M.R.O. 14—18,000—27-9-24

MADRAS RECORD OFFICE.

Government of Madras.

Revenue **DEPARTMENT.**

G.O. No. 2934 Press ~~Mis.~~

681. 682

Dated 30-10-1866.

Not to be folded or roughly handled

No. 681. Read the following Proceedings of the Board of Revenue, dated 20th October 1866, No. 7,557.

Read the following letter from the Collector of Madura, to the Secretary to the Board of Revenue, dated 3rd October 1866, No. 332 :—

1. With reference to the marginal correspondence, I have the honor to submit, herewith, the papers, as per accompanying list, and to request the sanction of the Board to make over to the Plaintiff the lands in dispute and under Government attachment, and to remit to the Civil Court the sum of Rupees 11,940-11-9, being the amount of the mesne profits from the lands, from Fusly 1245 to Fusly 1274, and held in deposit.

To Board, 31st March 1855, No. 46.
From do. 30th April ,, ,, 1,037.

2. The amount of mesne profits up to Fusly 1274 held in deposit, is given as Rupees 12,600 in the application presented to the Civil Court by the Plaintiff's Vakeel, which, according to my accounts, amounts to Rupees 12,600-11-9. The salary of the Gumastah entrusted with the management of the disputed lands, and the Saderwarid allowances are, under a special arrangement made with the Ramnad Zemindarni, first advanced by her for several months together, and afterwards re-imbursed to her, on her submission of a bill for the sum which she had actually disbursed. Deducting from the said sum of Rupees 12,600-11-9 now in deposit, Rupees 660, being the salary of the Gumastah, and the Saderwarid to be re-imbursed to the Zemindarni, in adjustment of the advance she has made for sixty months, from the commencement of Fusly 1270, to the close of Fusly 1274, the mesne profits which the Plaintiff is entitled to receive, amounts to but only Rupees 11,940-11-9.

Enclosure No. 2.

3. In the application to the Civil Court by the Plaintiff's Vakeel, interest is claimed for the sum in deposit. I do not think that the Plaintiff is, in equity, entitled to any interest whatever, for the following two grounds :—

First.—No interest has been awarded in any of the decrees passed by the Original or the Appellate Courts.

Secondly.—The lands in dispute were attached by Mr. Blackburne in Fusly 1245, with no other object than to prevent bloodshed, and to preserve the public peace.—*Vide* Orders of Government, dated 31st December 1835, passed in conformity with the Board's recommendation of the 21st idem.

4. For the above grounds, I propose to present a motion to the Civil Court, demurring to the payment of interest for the sum payable to the Plaintiff from the amount in deposit, on the intimation of the Board's approval to carry out my proposal. In the proposed motion, the fact that the Plaintiff is only entitled to the payment of Rupees 11,940-11-9, out of the mesne profits up to Fusly 1274 now in deposit, will be submitted for the Court's consideration.

5. I have, agreeably to the terms of the original decree, sent a Yadast to the Ramnad Zemindarni on the 14th September 1866, to remit to me Rupees 740-13-0, being the amount of costs incurred by the Collector from the income of the lands, for conducting the defence of the original suit, and the interests due thereon, viz., Rupees 508-15-0, for remittance to the Civil Court, to be paid to the Plaintiff. In an Urzi which the Manager of the Zemindarni has sent in reply to my said Yadast,

he informs me that a motion has been presented to the Court on behalf of the Zemindarni, objecting to the payment of interest on the costs incurred by the Collector and the Plaintiff from the date of the decree of the Privy Council, inasmuch as the Plaintiff failed to take proper steps for the execution of the decree when he had the means of doing so; and expresses his readiness to pay the Collector's costs with interest as claimed by the Plaintiff, provided the Court admits the propriety of the Plaintiff's claim for the payment of interest for the period in question, and pass orders accordingly. I will, therefore, in reference to an order which the Court will pass in regard to the Plaintiff's claim for interest, recover the costs, &c., from the Zemindarni, and remit the same to the Court.

6. I further request the authority of the Board to remit to the Civil Court the sum of Rupees 759-3-11, being the income of the lands for Fusly 1275, after deducting therefrom the charges of the management of the disputed lands from the commencement of Fusly 1275, down to the period of the restoration of the lands.

7. In conclusion, I beg to inform the Board that the Civil Court has, on my application, allowed me time till the 10th November next, to obtain the Board's orders for making over the lands in dispute, and for remitting to the Civil Court the amount of mesne profits, &c.

Enclosure No. 1.

Abstract.—Copy of a Notice issued by the Civil Court to the Collector, under date the 13th August 1866.

Enclosure No. 2.

Abstract.—Translate of an application, dated 18th July 1866, presented to the Civil Court by the Plaintiff's Vakil.

Enclosure No. 3.

Abstract.—Copy of the Judgment passed by the Civil Judge in Original Suit No. 2 of 1865, on the file of his Court.

Enclosure No. 4.

Abstract.—Copy of such portion of the decree in Original Suit No. 2 of 1865, as shews the cost of the suits.

Enclosure No. 5.

Abstract.—Copy of the Judgment passed by the late Sudder Court in Appeal Suit No. 10 of 1860.

Enclosure No. 6.

Abstract.—Copy of the Judgment passed by the Privy Council, dated 9th July 1864.

Enclosure No. 7.

Abstract.—Translate of a motion presented to the Civil Court by the Ramnad Zemindarni's Vakil, on the 12th September 1866.

From Govt.,	18th December	1835,	No. 1,575.
To do.	21st do.	,, ,,	621.
Board's Procs.,	19th April	1855, ,,	930.
Govt. Procs.,	28th do.	,, ,,	566.
Board's Procs.,	7th Sept.	1860, ,,	4,096.

1. Ordered that the foregoing letter and enclosures be submitted to Government, with reference to the correspondence noted in the margin.

Proceedings of the Madras Government, Revenue Department,
30th October 1866.

2. The subject matter of the suit in question was the recovery of a tract of and lying between the Zemindaries of Ramnad and Yettiapooram, to which both proprietors laid claim. The feud ran so high that the Ryots on either side were drawn into the quarrel, and violent affrays ensued, resulting, in several instances, in bloodshed and actual loss of life. Under the express orders of Government, Mr. Blackburne, in his capacity of Magistrate, sequestered the land in 1835, as the only means of maintaining public peace, and managed it as Collector, holding the profits in deposit, to be made over with the land to whichever party was declared by a Court of competent jurisdiction to be the rightful owner. The land and its mesne profits have been so held ever since. In 1855, the Zemindar of Yettiapooram instituted a suit in the Civil Court of Madura for the recovery of the land with mesne profits, making the Collector first Defendant, and the Zemindarni of Ramnad the second Defendant; and the Government sanctioned the defence of this suit on behalf of the Collector at the public expense.

3. The Civil Court adjudged the land in dispute to the Zemindar of Yettiapooram, and in paragraph 24 of the Judgment passed by it, ordered the Collector to make over the land to the Plaintiff with the "*net revenues* of the same in deposit from the time it was zufted," and decreed "that the second Defendant, as the admitted originator of the attachment, and consequent cause of this action, do pay his own and first Defendant's costs, as well as those of Plaintiff." In a further clause of the same paragraph, the Court, observing that the first Defendant (the Collector) had charged the costs incurred in defending the suit to the land in Fusly 1266, directed the first Defendant to pay them to the Plaintiff on *receiving* the same from the second Defendant. This decree was substantially affirmed by the late Sudder Court and by Her Majesty in Council; and pending final adjudication, the disputed land and its profits, as before remarked, have continued in the Collector's keeping.

4. He has now received notice from the Civil Judge to shew cause why the decree should not be enforced; and he begs orders for making over the land and mesne profits, and as to the steps he should take in respect to the Plaintiff's claim for interest, both on the sum in deposit, and on the costs originally awarded to the Plaintiff.

5. Subject to the orders of Government, the Board resolve to pass the following orders:—

The Collector is authorized to make over the disputed land at once to the Zemindar of Yettiapooram, in pursuance of the several decrees noticed above. He is also authorized to make over the mesne profits, subject to the deduction of the actual expense incurred in managing the land. This was clearly contemplated by the Civil Court, whose decision has been finally confirmed, in that it ordered the Collector to make over the land with the "*net revenues*" in deposit, evidently implying exclusive of expenses attending its management. The Plaintiff has no claim to interest on the deposits. Not only has no interest been awarded in any of the decrees, but the land and its revenues appear to have continued under attachment, pending legal steps for ultimate adjudication. If it was anybody's business, it was the Plaintiff's to enforce the execution of the original decree. The Collector will, therefore, pay into Court the net profits of the land up to date,

which the Board understand, from paragraphs 2 and 6 of his letter, to be (11,940-11-9 + 759-3-11 =) Rupees 12,699-15-8. As the Court distinctly relieved the Collector of all costs, the Collector has nothing more to do than to pay into Court the amount he recovers from the second Defendant. He has nothing to do with the paying of interest on those costs. That is a matter for the Zemindarni of Ramnad; and as it appears that she has taken steps to resist the claim, it will be for the Collector to await the order of the Court, and report the same for the information of higher authority.

No. 682. ORDER THEREON, 30th October 1866, No. 2,934.

Miscellaneous. Referred to the Government Pleader for his opinion.

(True Extract.)

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

To the Government Pleader,
,, the Board of Revenue.

Exd. S. T. Augustin.

No. 2934.

Referred to the Govt. Pleader for his opinion

4 To the Government Pleader
14 " the Board of Revenue

30 Oct. 66

Pro No 23.24 d 22.12.35
49.50. d 1.3.55
408.409 d 22.9.60.

T. Augustin.