M.E. O. 1—82,000—18-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 1542 Press Mis.

86-88
Dated 11-10-1820 19

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department, 11th October 1870.

Read the following :—

No. 86. Proceedings of the Board of Revenue, dated 8th August 1870, No. 5,207.

Read the following letter from the Government Pleader, to the Acting Secretary to the Board of Revenue, dated Madras, 19th July 1870, No. 102.

In continuation of my letter to the Board of Revenue, dated 22nd June 1870, No. 79, I have the honour to forward, for the information of the Board, a copy just obtained from the High Court of the decree of that Court in Special Appeal No. 571 of 1869.

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Enclosure No. 1.

In the High Court of Judicature at Madras.

Monday, the 20th day of June 1870.

Present : The Honourable Sir C. H. Scotland, Knight, Chief Justice, and the Honourable Mr. Justice Holloway.

Special Appeal No. 571 of 1869.

(Civil Miscellaneous Petition No. 60 of 1870.)

L. S.

The Collector of Tanjore, Special Appellant, (3rd Defendant). Nagalingam Pillay and another, Special Respondents, (Plaintiff's heir and 2nd Defendant).

Special Appeal against the decree of the Civil Court of Tranquebar in Regular Appeal No. 41 of 1867, reversing the decree of the Judge of the Court of Small Causes at Negapatam on the Principal Sadr Amin's Side in Original Suit No. 128 of 1865.

Decree.—This Special Appeal coming on for hearing : upon perusing the grounds of Special Appeal the judgments and decrees of the Lower Appellate Court and Court of First Instance, and the material papers in the Suit, and upon hearing the arguments of Mr. Government Pleader for the Special Appellant, and of Sanjiva Row, Vakeel for the 1st, and Srinivasa Chariyar, Vakeel for the 2nd Special Respondent, this Court doth order and decree that the decree of the Lower Appellate Court be, and the same hereby is, modified by adjudging the amount decreed, Rupees 2,414-5-5, to be paid in eight half-yearly instalments commencing on 1st July 1870, and in other respects that the said decree be, and the same hereby is, confirmed; and this Court doth further order and decree that the Special Appellant do pay to the 1st Special Respondent Rupees 125-7-8 for his costs in opposing the Special Appeal.

(Signed) C. H. SCOTLAND,
Chief Justice.

(Signed) W. HOLLOWAY,
Judge.

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Memorandum of Costs.

First Special Respondent's (Plaintiff's heir's) costs.

	Rs.	A.	P.
1 Stamp for Vakalatnama	2	0	0
Vakeel's fee on Rupees 2,414-5-5	120	11	2
1 Printed copy purchased	2	12	6
To be paid to the 1st Special Respondent (Plaintiff's heir) by the Special Appellant, (3rd defendant)	125	7	8

(Signed) H. WIGRAM,
Acting Registrar, Appellate Side.

SUBMITTED for the information of Government, in continuation of Board's Proceedings, dated 11th July 1870, No. 4,801.

No. 87. Proceedings of the Board of Revenue, dated 11th July 1870, No. 4,801.

Read again Board's Proceedings, dated 23rd March 1865, No. 1,660.
Do. do. " 8th June " " 3,091.
Do. do. " 5th May 1866, " 3,201.
Do. do. " 26th February 1867, " 1,199.
Do. do. " 25th October 1869, " 7,930.
Do. do. " 29th " " " 8,060.
Do. do. " 26th November " " 8,762.
Read also the following letter from the Government Pleader, to the Acting Secretary to the Board of Revenue, dated Madras, 22nd June 1870, No. 79.

WITH reference to the Board's Proceedings noted in the margin, I have the honour to report that the Special Appeal therein referred to (No. 571 of 1869) came on for hearing the day before yesterday before the Chief Justice and Mr. Justice Holloway. It was held that the finding of the Lower Court, that the whole of the debt, the subject of the Suit was contracted for the necessary expenses of the charity, could not be disturbed on Special Appeal, as there was some evidence to that effect, that *prima facie* a debt contracted for such purposes was binding on the charity unless it was shown that the act of incurring such debt was unnecessary and improper, and nothing of the sort was shown in this case, and that therefore the plaintiff was entitled to recover the amount of his debt from the charity property. The decree of the Lower Court was, however, varied in this respect, that the amount of that decree should be paid without further interest, by eight half-yearly instalments. Plaintiff's costs of the appeal to be paid by the Collector, the second defendant to bear his own costs. I shall forward a copy of the decree as soon as I can obtain it.

Dated 26th November 1869, No. 8,762.

2. Having regard to this decision, it would seem to be useless to continue to contest the claim made upon the Chuttrum property in the other Suit (No. 56 of 1869). The amount claimed in that Suit appears to have been due in respect of arrears of melwarum for which purpose, if for any, the trustee would certainly be justified in mortgaging the charity lands. It would be well perhaps, if possible, to make some arrangement for satisfaction of all such existing debts as shall be shown to have been contracted *bonâ fide* for discharge of kist and other kindred necessary purposes, by instalments from the income of the Chuttrum.

3. Of course, if it can be proved that the late trustee misapplied to his own purposes the income of the Chuttrum, out of which the kist, etc., ought to have been paid, thereby rendering it necessary to borrow for the purpose of paying the kist, etc., a Suit will be against his estate to recover the amount which he so misapplied, but this would probably be very difficult of proof though it is very likely to have been the case.

Proceedings of the Madras Government, Revenue Department,
11th October 1870.

IN February 1865, the Collector of Tanjore reported that the trustee of the Kallemodu Chuttrum on the road from Negapatam to Point Calimere desired to place it under the management of Government, and that a previous trustee had incurred debts to the amount of Rupees 5,401, part of which were secured by mortgages on the land belonging to the Chuttrum.

2. The Board having examined the founder's Will, authorized the Collector to take charge of the Chuttrum and to make arrangements for the gradual payment of such debts as had been incurred to meet the legitimate expenses of the charity.

3. In April 1866, the Collector reported that a Suit had been filed before the Small Cause Court at Negapatam for the recovery of Rupees 1,852, secured on the land. The Collector under the orders of the Board, contended that the trustee could not mortgage the land, unless he was obliged to do so to save the Trust, and that no such necessity was averred or proved, and he disputed the claim as against the Chuttrum. It appeared, however, that Rupees 800 of the money had really been spent on the charity, and the Collector offered to compromise the case by paying the plaintiff Rupees 1,000. This offer was refused. When the case was heard, the Judge of the Small Cause Court decreed in favour of the Collector and against the heir of the trustee who had incurred the debt, on the ground that it was not proved either that the money was borrowed for the charity, or that it was applied to the "absolutely necessitous wants of the charity."

4. An appeal was made to the Civil Court of Tranquebar, and in the meantime a second Suit was filed for Rupees 2,895 by another debtor. In this case the bonds sued on, purported to be for melvarum, payable on account of the Chuttrum lands. It was opposed on the ground that though the bonds purported to be for melvarum it was not known that the money was spent in defraying it, and that it was the duty of the trustee not to exceed the income of the Trust.

5. The Civil Court of Tranquebar decided the appeal in the first case against the Collector, on the ground that the instrument sued on was entered into for the purpose of securing the re-payment of a loan necessitated by the embarrassed state of the finances of the charity, and that the lands belonging to it were liable. The decree ordered the Collector to pay the plaintiff's claim within six months. After consulting the Government Pleader, the Board authorized a Special Appeal to the High Court.

6. In the second case, the Judge of the Negapatam Small Cause Court again decided in favour of the Collector, on the ground that it was not proved that it was imperatively necessary to contract a debt in order to pay the melvarum; that it was not shown how the produce of the land on which the melvarum was thus paid was disposed of; and that, even if these points were satisfactorily cleared up, the question would arise whether the trustee was warranted in exceeding the income of the Trust as he had done. The Board have not been informed of any appeal against this decision.

7. The Government Pleader now reports that the High Court have decided the Special Appeal against the Collector, on the ground that the Lower Court had found that the whole of the debt had been contracted for the necessary expenses of the charity, and that the funds of the charity would be liable for such a debt unless it could be proved that the act of incurring it was unnecessary and improper,

which had not been done. The Court, however, ordered that the amount of the decree should be paid without further interest, by eight half-yearly instalments.

8. The Government Pleader considers it useless to continue to contest the second case, and advises that arrangements should be made for satisfying all similar liabilities.

9. The Board agree with the Government Pleader, and the Collector will be guided by his advice in dealing with the second case (if an appeal is made to the Civil Court), and with any liabilities which may be still impending.

10. The amount of costs should be reported. They will be paid out of the Chuttrum Funds.

11. These proceedings will be submitted for the information of Government, in continuation of Board's Proceedings recorded in Government Order, dated 31st March 1870, No. 415.

No. 88. ORDER THEREON, 11th October 1870, No. 1,512.

Miscellaneous.

THE Government do not consider that the defence of Suit No. 56 of 1869 should be abandoned if the decree of the Judge of the Small Cause Court at Negapatam is appealed against. The principle involved is important, and supposing that the two Suits are analogous in respect to fact, it may, in the opinion of the Government, be fairly urged that when a trustee encumbers his trust with liabilities by spending more than the net income at his disposal, the burden of proof rests with him to show that the extra expenditure was in the interests of the charity. If his conduct has been *bona fide*, it will be easy for him to justify it by filing the accounts connected with his management of the chuttrum or adducing other good evidence; but, on the other hand, it will be almost impossible for the Collector to prove that the money obtained on loan has *not* been spent on the charity.

2. This point therefore should be especially urged on behalf of Government, if the decision in Original Suit No. 56 of 1869 is appealed against.

3. The Board are further requested to consult the Law Officers of Government as to the propriety of modifying the existing law, so as to place more restriction on the power of trustees of charitable establishments to incur liabilities to the detriment of the property under their charge.

(True Extract.)

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

To the Board of Revenue.

Exd. F. R. Bantleman.

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(True Extract.)

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

To the Board of Revenue.

Exd. F. R. Bantleman.

Memo for orders on A. 2472

Question. Whether it is expedient to continue further litigation in a suit (A 536 of 1869) with a view to protecting the funds of the Thullamodu Chattrum in Tanjore.

This case is summarised in the Board's Proceedings dated 11th July 1870, A. 2501.

2. Two suits are involved in the question in both of which the same principle is at stake - viz whether the Trustee of a Chattrum is justified in contracting a debt on behalf of the Chattrum instead of merely appropriating its

I am of opinion that I should defend the case referred to. It appears to me that if dispute has arisen between the Govt. and the inhabitants as to defining the trustee of a charitable institution he certainly loses authority of the Collector & the Govt. & we might dissociate ourselves in Council

I should defend the subject if we be pressed as to

Govt. of Madras.

REVENUE.

To

THE BOARD OF REVENUE.

Dated October, 11th

Rect.

G. O., 11th October 1870, No. 1,542.

OCTOBER.

Nos. 86—88.

Suit No. 56 of 1869, in connection with certain chultrum property in Tanjore District.—Passing orders with reference to its defence if the decree of the Negapatam Small Cause Court is appealed against.

it net income to the support of the chattrum.

A second question also is involved - viz whether, in such a case, the burden of proof lies upon the Collector to prove (in accordance with Reg: VII of 1817) that the debt in question was not contracted for the benefit of the Charity or upon the creditor to prove that it was so contracted.

3. The first suit was originally decided by the Negapatam Small Cause Court in the Collector's favour, but an appeal being preferred the Court reversed the finding of

Draft one rule be, as the Civil Court may find differently as to the facts.

When did Samiappa Pillai die? &

Was the suit brought with the permission of the Board & Law?

The decree should be binding from the founder of the charity & not from the present Chudrum Pandaram, as the Order seems to contemplate

I & S

of the Lower Court, & on Special appeal to the High Court, the decision of the Civil Court was confirmed. Thus the case was finally decided against first in their capacity of guardians of the funds of the chattrum -

2. The second point A. 31 of 1869 has at present not gone further than the Small Cause Court (Principal Sadder Ameen's side) on where it has been decided in favor of the Collector. If it is made the subject of appeal the Sudder Ameen's decision will probably be

be reversed - reasoning on the analogy of the two suits: and the question is whether it is worthwhile to set up a defence.

3- In the first suit, the High Court confirmed the Civil Judge's decision, because it was not shewn "that the act of incurring the debt "was unnecessary or "improper." This dictum it is submitted, involves a totally wrong principle. When a Trustee spends the annual income of the Chattrum yielding it nothing more, the presumption

6

presumption is that he is properly fulfilling his trust. But when he burdens the Chattrum with liabilities the presumption lies in the other direction and in such a case it is incumbent on him to shew what has occurred to justify abnormal expenditure, & nothing can be easier for him than to do so, if only he has been acting bonâ fide - On the other hand it would be almost impossible for the Collector to prove that the money presumed on law was unproperly

improperly spent by the Trustee.

6. It is therefore submitted that if appealed against, Sect. 56 of 1869 may be defended & the above point urged.

7. The Chattrum is a charitable and not a religious institution otherwise the Courts would, as instanced in a recent decision, deny the jurisdiction of Govt.—

JKW

Revenue Department

No. 1562.

Proceedings of the Madras Government

Under date the 11th Octr. 1870.

Read the following Proceedings

of the Board of Revenue.

Submg. letter from Govt. Pleader forwarding copy of decree in S.A. Suit No 571 of 1869 regarding a sum of money due on account of Kulla-mudun Chuttiram. — B.R. 8th August 1870, No 5204

Submg. letter from Govt. Pleader reporting that decision in the above suit is adverse to Govt. — B.R. 11th July 1870, No 4801

L.D.S

The Govt. do not consider that the defence of Suit No 56 of 1869 should be abandoned if the decree of the Judge of the Small Cause Court at Negapatam is appealed against. The principle involved is important, and supposing that the two

Revenue.

Council

Under Law

The appeal to be defended. The Board to consult Law Officers in the matter of Mr. Reid in regard to the powers of trustees to sue in debts against the property committed to their charge.

C. to Govt. 7/10

two suits are analogous in respect to fact, it may, in the opinion of the Govt, be fairly urged that when a Trustee encumbers his Trust with liabilities by spending more than the net income at his disposal, the burden of proof rests with him to shew that the extra expenditure was in the interest of the charity. If his conduct has been bonâ fide it will be easy for him to justify it by filing the accounts connected with his management of the Institution; but on the other hand

or adducing Mr first Evidence

hand it will be almost impossible for the Collector to prove that the money obtained on loan has not been spent on the Charity.

2. This point therefore should be especially urged on behalf of Govt, if the decision in O.S. No 56 of 1869 is appealed against, [and should it be necessary the case should be carried before the High Court on Special Appeal.]

3. The Board are further requested to consult the Law Officers of Govt as to the propriety of modifying the

the existing law so as to place more restriction on the power of Trustees of charitable establishments to incur liabilities to the detriment of the property under their charge.

H. Tufton Bp of Rochester

M.R. O. 1—32,000—16-10-29.