M.R.O. 14—10,000—21-4-22

MADRAS RECORD OFFICE.

Government of Madras.

Revenue **DEPARTMENT.**

G.O. No. 116	Press Mis.
377. 378	
Dated 20. 5. 1862	

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department, 20th May 1862.

Read again Proceedings of the Board of Revenue, dated 21st February 1862, No. 1,253, and recorded in Proceedings 1st March 1862, No. 455.

No. 377. Read the following Proceedings of the Board of Revenue, dated 28th April 1862, No. 2,688 :—

Read the following letter from C. DALE, Esq., Government Pleader, Sudder Adalut, to R. A. DALYELL, Esq., Sub-Secretary to the Board of Revenue, Madras, dated 25th April 1862, No. 75.

SIR,

Proceedings of Government, 1st March 1862, No. 455, Revenue Department.
Letter from Government Pleader to Secretary to the Board of Revenue, 5th March 1862, No. 31.
Proceedings of the Board, 7th March 1862, No. 1,534.
" " 8th " " " 1,561.
Letter from Government Pleader to Secretary to the Board of Revenue, 14th April 1862, No. 67.
Proceedings of the Board, 16th April 1862, No. 2,528.

1. With reference to the Proceedings of Government and the correspondence, &c., noted in the margin, I have the honor to enclose a written statement of the case of the Collector, which I recommend should be tendered to the Subordinate Judge of Salem at the first hearing of the Original Suit No. 11 of 1861, under the 120th Section of the New Civil Procedure Act.

2. Under Act No. VIII of 1859, no answer by a Defendant can be filed as was formerly required. This has been found to work very inconveniently, to obviate which, and really to put the Courts in possession of the facts disputed, upon which alone a Judge can settle the issues (a duty thrown upon him by this act), the Courts in this Presidency have, I believe, universally adopted the plan of requiring Defendants to put in written statements of their case, which constitutes a substitute for the answer. So far as I am aware, the practice regarding the effect of these written statements on the Defendant has not been authoritatively settled. On comparing this written statement with the Plaint, the Board will observe I have (as I believe) traversed every averment in the Plaint which is not admitted. This necessarily renders the written statement lengthy; but until the practice be authoritatively settled, I deem it my duty to traverse every allegation in a Plaint, consequent on recent rulings of the Sudder holding that any allegation in a Plaint which is not positively denied by Defendant operates as an admission by such Defendant of the truth of such allegation. When I first had the honor of practising in the Sudder, the Court, as then constituted, adopted the rule as prevailing in the Courts of Equity of England and America, viz., that all averments made by a Plaint which were not expressly ADMITTED by the Defendant must be proved by the Plaintiff; a different rule now prevails in the Sudder, and if that practice is to be extended to written statements, it behoves a Defendant to be extremely carefull to traverse in the most comprehensive and exact manner every portion of a Plaint to which he may unfortunately be called upon to offer a defence. It is a peculiar hardship upon defendants in this country, for Plaints are not here prepared according to recognized and approved principles, by which great exactness and certainty is attained accompanied by COMPARATIVE brevity and conciseness; but as a general rule, Plaints are prepared with considerable verbosity, great artfulness, and little respect to truth; it is therefore essential that the Collector of Salem should be particularly cautioned to go most carefully through this written statement with the Plaint, and satisfy himself that there is not a single averment in the Plaint, which he is not fully prepared to admit, that has not been traversed by me.

3. I regret to observe there has been a misunderstanding regarding the proceedings, &c., relating to this case, and that consequent delay has been caused in forwarding the written statement. On receipt of the Proceedings of Government, I addressed the Board in my letter of the 5th of March. After its despatch, the Proceedings of the Board, dated the 7th of March, reached me; but no notice of my letter of the 5th was taken in those Proceedings, and my Head Writer reported that the requisition contained in my letter had not been complied with, and the matter was ordered to lie over till I received a reply to my letter of the 5th March. The Proceedings of the Board, dated the 8th March, subsequently came to hand docked as follows, "Requesting to "be informed whether any further papers connected with the ANKUSAGIRI Suit are required." On the receipt of those Proceedings, it was reported to me that I had received all the necessary papers in the ANKUSAGARI Suit, consequently the Proceedings were merely registered, and placed in the bundle of papers relating to THAT Suit. On inquiry from time to time, I was informed

that my letter to the Board had not been answered, and the matter was consequently not taken up, as I could not do so effectively till I received a reply to that letter. The Board's Proceedings, dated the 16th April 1862, refer me to Proceedings under date the 8th March 1861. In reading those hurriedly, the year 1861 did not strike me, and on searching the bundle of papers relating to Original Suit No. 11 of 1861, and my Register, no such Proceedings could be found. On this result being reported to me, I looked more particularly at the dates, &c., when it occurred to me that the insertion of 1861 must in all probability be an error for 1862, and I directed another search to be made in my Register including the present year, when it was discovered that the Proceedings of the 8th March 1862, No. 1,561, had been received, but wrongly docketed as previously mentioned, and had in consequence been put into the wrong bundle. I admit there is some blame due to my Establishment, and that the error in your Office in wrongly docketing those Proceedings should have been detected. The apology I have, however, to make is, that at that time the number of references to me were even more numerous than usual, and that consequently my Establishment had much to do.

4. I return the papers received with the Board's Proceedings of the 7th March 1862.

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1. Ordered to be submitted to Government, with reference to their Order, dated 1st March 1862, No. 455. The defence proposed by the Government Pleader seems to meet the wishes of Government as expressed in the Order referred to.

2. The Board observe that the papers connected with the Suit were forwarded to the Government Pleader with their Proceedings of the 7th March, No. 1,531, and that his letter applying for the same was disposed of in their Proceedings, dated 8th March, No. 1,561, which are correctly docketed in the original copy. He will be requested to inform the Board whether the docket referred to was attached in his Office or in the Board's Office with a view to due notice being taken of the error.

3. The Board are glad to observe from information received from the Collector that the time for filing the answer has been extended to the 21st proximo.

(A True Copy and Extract.)

(Signed) R. A. DALYELL, *Sub-Secretary.*

No. 378. ORDER THEREON, 20th May 1862, No. 1,116.

1. Agreeably to the recommendation of the Board of Revenue His Excellency the Governor in Council grants authority for the defence, in the first instance, at the public expense of Original Suit No. 11 of 1861, on the file of the Principal Sudder Amin's Court at Salem, brought against the Collector of that District by the Muttadar of Dadavulli, but will determine when the Decree is submitted who should bear the costs if any be adjudged against that Officer.

2. The defence prepared by the Government Pleader is approved. The Board will issue the necessary instructions to the Collector.

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

Pro: 1 March 62 No 11-12

Rev= 1862 Depart

Pro: of Govt 7th May

Nº 1236.

To Proceedings of the Board of Revenue

Dated 28th
Desp^d 29
Rec^d 30th
Ex. Officer

April 1862

Nº 2088

Pro Bd of Rev 3 Nov 63
Col Nº 2665 in Pro

Submitting letter from the Government Pleader forwarding a written statement of the case of the Collector of Salem, with the Boards observations thereon.

Nº 377 & 378

Nº 1116 - 26 May
Write an order

Ent^d May 19

Nº 1116.

Read a com Pro of the Bd and recorded of Rev d/ 21st February 1862 Nº 1255.

Read also Nº 1236.

Agreeably to the recommendation of the 13d of Rev the Hon Excellency the Governor in Council grants authority for the defence in the first instance at the public expence of Original Suit Nº 11 of 1861 on the file of the Principal Sudder Ameens Court at Salem brought against the Collector of that District by the Muttadar of Dadavadi, but will determine who is to bear the costs is submitted who should bear the costs if any be adjudged against that Officer -

2 The defence prepared by the Govt Pleader is approved - The Bd will issue the necessary instructions to the Colr

J. D. S.

Ent^d 20th May 1863
Sent to Govt
13d of Rev with draft of defence Dispd 20th ditto Exp^d