

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 2734	Press Mis.
128-129	
Dated 11-11-18	65.

Not to be folded or roughly handled

*Proceedings of the Madras Government, Revenue Department,
11th November 1865.*

No. 128. Read the following Proceedings of the Board of Revenue, dated 2nd November 1865, No. 7,021.

Read the following letter from the Collector of Madura, to the Acting Secretary to the Board of Revenue, dated 23rd October 1865, No. 286:—

1. Adverting to the Board's Proceedings, No. 5,766, dated 16th September 1865, I have the honor to submit herewith copy of an order passed by the Acting Civil Judge on the 17th instant, ⁱⁿ my application (with reference to paragraph 7 of Mr. Dale's letter recorded in the Board's Proceedings, No. 5,167, dated 24th August 1865) to him, on the subject of the determination of the mesne profits payable by Government under the decree to the Plaintiff, in Original Suit No. 1 of 1856, on the file of the Civil Court.

2. The Government Vakeel of this station promises to obtain for me a copy of an account, which will be framed by the Court, as to the amount payable by Government to the Plaintiff, as per Tabular Statement laid down at the foot of the Civil Judge's order, and on my receipt of the account, I will forward a translation of the same for the information of the Board.

Original Suit No. 1 of 1856, on the file of the Civil Court of Madura.

Order of the Civil Court on the Plaintiff's application for mesne profits, &c., of the Erasekanai Polliem.

The Petitioner applies for payment of the mesne profits of the Polliem of Erasekanai, with interest at twelve per cent. during the time she has been kept out of possession of the said estate by the Government, i. e., from 1265 to 1273. The Government disputed the right of succession of the Petitioner to the estate, and in the original decree, as well as in the appeals preferred, the right and title of the Petitioner was made out and confirmed. The final decree of Her Majesty on the subject was pronounced in 1863, and on the 3rd November of the same year the said decree was filed in the High Court of Madras. The Petitioner's application for the mesne profits with interest, was made on the 12th December 1864, or more than a year after the Decree of the Privy Council reached this country. The Petitioner has failed, I consider, to satisfactorily account for her not having availed herself of the final decree in her favor before December 1864. The Collector, on the part of Government, has objected to the claim of the Petitioner to the mesne profits with interest, and basing his objection on the fact that no interest was allowed either in the Original or Appeal Decrees. I am of opinion that the Petitioner, however, is entitled to interest, though not at the exorbitant rate claimed, namely, at twelve per cent. per annum, and further that though the decrees, both in Original and Appeal, did not award interest, yet the Court has the power, under Section 11, Act XXIII. of 1861, of granting such interest as may seem fair and reasonable. The Government were in adverse possession of the estate, and pending the litigation of the claims of the contending parties, it is but equity that would warrant the awarding of a fair rate of interest during that period. The Petitioner has, however, I consider forfeited her equity to interest after she had the power of enforcing her judgment. Now that the final decree has been pronounced, the Court has nothing to do with any omission on the part of the original offence, but for what, as has been alleged, the Petitioner would not have obtained a decree.

During the time the Government held the estate no doubt the best was done for it that could have been, and the surplus, after paying the several charges, were in their possession; and under such circumstances, a rate of fair interest should be allowed to the party who has been proved was the rightful owner of both estate and profits thereon, and has been kept out of such enjoyment. The following Tabular Statement will show the Fuslies and the rate of interest that the Court

*Proceedings of the Madras Government, Revenue Department,
11th November 1865.*

awards the Petitioner, which has been calculated at the rate of five per cent., and which, I consider, to be a fair and equitable rate.

Interest at five per cent. per annum.

On Fuslies 1265, 1266, 1267, from date of Original Decree.

Do do. 1268 to 1273, from date of the commencement of each succeeding Fusly.

(Signed) C. N. POCHIN,
Acting Civil Judge.

Order passed under Section 2, Act XXIII. of 1861.

An appeal lies from this order.

(Signed) C. N. POCHIN,
Acting Civil Judge.

17th October 1865.

(Signed) ரமசாமி அய்யர்,
கெ-வக்கீல்.

(True Copy.)

(Signed.) V. H. LEVINGE,
Collector.

Forwarded for the information of the Government Pleader. The Board presume, from his former remarks on this case, that Mr. Dale will not advise an appeal from the Acting Civil Judge's order on the subject of interest.

No. 129. ORDER THEREON, 11th November 1865, No. 2,734.

Miscellaneous.

The Government accept the Court's decision in the matter. They are averse to prolonging the litigation.

(True Extract.)

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

To the Board of Revenue.

Exd. S. T. Augustin.

No. 7,021.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 2nd November 1865.

Read the following letter from V. H. LEVINGE, Esq., Collector of Madura, to R. A. DALLYELL, Esq., Acting Secretary to the Board of Revenue, dated 23rd October 1865, No. 286:—

1. Adverting to the Board's Proceedings, No. 5,766, dated 16th September 1865, I have the honor to submit herewith copy of an order passed by the Acting Civil Judge on the 17th instant, on my application (with reference to paragraph 7 of Mr. Dale's letter recorded in the Board's Proceedings, No. 5,167, dated 24th August 1865) to him, on the subject of the determination of the mesne profits payable by Government under the decree to the Plaintiff, in Original Suit No. 1 of 1856, on the file of the Civil Court.

2. The Government Vakil of this station promises to obtain for me a copy of an account which will be framed by the Court as to the amount payable by Government to the Plaintiff, as per tabular statement laid down at the foot of the Civil Judge's order, and on my receipt of the account, I will forward a translation of the same for the information of the Board.

ENCLOSURE No. 1.

Original Suit No. 1 of 1856 on the file of the Civil Court of Madura.

Order of the Civil Court on the Plaintiff's application for mesne profits, &c., of the Erasekanaiknur Polliem.

The Petitioner applies for payment of the mesne profits of the Polliem of Erasekanaiknur, with interest at twelve per cent. during the time she has been kept out of possession of the said estate by the Government, i. e., from 1265 to 1273. The Government disputed the right of succession of the Petitioner to the estate, and in the original Decree, as well as in the appeals preferred, the right and title of the Petitioner was made out and confirmed. The final decree of Her Majesty on the subject was pronounced in 1863, and on the 3rd November of the same year the said Decree was filed in the High Court of Madras. The Petitioner's application for the mesne profits with interest, was made on the 12th December 1864, or more than a year after the Decree of the Privy Council reached this country. The Petitioner has failed, I consider, to satisfactorily account for her not having availed herself of the final Decree in her favor before December 1864. The Collector, on the part of Government, has objected to the claim of the Petitioner to the mesne profits with interest, and basing his objection on the fact that no interest was allowed either in the Original or Appeal Decrees. I am of opinion that the Petitioner, however, is entitled to interest, though not at the exorbitant rate claimed, namely, at twelve per cent. per annum, and further that though the decrees, both in Original and Appeal, did not award interest, yet the Court has the power, under Section 11, Act XXIII. of 1861, of granting such interest as may seem fair and reasonable. The Government were in adverse possession of the estate, and pending the litigation of the claims of the contending parties, it is but equity that would warrant the awarding of a fair rate of interest during that period. The Petitioner has, however, I consider forfeited her equity to interest after she had the power of enforcing her judgment. Now that the final Decree has been pronounced, the Court has nothing to do with any omission on the part of the original defence, but for what, as has been alleged, the Petitioner would not have obtained a decree.

During the time the Government held the estate no doubt the best was done for it that could have been, and the surplus, after paying the several charges, were in their possession; and under such circumstances, a rate of fair interest should be allowed to the party who has been proved was the rightful owner of both estate and profits thereon, and has been kept out of such enjoyment. The following tabular statement will show the Faslis and the rate of interest that

the Court awards the Petitioner, which has been calculated at the rate of five per cent., and which, I consider, to be a fair and equitable rate.

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(Signed) C. N. POCHIN,
Acting Civil Judge.

Order passed under Section 2, Act XXIII. of 1861.

An appeal lies from this order.

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(Signed) V. H. LEVINGE,
Collector.

Forwarded for the information of the Government Pleader. The Board presumes, from his former remarks on this case, that Mr. Dale will not advise an appeal from the Acting Civil Judge's order on the subject of interest.

(True Copies and Extract.)

[Signature]

Acting Secretary.

To C. Dale, Esq., Government Pleader.

Copy to V. H. Levinge, Esq., Collector of Madura.

„ to W. Hudleston, Esq., Acting Secretary to Government, R. D.

Exd. J. Wright.

W-2734
The Govt accept the Court's
decision in the matter. My
own correct proceedings to
the signature. - L. B. H. H. -
11th November/65.
14th Nov 1865

19/10/1865 - 10/11/1865

PROCEEDINGS OF THE BOARD OF REVENUE,
No. 3141.

1865. Department.

Dated 2nd November 1865.

No. 7,021.

Forwarding for the information of the Government Pleader letter from the Collector of Madura submitting copy of the order of the Acting Civil Judge on the subject of the mesne profits of the Erasekanikur Pollam payable by Government to Plaintiff in O. S. No. 1 of 1856 on the file of the Madura Civil Court.

12/12/1865

W. H. L.