M.R.O. 14—10,000—21-4-22

MADRAS RECORD OFFICE.

Government of Madras.

Revenue **DEPARTMENT.**

G.O. No. 1613 Press ~~Mis.~~

69-70

Dated 28 - 11 — 1859.

Not to be folded or roughly handled

No. 69. Read the following Proceedings of the Board of Revenue, dated 23rd November 1859, No. 4803.

Read the following letter from the Officiating Collector of Salem, dated 8th November 1859, No. 241.

(In Con. 12th November 1859, No. 5643.)

Subordinate Court of Salem, O. S. No. 12 of 1859.
Plaintiff.
Gopien, son of Soobien, residing in the village of Sacandahully, Tengarigottah Táluq.
versus.
1. T. J. Knox, Esq., Officiating Collector of Salem.
2. Captain T. E. Gahagan, District Engineer of Salem.
3. Collen, } Sons of Condee Kempen, residing in the
4. Kempen, } village of Sacandahully.

With the above letter the Officiating Collector, Mr. T. J. Knox, submits the pleadings in the suit noted in the margin, in which he has been made a defendant on behalf of the late Acting Collector, Mr. Hathaway.

2. Mr. Knox asserts that the statements in the plaint are correct in the main, and they are to the following effect.

3. Plaintiff owns 535 and odd guntahs of lands, assessed at Rupees 70-3-6 under the Corangary tank. The 3rd and 4th defendants also held 65 and odd guntahs of Daswandum Inám land, assessed at Rupees 8-8-6, under the same tank. The whole of these lands were irrigated from an old sluice leading from the tank, but the 3rd and 4th defendants built a new sluice on a lower level, at a cost of 5 Rupees, and thus prevented water from flowing through the old one.

4. Plaintiff complained to the Tahsildar, before whom 3rd and 4th defendants filed a razeenamah agreeing to fill up the new sluice by the 15th August, and in default to be responsible for plaintiff's losses. They failed, and the Collector, Mr. Brett, issued two takeeds directing the Tahsildar to call on them to conform to the terms of their razeenamah. Subsequently on a report from the Tahsildar, the Acting Collector, Mr. Hathaway, issued an order stating that as he had learnt from the District Engineer, (2d Defendant,) that the new sluice did not prevent the passage of water to plaintiff's lands through the old one, it should not be interfered with.

5. The new sluice seems to have been constructed in A. D. 1854, and plaintiff claims damages from 3rd and 4th defendants, from that year to 1859, amounting in all to 675 Rupees.

6. Mr. Knox states that he cannot justify Mr. Hathaway's order. It was, he says, in direct opposition to Mr. Brett's judgment formed after some enquiry, and founded on a very vague letter of the District Engineer who had not himself seen the tank. As Government land was in no way concerned, the desirable arrangement was, in his opinion, to use the old sluice, which the parties to whom the tank water belongs had agreed to use, and not the new one, although it would best supply water to the land.

7. Mr. Knox proposes in his draft answer to admit the correctness of the plaint in the main, but to submit that Mr. Hathaway acted bonâ fide, upon the professional opinion of the District Engineer.

8. With the exception of the admission, which the Board propose to omit, they think that Mr. Knox cannot put in any better defence. It is likely that the suit will be decided as between the proper parties to it, viz. the plaintiff and the 3rd and 4th defendants, the order of the Acting Collector amounting merely to an injunction to his subordinates not to interfere. The Board recommend that Mr. Knox be authorised to file the answer as modified by them and to conduct the defence in the first instance at the public expense.

9. The time for filing the answer expires on the 30th instant, but the Acting Collector has been requested to obtain a fortnight's extension of this period.

(A true Extract.)

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

Proceedings of the Madras Government, Revenue Department, for the month of November 1859.

No. 70. ORDER THEREON, 28th November 1859, No. 1613.

The Honorable the Governor in Council sanctions the defence in the first instance, at the public expense, of O. S. No. 12 of 1859 instituted against the acting Collector of Salem and others in the Sub Court of the district by Gopien; but will determine, when a copy of the decree is submitted, whether the costs, if any be adjudged against the Collector, shall be borne by that officer or the Government.

2. The Government resolve to point out to the Board that the information given in their proceedings respecting the suit is insufficient. It is not to be known therefrom that the tank is a daswantam, though that is an essential point in the case, or that the 3rd and 4th defendants are the daswantadars. This information had to be sought from the enclosures. The Government have also to notice that the year ought to have been specified in the narrative in paragraph 4.

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

No. 4803.

PROCEEDINGS of the BOARD of REVENUE, dated 23d November 1859.

Read the following letter from the Officiating Collector of Salem, dated 8th November 1859, No. 241.

(In Con. 12th November 1859, No. 5643.)

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Plaintiff.
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9. The time for filing the answer expires on the 30th instant, but the Acting Collector has been requested to obtain a fortnight's extension of this period.

(A true Extract.)

Acting Secretary.

To

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

Exd. J. Wright.

R.D. 3

№ 1613

Proceedings of the Madras Government

Under date the 28th November 1859

Read the following

Proceedings of the Board

of Revenue.

Reporting the institution
of O.S. № 12 of 1859 in the Sub
Court of Salem by one Gopien
against the Actg Collr &
others and recommending
that the Actg Collr be
authorized to conduct the
defence at the public expense.

(Here enter 23 Nov 59 № 4803)

The Hon the
Govr in Council sanctions
the defence in the first
instance, at the
public expense, of
O.S. № 12 of 1859 insti-
tuted against the acting
Collector of Salem and
others in the Sub Court
of the district by Gopien;
but will determine,
when a copy of the
decree is submitted,
whether the costs, if
any

Revenue 1859 Despatches & Reports Govt
Proceedings of the Board
of Revenue.

Dated 23rd
Dep 25th November
Rec'd 29th 1859.
Encl. letter
from Govt № 4803.
Referred

Submitting a Letter
from the Offg Collr of Salem
reporting the institution
of O.S. № 12 of 1859 in the
Sub Court of Salem by
one Gopien against the
Collr and the Others and
recommending that the
Actg Collr be authorized
to file the Answer as
Instructed by the Board
and to conduct the defence
at the public expense.
№ 1613 28th November

№ 4803.

any be adjudged against
the Collector. shall be
borne by that Officer
or the Govt.

2 Govt. resolve to point out to the Board that the
the information
given in their Proc: respecting the suit
is insufficient. It is
not to be known there-
from that the tank
is a Dasawantam, tho'
that is an essential point
in the case
Court, or that the 3d
and 4th defendants
are the dasawanta-
dars. This informa-
tion had to be sought
from the enclosures.
The Govt have also
to notice the [illegible] that
of the year ought to have been specified
in the Warra-
tive in para 4.-

6 Copies. Board of Revenue.
with 3 Proc: Civil &c.

Revenue 1859 Depart.t
Proc.s Govt. 30.th Oct.r

№ 1613.

Pro.s of the Madras Govt.

Dated 28.th November 1859.

Pro. P.C. of Rec.d 12.th Janry 63
6 Pts. 121 in Toe.

Sanctioning the
defence in O.S. № 12 of
1859 on the file of the
Salem Sub Court.

Pp. 69 & 70.

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