the Defendant. From many great force on the observations made by the Board of Revenue and I admit it might be very desirable, that in such suits, of a character similar to that now under consideration, the Collector of the District should be the Defendant; and the Engineer Officers should remain available as witnesses, but unfortunately a difficulty may arise in enforcing obedience to this Opinion. -

3. The Engineer Officer, is the Party under whose immediate Order and Superintendance the Act complained of has been performed; he is as I understand now under the Orders of the Department of Public Works; and not as formerly under the Collector; and that the Collector is

no

no longer answerable for the Acts of the Engineer Department.

4 Doubtless the party guilty of the act, is the party ostensibly answerable, and should be the Defendant.

5 It therefore does appear to me, to be fraught with same difficulty, to frame iny an answer an averment, which could be supported, that the Engineer Officer is not the proper party to be made Defendant; the only ground for putting forward such an answer to a suit could be, that the Engineer Officer is a mere Subordinate to some Superior, performing duties assigned to him by such Superior, and in the Organization and Carrying out of which, he (the Engineer Officer) had nothing to do, nor any control or discretion, and for the doing of which such Superior was alone responsible. Now supposing for the sake of argument, that such would be a good ground for dismissing the suit against the Engineer Officer, who could be named as the Superior under whose Orders the Engineer Officer so acted? It would appear that, with a due regard to truth, it could not be averred that the Collector is the party so responsible - the question then arises, who is? Is it the Chief Engineer? and if so, are parties aggrieved to be compelled to have resort to the Government? for to no other Court is that Officer amenable.

The foregoing are some of the difficulties which would have to be overcome in attempting to pursue the Course suggested by the Board.

7

15 K 13

1- The Board do not allude to Act No. 1 of 1855, under which one party to a suit may examine another Party as a Witness; Nor to Act No. 2 of 1855, whereby a Party to a Suit may give Evidence on his own behalf.

8. In those cases in which the Act Complained of, has really been bonâ fide done under the sanction of Competent Superior Authority; and therefore it is a case in which the Government would defend the Officer, and hold him harmless from the consequences no practical difficulty would arise, whether the Collector, or the Engineer Officer were the Defendant.

9. If however a case were to arise, in which an Engineer Officer proposed Work mala fide, and obtained sanction overstrong or improper data, and thereby Parties were really aggrieved, Government would of course leave such Officer to bear the Consequences; but if the suggestion of the Board were adopted, and the Engineer Officer is not to be made Defendant, but the Collector is, how could the Engineer Officer be made immediately to bear such consequences? of course as a Military Officer he would be amenable to a Court Martial; but that is foreign to the subject now under consideration.

10 This point is deserving of grave consideration, as by the course adopted in the present case, all further proceedings may be

more

more or less affected.

11. I have therefore deferred sending in my report, with the view of giving the point more mature consideration, and after weighing the subject in all its bearings, I submit for the consideration of the Right Honorable the Governor in Council as my opinion, that in suits of a character similar to that now under consideration, the party by whom the Act complained of has been performed, should be the Defendant

12. It is an object that in suits against Officers of Government none should be made Parties, excepting those that are really answerable for the Act complained of

13. If therefore the Collector has now no longer any power over the Goods of the Importer, is not in any way answerable, or accountable for them, he should not be made a Defendant; and if His Lordship in Council approves of the views I have put forward, I would advise that Mr Bird and Mr Cherry should so answer

14. Whether a Party to the Suit or not, Collectors should in all cases afford all aid in getting up the case or defence, both personally and by their Establishments.

15. I now proceed to consider the injunctions so far as I can learn, the granting of injunctions by the Mofussil courts is a modern introduction, Copied as I suppose from the Courts of Chancery in England and Ireland, and Her Majesty's Supreme Courts in India, sitting in their Equitable

Jurisdiction

Jurisdiction; Mr Parker, in his Letter to the Board of Revenue under date the 3rd July 1852 Paras 4 and 5, has commented on the subject, and shewn the evils which are likely to arise from an indiscriminate and injudicious use of this practice; and it appears to me, the present case is a further illustration of the want of a Circular Order, defining the terms on which injunctions are to be granted

16 Formerly the injunctions issued by the Courts of Chancery and Supreme Courts, were of 2 kinds "the common injunction" and the special injunction"

17 The common injunction is no longer granted; I however refer to it, for the purpose of shewing that even that was not issued without the knowledge of the Defendant, and that he had power of preventing the injunction from being issued, unless the Plaintiff adduced evidence to the Court in support of his case. It was issued under the following circumstances, In cases where the issue of the injunction was not considered by the Plaintiff to be Emergent for a short time, the Plaintiff might not move for a special injunction immediately after filing his bill, but having in his Bill laid the grounds wherein he considered himself entitled to an injunction, he prayed that one might be issued; and if the Defendant did not appear or answer within the period allowed by the Court, the injunction issued by the Officer of the Court on the application of the Plaintiff, and without Evidence as to the merits, but of course the Defendant was aware of the

Grounds of Complaint

grounds alleged in, and the prayer of the bill,
and Knew the practice of the Court.

18- The Special injunction is sometimes
granted Ex parte, and without Notice. This is generally
in Cases of great Emergency, but the Plaintiff must
support by Affidavit, the case made by his bill
to the satisfaction of the Court, and unless he does so,
the Court will not grant the injunction.

19- Doubtless in many Cases, injunctions
are granted by Courts of Equity which never should
have been so. if such be the Case, where such
precautions are taken, it follows that the practice
which grants injunctions without any Evidence
at all, but merely on the bare assertion of an
interested party, who cannot be punished for his
fraud, must be a pernicious one; and it requires
no argument to shew, that such a practice
requires to be forthwith altered.

20 I cannot follow the views enunciated
by Mr. Parker in Para 5, to their full Extent, but
I do consider that in cases like the present, the Courts
should not be permitted to interfere with the
Execution of publics Works, except on the clearest
and most satisfactory Evidence, of an irremediable
injury being about to be committed.

21- As Regards the injunction issued in
the Case now under consideration, I would advise
that Lieutenant Ryves be consulted, whether the
stoppage of the Works is likely to lead to injury,
and if he is of that opinion, I would advise
that an appeal to the Civil Court be preferred, in
the same manner as was done in the Madura
Case;

17

and an Official Copy of the Order of the Civil
Court of Madura might be laid before the Court at
Salem as an authority for the Civil Judges guidence.

22 It only now remains to be considered the
nature of the defence to be put in by the several
Defendants. 17K

23 I should advise that Mr. Cherry and Lt.
Gahagan should answer by themselves; I enclose
a form of Answer for consideration.

24 I deem it desirable that Mr. Bird and
Lt. Ryves, should each put in a separate Answer;
I enclose drafts for consideration; the Answer of Mr.
Bird may require alteration, should His Lordship
in Council not agree with the views I have
submitted above.

25 His Lordship in Council will observe, that
in Lt. Ryves' Answer alone, I put forward a defence
on the merits; I consider it unnecessary to repeat
such defence in the Answers of Defendants who
are not necessary or proper parties, and
that they are not necessary or proper parties; and
the defence once raised, the Court (if it proceeds on
the merits) must go into the whole case as set up
by the Pleadings.

26 His Lordship in Council will also remark
that I have not raised the question regarding the
power of Government over Rivers. I understand
it is contemplated that this question should be
settled by Legislative Enactment, and as I do not
consider it necessary to raise the point for the
defence of this Suit, I have deemed it the most
prudent and advisable course, not to raise the
question; and I have been further influenced by the

Consideration

Consideration that this Suit could not be appealed as of right, to Her Majesty in Council, and in raising questions of law of such weight and magnitude I consider it more desirable they should be raised, if possible, in a suit wherein an appeal to Her Majesty in Council would lie

2d. I return all the papers which accompanied the Extracts from Minute of Consultation noted above

I have the honor to be

Sir,

Your most Obedient Servant

Wm. Clark

Gov.t Pleader

197-17

We Do[illegible] opinion appears
to Sound one so far as
Hon.- judge of the Courts
the case -

the District Court is
Clearly not under the
orders of the Collector.

Tho: Le may Substitute
what law they Legally
Either Exclusively or Cumulatively

Rev Dept

19

No 647

D K

Extract from the Minutes of Consultation

Under date the 26th June 1857.

Read the following letter

from the Government

Pleader Sadr Adalut

(November 3d June/57 No 54)

In this letter the

Government Pleader sub-

mits his opinion on suit

No 3 of 1857, on the file of the

Subordinate Court of Salem,

as required in Mine Cons.

dated 11th May 1857, No 452.

The suit is against the Col-

lector and District Engineer

of Salem and Trichinopoly

and its objects is to prevent

the

the excavation of a clean
-nel from the Curvanthaur,
above the recently restored
and improved Anicut
in the Salem District,
for the better supply
of the Moorungay Colut
toor Tank in Tinchinopoly

2 The Board in their
Proceedings dated the
27th April took exception E. No. 60. 14th May 1857 No 457
to the plea introduced
in the draft answer
submitted by the Col-
lector of Tinchinopoly,
"that he is in no way
liable for the acts of
the Engineer Department"
They have adduced no
good reasons for joining the
Collector a prominent

position

92

the defence of
positions in such Suits,
but the Government or
Pleader gives it as
his opinion that "the
party by whom the
act complained of has
been perpetrated, should
be the defendant" and
that "in suits against
officers of Government,
none should be made
parties, excepting those
that are really answer-
able for the acts". Dale
has satisfactorily ex-
plained the difficul-
ties which would
have to be overcome
in attempting to pur-
sue the course pro-
posed by the Board,

and

and the Government therefore concur with him in the view he has taken of the subject, but they direct that whether a party to the suit or not, the Collector shall always render every assistance in his power in the conduct of suits in which the interests of Government are involved.

3 The Board next urge that the Government posses an absolute right over rivers and streams, and make it a grounds in the draft answer for requesting

23K

dismiss the suit. Mr. Dale thinks it prudent not to raise the question as it should be settled by Legislative enactment. The point has already been adverted to in para 5 of Mr. Secretary Bourdillon's letter to the Hon'ble Member of the Legislative Council dated 9th August 1866 and it was resolved in para 2 of Govt. Min. of the same date that it should receive consideration with the separate draft act providing for the liabilities of Zemindars and

others for a share of the
cost of Govt. improve-
ments by which they en-
hanced, which was
then under consider-
ation by the Board
of Revenue. The Board
have submitted the
draft with the Se-
cretary's letter of the
5th Instant, and it
will be brought on
record hereafter, and
the subject will be in
connection with the
draft be laid
before the Legislative
Council. ~~In this~~
~~Stage of Proceedings~~
The Govt are dis-

24K

4. The other point
to be noticed in con-
nection with the suit
is the injunction issued
by the Salem Subordi-
nate Court against the
progress of the work
connected with the
in question.
channel. The Board
remark that no such
injunction ought to have
been issued on the mere
application of the Plain-
tiffs, and without any
previous enquiry as was
apparently done. Mr.
Dale explains the law
of injunctions at some
length and remarks
that the present case
is a further illustration

of the want of a circular order defining the terms on which injunctions are to be granted. Mr. Sale will be good enough to point out whether any and what course it will be advisable to pursue in order to procure the issue of a circular order of the description alluded to and to obtain some limit to the practice of granting injunctions.

2. As regards the injunction issued in the case immediately under notice, Mr. Sale suggests that Govt. Pleader, the Dist. Engineer of Irrigation, be consulted whether the stoppage of the works is likely to lead to injury and if he is of that opinion, Mr. Sale

Vide Board's letter dated 16th May 1857 No. 1605. Ex. Mr. 6. 19th May 1857 No. 473.

the civil Court be referred in the same manner as was done in Suit No. 98 of 1852, on the file of the Subordinate Court of Madura; an Official Copy of the order of the Civil Court of that District, passed in the Suit alluded to, with a drawing, an injunction of a similar nature, being laid before the Court at Salem as an authority for the Civil Judge's guidance. The Government observe from para 6 of the Board's Proceedings of 27th April 1857

that

that the channel from the Current to Bar was almost completed so before the injunction reached Lieutenant Ayres. The Board will however ascertain this the Collector, and report whether the work has been altogether completed, and if not whether the injunction will prove injurious in any respect. If completed fully, it will be unnecessary that the Civil Court should be moved to remove the particular injunction. If

~~the Civil Court granted the injunction the matter would not come before the Court~~

6 Mr Dale proposes that the District Engineer of Richmond only alone should put in a defence on the merits and that the other defendants should plead points of law viz: that the Collector and District Engineer of Baltimore should plead that the channel in question is not in that District and that therefore they

had and could have
nothing to do with it,
and that the Collector
of Erichinopoly should
urge that the Salem
Court can have no
jurisdiction in the
matter, as the cause
of action arose in
Erichinopoly, and he
[illegible] Mr Dale also submits
drafts of answers to be
filed by these Officers
severally. The Right
Honorable the Governor
in Council approves
them, and grants the
authority for the defence
of the Suit in the
[illegible] first

27th
first instance; but
will determine when
a copy of the decree
is furnished whether
the costs if any be
adjudged against
any of the public
Officers included in
shall
the suit, be borne by
them or by the Pet.
& the Postscript
of
Proceedings the
Board request to know,
with reference to
Mad. Cons. of 2d.
April 1857 No 775,
whether, under the
explanation afforded
in their Proceedings,
the suit shall be
defended by the
Collector

Collector of Richmond
or left to the Collector
of Salem, as directed
in the above order.
The Govt did not
intend, by the order
in question, to give
the Distt any pre-
mium in the
defence of the suit.
It was thought that
it would give facility
for the conduct of the
defence if it were
entrusted to the
Collector of the Dis-
trict in which the
Court is situated.
Now that separate
answers are to be
filed, it will be
sufficient

for the Collector
to give a Retainer
to the Proctor
employed to file the
answer approved by
the Board & such
Retainer.

A Copy of
the Board's letter
will be furnished
to the Collector
for his
information.

Dec 26

A Copies to Mr. Dodge of Mr. Pinckney's letter of Dec 8 & Copy of Mr. Dodge's letter of the 8th & Copy of Dec 24
2 — Cov & Reader — 8

22-8-66.

Corr. rec'd 25th Sept.
Ans. Corr. 30th

Copy

Extract Minutes of Corr.:

Copy Journal

Copy Govt. Order to Corr.
of Lds. Abstracted Journ. Page
127

Copy Proc. of Revn. 25th June 65
Plan & Sec.
Do. 9th Jany 58 C.L. 28 & C
Do. 267

Copy Orders on a
letter from the Government
Pleader in regard to Suit No.
of 1865 on the file of the Sub-
ordinate Court of Salem and
Petitioning against the Collect
and Engineer of the 2nd Proc.
from the Chief Engr.
9th Nov. 59. Ops. 2913.

3222+23.

4th June R15th