

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 568	Press ~~Mis.~~
71-72	
Dated	5-4-1918

Not to be folded or roughly handled

*Proceedings of the Madras Government, Revenue Department,
5th April 1864.*

No. 71. Read the following Proceedings of the Board of Revenue, dated 16th March 1864:—

Read again letter from the Acting Collector of South Canara, dated 13th February 1864, No. 29, in Board's Proceedings 1st March 1864.

Read also the following letter from the Government Pleader, dated 2nd March 1864, No. 50.

1. I have the honor to acknowledge the receipt of the Proceedings of the Board of Revenue under the date and number noted in the margin; and to state that, in my opinion, it will not be advisable to profer

an Appeal from the Decree of the Acting Civil Judge.

2. I am of opinion the Civil Judge was wrong in giving the Plaintiff a Decree; the Plaintiff had deliberately stated in two papers that the Salt was not his own; he so acted with a fraudulent intention, and should have been held responsible for his wilful and fraudulent misrepresentation. There is no ground, whatever, as shown by the papers before me, for the Civil Judge saying the Defendant had no right to plead that fact. I am however of opinion that no other party could sue the Government, and that it would be undignified for Government to appeal on that ground, as no injury is likely to arise from the error.

3. The acts of the Collector's Department were so ill-advised in the first instance, and the way in which the case was defended was so very objectionable, I do not consider I should be justified in advising an appeal on any other ground.

4. If when the Plaintiff failed to fulfil his part of the contract, the Collector had given him notice that he rescinded the contract, the Collector would have had it in his power to have made fresh arrangements with the Plaintiff, and to have prevented him (the Plaintiff) from putting the Collector in the wrong. Independently however of that it appears to me the 2nd Defendant assumed to himself an importance and authority he did not possess, and that through self-conceit he missed his way. I observe the Collector adopts all the 2nd Defendant's proceedings.

5. I return the three enclosures.

From Collector of South Canara 17th December 1862, and Board's Proceedings 23rd idem.
From Government 29th December 1862, No. 2,697.
From Government Pleader, 22nd June 1863, and Board's Proceedings 26th idem.

1. Ordered that the above papers be submitted to Government, with reference to the correspondence noted in the margin, and with the Board's recommendation that the Decree be accepted as recommended by Mr. Dale, and that sanction be given for the charge of Rupees 1,526-2-0 awarded by the Court to Plaintiff as damages with interest and costs.

2. It appears that Plaintiff commenced landing the Salt in February 1861, at his own risk, having been previously warned that no Salt in excess of the contract quantity would be received, which warning was subsequently more than once repeated, that he completed the landing within the end of March, and that the excess landed was in June 1861 destroyed in consequence of his failure to re-export it or pay duty for it. The quantity so destroyed was Indian Maunds 3,366, and the Court has awarded Rupees 1,438 as its value at, it is presumed, the contract rate.

3. The Court state that they can find no provision of the Customs or Salt Law which warranted the Collector's act, and the Board infer that the Court deem the course proper to have been followed to be that prescribed in the latter part of Section 47, Act VI of 1844, which was the Customs Law in force at the time the case occurred.

4. The Board are not prepared to dispute the correctness of this view, but they see no reason to doubt that the Collector believed he was debarred from availing himself of this procedure, and they therefore have no hesitation in recommending that he be held harmless.

No. 72. ORDER THEREON, 5th April 1864, No. 568.

1. Agreeably to the recommendation of the Board of Revenue, His Excellency in Council is pleased to acquiesce in the Decree of the Civil Court of Mangalore as suggested by Mr. Dale,

*Proceedings of the Madras Government, Revenue Department,
5th April 1864.*

and to sanction the payment of Rupees 1,526-2-0 awarded by the Court to Plaintiff as damages with interest and costs.

2. The Government agree with the Board that the Collector, under the circumstances of the case, should not be held liable.

(True Extract.)

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

To the Board of Revenue.
" Government Pleader.
" Accountant General.
" Civil Paymaster.

Exd. S. T. Augustin.

No. 1,305.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 1st March 1864.

Read the following letter from the Acting Collector of South Canara, dated Kundapur, 13th February 1864, No. 29:—

1. I have the honor to forward herewith, for the perusal of the Board, copy of the Decree and Judgment of the Civil Court of Mangalore in the Suit brought by Felix Mariano Telis against J. Fraser, Esq., Collector of South Canara, for the recovery of Rupees 10,052-4-9, the amount of losses sustained by destruction of salt and breach of agreement on the part of the Collector, who failed to receive, store, and dispose of it as it arrived.

2. The Board will perceive that the Court neither examined any witnesses, nor required the production of any evidence; but after hearing the Vakeels on both sides, has given a decision on two points, viz., the value of the salt destroyed, and the cost incurred in destroying the same, in favor of the Plaintiff and adverse to the Defendant, and ordered that the latter should pay the sum of Rupees 1,458 and Rupees 68 respectively for the aforesaid two items, with interest on the joint sum from the date of the plaint as well as costs in proportion. The total amount of costs is not yet known, as a certain portion of those in the Plaintiff's appeal to the High Court will have to be included, and the amount of interest is also not specified in the Decree.

3. On the day fixed for settling the issues, I had intended to attend the Court; but as the Civil Judge told me that I could not address the Court in person, and I felt that my limited knowledge of Canarese would not permit me to converse readily in Court with the Government Vakeel, who is totally unacquainted with English, I directed the Salt Deputy Collector, who was well acquainted with this case, to go in my place.

4. The Salt Deputy Collector has furnished me with a Memorandum* of all that took place in the Civil Court on the day in question, and I beg to forward it herewith for the information of the Board.

5. If the Board and the Government Pleader, after perusing this Judgment, &c., be of opinion that an appeal ought to be preferred to the High Court, I beg to be informed whether the Government Pleader will require any further information than that mentioned in his letter to the Board dated 22nd June 1863, No. 67.

6. I trust I shall not be thought to be asking too much, if I request that any instructions sent me may be as specific and precise as possible, as I should much regret if any mistake were to occur on my part in furnishing Mr. Dale with all explanations which he may require.

7. The copy of the Judgment herewith forwarded has not yet been authenticated by the Civil Judge, because the amount of the costs of the appeal to the High Court is not yet known. When this has been ascertained, a certified copy will be furnished to me by the Judge and by me to the Board.

ENCLOSURE No. 1.

Revised Decree of the Civil Court of Mangalore.

Present—J. G. THOMPSON, Esq.

Before the Civil Court of Mangalore.—Original Suit No. 2 of 1861,

Under Act VIII of 1859.

Plaintiff

versus

Defendant.

Felix Mariano Telis, son of Jacob Telis, residing
at Mangalore.

The Collector of South Canara.

By Vakil L. Ramachendrya.

By Vakil P. Subarow.

This suit is instituted to recover Rupees 10,052-4-9, the amount of losses sustained by destruction of salt and breach of agreement on part of the Defendant who failed to receive, store, and dispose of it as it arrived.

This case coming on to be heard and debated this present day before J. G. Thompson, Esq., Officiating Civil Judge of Mangalore, in the presence of L. Ramachendrya, Counsel for the Plaintiff, and P. Subarow, Counsel for the Defendant, and the documentary evidence produced by the Defendant having been heard, and due consideration having been given to what was alleged by the Counsel on both sides, the Court orders and decrees that the Defendant shall pay to the Plaintiff Rupees 68-2-0 (the difference between Rupees 1,706-1-0 and Rupees 1,637-15-0) and Rupees 1,453, being the value of the salt destroyed, with interest on the joint sum from the date of the plaint, and costs in proportion.

"No process of execution will be issued to enforce this decree unless some proceeding shall have been taken to keep the same in force within three years next preceding the application for such execution."

Costs in the Revised Decree in Original Suit No. 2 of 1861, exclusive of those in the Plaintiff's appeal to the High Court.

ITEMS.	PLAINTIFF'S COSTS.			DEFENDANT'S COSTS.			Total.		
	To be borne by Plaintiff.	To be paid by Defendant.		To be borne by Defendant.	To be paid by Plaintiff.				
	RS. A. P.	RS. A. P.		RS. A. P.	RS. A. P.		RS. A. P.		
Stamp duty on institution under Act XXXVI of 1860.	200 0 0	150 0 0		...	...		350 0 0		
Fees of the Vakil under Section 25, Regulation XIV of 1816.....	192 13 6	158 3 2		158 3 2	192 13 6		702 1 4		
Value of stamp papers.....	...	2 0 0		2 0 0	...		4 0 0		
Expenses for serving processes.....	...	1 8 0		...	...		1 8 0		
Total...	392 13 6	311 11 2		160 3 2	192 13 6		1,057 9 4		

Given under my hand and seal of the Court at Mangalore this 20th January 1864.

(Signed) J. G. THOMPSON, Officiating Civil Judge.

Copy applied for by Government Vakeel Subarow on the 29th January 1864.

Do. ready and delivered on the 8th February 1864.

(True Copy.)

(Signed) J. G. THOMPSON, Officiating Civil Judge.

ENCLOSURE No. 2.

Revised Judgment in Original Suit No. 2 of 1861.

Present—J. G. THOMPSON, Esq.

1. This Suit having been replaced on the register of this Court, under the orders conveyed in the Proceedings of High Court, dated 22nd June 1863, the Officiating Civil Judge proceeds to dispose of it on its merits.

2. Defendant 2 is now dead.

3. The Plaintiff's Vakeel declares that as Defendant 1 admitted in his statement that he is responsible for "the whole transaction of the 2nd Defendant in the matter of his Suit," the Plaintiff has no further demand upon the representation of Defendant 2.

4. The Plaintiff's Vakeel states that Mr. Fraser is sued as Collector, and not in his individual capacity. He has no demand against Mr. Fraser himself. The notice of the present hearing was served upon the Government Vakeel; and he has accepted it. But it was addressed to "J. Fraser, Collector of South Canara," and he declares that he accepted it merely to enable him to appear and point out that Mr. Fraser is no longer Collector, and that the present Acting Collector should have been made a party to the Suit.

5. If the Suit was originally brought against Mr. Fraser as Collector, the plaint is informal. It should have been brought against "the Collector of South Canara," without any mention of the individual's name, as provided in paragraph 6 of Section 26 of Civil Procedure Code. There would then have been no question.

6. The original notice was directed to J. Fraser, Esq., 1st Defendant, but signed by him "J. Fraser, Collector." Only one month was allowed. But as a Vakalatnamah was filed by the Government Pleader, dated 31st August 1861, it must be supposed that the Government undertook the defence; that the service of the present notice on the Government Pleader was a sufficient service; and that there was no occasion to make the present Acting Collector a Defendant, as the Government Pleader urges.

7. The Suit coming on this day for the adjourned first hearing, it is directed that the plaint be amended, the names of the original Defendants being struck out, and "the Collector of South Canara" being sued alone. It will save some trouble in the proceedings.

8. The pleadings being very badly drawn, and the original bond, Exhibit V, having been produced, it is agreed that it be consulted for the settlement of the points in dispute.

9. On the adjourned first hearing, the Vakeels represented that the Plaintiff has, in his appeal to the High Court, withdrawn all his claim except Items 5 and 6. This does not appear from the "printed copy" sent down by the High Court. That copy contains several mistakes in translation, which have caused some inconvenience.

10. It is necessary first to dispose of Item 6.

The Plaintiff affirms, and the Defendant denies, that the quantity of Salt turned out of the Depot (and afterwards destroyed) was garces 31-64.

11. The issue therefore is whether this is true.

The Plaintiff cannot prove it except from the Defendant's accounts. He neither required the production of these when he filed his plaint, under Section 40, nor gave notice to produce under Section 107; so the Defendant cannot now be required to produce them, and he declines to do so. The Plaintiff urges that the Defendant's figures on this record are contradictory, the quantity being stated in Exhibit IV as garces 26-238, and in the statement as only garces 25-38. The Defendant answers that there is no contradiction; the large number referring to

the small garce of 400 merkals, and the smaller number to the large garce 424 merkals. Explained thus, the figures correspond, and from the first item of the claim it seems that the small garce was used in some of the transactions between the Plaintiff and the Defendant. It must therefore be assumed that the Defendant has correctly stated the quantity as large garces 25-58. The large garce alone is named in the Karar.

The Defendant affirms, and the Plaintiff denies, that the Defendant had authority to destroy the salt.

The second issue therefore is whether he had authority.

From the declaration in the original Judgment that "the Defendant had undoubted authority for his proceedings," the Officiating Civil Judge looked through all the Salt and Customs laws, but failed to find any authority. The Defendant's Vakeel, instructed at the hearing by the Deputy Collector in charge of the Salt Department, stated that it was not for any breach of the Salt or Customs Laws; but simply because the Plaintiff failed to remove it, after he had been warned that it would be destroyed if he did not. He admitted that he has searched in vain for any provision of law which justifies the act.

He pleaded however that it was justified by the provision in the plaint Karar that "if any fraud, &c., be practised by myself, or by persons on my behalf, with regard to the Salt delivered by me under this Karar, I will be liable to the penalty inflicted by the Circular in respect thereof." But it is clear that this referred only to fraud in the quality of the salt; and the Defendant's Vakeel afterwards admitted this.

He then urged that the act was justified by Exhibit IX in which the Plaintiff's agent got leave to land and store the salt on his own responsibility. The Plaintiff declares that his agent exceeded his powers in making this arrangement. But this is a matter of no moment; for the exhibit does not contain a word which can be construed as a justification of this act. It simply provided that the Salt should be landed and re-shipped at the Plaintiff's own expense.

Hence it appears that the destruction of the salt was unauthorized by law or by the plaint Karar. The Defendant fails to show any excuse for his conduct. Because of the Government monopoly he could not put it outside, and leave the Plaintiff to be in any loss from theft or waste. But he might have had it guarded at the Plaintiff's expense, if he could not or would not buy it for the next season.

The Plaintiff affirms, and the Defendant denies, that the Plaintiff was entitled to sue for the value of the salt destroyed.

The third issue therefore is whether he was entitled.

The Defendant's argument is that in his endorsement on Exhibits II and IV, the Plaintiff declared that the salt was not his own, and that it was not in his power to receive it from the stores in the absence of his sub-contractor. The Plaintiff's Vakeel admits both these exhibits, and they contain the alleged statements. But he merely meant that he was bound by his private engagements to procure the presence of his sub-contractor when the salt was being measured. This was a matter with which the Defendant had nothing to do, and he disregarded the statement at the time; so that he has no right to plead it now. The Plaintiff added that if the Government Officers thought he should appear without waiting for the sub-contractor, he would do so; and he agreed to pay the duty on the salt himself. It was by the Plaintiff that the salt was stored, it was he alone who had any dealings with the Defendant about it; and he alone was entitled to sue on the Karar. This objection therefore cannot be admitted.

The Court now proceeds to Item 5.

The Defendant admits that the Plaintiff delivered to him salt worth Rupees 1,706-1-0, and he has paid the Plaintiff through the Court, Rupees 1,637-15-0 on account of it. As a set-off against the balance, he urges that he incurred expenses upon it. But he admits that they were

all incurred in the destruction of the salt above referred to, and as this has been declared an unauthorized proceeding, he cannot be allowed credit for them. Moreover, according to the Karar, the whole sum should have been paid before the date on which the salt was destroyed.

He disputes the Plaintiff's claim to interest up to the date of the plaint on the ground that it was the Plaintiff's own fault that the money was not so paid. He states that the first receipt was produced on May 31st by a messenger who had no authority to receive the cash; that the cash was at once placed at the Plaintiff's disposal, and that the Plaintiff never came to ask for it. The Plaintiff's Vakeel is unable to deny this; and withdraws the claim.

There is no need of further argument or evidence, and the finding is sufficient for the decision of the Suit. The Court accordingly decrees that the Defendant shall pay to the Plaintiff Rupees 68-2-0, the difference between Rupees 1,706-1-0, and Rupees 1,637-15-0, and Rupees 1,458, being the value of the salt destroyed; with interest on the joint sum from the date of the plaint, and costs in proportion.

(True Copy.)

(Signed) G. L. MORRIS, Acting Collector.

ENCLOSURE No. 3.

ABSTRACT.—Memorandum of points argued before the Civil Court of Mangalore in original Suit No. 2 of 1881.

1. Resolved that the above letter be communicated to the Government Pleader with reference to the correspondence quoted in the margin. Mr. Dale will be requested to favor the Board with his opinion as to whether it will be advisable to prefer an appeal from the Acting Civil Judge's decree to the High Court. The Acting Civil Judge appears to have relied upon the fact that there is no precise law under which the Collector was justified in destroying the Salt, and the Board cannot say that the Court was mistaken on that point.

(True Copies and Extract.)

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

To C. Dale, Esq., Government Pleader, with three enclosures.

Copy to G. L. Morris, Esq., Acting Collector of South Canara.

Exd. J. Wright.

the contents of this view. But they see no reason to doubt that the Collector believed he was delayed from availing himself of this procedure and they therefore have no hesitation in recommending that he be held harmless.

(A true Copy & Extract)

[Signature]
Secretary

2

J. D. Finn Esq.
Secretary to the Board of Revenue
with copy of Board Proceedings
dated 1st March 1864.

[Signature]
J. D. Finn Esq.

End of the No. 1505 of
the Board of Revenue
dated 1st March 1864.

1864. Department

Recd. 6/9/64.
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PROCEEDINGS OF THE BOARD OF REVENUE

Dated 1st March 1864

Despatched

Received
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No. 1,305.

Communicating letter from the Acting Collector of South Canara and requesting the opinion of the Government Pleader as to the advisability of preferring an appeal to the High Court from the Decree passed by the Acting Civil Judge in the Suit brought by F. M. Tella against Mr. Fraser.

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