M.R.O. 14—10,000—21-4-22

MADRAS RECORD OFFICE.

Government of Madras.

Revenue **DEPARTMENT.**

G.O. No. 1533 Press ~~Mis.~~

112-113

Dated 10 - 11 - 1859

Not to be folded or roughly handled

No. 112. Read the following Proceedings of the Board of Revenue, dated 3rd November 1859, No. 4488.

Read the following letter from the Acting Collector of Salem, dated 10th October 1859, No. 202.

(In Con. 12th October 1859, No. 5073.)

Sub Court of Salem.
O. S. 10 *of* 1859.
Vencatacuppien,
Versus.
T. J. Knox, Esq., Acting Collector of Salem, for A. Hathaway, Esq., late Acting Collector.

With the foregoing letter the Acting Collector submits the pleadings in the suit noted in the margin, instituted against him as the successor of the late Acting Collector, Mr. Hathaway.

2. The plaintiff was formerly joint Curnum of the village of Darapoorum in Womalore talook, of the Salem district, but being charged with entering the names of certain fictitious persons, in adhurcast presented by one Nagappa Gounden and others, he was formally tried by the late Acting Collector, under Regulation IX. of 1822, convicted, and sentenced to dismissal from office, and to pay a fine of one hundred and fifty Rupees. Plaintiff subsequently preferred an appeal to the Board against the Collector's decision, but they rejected it, and referred him for redress to the established Courts should he think fit to seek it there.

Board's Pro. 10*th May* 1859, *No.* 1704.

3. He has accordingly now instituted the present suit, praying for restoration to office, a refund of the fine levied upon him, and payment of damages to the amount of 40 Rupees, being the loss alleged to be sustained by him in consequence of his deprivation of office.

4. The Acting Collector proposes in his answer to object to the form of the suit, it having been instituted contrary to the Circular order of the Sudder Udalut of 20th October 1853, as a regular suit against the officer who passed the decision, instead of in the form of an appeal against the decision itself, but if the Court should not see fit to reject the plaint on these grounds, Mr. Knox proposes to plead non-liability under the provisions of Act XVIII. of 1850, the act complained against having been done in good faith, and in the discharge of the late Acting Collector's Judicial duty.

5. There can be no doubt that the plaintiff has mistaken the form of suit, and that the proposed answer of the Acting Collector is the only one he can file under the circumstances: the Board, therefore, recommend that he may be authorised to adopt it, and to conduct the defence, in the first instance, at the public expense.

(A true Extract.)

(Signed) W. HUDLESTON, *Acting Secretary.*

No. 113. ORDER THEREON 10th November 1859, No. 1533.

The order of the Sadar Adálat quoted by the Board clearly lays it down that where a party deeming himself aggrieved by a decision under Regulation IX. of 1822 seeks to recover damages, in addition to the reversal of the sentence, the proper form of action is by original suit. As damages are claimed in the present instance, the Plaintiff appears to have adopted the proper course. The first plea proposed is therefore unsustainable.

2. With respect to the second, viz. protection under Act XVIII. of 1850, the Government do not consider that the Act is fairly applicable to the present case, though literally it may be so. The object of the Act was to protect officers acting in good faith, when inadvertently exceeding the bounds of their authority. To give it the larger application now proposed would be to cut off parties from means of redress specially given to them by various enactments; and in particular, as respects the present case, by Section VI. Regulation VII. of 1828. It is obvious that the Sadar Adálat in 1853 did not regard the Act as having that large application; and in the opinion of Government it ought not to have it.

3. For the foregoing reasons the Governor in Council considers it necessary to defend the suit, if at all, on the merits; and the papers must be remitted to the Board of Revenue for consideration on that point, and for the preparation and submission of a new draft of answer, if a defence should be deemed proper, as it probably will. This delay will make it necessary, in consequence partly of want of promptitude in laying the case before Government, to apply to the Court for further time.

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

No. 4488.

PROCEEDINGS of the BOARD of REVENUE, dated 3d November 1859.

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(In Con. 12th October 1859, No. 5073.)

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O. S. 10 of 1859.
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Board's Pro. 11th May 1859, No. 1704.

3. He has accordingly now instituted the present suit, praying for restoration to office, a refund of the fine levied upon him, and payment of damages to the amount of 40 Rupees, being the loss alleged to be sustained by him in consequence of his deprivation of office.

4. The Acting Collector proposes in his answer to object to the form of the suit, it having been instituted contrary to the Circular order of the Sudder Udalut of 20th October 1853, as a regular suit against the officer who passed the decision, instead of in the form of an appeal against the decision itself, but if the Court should not see fit to reject the plaint on these grounds, Mr. Knox proposes to plead non-liability under the provisions of Act XVIII of 1850, the act complained against having been done in good faith, and in the discharge of the late Acting Collector's judicial duty.

5. There can be no doubt that the plaintiff has mistaken the form of suit, and that the proposed answer of the Acting Collector is the only one he can file under the circumstances: the Board, therefore, recommend that he may be authorised to adopt it, and to conduct the defence, in the first instance, at the public expense.

(A true Extract.)

Acting Secretary.

To
J. D. BOURDILLON, Esq., Secretary to Government, R. D.
Copy to Officiating Collector of Salem.

Exd J. Wright.

20th October 1853.

Sudr Udalut C. O. No. 130.

Read letter under date the 20th September 1853, from the Civil Judge of Guntoor.

1. In the foregoing letter the Civil Judge requests the opinion of the Court of Sudr Udalut, as to whether an appeal preferred under Section VI, Regulation VII of 1828, from the decision of a Revenue Officer under Section V or VI, Regulation IX of 1822, brings before the Court the whole question of the justice of the decision, or merely the legality of the proceedings.

2. The Court of Sudr Udalut are of opinion that the appeal provided for in Section VI, Regulation VII of 1828, is intended to bring before the Court to which it is preferred the entire merits of the judgment appealed from.

3. As it appears from the Civil Judge's letter that the present reference has been made by him in consequence of an appeal having been preferred to him in the form of a Civil Suit against a judgment of the Collector imposing a fine for peculation in the Salt Department, the Court of Sudr Udalut deem it proper to observe that the appeal provided for in Section XVI, Regulation IX of 1822, as modified by clause second, Section VI, Regulation VII of 1828, need not be preferred in the form of a Civil action, which is only necessary in those cases in which the complainant may think fit to file a suit for damages against the Collector on account of any supposed injustice in conducting the proceedings.

4. The Section above quoted (Section XVI, Regulation IX of 1822,) appears to the Court of Sudr Udalut to provide for two courses to either of which a party considering himself aggrieved by the judgment of a Collector under Regulation IX of 1822, on receiving from the Secretary to the Board of Revenue the order referred to in clause second, Section VI, Regulation VII of 1828, remitting him to seek redress in the Court of Adawlut is at liberty to resort, viz: to file an original suit for damages against the Collector, wherein not only the merits of the judgment, but the propriety of the preliminary proceedings is brought in question; and the Court is called upon not only to reverse the decision, but to adjudge the Collector to pay the Plaintiff such personal damages as may be deemed equitable in compensation for the injury which the former represents himself

to have sustained, independently of the judgment passed upon him, from the illegality or impropriety of the proceedings previously held; or if the merits of the decision only are called in question and the reversal thereof the only redress sought, to present a petition of appeal to the Civil Court complaining of the insufficiency of the grounds upon which the judgment has been based and praying for it's reversal.

5. In the latter case, which is merely an appeal from a penal sentence, there is no party who could be entered as a Respondent. The Collector is clearly not in such a position, for there is no claim made against him, and under such circumstances to require the payment by the appellant of an institution fee would be contrary to the established principles upon which appeals from penal sentences are allowed.

6. The Court of Sudr Udalut accordingly resolve to declare that the appeals preferred under the Section above quoted should be presented in the form of motions, and that only in those cases in which damages may be claimed should the party be required to proceed by instituting a regular suit.

P. C.

No. 1533.

Proceedings of the Madras Govt.
dated 16 Nov. 1859.

Read the following
Pro. of the Bd of Rev.

Here enter 3 Nov/59.
No. 4488.

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Sudder Adalat protect by
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The first plea proposed
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2 With respect to the
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under Act 18 of 1850, the

Government do not consider that the Act is fairly applicable to the present case, though literally it may be so. The object of the Act was to protect Officers acting in good faith, when inadvertently exceeding the bounds of their authority. To give it the larger application now proposed would be to cut off parties from means of redress specially given to them by various enactments in particular, as respects the present case, by Section 6 Reg: 7 of 1828. It is obvious that the Sudder Adawlut in 1853 did not regard the Act as having that large application; & in the opinion of Government it ought not to have it.

3 For the foregoing reasons the Governor in Council considers it necessary to defend the suit, if it shall on the merits, & the papers must be remitted to the Board of Revenue for consideration on that point

& for the preparation and submission of the new draft of answer, if a defence should be deemed proper, as it probably will. This delay will make it necessary in consequence partly of want of promptitude in laying the case before Government, to apply to the Court for further time.

[signature]

6 Copies to the Bd of Rev. Dispt: 10th
with 3 Encls

Revenue 1859 Dept.
Pro: of Govt. 10th Nov.

No. 1533.

Pro: of the Madras Govt.
Dy 10th Nov. /59.

Trans. Bd. of Revr. 16th December /59
Cs. No. 2316

Board to submit
a new draft of answer
in O. S. No. 10 of 1859 on
the file of Salem Sub
Court.

No. 112 & 113.