

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 14 59	Press
66-67	~~Mis.~~
Dated 4 - 7 - 1862	

Not to be folded or roughly handled

*Proceedings of the Madras Government, Revenue Department,
4th July 1862.*

Read again letter from the Magistrate of Salem, dated 2nd June, and recorded in the Proceedings of Government, 18th June 1862, No. 1,336 :—

No. 66. Read also the following Proceedings of the Board of Revenue, dated 1st July 1862, No. 4,239 :—

Read Proceedings of Government, dated 18th June 1862, No. 1,336, Revenue Department:

(In Cons. 19th June 1862, No. 3,787.)

1. The original plaint filed in this case sets forth that the 1st and 2nd Defendants (Village Moonsiff and Zufty Amin) having returned the sum of Rupees 16, tendered by Plaintiff in liquidation of the Income Tax demand against him, did in consequence of his refusal to pay 20-9-0, demand the surrender of certain property, using at the same time language calculated to disgrace him. For this he claims damages amounting to Rupees 300.

2. In his Supplemental Plaint he requests that Mr. Boalth the Deputy Magistrate, and Ramaswamiah the Taluq Magistrate, may be included as Supplemental Defendants.

(1.) Because they aided the Defendants in their improper acts.

(2.) Because they acted in opposition to the Diary order of the Court, and caused Plaintiff and his son to be apprehended, tried, and punished by the 1st Supplemental Defendant.

3. The sum claimed as damages from the Supplemental Defendant, on account of defamation of character, is Rupees 300, added to which there is a claim for Rupees 75 for expenses, and a similar sum levied from Plaintiff as fine, total Rupees 450. The sum total claimed from both Original and Supplemental Defendants is therefore 750 Rupees.

4. In the Draft answer forwarded for approval by the Magistrate of Salem, the 1st Supplemental Defendant states that the Income tax of the Plaintiff was first fixed at Rupees 16, and afterwards raised by himself to Rupees 20-9-0; that in accordance with the Bill sent by the 1st Supplemental Defendant to the Tahsildar, an account was prepared, and a demand made by the 1st and 2nd Defendants on the Plaintiff for the sum in question; that the Plaintiff refused to pay, and that the 1st and 2nd Defendants then proceeded to attach his property in his presence, but did not abuse either Plaintiff or his wife; that the Plaintiff did not tender to the 1st and 2nd Defendants 16 Rupees; and that in consequence of Plaintiff's obstruction to the attachment, the 1st Supplemental Defendant, in his capacity of Deputy Magistrate, fined Plaintiff and his son under Section 214, Act XXXII of 1860, being of opinion that the Diary order of the Mufti did not preclude him from investigating the case before him.

5. The Board consider that the answer may be properly restricted to the points referred to in the amended draft prepared by them, and now forwarded for the approval Government. They have referred especially to the fact that no previous notice was given by Plaintiff to Defendants as required by Section 245 of the Income Tax Act, of his intention to file the present action; for the Act evidently provides that such notice should be given in order to protect persons engaged in carrying out the law from pecuniary liability in respect to mere mistakes or errors of judgment, which might when discovered be remedied; and it seems to the Board that every one so employed should have the full benefit of any advantage which the law may give him on such occasions. They have alluded also to Act XVIII of 1850, under which the Deputy Magistrate (1st Supplemental Defendant) is not liable to be sued in a Civil Court for an act done by him in good faith and within his jurisdiction in the discharge of his Judicial duty.

6. They now proceed to offer a few observations on the case generally. They observe with regret that the cause of action has arisen from the irregular and arbitrary mode of procedure adopted by Mr. Boalth. It appears that Mr. Boalth in the first instance, and apparently without reason, raised the assessment from 20-9-0, the sum proposed by the Assessor, to Rupees 32-9-0; that he then allowed the Plaintiff the privilege of appeal, contrary to the provisions of Section 55 of the Income Tax Act; and on this appeal reduced the assessment by one-half, without, confessedly, considering the amount of profits on which the tax should be fixed; 16 Rupees, the sum settled by him, being in no case a correct assessment for the reasons stated in paragraph 5 of

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Mr. Arbuthnot's letter; and that when he found this out, instead of applying to the Collector to remedy the error, he again raised the assessment in an arbitrary manner to Rupees 20-9-0, and issued the Bill which in ordinary course was presented to Plaintiff. The Board consider that the Deputy Collector, by that loose and unsatisfactory mode of doing business, showed that he had failed to give to this portion of his duties that care and attention which the orders of the Government and the Board so strongly enjoin.

7. The Board have no grounds on which to arrive at the conclusion as to whether the evidence in the case justified the conviction before Mr. Boalth of the Plaintiff and his son under Section 214 Act XXXII of 1860. As far as they can gather, all was done legally, and if resistance was offered to the Distraining Officer, and the language imputed to Plaintiff was used by him, he clearly rendered himself liable to punishment. But, at the same time, the Board cannot but think that the Deputy Magistrate's sentence was most severe. The man had every reason to think that the demand was unauthorized and illegal and may have been guilty of some extravagancies, but for that matter so had Mr. Boalth, and a very moderate fine would have sufficed to vindicate the law. The fine actually imposed was excessive, and was so high as to indicate great want of judgment in the Deputy Magistrate.

8. It further occurs to the Board to remark that the Plaintiff's obvious course was, in the matter of the assessment, to appeal to the Collector, under whose authority Mr. Boalth was employed under Section 22 of the Income Tax Act; and as regards the fine, to have applied for redress to the Sessions Judge. The Board are of opinion that the proceedings of the Deputy Magistrate should still be reviewed by the Sessions Court, with a view to some mitigation of the excessive fine imposed on the Plaintiff.

9. The time for filing the answer in this Suit would appear to have expired on the 15th June on which date the Sub-Court re-opened, though from the wording of paragraph 13 of the Salem Magistrate's letter, the 15th July was the day apparently intended. The Board presume that an extension has been applied for.

(A true Extract.)

(Signed) C. G. MASTER, Acting Sub-Secretary.

Proposed Amended Answer.

1. The Defendants in the Original plaint make answer that the 2nd Defendant was deputed by the collecting Officer of the Salem Taluq to collect Income Tax from the Plaintiff according to a bill furnished; that no greater sum was demanded from the Plaintiff than the amount shown in the bill; that in proceeding to attach the Plaintiff's property, the Defendants acted under authority; that the Plaintiff has incurred no injury to his character through any act of the Defendants; and that the Plaintiff gave the Defendants no previous notice in accordance with Section 245 of the Income Tax Act, that he intended bringing the present Suit; the Defendants therefore pray that on the last mentioned ground the Suit may be at once dismissed.

2. The 1st Supplemental Defendant states in answer that in his official capacity as Deputy Magistrate he sentenced the Plaintiff to pay a fine of Rupees 75 under Section 214 of the Income Tax Act; that, under Act XVIII of 1850, the Defendant is not liable to be sued in a Civil Court for an act done by him in the discharge of his Judicial duty as Deputy Magistrate; and that if the Plaintiff considered himself aggrieved either by the above sentence, or by the demand made against him on account of Income tax, it was open to him to appeal, in the one case to the Sessions Judge, in the other to the Collector. The 2nd Supplemental Defendant pleads that the Plaintiff has not through any of his acts suffered any injury to his character; and both Supplemental Defendants further object to this Suit that the Plaintiff did not give them, as required by Section 245 of the Income Tax, any previous notice of his intention to file the present action. They, therefore, pray that on the last mentioned ground the Suit as against them may be at once dismissed.

*Proceedings of the Madras Government, Revenue Department,
4th July 1862.*

No. 67. ORDER THEREON, 4th July 1862, No. 1,459.

1. The Governor in Council sanctions the defence at the public expense, on the usual terms, of O. S. No. 913 of 1861 on the file of the Moofy Sudder Amin's Court at Salem, instituted by one Sookavana Moodelly against the Deputy Magistrate of that District and others. The amended draft answer, submitted with the Revenue Board's Proceedings above recorded, should be filed.

2. The Board will direct the Collector to obtain and submit an explanation from Mr. Boalth in respect to the different acts of irregularity pointed out in paragraph 5 of their Proceedings.

3. As regards the fine noticed in paragraphs 6 and 7, it rests with the Plaintiff to appeal to the Sessions Court for redress if he sees fit. The Government cannot interfere.

(Signed) A. J. ARBUTHNOT,

Acting Chief Secretary.

Rev Depart.

N^o 1459-

Proceedings of the Madras Government
Under date of the 4th July 1862

Read again letter from
the Mag^{rs} of Salem of 2^d
June & recorded in the
Pro of Govt 18 June 1862 No 1336

Read also the fol-
lowing Pro of the B^o of Rev.

Submitting the
Boards opinion on the subject
of O. S. No 913 of 1861 on the file (Here enter 1 July 1862)
of the Muztadar Qudr Alim
Court at Salem.

The Gov^t will
sanction the defence
at the public expense,
on the usual terms, of
O. S. No 913 of 1861 on the
file of the Muztadar Qudr
Alim's Court at Salem
instituted by one Mo Kavana
Moodally against the Deputy
Magistrate of that District.

And

20:18 June 1862 No 257-258

Pro = 1862
Pro of Govt 18 July 1862

Proceedings of the
Boards of Revenue
Dated 1st July 1862
No 257-258

O. S. No 1459 July 1862

Submitting the
Boards opinion on the subject
of O. S. No 913 of 1861 on the file
of the Muztadar Qudr Alim's
Court at Salem.

20:18 June 1862

Proceedings of the
Boards of Revenue
Dated 1st July 1862
No 257-258

O. S. No 1459 July 1862

The Government will
sanction the defence
at the public expense,
on the usual terms, of
O. S. No 913 of 1861 on the
file of the Muztadar Qudr
Alim's Court at Salem
instituted by one Mo Kavana
Moodally against the Deputy
Magistrate of that District.

and others. The ~~revised~~
Draft answer submitted
with the Revenue Board
Proceedings above recorded
should be filed -

2. The Board will
direct the collector to
obtain and submit an
explanation from Mr. Roark
in respect to the supposed
acts of irregularity pointed
out in para 5 of their
Proceedings.

3. As regards the
five notices in paras
6 and 7, it rests with
the Plaintiff to appeal
to the Supreme Court for
redress if he sees fit.
The Government ~~will~~
~~not~~ ~~therefore~~ interfere
in the matter.

Not Copy

Board of Revenue & Encl. 4
C. P. B. 11/10/53

Sub against the
Magistrate of La. Co.

Jan 18 June 1862
No 257-258

Revenue 1862. 29th
No of Court for July

No 1459.

Pro of the Madras Court
Jy 4th July 1862

Pro of the 23rd of Dec 57
5 Aug 1862 C No 2234

Declining defence
at the public expense of
Q. S. 12913 of 1861 on the
file of the Madras Court
Criminal Court at Salem
against the Deputy
Magistrate, Sec of that
District.

Q. S. 12913 of 1861
C No 2603 in No.

No 66 567.

Wm. H. H. H. H. H.