M.R.O. 1—30,000—16-10-25.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 93B Press ~~Mis~~

132-33
Dated 7-4-1869 19

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department, 7th April 1869.

Read the following :—

No. 132. Proceedings of the Board of Revenue, dated 25th November 1868, No. 8,313.

Read the following letter from the Collector of Malabar, to the Acting Secretary to the Board of Revenue, dated on circuit at Pattambi, 24th September 1868, No. 272 B.

I HAVE the honor to acknowledge receipt of the Proceedings* of the Board of Revenue, covering Government Order, dated 5th September 1868, No. 2,328, in which it is said that the practice of applying for the transfer of suits in which Government is involved from the Moonsiffs' Courts to the higher Civil Courts is unobjectionable, and may be followed with advantage. The practice used to be general in this district ; but, as a rule, I abandoned it altogether. Unless there is some special reason in a particular suit for making a request for transfer, I do not make it ; and I respectfully submit that my reason for this course is, that it seems to me very undesirable, where the ordinary civil rights of Government, as a land-owner or otherwise, are concerned, to adopt a course tantamount to saying that the ordinary Courts are not, in the opinion of the Executive Government Officials, sufficiently skilful or trustworthy to undertake the adjudication of those rights. If the Moonsiffs' Courts are presumably competent to conduct the important duties entrusted to them as regards the public, they are, as it seems to me, presumably able to dispose ordinarily of such cases in which Government is concerned, as would, in ordinary course, come before them. To remove, as a rule, such cases seems to me equivalent to saying, that what is good enough for the people is not good enough for Government ; and that is an idea which it is neither desirable for the public, nor for the Courts to entertain or suppose that Government entertains.

* Dated 14th September 1868, No. 6,549.

2. This was my principal reason for the course I have adopted. A minor one was, that, unless cause is shown for a request for transfer, the order might very possibly be refused by the Civil Judge, and the Collector is placed in a position which it is desirable to avoid. I would respectfully request that my reason for desiring to follow the course I have indicated above, may be submitted to Government, and that the Board and Government will permit me to continue it.

THE subject has already been disposed of by Government. The Board do not consider that the arguments adduced by Mr. Ballard outweigh those in favor of the course now prescribed.

2. In the majority of cases against the Government, the presiding Officer is, in effect, sitting in judgment on the official acts of another public servant ; and if cases are left with the Moonsiff, the official, whose acts he is adjudicating, is probably of such far higher standing as to render the proceeding undesirable. No slur can, as suggested by Mr. Ballard, be supposed to be cast on the lower Court.

3. Moreover, the Government have not a Vakeel at every District Moonsiffs' Court.

No. 133. Proceedings of the Board of Revenue, dated 19th January 1869, No. 308.

Read the following letter from the Collector of Malabar, to the Acting Secretary to the Board of Revenue, dated Calicut, 7th December 1868, No. 335.

Adverting to the Board's Proceedings, dated 25th November 1868, No. 8,313, I have the honor respectfully to solicit my letter of the 24th September, reviewed in the Proceedings under acknowledgment, may be submitted to Government. Of course, the Orders of Government and the Board will be carefully attended to.

The Board resolve to submit this and the Collector's previous letter for the orders of Government.

2. They adhere, however, to the opinion expressed in paragraph 2 of their Proceedings, dated 25th November 1868, No. 8,313.

No. 134. Order thereon, 7th April 1869, No. 933.

Miscellaneous.

In their Proceedings, dated 30th July 1868, No. 5,513, the Board of Revenue, in reviewing the answers of the several Collectors to a Circular, regarding remuneration to Vakeels for conducting suits on behalf of Government in District Moonsiffs' Courts, remarked that, where practicable, the practice (which was in force in the Salem District) of applying to the Civil Judge to transfer suits from the Moonsiffs' Courts to a superior Court seemed desirable, as it was scarcely seemly that Collectors should be sued for official acts in the lowest Courts.

2. The Government, in their Order on the Board's Proceedings above quoted, observed that the practice referred to by the Board was unobjectionable, and might be adopted with advantage in other districts.

G. O., 5th September 1868, No. 2,328.

3. The Board now submit letters from Mr. Ballard, Collector of Malabar, taking exception to this Order. He states that he discontinued the practice of applying for the transfer of suits from a subordinate to a superior Court on two grounds :—

(1.) That it is tantamount to declaring that, in the opinion of the executive, the inferior Courts are incompetent to deal with the rights of Government.

(2.) That such applications may at any time be refused, and the Collector be thereby placed in a false position. He requested a reference to Government on the subject.

4. The Collector's letter, however, was disposed of by the Board, who remarked that in the majority of suits against Government the presiding Officer is, in effect, sitting in judgment on the official acts of a public servant, who is probably of longer standing than himself, and that, in their opinion, the application for transfer of suits to a superior Court is not open to the construction suggested by Mr. Ballard. The Board adduced, as an additional argument, that there was not a Government Vakeel at every District Moonsiff's Court.

Proceedings of the Madras Government, Revenue Department, 7th April 1869.

5. Mr. Ballard still pressed for a reference to Government, and the Board now submit the correspondence.

6. The Government fully concur in the Board's opinion, and think that Mr. Ballard should have been satisfied with their disposal of the matter.

7. It is difficult to secure the proper conduct of a suit in the District Moonsiffs' Courts, for a principal reason, among others, that the local Government Vakeel cannot conveniently be present whenever a hearing of the matter has been fixed in the District Moonsiffs' Courts.

8. The Collector, moreover, can better attend to the subject in litigation when it is on the file of a Court held at the principal station of a district, and the resort to that station of the private litigant is seldom attended with any real inconvenience to him.

9. The Orders already passed on the subject, under date 5th September 1868, and referred to above, must therefore be maintained and acted upon.

(True Extract.)

(Signed) R. A. DALYELL,

Acting Secretary to Government.

To the Board of Revenue.
,, the Judicial Department.

Exd. F. R. Bantleman.

No 3

Mem: for orders
on 40 200

Bard's No: 30th July 1868. Inspectors
Boxes.

To direct the Collectors
of Dalhousie & Circular
to grant drawbacks
on Goods by the Steamer
Vakil for Condition
Saints on behalf of
Monts in Dt of Municipalities
Counties, the Bd of Mgrs
having asked that the Collr
from which the practice
of supplying) to the Coll
for the Campbellton Saints
from the Municipalities
together to a suspension
Council seems desirable
until it be ascertained seemly
what Collectors should

be

"be issued for official
"acts in the Lower
"Courts."

The Govt. in
disposing of these
papers observed that
the practice proposed
by the Bar in various
objectionable points might
be adopted with advan-
tage in the
Districts.

The following
Malabar takes exception
to the remarks of the
Bar Govt on the subject
of applying for the
transfer of civil cases from
the Lower to Superior
Superior Courts, and
states,

G.O. Rec. Depart. 5th Dec. Legislative
1868. No 976.

Letter to Board. 24th November
1868. No 2928.

that he discontinues
the practice on two grounds.
(1) That it is tantamount
to declaring that in the
opinion of the Executive
the Superior Courts are
incompetent to deal
with the rights of Govt.
(2) That such application
may at any time be
refused, and thus
place the collectors
in a very unpleasant
& false position
& he requests to be
informed whether
he is bound to
receive the petitions
& forward them
to the Magistrate
with a view to
their being laid
before the

Govt Rec: 25th November 1868
No 6312.

the presiding Officer
in the effect sitting
in judgment on the
official acts of a public
servant which is probable
of large standing
that himself, and that
in their opinion the
application for transfer
of suits to a superior
Court is not open to
the Construction sug-
gested by Mr Ballard
Mr Ballard to their former
opinion add an ad-
ditional argument that
there is not a Govt Vakil
at Kandy D.C. Municipal Court

Mr Ballard still pressing
for a reply to Sections 15th
Submit the Correspondence

Mr

Letter to Govt. 7th March
1868. No 238

Govt Vakil 13th Mr Ramanathan
No 204

Remarks

5

In disposing of applications
for the transfer of suits
from a subordinate to a
superior Court, the
District Court having dis-
=cretionary power to
transfer" whenever it
"may see sufficient
"cause for so doing"
(Section 5 of Civil Procedure
Code), but Section 5 declares
"that every Civil Court
shall proceed to and
determine all suits
which come within
their respective jurisdictions
"if the same be perhaps
practicable, whether
the Government should
in every case apply
for the transfer and
the objections raised
by

by Mr Ballard as in double duty of 50 one hundred=

I am quite of the Bd's opinion & think that Mr Ballard should have been satisfied with the dismissal of the matter - Mr Dessaint to examine the proper conduct of a suit in the Dist Mff's Court; for a principal reason among others, that the local Govt cannot be cognizant of the Zillah station & so trusting about a district to be visited & when in a hearing the smaller has been heard in the Dist Mff's Court. - He also would be doubtless, I consider, shelter in natural diligence & prudence against the acts of the

Sgd C Bell

& European Officers of a collectorate thro' the medium of a Civil action, can be made to believe that an inferior Judiciary of the rank of a Dist Mff & Assistant Judge, as independent & as versed in European Civil Judge.

The Collector, too, can better attend to the subject in dispute & in the Zillah & attend in the Zillah Court of a small Cause than a Judge of a Court held at the principal station of a District; and the work of that station of the Presidency, is seldom attended with any real inconvenience to him. —

Mr Ballard's arguments are double-edged well and are perhaps in unison with the tendencies of the times but I do not believe they are sound & reasonable & would not adopt them

31.1.69 A D

Revenue Department.

No. 933.

PROCEEDINGS of the MADRAS GOVERNMENT.

Under date the 7 ~~October~~ April 1869.

Read the following Rs: of the 13th of Nov.

Submitting with remarks Collectors letters objecting to practice of applying for transfer of suits in which Govt is involved from Dist & Sessions Judge's Court to Civil Courts.

(Gl. C. 19th Nov 68 No 308)

In their Proceedings dated 30 July 1868, No 551, the Board of Rev. in reference to the answers of the several Collectors to a Circular regarding transmission to Vakeels for conducting Suits on behalf of Govt in the Mussiffil Courts remarked that, where practicable, the practice (which was in force in the Salem Dist) of applying to the Civil Judge to transfer Suits from the Mussiffil Court to a superior Court seemed desirable, and scarcely liable to any that Collectors should

should be used for official acts in the lowest Courts."

2. The Court, in their Order on the Board's Proceedings above quoted, observed that the practice referred to by the 13th was unobjectionable, and might be adopted with advantage in other Districts. I.C. 5 : 1 Ste. 368 : 2228

3. The 13th now submit letters from Mr. Ballard, Collector of Malabar, stating exception to the above-mentioned Order: He states that his discontinued the practice of applying for the transfer of Suits from a Subordinate to a superior Court on two grounds.

(1) That it is tantamount to declaring that in the opinion of the Executive the inferior Courts are incompetent to deal with the rights of Govt.

(2) That such applications may at any time be refused and the Collr be thereby placed in a false position. He requested a reference to Govt on the subject.

4. The Collector's letter however was disposed of by the 13th, who remarked that in the majority of Suits against Govt the presiding officer is in effect sitting in judgment on the official acts of a public servant who is probably of longer standing than himself, and that in their opinion the application for transfer of Suits to a Superior Court is not open to the Constructions suggested by Mr. Ballard. The 13th adduced as an additional argument that there is not a Govt Pleader at every Munsiffs Court.

5. Mr. Ballard still prayed for a reference to Govt, and the 13th now submit the correspondence

6. The Govt fully concur in the Board's opinion, and think that Mr. Ballard should have been satisfied with their disposal of the matter.

7. It is difficult to secure

the

the proper conduct of a suit in the Dt Munsiffs Courts, for a principal reason, among others, that the local Courts cannot be leaving the Tillah station, and go about a District to be present whenever a hearing of the matter has been fixed in the Dt Munsiffs Courts. It is also to be doubted whether native litigants, protesting against the acts of the European Officers of a Collectorate, through the medium of a Civil action, can be trusted to believe that an inferior judicatory of the rank of a Dist Munsiff will treat the subject as at once as independently as would the European Civil Judge.

8. The Collector moreover can better attend to the subject in litigation when it is in the file of a Court held at the principal station of a Distt

and

and the resort to that station of the private litigant, is seldom attended with any real inconvenience to him.

9. The Orders already passed on the subject under date 5th Sept 1868, and referred to above, must therefore be maintained and acted upon.

16 Copies to the Bd of Rev Dept 8th
5 " Jud Dept 1

[illegible]

Pro Nº. 75.76 d 5.5.68