

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No.	311	Press <u>Mis.</u>
<u>69-70</u>		
Dated	6 th December 1869..	

Not to be folded or roughly handled

*Proceedings of the Madras Government, Revenue Department,
6th December 1869.*

No. 69.] Read the following letter from the Government Solicitor, Madras, to the Acting Secretary to Government, Revenue Department, Fort Saint George, dated Madras, 8th November 1869, No. 608:—

I HAVE the honour to acknowledge the receipt of the order of Government dated 24th September 1869, No. 2,657, Revenue Department. ^{noted in the margin, together with its enclosures, requesting the Advocate-General's opinion, in consultation with the Government Pleader, relative to the Special Appeal to the High Court at Madras from the decree of the Principal Sudder Ameen of Masulipatam in Appeal Suit No. 1 of 1869.}

2. I submitted the matter for the consideration of the Advocate-General, and have also conferred with him and the Government Pleader thereon.

3. I now forward a copy of the opinion of the Advocate-General, and herewith return the enclosures above noted.

4. I marked on the Advocate-General's papers when submitting them to him, a fee of Pagodas 40 or Rupees 140, being the usual fee for an opinion and conference, and have paid him that amount, and request the sanction of Government for the payment so made.

OPINION.

It has been necessary to file the Appeal since these papers have been received, in order to save the time for appealing. The point appears doubtful, and as the Appeal has been filed, it had better be proceeded with, in order to obtain an authoritative opinion upon it. The amount is small. The costs, if the case goes against the Government, will be something very trifling. The Pleader's fee is Rupees 5-8-9 in the lower court.

6th November 1869.

(Signed) J. B. NORTON,
Advocate-General.

(True Copy.)

(Signed) H. G. PRICHARD,
Government Solicitor.

No. 70.

ORDER THEREON, 6th December 1869, No. 3,111.

Miscellaneous.

ORDERED that these papers be communicated to the Board of Revenue, with reference to the Proceedings of

Government, dated 24th September 1869, No. 2,657.

2. Sanction is granted for Rupees (140) one hundred and forty.

(True Extract.)

(Signed) R. A. DALYELL,

Acting Secretary to Government.

To the Board of Revenue.

„ the Government Solicitor.

„ the Accountant-General.

Erd. E. C. Shunker.

No. 206.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 15th January 1867.

Read the following letter from G. THORNHILL, Esq., Collector of the Kistna district, to the Secretary to the Board of Revenue, dated Circuit Catcherry at Vinuconda, 2nd January 1867, No. 2:—

1. I have the honour to report, for the information of the Board, that one Calavagunta Chinnamraz, Curnum of the village of Pasalapudy, in Gudewada taluk, has preferred a suit, No. 219 of 1866, in the District Munsiff's Court of Masulipatam, against certain ryots of the said village, and the Collector, for the recovery of a sum of Rupees 111-3-3 from the former (ryots) on account of his (plaintiff's) Curnikum emoluments, and praying that the costs of the suit may be borne by all the defendants.

2. A translation of the Plaint, and a Memorandum of the facts of the case, together with a Draft Answer, are herewith submitted; and I request that the Board will be pleased to sanction the defence at public cost.

3. The time for filing answer will expire on the 9th instant, but I have applied for one month's further time.

ENCLOSURE No. 1.

Complaint.

No. 219 of 1866.

To the District Munsiff's Court, Masulipatam.

Complaint preferred by the plaintiff, a Curnum named Calavagunta Chinnamraz, an inhabitant of Channur, in the Vinnacota Pergunnah, against the defendants, cultivators, viz.,

1. Sankara Chendria, an inhabitant of Gudewada.
2. Do. Venketroydoo, an inhabitant of Guraja, in the Vinnacota Pergunnah; and
3. T. A. N. Chase, Esq., Acting Collector, Kistna district, residing at Chilacalapudi.

I preferred a summary complaint against the first and second defendants who are cultivators in Pasalapudy, in the Vinnacota Pergunnah, in 1861, before the then Collector, for Rupees 59-3-0, being Curnikum emoluments, &c., due to me from them, from Fusly 1262, up to Fusly 1269.

1. The first and second defendants effected a compromise with me, by which I remitted to them Rupees 15-3-0 out of the aforesaid amount. They conditioned to pay me the remaining amount, Rupees 44, in three Fuslies from Fusly 1271, viz., the first defendant Rupees 20-9-6, and the second defendant Rupees 23-6-6. Accordingly, I and the defendants presented a razinama on the 21st January 1862.

2. Subsequently, the Collector fixed the emolument at 9 pies per rupee of the Seri sist; the emolument for the Inam-produce being determined according to the former mamool; both of these emoluments amounted to Rupees 8-5-1, up to Fusly 1270, which was due to me. Of this, the first and second defendants paid me only Rupees 8-0-0, promising to pay me the remaining sundry sum with the emolument of Fusly 1271.

Cont. of 118661

REVENUE.

THE BOARD OF REVENUE.

Dated December 1866.

Recd.

G. O., 6th December 1866, No. 3,111.

108, 00-70.

Appeal Suit No. 1 of 1866, in Masulipatam District Munsiff's Court.—Govern-ment Solicitor's letter forwarding Advocate-General's opinion in connection with it, communicated to Board of Revenue. For the opinion, forwarded.

3. The first and second defendants failed to pay me, in Fusly 1271, the amount of the aforesaid razinama, the sundry sum, and Rupees 13-1-2, being the amount of emolument due for that Fusly. I therefore requested the Tahsildar of Gudewada taluk to order the said money to be paid to me. The Tahsildar brought the matter to the notice of the Collector, who rejected the objection raised by the first and second defendants, and directed the Tahsildar to cause the money in question to be paid to me.

4. The first and second defendants, not only failed to pay me the aforesaid money, but also discontinued the payment to me of the emoluments due for Fuslies 1272, 1273, and 1274. I therefore complained every year on the subject to the Tahsildar, according to the rules, and presented to him an account for the same. He used to summon the first and second defendants, and direct them to pay me the money, but they evaded paying it. The Tahsildar thereupon submitted Arzis to the Collector, to the effect, that, unless their property be attached, the money could not be collected. The Collector, not agreeing to that measure, issued hukums to the Tahsildar, to cause the money to be collected anyhow, and paid to me; but no money on account of any item has been collected and paid. Moreover, the Arzis that I have submitted to the Board on the subject have proved useless.

5. It was provided by Government in Section 25, Act II. of 1864, that dues of the above description should be realized as revenue-demand. Though provision was thus made, and though the Board held Proceedings (in accordance with the same) on the 21st June 1865 in my case, the Collector did not only not act accordingly, but also irregularly reduced (on the application of the first and second defendants) one-fourth of the amount of emoluments due to me, as detailed below, for Fuslies 1271, 1272, 1273, and 1274, so that my interests have been affected, and issued a hukum on the subject to the Tahsildar on the 4th May 1866.

6. The aforesaid hukum was clearly contrary to the orders issued by the Collector himself, at the Jummahbundy of Fusly 1272, to several subsequent orders; to many Arzis submitted by Tahsildars; to the rules by which the collection of emolument, at 9 pies per rupee, of the produce of Zemindary farms was fixed, and to the law in force. I therefore submitted an Arzi to the Collector, on the 21st May 1866, requesting him, among other things, to reject the aforesaid hukum. The third defendant passed an endorsement on 5th June last, to the effect, that the order of the late Collector cannot be disturbed. He, moreover, passed another endorsement on 11th June last, that authenticated copies of the hukums, &c., above referred to, cannot be granted as requested. By this, the collection of the money justly due to me has been impeded, and the first and second defendants have been encouraged to conceal their property to subject me to loss. I have, therefore, also included the third defendant in the suit which I brought under Sections 59 and 60, Act II. of 1864, and Section 26, Act VIII. of 1859.

The money due to me from the defendants is as detailed below:—

Amount of the aforesaid razinama ...	Rs.	A.	P.
Balance due for Fusly 1270...	41	0	0
For Fusly 1271 ...	0	5	1
Do. 1272 ...	13	1	2
Do. 1273 ...	13	5	5
Do. 1274 ...	14	0	3
	10	9	10
Interest at 8 Annas per cent. per mensem due up to 24th instant, according to dates; under Section 27, Act II. referred to above..	95	5	9
	15	13	6
	111	3	3

One hundred and eleven Rupees, Annas three, and Pies three.

I pray the Court will be pleased to try the suit, and pass a decree awarding the first and second defendants to pay me the amount of the suit with subsequent interest, and all the defendants to pay the costs. I beg to present, herewith, the endorsement dated 5th June 1866, and an Arzi endorsed on the 11th June.

Please to consider this.

(Signed) K. CHINNAMRAZ,
Plaintiff.

26th July 1866.

(Signed) B. LAKSHMINURSIMHUM,
Pleader.

I, plaintiff in the above suit, do declare that what is herein stated is true to the best of my information and belief.

(Signed) K. CHINNAMRAZ.

Filed in Court, 26th July 1866.

(A true translation.)

(Signed) G. THORNHILL,
Collector.

ENCLOSURE No. 2.

Memorandum.

1. Calavagunta Chinnamraz, Curnum of Pasalapudy, in Gudewada taluk, preferred a summary Suit before the Collector in 1861, against Senkara Chendrayya and Venketroydoo, ryots of the said village, for the recovery of his emoluments.

2. Both parties entered into a razinama, to the effect, that out of Rupees 59-3-0 due from Fuslies 1262 to 1269, a sum of Rupees 15-3-0 should be remitted to the defendants, and the remainder, Rupees 44, be paid by three yearly instalments.

3. But the defendants having failed to pay the said instalments, as well as the subsequent emoluments, Chinnamraz petitioned the Collector, praying for the recovery of the same.

4. The defendants were ordered, through the Tahsildars, to pay what was due by them to the plaintiff, but they failed to do so.

5. The plaintiff petitioned also the Board of Revenue on the subject. The petition was referred for report, which was sent on.

6. The Board in their Proceedings, dated 21st June 1865, ordered that the Collector must satisfy himself that the fees are properly leviable before he puts in force the law quoted by him for the recovery of the fees, viz., Section 52, Act II. of 1864.

7. The Tahsildar was then directed to prepare and forward any documents bearing on the subject, showing the amount actually due by the different individuals, and to take a written statement from the ryots, showing whether they assented to the demand or not.

8. The plaintiff then gave in an account for Rupees 105-7-11, due up to Fusly 1274, including the Rupees 44 as per above razinama with interest.

9. The defendants stated, that, as they were formerly Agraharumdars of the Pasalapudy-village, they never paid emoluments for the lands cultivated by themselves, and that as the plaintiff had remitted certain money on that account in the razinama, and had promised to do the same for the future, but had failed to keep to his promise, they declined to pay the emoluments, but that if the emoluments due on their own cultivation be remitted to them, they would pay the balance by three yearly instalments.

10. On inquiry, some ryots stated that it was usual to pay fees on the lands cultivated by the Agraharumdars, while others stated the reverse.

11. As the plaintiff's claim to the full amount was not thus established, there was nothing to act upon, except the razinama in question filed by both parties.

12. The Tahsildar was accordingly ordered that one-fourth of the demand of the subsequent Fuslies, also Rupees 15-3-0, should be remitted with reference to the razinama in question, and the remainder be recovered from the defendants, and paid to the plaintiff.

13. The plaintiff, not consenting to that order, preferred a suit in the Munsiff's Court of Masulipatam against the Collector, and the above defendants, claiming recovery of Rupees 111-8-8 with interest, under Sections 59 and 60 of Act II. of 1864, and Section 26 of Act VIII. of 1859.

2nd January 1867.

(Signed) G. THORNHILL,
Collector.

ENCLOSURE No. 3.

Draft Answer.

Original Suit, No. 219 of 1866, Masulipatam District Munsiff's file; wherein

Plaintiff, Versus Defendants.
Calavagunta Chinnamraz, of Chenur, in Gude-
wada taluk, 1. Sankara Chendria of Gudewada.
2. Do. Venketroydoo, of Guraja.
3. T. A. N. Chase, Esq., Acting Collector of the Kistna district.

Statement of G. THORNHILL, Esq., Collector of the Kistna district for the time being.

This defendant begs to state that the Court is barred, by Regulation VI. of 1831, from entertaining a suit, relating to emoluments connected with the Village Service; that the Enactment in question is not repealed by Act II. of 1864, (vide Section 1865); and therefore prays that the Court will dismiss the suit with costs.

VINUCONDA,
2nd January 1867.

(Signed) G. THORNHILL,
Collector.

1. There can be no question that the Court has not jurisdiction in this case, and the Board sanction the defence of the suit at the public cost on this plea.

2. But they are not satisfied that the Collector's decision as to the merit of the case is correct, and they request him to reconsider the matter. *Prima facie* all occupiers of land in their own right, are liable to pay the customary fees to the Village-officers; and it is for those who claim exemption to establish the facts stated and the right claimed. To cast the "onus probandi" on the Village-officer appears to the Board wrong in principle.

(True Copies and Extract.)

(Signed) W. HUDLESTON,
Secretary.

To the Collector of the Kistna district.

Copy to the Accountant General.

Sanctioning defence at public cost of Suit No. 219 of 1866, filed in Masulipatam district Munsiff's Court by the Curnum of a village in Guduwada taluk for recovery of Rupees 111-8-8 from the ryots of that village on account of Curnum emoluments.

Exd. J. Wright

No. 266

Dated 15th January 1867.

PROCEEDINGS OF THE BOARD OF REVENUE.

No.

1867.

Department.

No. 3152/67

No. 4,982.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 3rd August 1867.

Read the following letter from W. WILSON, Esq., Acting Collector of the Kistna district, to the Acting Secretary to the Board of Revenue, dated Masulipatam, 9th July 1867, No. 219:—

1. I have the honour to enclose translation of a proceeding held by the District Munsiff's Court at Masulipatam, in the matter of the third defendant's (Collector of Kistna) answer to the plaint in Original Suit No. 219 of 1866 on the file of that Court, (vide Board's Proceedings, No. 266, dated 15th January 1867.)

2. The Court rejects the plea, and directs the filing of a new answer on the ground that the jurisdiction taken from the Civil Courts by Regulation VI. of 1831 applies only to "claims to the possession of, or succession to, hereditary village or other offices in the Revenue and Police Departments, or to the enjoyment of any of the emoluments annexed thereto," but does not apply to suits to recover the amount of emoluments by the acknowledged office-holder. There can be no question that the jurisdiction, granted by Clause 1st, Section 4 of the Regulation to Revenue Officers, extends only to claims to office, or to the right by virtue of office to enjoy emoluments attached thereto; when the claim is established, the jurisdiction of the Collector is at an end; under the Regulation he has no power to enforce payment of fees by a person indebted to an office-holder. But though the jurisdiction of the Collector is thus excluded, I am not convinced that, that of a Civil Court is thereby raised: had the wording of Clause 1st, Section 3 continued as it began, "had the concluding words been "all suits respecting such claims to, &c." instead of *all suits respecting such offices or emoluments, &c.*," the argument of the Court might have been conceded. But the object of the Regulation, however loosely expressed, seems to have been to consider village service fees a part of revenue, and to confine claims to the right to receive them to the adjudication of the Revenue Officers of Government. It may have been supposed that their amount, known and determined, would be always part of the demand, and the point now raised, it may have been thought, could for this reason never have arisen, and was for that reason not provided for. "All suits regarding emoluments" of village servants are excluded by the Regulation from the jurisdiction of the Courts. In its widest sense this would include suits brought by an office-holder against a person indebted to him on account of fees: if the Board consider this argument sufficient, I would counsel motion being made in the Civil Court for withdrawal of the suit: if they are of opinion that the construction of the second part of Clause 1st, Section 3 is ruled by the first, then I would propose the following amended

Answer.

1. That the fees claimed by the plaintiff were not entered in the puttass of the ryots from whom he sought to recover by the third defendant's aid.
2. That not being so entered, the third defendant was powerless to enforce their collection, as his power to collect is limited by the entries in the ryots' puttass.
3. That being thus powerless he could only refuse to collect, which he did.
4. Prays, therefore, that the suit as against the third defendant may be dismissed with costs.

ENCLOSURE No. 1.

Proceedings of the District Munsiff's Court of Masulipatam.

No. 219 of 1866.

1. The plaintiff sets forth that, on his requesting the Collector to cause the emoluments due to him from the first and second defendants in the village of Pasalapudi to be paid to him, they agreed to pay Rupees 44, and had a razinama filed; that not only that amount has not been paid him, but also the fees due for the subsequent Fuslies has not been regularly paid him; that although he submitted several petitions on the subject to the Collector and the Board of Revenue, yet they did not cause the fees due to him to be paid to him; that it is the duty of the Collector to have village service fees also collected as revenue dues agreeably to Section 52, Act II. of 1864; and that he (plaintiff) has brought this suit under Sections 59 and 60 of the aforesaid Act.

2. The third defendant contends that, under Regulation VI. of 1831, the Court can have no jurisdiction, of suits brought regarding the fees of village servants; that that Regulation was not repealed by Act II. of 1864; and that, therefore, this suit is liable to be quashed.

3. The first point for decision is, therefore, whether this suit is cognizable or not by the Court. This suit is not of the nature of the suits prohibited in Sections 2, 3 and 4, Regulation VI. of 1831; that is to say, it appears from those Sections that the Civil Courts should not take cognizance of

suits brought by "others" to get a right to, or recover the Inams and fees of village service. This suit is not of that nature. The proper incumbent has brought this suit, setting forth that, while it is the duty of the Collector to "collect and pay" under Section 52 of Act II. above referred to, he did not do so, and that one-fourth of the amount which he has to recover agreeably to rules and custom, was causelessly reduced. It does not also clearly appear from any rules that such suit as this should not be admitted. Section 1 of the Civil Procedure provides that, unless prohibited by any enactment, the Civil Courts should have cognizance of all suits. No impediment whatever appears to have existed in admitting this suit agreeably to Section 59, Act II. above referred to. Also in the thirteenth paragraph, under the head "Cause of action," authority is given to bring such suits.

4. This Court, therefore, cannot consider it proper to reject this suit. The third defendant is requested, under Section 122 of the Civil Procedure, to file a Kyfeit or statement to account for all the circumstances of the plaint.

20th June 1867.

(Signed) MOWLAVI ABDUL ALAM,
District Munsiff.

(True translation.)

(Signed) W. WILSON,
Acting Collector.

1. The Law has provided a special tribunal for claims to the possession of, or succession to hereditary village or other offices in the Revenue and Police Departments, or to the enjoyment of any of the emoluments annexed thereto, and has expressly removed such claims from the cognizance of the "ordinary Courts of Judicature." The Law makes no specification or restrictions as to the parties by whom, or against whom the claims are made; the mere fact that the claims are for these offices, or their emoluments, removes them from the jurisdiction of the ordinary tribunals to that of the Special Courts which the Law has created for the adjudication of these cases, and which Courts are certainly in the best position to determine what emoluments the State has annexed to these offices, by whom they shall be paid, and by whom they shall be enjoyed.

2. Mr. Wilson will, therefore, appeal against the order of the District Munsiff to the Civil Court, observing that the Munsiff claims, in fact, to decide upon the amount of fees due to a village officer which he is quite incompetent to do, and report the result to the Board.

3. In the first paragraph of the amended answer, contained in the foregoing letter, the argument made use of is that the fees are not realizable under Act II. of 1864, as they were not entered in the puttass of the ryots.

4. The argument is not a valid one. Village service fees, to be recoverable under Section 51, Act II. of 1864, need not be entered in the puttass.

(True Copies and Extract.)

(Signed) R. A. DALYELL,
Secretary.

To the Acting Collector of the Kistna district.
Copy to the Accountant General.

Exd. J. Wright.

Directing Acting Collector of Kistna district
to appeal against order of District Munsiff of
Masulipatam, in Original Suite No. 219 of 1866.

No. 4,982.

Dated 3rd August 1867.
Received

PROCEEDINGS OF THE BOARD OF REVENUE.

No.

1867. Department.

No. 3162/67

No. 5,769.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 5th September 1867.

Read the following letter from W. WILSON, Esq., Acting Collector of the Kistna district, to the Secretary to the Board of Revenue, dated Masulipatam, 13th August 1867, No. 275:—

1. Referring to Board's Proceedings, dated 3rd August 1867, directing me to appeal against the order of the Munsiff's Court of Masulipatam, claiming jurisdiction in a case apparently within the provisions of Regulation VI. of 1831, I have the honour to draw the Board's attention to Section 353, Act VIII. of 1859, which seemingly precludes appeal at this stage of the proceedings. The exception to the jurisdiction can be taken apparently only when the decree is appealed against.

2. I propose, therefore, to let the answer as originally approved stand, and base an appeal, if necessary, on defect of jurisdiction in the lower Court.

Under the circumstances stated by the Acting Collector, the Board request that he will move the Court to place on record his plea against the Court's jurisdiction, in view to appeal, as he desires to make no other defence on behalf of Government.

(A true Copy and Extract.)

(Signed) R. A. DALYELL,
Secretary.

To the Acting Collector of the Kistna district.

Exd. J. Wright.

No. 6,272.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 21st August 1869.

Read the following letter from J. A. C. BOSWELL, Esq., Officiating Collector of the Kistna District, to the Acting Secretary to the Board of Revenue, dated Masulipatam, 11th August 1869, No. 241:—

With reference to the Proceedings of the Board noted in the margin, I have the honor

to submit, herewith, copy of the Principal Sudder Ameen's decree and judgment, in Appeal Suit No. 1 of 1869, confirming the Original Decree* of the District Moonsiff. All that the Collector

loses by it are his own costs, but on account of the principle involved in the case, which is a very important one, namely, whether or not the Civil Courts have power to adjudicate claims regarding the emoluments of village servants, I would strongly advocate a special appeal to the High Court, as the Principal Sudder Ameen has decided the question in the affirmative.

2. As appeals from the District Moonsiff's Court at Masulipatam lie to the Judge of the Small Cause Court, who is also a Principal Sudder Ameen, the appeal in the present case was not made to the Civil Judge of Guntoor.

3. There is *prima facie* mistake of fact and of law in the appeal decree which I beg to bring to the Board's notice as follows:—

At the end of paragraph 8 of the judgment in appeal, the Court observes that "the Collector disallowed one-fourth of the amount claimed for the Fuslies 1271 to 1274, and left the plaintiff to recover the balance by his own means." This latter clause is incorrect. The Board will observe from the Memorandum (enclosure 2) sent with Mr. Thornhill's letter embodied in the Board's Proceedings, dated 15th January 1867, No. 266, that "as the plaintiff's claim to the full amount was not thus established, there was nothing to act upon, except the Razinamah in question, filed by both parties, that the Tahsildar was accordingly ordered that one-fourth of the demand of the subsequent Fuslies also Rupees 15-3-0 should be remitted with reference to the Razinamah in question, and the remainder be recovered from the defendants and paid to the plaintiff, and that the plaintiff, not consenting to that order, preferred a suit in the Moonsiff's Court of Masulipatam against the Collector." The Board will observe from the above, that the plaintiff resorted to the Court not because the Collector refused to levy the amount adjudged by him to be paid by the 1st and 2nd defendants, but because he was dissatisfied with the Collector's order disallowing one-fourth of the amount claimed by him (the plaintiff.) In the beginning of paragraph 10 of the accompanying judgment in appeal, it is stated as follows:—"The Court is bound to accept the above as facts, as the 3rd defendant" (the Collector) had failed to challenge any of those statements." The Board directed in their Proceedings quoted above, under date 5th September 1867, that the Collector should "move the Court to place on record his plea against the Court's jurisdiction, in view to appeal, as he desires to make no other defence on behalf of Government." The Collector accordingly simply demurred to the jurisdiction of the Court and advanced no other pleas.

4. In paragraph 11 of the judgment in question, the Court admits that Regulation VI. of 1831, certainly excludes claims to the enjoyment of the emoluments of a Curnum from the cognizance of the ordinary Courts of Judicature, but says afterwards that as this enactment contains no provision to collect the fees or other dues to village servants, they must be recovered under Act II. of 1864, Section 52; and as Section 59 of the Act provides that parties deeming themselves aggrieved by any proceedings under this Act can apply to the Civil Courts for redress, the present suit was cognizable by the Court. I beg to point out here that the plaintiff considered himself

PROCEEDINGS OF THE BOARD OF REVENUE.

1867.

Department

No.

Rev. 3182/69

Dated 6th September 1867.
Received

No. 6,769.

Requesting Acting Collector of the Kistna District to move District Moonsiff's Court at Masulipatam to place on record his plea against Court's jurisdiction in Original Suit No. 219 of 1866 on its file, regarding a village office.

aggrieved by the reduction of the amount of his demand, a point adjudicable by Regulation VI. of 1831, and not by any proceedings of the Collector under Act II. of 1864, in which case alone, he can apply to the Civil Court for redress under Section 59 of the Act. The Collector's decision in the case was given on 4th May 1866. The plaintiff made no application to the Collector afterwards to realize the decreed amount, but filed a suit in the Moonsiff's Court on 26th July 1866.

ENCLOSURE No. 1.

JUDGMENT.

Masulipatam District Moonsiff's Court, Original Suit No 219 of 1869, 4th September 1868.
Plaintiff. Sankara Chendraya and others.
Kalavagunta Chinnamrauz. versus Defendants.

The plaintiff instituted this suit for the recovery from the 1st and 2nd defendants of the sum of Rupees 44 due to him as per Razinamah (deed of agreement) filed in the summary suit instituted for the recovery of emoluments due to the plaintiff for Fuslies from 1262 to 1267; the sum of Rupees 51-5-9 being the amount of emoluments due to him for subsequent Fuslies up to 1274 and Rupees 15-13-6 the interest due thereon, in all amounting to Rupees 111-3-3, and for the recovery of expenses from the 3rd defendant for having declined to allow him the emoluments over which he has authority, though he has often petitioned him, besides reducing the amount. Plaintiff states that the 1st and 2nd defendants have admitted his claim, and that they have filed Kyfeyats to that effect.

2. First and 2nd defendants are *exparte*.
3. The third defendant pleaded that the Court has no jurisdiction in the matter.
4. The question of jurisdiction has been decided by the late District Moonsiff, in the Proceedings dated 20th June 1867.
5. The issues in this suit are the following:—whether the 1st and 2nd defendants have admitted the plaintiff's claim for emoluments and filed a Razinamah (deed of agreement) in Gudewada Talook; whether the plaintiff is entitled on produce yielded on lands cultivated by the 1st and 2nd defendants; whether the 3rd defendant is legally bound to collect those emoluments; whether the 3rd defendant has reduced any, on lands cultivated by defendants; whether he is bound to make good the expenses incurred for this, and whether the plaintiff is entitled to interest on this amount.

6. The three witnesses for the plaintiff were examined. The documents enumerated below were filed.

The document marked A., is an endorsement granted to the plaintiff by the Acting Collector on 15th June 1866.

The document marked B., is an Arzi addressed by Kalavagunta Chinnamrauz on 28th May 1866, to T. Dharma Rao Moodelliar, Deputy Collector, Kistna District, and an endorsement granted by the Collector on 11th June 1866.

The Document marked C., is an endorsement granted on 15th June 1866.

The document marked D. is an agreement filed by Sankara Chendraya on 23rd April 1866.

The document marked E. is a Kyfeyat (deposition) given by Sankara Venkatrayadu on 11th November 1865.

7. The first and second witnesses for the plaintiff who attested the document A., swore to its having been filed in Gudewada Talook by Sankaraiya, son of the second defendant. It appears from the evidence of the third witness who attested the Razinamah filed in the summary suit brought before the Collector, that the first and second defendants have filed a Razinamah for paying him Rupees 44. The third witness swore that the document B., was drawn up by the second defendant in his own hand-writing.

8. It is proved by the first and second, witnesses for the plaintiff that the document D., was drawn up and filed in the Talook Cutcherry by the son of the first defendant.

9. It has been proved by the first, second and third witnesses for the plaintiff that Sankaraiya, son of the first defendant, is managing all the domestic affairs and carrying on the trade in consequence of his father having been incapacitated by old age; the first defendant should be bound by the document D.

10. It clearly appears from it that he owed to the plaintiff Rupees 20-9-6, as per Razinamah filed in the summary suit, and Rupees 25-10-11, including the emoluments due on lands cultivated by him.

11. The 1st defendant merely traversed the matter of emoluments of Rupees 6-6-9 due on his own lands; but it has been proved by Adusumilly Seshadry, plaintiff's third witness, a respectable man who is in the habit of holding Agraharams on lease, that it is the custom in the neighbouring Agraharams to pay emoluments on lands cultivated by them. This evidence clearly shows that the Curnums are entitled to emoluments on lands cultivated by the Agraharumdars also.

12. The plea urged by the defendants for emoluments due on lands cultivated by themselves is in the opinion of the District Moonsiff wholly untenable. The claim regarding the emoluments due on lands cultivated by the defendants is decided in favor of the plaintiff.

13. The Kararnamah marked D. proves that the sum of Rupees 20-9-6 as per Razinamah and the surplus allowance (Lavajmal) of Rupees 25-10-11, should be paid by the first defendant.

14. It is proved by the plaintiff's third witness that the Razinamah said to have been destroyed during the Cyclone was filed by the second defendant. Agreeably to this, (Razinamah) it is supported by the same evidence that the defendant shall have to pay the remaining sum of Rupees 24, after deducting the portion of the first defendant.

15. No evidence either oral or documentary was adduced to prove that the second defendant is bound to pay the remaining emoluments to the plaintiff on lands cultivated by him. The second defendant admitted therein to bind himself by the same principle that might be adopted in the decision to be passed in the case of emoluments, lands cultivated by the first defendant, but this is not clear. Therefore the claim of the plaintiff as regards emoluments, namely, Rupees 25-10-11 said to be due subsequent to the Razinamah, is not proved.

16. The plaintiff claimed the interest of Rupees 15-13-6. He points out that Section 27 of Act II. of 1864 is applicable to it. This Section has no bearing on the case. Section 7 of the same Act prescribes that the Government only are entitled to interest on arrears of Revenue. It is nowhere expressed that the Curnums are entitled to interest on arrears of emoluments.

17. The Razinamah filed in the summary suit is a written document which shows that the amount inserted therein is due. It appears to be just to allow interest on this amount at the rate of half a Rupee per cent. The claim for the former interest is dismissed.

18. Under Section 52 of Act II. of 1864, the third defendant is empowered to collect the emoluments for the plaintiff. It is not known why he has not done so. No evidence was adduced by the plaintiff to prove that the third defendant has reduced his emoluments due on lands cultivated by the defendants. The plaintiff had applied for copies of certain documents to the third defendant, but they were not granted by him. The mere withholding of copies does not induce us to presume that he has passed orders regarding the emoluments on lands cultivated by them to the prejudice of plaintiff's interests. At any rate it does not appear that he has committed such irregular acts as will justify his liability to incur the costs.

19. For these reasons it is decreed that the first and second defendants should pay Rupees 20-9-6 and Rupees 23-5-6 respectively, with interest from 1st January 1862 at $\frac{1}{2}$ Rupee per cent., that of the remaining claim of emoluments the second defendant should pay Rs. 25-10-11 with interest at the same rate from this date and that the remaining claim is dismissed.

20. All the costs incurred by the plaintiff in this suit should be borne by the first and second defendants equally with interest at the same rate. The costs incurred by the third defendant should be borne by himself.

(Signed) C. VENKOBACHARY,
Acting District Moonsiff,
for the late District Moonsiff.

(True Translation.)

(Signed) J. A. C. BOSWELL,
Officiating Collector.

ENCLOSURE No. 2.—Decree of District Moonsiff.

ENCLOSURE No. 3.
To the Principal Sudder Ameen's Court, Masulipatam.
Original Suit No. 219 of 1866.
District Moonsiff's file.

Plaintiff.
Kalavagunta Chinnamrauz, Curnum of Pasala-
pudi Village, in Gudewada Talook, inhabitant of
the village of Chennur.

versus

Defendants.
1st. Sankara Chendraiya, of the village of Gude-
wada.
2nd. Do. Venkatrayadu of Guraja village.
3rd. T. A. N. Chase, Esq., Acting Collector of
the Kistna District.

Appeal petition presented by the third defend-
ant (Acting Sub-Collector in charge of the
Kistna District for the time being) against
the Decree of the Moonsiff's Court, dated
6th September 1868.

This appeal is based on the following grounds:—

- (1.) The original suit was for the recovery, which is in point of fact, the enjoyment of a certain amount of emoluments pertaining to the hereditary office of Curnum. By Clause I. Section III. of Regulation VI. of 1831, it is declared that claims to the possession of, or succession to, hereditary village or other offices in the Revenue and Police Departments or to the enjoyment of any of the emoluments annexed thereto, shall not be cognizable by the ordinary Courts of Judicature. The District Moonsiff's Court therefore had no jurisdiction to entertain the suit.
- (2.) By his decree, the District Moonsiff claims in fact to decide upon the amount of fees due to a village officer which he is quite incompetent to do.
- (3.) The appellant prays, therefore, that the Court will be pleased to quash the Decree of the Moonsiff's Court and that the Respondent (plaintiff in original suit) may be adjudged to pay the costs of the appellant, both in the original and appeal suits.
- (4.) Copy of the Judgment and Decree appealed against, with a true translation, is enclosed for the information of the Court.

(Signed) W. H. COMYN,
Acting Sub-Collector.

(True Copy.)

(Signed) J. A. C. BOSWELL,
Officiating Collector.

ENCLOSURE No. 4.
Original Suit No. 219 of 1868.
In the District Moonsiff's Court of Masulipatam.
Present.—M. R. SABHAPATI NAIDU.

Plaintiff.
Kalavagunta Chinnamrauz.

versus

Defendants.
1st, Sankara Chendraiya.
2nd, do. Venkatrayadu.
3rd, T. A. N. Chase, Esq., Acting Collector of
the Kistna District.

Appeal Suit No. 1 of 1869.
In the Principal Sudder Ameen's Court of Masulipatam.
Present.—JAMES WILKINS, Esq.

Appellant (3rd Defendant.)
W. H. Comyn, Esq., Acting Sub-Collector in
charge of the Kistna District, for the time
being.
Pleader Y. Bollayya.

Respondent (Plaintiff.)
Kalavagunta Chinnamrauz.
Pleaders, K. Purnayya and K. Seshagiri Row.

The plaintiff seeks to recover from the 1st and 2nd defendants Rupees 111-3-3, being the amount of emoluments due to him from Fusly 1262 up to 1267 and costs from all the defendants.

2. First and 2nd defendants failing to answer, 3rd defendant takes exception to the jurisdiction of the Court over the case.

3. The District Moonsiff decrees that of Rupees 44, being the amount of the summary* Razinamah, the first defendant should pay Rupees 20-9-6, and the 2nd defendant Rupees 23-5-6 with interest, at Rupees 6 per cent. per annum from 1st January 1862, and that out of the remaining claim of emoluments, the first defendant alone should pay Rupees 25-10-11 with interest as above, the rest of the claim being disallowed, and awards plaintiff's costs against the 1st and 2nd defendants, charging the 3rd defendant with his own costs.

4. Against this decision, the 3rd defendant appeals.

Judgment.

5. The only point for determination in this appeal is, whether the original Court had jurisdiction to entertain and try the present suit, which the appellant, 3rd defendant, contended is beyond his jurisdiction, according to the provisions of Clause 1, Section III, Regulation VI. of 1831.

6. The District Moonsiff in his preliminary Proceedings over-ruled this objection, observing that the plaintiff's claim did not fall within the nature of suits excluded from the Court's jurisdiction by that regulation, and that by Section 59, Act II. of 1864, there appeared no objection to the institution of the suit.

7. The 3rd defendant contends in his appeal that the suit was for the recovery, which is in point of fact the enjoyment of a certain amount of emoluments pertaining to the hereditary office of Curnum; that by Clause 1, Section III, Regulation VI. of 1831, it is declared that claims to the possession of, or succession to, hereditary village or other offices in the Revenue or Police Departments, or to the enjoyment of any of the emoluments annexed thereto, shall not be cognizable by the ordinary Courts of Judicature; that the District Moonsiff's Court had, therefore, no jurisdiction to entertain the suit; and that by his decree, the District Moonsiff claims in fact to decide upon the amount of fees due to a Village Officer which he is quite incompetent to do.

8. It appears from the plaint, that the plaintiff, a Curnum of an unsettled district, preferred a summary suit before the Collector for recovery of Mirassi emoluments from the ryots (first and second defendants) for Fusly 1262 to 1269; both parties then entered into a Razinamah or mutual agreement the plaintiff remitting Rupees 15-3-0 from the sum claimed, and defendants promising to pay the balance within three years from Fusly 1271; the defendants failed in their engagement as well as in the payment for subsequent fuslies; plaintiff applied to the Tahsildar for their recovery, who referred the claim for the orders of the Collector, and that officer adjudged payment to the plaintiff. The first and second defendants still refused to pay for the period adjudged, as well as for subsequent Fuslies 1272 to 1274, and plaintiff appealed to the Tahsildar who applied to the Collector, third defendant, for recovery of the same by attachment; the Collector disallowed one-fourth of the amount claimed for the Fuslies 1271 to 1274, and left the plaintiff to recover the balance by his own means.

9. It was in consequence of the Collector's refusal to recover the fees due to plaintiff by enforcing the provisions of Section 52, Act II. of 1864, and disallowing the one-fourth claimed by him that he was included as third defendant, whilst he sued the first and second defendants for the amount due by attachment of their property.

10. The Court is bound to accept the above as facts, as the third defendant had failed to challenge any of those statements, and it is obvious from the Deputy Collector's endorsement on plaintiff's application for copy of Proceedings, that it had been refused on the ground that the Collector had deemed the furnishing of a copy unnecessary. The Collector's order disallowing one-fourth of the amount claimed by the plaintiff has not been disturbed by the original Court.

11. The Regulation quoted by the appellant certainly excludes claims to the enjoyment of the emoluments of a Curnum like the plaintiff from the cognizance of the ordinary Courts of Judicature, whilst on the other hand, Act II. of 1864, Section 52, prescribes that all fees or other dues payable by any person to, or on behalf of the village servants employed in Revenue or Police duties, and all cesses lawfully imposed upon land, may be recovered in the same manner as arrears of land revenue under the provisions of the said Act, unless the recovery thereof is otherwise

147
 1. Bd of Revenue Dec 17
 3. Genl Solicitor
 6. Act General
 9. Ball

3. I now forward a copy of the Opinion of the Advocate General and herewith return the enclosures above noted. -

4. I marked on the Advocate General's papers when submitting them to him, a fee of Pagodas 40 or Rupees 140 being the usual charge.

N^o 1 of 1869. -

2. I submitted the matter for the consideration of the Advocate General and have also conferred with him and the Government Pleader thereon. -

and Conference and have paid him that amount and request the sanction of Government for the payment so made. -

I have the honor to be,
Sir,

Your most Obedient Servant,

H. S. Richard

Revenue 1869. Oct^r

To
The Government Solicitor
Madras.
The actg. Secretary to Govt.
Revenue Department
Fort St. George

Dated 8th November
Recd 9th

N^o 608.
Enclosures 2. -

Forwarded copy of the Advocate General's Opinion Re the Special Appeal to the High Court from the Decree of the Principal Sudder Ameen of Masulipatam in appeal with N^o 1 of 1869; & returns the Proceedings of the Board of Revenue dated 15th January 1867, N^o 266. -

S. Act 3111. 6 Decr 1869

69.

21/11/69 Madras

Recd 24 Oct 1869/69 No 394-5

Recd 24 Oct 1869/69 No 394-5

Opinion

It has been necessary to file the appeal since these papers have been received, in order to save the time for appealing. The point appears doubtful, and as the appeal has been filed, it had better be proceeded with, in order to obtain an authoritative opinion upon it. The amount is small. The Costs if the case goes against the Government will be something very trifling. The Pleaders fee is \$5.00 in the lower Court.

6th November
1869

(Signed) John Bruce Norton
Adv. Genl

(True copy)

H. G. Pritchard

Govt Solicitor.

10394-5

10394-5

Rev. 3836/6

(Copy)

Admiral General's Office,
dated 6th November 1889.

Enclosure in Letter from
the Government of India
to the Government of
Madras, to the effect of
the Government of India
to the Government of
Madras, dated 8th November 1889, No.
688.

311
N69

Rev. 8. Dec 2/89 L. 169