M.R.O. 14—13,000—27-9-24.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue **DEPARTMENT.**

G.O. No. 813 Press ~~Mis.~~

119-120

Dated 12 - S - ~~19~~ 1863

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department, 12th May 1863.

No. 119. Read the following Proceedings of the Madras Government in the Judicial Department, dated 27th April 1863, No. 613 :—

Communicating copy of a letter from the Advocate General, reporting the result of certain cases by the High Court in its original jurisdiction. } (Vide Judicial Proceedings, 27th April 1863, Nos. 216, 217.)

No. 120. ORDER THEREON, 12th May 1863, No. 813.

Forwarded to the Board of Revenue, who will be requested to call for and submit to Government a report on the conduct of Nazeemoodeen Saib, late Tahsildar of Trivallore, now Tahsildar of Sydapett, in connection with the case referred to in paragraphs 4 to 9 of the Advocate General's letter.

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

JUDICIAL DEPARTMENT.

PROCEEDINGS OF THE MADRAS GOVERNMENT.

Read the following Extract from a letter from the Honorable T. SYDNEY SMYTH, Advocate General; to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George, dated Madras, 27th March 1863.

I have the honor to report for the information of His Excellency the Governor in Council, the substance of four judgments delivered to-day by the High Court in its original jurisdiction, wherein the interests of Government, and of public justice, were materially concerned; in all which cases, the result, I am happy to say, were most satisfactory.

2. The cases, which I mention in the order of their public importance, were

1stly.—No. 9 of 1862—

C. Soobaroya Moodelly and others,

versus.

The Government and B. Cunliffe, Esq., Collector of Madras.

2ndly.—In re the second investigation respecting the wreck of the British Steamer "Jason."

3rdly.—In re the conviction of Taneachellum Modelly and several others for gambling.

4thly.—In re the special case of G. M. Niamud Khan.

versus.

The Secretary of State and the Carnatic Receiver.

3. The 2nd and 3rd cases were decided upon showing cause against Rules Nisi for a Certiorari.

4. The most important case beyond all question is the first. I regret that my great debility prevents my remarking on it as fully as I could wish; but this is comparatively unimportant, as the Chief Justice's Judgment was a written one, of which he has promised a copy, which the Government Solicitor will furnish when obtained. I more regret being unable fully to suggest all the steps which, I conceive, this case indicates as advisable to be taken in [illegible] acted contrary to the Collect[illegible] against the Collector on the trial.

ORDER THEREON, 27th April 1863, No. 643.

Paragraphs 4 to 9 of this letter will be communicated to the Revenue Department; paragraph 10 to the Master Attendant in charge of the Marine Office, and to Lieutenant Colonel Wilson; paragraph 11 to the Magistrate of the Town Police Court, and to the Commissioner of Police; and paragraphs 12 and 13 to the Political Department.

2. The Governor in Council concurs with the Advocate General in considering the result in each of the cases referred to, to have been very satisfactory.

(True Extracts.)

A. J. Arbuthnot

Chief Secretary.

Remark ptt. 2. The Governor against passing ptte Provincial Judge's letter
— do — "Better get rid of this man" W.D.
To the Revenue Department. for the order — Some notice should be taken of the Conduct of the Tahsildar
W.D.

Exd. T. McMootry.

10 Spare copies

7. The Court also intimated that if a distinct issue had been raised whether the Government was liable in this case for the Collector's act, supposing him liable, and the Court to have decided against him, the Court would have held that Government was not liable for the Collector's act.

8. It is obvious therefore that this issue should henceforwards, *ex majori cautelâ*, be taken in every similar case. The learned Judge who settled the issues, Sir A. Bittleston, said he understood me to admit that Government adopted the Collector's act. What I did really say was, simply, that, under instructions from Government, I appeared to defend Mr. Cunliffe —and here I would suggest that Government never should defend a Collector in cases like this, but should act as in case of Magistrates, viz., let them defend themselves, advancing funds if necessary. Otherwise, mistakes of this kind will be constantly arising on the settlement of issues, which is really more like a conversational wrangle or squabble than a decent Judicial Procedure. No one who has attended at some settlements of issues, will suppose that I mean by this any reflection on Sir A. Bittleston. The Procedure Code makes all this almost inevitable. The suitor's Counsel can settle the proper issues much better in their own Chambers, than any Judge can do in such a scramble; and Counsel should be left to do so. As long as the present system lasts, the only safe course seems to me to be that Counsel should be consulted first as to the necessary issues; that the Attorney should then attend on the Judge at the settlement; and that if the Judge neglects or refuses to give the necessary issues, Counsel should be again consulted as to the proceedings necessary in order to amend the issues, or add new ones, and be heard by the Court, not in Chambers. Sir A. Bittleston admitted recollecting that I had strongly urged that Government and the Collector were distinct and separate parties, and could not possibly be jointly liable for that which was the act of one alone, either of Government by their servant and agent the Collector, or of the Collector in his individual capacity, and that one or the other should be struck out as Defendant. How, after this, he could think I meant to say that Government adopted Mr. Cunliffe's act, I can only attribute to the confusion which seems inseparable from a settlement of issues under Act VIII of 1859.

9. I must add that I see no reason whatever to doubt that the whole of this troublesome [illegible] Letters Patent [illegible] of Trivellore, now Tahsildar [illegible] ges or Practitioners have a[illegible]ng beyond [illegible]rest [illegible]ttering of profess[illegible]ge—for to Mofussil Courts and Vakeels it has probably been of use) Code of Procedure Act VIII of 1859, has thrown many matters involved in this case.

5. The principal points decided arose upon the construction of Section 12 of the new Letters Patent.

6. The Court decided, by analogy to cases decided in England under the County Court's Act against Railway Companies, that as the *Head Office* of Government was in the Council Chamber in Fort Saint George, Government must be considered as "carrying on business there," and as such liable to the ordinary original Civil jurisdiction of the High Court, for all acts done or authorized by it. 2ndly. The Court decided, that as the Collector of Madras did not, "at the time of the commencement of the suit, dwell, or carry on business within the local limits," &c., &c., he was not liable to the original jurisdiction in this case, where the cause of action arose outside of those limits. This involved a declaration that the word "dwell" meant a *personal* dwelling, and the words "carrying on business" a *personal* carrying on thereof, and that as the Collector personally carried on his business at Sydapet, outside the local limits, and that such business referred only to Chingleput affairs, and *not* to matters arising within the local limits except by way of appeal, the fact of the Deputy Collector carrying on the business of Madras proper—if I may use the phrase—on the Mount Road, was not enough to make the Collector personally liable in cases like the present. 3rdly. The Court decided that the sale of the jungles was to the Monigars only as representing the villagers, who moreover had independent rights therein, exclusive of such sale, and that neither such rights, nor those acquired under the sale, could be alienated without their consent (of which no evidence was offered; while the reverse was distinctly proved) so as to give the "exclusive right" which the Plaintiffs asserted, but had wholly failed to prove; not venturing even to call the Monigars themselves.

No. 813.

Forwarded to the Board of Revenue who will be requested to call for and submit to Govt a report on the conduct of Nazeer-moodeen late Tahsildar of Trivallore now Tahsildar of Sydapett, in connection with the case referred to in para 4 of the Advocate General's letter.

From Govt. St. George
12th May 1863.

4 Chas Letts, Gt Russell Court, Drury Lane, W.C. Lith.

22d Septr 62 No 428 429.
9 October — o — o — 111-112
14 — o — o — 191-192

Rev: 1863 Oct 1st
Rec: of Govt Foreclay.
No. 1023.

Proceedings of the
Madras Govt: in
the Jud: Dept:.

Dated 27th Apl: 63.
Received 4th May 63.
No. 643.

Transmitted 17 June 63
No 1494

Communicating Copy
of a letter from the Advocate
General reporting the result
of certain Cases by the High
Court in its original Juris
diction.

No 119 & 120.

No 813. 7th May

Wm Dundas

Copy to May 1863 R.G.