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TAMIL NADU ARCHIVES

GOVERNMENT OF TAMIL NADU

Financial DEPARTMENT

G.O. No. / B.P. No.	1467	Press. / Mis.
Dated	13 . 8 . 1881	

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Not to be folded or roughly handled

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GOVERNMENT OF MADRAS.

FINANCIAL DEPARTMENT.

13th August 1881, No. 1467.

Municipal—Sanitary.

Read the following paper:—

From Lieutenant-Colonel T. WELDON, Chief Magistrate for the Town of Madras, to the Officiating Chief Secretary to Government, dated Madras, 19th July 1881, *No.* 209 [*Current No.* 1863].

I have the honor to acknowledge receipt of G.O., dated 16th June 1881, No. 1118 (Financial), calling on me for observations in reference to the working of the Magistracy under the Municipal Act and as to the practice of discharging offenders with a warning.

2. The dismissal of offenders with a warning may, as Government observe, be a course legally open to question; but it is a custom which has been in force for the last forty years at least to meet cases in which there has been some technical breach of a petty local regulation that really calls for no punishment whatever, and which, in analogous circumstances, would come within the meaning of Section 95 of the Indian Penal Code. These are cases in which the law might be strained to the extent of inflicting punishment; but more frequently the cases are such that, if all parties stood on their strict rights, the evidence would be found of such a nature that the accused would be acquitted. There is often an utter absence of the *mens rea* which British Magistrates are accustomed to look for ere dealing with a man as a criminal.

3. The principle of administering a solemn judicial warning, which shall bear fruit if disregarded, is fully recognized by the English Legislature, and I hope will ere long also be formally adopted by our Indian Councillors. Under the law as it stands, if construed by the letter, the assumption by Magistrates of this discretion is not expressly provided for. But, if the exercise of such discretion be objected to, there will necessarily be an unsympathetic rigidity in the judgment when confined simply to "guilty" or "not guilty," which may sometimes disappoint prosecutors and mislead defendants into imagining that their conduct has been wholly without reproach. More especially will this be the case when, as frequently occurs, the main object of the prosecution, or the resistance to the demand of the Municipality, is to seek for an authoritative opinion as to the legality or otherwise of a certain act, omission, or demand. In the last annual report (for 1879) by the Chief Presidency Magistrate of Bombay on the state of crime in that town, I find that no less than 3,770 persons are accounted for under the heading "*admonished and discharged.*"

4. Mr. *Scharlieb* states that it is not possible now to give the exact details of the few cases (out of many thousand tried in his Court) in which the accused were discharged with a warning, because, being very petty cases, the proceedings were summary and no evidence was recorded. Mr. *Scharlieb* also says that in cases in which the accused have been warned and discharged, and in cases in which time has been given to the accused to comply with the requirements of the Municipality, both he and his colleague, Mr. *Ponnoosawmy Pillay*, have invariably acted on the suggestion of the Municipal officers who prosecuted the cases. I am fortunately able to trace the few cases in which, in the last twelve months, the accused have been in this division discharged with a warning, and they will furnish samples of the circumstances

in which the Magistrates endeavour to temper justice with mercy. I will also show that the principle is one largely adopted by the Municipal officers themselves and to a far greater extent than by the Magistrates.

5. In regard to the amount of fines inflicted, I find that the Magistrates have been mainly influenced by the Order of Government, dated 28th August 1879, No. 2209 (Judicial), by which Magistrates were positively ordered to inflict fines only for offences under Municipal laws and Police Conservancy laws, &c.; and the Magistrates were further reminded that a sum of two annas represented often a man's daily wages, not to mention punishment by arrest, loss of time, &c. I venture most respectfully to submit that this furnishes an illustration of the difficulty arising when providing by comprehensive executive orders for the exercise of a judicial discretion which should be applied to each particular case as it arises.

6. Mr. *Scharlieb* says—and, as regards my Court, I agree with him—that "as a rule the objects of Municipal prosecution come from the very poorest classes," struggling laborers and artizans living literally from hand to mouth. The President of the Municipality is necessarily to a large extent dependent on the reports of his subordinates. *Ram Doss*, a resident of Pursewaukam as he appears on paper to the President, may be a (potentially) thriving sowcar or a well-to-do merchant, who ought to be ashamed of himself for his ignorance of the principles of even elementary hygiene. *Ram Doss*, as he appears in the flesh to the Magistrates, may be a miserable being whose whole personal estate could not, with any pretence to decency, be made available in satisfaction of a fine of even four annas.

7. Excluding purely fiscal prosecutions instituted by the department under the Revenue Vice-President, an examination of our records for the twelve months last past shows the following result:—

—	Prosecutions instituted.	Convicted.	Acquitted.	Warned and discharged.	Withdrawn or not further prosecuted.	Amount of Fines.
						RS. A. P.
First Division (Black Town Court) ..	744	191	31	49	473	91 15 0
Second do. (Egmore Court) ..	469	327	32	23	87	430 4 0
Total ..	1,213	518	63	72	560	522 3 0

8. A large proportion of these cases are not strictly sanitary cases. If we eliminate these non-sanitary cases the return will stand thus:—

—	Prosecutions instituted.	Convicted.	Acquitted.	Warned and discharged.	Withdrawn or not further prosecuted.	Fines.
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First Division (Black Town Court) ..	441	149	28	41	223	60 3 0
Second do. (Egmore Court) ..	203	124	20	11	48	135 12 0
Total ..	644	273	48	52	271	195 15 0

9. Of the above, 50 per cent. were prosecutions for carrying on certain trades (said to be dangerous or offensive) without a license; and unquestionably the object of the prosecution was to enforce the taking out *and paying for* licenses, not to suppress the trade. Thirty-three per cent. were prosecutions under the bye-laws; and

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the fact that the offence was created such only by virtue of a bye-law, implies that the matter was of a very petty kind. About 17 per cent. thus remain for all other offences under sanitary and conservancy laws.

10. In regard to the punishment awarded, I can find no instance of a fine of two annas in this (Second) Division. There certainly has been one case in this division last month in which the punishment might appear to be inadequate, taking into consideration both the nature of the offence and the status of the offender. The case was one in which a Mahomedan named *Ahmed Ali Khan Bahadur* was prosecuted for burying a corpse in a place not registered as a burying ground. The offence was admitted, and in extenuation it was, I am informed, pleaded that the defendant's wife became very ill during her absence with the defendant at Hyderabad. She was brought to Madras and died two days after arrival. The place where the corpse was buried was a burial-ground in which other deceased members of defendant's family had been interred, and for two years defendant had registered the place and paid for license, but this year it was not registered owing to the absence of defendant from Madras. On the death of his wife defendant was having a grave prepared in the usual burying place, but the work was stopped by an officer of the Municipality. Defendant went at once to the President and explained matters, asking to have the place registered as the corpse was waiting burial. Defendant, it is alleged, was informed that matters could not be settled in a hurry in that manner; that the usual application should be sent in by the usual channel. Defendant, understanding that on compliance with the forms he would obtain registration, buried his wife, and proceeded with the necessary steps for registration; and, in fact, at the time of trial the disposal of the application was pending and had been favorably reported on by the proper officer to the President. After the trial the President finally refused his sanction. The Magistrate fined the defendant eight annas. The President's view of the matter is that the place was closed as a burial-ground intentionally, as being unsuited for the purpose; that defendant, in defiance of the rules, which he had previously ascertained at the Municipal Office, had the corpse buried in the place objected to, which is, it appears, an old Mahomedan burial-ground by the side of the Mount Road near Tod's Coach Factory. In the First Division I have got a list of all cases in which a fine of less than four annas was imposed during the past twelve months. There were 32 such cases out of the 744 prosecutions. Of these thirty-two cases, eighteen were for oil boiling without a license (generally old women who follow this trade). Opposite one case I find a note by the Magistrate as follows:—"*The defendant appears to be very poor and says she is unable to pay; had I the power I would remit her tax, but as I have not, I must fine her two annas.*" This is probably a fair sample of the rest. The other cases were for tying cows or bullocks outside houses (an immemorial custom). Neglecting to metal and drain cow stalls, and improper—that is non-legal—use of Red Hills water (usually by strangers). One effect of a crusade against the practice of tying cattle in verandahs would be to oblige the owners to rent stalls; and, seeing that many of these animals are used for hackney carriages, the Municipality would levy a tax at so much per stall. Mr. Arundel is informed that owners, knowing they would have to pay one rupee as rent for a stall, prefer to risk a prosecution on the chance of the fine being less; but this view has never before been suggested to the Magistrates, and a second prosecution would explode the delusion if it existed. Even from a sanitary point of view I think it may be worthy of consideration whether, of two evils, it might not be better to have the animal kept where the place is open to constant and free inspection—which would disclose at once any insanitary result—rather than compel the owners to make the beasts members of the family with all the privileges of "*gosha.*" This, however, is merely a question of expediency; the Magistrates must, when called upon, administer the law as they find it.

11. Of the cases in which accused were warned and discharged, I find there were altogether in the First Division forty-nine such cases. While in the same division the Municipal officers themselves so dealt with 473 cases. In the Second Division, in only twenty-three cases were the accused warned. In the First Division most of the persons warned were charged under the bye-laws; and I find entries against some of the cases—"*Prosecution does not press the charge;*" "*cautioned and*

discharged at the request of the Overseer." A large number of these cases were for depositing dust, &c., in the streets instead of conveying it to a dust-bin, probably at some distance. People sometimes fancy that the rubbish carts which they see passing their doors are, in fact, peripatetic dust-bins, and that the attendants will take up any dust, &c., placed convenient for the purpose. Mr. *Arundel* has kindly furnished me with lists made out by the Sanitary Inspectors of cases which are said to have been inadequately punished, but Mr. *Scharlieb* informs me that the lists referring to his division are so incorrect as to dates that they cannot in all instances be verified. In many of the cases the orders were passed either with concurrence or on application of the Municipal officers who attended to prosecute.

12. Of the twenty-three persons warned in the 2nd Division, sixteen had complied with the requirements of the Municipality before conviction; some before receiving summons. Five were children said to have been trespassing within the boundary limit of the delivery channel. One was a case in which a small temporary pandal had been erected without permission being first obtained. One was the case of a man who did not take out a license for the stall in which he kept a horse, because his horse had died (many of these cases under Section 325 have since been held not to come within the meaning of the Act); and one was a man whose people, during the owner's absence upcountry, used some open ground in front of his house as a stall, which the Municipal officers say is contrary to a bye-law. Many cases are disputed solely with a view to testing the legality of the Municipal demand.

13. I do not think it can seriously be contended that leniency in dealing with a few of the miserable people brought before the Magistrates has, in an appreciable measure, unfavorably affected any attempted reform of the insanitary horrors pointed out by the Sanitary Commissioners and mournfully acknowledged by the able President. The learned Advocate-General justly remarks: "Until the Commissioners are in a position to comply with the requirements of the Act as regards their own obligation under it (the present inability apparently arising from want of funds), it may be doubted how far it would be prudent to institute prosecution against persons who may be unable to comply for the same reason, although in the case of the owner or occupier this would not be a legal excuse." Householders sometimes complain, not unreasonably, that if they allow waste-water and refuse to run from their premises, they are prosecuted for causing a nuisance; if they keep it in, they are told they are creating a cess-pool and equally are they prosecuted; while close by their dwellings runs a fetid drain, the property of the Municipality, which is poisoning the neighbourhood. Again, a formidable-looking charge on paper is, "allowing premises to be in a filthy condition;" this generally is the case of open land, frequently of considerable extent, to which persons resort at night. The Municipality is itself a great offender in this way, as the open ground along Ice-house road is freely resorted to, and so is the sea beach. The Police are reasonably active in arresting persons committing nuisances on public ground; what then must be the difficulties private owners of land have in protecting their ground? It must be remembered that every prosecution for a continued nuisance, and the existence of any nuisance for more than twenty-four hours, implies *laches* on the part of the Municipality; as, in almost every case affecting public health or safety, the Municipality is empowered to remedy the evil at once by its own agents and to recover the expense incurred. I am unable to trace any instance in which an individual warned, or discharged on payment of a nominal fine, reappeared as an offender. In this division there is on record one case of repeated conviction. The charge was for neglecting to maintain and keep in repair a proper fence round some land; accused (a woman) was fined 5 rupees. The Municipality being still dissatisfied with the state of the premises, again prosecuted, and the accused was fined 25 rupees.

14. I am not sure that I rightly apprehend the meaning of the President's remark that "the tendency in certain of the Courts seems to be to regard as the real offence, not the breach of the Municipal law, but the disregard of the Magistrate's warning shown by a second conviction." If it be intended to convey that a repeated offence is treated as a kind of personal slight on the Magistrates, and punished as such only, we must so regard instances in which a Judge sentences an "old offender" to

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penal servitude or transportion. I trust I misunderstand Mr. *Arundel* on this point. Undoubtedly, the fact that a man has already been warned and has abused the leniency extended to him is a very proper element for consideration when deciding on the punishment to be inflicted.

15. There certainly is a well-founded feeling on the part of the Magistrates that they are chiefly employed by the Municipality to extract money from an impoverished population. Processes are taken out literally by the hundred, and several Police officers are constantly employed solely in serving Municipal summonses and executing warrants arising from Municipal complaints. The Municipal officers sometimes allow these processes to remain unserved or unexecuted while the pressure for the extraction of coin is being applied, and after, sometimes months, an application will be made to return a warrant into Court on the ground that "the defendant has paid up the demand made on him!" The objections to the enormous power thus put in the hands of subordinates are obvious. If opportunity should offer I would suggest—a suggestion in which all the Magistrates agree—that the privilege of obtaining processes without payment of the usual fees by the Municipality should be rescinded. In no other way, apparently, can the subordinates be made to realize the necessity for due care in the selection of subjects for criminal prosecution, and diligence in the service of the processes.

16. The Municipality are now prosecuting the inhabitants by hundreds (taking whole streets at a time) for neglecting to comply with a bye-law of which, probably, the accused never heard (for notice is not always given before prosecution) requiring them to lime-plaster their houses and walls. Some of these buildings are in substantially good repair. Some are lime-washed over mud plaster, but as the law says they must be lime-plastered, the law is so enforced. A struggling man, who can with difficulty pay a fine of 8 annas or 1 rupee, is prosecuted, fined, and called on, under a penalty of 10 rupees per diem in default, to incur an expenditure of 25 or 30 rupees. In the case of mud walls which cannot be lime-plastered, the unfortunate owners must, if they are to comply with the demand of the Municipality, pull down and rebuild their walls and houses. This will involve (besides the crushing expense) further vexatious petitions to the President (after duly satisfying the subordinates), submission of plans, &c., and, pending sanction thereto, which after all may be withheld, no habitation. The Municipality may require that the Senate House, Presidency College, Central Railway Station, and other such buildings be externally coated with lime-plaster, and not only that but the owners are liable to be prosecuted without further notice for not having already done so. It is true that the Municipal Commissioners may exempt any building; but I imagine that Government and the public companies referred to have just as much or as little ground for supposing that they are exempted as the unfortunates now being dragged before the Magistrates in batches of fifty or sixty. From an æthetical point of view, no doubt, in the case of the humbler buildings the effect may be good, but with the drainage of the town in its present condition, lime-plastering the exterior side of a wall will have little influence on the public health. I must not be understood as depreciating the undoubtedly meritorious efforts of the able President to improve the city both in substantial matters of hygiene and in appearance, but I would most earnestly impress on Government and on Municipal officers the fact—for it is an undoubted fact—that, for the poorer classes, life in this town is becoming most grievous. They are harassed by Police regulations and Municipal regulations, by a multiplicity of taxes, payable at divers times, to divers persons, at divers places. The poor creatures require to be encouraged and educated rather than coerced into an appreciation of the benefits of hygienic reform, which, in many cases, to them bears the appearance of an unwarranted interference with their domestic habits and customs. The Magistrates are, I hope, fully alive to the necessity for emphasising all legitimate efforts on the part of the Municipal officers to improve the sanitary condition of the town; and any offender who has abused indulgence once shown to him should be sharply dealt with, still he need not be utterly crushed. As the Municipal officers have a right to look to the Magistrates for support, so have the people a claim that their interests shall also be regarded, and that the gravity of

alleged misdeeds shall be judged by independent tribunals rather than by the complainants. There is not in the whole Statute book an Act which is more capable of abuse and of being productive of unmerited hardship than the Municipal Act and its off-shoot the bye-laws. If that Act were rigidly and literally enforced, even torpid Madras would, in a twelve-month, be in a state of rebellion or be deserted.

17. On the whole therefore, although the penalties inflicted in the Northern Division of the town appear to be very light, I hesitate to advise Government that they have not substantially met the requirements of justice.

ORDER THEREON, 13th August 1881, No. 1467.

Communicated to the President of the Madras Municipality.

2. The tables in paragraphs 7 and 8 prove that the number "warned" by the Magistrates is insignificant compared with the number "withdrawn" by the Municipal officers, and the Government are not prepared to issue any proceedings disallowing the practice of "warning" only in petty nuisance cases committed by the poorer people of Madras. The Governor in Council is, however, quite unable to accept Colonel Weldon's view as to the proof of the *mens rea* being required to constitute an offence under such Municipal laws.

(True Extract.)

Chief Secretary.

To the President of the Municipal Commission, Madras.
" Chief Magistrate for the Town of Madras.

Exd. T. O'Connor.

1462/4

Govt. of {1881} Madras.

FINANCIAL.

To

THE PRESIDENT OF THE
MUNICIPAL COMMISSION,
Madras,

&c., &c., &c.

Dated August, 13*th.*

Issued

Recd. *Encl.*

G.O., 13th August 1881, *No.* 1467.

AUGUST.

Municipal—Sanitary.—Orders passed on letter from the Chief Magistrate for the Town of Madras submitting remarks on Municipal nuisance cases disposed of in the Presidency Magistrates' Courts.

Presidency Magistrate's Court

No. 209. Egmore, Madras 19th July 1881

CURRENT No. 1863.

From

Lieutenant-~~Colonel~~ G. Weldon

Chief Magistrate 1467/5

for the Town of Madras.

To

C. G. Masters, Esquire

Acting Chief Secretary

to Government

Ootacamund.

Sir,

I have the honour to acknowledge receipt of G. O. dated 16th June 1881 No. 1118 (Financial) calling on me for observations in reference to the working of the Magistracy under the Municipal Act and as to the practice of discharging offenders with a warning.

RECEIVED 22 JUL 81

DISPOSED OF 13 AUG 81

BY G.O. No.

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cases in which there has been some technical breach of a petty local regulation that really calls for no punishment whatever; and which, in analogous circumstances, would come within the meaning of section 95 of the Indian Penal Code. These are cases in which the law might be strained to the extent of inflicting punishment; but more frequently the cases are such, that, if all parties stood on their strict rights, the evidence would be found of such a nature that the accused would be acquitted. There is often an utter absence of the mens rea which British Magistrates are accustomed to look for before dealing with a man as a Criminal

3. ——— The principle of administering a solemn judicial warning, which shall bear fruit if disregarded, is fully recognized by the English Legislature; and I hope, will ere long also be formally adopted by our Indian Councillors. Under the law as it stands, if construed by the letter, the assumption by Magistrates of this discretion is not expressly provided for. But, if the

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the exercise of such discretion be objected to, there will, necessarily, be an unsympathetic rigidity in the judgment when confined simply to "Guilty" or "Not Guilty", ——— which may sometimes disappoint Prosecutors, and mislead Defendants into imagining that their conduct has been wholly without reproach. More especially will this be the case where, as frequently occurs, the main object of the prosecution, or the resistance to the demand of the Municipality, is to seek for an authoritative opinion as to the legality or otherwise of a certain act, omission, or demand. In the last annual report (for 1879) by the Chief Presidency Magistrate of Bombay on the state of Crime in that Town, I find that no less than 3740 persons are accounted for under the heading "Admonished and Discharged"

4. ——— Mr. Scharlieb states that it is not possible now to give the exact details of the few cases (out of many thousands tried in his Court) in which the accused were discharged with a warning; because, being very petty cases, the proceedings were summary and no evidence was recorded

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Mr. Scharlieb also says that in cases in which the accused have been warned and discharged, and in cases in which time has been given to the accused to comply with the requirements of the Municipality, both he and his colleague, Mr. Ponnosawmy Pillay, have invariably acted on the suggestion of the Municipal Officers who prosecuted the cases. I am, fortunately, able to trace the few cases in which, in the last thirteen months the accused have been in this Division discharged with a warning, and they will furnish samples of the circumstances in which the Magistrates endeavour to temper justice with mercy. I will also show that the principle is one largely adopted by the Municipal Officers themselves and to a far greater extent than by the Magistrates.

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for offences under Municipal laws and Police Conservancy laws &c.; and the Magistrates were further reminded that a sum of ten annas represented often a man's daily wages, not to mention punishment by arrest, loss of time &c. I venture most respectfully to submit that this furnishes an illustration of the difficulty arising when providing by comprehensive executive orders for the exercise of a judicial discretion which should be applied to each particular case as it arises.

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remain for all other offences under Sanitary and Conservancy laws.

10. _____ In regard to the punishment awarded - I can find no instance of a fine of two annas in this (2nd) Division - There certainly has been one case in this Division - last month - in which the punishment might appear to be inadequate, taking into consideration both the nature of the offence and the status of the offender - The case was one in which a Mahomedan named Ahmed Ali Khan Bahadar was prosecuted for burying a corpse in a place not registered as a burying ground - The offence was admitted, and in extenuation it was, I am informed, pleaded that the Defendant's wife became very ill during her absence with the Defendant at Hyderabad - She was brought to Madras and died two days after arrival. The place where the corpse was buried, was a burial ground in which other deceased members of Defendant's family had been interred - and for two years Defendant had

1467/9 5th

had registered the place and paid for licence - but this year it was not registered owing to the absence of Defendant from Madras - On the death of his wife Defendant was having a grave prepared in the usual burying place but the work was stopped by an Officer of the Municipality - Defendant went at once to the President and explained matters, asking to have the place registered as the corpse was waiting burial - Defendant, it is alleged, was informed that matters could not be settled in a hurry in that manner; that the usual application should be sent in by the usual channel - Defendant ~~f~~ understanding that on compliance with the forms he would obtain registration, buried his wife and proceeded with the necessary steps for registration - and in fact at the time of trial the disposal of the application was pending and had been favourably reported on by the proper officer to the President - After the trial the President finally refused his sanction - The Magistrate fined the Defendant Eight annas

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"The Defendant appears to be very poor and says she is unable to pay - had I the power I would remit her tax, but as I have not I must fine her 2 annas" -

This is probably a fair sample of the rest - The other cases were for tying Cows or bullocks outside houses (an immemorial custom) - neglecting

(1867/10) 68

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that if they allow waste water and refuse to run from their premises they are prosecuted for causing a nuisance - if they keep it in, they are told they are creating a cess pool and equally are they prosecuted - while close by their dwellings runs a fetid drain, the property of the Municipality, which is poisoning the neighbourhood - Again, a formidable looking charge on paper is - "allowing premises to be in a filthy condition" - this generally is the case of open land, frequently of considerable extent, to which persons resort at night - The Municipality is itself a great Offender in this way as the open ground along the house roads is freely resorted to - and so is the sea beach - The Police are reasonably active in arresting persons committing nuisances on public ground; what then must be the difficulties private owners of land have in protecting their ground! It must be remembered that every prosecution for a continued nuisance - and the existence of any nuisance for more than twenty four hours - implies laches on the part of the Municipality; so, in almost every case affecting

affecting public health or safety, the Municipality is empowered to remedy the evil at once by its own Agents and to recover the expense incurred. I am unable to trace any instance in which an individual warned, or discharged on payment of a nominal fine, reappeared as an offender. In this Division there is on record one case of repeated Conviction. The charge was for neglecting to maintain and keep in repair as proper fences round some land - Accused [a woman] was fined Five Rupees. The Municipality being still dissatisfied with the state of the premises, again prosecuted - and the accused was fined twenty five rupees.

14 _____ I am not sure that I rightly apprehend the meaning of the President's remark that "the tendency in" "certain of the Courts seems to be to regard as" "the real offence, not the breach of the Municipal" "law, but the disregard of the Magistrates'" "warning shown by a Second Conviction". If it be intended to convey that a repeated Offence is treated as a kind of personal slight on the

the Magistrate, and punished as such only we must so regard instances in which a Judge sentences an "old offender" to penal servitude or transportation - I trust I misunderstand Mr. Arundel on this point. Undoubtedly, the fact that a man has already been warned and has abused the leniency extended to him is a very proper element for consideration when deciding on the punishment to be inflicted.

15. _____ There certainly is a well founded feeling on the part of the Magistrates that they are chiefly employed by the Municipality to extract money from an impoverished population. Processes are taken out, literally, by the hundred, and several Police Officers are constantly employed solely in serving Municipal Summonses and executing warrants arising from Municipal Complaints. The Municipal Officers sometimes allow these processes to remain unserved or unexecuted while the pressure for the extraction of coin is being applied - and after, sometimes, months

months, an application will be made to return a warrant into Court on the ground that - "the Defendant has paid up the demand made on him" -! - The objections to the enormous power thus put in the hands of Subordinates are obvious - If opportunity should offer I would suggest - a suggestion in which all the Magistrates agree - that the privilege of obtaining processes without payment of the usual fees by the Municipality should be rescinded - In no other way, apparently, can the Subordinates be made to realize the necessity for due care in the selection of Subjects for Criminal prosecution, and diligence in the Service of the processes.

16 _____ The Municipality are now prosecuting the inhabitants by hundreds - (taking whole Streets at a time) - for neglecting to comply with a Bye Law - of which, probably, the accused never heard (for notice is not always given before prosecution) - requiring them to lime plaster their houses and

and walls - Some of these buildings are in substantially good repair - Some are lime washed over mud plaster - but, as the law says they must be lime plastered the law is to be enforced - A struggling man who can with difficulty pay a fine of Eight annas or One rupee is prosecuted, fined, and called on under a penalty of ten rupees per diem in default, to incur an expenditure of 25 or 30 Rs: - In the case of mud walls which cannot be lime plastered, the unfortunate owners must - if they are to comply with the demand of the Municipality - pull down and rebuild their walls and houses - This will involve (besides the crushing expense) further vexations - petitions to the President (after duly satisfying the Subordinates) Submission of plans &c and, pending Sanction thereto, which after all may be withheld - no habitation - The Municipality may require that the Senate House - Presidency College - Central

Venbiah Railway Station and other such buildings be externally coated with lime plaster - and not only that, but the owners are liable to be prosecuted without further notice for not having already done so - It is true that the Municipal Commissioners may exempt any building; but I imagine that Government and the public Companies referred to, have just as much - or as little - ground for supposing that they are exempted, as the unfortunates now being dragged before the Magistrates in batches of fifty or Sixty - From an Aesthetical point of view, no doubt, in the case of the humbler buildings the effect may be good but, with the drainage of the town in its present Condition, limeplastering the exterior side of a wall will have little influence on the public health - I must not be understood as depreciating the undoubtedly meritorious efforts of the able President to improve the City both in substantial matters of hygiene and in

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in appearance, but, I would most earnestly impress on Government and on Municipal Officers, the fact - for it is an undoubted fact - that, for the poorer classes, life in this town is becoming most grievous - They are harassed by Police regulations and Municipal regulations by a multiplicity of taxes, payable at divers times, to divers persons, at divers places - The poor creatures require to be encouraged and educated rather than coerced into an appreciation of the benefits of hygienic reforms which, in many cases, to them bears the appearance of an unwarranted interference with their domestic habits and customs. The Magistrates are, I hope, fully alive to the necessity for emphasising all legitimate efforts on the part of the Municipal Officers to improve the Sanitary Condition of the Town; and any offender who has abused indulgence once shown to him should be sharply dealt with - still he need not be utterly crushed - As the Municipal Officers have

have a right to look to the Magistrates for support, so have the people a claim that their interests shall also be regarded, and that the gravity of alleged misdeeds shall be judged by independent tribunals rather than by the Complainants - There is not in the whole Statute book an act which is more capable of abuse and of being productive of unmerited hardship than the Municipal Act and its By-Laws - If that act were rigidly and literally enforced, even Lopid Madras would, in a twelve months, be in a State of rebellion or be deserted.

17. ——— On the whole therefore, although the penalties inflicted in the Northern Division of the Town appear to be very light, I hesitate to advise Government that they have not, substantially, met the requirements of Justice.

1467/16

I have the honour to be,
Sir,
Your most Obedient Servant.

Thweedow
Chief Magistrate

Fin. 0881 Dept

From (Mun.l – Sanitary)

The Chief Magistrate

for the Town of Madras

To

The Acting Chief Secretary

to Government

Cotacamund

—

D. 19th July 1881.
R. 21st

CURRENT No. 1863.

No. 209

Submitting remarks, in compliance with G.O, dated 16th June 1881 No. 1118, (Financial), on Municipal prosecutions in the Presidency Magistrates' Courts.

Financial DEPARTMENT.

No. 1863.

From the Chief Magistrate for the town of Madras, dated 19th July 1881; No 209.

1467/17

Shall take such verbose reports –

I do not commend to Govt – observing that he tallies in paras 7 & 8 from both the number warned & by the Magistrates is insignificant compared with the number convicted by the Municipal Officers – & that they are not prepared to issue any proceedings, disallowing the practice of 'warning' only in petty nuisance cases thereby the poorer people of Madras – also quite unable to accept CM's view as to part 1 he comments on leaving required to summon as persons under municipal Laws –

A – 4/8

action

FOR ORDERS.

In para 2 of G.O. dated 16th June 1881, No 1118, the Chief Magistrate for the town of Madras was called upon to offer observations with reference to the remarks of the President, Municipal Commission, on the

of

of the Magistracy in regard to the Municipal nuisance cases, by merely dismissing the offenders with a warning or punishing them with a small fine of two annas.

2. In compliance with the above order the Chief Magistrate submits his report on the subject.

3. It is submitted that the above reply may be communicated to the President, Mun. Commission, together with such further observations as the Govt. may wish to make in the matter.

There certainly appears to be a considerable difference between the practice of the Black Town, & of the Egmore Court as regards the number of convictions and the extent of the penalties inflicted. The question of the legality or otherwise of a dismissal with mere warning might be taken by a test case to the High Court if the Municipality like.

27/7

1467/18.

Disposal of Municipal Nuisances cases by Magistracy.

FOR ORDERS.

H. Hon. D. F. Carmichael
& Cir

fo (Pub) 1467/81.

C29-7
R 10/8/81

Jud. Department. 128

PROCEEDINGS of the MADRAS GOVERNMENT. 1467/19

READ the following :—

From the Chief Magistrate, Madras. (D.O. No. 209 of 19th July, 1881.)

Order :— 13th Augt. 1881. No 1467.

Communicated to the President of the Madras Municipality.

2. The tables in paragraphs 7 and 8 show that the number "warned" by the Magistrates is insignificant compared with the number "withdrawn" by the Municipal officers and the Govt. are not prepared to issue any proceedings disallowing the practice of "warning" only in

petty nuisance Cases committed by the Native people of Madras. The Govr. in Council is of opinion, quite unable to accept Col. Wellan's view as to the proof of the mens rea being required to constitute an offence under such municipal [illegible] pass orders.

Govt. of {188} Madras.

To _____

Dated
Recd. } 188 , No.

Nos.

1467/20

Rec'd 16/8

To the Board of Man: Com: Madras. 6
" Chief Magistrate 6
Secretary

LD 351
Dkg
24/8

10/8

Govt. of {1881} Pen Madras.

Jail

DISPOSED OF

13 AUG 81

BY G. O. No. 1467

(20)

G. [illegible] 188 ; No.

Nos.

Jail

Immt - Sanity. Orders passed on letter from the Clerk of the Town of Madras submitting re-marks on Prisoners Lunatic dispos-ed of in the Presidency Mag-istrates' Courts — with