

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	1575	Press
		~~Mis.~~
12-13		
Dated	3-12-1957	

Not to be folded or roughly handled

[Handwritten mark]

Fort St. George, Judicial Consultation, 8th December 1857.

No. 12. Read the following letter from CLEMENT DALE, Esq., Government Pleader, Sudr Udaltut; to THOMAS PYCROFT, Esq., Chief Secretary to Government, dated 25th November 1857, No. 123.

SIR,

Para: 1. I have the honor to acknowledge the receipt of Extract from the Minute of Consultation, noted in the margin; and in reply to draw to the attention of the Right Honorable the Governor in Council, that the process issued by the Principal Sudr Ameen in the case under consideration, is a summons directed to Mr. Parsons, requiring him to appear before the Court as a witness.

Minutes Consultation, 17th
November 1857, No. 1489,
Judicial Department.

2. In cases where the testimony of an Officer or Soldier is required before a Court of Justice, I am not aware that any peculiar exemption exists, but (as I believe) such Officer or Soldier, if duly summoned, must attend the same as any other person, or he renders himself liable to the penalties attaching to witnesses who disobey a summons.

3. It is however singular, that the summons in question recites, that the attendance of Mr. Parsons is required to give evidence *on behalf of himself*. It is to be assumed that this summons was issued without any requisition on the part of Mr. Parsons, and if such be the case, the proceeding is unintelligible.

4. I am of opinion that the suit No. 153 of 1857, has been improperly brought in the Court of the Principal Sudr Ameen at Ootacamund, it being required by the Act 12 and 13 Victoria, Chapter 43, Section 66, that all actions of debt, and all personal actions against Officers, shall be cognizable before a Military Court of Requests and not elsewhere, and I am not aware that this provision has been repealed or altered; or that in establishing the Court of the Principal Sudr Ameen at Ootacamund, any peculiar or more extensive jurisdiction was given to it, other than is exercised by other Mofussil Courts.

5. I am also of opinion that the Principal Sudr Ameen should have refused to file the plaint, on the ground that he had no jurisdiction; it is equally clear, that if the Judge overlooked that circumstance, the defendant might have authorized a Vakeel, and have instructed him to plead to the jurisdiction; if this step had been taken, it is not probable that the summons would have been issued, and thus the present difficulty might have been avoided.

6. It would appear that a Military Court of Requests, has no power to issue a Commission for taking the evidence of witnesses resident at a distance. Assuming this to be the fact, I would suggest for the consideration of His Lordship in Council, the advisability of such power being given by Legislative enactment.

7. I take this opportunity of mentioning, that this Department has not been furnished with copies of the Mutiny Acts and Articles of War, or of the General Rules, &c., connected with the Judge Advocate General's Department; and for the purposes of this reference I have been obliged to borrow the Works alluded to.

(Signed) CLEMT. DALE,
Government Pleader.

No. 13. ORDER THEREON, No. 1575; dated 3rd December 1857.

Ordered to be communicated to the Military Department in reference to Extract Minutes Consultation 14th November 1857, as also to the Court of Sudr Adawlut for the issue of the necessary instructions to the Principal Sudr Ameen of Ootacamund.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. F. Cartledge.

From Clement Dale Esquire Government Pleader Sudr Udalut
To Thomas Pycroft Esquire Chief Secretary to Government

Madras 25th November 1857

Sir

Para 1 I have the honor to acknowledge the receipt of
Extract from the Minute of Consultation noted in the

U/L 14th November 1857 N^o 11489
Judicial Department

margin, and in reply to draw to the
attention of the Right Honorable
the Governor in Council, that the
process issued by the Principal Sudr Ameen in the
case under consideration, is a summons directed to
Mr. Parsons requiring him to appear before the Court as a
Witness.

2. In cases where the Testimony of an Officer
or Soldier is required before a Court of Justice, I am not
aware that any peculiar exemption exists, but (as I
believe) such Officer or Soldier, if duly summoned,
must attend the same as any other person, or he renders
himself liable to the penalties attaching to witnesses
who disobey a summons.

3. It is however singular, that the summons
in question recites, that the attendance of Mr. Parsons
is required to give evidence on behalf of himself -
It is to be assumed that this summons was issued
without any requisition on the part of Mr. Parsons, and
if such be the case, the proceeding is unintelligible.

4. I am of opinion that the suit N^o 153 of 1857
has been improperly brought in the Court of the Principal
Sudr Ameen at Ootacamund, it being required by the

Act

Act 12 and 13 Victoria Chapter 43 Section 56, that all actions of Debt, and all personal Actions against Officers, shall be cognizable before a Military Court of Requests and not elsewhere - and I am not aware that this provision has been repealed or altered; or that in establishing the Court of the Principal Shud Ameen at Ootacamund, any peculiar or more extensive Jurisdiction was given to it, other than is exercised by other Mofussil Courts.

5. I am also of opinion that the Principal Shud Ameen should have refused to file the plaint, on the ground that he had no Jurisdiction; it is equally clear that if the Judge overlooked that circumstance, the Defendant might have authorized a Vakil, and have instructed him to plead to the Jurisdiction; if this step had been taken, it is not probable that the summons would have been issued, and thus the present difficulty might have been avoided.

6. It would appear that a Military Court of Requests, has no power to issue a Commission for taking the evidence of Witnesses resident at a distance. Assuming this to be the fact, I would suggest for the Consideration of His Lordship in Council, the advisability of such power being given by legislative enactment.

7. I take this opportunity of mentioning, that this Department has not been furnished with Copies of the Mutiny Acts and Articles of War, or of the General Rules &c. Connected with the Judge Advocate General's Department; and for the purposes of this reference I have been obliged to borrow the Works alluded to.

I have the honor to be
Sir
Your Most Obedient Servant
[Signature]
Govt. Pleader

N^o 1575

[Initials] I understand to be communicated to the Military Dept. in reference to LMC 14 Nov 1857 - as also to the Court of Sudder Adawlat for the issue of the necessary instructions to the Pleader of

[Initials] Ootacamund
For to St George's
3rd December 1857

[Signature]

To the Military Department } Disptd
" Court of S. Adawlat }

[Marginalia]
none
at

Nov 17 Nov 1871 - 1489
1871

Copy to Nov. 8th Decr
Judicial. 1871. Sept. 18

From Clerk of the Court
Nov. 1871. 1871.

8/26
1871 Nov. 1871

1871

1871

12 4/13

of the General Office &
connected with the 1871
General Office & 1871
1871

With reference to the 1871
1871 states that in 1871
before the testimony of an
Officer or Officer is required
before a Court of Justice, he
must swear that any
particular exception is not
but that such Officer or
Officer, if duly examined,
must attend the same, and
any other person. 1871
to notice that he has not
received copies of the 1871
1871 and 1871 of 1871,
1871 or 1871 or