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TAMIL NADU ARCHIVES

GOVERNMENT OF TAMIL NADU

Secular

DEPARTMENT

G.O. No.	439-440	Press.
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Not to be folded or roughly handled

Fort St. George, Judicial Consultation, 21st April 1857.

No. 37. Read the following letter from J. R. BOYSON, Esq., Honorable Company's Solicitor; to T. PYCROFT, Esq., Chief Secretary to Government, dated 14th April 1857, No. 193.

SIR,

Extract Minutes Consultation, dated 12th March 1857, No. 303, Judicial Department.
Order, dated 6th April 1857, No. 404.
One letter from the Town Major to Secretary to Government Military Department, dated 4th April 1857, No. 559.
Letter from the Honorable Company's Solicitor to the Chief Secretary to Government, dated 7th April 1857, No. 185.

With reference to the papers noted in the margin, I have now the honor to forward for the information of Government a copy of Mr. Dale's opinion on the questions therein involved.

I did not consider Mr. Dale's opinion of the 9th Instant sufficiently specific, and therefore re-submitted the papers to him.
I received them back again this afternoon.

(Signed) J. R. BOYSON,
Honorable Company's Solicitor.

COPY OPINION.

I have perused the accompanying Extract from Minutes of Consultation, under date the 12th March 1857, No. 303, Judicial Department, and the correspondence which accompanied it, and am of opinion, that it is not competent for the Magistrates in awarding costs under the 102nd Section of Act XIII of 1856, to order that a party who had unduly used the services of Police Officers in the summoning of witnesses, who proved to be unnecessary, should pay any compensation for such unnecessary employment of Public Servants.

As regards the concluding sentence of that para: I am of opinion that it is equally incompetent for the Magistrates to order compensation to witnesses unnecessarily called from their own business. In Civil cases, a witness is not bound to attend unless he is paid his reasonable *expenses*, and of late years the Common Law Courts at Westminster have allowed witnesses certain compensation for loss of time. Mr. Chitty, however, in his Work on Criminal Law (Volume 1, page 613) remarks, that formerly there was no Law to reimburse those who attended on behalf of the Crown, a remedy has, however, been to a certain extent provided by several statutes for payment of witnesses *expenses* out of the county stock and an allowance, *if poor*, for loss of time; and in certain cases *before Justices*, provision is made for payment of the *expenses* of witnesses; but in all these instances, the provisions have been made by statute, none of which have been extended (as I believe) to this country.

With reference to paras. 5 and 6, the best opinions were, that a Magistrate had no power to administer what were usually called voluntary oaths (and which I suppose are alluded to in these paras). The doubts, however, in England were removed by the 5 and 6 Wm. 4, Ch. 62, Section 13, which declared that it should not be lawful for a Justice of the Peace, &c. to administer such oaths; and in Section 18, a form of declaration was substituted, and in the 3 subsequent Sections, provision was made for the fees for administering such declaration and for punishment of parties making a false declaration. This provision has been found to be of very great utility in England and it would (in my opinion) be found to be so in this country, if a similar provision were passed. This subject, I submit, is well worthy the immediate attention of the Legislature, as, I believe, the Magistrates here (as well as in Calcutta) now refuse to administer such oaths. And an opinion is generally prevalent in the profession at Madras that in this country Notaries Public have no power to administer an oath, so that great inconvenience is likely to be felt for want of such a provision.

(Signed) CLEMT. DALE.

Madras, April 9th, 1857.

Since writing the foregoing, the Honorable Company's Solicitor has requested me to give my opinion specifically to the 3 following questions.

1. Whether in this country a Justice of the Peace has authority to administer a voluntary oath?
- 2ndly. Whether in this country a Magistrate has authority to administer such an oath? and

- He also thinks that a Justice

Fort St. George, Judicial Consultation, 21st April 1857.

3rdly. Whether in this country a Notary Public has power to administer such oaths?

As regards the two first of these queries, I was under the impression, I had sufficiently replied, although I did not offer a decided opinion of my own, not considering it could have weight in a case in which the talent of England had experienced doubt; but in compliance with the Solicitor's request, I beg to state, that I am not aware of any provision in this country of a general character authorizing either Justices of the Peace or Magistrates to administer such oaths; indeed, I feel assured there is no such general provision; hence it follows the Law is in the same state here, as it was in England before the passing of the Act of 5 and 6 Wm. 4, and my opinion is that (except where authority is given for a specific purpose by any particular statute) neither Justices of the Peace nor Magistrates, in this country have authority to administer a voluntary oath.

As regards the 3rd query, such a question was not put as the matter originally came before me. In England previously to the passing of the 5 and 6 Wm. 4, (before referred to) a doubt prevailed as to the power of Notaries in England to administer oaths. In "The King v. The Scrivener's Company" 10 Barn and Cress 518 the late Lord Tenterden certainly states that one of the duties of a Notary is "to receive Affidavits of Mariners and Masters of Ships." I would, however, remark that that point was not raised in the case, and consequently it was not argued, or even referred to in the argument of Counsel. Mr. Brooke in his office of a Notary remarks the Act of 6, Geo. 4, Ch. 87, Sec 20, may be referred to as countenancing in some degree the idea that they (*i. e.* Notaries Public) are authorized to administer oaths certainly that is as much as can be said of that provision; on the whole, I incline to the opinion that Notaries Public in this country have not the power of administering voluntary oaths; at any rate if there be a doubt, I submit it is better to set it at rest by Legislative enactment.

(Signed) CLEMT. DALE.

(A true Copy.)

Madras, April 14th, 1857.

(Signed) J. R. BOYSON,
Honorable Company's Solicitor.

No. 38.

ORDER THEREON, No. 439; dated 17th April 1857.

In the above letter, the Honorable Company's Solicitor submits the opinion of Mr. Dale on the points referred to him under the orders of Government, para: 2, Extract Minutes Consultation, 12th March last.

2. The Government resolve to address the Government of India immediately on the question mooted in paras: 5 and 6 of the Honorable Mr. Elliott's Minute of 16th February last, viz., as to the authority by whom Affidavits and Declarations are to be attested at Madras. Meanwhile advert to the great public inconvenience that would otherwise be occasioned, the Magistrates of Police at Madras will continue to swear parties to Affidavits and attest them and Declarations until further orders.

3. It is observed, in reference to para: 4 of Mr. Elliott's Minute, that, in the opinion of Mr. Dale, it is not competent to the Magistrates, in awarding costs under the 102 Section of Act 13 of 1856, to order, that a party who had unduly used the services of Police Officers in the summoning of witnesses who proved to be unnecessary, should pay any compensation for such unnecessary employment of public servants; nor is it competent to the Magistrates to order compensation to witnesses unnecessarily called from their own business.

(Signed) T. PYCROFT,
Chief Secretary.

Ordered that the following letter be despatched.

No. 39. From T. PYCROFT, Esq., Chief Secretary to the Government of Fort St. George; to the Government of India, dated 17th April 1857, No. 440.

SIR,

In a Minute, copy of which accompanies, of the Honorable D. Elliott, Member for Madras of the Legislative Council, recorded upon certain questions propounded to him by this Government,

Fort St. George, Judicial Consultation, 21st April 1857.

relative to the operation of Act XIII 1856, or the Act for regulating the Police of the Towns of Calcutta, Madras and Bombay, doubts were intimated, paras. 5, 6, as to the legal authority of Magistrates under that Act to attest Affidavits and Declarations. In Calcutta, it was remarked the Magistrates generally refused to swear persons to Affidavits, referring those who wished to make them to a public Notary.

2. The matter appearing to the Government to be of importance, was referred for the opinion of Counsel, and I am desired to forward for submission to the Government of India the enclosed copy of the opinion given by Mr. Dale.

3. It will be seen that in Mr. Dale's opinion "neither Justices of the Peace nor Magistrates in this country have authority to administer a voluntary oath." Mr. Dale also thinks that Notaries public have no such authority.

4. The very great public inconvenience which will be occasioned, if as thus supposed there be no authority either in the Town of Madras or in the Provinces, by whom oaths can be administered, unless in cases coming before them judicially, or Affidavits and Declarations attested is so palpable, that this Government have resolved

Note.—One very striking instance has already been brought to the notice of Government. Pensioners on Lord Clive's Fund, Widows and families without other provision cannot draw their Pension unless on Affidavit. The same will probably be the case with other Funds.

at once to bring the matter under the consideration of the Government of India, for such notice as it may seem to require. Meanwhile the Magistrates of Madras have been instructed to continue their previous practice of administering and attesting Affidavits and Declarations.

(Signed) T. PYCROFT,

Chief Secretary.

8

Memo -

Minute

In a late letter, the Member for Madras 16 Feb 57
of the Leg Council threw out doubt
whether Magistrates of Police at Ma-
dras had authority to administer
the oath, unless in cases coming
principally before them.

This point with others mooted
at the same time by Mr Elliott was
referred to the H.C. Solicitor for the
opinion of Council -

It will be seen that in Mr
Dale's opinion "neither Justices"
of the Peace nor Magistrates in this
Country have authority to admini-
ster a voluntary oath - that is
to any one not a party in a case
before them & connected with that
case - He also thinks that a Magistrate

public law with such authority.

The matter may be referred
to the Govt of India for their ^{early} con-
sideration and for such remedy as
they or the Leg. Council may think
to provide - Probably the case is much
the same at Calcutta as here -
The question is what is to be
done in the meanwhile.

The Police Magistrate of
Madras hearing of his doubts, inter-
fere as to his competency to
administer oaths - I understand
do so, until the matter is settled -
any more

The absence of such authority will be
productive of great inconvenience in
any ways
One is which it will operate most
heavily is shown in the Town Major's
letter - Prisoners on Town Major's
Fund - his own & children who
have no other provision cannot
draw their Pensions without

affidavits, which they have now
no means of making -

In the Civil Fund and pro-
- laps in other Funds Affidavits
- are similarly required.

Perhaps under the extreme
urgency of the case - and con-
- sidering that it is not certain that
Mr Dule is right after all - the
Magistrates of Police might be
directed to attend affidavits as
before - pending the receipt of
orders from Calcutta -

J.P.

Clearly, the Magistrates must
be authorized to administer oaths -
the question before the Govt of India.

W. G. A.
M. G.

I D 3

N^o 439

Extract Mins: of Cons. Dated 17th April 1857

From Mr C Pricer 14 April 1857
N^o 193

In the above letter Mr
Mr C Pricer sub-
mits the opinion
of Mr Dale on the
points referred to
him under the order
of Gov P^r 2^d M^c
12 March last —

2 The Govt resolves
to address the Govt
immediately
of India on the
question mooted
in para 5 & 6 of
the H^{on} Mr Elphinstone
minutes of 16 Feb^y
last viz as to the

On 24th March: 21st April

India in 1857 Sept^r

N^o 439

India 1857 Sept^r
Jude & Co. 15 Aug^r 24 20 Cash
N^o 264 1857
N^o 1110

Sept 27 1857

Sept 27 1857

Office Secy to the Govt of
India

Sept 27 1857

Sept 27 1857

85/42
C. N^o 20-21
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Long
7-4-1857

216/42

authority by whom
affidavits & declara-
tions are to be
afforded at Madras
meanwhile ad-
mitting to the great
public inconvenience
- which that would
otherwise be occa-
sioned, the Magis-
trates of Police
at Madras will
continue to admit
- the sworn parties
to affidavits &
affidavits &
declarations until
further order -

3. It is observed, in refer-
- ence to para 4 of
Mr Elliott's opinion to,
that, in the opinion of
of Mr Dalrymple, it is not
competent to the
Magistrates, in award-
- ing costs under the
162 Section of Act
13 of 1856, to order,
that a party who
had unduly used
the services of Police
Officers in the sum-
- moning of witnesses
- he who proved to
be unnecessary,
should pay any
compensation for
such unnecessary
employment of public

Sept 20, 1856

Copy
The Magistrate of the
First District
- second do
- third do

Commissioner of Police
Military Dept. } Sept 21st

Ordered that the following letter be
despatched

Sept 23rd No 440
To The Govt of India.

servants — he is
it competent to the
In a judicial to order
compensation to
witnesses, in many
-sarily called from
his own business —

In a Min. to-copy
of which accompanied
of the Mr. D. B. Smith M. C.
- he for Madras of the
Legislative Council;
referred upon certain
questions, propounded
to him by this Govt

relative to the opera-
-tion of Act X III. 1856
on the Act for regulating
the Police of the Towns
of Calcutta, Madras
and Bombay, doubtless
was intimated - para
5. 6. as to the legal
authority of the Magis-
-trates under that
Act to alter Affi-
-davit & Declaration
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remarked, the Magis-
-trates generally expe-
-cted to swear persons
to Affidavits, referring
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make them to a
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to the fact that of importance, was referred for the opinion of Council and I am desired to proceed for submission to the fact of India the enclosed copy of the Opinion given by Mr. Dale.

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4. The very great public inconvenience

now - One very striking instance has already been brought to the notice of the Provisional or Lord Clive's Fund - widows and families without other provision cannot draw their Pension unless on affidavit. The same will probably be the case with other Funds.

which will be a serious - ed, if as they suppose - ed, there be no authority either in the town of Madras or in the Provinces, by whom oaths can be administered, unless in cases coming before them judicially, or affidavits and declarations attested - is so palpable that the fact has resolved at once to bring the matter under the consideration of the Government of India for such action as it may see fit to require - Meanwhile the Instructions of Mr. Charles have been

instructed to continue
their previous practice
of administering
and a testing affi-
davit & declaration

J.P.