

15.7.3811

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Revenue Department

No 309

Dated ~~300~~ 11-3-1859

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Fort Saint George, Revenue Consultation of 15th March 1859.

No. 35. Read the following letter from CLEMENT DALE, Esq., Government Pleader Sudr Udalut; to J. D. BOURDILLON, Esq., Secretary to Government; dated Madras 4th March 1859, No. 31.

SIR,

Para. 1. I do myself the honor of acknowledging the receipt of an Extract from the Minutes of Consultation noted in the margin, and to report for the information of the Right Honorable the Governor in Council, that a Circular Order was passed by the Court of Sudr Udalut

Minutes Consultation 26th February 1859, No. 249, Revenue Department.
under date the 10th of August 1857, of which I enclose an Extract; this has been modified by a further Circular dated the 22d October 1857, of which I enclose a copy.

2. The order of the Civil Judge dated the 14th February 1859 is an interlocutory order, and I am of opinion it does not come within the excepted cases contemplated by the Circular of the 22d October 1857. It does not appear on the face of the order that it has been passed in contravention of a legislative enactment, nor of any rule of procedure, or established practice of the Courts.

3. It is perfectly competent for a Court, previously to delivering its judgment, to call for any further evidence that it may consider to be necessary to enable it to judge of the merits of the case, and for doing this, it may be moved by the suitor, or it may proceed on its own motion; such a procedure is however entirely in the discretion of the Judge. In my opinion the Acting Civil Judge of Madura has not evinced a sound discretion in the course he has pursued, but I am of opinion that the argument that he had thereby contravened a rule of procedure, or an established practice of the Court, could not be successfully maintained, on the contrary I opine that the Court of Sudr Udalut would decide that the case did not come within the exception; and would uphold its Circular.

4. That some check on appeals from interlocutory orders was needed, there can be no doubt, whether the modification made by the Circular of the 22d October is sufficient to meet the different cases which must constantly arise, time will shew; it appears to me the present case proves that some further modification would be desirable, and if his Lordship in Council should be of the same opinion, and should desire that an appeal should be preferred with the view of eliciting the opinion of the Court, as to promulgating such a modification, I will present the petition on receiving orders to that effect.

5. I have deemed it my duty to draw the attention of his Lordship in Council to these Circulars, with the view (if His Lordship in Council should think fit) of the matter undergoing further consideration, as I submit that it is undesirable for Government to adopt any measures, which are opposed to existing laws, or practice, except with the view of thereby procuring a modification or alteration.

Extract from the Proceedings of the Sudder Udalut, under date the 10th August 1857.

Circular.—1. As much confusion and delay, in the disposal of Civil Suits, are occasioned by the improper interference of the appellate authorities, with the interlocutory orders passed by the lower tribunals whilst such suits are under enquiry before them.

2. The Court of Sudder Udalut hereby declare that no appeal can be from any interlocutory order passed by any Judicial tribunal in respect to any proceedings held in any suit whilst such suit is under trial before that tribunal, save and except in the instances provided for by Section VIII. Regulation IV. of 1802.

Extract from the Proceedings of the Sudder Udalut under date the 22d October 1857.

Circular.—1. The Court of Sudr Udalut find that some modification of their Circular instructions of the 10th August last, is necessary, in order to provide for the timely correction of errors, which, if allowed to remain unrectified, would eventually cause much unnecessary loss of time and needless expense to the parties.

2. The Court of Sudder Udalut accordingly resolve to rule that, where it appears on the face of the interlocutory order appealed from, that it has manifestly been passed in contravention

Fort Saint George, Revenue Consultation of 15th March 1859.

of some legislative enactment, or rule of procedure, or established practice of Court, it shall be competent to the Appellate Court in such cases, but only in such cases to hear and dispose of the matter of the appeal.

(True Extract.)

(Signed) C. F. CHAMIER, *Acting Register.*

No. 36. ORDER THEREON, No. 309; dated 11th March 1859.

Ordered to be communicated to the Board of Revenue, with reference to their Proceedings of the 25th February, No. 707.

2. The Government are of opinion that the lower Court should be again applied to by the Collector, pointing out strongly the grounds for asking the extension of time and the necessity existing for looking for further evidence.

(Signed) J. D. BOURDILLON,

Secretary to Government.

1648

My dear Sir,
I have not received
from you any reply to my
letter of 4th March 1859 No 31.
The Rev. Mr. [unclear] sent me
on the 22nd [unclear]
the [unclear] of 10th March 1859 No 30.
but did not send me the
[unclear] of 11th March 1859 No 309.
until this morning
and in consequence I have
not understood the wishes
of Govt. I have been busy
myself lately, that is one
of much importance, but

with the view of thereby procuring a modification
alteration

I have the honor to be
Sir

Your most Obedient Servant

Wm. L. L. L.
Govt Pleader &c

under the impression that
you wished me to present
the facts I have been
using the following to send
one copy of the order to

- This may have the effect
of misleading, & my object
in now writing to you is
to suggest that as these
papers are now printed
it would be desirable
should have a copy of
all such things sent to
me direct from your office

Believe me
Very truly yours
C. Dall
St. Louis

87d. Com: 104 March 1859

87d. Com: 104 March 1859

the lower court should be again applied to by the collector, pointing out strongly the grounds for asking the extension of time and the necessity existing for looking for further evidence.

87d. Com: 104 March 1859

11 March 1859. 2nd Copy to Sec of the Dist. 11

Recd 1859 March 1859

Secretary to Government

Dated 4th March 1859

Recd 5th March 1859

(With Enclosure)

1. Deft. Remanded and Resolved & 4th March 25th February 1859 at 249. for sending copy of Circular Orders passed by the Hon. Sec. of State.
2. The Order complained of is an interfering Order and not within the Code enacted in the Circular.
3. Showing power of Court to suggest a modification in Circulars desirable for.

Form 13 and 14 Recd 1859 March 1859

With an Order

No. 309.

By Mr. Atty.

referred to the Board of Commissioners to the Board of Commissioners of the 23rd February

No. 107.

The Court are of opinion in the

Handwritten notes and signatures at the bottom of the page, including "The Court are of opinion in the" and "referred to the Board of Commissioners".