1/390

# Revenue Department

## Minutes of Consultations

30th March 1858

(5)

Book vs 19 & 20

Order No 390 of 24th March 1858

பாதுகாப்பு பிரிவு - 1

செப்பனிடுபவர் பெயர் [illegible]

செப்பனிடுவதற்காக எடுத்துக் கொள்ளப்பட்ட நாள் 16-5-08

செப்பனிட்டு முடித்த நாள் -11-08.

28/11/08

சரிபார்க்கும் முதல் மு. நி. பா. எ. கையொப்பம்

சரிபார்க்கும் கூ. நி. பா. எ. கையொப்பம்.

19/12/08

ஆராய்ச்சி உதவியாளர் கையொப்பம்

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*Fort Saint George, Revenue Consultation of 30th March 1858.*

No. 19. Read the following letter from CLEMENT DALE, Esq., Government Pleader Sudr Udalut; to HENRY FORBES, Esq., Acting Secretary to Government, Fort Saint George; dated Madras, 23d March 1858, No. 28.

SIR,

Para. 1. I do myself the honor of acknowledging receipt on the 20th Instant of an Extract from the Minutes of Consultation noted in the margin, and to report for the information of the Right Honorable the Governor in Council that I on that day applied to the Court as there instructed; and that the Judges were pleased to make an order as prayed, allowing 3 weeks for the presentation of the brief Appeal Petition. A copy of the order I enclose.

*Mins. Cons. 19th March 1858, No. 356 Revenue Department.*

2. A difficulty presents itself at first sight, which is that the appeal is really an appeal for costs. In Her Majesty's Courts and in the Privy Council as a general rule, no appeal lies *for costs* alone; in Bengal I observe (from Macpherson page 199) that an appeal may be brought for costs alone; in support of which he quotes Regulation 23 of 1814 and Regulation 5 of 1831 &c., I have not the Bengal Regulations, nor have I at present been able to trace whether those Regulations have been extended to this Presidency, and so far as I have at present been able to search, I do not find that the point has been decided in the Sudr Udalut at Madras or in the Privy Council. Looking however at the language used in Regulation 3 of 1802 Section 9 and Regulation 14 of 1816 Section 26 Clause 2d I am of opinion that an appeal may be sustained against a Decree passed in violation of those Regulations; and such appears to me to be the case as regards the Decree, which it is wished should be appealed against.

3. I observe however, that the Civil Judge permitted the suit which had abated by the death of the original Plaintiff to be revived by his heir. The suit was brought to recover damages for an alleged injury to the original Plaintiff by the use of an alleged inappropriate method of addressing the Plaintiff; such a suit is strictly personal, and under the Circular order of 7th November 1809, cannot be revived.

4. I purpose therefore appealing on both grounds, I doubt not the appeal suit will be defended, and that it will be contended, that from the nature of the decision, both objections in fact resolve themselves into the one question of costs; I trust I shall be able to convince the Court such is not the case, and that I may be able to obtain a decision on both points.

5. The defendant should, within the time now allowed, present a brief Petition of appeal to the Civil Court; such Petition should contain only notice that he the defendant being dissatisfied with the decree is desirous of appealing from it. And security for the eventual costs should be given within the limited time.

6. I should wish to be furnised with a copy (or translation if in a vernacular) of such brief appeal Petition.

7. On the record arriving at the Sudr Udalut I will present the grounds of objection.

8. With regard to the 3d para. of the Minute of Consultation noted above, I require to see the decree appealed against, as also the Petition of appeal and answer, before I can form an opinion as to the proper course to be pursued. If I am furnished with those I will give the matter immediate attention.

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Extract from the Proceedings of the Sudr Udalut under date the 20th March 1858.

*Ordered*, upon the motion of the Government Pleader, that the period allowed for appealing from the decision of the Civil Judge of Calicut in original suit No. 2 of 1856, be extended for three weeks.

(True Copy.)
(Signed) C. F. CHAMIER, *Acting Register.*

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No. 20. ORDER THEREON, No. 390; dated 24th March 1858.

Ordered to be communicated to the Acting Collector of Malabar, through the Board of Revenue. The Board will call the early attention of that officer to paras. 5 and 6 of Mr. Dale's letter.

(Signed) H. FORBES,
*Acting Secretary to Government.*

No 28

To Clement Dale Esquire Government Leader Sudr Udalut
Henry Forbes Esquire Acting Secretary to Government

Madras 23rd March 1858

Sir

Para 1. I do myself the honor of acknowledging receipt on the 20th instant of an Extract from the Minute of Consultation noted in the Margin and Report for the information of The Right Honorable The Governor in Council that I on that day applied to the Court as there instructed and that the Judges were pleased to make an Order as prayed allowing 3 Weeks for the presentation of the Brief Appeal Petition. A copy of the Order I enclose

16 19th March 1858 No 356
Revenue Department

2. A difficulty presents itself at first sight, which is that the Appeal is really an Appeal for Costs. In Her Majesty's Courts and in the Privy Council as a general Rule, no Appeal lies for Costs alone. In Bengal I observe (from Macpherson page 499) that an Appeal may be brought for Costs alone, in support of which he quotes Regulation 23 of 1814 and Regulation 6 of 1831 pp. But I have not the Bengal Regulations, nor have I at present been able to trace whether those Regulations have been Extended to this Presidency, and so far as I have

at present been able to search, I do not find that the point has been decided in the Sudr Udalut at Madras or in the Privy Council Looking however at the language used in Regulation 3 of 1802 Section 9 and Regulation 11 of 1816 Sect. 26 Clause 2d. I am of opinion that an Appeal may be sustained against a Decree passed in Violation of those Regulations; and such appears to me to be the case as regards the Decree, which it is wished should be appealed against.

3- I observe however, that the Civil Judge permitted the suit which had abated by the death of the Original Plaintiff to be revived by his Heir. The suit was brought to recover damages for an alleged injury to the Original Plaintiff by the use of an alleged inappropriate method of addressing the Plaintiff: such a suit is strictly personal, and under the Circular Order of 7th November 1809 cannot be revived.

4- I purpose therefore appealing on both Grounds. I doubt not the Appeal Suit will be defended, and that it will be contended, that from the nature of the decision, both objections in fact resolve themselves into the one question of Costs; I trust I shall be able to convince the Court such is not the Case, and that I may be able to obtain a decision on both points.

5- The Defendant should, within the time now allowed, present a Brief Petition of Appeal to the Civil Court. Such Petition should



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Contain only Notice that he the Defendant being dissatisfied with the Decree is desirous of appealing from it. And Security for the eventual Costs should be given within the limitted time.

6- I should wish to be furnished with a Copy (or translation if in a Vernacular) of such Brief Appeal Petition.

7- On the Record arriving at the Sudr Udalut I will present the Grounds of Objection.

8- With regard to the 3d Para of the Minute of Consultation noted above, I require to see the Decree appealed against, as also the Petition of Appeal and Answer, before I can form an opinion as to the proper Course to be pursued. If I am furnished with those I will give the matter immediate attention.

I have the honor to be
Sir
Your most Obedient Servant
[signature]
Govt. Pleader

Cons 19th March/58 Nos 39-40
" 2d Septr/56 — 3-4
" 19th January/58 — 26-27

Revenue 1858 Deptt
Dy to Cons: 30th March

No 422

From the Govt Pleader
to the Sudr Sedalut.

Dated 23d March 1858.

Rect 24th
Regd 25th "

Reporting that the Judder Adalut has allowed 3 Weeks for the presentation of the Brief appeal Petition against the Decree passed by the first Court of Calicut in Original Suit No 2 of 1856 and submitting his observations as to a Difficulty which presents itself to his sight, against the appeal.

From Govt Pleader S. W. Sippy Esqr Calicut Cr.

Mette as per Do
No 390, 24th March 1858

No 390.

Ordered to be communicated to the Acting Collector of Malabar through the Board of Revenue. The Board will call the early attention of that Officer to paras 5 and 6 of Mr Dale's letter.

Fort St. George,
24th March 1858

Copy to the Board of Rev Dy 24
" Pointer — to do — 25