M.R.O. 1—33,000—16-10-33.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 2415 Press Mis.—

374-375

Dated 25th August 1869

Not to be folded or roughly handled

2415

Proceedings of the Madras Government. Revenue Department, 25th August 1869.

No. 374. Read the following Proceedings of the Board of Revenue, dated 5th August 1869, No. 5,748 :—

Read the following letter from the Collector of Madras, to the Acting Secretary to the Board of Revenue, dated Sydapet, 8th July 1869, No. 221.

I HAVE the honour to forward the translation of the decision of the Poonamalle District Moonsiff, dismissing with costs the claim of the plaintiff in original Suit No. 234 of 1864, the defence of which was sanctioned in Board's Proceedings, dated 13th December 1864, No. 7,967, at the expense of Government.

ENCLOSURE No. 1.

Before the District Moonsiff of Poonamalle.

Original Suit No. 234 of 1864.

Plaintiff. — *versus* — *Defendants.*

Perumaul Deivanayaka Mudaliar, son of Vengoo Mudaliar, residing on the western side of Acharappen street, door No. 53, in Peddu Naik's Pettah, Madras.

Represented by Sabapathi Mudaliar.

1. Venkatakamatchi Iyer, son of Comsari Bullai Ramasawmy Iyer, residing in Amoor, Ponneri Talook.
2. Sama Row, Sheristadar of Ponneri Talook, residing in the said village of Ponneri.
3. Cuppu Row, Tahsildar of Ponneri Talook, residing in the said village of Ponneri.

The first defendant represented by Venkata Row, second and third defendants represented by Sri Narasimmah Chariar.

In the plaint marked 2, presented by the plaintiff's Vakeel on the 27th August 1864, it is stated that, in 1863, the first defendant preferred to the second and third defendants a false complaint against the plaintiff, charging him with the offence of mischief for having constructed achicuts and thus prevented the freshes, which used to flow from the village Vadakapattu included in Amoor Muttah of plaintiff to the tank of Tadaparumbakum, a shrotriem village of the first defendant; that though it was proved in the inquiry and admitted by the second and third defendants in the decision that the achicuts were not new, still the said defendants willing to please the first defendant fined the plaintiff without any ground in the sum of Rupees 18 on the 18th December 1863; that the Collector before whom the case went in appeal agreed with the second and third defendants that the achicuts were of long standing, and on the 3rd May 1864 passed a decision directing the refund to the plaintiff of the fine imposed on him, on the grounds that the plaintiff had a right to construct achicuts in his own village for purposes of cultivation, and to retain as much of the freshes as could be contained within them; that the achicuts should be three feet in height, and that the plaintiff was not guilty of the offence of mischief; that the plaintiff is a man of high position, being a Zemindar and Soucar and carrying much foreign trade and a variety of merchandize; and that, as the first defendant preferred against him a false charge, thus disturbing his peace and causing him great anxiety and annoyance, and, further, as the defendants 2 and 3 to please the first defendant insulted him and damaged his character by imposing on him an unjust fine, all the three defendants should be made by the Court to pay him damages to the amount of Rupees 800.

2. In the statement marked No. 5 submitted by the first defendant's Vakeel, it is stated that the plaintiff is not entitled to damages even to the extent of a single pie; that the plaint should be dismissed in the first hearing only; that this defendant complained to the second defendant against plaintiff for having raised newly an embankment on the ridges of his fields and thus interrupted the supply, which the tank of Tadaparumbakum, a shrotriem village, had long been receiving from the freshes; that the charge being confessed by the plaintiff before the second defendant the latter on inquiry imposed a fine for the said offence; that on appeal, the fine has been

remitted by the District Magistrate; that though the plaintiff has in the first paragraph of the plaint accused the first defendant of having preferred a false charge against him (plaintiff) still nothing to the effect has been mentioned in the decision either of the Sub-Magistrate or the District Magistrate; that the other matters will become apparent at the hearing; and that the suit must be dismissed with a direction to the plaintiff to pay the first defendant's costs.

3. The statement marked No. 11 submitted by the second defendant's Vakeel states that second defendant acted in the matter referred to in the plaint in his official capacity as Sub-Magistrate and in good faith, that consequently he is not liable to a civil action under Act XVIII. of 1850, and that therefore the suit must be dismissed.

4. The statement marked No. 13, submitted by the third defendant's Vakeel, says that he took no part in the case of mischief out of which the present action has arisen, and that he begs therefore, that the suit may be dismissed as against him.

5. The petition marked No. 14 presented by the plaintiff's Vakeel, explains the reasons for having included the third defendant in the suit, stating that this was done because the second defendant was doing duty as Acting Sheristadar and Sub-Magistrate in the third defendant's Cutcherry, and because the inquiry was conducted and the disputed spots, etc., inspected jointly by both these defendants, a point admitted in the decision itself, notwithstanding the decision bears the signature of the second defendant alone.

6. The issues settled for proof by the plaintiff were that he should prove that the charge preferred against by the first defendant before the second defendant, to the effect that the plaintiff raised new achicuts for the purpose of stopping the freshes flowing to Tadaparumbakum, the shrotriem village of the first defendant, was a false one, and that he suffered thereby loss of character as well as of money.

The defendant was directed to disprove the above points.

Plaintiff's Exhibits.

1. Extract from the Magisterial decision of the second defendant passed on the 18th December 1863 in a case concerning the plaintiff, marked A, No 16.
2. Extract from the Magisterial decision of the Collector passed in appeal on the 31st May 1864, marked B, No. 17.
3. Extract from the Criminal petition presented to the Talook Magistrate of Penneri by the Goomastah of the first defendant on the 14th November 1862, marked C, No. 29.
4. Extract from the petition presented by the first defendant to the Sub-Magistrate on the 19th November 1862, requesting the latter to examine the plaintiff, marked D, No. 30.
5. Summons issued to the second defendant on the 30th November 1863, marked E, No. 31.

Exhibits of the First Defendant.

1. Extract from the decision of the Sub-Magistrate, dated 18th December 1863, marked I, No. 7.
2. Extract from the decision of the District Magistrate passed on appeal on the 31st May 1864, marked II, No 8.

Plaintiff's Witnesses.

1. Krishna Deechathur, first witness, No. 34.
2. Ramasawmy Moodelly, second witness, No. 35.
3. Kailasa Naicken, third witness, No. 36.
4. Nagamani Moodelly, fifth witness, No. 37.

Witnesses for the First Defendant.

1. Sami Reddi, first witness, No. 39
2. Lutchumana Pillay, third witness, No. 40.

Judgment.

The Criminal petitions marked C and D, presented by the first to the second defendant, have not at all been proved to be false; there does not appear the slightest reason to suppose that the complaints were groundless and prompted by feelings of animosity. On the other hand, it appears satisfactorily from the Magisterial decision marked B, as well as the depositions of witnesses on

Proceedings of the Madras Government, Revenue Department, 25th August 1869.

both the sides, that there was sufficient ground for the complaints made by the first defendant. The Court also fails to perceive that the plaintiff suffered any loss of character from the complaints made against him by the first defendant.

2. The second defendant in his Magisterial capacity received and accepted the petitions presented to him, instituted an inquiry into the case, inspected personally the disputed spot, and passed the decision marked A, and there does not appear the slightest reason to suppose that this act of the said defendant was at all opposed to Act XVIII. of 1850.

3. The plaintiff alleges that the first defendant's petition was given to the second and third defendants, and that they passed a decision unfavorable to the plaintiff. But it appears from the petitions marked C and D that the complaint was made only to the second defendant, and that he (second defendant) passed the decision marked A in his Magisterial capacity; consequently the grounds assigned by the plaintiff, for including the third defendant in the suit, have fallen to the ground. There is a statement in the second defendant's decision, marked A, to the effect that he inspected the disputed spot jointly with the Tahsildar; but the records do not show the nature of the concern the third defendant had in the matter, so as to induce the second defendant to require his (third defendant's) presence in the inspection. It might be that the third defendant was present at the inspection of the disputed spot as a *friend* of the second defendant, and at his instance; but if such was the case, there is no reason for the second defendant to mention the matter in the decision. There must, therefore, have been some proper reason for the same, which the Pleaders of neither party have been able to disclose during the hearing. However this be, there is no sufficient cause for the inclusion of the third defendant in the suit.

4. Under the above circumstances the plaintiff's claim is dismissed with costs.

(Signed) T. CHELLAPAH NAICKER,
District Moonsiff.

[illegible] 1867

(True Translation.)

(Signed) E. G. R. FANE,
Collector.

SUBMITTED, together with a copy of Board's Proceedings, dated 13th December 1864, No. 7,967, for the information of Government.

2. The suit has been dismissed.

No. 375. ORDER THEREON, 25th August 1869, No. 2,415.

Miscellaneous.

ORDERED to be recorded.

(True Extract.)

(Signed) H. WELLESLEY,
Acting Under-Secretary to Government.

To the Board of Revenue.

Exd. E. C. Shunker.

No. 7,967.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 13th December 1864.

Read the following letter from E. G. R. FANE, Esq., Collector of Madras, to W. HUDLESTON, Esq, Secretary to the Board of Revenue, dated Sydapet, 23rd November 1864, No. 535:—

1. I have the honor to forward translation of a Plaint filed in the District Munsiff's Court of Trippasore, in Original Suit No. 234 of 1864, against 1st, Vencatacamatchi Iyer, Shrotriemdar of Tadaparambakam, in the Ponneri Taluk; 2nd, Sama Row, Taluk Sherishtadar and Sub-Magistrate of Ponneri; and 3rd, Cuppa Row, Taluk Magistrate of the same Taluk, claiming damages to the extent of Rupees 800 for defamation of character.

2. I also forward draft of answers proposed to be filed on behalf of the 2nd and 3rd Defendants, for the Board's approval.

3. The facts of the case are as follows: The 1st Defendant, the Shrotriemdar of Tadaparambakam, complained to the 2nd Defendant, Sub-Magistrate of Ponneri, in November last, that the Plaintiff who is the Mootahdar of Amoor, a neighbouring village, had raised an embankment contrary to established usage, and that thereby loss of water had been caused to his tank in the said Shrotriem village of Tadaparambakam. The charge falling under Section 426 of the Indian Penal Code was taken up and tried by the 2nd Defendant, Sub-Magistrate.

4. The Plaintiff Devanayaga Mudaly, against whom the 1st Defendant preferred the charge, stated in defence that the land on which the embankment in question was raised was his own, forming a part of his Moottah village of Vadacapattu, and that the embankment had been in existence for many years having been put up by the former Mottahdar, and that he had simply repaired and strengthened it as it had fallen into disrepair.

5. The evidence adduced before the Sub-Magistrate, the 2nd Defendant, on behalf of the Plaintiff showed as alleged by him that the embankment had existed for a long time, its height being from two and a quarter to eight feet, and that the land on which it stood belonged to his Moottah village of Vadacapattu, while the 1st Defendant Venkatasamatchi Iyer failed to prove that the disputed embankment was a new erection. On the contrary the evidence adduced on his behalf went to confirm the statement of the Plaintiff, viz., that there was an old embankment which had now been simply repaired; but that in repairing it the height only had been somewhat increased.

6. The Sub-Magistrate, the 2nd Defendant, inspected the disputed embankment, and recorded the result of his to doing so the following effect, "that there was an old embankment almost "all round the Plaintiff's land which had been raised three feet high in some places, and in others "three-fourth feet, and the act of the Plaintiff in thus raising the embankment tended to "diminish the supply of water to the 1st Defendant's tank." He was therefore of opinion that the charge of mischief was proved, and fined the Plaintiff in the sum of Rupees 10, and his two servants in the sums of Rupees 5 and 3 each.

7. Plaintiff dissatisfied with this decision appealed to me. In appeal I reversed the sentence of the Sub-Magistrate on the following grounds, 1st, that the disputed embankment did not appear to be a new one as admitted by the Sub-Magistrate himself, as well as by one of the 1st Defendant's witnesses; 2ndly, that the repairs done to it therefore could not be construed to be mischief, and that it was no infringement upon the rights of the 1st Defendant, inasmuch as all wet lands must have such embankments to keep in water; and lastly, that the Plaintiff was entitled to the use of the water that flows over his lands.

8. Nothing however in the proceedings held by the Sub-Magistrate casts a reflection on the character of the Plaintiff, and all that can be said of the (2nd Defendant) Sub-Magistrate's decision, is that it was an error in judgment which was rectified on appeal. I therefore beg in herewith laying the whole case before the Board, that they will authorize the defence of the suit at the public expense. The time for filing the answer expires on the 6th January next.

ENCLOSURE No. 1.

To CHELLAPATHY NAIKER, Taluk Moonsiff of Tirippasore, Chengleput District.

1. The plaint filed by Court Vakeel Soonderavarada Pillay on behalf of Punemel Daivanayaga Mudaly, son of Yencoo Mudlyar, Velala caste, Zemindar and merchant, residing in the western side of Acharappen street, door No. 53, in Peddanaicken Pettah, Madras, for damages amounting to Rupees 800 against I Vencatacamatchi Iyer, son of Ramasawmy Iyer, Shrotriem-

lar, 2 Samakow Taluk Serishtadar of Ponnery Brahmin, father's name not known, living in Ponnery 3 Coopoorao, Tahsildar of the said Taluk, Brahmin, living in Ponnery.

The first Defendant preferred to the 2nd and 3rd Defendants a complaint in 1863 of mischief against the Plaintiff, charging him with having constructed Achicuts (ridges) across the freshes flowing to Thadaperambacam tank in the 1st Defendant's Shrotrium village from Vi.aka-puttoo in Amoor Moottah belonging to Plaintiff.

2. In the inquiry it was proved that the said Achicuts were of long existence. The 2nd and 3rd Defendants also admitted this fact in their decision; but have, to favor the 1st Defendant, fined the Plaintiff Rupees 18 on the 18th December 1863. The Collector inquired into this case in appeal, cancelled the original decision, and on the 3rd May 1864 ordered the fine to be refunded to Plaintiff on the ground that the Achicuts were long standing ones, and that the Plaintiff had a right to construct them for cultivation in his village, and to retain as much of the freshes as he liked. He (Collector) also decided that the Achicuts should be three feet high, and declared that no charge of mischief could be preferred against him (Plaintiff).

3. The Plaintiff is a person of great respectability, being a landed proprietor and a merchant having ships, &c., and the 1st Defendant preferred a false complaint against him, and thus caused him much anxiety and loss. The 2nd and 3rd Defendants, to please the 1st Defendant, insulted him (Plaintiff), and damaged his character by unjustly fining him. The Plaintiff now therefore complains against them and the 1st Defendant, and requests that damages, to the amount of Rupees 800, may be recovered from the three Defendants.

(Signed) SOONDARAVARADA PILLAY,
Court Vakeel.

I, the Plaintiff in this case, do hereby solemnly declare that what is stated in it is true.
Dated 2nd August 1864.
Received 27th " "

(Signed) PUMMAL DIVANOYAGA, MUDDALY.

(True Translation.)

(Signed) E. G. R. FANE, Collector.

ENCLOSURE No. 2.

Answer proposed to be filed by the 3rd Defendant Kuffu Row, Taluk Magistrate of Ponnery, in Original Suit No. 234 of 1864, on the file of the Munsiff's Court of Trippasore.

The 3rd Defendant begs to submit he took no part in the alleged case of mischief, out of which the present action has arisen. He therefore begs that the Court will dismiss the suit against him.

SYDAPET,
23rd November 1864.

(Signed) E. G. R. FANE,
Collector.

Answer proposed to be filed in Original Suit No. 234 on the file of the District Munsiff's Court of Trippasore by Sama Row the 2nd Defendant in that Suit.

The 2nd Defendant submits that he acted in the matter referred to in the Plaint in his official capacity as Sub-Magistrate and in good faith, and that under Act XVIII of 1850 he is not liable to a Civil Action. He therefore begs that the Court will dismiss the suit as against him with all costs.

SYDAPET,
23rd November 1864.

(Signed) E. G. R. FANE,
Collector.

The Board sanction the defence of the Suit at the public cost, on the usual terms, and authorize the Collector to file the draft answer as amended.

(True Copies and Extract.)

(Signed) W. HUDLESTON,
Secretary.

To E. G. R. Fane, Esq., Collector of Madras.
Copy to R. W. Ludwick, Esq., Civil Paymaster.

Exd. R. H. Lee.

Rev. 1869. Aug. 25
Board of Revenue
MADRAS.
R. 2715.

PROCEEDINGS 5TH AUGUST 1869, No. 5,748.

Copy 13th Aug. 1869. Each
Received 14th

AUGUST.
No. 5,748.

Suit—No. 234 of 1864, on file of Poonamallee District Munsiff's Court in Madras District, Letter from Collector forwarding translation of Judgment in, submitted to Government.

R. 2715

C. 18 Aug. 69 P. 20

25-Aug. 69

Error in the Copy of the Bd of Rev. to the Govt to be corrected
Dated 5 Aug. 1869 Col. 3 l. 44

1864. Department.

Rev. 2715/69

No.

PROCEEDINGS OF THE BOARD OF REVENUE,

Dated 13th *December* 1864.

No. 7,967.

Sanctioning the defence at the public cost and on the usual terms of O. S. No. 234 of 1864, and authorizing the filing of the proposed draft answer.

Rev. 25 Aug. 69 L. 2 3/4