M.R.O. 14—18,000—27-9-24.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 1345 Press ~~Mis.~~

391. 392

Dated 20. 7. ~~19~~ 1863

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department, 20th July 1863.

No. 391. Proceedings of the Board of Revenue, dated 15th July 1863:—

Read again Board's Proceedings, dated 22nd April 1863, No. 2,343, on letter from the Collector of the Godavery District, dated 26th March 1863.

Read also the following letter from H. MORRIS, Esq., Acting Collector of the Godavery District, to W. HUDLESTON, Esq., Secretary to the Board of Revenue, Madras, dated Cocanada, 6th July 1863, No. 182.

SIR,

1. In reply to the Board's Proceedings dated 22nd April 1863, I have the honor to inform you that the principal Plaintiff in the case cannot be found, although repeated orders have been sent to the Tahsildar to ensure his attendance at this Office.

2. The second Plaintiff has agreed to withdraw from the Suit; but his consent is of no avail in the absence of the other Plaintiff, who has the principal share in renting the island. The share of each cannot, however, be accurately ascertained.

3. The time given for filing an answer in the Suit will expire on the 31st instant.

1. Ordered that the above papers be submitted to Government.

The absence of the 1st Plaintiff precludes the Board from carrying out their intention of remedying the grievance of which the Plaintiffs complain, and as they cannot allow the Suit to be decided "*ex parte*" in Mr. Purvis' absence, they resolve to recommend to Government that the Acting Collector be instructed to apply to the Court to include him as a Supplemental Defendant, and that he be authorized to defend the Suit at the public cost.

2. The answer should in the Board's opinion be cast in the following form.

That Plaintiffs in their plaint admit that they made an offer to rent the Lunka in question.

That the terms of the offer included a special condition under which Plaintiffs agreed to bear any loss resulting from causes not originating with the Government.

That this offer was accepted by the Collector and Plaintiffs were put in possession of the island.

That under these circumstances their Suit is really one for the remission of a revenue demand, and that the Court has not jurisdiction in such matters.

That Plaintiffs' remedy is by appeal to the Collector's superiors, who are ready to give Plaintiffs' case full consideration, but that Plaintiffs have not availed themselves of the course thus open to them.

That under the circumstances the Supplemental Defendant prays the Court to dismiss the Plaintiffs' Suit with costs.

3. If the Court should decide in favor of the Acting Collector, he will at once forward to the Board the detailed information called for in their former Proceedings to enable them to decide how far Plaintiffs are equitably entitled to remission.

4. As the time for filing the defence expires on 31st instant the Board request speedy orders.

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

No. 392. ORDER THEREON, 20th July 1863, No. 1,345.

1. The Government concur with the Board of Revenue in regretting the strictness of the late Collector's proceedings towards the Plaintiffs. Even assuming that the entire demand against them may be recovered at Law, the Governor in Council does not think that the contract could be equitably enforced, in the face of the statement in the seventh paragraph of Mr. Purvis' draft answer that only "land yielding about half the amount of rent was fit for cultivation."

2. It is true that the renters agreed to run all risks, but of course only *reasonable* risks are implied. Such a loss as 50 per cent. at starting seems to be far beyond that category.

3. Unless, therefore, the rent was manifestly so low as to lead naturally to the inference that even such a loss as this was reckoned upon, and the fact that it was nearly four times the amount of the rent of the preceding Fasli appears to preclude this supposition, the Government are of opinion that a remission of one-half the demand may fairly be offered.

4. The fact of this offer having been made should be stated in the Collector's answer. With his addition the reply proposed by the Board is approved, and sanction is given for the defence being conducted at the public expense, on the usual conditions.

(Signed) P. P. HUTCHINS,
Acting Deputy Secretary to Government.

No. 2,343.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 22nd April 1863.

Read the following letter from A. PURVIS, Esq., Collector of the Godavery District, to W. HUDLESTON, Esq., Secretary to the Board of Revenue, dated Ambajepetta, 26th March 1863, No. 65:—

1. I have the honor to submit copy of a plaint filed against me as Collector, in the Court of the Principal Sudder Amin at Rajahmundry by Mudunuri Subbaraz and Sagiraz Venkatraz of Atreyapuram, now in the Amalapur Taluk of this District.

2. The object of the Suit is to obtain under Section 15, Act VIII of 1859, a Decree that Plaintiffs are not to be held liable to pay the sum demanded from them as the rent for Faslis 1271 and 1272, of an Island in the Godavery attached to the village of Atreyapuram, which was rented by Plaintiffs for the Faslis named for 3,750 Rupees per annum.

3. At the Jamabundy of the Taluk for Fasli 1270, proposals were as usual invited for the rent for the coming season of the Island in question among others. The tract had of late years increased considerably in value, and several proposals were made for the rent of the same. That given by the present Plaintiffs was the highest, and was duly accepted.

4. They engaged to furnish security for the due fulfilment of the conditions into which they had entered, but while inquiry into the circumstances of the proposed sureties was in progress, and before the security bonds were executed, the heavy freshes of August 1861 had done considerable damage to the Island, and the parties named by Plaintiffs declined to stand security.

5. The Plaintiffs also applied to be released from their engagement, but I did not feel justified in acceding to their request, seeing that they entered into the engagement on the express understanding that they would have no claim against Government for loss. No such order as that alleged in the plaint was issued to the Tahsildar.

6. Had the Plaintiffs done their best under the circumstances, and cultivated as much of the Island as was still fit for cultivation, their case would perhaps have been entitled to consideration at the Settlement for Fasli 1271, but they left the whole waste in hope of evading the conditions under which they took the Island.

7. They refused at the Jamabundy of Fasli 1271 to accept a Puttah for the land, or to give a Muchilka, but I submit that they are nevertheless bound by the terms of their proposal freely given, and accepted in the usual manner.

8. The property of the renters has been attached, and some moveable property, principally grain, has been sold; the amount thus realized amounting to Rupees 362-0-8, real property to the amount of Rupees 1,926 is under attachment.

9. I submit a translate of the proposal given by the Plaintiffs, and a draft of an Answer which I propose to put in, and request sanction for defending the Suit at the cost of the State.

10. The present period for filing an Answer expires on the 19th proximo.

ENCLOSURE No. 1.

Original Suit No. 108 of 1862, Principal Sudder Amin Court's file, to the Principal Sudder Amin's Court of Rajahmundry.

A complaint filed by Plaintiffs (1) Mudunuri Subbaraz, and (2) Sagy Venkataraz of Atreyapuram, against A. Purvis, Esq., Collector of the Godavery District, Cocanada, Defendant.

This complaint is brought under Section 26 of Act No. VIII of 1859 in order to obtain a declaration under Section 15, that we need not pay to Circar the sum of 7,500 Rupees, being the assessment of Atreyapuram Pallapu Lanka Island for Faslis 1271 and 1272 (A. D. 1861-62 and 1862-63), or the years Durmati and Dundubhi.

1. We have proposed to the Defendant under date 8th February 1860 to rent the Atreyapuram Pallapu Lanka Island for the said years Durmati and Dundubhi, on an annual payment of 3,750 Rupees. Sageraz Gopala Krishnamraz and others presented an Arzi to the Defendant on 29th

May 1861, agreeing to stand security for the rent. An order was issued to the Daroga of Akavid on the 25th July 1861, to inquire into the circumstances of the securities and their property, and send a security bond. During this examination, the heavy freshes of the Godavery, which came down from July 1861, covered the said Lanka with sand, and it became unfit for cultivation.

2. We presented an Arzi to the Defendant in the month of September 1861, requesting him to cancel our proposal, because the Island had become unfit for cultivation. Defendant issued an order to the Amildar of Rali Taluk to inquire into the matter. The Amildar inspected the Lanka, and reported in April 1862, that it had really been rendered unfit for cultivation. While this was the case, the Defendant attached our property, insisting upon our paying the cist for Fasli 1271.

3. No Muchilka has been taken from us, nor any Puttah given to us, nor has any bond been obtained from the sureties up to this time. The Lanka was covered with sand and became unfit for cultivation before such documents had been executed, and it is not just to demand the amount of the rent from us when we have not had anything to do with the Lanka. We therefore request the Court will be pleased to examine our witnesses and documents, and pass a decree that we are not liable to pay the said 7,500 Rupees, and that Defendant should pay us the costs of Suit. Please to peruse.

This 16th October 1862.

(Signed) VACKALANKA KAMARAZ, Pleader.
(„) SUBBARAZ and VENKATRAZ.

Filed this 13th November 1862.

(True Translate.)

(Signed) A. PURVIS, Collector.

ENCLOSURE No. 2.

To the Collector of the Godavery District.

Proposal presented by Sagiraz Venkataraz and Pettundar Mudunuri Appalarazegari Subbaraz, &c., of Atreyapuram in the Taluk of Ralli.

We hereby agree to take the Pallapu Lanka Island belonging to the said village for Faslis 1271 and 1272, for the following sums:—

For Fasli 1271.

Cist for Fasli 1270	Rs.	
Increase	1,000	
For Fasli 1272	2,750	
		3,750
		3,750
		7,500

Seven thousand and five hundred Rupees, binding ourselves to enjoy the profit or bear the loss that may be occasioned either from any addition to, or diminution in the extent of the Island without the interference of the Circar, and to pay punctually the demand of each year according to the instalments that may be fixed by Circar.

We further agree to cultivate the Island in such a manner as not to prevent its future increase.

We will produce good security for the above amount within a week.

This proposal for the Island is executed with our free consent.

8th February 1861.

(Signed) SAGIRAZ VENKATARAZ.
(„) MUDUNURI APPALARAZ GARI SUBBARAZ.

(True Translate.)

(Signed) A. PURVIS, Collector.

ENCLOSURE No. 3.

DRAFT OF AN ANSWER.

Original Suit No 108 *of* 1862, *Principal Sudder Amin Court's file.*

To the Principal Sudder Amin's Court of Rajahmundry.

A Statement presented by A. Purvis, Esq., Collector of the Godavery District.

1. The suit brought by the Plaintiffs, praying they should be exempted from the payment of 7,500 Rupees, being the Cist of Atrayapuram Pallapulanka Island, rented by them for Faslis 1271 and 1272, is connected with the assessment of the Land Revenue, and the Plaintiffs are not entitled to bring the same before the Court.

2. Plaintiffs admit in their plaint that they presented a proposal to rent the said Pallapulanka Island for Faslis 1271 and 1272 at 3,750 Rupees per annum, or 7,500 Rupees for both Faslis. The Collector accepted their application, and they were put in possession of the Island. Plaintiffs made arrangements with other Ryots for cultivating the Island.

3. Plaintiffs were required to furnish competent security for the rent, and Sagiraz Gopalakrishnamraz, &c. consented to stand security, but before the inquiry into their circumstances could be completed, and the bonds executed, the Island was injured by the freshes, and they then refused to stand security; the responsibility of the renters is not affected thereby.

4. The proposal presented by the Plaintiffs for renting the Island contains a special condition, binding them not to put forward any claim for loss, at the same time they would be liable to no additional demand on account of enhanced profit.

5. It is true that Plaintiffs presented an Arzi in September 1861, begging to be released from their engagement, but their Arzi was returned with an endorsement under date the 7th October 1861, to the effect that they should cultivate the Island, and pay the demand without fail according to the conditions of their proposal.

6. It is usual when Islands or villages are rented to receive the applications for rent for the ensuing year at the settlement of the previous year, and to make over the land to the renters on the acceptance of their proposals, and to grant Puttahs under the seal and signature of the Collector at the settlement of the following Fasli, that is, the Fasli in which the demand becomes due, taking Muchilkas from the renters. The Plaintiffs did not consent at the Jamalandi to present Muchilka and receive Puttah. Steps were taken to enforce payment of the demand.

7. The Island was not so seriously injured by the freshes as is pretended by the Plaintiffs. It is believed that land yielding about half the amount of rent was fit for cultivation, but the Plaintiffs left the Island wholly uncultivated for the last and present Faslis, in the hope of evading their responsibility.

8. The Collector therefore requests the Court will be pleased to reject the complaint of the Plaintiffs on the preliminary inquiry, and pass a Decree awarding him all costs. The original proposal of the Plaintiffs for renting the Island is appended.

(Signed) A. PURVIS, Collector.

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1. The Board regret to record their opinion that the Collector has dealt very harshly with the Plaintiffs in this Suit, and consider that the case should never have been allowed to go into Court. Had the Collector felt doubt as to the extent to which remission should be granted, he might have reported the case to the Board for decision, but the attempt to enforce the original demand under the circumstances of the case cannot be defended in equity even if the law would uphold the enforcement of the lease.

2. On Mr. Purvis' own showing the Island was within one month of the commencement of the two years' lease "considerably damaged by the heavy freshes of August 1861," when the parties named as security declined to be bound, and the Plaintiffs applied to be released from their engagement.

3. Their application was in fact an admission of their liability, but the proper course to follow would, the Board consider, have been to release them from their contract, and to have re-sold the lease, which course would probably have secured all the just rights of Government.

4. The effect of the Collector's proceedings has apparently been to risk the total loss of two years' revenue, to leave the Island waste for that time, to inflict serious hardship on the Plaintiffs, and now to compel the defence of an oppressive demand.

5. The Board would wish even at this late stage to afford the Plaintiffs all reasonable relief, and they request the Collector to ascertain from them whether they are willing to withdraw their Suit, and to refer the question of remission to the Board's decision.

6. In the event of their accepting this offer, the Collector will please to forward to the Board, without delay, Statements to show the original cultivable area and estimated rent value of the Lanka, and its condition after the freshes of August 1861 was subsided, and at the present time. He will also state whether any cultivation was carried on in Faslis 1271 and 1272, and to whom the Ryots paid their rent, and whether the Plaintiffs have derived any profit whatever from the Lanka during the lease which is still current.

7. Should the Plaintiffs reject the above offer and resolve to proceed with the Suit, the Government authorities will be in a better position to defend the action than they at present occupy, and the Board will then pass their orders on the defence. He will state what extension of time has been obtained for putting in the Answer.

(True Copies and Extract.)

(Signed) W. HUDLESTON,
Secretary.

To A. Purvis, Esq., Collector of the Godavery District.

Cd in the Proceedings of the Board of Revd to the Secy to Govt. Dated 15 July 1863.

1863. Department.

Rec 16/6/63.

No.

PROCEEDINGS OF THE BOARD OF REVENUE.

Dated 22nd April 1863.

Despatched

Received

No. 2,343.

Making certain observations respecting Suit No. 108 of 1862, and inquiring what extension of time has been obtained for putting in the Answer.

R. D.

No. 1345.

For Orders. I do not think put could equitably enforce the contract — assuming that they can legally do so. It is true that the renters agreed to run all risks — but of course reasonable risks are implied — such a loss at starting as 50 per cent seems to me far beyond that category — I would suggest therefore that unless the rent has manifestly so low as to lead naturally

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No.

NGS OF THE BOARD OF REVENUE,

April 1863.

No. 2,343.

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Rev. 1863 Depart.
Pro. of Govt for July
No. 1676.

Proceedings of the Board of Revenue

Dated 15th
Desp. 15 } July 1863.
Rec. 16th
E. 1.

No.

S. O. No 1345 - 30th July

Submitting letters from the Collector of the Godavery District relative to O. S. No. 108 of 1862 and recommending that the Acting Collector be instructed to apply to the Court to include him as a Supplemental Defendant and that he be authorized to defend the suit at the Public cost.

No 391.

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16th July No 3 Pl 17

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No. 2,343.

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Proceedings of the Madras Government
Under date 20th July 1863.

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(Here enter 15th July 1863)

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14 Copies to the B. of Rev. Cept. 21 July

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Revenue 1863 Deptt.
Pro: of Govt for July
No 1345.
Pro: of the Madras Govt
Dd 20th July /63.

Pro. of the Board of Revenue
dd 2d September /63, C No 2126.
10 Septr 63 No 1674.
Pro. B of Rev. dd 6 Jany 60
C No 66.

No 391 & 392.

Original Suit No 108.
of 1862 in Godavery
ordered to be defended
at the public expense
on the usual conditions.