M.R.O. 14—18,000—27-9-34

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 2192 Press ~~Mis.~~

273-275

Dated 13-9-1865.

Not to be folded or roughly handled

Read the following :—

No. 273. Proceedings of the Board of Revenue, dated 24th August 1865, No. 5,167.

Read again Board's Proceedings, dated 19th May 1865, No. 2,613.

Read also the following letter from C. DALE, Esq., Government Pleader, to R. A. DALYELL, Esq., Acting Secretary to the Board of Revenue, dated Madras, 10th August 1865, No. 134.

SIR,

1. I have the honor to acknowledge the receipt of the Proceedings of the Board, under the date and number noted in the margin.

19th May 1865, No. 2,613.

2. The Decree in the Original Suit does not award interest on the mesne profits, but merely awards to the Plaintiff "the mesne profits sued for." The Decrees of the Sudder Adulut and of Her Majesty in Council are equally silent on the subject.

3. The Decree in the Original Suit was passed before the Code for Civil Procedure came into operation in this Presidency, but I am not aware of any circumstances in the Suit which would authorize the Collector to ask that the latter portion of Section 387 of that Code should be brought into operation.

4. By the 196th Section of the Code the Court of Original Jurisdiction may provide in the Decree for the payment of mesne profits, or rent on such land or other property, from the date of the Suit until the date of delivery of possession to the Decree holder, with interest thereupon at such rate as the Court may think proper.

5. I have shown the Court has not made any such provision, and if no appeal had been made from that Decree there would not have been the slightest pretext for the Plaintiff claiming interest, she not having done so in her plaint ; but appeals have been preferred, not by the Plaintiff but by the Collector, and from the 30th of March 1859 to the year 1863 (when the Decree of Her Majesty was pronounced) the Plaintiff has been kept out of her Estate : and the Government has collected the rents and profits, and made use of the money : why the Plaintiff did not avail herself of the Decree in the Privy Council from 3rd November 1863, when it was filed in the High Court to the 12th of December 1864, has not been explained ; and probably it would be difficult for her to offer to the Court any reasonable explanation ; but although the Plaintiff has been tardy in enforcing her rights, the Government has been in receipt of the rents and profits to the time possession was given to her.

6. The law under which the Civil Court will have to act in enforcing the Decree is contained in the 11th Section of Act No. XXIII. of 1861, by which it is enacted that all questions regarding any mesne profits *or interest* which may be PAYABLE in respect of the subject matter of a Suit, between the date of the institution of the Suit and execution of the Decree, shall be determined by order of the Court executing the Decree ; doubtless a question might be raised under the wording of that Section, that interest is not *payable*, it not having been decreed ; but I have little doubt that the Civil Judge would hold he had *power* to order interest to be levied : previously to the passing of the Civil Procedure Code the Courts exercised that power. I am not aware of any legislative enactment directly give them the power in cases where mesne profits were claimed ; nor am I aware that the power was ever disputed in a formal manner which would call forth an authoritative judgment.

7. In cases that are doubtful, and that do not involve any question of great public interest, but where the equity is with the opponent, I do not advise Government to raise the question, and I consider I am best performing my duty to Government in advising in this case that the question should not be *seriously* raised or fought. If it be wished by Government to raise the question with the view of

obtaining a Judicial opinion, the Collector might very fairly point out to the Court that in none of the Decrees is interest given to the Plaintiff, and submitting for the Judge's consideration whether as interest is not made "PAYABLE" by the Decree he has the power to order payment by the 11th Section of Act XXIII. of 1861. The Collector might also point out the great laches of the Plaintiff in not attempting to enforce her rights from November 1863, when the Decree of the Privy Council was filed in the High Court, to the 12th December 1864, and submit that even if the Judge should consider he has the power to order the payment of interest, and thinks it a case in which interest should be adjudged during the pending of litigation, yet that the Plaintiff had forfeited her equity to interest after she had the power of enforcing her judgment. The Collector might inform the Judge that although he considered it right to submit the questions for his consideration, he did not do so in a litigious spirit, but only with the view that the points which appeared questionable might have consideration.

8. If the question were so raised the decision would really carry no weight in it as settling the law on the point.

9. On the second point I consider, under the circumstances, that Mr. Levinge is right in the course he has pursued.

10. As to the third point, if the Renter held the Zemindary under some contract for a fixed term, and by which he agreed to pay, and the Zemindar agreed to accept a certain rent during such term, and such contract was confirmed, or accepted, or acted upon by Government for the residue of the term, I am of opinion that the Renter is not liable for the difference between the rent paid by him and the full Jummahbundy of the estate less Peishcush and charges for the four Fuslies named.

11. I am not sure that I understand the concluding part of paragraph 5 of the Board's Proceedings. The Court will determine the proper amount to be paid for mesne profits, and beyond that the Collector should not pay.

12. I return the original papers noted at foot.

1864 November 30th.	Application preferred on behalf of the Plaintiff in Original Suit No. 1 of 1856, on the file of the Civil Court of Madura.
1865 February 4th.	Notice to the 1st Defendant.
" " 4th.	Proceedings of the Civil Court of Madura.
" " 10th. No. 59.	Letter from the Civil Judge of Madura to the Collector of Madura.
" " 18th.	Abstract shewing the particulars of the amount payable by Government to the Plaintiff in Original Suit No. 1 of 1856, on the file of the Civil Court of Madura.

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1. Resolved that the foregoing papers be submitted to Government, with reference to the Board's Proceedings, dated 4th March 1865, No. 1,238, recorded in the Government Order, under date 16th March 1865, No. 582.

2. The matter under consideration will be found detailed in the Board's Proceedings recorded above, and it now rests with Government to determine whether they will raise the question referred to in paragraph 7 of the Government Pleader's letter. If the delay in the execution of the Decree from November 1863 to December 1864 was owing to the Plaintiff having failed to exercise her rights, the Board consider that payment of interest for this period might fairly be demurred to by Government. The Collector will be requested to report on this point at once.

3. Under the circumstances stated by the Government Pleader, the Board do not think it advisable to raise the general question as to the non-liablity of

Government to pay interest on the ground that no mention of interest was made in the decree.

4. The Collector will observe that, in Mr. Dale's opinion, he was correct in including in his estimate of mesne profits the full amount of collection from the estate, instead of the amount of rent; and that, with reference to his proposal to pay over the actual collection of the current year, he should only pay such sum as the Court may adjudge.

5. The Board have already informed Mr. Levinge that when the amount payable to the Plaintiff in the Suit is determined, they will address the Accountant General regarding the Budget provision to which it is to be charged.

No. 274. Proceedings of the Board of Revenue, dated 8th September 1865.

Read the following letter from V. H. LEVINGE, Esq., Collector of Madura, to R. A. DALYELL, Esq., Acting Secretary to the Board of Revenue, dated Madura, 2nd September 1865, No. 233.

SIR,

With reference to the latter part of paragraph 2 of the Board's Proceedings, No. 5,167, dated 24th August 1865, I have the honor to report that I enquired of the Plaintiff's Agent at Madura, as to the cause of the delay in the execution of the Decree, from November 1863 to December 1864. He attributes the delay to the circumstance of the confirmation of the Appeal Decree by the Privy Council having been brought to the Plaintiff's notice only a few days before the presentation of her application to the Civil Court for the enforcement of the Decree. If the Board consider that such a plea is inadmissible, the payment of interest for this period might be demurred to by Government as observed by the Board.

Submitted to Government, with reference to the Board's Proceedings quoted by the Collector. The Board cannot admit that the explanation of the delay is a valid one.

No. 275. ORDER THEREON, 13th September 1865, No. 2,192.

Miscellaneous.

1. The Government consider that it will be well to adopt the Government Pleader's suggestion, and apply to the Court to determine what amount is payable by Government under the Decree.

2. It must be borne in mind that but for an omission in the original defence, the Plaintiff would certainly never have obtained a Decree, the right of Government to decide as to succession to unsettled Poliems, having been upheld by several unquestioned Decrees of the Sudder Court. Plaintiff has, therefore, no claim to special consideration, and it appears to Government that the rate of interest claimed is excessive, and that no interest can be claimed for the period during which the Plaintiff allowed the Privy Council Decree to lie in abeyance.

3. A reference to the Court will be the simplest mode of adjusting the account.

(True Extract.)

(Signed) W. HUDLESTON,
Acting Secretary to Government.

To the Board of Revenue.

Ed. S. T. Augustin.

Rev. 1865 Departl.

No. 2514.

Proceedings of the Board of Revenue

Dated 18: Sept. 8 Rec. 9 } September 1865.

No.

Letter

Submitting with remarks, letter from the Collector of Madura reporting the explanation given by the Plaintiff in O.S. No. 1 of 1865, on the file of the Madura Civil Court, for the delay in the execution of Her Majesty's Decree in that suit granting Plaintiff the interest on the mesne profits of the Pragadi Kuppaikkoor Villam

No. 2,613.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 19th May 1865.

Read the following letter from V. H. LEVINGE, Esq., Collector of Madura, to R. A. DALYELL, Esq., Acting Secretary to the Board of Revenue, dated Terumangalum, 27th April 1865:—

1. Referring to paragraph 6 of my letter to the Board, dated 18th February 1865, No. 56, I have the honor to submit herewith three Statements marked Nos. 1, 2 and 3.

Statement No 1.

2. The Plaintiff in her application to the Civil Court through her Vakil claims the recovery of Rupees 65,049-0-5, as mesne profits due to her from Faslis 1265 to 1273, with interest, but under the settlement accounts of both the renter and Government for the period in question, the sum payable to the Plaintiff amounts to Rupees 53,357-2-2 only, being less than her demand by Rupees 11,691-14-3. I beg to refer the Board to the remark in the Statement for explanation as to the difference existing beween amounts shown in Columns 8 and 15. The Plaintiff's agent has, however, signed a document before me admitting the correctness of the mesne profits entered in Column 15, but claims interest at 12 per cent. per annum. The Government Vakil of the Madura Court reports that the Plaintiff is not entitled to any interest for mesne profits, as, according to the practice now observed in the Civil Court, interest is not allowed in most cases, and I, therefore, leave the question for the decision of the Board in communication with the Government Pleader at Madras.

Statement No. 2.

3. Shows the amount in the Treasury to the credit of the estate. Of the sum of Rupees 33,634-5-9 therein shown, Rupees 5,600, the amount of rent paid by the lessee of the estate for Faslis from 1263 to 1266 have been already carried to the credit of Government, and the remainder is now in deposit. If it be decided by the Board that the mesne profits (without interest) shown in Column 15 of the Statement No. I, is only to be paid to the Plaintiff, I beg to solicit the sanction of the Board for the disbursement of Rupees 53,357-2-2, of which Rupees 28,034-5-9 is to be paid from the fund of the estate now in deposit, and Rupees 25,322-12-5 from the Imperial revenue, and to be informed the grounds on which the Plaintiff is considered not entitled to interest on the mesne profits, to enable me to represent the same to the Civil Court.

4. The Statement No. III. is prepared for the information of the Board to show the amount of interest accruing on the mesne profits in Column 15 of the Statement No. I. at 12 per cent. per annum to the close of April 1865. Should the Board consider that the Plaintiff has a right to demand payment of interest on the mesne profits, I request the sanction of the Board to remit to the Civil Court Rupees 79,434-5-0, as shown in Column 5 of the Statement No. III., and subsequent interest on Rupees 53,357-2-2 from 1st April 1865 to the date of payment.

To Board 8th September 1853, No. 95.
Proceedings of the Board of Revenue, 1st May 1854.
Do. do. 24th December 1855, No. 3,134.

5. It will be seen from the marginal correspondence that after the death of Chinnammal, the proprietress of the estate in 1853, the renter who obtained a lease of the Zemindary from her was, under the orders of Government, allowed to enjoy the estate for the unexpired portion of the lease, or till the close of Fasli 1266, and to pay the stipulated rent to Government, and thus it is apparent that until 1857 no portion of the mesne profits of the Faslis from 1263 to 1266 over and above the rent came into the possession of Government.

6. The Board will perceive from the Decree of the Civil Court, which has been affirmed both by the late Sudder Court and the Privy Council, that the Collector, the 1st Defendant, has been adjudged to pay the mesne profits of the two Faslis, viz., 1263 and 1264 sued for, or in other words the full Jummabundy amount of the above period, *minus* the Peishcush, Sibbundi charges, &c.

7. The correspondence noted in the margin will show the Board that on the confirmation of the original Decree by the late Sudder Court, a review Petition was, on behalf of the Collector, presented to the Court raising objections as to the liability of the Collector to pay the mesne profits sued for over and above the sum he had actually received, and that the Petition was rejected on the ground of the question not having been raised either before the Court below, or at the hearing of the appeal.

Board's Proceedings,	dated	9th November 1860,	No.	5,199.
Government	"	" 24th	"	" 2,232.
Board's	"	" 12th	"	" 5,833.
"	"	" 21st January 1861,		" 843.
Government	"	" 25th	"	" 181.
Board's	"	" 2nd February	"	" 679.

8. I have from the circumstances above stated entered in Statement No. 1 the full Jummabandy amount of the Faslis 1265 and 1266, *minus* Peishcush, though the Government had received only the rent for the said period.

9. Agreeably to the sanction of Government conveyed in their Proceedings, No. 582, dated 16th March 1865, Rupees 15,220-10-2, inclusive of subsequent interest on Rupees 8,780-14-11, from 1st December 1864 to 28th March 1865, have been remitted to the Civil Court.

10. The Board are aware the lease of the Estate was recognized by Government, but as the escheat of the Polliem by Government has been since disallowed, I beg to be favored with the Board's opinion as to the propriety of suing the heir or heirs of the deceased renter for the difference between the full Jummabandy amount of the Faslis marginally noted after deducting Peishcush, Sibbundi charges, &c., and the rent paid to Government for the above period.

1263, 1264, 1265, 1266.

11. If the Board consider such a measure unobjectionable, I request that they will instruct Mr. Dale to favor me with a Draft Plaint.

12. Of the amount of revenue collected in the Estate during the current Fasli, a sum of Rupees 2,165-2-6 after meeting payment of Peishcush and Sibbundi charges, &c., is now on hand, and I request the sanction of the Board to remit the amount also to the Civil Court.

Enclosure No. 1.

Account particular showing the amount of mesne profits due to the Plaintiff in Original Suit No. 1 of 1856, instituted for the recovery of Ernakanaikur Zemindari.

As per application presented by the Plaintiff's Vakil.

By whom settlement made.	Fasli.	Demand.	Peshkush.	Private cultivation.	Service Maniem.	Total.	Balance.	Total demand.	As per Government Accounts.
1	2	3	4	5	6	7	8	9	
		Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.
Renter.....	65	6,885 0 5	2,061 15 8	92 0 0	180 7 5	2,334 7 1	4,550 9 4	6,938 11 1	
	66	9,049 3 9	2,061 15 8	92 0 0	180 7 5	2,334 7 1	6,714 12 8	7,287 6 6	
		15,934 4 2	4,123 15 4	184 0 0	360 14 10	4,668 14 2	11,265 6 0	14,226 1 7	
Collector.....	67	9,131 12 2	2,061 15 8	92 0 0	180 7 5	2,334 7 1	6,797 5 1	7,918 2 10	
	68	8,593 3 5	2,061 15 8	92 0 0	180 7 5	2,334 7 1	6,258 12 4	7,423 0 6	
	69	11,858 9 7	2,061 15 8	92 0 0	180 7 5	2,334 7 1	9,524 2 6	9,703 11 0	
	70	9,411 1 11	2,061 15 8	92 0 0	180 7 5	2,334 7 1	7,076 10 10	8,158 11 6	
	71	10,722 2 0	2,061 15 8	92 0 0	180 7 5	2,334 7 1	8,387 10 11	9,469 11 7	
	72	9,465 8 4	2,061 15 8	92 0 0	180 7 5	2,334 7 1	7,131 1 3	8,213 1 11	
	73	10,942 6 7	2,061 15 8	92 0 0	180 7 5	2,334 7 1	8,607 15 6	9,690 0 2	
		70,124 12 0	14,433 13 8	644 0 0	1,263 3 11	16,341 1 7	53,783 10 5	60,576 7 6	
		86,059 0 2	18,557 13 0	828 0 0	1,624 2 9	21,009 15 9	65,049 0 5	74,802 9 1	

Account particular showing the amount of mesne profits, &c.—(*Concluded.*)

By whom settlement made.	Fasli.	As per Government accounts. Peishkush.	Deduct. Establishment.	Sederwarid.	Income Tax.	Total.	Balance.	Increase.	Decrease.
		10	11	12	13	14	15	16	17
		RS. A. P.	RS. A. P.	RS. A. P.	RS. A. P.	RS. A. P.	RS. A. P.	RS. A. P.	RS. A. P.
Renter.....	65	2,061 15 8	... ...	... ...	... ...	2,061 15 8	4,876 11 5	326 2 1	... ...
	66	2,061 15 8	... ...	... ...	... ...	2,061 15 8	5,225 6 10	... ...	1,489 5 10
		4,123 15 4	... ...	... ...	... ...	4,123 15 4	10,102 2 3	326 2 1	1,489 5 10
Collector.....	67	2,061 15 8	178 8 0	50 6 0	... ...	2,290 13 8	5,627 5 2	... ...	1,169 15 11
	68	2,061 15 8	356 10 3	50 6 0	... ...	2,467 15 0	4,955 0 7	... ...	1,303 11 9
	69	2,061 15 8	294 4 1	50 6 0	... ...	2,406 6 9	7,297 4 3	... ...	2,226 14 3
	70	2,061 15 8	270 14 1	50 6 0	152 13 0	2,542 0 9	5,616 10 9	... ...	1,460 0 1
	71	2,061 15 8	324 8 0	50 6 0	71 7 0	2,508 4 8	6,961 6 11	... ...	1,426 4 0
	72	2,061 15 8	298 8 5	50 6 0	273 8 0	2,684 6 1	5,528 11 10	... ...	1,602 5 5
	73	2,061 15 8	309 2 1	50 6 0	... ...	2,421 7 9	7,268 8 5	... ...	1,939 7 1
		14,433 13 3	2,037 3 11	352 10 0	497 12 0	17,321 7 7	43,254 15 11	... ...	10,529 10 6
		18,557 13 0	2,037 3 11	352 10 0	497 12 0	21,445 6 11	53,357 2 2	326 2 1	12,018 0 4
								Net decrease...	11,691 14 3

Remarks.—The difference of Rupees 11,691-14-3 between Columns 8 and 15 is owing to the entries in Columns from 9 to 15 against Faslis 1265 and 1266 having been filled up as per accounts rendered by the Renter for the two Faslis in question, and to the fact of the village servants having been during the management of the estate by Government from Faslis 1267 to 1273 allowed to enjoy as Inam the lands granted them as service Inams by the late proprietors in excess of the Faisal Inams which were insufficient for their support, and to the inclusion of the assessment of the excess Inams so allowed in the application presented by the Plaintiff to the Civil Court. The amount in Column 9 is the amount actually settled, and that in Column 15 is the balance after deducting Peishcush, &c., charges. The Plaintiff's agent now acknowledges the correctness of the sum in Column 15.

TERUMUNGALUM,
27th April 1865.

(Signed) V. H. LEVINGE,
Collector.

ENCLOSURE No. 2.

No. II.—Statement showing the particulars of the assets of the Errasakanaiknur Estate.

Particulars.	Amount. RS. A. P.	Total. RS. A. P.
Amount of rent of the estate for Faslis 1265 and 1266, at Rupees 1,400 per Fasli (the Zemindari then being rented) out of Rupees 10,102-2-3, being the balance of revenue of those Faslis, as per Statement No. I, after deducting Peishcush from the amount of settlement...	2,800 0 0	... ...
Amount of rent for Faslis 1263 and 1264	2,800 0 0	... ...
Balance (according to Column 15 of the Statement No. I.) of the Jummabhundy amount of Faslis from 1267 to 1273, during which the estate was managed by Government after deducting Peishcush, &c., charges, as particularized in Statement No. I....	43,254 15 11	48,854 15 11
Deduct.		
Remitted to the Civil Court, as per sanction of Government conveyed in their Proceedings, No. 582, dated 16th March 1865, being the amount of mesne profits of the two Faslis 1263 and 1264 sued for, costs incurred by the Plaintiff, and interest inclusive of subsequent interest on Rupees 8,730-14-11 from 1st December 1864 to 28th March 1865...	... ...	15,220 10 2
Balance...	... ...	33,634 5 9
In deposit...	28,034 5 9	... ...
Credited to Land Revenue...	5,600 0 0	... ...

TERUMUNGALUM, 27th April 1865.

(Signed) V. H. LEVINGE, Collector.

ENCLOSURE No. 3.

No. III.—Statement showing the interest accruing on the mesne profits due to the Plaintiff in Original Suit No. 1 of 1856, on the file of the Civil Court of Madura.

By whom settlement made.	Fasliwar.	Amount entered in Column 15 of the Statement No. I. RS. A. P.	Interest at 12 per cent. per annum. RS. A. P.	Total. RS. A. P.	Remarks.
Renter	1265	4,876 11 5	3,560 0 0	... ...	The original Decree was passed on the 30th March 1859, and the interest is calculated from 1st April 1859 to 30th April 1865.
	1266	5,225 6 10	3,814 9 0	... ...	
		10,102 2 3	7,374 9 0	... ...	
	1267	5,627 5 2	4,107 15 1	... ...	The interest on the amount entered against each Fasli is calculated from the commencement of the following Fasli to the close of April 1865.
	1268	4,955 0 7	3,468 8 5	... ...	
	1269	7,297 4 3	4,232 6 8	... ...	
	1270	5,616 10 9	2,583 10 6	... ...	
	1271	6,961 6 11	2,366 14 2	... ...	
	1272	5,528 11 10	1,216 5 2	... ...	
	1273	7,268 8 5	726 13 8	... ...	
		4,324 15 11	18,702 9 10	... ...	
		53,357 2 2	26,077 2 10	79,434 5 0	
Amount deposited as per Statement No. 2	...	33,634 5 9	... ...	33,634 5 9	
Balance...	...	19,722 12 5	26,077 2 10	45,799 15 3	

(Signed) V. H. LEVINGE, Collector.

1. Resolved that the foregoing letter, together with copy of the Board's Proceedings, dated 4th March 1865, No. 1,238, be forwarded for the consideration of the Government Pleader.

2. In the case under reference, one Veraka Ammal sued the Government in 1856 for the Poliput of Errasakanaiknur with mesne profits for Faslis 1263 and 1264. In Suit No. 1 of 1856, the Civil Judge decreed to her the estate and the mesne profits sued for with costs of suit. This Judgment was declared on 30th March 1859. In April, an appeal was preferred to the late Sudder Court, and in March 1860, that Court confirmed the Judgment of the lower Court. Though the Government at first resolved to submit to the decree, on its being pointed out that a considerable sum had been decreed against them in the shape of mesne profits which they had never received, the estate having been under rent at a low rate, the Court was applied to review its Judgment on this point. The Petition was, however, dismissed, and an appeal was then made to the Privy Council. The Privy Council confirmed the Judgment of the lower Court in 1863, and this fact was communicated to the Collector of Madura in the Board's Proceedings, dated 28th September 1863, No. 6,148. The Government Pleader was also requested to file the original order of Her Majesty in Council in the High Court, this course being necessary to give effect to the Judgment of the Privy Council.* No further action appears to have been taken in the matter by the Collector until December 1864, when he addressed the Board on the subject, and the Government Pleader was requested to furnish all necessary instructions to him at an early date.† Mr. Dale accordingly supplied the Collector with a copy of the Judgment of the Privy Council, and in accordance with the orders of the Civil Court of Madura, the Collector put Veraka Ammal in possession of the estate, and applied for sanction to pay her Rupees 14,877-14-4, being the amount of the costs of suit, and of the mesne profits sued for in the Original Suit with interest on them up to date from date of original decree. This payment was sanctioned by the Board and Government in accordance with the Court's application.

* Government Order, 24th September 1863, No. 1,754.

† Board's Proceedings 27th December 1864, No. 8,247.

Government Order 16th March 1865, No. 582.

3. The Collector now desires instructions as to an application made by the Plaintiff's Vakeel for the mesne profits of the estate from Faslis 1265 to 1273, and though the demand made was at first in excess of the profits according to the Collector's accounts, the Plaintiff's agent has consented to accept the Collector's estimate, and the only question at issue is regarding her demand for interest on these mesne profits which amounts to a very large sum. On this point Mr. Dale's opinion will be requested.

4. The Collector in his estimate of the profits of Faslis 1265 and 1266 has entered the full amount of the Jummahbundy of the estate less Peishcush and charges, though the Government merely received the rent paid by the Renter of the estate. Mr. Levinge has adopted this course, because the application of Government to be held liable only for the amount actually received by them was thrown out by the Sudder Court as shown above. Mr. Dale will be requested to give his opinion as to the propriety of this part of the Collector's proceedings.

5. The further point raised by Mr. Levinge as to the liability of the Renter for the difference between the rent paid by him and the full Jummahbundy of the estate, less Peishcush and charges, for the four Faslis 1263, 1264, 1265, and 1266, will also be submitted for Mr. Dale's consideration, and he will be requested to inform the Board whether there is any objection to the amount collected from the property during the current year being handed over to the agent of the proprietor.

6. The Collector will be requested to report from what provision in the Budget he proposes to meet any charges in excess of the sum in deposit which it may be found necessary to incur.

(True Copies and Extract.)

(Signed) R. A. DALYELL,
Acting Secretary.

To C. Dale, Esq., Government Pleader,
with copy of Board's Proceedings 4th March 1865, No. 1,238.
Copy to V. H. Levinge, Esq., Collector of Madura.

Encl. in the Pro. of Board of Rev. to the Advocate to Govt. R. D. dated 26 Augt 1865. No 6167.

1865. Department

Rev: 2862/65

No.

PROCEEDINGS OF THE BOARD OF REVENUE.

Dated 19*th May* 1865.

No 2,613.

Forwarding to the Government Pleader, for consideration, letter from the Collector of Madura requesting instructions as to an application made by the Vakeel of Plaintiff in O. S. No 1 of 1865 for the mesne profits of the Erramakanaikur Estate from Fasli 1265 to 1273.

Justly. It apparently was
immaterial to the rights of
the ant. claimants whether the
obligor formally the right of the
heirs as his representatives.

Venkanna Annaji claimed
the succession &c.

The general question as to the right
of the heirs of female children to succeed
to property was not left open. But
Venkanna's claim was disallowed
on the plea that the existence of the
Tarwad was admitted, if female
succession was the Estate was
divisible between sharers.

The Court in taking possession
of the Estate under the Act was only bound to do so
Venkanna Annaji under the
claim in Court & got a decree (Os. No. 1. 1856
in the ground that Govt. by permitting
Chinnaiyal to succeed had debarred
himself from pleading that females
could not succeed.

Decree for pltff was awarded by C.J.
Govt. as well for all the lands
had been made prior to the Act to
Govt. The ant. then for bas. P. 7113. 13.7.

The Govt. appealed to the S.U. urging (Ds. 140. 1859
among other arguments the general
ground that Govt. nominate the succession

to vacated properties.

The C. declined to admit
plea not urged in the
lower Ct. confirmed
the orig. decree but
calculated the execution
profits at Rs. 27,803-15-2

A review of judgment
was sought on the point
of overstatement of profits
profits - mesne. which the
Govt. of the ant. awarded
after trial. but the Ct.
rejected the petition.

A special appeal was
made to the Sr. Court, formally
stating the J. C. decision
was confirmed - no
bona fide.

1863 - Pltff appeal. Thus
taken no step to obtain
execution of the decree
until Dec. 1864. When
the was in the critical
flourishing condition
of the Estate.

Opinion of P. 15220 Rs.
being ~~apparently~~ the mesne
profits with awarded with
interest & costs of suit
costs of appeal
was also being paid.

The question now

Think the objection that Govt. was
not liable to pay more than they had
received under not been timely admitted
as they had (the true officers) accepted
claim & was responsible for any
mesne profits of the estate
only at the date of the decree
leaving the Estate entirely
Govt.

Judgment

Judgment

Judgment

January 61. 1865
Vol. h/55. 12/11/77

Rec: 1865. Department

Pro: of Govt for Letter

No. 2362.

PROCEEDINGS OF THE BOARD OF REVENUE,

Pro. B of Rev. dated 24th Aug.

6 No 1141

Dated 24th August 1865.

Sep 25 -
Oct 26 -
Cl -
Further No 314/67

No. 5,167.

Submitting with remarks, letter from the Government Pleader, with copy of Board's Proceedings dated 19th May 1865, regarding the interest on the mesne profits of Erasackanaikanoor Estate to be paid to Plaintiff in Original Suit No. 1 of 1865 on the file of the Madura Civil Court; and requesting the Collector to report the cause of the delay in the execution of the Decree.

No 273 to 276

With an order
No 372-13 Letter

5 Letters 5546