M.R.O. 14—10,000—21-4-22.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue **DEPARTMENT.**

G.O. No. 2473 Press ~~Mis.~~

373-374

Dated 21-12- 18 69

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department, 21*st December* 1860.

No. 373. Read the following Proceedings of the Board of Revenue, dated 18th December 1860, No. 5,938 :—

Read the following letter from G. S. FORBES, Esq., Collector of Ganjam, to W. HUDLESTON, Esq., Acting Secretary to the Board of Revenue, Fort Saint George, dated Chetterpore, 4th December 1860, No. 320 :—

SIR,

Letter to the Board, dated the 11*th April* 1859, *No.* 86.
Board's Proceedings, 21*st April* 1859, *No.* 1,441.

1. With reference to the corrse pondence noted in the margin, I have the honor to enclose for the information of the Board, copies of Judgments and Decrees passed by the Civil Judge of Chicacole in Causes Nos. 4 and 5 of 1859, on the file of his Court, together with the draft of an appeal to the Court of Sudder Adálat.

2. Should the Board approve of the draft, I request that they will be good enough to communicate their approval by Telegraph, as appeal time expires on the 31st January 1861.

3. The Board will perceive that the Civil Judge has rejected as informal, and otherwise unreliable, a Razinamah, or document of renunciation, taken about thirteen years ago from the mother and guardian of the Plaintiff by the Curnum and Carzee of the village. On the strength of this document, though informal in character, the then Collector Mr. Bannerman made over the land to other cultivators, with the acquiescence (for all that appears to the contrary) of the widow of the deceased Ryot. I have no doubt that the transaction, however apparently informal, was in reality correct, and that the land was relinquished, because the widow felt unable to manage so large an extent.

4. As, however, the Civil Judge has rejected the Razinamah as spurious, he is manifestly in error, on his own premises, in throwing the whole costs on the Collector, seeing that on this view of the matter it was incumbent on the mother and guardian of the Minor, on being deprived of the lands against her will, to seek redress from the then Collector during his tenure of office, and under Section 28, Regulation XXVII of 1802, the successors of that Officer cannot be held liable for his acts, and this is the ground I have taken in appeal.

In Cons. 27*th April* 1859, *No.* 1,872.

1. Ordered to be submitted to Government, with reference to Extract Minutes Consultation, dated 25th April 1859, No. 569, Revenue Department, and with the Board's recommendation that the proposed appeal be authorized at the public expense.

2. The Collector was sued for issuing Puttahs in the names of the Defendants for the land claimed by the Plaintiff. The defence was that the mother and guardian of the Plaintiff, then a Minor, having, as was admitted by the plaint, placed the Defendants in possession, the Collector (1st Defendant) had not power to oust them.

3. The Court has rejected as a forgery the Razinamah produced as proof of this willing surrender by Plaintiff's mother and guardian, and as justification of the Puttahs issued to the Defendants by the then Collector, and by thus deciding that their occupation was an usurpation, and the issue of Puttahs to them a wrong against Plaintiff, has thrown on his guardian the *onus* of seeking redress at the time that wrong was inflicted from the then Collector. This she did not do, and indeed the Collector believes the transaction to have been *bonâ fide* throughout; but such being the case, the present Collector is not liable to be sued for the act of his predecessor, or cast in costs as has been done, and on this he bases his appeal. The Board think that the ground is a good one.

4. The Collector will of course place the matter in the hands of the Government Pleader, Mr. Dale.

(A true Copy and Extract.)
(Signed) W. HUDLESTON, *Acting Secretary.*

No. 374. ORDER THEREON, 21st December 1860, No. 2,473.

The Government concur with the Board and Collector that costs in this suit should not have been awarded against them. They consider, however, that the best course will be for the Collector to move for a review of judgment as regards the costs of suit only, on the grounds proposed for appeal. If the motion is unsuccessful the Government would acquiesce in the judgment, erroneous as it is in this respect, rather than continue the litigation for the small sum at issue.

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

Mr Dale

A true Extract Copy

&

Endorsed

Ag Secretary.

To

J D Sim, Esq

Ag Secretary to Government

Revenue Department.

Plff's father died about 14 years ago, leaving him a minor under the guardianship of his mother. Among the property of the deceased were the lands which form the subject of these suits.

Plff's mother is alleged to have fraudulently relinquished the lands for which Plff then obtained a grant & from the then Collector of which they have since been in possession.

The judge has now decided that the deed of relinquishment is fraudulent and that even if it were not, it would be voidable by Plff as being beyond his guardians competency to Execute.

The judge therefore decrees the lands to Plff - but in trust to account for profits - and saddles the Collector

with all costs -

In the present state of title the Pts are not interested & the parties are left to contest that question or not as they please.

The Pts & Defts propose that an appeal shall be preferred to the Lr Ct to set aside that part of the decree which adjudges the Costs & pay all costs.

The appeal is to be lodged on or before 28 Reg 27 of 1802 and there can be no doubt that it will be successful. For the costs should in common justice have been levied from the Defts & not from the Pattah. were issued on them since respondents & who have alone reaped the advantages of the error.

The costs however amounts only to Rs 186 - part of which is for Pts stamps.

It seems to be undesirable for such a paltry sum to continue the litigation & put the parties - residents of Chincorle & the Expense of a suit in Madras - solely for this sum - If the Defts appeal to the Lr Ct, Pts can then bring forward the question of costs - But if they do not appeal, the whole case is reopened.

The error too is that of the Judge - for Pltf is entitled to his costs & must ask from the Collr.

Early orders are requested as the appeal time Expires on the 31 prox.

J. D. S 19/12.

- It seems best for the Collector to move for a review of Judgment on that one point of costs having been mistakenly awarded against him - If the motion is unsuccessful the matter may be allowed to rest & without a formal appeal

Will. Elliot

25

29th April 1865 Ja 31.35

Pro: of the Board of Rev 28th Feb 1861 Ds No 578.

Nos 373 & 374.

Rev. 1860 Department
Pro: of Govt for December
No 2990.

Proceedings of the Board of Revenue.

Dated 18th
Desp: 18th } December 1860.
Rec: 19th

Encl: 5. Ol. Encl:
2. Encls.

No 5938.

Submitting a letter from the Collector of Ganjam on the subject of the proposed appeal in causes No 4 & 5 of 1859 requesting authority for defending the same at the Public expense.

No 2473. 21st Dec:

with 2 enclosures

No 2473.

The Government concur with the Board and Collector that costs in this suit should not have been awarded against them. They consider however that the best course will be for the Collector to move for a review of judgement as regards the costs of suit only, on the grounds proposed for appeal. If the motion is unsuccessful the Govt would acquiesce in the judgement erroneous as it is in this respect, rather than continue the litigation for the small sum at issue.

J. A. S.

For the Govt Genl
21st Dec: 1860.

M. S. Copy to Bd of Rev Circ 21st
12 Encls with 2 Encls
Recd do to do 24