M.R.O. 14—13,000—27-9-24.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue **DEPARTMENT.**

G.O. No. 530 Press ~~Mis.~~

336. 337

Dated 31— 3— ~~19~~ 1864

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department,
31st March 1864.

No. 336. Read the following letter from CLEMENT DALE, Esq., Government Pleader, to J. D. SIM, Esq., Secretary to Government, Revenue Department, Fort Saint George, dated Madras, 23rd March 1864, No. 68 :—

SIR,

22nd March 1864, No. 485, Revenue Department.

1. I do myself the honor of acknowledging the receipt of the Order of Government of the date and number noted in the margin.

2. The four witnesses referred to in the Proceedings of the Board of Revenue under date the 4th February 1864, No. 745, were examined before the Small Cause Court, as reported in my letter to the Board, dated the 8th February 1864, No. 31. Mr. Banbury alludes to their examination.

3. There is, however, further information to be obtained, as advised in my letter to the Board under date the 1st of February 1864, No. 21, I fear from Mr. Banbury's letter he may experience difficulty in procuring that. It is a matter of great importance to Government, and I regret I have it not in my power to assist, but I have no means for such a purpose.

No. 337. ORDER THEREON, 31st March 1864, No. 530.

Communicated to the Board of Revenue, who will instruct the Acting Collector of Madras to furnish the further information alluded to in paragraph 3.

(True Extract.)

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

To the Board of Revenue.
„ Government Pleader.

Exd. S. T. Augustin.

Government Pleader

No. 746.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 4th February 1864.

Read the following letter from the Government Pleader, dated Madras, 1st February 1864, No. 21:—

1. With reference to the Proceedings of the Board of Revenue, under the date and number noted in the margin, sending a copy of the report of the Collector of Madras on the subject of the anonymous Petition regarding the Vissanapettah case, I have the honor to advise that evidence should be adduced of the several facts related by Mr. Banbury in paragraphs 1 to 6

17th December 1863, No. 7,992

2. For this purpose it will be necessary that the Civil Court of Guntoor should be moved for the purpose of procuring the issue of a Commission or Commissions—see Sections 175 and 176 of Code of Civil Procedure.

3. Under the 138th Section of the Code of Civil Procedure the Court at Guntoor might call for the production by the Civil Court at Chingleput of the record referred to. I do not however think it could have been the intention of the Legislature, that original records should be sent to such a distance, and if it were, I am of opinion it would be an inconvenient precedent to set; moreover as this case must come up again to the High Court, and may possibly be again appealed to the Privy Council, I advise that copies of such parts of the record as prove the facts should be put in being proved in the proper manner.

4. If the record were sent to me as suggested by Mr. Banbury, I could if in English, point out what portions I think it would be desirable to put in. If the record be not in English, a translation of it should be laid before me: as the Suit was tried *exparte* I suppose it cannot be lengthy.

5. Act No. XV of 1852 provides for the proof of Judicial proceedings; but that Act applies only to Her Majesty's Supreme Courts; and no similar provision has been introduced into Acts II or X of 1855

6. Mr. Norton in his work on Evidence Section 459 (1st Edition) refers to the proof of Judgments in the Mofussil Courts, but he does not speak in positive terms.

7. While in Section 456 he shows the manner in which the copy of a record should be examined.

8. And I advise that the proof should be tendered in that manner.

9. The copies should be made in the usual manner on stamp, and then Officers in the Collector's establishment could examine the copies with the originals, and one could prove their having been examined as laid down by Mr. Norton; and that the original record was then in the custody of the proper Officer of the Civil Court at Chingleput.

10. It is not probable that there should have been in 1837 another party named Cavali Vencata Lutchmiah, besides the father of the Defendant in Original Suit No. 103 of 1855, on the file of the Civil Court of Masulipatam; or if there had been, that such other person should also have had three sons named Vencata Soobiah, Vencata Borrier, and Vencata Narrainapah. It is, however, possible that such might be the case, and as, I think, we have no direct evidence to show that Cavali Vencata Lutchmiah had more sons than the present Defendant, it will be necessary to identify the Cavali Vencata Lutchmiah who mortgaged to Ramnad Pondia as the same man who is mentioned in Original Suit No. 103 of 1855, and was the father of the Defendant in that Suit. Doubtless evidence could be obtained if proper search were made. I do not know whether the sons, V. Soobiah and V. Borrier, are still alive; or whether, if alive, they are friendly to their brother Vencata Narrainapah. If they are friendly, it would not be desirable for the Plaintiff to put them in the box; not that I anticipate they would not speak the truth on such a point, but it would afford the Defendant's Counsel an opportunity to cross-examine them on all points relevant to the issues.

5. I suppose the letter will be now tendered to be read; and that the Civil Judge will be pressed to receive it as evidence. On behalf of the Collector that should be resisted, on the ground that it has not been proved (if such is the case) to come from the proper custody, and also that it is not relevant to the issue inasmuch as this letter is dated in 1811 whereas the account set up by the Defendant does not commence till 13th May 1813. If the Civil Judge should determine to receive it, then in his address to the Court the Vakeel should urge the foregoing circumstances, to show the Court the paper is not worthy of credit; and if it had not been accompanied by such circumstances, still it proves nothing more than that Colonel Mackenzie had been led to believe, rightly or wrongly, a story put forward by Lutchmiah with the view of getting money out of Colonel Mackenzie who, from what Mr. Burke said, appears to have been a most kind-hearted man, spending all his substance on those around him; but the letter does *not prove* that the story of Lutchmiah and as recapitulated on that letter was correct, and in accordance with the facts.

See Decree, paragraph 2.

6. As it is now evidently intended to rely on that letter, it is desirable the Collector should satisfy himself whether the Zemindary there referred to by the name of Zamalovay is the same as the Zemindary in dispute, and known by the name of Vissannapettah. If it is not, evidence should be adduced to that effect; and it should be proved that in 1811 there was a Zemindary known by the name of Zamalovay and to whom it belonged; or that there was no Zemindary in the District known by that name as the case may be. If the Collector is satisfied that the Zemindary now in dispute was known by the name of Zamalovay and is the Zemindary referred to in that letter, then he should satisfy himself whether the statement concerning it which is contained in that letter is correct; for instance, had it been then or at any recent period adjudged to any claimant, what was the name of the claimant; was it Lutchmedavummah; was the Kist for Vissannapettah then in arear; if so, to what extent; and if possible whether the widow required aid as intimated, or whether from any fund in Court, or from her own resources, or from the revenues of the Zemindary, she was enabled to liquidate the arrears. I have not been informed that any litigation in respect of the Zemindary of Vissannapettah had been pending about that time; indeed the Zemindar had died so recently as 1810, and from the papers before me I collect that the widow took or retained perhaps more properly speaking, possession of the Estate as a matter of course. Who was Mr. Hawkins? I suppose it would be impossible to ascertain whether Colonel Mackenzie addressed him as is stated in that letter.

7. The Deputy Record-keeper produced an entry in the Board's books of a Petition presented by Lutchmedavamah in the year 1832. I objected to the reception of such evidence, as it was not the best evidence; whereupon I was informed by Mr. Mayne, that the Defendant had filed the original Petition in the Court at Guntoor as an exhibit, and which I understood had been marked as No. XX. Mr. Mayne pointed to a paper which had been sent by the Civil Court to the Court of Small Causes. It was written in Telugu, and from the casual observation I was able to make during the examination, I did not see any mark on it to identify it as having been before the Board. I did not see any endorsement upon it. I believe it has ever been the invariable practice to endorse the replies on the Petitions themselves. If so, it would appear that the paper now filed cannot be THE *original* Petition which was presented to the Board. The Government Vakeel should object to the reception of the Extract from the Board's books, because it is not the best evidence of the contents of that petition, OR *of the endorsement*. The Petition and the endorsement, if produced would be the best evidence. I observe in the book it is stated, the Petition was in Telugu AND English. If an endeavour is made to put in the Petition, and only the Telugu part is produced, that entry should be pointed out to the Judge, and if the Civil Judge should be of opinion that the Petition is admissible the Government Vakeel should submit that both parts must be produced and filed or none. But it should be contended that the Petition is not admissible in evidence, it being an ex-parte statement made by Lutchmedavamah, and it is a rule that no person can make evidence for themselves; and if Lutchmedavamah could not have put it in evidence neither can the Defendant who claims under her. But from the entry and the Board's book, it appears to me the Petition must be irrelevant to the issue. The extent of the widow's right to the Zemindary and the interest she took in it have been determined by the Privy Council.

8. The third witness was examined to prove the deaths of two parties named Jothy Toolaja Ram Raja Ram; and Chintalapaty Ramalingum. Who these two parties are I do not know, nor what they could have to do with the present Suit. Mr. Mayne was under no necessity to open his case on this occasion, and he would only tell me it was necessary to prove their deaths before he could tender a part of his evidence in support of the Defendant's case. From not knowing the parties, or the precise object for which it was necessary to prove their deaths, I could do no more than cross examine the witness generally. From this man's evidence it is possible the Civil Judge may believe the two parties are dead, and that the witness' brother died in the year Siddadry, but I doubt whether the Civil Judge will place much reliance on his statement of the time of the death of the other man, if the exact time of his death is of importance.

9. As regards the witness' brother, it does not occur to me to suggest much inquiry regarding him; his brother says he was a wanderer from the time of his coming to his age till about ten years before his death or 1849 (the widow having died in 1849, September 1st), and that he was dependent on charity all his life. What therefore he could have to do with the matter in question, I am at a loss to conjecture; and the only inquiry I can suggest is to ascertain whether there really was such a person, and whether he really did live at Conjeveram as deposed to by this witness. As to the other man however, it may be well to inquire whether there was such a man, and whether the witness' statement of him, his residence, his occupation, his death, &c., is correct, or if not, what the real facts concerning him are.

ENCLOSURE No. 1.

ABSTRACT.—Letter alleged to have been written by Colonel Mackenzie to Mr. Travers, Collector of Masulipatam.

ENCLOSURE No. 2.

ABSTRACT.—Petition presented by S. Veeannah Detchalooloo, Pleader on behalf of the Defendant in Original Suit No. 103 of 1855.

From the same gentleman, dated Madras, 10th February 1864, No. 33.

8th February 1864, No. 31.

1. In continuation of the letter I had the honor of addressing to you under the date and number noted in the margin, I do myself the honor of forwarding for the information of the Board, copies of the depositions of the witnesses given in the Small Cause Court at Madras respecting the Original Suit No. 103 of 1855 on the file of the Civil Court of Guntoor (in Vissannapetta case).

2. The Collector will be able to procure a copy from the Guntoor Court.

3. I observe some of the questions are not transcribed quite in the language they were put by me, although the purport is the same, and in some instances, particularly in the evidence of Mr. Burke, the whole of the answers given are not taken down; probably Mr. Cower considered it of no importance.

ENCLOSURES Nos. 1 to 3.—Depositions taken from witnesses.

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1. Ordered to be communicated to the Collector of the Kistna District for information and guidance. He will take care that Mr. Dale's instructions are observed at the hearing in Court at Guntoor. Mr. Thornhill can obtain copy of the depositions from the Guntoor Court.

2. The Collector of Madras will be requested to communicate with Mr. Dale as to the further inquiry suggested in paragraph 9, and to take such steps in the matter as Mr. Dale deems necessary.

(True Copies and Extract.)

(Signed) W. HUDLESTON,
Secretary.

To G. Thornhill, Esq., Collector of the Kistna District, with an enclosure.

Copy to G. Banbury, Esq., Acting Collector of Madras.
-- to C. Dale, Esq., Government Pleader.

Exd. J. Wright.

1864. Department.

No.

PROCEEDINGS OF THE BOARD OF REVENUE,

Dated 12th February 1864.

No. 953.

Communicating to the Collector of the Kistna District with instructions letter from the Government Pleader reporting the result of the examination of the witnesses in the Vissanapettah case, and requesting the Collector of Madras to communication with Mr Dale as to the futher enquiry referred to.

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No. 68

From Clement Dale Esquire Government Pleader Madras,
To J. D. Sim Esquire Secretary to Government

Madras 23d March 1864.

Sir

Vasal

I do myself the honor of acknowledging the receipt of the Order of Government of the date and Number noted in the Margin.

22d March 1864 No 1485
Revenue Board

2. The witnesses referred to in the Proceedings of the Board of Revenue under date the 4th February 1864 No. 745, were examined before the Small Cause Court, as reported in my letter to the Board dated the 8th February 1864 No. 31; Mr Banbury alludes to their examination.

3 There is however further information to be obtained as advised in my letter to the Board under date the 10th February 1864 and No. 21, I fear from Mr Banbury's letter he may experience difficulty in procuring that; it is a matter of great importance to Government and I regret I have it not in my power to assist, but I have no means for such a purpose.

I have the honor to be
Sir
Your most obedt Servant
Clem. Dale
Government Pleader

Pro. 8 February 64 N 159-160
" 23 March — 245-246
Bo Pro 5 Feby 162 N 7446
" 12 " 958

Pro B of Rev dy 25 Feby 64
6 N 1106

N. 336 & 337

Rev. 1864 No 1st
Proc Govt for March
No. 786
From Government Pleader
Madras
To Secretary to the Board
of Revenue

Dated 23
Rec'd 30 March 1864

No 68

Drawing attention
that further information has
to be obtained in the Provinces
to the suits as advised in Govt
Pleader's letter to the Board
dated 12th February 1864
No 21.

No 680. 31st March

Wilkinson
2

No. 530.
5

Communicated to the Board
of Revenue who will instruct the re-
=turn of Collector of Madras to fur-
=nish the further information re-
=ferred to in para 3.

Fort St. George
31st March 1864.

164

Rec'd To the Bd of Rev Cert 1st April Rec'd 4 Cert 5 April
Mc a Govt Pleader Cert 2 1st April.

30