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TAMIL NADU ARCHIVES

GOVERNMENT OF TAMIL NADU

Rev. DEPARTMENT

G.O. No. / B.P. No.	2045	Press. / Mis.
Dated	20.8.1878	~~197~~ .

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GOVERNMENT OF MADRAS.

LEGISLATIVE DEPARTMENT.

1st August 1878, No. 139.

Regulation VI of 1831.

Read again—

Proceedings of Government in this Department, dated 14th January 1878, *No.* 5.

Read also the following papers:—

No. 1. *Proceedings of the Board of Revenue, dated 11th May* 1878, *No.* 1266.

Read the following letter from the Honorable P. O'SULLIVAN, Acting Advocate-General, to the Acting Secretary to the Board of Revenue, dated Madras, 19th February 1878:—

With reference to the Order of Government, dated the 14th January 1878, No. 5, Legislative Department, I have the honor to enclose, for the consideration of the Board, a Draft Bill which I have prepared to enable Collectors to give effect to their decisions under Regulation VI of 1831. This purpose may be accomplished in the way provided in the Draft Bill, or by requiring the Civil Courts to execute the decisions of the Collector in the manner provided for the execution of decrees or orders passed in civil suits. It is, I think, best to leave the matter within the control of the Collectors as being more in accordance with the provisions of the Regulation.

2. Adopting a suggestion made by the Board in their Proceedings, dated 3rd February 1872, No. 261, I have put in Clause 1 authorizing the Governor in Council to make rules for regulating the procedure of Collectors under Section 4 of the Regulation. The procedure is not now defined in any way, and I think some provision is necessary in this direction. I do not think the provisions of Madras Act VIII of 1865 could be safely adopted, nor that any hard-and-fast rules should be laid down in the Bill; and it appears to me that in this case the procedure ought to be laid down by the Governor in Council and not by the Legislature.

ENCLOSURE No. 1.

Whereas it is expedient to make provision for the procedure to be adopted by Collectors of districts in adjudicating upon claims made under Section 4 of Madras Regulation VI of 1831, and for enabling Collectors to enforce decisions passed under the said Regulation, it is enacted as follows:—

1. The Governor in Council may from time to time make rules providing for the procedure to be adopted by Collectors in adjudicating upon claims made under Section 4 of Madras Regulation VI of 1831.

2. Whenever a decision shall have been passed by a Collector under Section 4 of Madras Regulation VI of 1831, it shall be lawful for the Collector to enforce his decision in manner following:—

(*a*)—When any person is declared to be entitled to the possession of immovable property, by issuing a warrant under the hand and seal of the Collector addressed to some person named therein authorizing such person to give possession of the immovable property according to the adjudication.

(*b*)—When any person is adjudged liable to pay mesne profits or costs or any sum of money, by proceeding in the manner provided for the recovery of arrears of revenue.

(*c*)—In cases when any person is declared to be entitled to the possession of an office, by a notice in writing under the hand and seal of the Collector prohibiting the person or persons named therein from exercising or pretending to exercise the office or performing the duties thereof.

3. Whoever resists or obstructs the execution of the decision of a Collector under this Act without just cause or excuse shall, in addition to any penalty to which he may be liable under the Indian Penal Code or any other law, be liable on conviction before a Magistrate to a penalty not exceeding Rupees 100, or in default of payment to simple or rigorous imprisonment not exceeding one month for every such offence.

4. This Act shall be read with, and taken as part of, Madras Regulation VI of 1831.

The Draft Act is approved and will be submitted for the orders of Government with a draft set of rules of procedure to be issued under Section 1 of the Draft Act.

2. As suggested in Board's Proceedings, dated 3rd February 1872, No. 261, the draft rules are adapted from Sections 50 to 77 of Act VIII of 1865 with the omission of the provisions relating to limitation, appeals, and the issue of summonses.

3. A law of limitation under Regulation VI of 1831 has always been recognized in practice, and though the Government in G.O., dated 17th January 1877, No. 173, expressed their opinion that it was impossible to lay down any hard-and-fast rule, they were pleased to approve, as a matter of administrative convenience, the Board's recommendation that an incumbent should not be liable to be ousted by reason of inferior hereditary title if he has held office continuously for the space of three calendar years. The legality of this rule of practice is admittedly open to question; and, as it involves more than a mere matter of procedure, the Board would suggest that the Advocate-General be requested to frame an additional section to provide for it.

4. The issue of summonses, &c., is provided for by Act III of 1869.

5. The present practice with regard to appeals is, in the opinion of the Board, very unsatisfactory, but it can only be remedied by changing the law. Under the combined action of Regulation VII of 1828 and Regulation VI of 1831, a Divisional Officer exercises the powers of a Collector in trying suits, but the Collector of the district may revise and modify any decision so passed. A party against whom a decision is passed by a Divisional Officer may thus in the first instance apply to the Collector for revision, and, if not satisfied with the result, he may then appeal to the Board of Revenue under Section 6, Regulation VI of 1831. The Board's order on such appeals is declared by the section to be final and conclusive, but a proviso is added empowering the Government to revise and modify the Board's decisions whenever it is deemed necessary for the ends of justice. As an application for revision is not likely to be based on any other plea, the effect of the proviso is hardly to be distinguished from the establishment of a third Court of appeal.

6. The Board consider that the law should be amended so as to provide for an appeal from Divisional Officers to the Collector within sixty days, and from the Collector to the Board of Revenue within the same period; and the Government will perhaps be willing to consider whether it is necessary to retain the power of revising the Board's "final and conclusive" decision now vested in them by the proviso to Section 6.

(True Copies and Extract.)

(Signed) J. STURROCK,
Acting Sub-Secretary.

To the Chief Secretary to Goveanment, with Draft Rules.

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ENCLOSURE No. 1.

DRAFT RULES of Procedure to be adopted by Collectors in adjudicating upon claims made under Section 4 of Madras Regulation VI of 1831 issued by the Governor in Council under the provisions of Section 1, Madras Act.

1. Suits under Regulation VI of 1831 shall be instituted by presenting to the Collector a plaint which shall contain the name, description, and place of abode of the plaintiff; the name, description, and place of abode of the defendant so far as they can be ascertained, and the nature of the claim.

Any documents which the plaintiff wishes to produce in support of his claim shall accompany the plaint, and none shall be received afterwards unless the Collector shall see cause to admit them. Irregular or incomplete plaints may be returned to the party, or the Collector may at his discretion allow them to be amended.

2. If the plaint shows that the suit is cognizable by the Collector, a day shall be announced for its hearing and a written summons shall be addressed to the defendant containing the name of the plaintiff and stating concisely the nature of the claim. The summons shall require the defendant to appear at the Collector's Office on the day fixed, bringing with him, subject to all just exceptions, any documents which the plaintiff may desire to inspect, and all documents which the defendant may desire to produce in his defence, as well as his witnesses should they be willing to appear without issue of process. The defendant shall not be allowed to produce any documents except at the first hearing of the suit, unless he shall show cause to the Collector's satisfaction for their admission afterwards.

3. It shall be competent to parties to appear either in person or by authorized agent, unless the personal attendance of either is required for the purpose of giving evidence.

4. If on the day fixed for the trial of the suit or on any subsequent day to which the hearing of the case may be adjourned, neither of the parties appear in person or by authorized agent, the suit shall be dismissed.

If the defendant only appears, the Collector shall pass judgment against the plaintiff by default unless the defendant admit the cause of action, in which case the Collector shall pass judgment on such admission without costs; provided that such judgment, if there be more than one defendant, shall be only against the defendant who makes the admission.

If the plaintiff only appear, the Collector, upon proof that the summons was duly served, shall proceed to examine the plaintiff and his evidence and may pass judgment *ex parte* for or against the defendant.

5. In the case of a judgment by default or *ex parte*, the Collector, on good and sufficient cause being shown within sixty days from the date of the decree, may revive the suit and alter or rescind the decree according to the justice of the case. The Collector shall also have power to extend the period within which a suit may be revived when he considers such extension to be necessary for the ends of justice.

6. In the hearing of the suit the examination of the parties or their authorized agents, and of the witnesses for the plaintiff and the defence, shall be upon oath or affirmation, or otherwise according to the law for the time being in force relative to the examination of witnesses.

The evidence of the plaintiff, defendant, and witnesses shall be taken down in the form of a narrative in the vernacular language of the district or in English, and shall be signed by the Collector after being read over and being explained, if necessary, to the deponent.

It shall be lawful for the Collector to call for any additional evidence or documents and to summon any additional witnesses necessary to elucidate the case.

7. If on the presentation of a plaint the defendant be present, it shall be lawful for the Collector to proceed at once with investigation of the suit.

8. The Collector may in any suit grant time to the plaintiff or defendant to proceed in the prosecution or defence of the suit, and may also for any sufficient reason to be recorded by him adjourn the hearing in such manner as to him may seem fit.

9. The record of the suit shall comprise the plaint, such summonses as may have been issued or copies of them, the examination of the plaintiff or his authorized agent, the statement taken from the defendant or his authorized agent, or any written statement which the defendant may have filed, the evidence of the witnesses, and a list of the documents filed. Such documents when retained by the Collector shall be included in the record.

10. When a reference has been made to Assessors under Clause 3 of Section 4 of Regulation VI of 1831, the report of the Assessors with the evidence and documents upon which it is founded shall form a part of the record of the suit and shall be considered by the Collector in passing his judgment.

11. On the hearing of the suit being completed, the Collector shall pronounce judgment. The judgment shall be written by the Collector in English and shall contain the reasons for the same, and shall be dated and signed by the Collector at the time when it is pronounced. A copy shall be given to each of the parties free of charge if present, or be sent post bearing if absent.

12. Divisional Officers exercising the powers of Collectors under Regulation VI of 1831 shall endorse upon the copy of their judgment given to the parties a notice to the effect that an appeal from the judgment lies to the Collector and must be presented within sixty days from the date of the judgment.

13. When an appeal from the decision of a Divisional Officer is received by a Collector, he may call for the proceedings if he see fit, and may confirm, modify, or reverse the judgment.

14. Collectors shall endorse upon the copies of their judgments given to parties in original or appeal suits that an appeal against that judgment lies to the Board of Revenue if presented within sixty days from the date of the judgment appealed against.

15. No judgment under Regulation VI of 1831 shall be set aside for want of form or for irregularity of procedure, but upon the merits only.

16. Every Collector shall keep a register in the following form of the suits heard and decided by him under Regulation VI of 1831 :—

Number of Suit.	Date of Plaint.	Abstract of Plaint.	Abstract of Defence.	Date and Abstract of Judgment.	Date of Delivery to the Party.	
					Personally.	By Post.

(Signed) J. STURROCK,
Acting Sub-Secretary.

No. 2. * * * *

No. 3. ORDER THEREON, 1st August 1878, No. 139.

Regulation VI of 1831 removes suits regarding "claims to village offices or to any of the emoluments attached thereto" from the ordinary Courts, and renders them adjudicable exclusively by Collectors. But, from the loose way in which the Regulation is framed, it has been found that the Collectors are without power to execute their decisions.

2. It has therefore been decided to amend the Regulation. The Board submit the Advocate-General's Draft Bill with their remarks thereon.

3. The Bill further gives power to Government to make rules for the Collector's procedure in adjucating. These do not press. The Draft Rules proposed by the Board can be considered when the Bill becomes an Act.

4. The Board are in favor of a limitation for such claims ; but the Local Legislature cannot override the Imperial Limitation Act, which expressly exempts such claims from its scope, and, as the Government think, with good reason.

5. As to appeals, the Board's remarks on the first point are correct. Every Divisional Officer has all the powers of a Collector. The Collector of the district may revise his decisions, but no time is fixed. In these cases it might be fixed at thirty days, and ninety days allowed for an appeal from the Collectors to the Board.

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6. His Grace the Governor in Council does not approve the suggestion that there should be no power of revision by the Government. The Government, in practice, never interfere except on a point of principle ; and this power, they think, should be retained in accordance with the present law.

7. The Advocate-General will be requested to furnish an amended Draft Bill with reference to these remarks.

(True Extract.)

Assistant Secretary to Govt.,
Legislative Department.

To the Board of Revenue.
" Advocate-General.
" Revenue Department.

Exd. J. W. Fischer.

5 spare copies

Revenue Despatch

No. 3631

Govt. of {1878} Madras.

LEGISLATIVE.

To

THE BOARD OF REVENUE,

&c., &c., &c.

Dated August 1st.

Issued — 8 — 17

Read — 8 — 19

Encl. 5 & Copies

G.O., 1st August 1878, No. 139.

AUGUST.
Nos. 1—3.

Regulation VI of 1831.—Observations recorded on the Draft Bill "to enable Collectors to give effect to their decrees under the above Regulation," and the Advocate-General requested "to furnish an amended draft with reference thereto."

No 2045 Lodged

Do Regd 1878