

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 1409

Press
Mis.

50-51

Dated

2 Feb 1918

Not to be folded or roughly handled

1c

Fort St. George, Judicial Consultation, 12th October 1858.

No. 50. Read the following letter from J. J. COTTON, Esq., Civil and Session Judge of Masulipatam; to T. PYCROFT, Esq., Chief Secretary to Government, Judicial Department, Fort Saint George, dated 24th September 1858, No. 467.

SIR,

I have the honor to transmit herewith a Memorial, in triplicate, addressed to the Honorable the Court of Directors, appealing against the orders of Government, dated the 22nd * Judicial Department. May* 1858, No. 671, and request that the same may be forwarded to the Home Authorities in due course.

No. 51. ORDER THEREON, No. 1409; dated 9th October 1858.

Mr. J. J. Cotton will be desired to submit his Memorial—in triplicate—to the address of the Honorable the Court of Directors *in manuscript*. The Court decline to receive printed Memorials.

(Signed) T. PYCROFT,
Chief Secretary.

To

THE HONORABLE THE COURT OF DIRECTORS
OF THE EAST INDIA COMPANY.

THE HUMBLE MEMORIAL OF THE UNDERSIGNED.

SHOWETH,

That, whereas an application has been made by your Memorialist under date 10th June 1858 to the Right Honorable the Governor in Council of Fort Saint George in the Presidency of Madras, for the re-consideration of their orders passed, in an Extract from the Minutes of Consultation dated 22d May 1858, No. 671, upon a communication made by the Court of Sudr and Foujdaree Udawlut, whereby your Memorialist was made responsible for the (reputed) value of certain monies, valuables, &c. (to the amount of Rs. 2,676 - 2 - 4) stolen from the office of the Nazir of the Court of Masulipatam, whereof your Memorialist holds the office of Civil and Session Judge; and whereas such application has been rejected by the "Government", who referred your Memorialist's application and appeal for re-consideration, to the Court of Foujdaree Udawlut, who had already animadverted on your Memorialist's proceedings &c. and had themselves recommended the infliction of the Fine on your Memorialist for reasons set forth, against which the said appeal application was preferred; and who, being called upon for their remarks thereupon, reported that they saw nothing set forth in the above appeal to *Government* to induce them, the Court of Foujdaree Udawlut, to alter or modify their former opinion on your Memorialist's conduct, &c. &c. and the Government having hereupon also seen no reason to modify their orders of the 22d of May 1858, No. 671, holding your Memorialist answerable for the value of the property stolen from the office of the Nazir of the Court of Masulipatam; and whereas your Memorialist feels deeply aggrieved at such a result, he has considered it incumbent upon him to lay the matter before your Honorable Court in order to seek that consideration at the hands of your Honorable Court which he has failed to receive from the Local Authorities.

The correspondence &c. appended hereto will exhibit to your Honorable Court the chief features of the case which your Memorialist desires to bring forward; and while referring thereto, it will be necessary to allude cursorily to the former proceedings and correspondence, which have passed between your Memorialist and the Court of Sudr and Foujdaree Udawlut, his immediate superiors, on the subject of the robbery in question; and your Memorialist confidently trusts that in laying the whole of the circumstances of the case honestly before your Honorable Court, they will be induced to take a more liberal view of the matter than has been adopted by the Local Authorities against whose decision he ventures to prefer the present appeal.

A Robbery was committed in the office of the Nazir of the Court of Masulipatam on or about the 9th day of November 1857, the said office being one of the rooms of the Court house where there is always a guard of Peons stationed for the safe custody of all the Court property, whether records, cash chest, or other. The Robbery itself was one of the most impudent imaginable, as from the facts connected with it, noted in the correspondence, there cannot be a doubt that it was committed with the knowledge and privity of some person or persons employed in the Court who were perfectly cognizant of the internal arrangements of the Nazir's office, and the orders issued by the Court regarding the disposal of the lost property.

The Robbery premeditated by such competent parties was naturally so carried out as to leave little or no traces behind, by which to detect the individuals concerned; while the articles (a padlock and some keys) found about the room were evidently so left, to attract the attention of the first person who should enter the premises after the commission of the act. Had secrecy been intended after its commission nothing would have been easier than for the party or parties who took the keys of the Almirah in which the stolen property had been deposited, from their known localities, to have re-locked the whole of the locks and replaced the keys in the same place whence they had been originally taken.

Your Memorialist merely mentions the above to show that the difficulties of tracing the thieves in the case in question, and especially in a country where circumstantial evidence is so

rarely productive of results, were peculiarly great, and have hitherto baffled all who are interested in bringing home the charge against any one, however much suspicion may indicate parties connected therewith.

The Court of Sudr and Foujdary Udawlut upon receiving your Memorialist's report of the circumstances, opened up a correspondence with him chiefly in regard to the suspicions which they, perhaps naturally, felt attached to the Nazir himself, as having been concerned in the Robbery, and your Memorialist confined his replies to the main facts of the case as they bore upon such suspicions and which appeared entirely to acquit him of all complicity in the theft. (He not only at once upon the commission of the theft offered a reward of Rs. 200 for the apprehension and conviction of the offenders, which offer was proclaimed by printed placards far and wide, but even to pay up the amount of the valuables stolen, if they were not recovered. To this latter proposition your Memorialist could not accede, as under the peculiar circumstances of the case he considered it would be unjust to hold him responsible for the theft.)

By degrees animadversions became directed against your Memorialist's conduct, and in the Higher Court's proceedings of the 17th December 1857, they observe that the fact of the Nazir of the Court detaining in his own charge monies and jewels &c. received by him in the performance of his duties until he had prepared the necessary reports, was at direct variance with the circular order No. 128, dated 20th May 1853, and called on your Memorialist to submit for their consideration any explanation he had to offer on the subject.

Your Memorialist at once replied that the instructions conveyed in the above circular order were always attended to in your Memorialist's Court, and that the monies referred to had no connection with the circular order pointed out, being warrant and sale proceeds which it was the duty of the Nazir to collect and forward in due course, with his reports.

Your Memorialist has appended a true copy of the circular order alluded to (marked G.) and which he, as well as most others reading it, would construe to apply to intestate property and to which head the items Nos. 1, 2, and 3, alluded to in para 1 of the Higher Court's letter to Government dated the 12th May 1858, (marked B. in appendix) would solely belong.

With reference to the above items (Nos. 1, 2, and 3,) your Memorialist showed how that this property (of an intestate estate) had always remained in the safe custody of the Huzoor

*Vide Rules dated 9th
February 1819, para. 4.

Treasury guards in lieu of the Court cash chest* from the 14th November 1855, when it came into the hands of the Civil Court (as narrated in paras. 7, 8, 9, of your Memorialist's letter to Government, of the 10th June 1858) until the 5th November 1857, when they were handed over to the constituted Government official to be sold (the date of proposed sale being on the 4th day thereafter) AFTER the receipt of sanction from Government for such sale. The 8th of November was a *dies non* Sunday, and for reasons given the sale did not take place on the 9th. The robbery occurred as far as can be ascertained on that very day. The object for delivering the property in question to the charge of the Nazir a day or two previous to the intended date of sale is also given, viz. to enable would-be purchasers to examine and inspect the property before hand; a proceeding that appeared, at the time, as unobjectionable as it is universal.

Your Memorialist here adverts with much reluctance to one or two passages in the letter from the Sudr Court to the Government dated 12th May 1858, (marked B.) which appear to him calculated however unintentionally to mislead and to give a deeper colour to the irregularities complained of than the actual facts of the case rightly warrant.

In para. 4 of the above letter, in quoting the circular order, which your Memorialist is charged with having disobeyed, the Higher Court's letter leads to the inference that the circular order included "all jewels, monies, &c. forwarded to the Courts", and that in consequence of your Memorialist's disregard (the Government have added the epithet "wanton" to this charge) of the orders of the Court on the subject, property to so large an amount had been allowed to remain in the hands of the Nazir, which afforded facilities for the commission of the theft and loss of property which could not otherwise have occurred.

Your Memorialist would very respectfully ask whether from the foregoing exposition of the case, it could be gathered that the circular order alluded to referred only to *intestate* property, and that the intestate property stolen had only been delivered to the Nazir for sale after the receipt by your Memorialist of the orders of Government for its sale.

The remarks of the Higher Court in the following para., based upon the reiterated hypothesis that the circular order in question referred to *all* monies, &c. such as were included in the items noted in the *margin, your Memorialist cannot but feel, tended also to mislead the judgment of the Government which acted upon such representation.

*Nos. 4 and 5.

Again by paras. 2 and 7 it would certainly be inferred that the Pagodas in question had been for a *considerable* length of time in the hands of the Nazir who is referred to as having frequently (on "several nights") taken them to his own house, for that your Memorialist had delivered them to him "several days before the time appointed for the sale", and during which the Nazir kept them "sometimes" at his own house, "sometimes" at his office, and showed them to parties at both these places; and concluded, that such irregularities were to a degree countenanced by your Memorialist. Whereas the Pagodas alluded to had been delivered, as stated above, to the Nazir just three complete days, one of which was a Sunday, before the intended date of sale; and the Nazir had taken them to his own house on leaving his office on the Thursday and also the following evenings at 6 P. M. for the purpose of procuring purchasers (none or only one having attended at his office in the Court) bringing them back on the succeeding days at 10 A. M. when the office was opened.

With regard to the charge that your Memorialist, if he did not actually and positively sanction the above proceedings, they at least did not meet with his disapproval, your Memorialist has only to say that after officially delivering over the Pagodas for sale to the Nazir he was not aware of any circumstances connected with them thereafter, until the report of the robbery was made to him; except indeed a verbal communication made by the Nazir on the Friday that he hoped to realise a larger sum than at the rate of Rs. 4-2-0 each, which had been offered by one individual for the whole lot; and it was not till subsequently that your Memorialist learned that such irregularities as those pointed out by the Higher Court had taken place, when, he reprimanded the Nazir for the same.

In para 10 of the above letter the Judges after alluding to the difficulties that attend the office to which your Memorialist stands appointed, and again referring to the circular order as if it conveyed any instruction regarding the security of any *other* properties than those to which your Memorialist believed, and still believes, it has reference—are of opinion that your Memorialist not only exercised no proper supervision over his subordinates (upon matters regarding which your Memorialist most respectfully urges he could not possibly have had cognisance until brought before him by regular reports) but also that he appeared to have been aware of and sanctioned the infringements of rules laid down for his guidance.

This method of stating the case has your Memorialist respectfully submits again misled the the Highest Authorities; your Memorialist would venture to state, that from the whole of his experience in the Judicial Department extending over many years, and in a great number of Courts, in none have the rules and orders laid down for the guidance of the lower Courts been so strictly or in such detail carried out as in that over which he at present presides (seventeen books of record for cash entries alone are kept in the Sheristadar's and seven of the same kind in the Nazir's office.) He is free moreover to confess that he can find no order whatever that directs him to have such personal supervision and controul over the executive servants of the Court by which he *could* become aware of the time when, and the manner in which, Court processes are executed and monies &c. reach their hands, except by reports. Consequently your Memorialist could not by possibility have been aware of, or sanctioned the infringement of the rules, which he believes are non-existent; but which are, (apparently) referred to by the Judges in alluding to the items Nos. 4 and 5 not having been secured in the Court cash chest.

The only rule or order which your Memorialist is charged with contravening is the one Circular Order Sudr Udawlut No. 128 above mentioned; how far this accusation has been borne out by the facts as they occurred, the present plain exposition, your Memorialist trusts, will show.

That the Robbery occurred under such circumstances is a matter of deep regret, but that your Memorialist should be held responsible for the result of this untoward event he does feel to be most unjust. The Court cash chest itself in which the Higher Court insist that the property stolen should have been kept is only under the identical guard which had the patrol over the Nazir's office close to the room in which the former is kept.

To compare great things with small, as lief might the Government of India be held legally responsible for the enormous amount of private property plundered and destroyed by the Rebels in the northern parts of India, as that your Memorialist should be held answerable for the plunder of a public building where the property was secured under no less than 4 locks besides bolts, with a guard of Peons over it; and for a similar reason viz. that neither could anticipate or prevent the one or the other.

Had the property alluded to in your Memorialist's case been made away with through fraud or embezzlement of the party to whose hands your Memorialist had entrusted it, the above decision of the Government, based upon the recommendation of the Court of Foujdaree Udawlut, might perhaps, with more show of justice, have been framed so as to affect your Memorialist

secondarily, but in such as that now under appeal to your Honorable Court, your Memorialist most respectfully but unhesitatingly submits that the antecedents of the one and the other are totally dissimilar in every way, and accordingly call for a righteous discrimination between the two.

Your Memorialist trusts he has thus far satisfactorily met the painful charges made against him by the Local Authorities of "culpable neglect" and "a wanton disregard of the orders" alluded to, and without referring further to the secondary arguments that he might, with good reason, pursue on his behalf to induce your Honorable Court to view with leniency and liberality the circumstances under which your Memorialist has been called upon to pay so large an amount to Government, on account of an *unclaimed* asset, he trusts the broad principles of justice, will at once exonerate your Memorialist in the eyes of your Honorable Court from all blame and consequent responsibility on account of the unfortunate contretemps that has brought your Memorialist to the present alternative. He now throws himself upon the known justice and liberal sentiments, that are so largely accredited to your Honorable Court, and trusts that his case may meet with that favourable reception which his conscience feels it will command.

And your Memorialist will as in duty bound ever pray.

MASULIPATAM, 14th August, 1858.

Cotton
Civil Session Judge

Masulipatam Collectorate Press.

APPENDIX.

A.

JUDICIAL DEPARTMENT.

No. 671.

Extract from the Minutes of Consultation under date the 22nd May 1858.

Read the following letter from the Acting Register of the Court of Sudr Udalut.

Reporting on the theft committed in the office of the Nazir of the Civil Court of Masulipatam, of property valued at Rupees 2,728 - 10 - 4 and stating that as the loss has been occasioned by Mr. Cotton's disregard of the standing rules and orders of his Court, he should be held responsible for the loss. (Here enter 12th May 1858, No. 33.)

In the above letter, the Judges of the Court of Sudr Udalut report that a theft was committed in the office of the Nazir of the Court of Masulipatam, on the night of the 10th November last, and that property valued at Rupees 2,728 - 10 - 4 was stolen on the occasion.

2. The Court point out that this loss of property has been caused by the lax supervision and irregular proceedings of the Civil Judge Mr. J. Cotton, and by his culpable neglect of the circular order of 20th May 1853, and they conclude by expressing their opinion that as it has thus been occasioned, he should be held responsible for it, as it must otherwise fall on Government.

3. The Government understand that it was in consequence of the general and serious irregularities found to exist in the management and custody of monies and jewels by the Nazirs of Courts that the circular order of the 20th May 1853 was issued. It is the wanton disregard of that order that has led to the state of affairs in the Masulipatam Court now reported. Under such circumstances the Government do not consider themselves to be by any means called on to save Mr. Cotton from the consequences of his own neglect of duty. They therefore resolve that he be held answerable for the loss to the extent shown in the margin of the last para. of the Sudr Court's letter or Rupees (2,676 - 2 - 4) two thousand, six hundred and seventy six, Annas two, and Pice four.

4. Adverting to the present and other late instances in which room has been afforded for the abstraction of Court monies or property by the remissness of the presiding officers, it appears to the Government that it might have a salutary effect if the Sudr were to issue a circular order setting out in general terms and without specification of names or places the main circumstances connected with the recent robbery in the Masulipatam Court, and the course taken by Government thereon, with a warning that the same will be taken by them in all similar cases in future, and that officers who will not conform to the plain instructions prescribed for their observance in such matters will invariably be left to bear the loss which may arise from their neglect.

(True Extract.)

(Signed) T. PYCROFT,
Chief Secretary.

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

To the Judges of the Court of Sudr Udalut.

To the Civil Judge of Masulipatam for his information. 1st June 1858.

B.

MADRAS, 12th May, 1858.

No. 33.

FROM

C. F. CHAMIER, ESQ.

Acting Register to the Court

of Sudr Udalut.

TO

T. PYCROFT, ESQ.

Chief Secretary to Government.

SIR,

I am directed by the Judges of the Sudr Udalut to report for the information of Govern-

No 1.	{ 455 Gold Pagodas at 4½ Rupees.....	2,047 - 8 - 0	was committed in
	Sale proceeds of 25 do.....	112 - 8 - 0	the office of the Na-
No. 2.	One base Pagoda.....	1 - 0 - 0	zir of the Court of
No. 3.	One gold ornament.....	64 - 6 - 4	Masulipatam on the
No. 4.	Sale proceeds of waste paper.....	183 - 12 - 0	night of the 10th of
No. 5.	Warrant money with peons' batta.....	268 - 0 - 0	November last, and
No. 6.	Subscription on account of Fusiliers.....	51 - 8 - 0	that property valued
			at Rs. 2,728 - 10 - 4
	Rupees. 2,728 - 10 - 4		was stolen on the oc-
			casion.

2. The Judges consider it unnecessary to enter into any detail concerning the manner in which the theft appears to have been effected or to hazard any opinion as to its perpetrators as these questions now form the subject of Judicial inquiry before the Criminal Court of Masulipatam. They would confine themselves to drawing the attention of Government to the lax and irregular manner in which the acting Civil Judge Mr. Cotton has been in the habit of providing for the security of valuable property deposited in his Court, and to which, in the opinion of the Judges, the loss in the present instance is to be mainly attributed.

3. In his letter of November 20th reporting the circumstance of the theft, it is stated by Mr. Cotton, that on the evening of the 7th the acting Nazir feeling unwell left his office early after securing in the usual places of deposit, the money and property in his charge; that on the 9th being still unwell he entrusted the keys of his office to his Goomastah who had occasion to refer to some papers; that the keys were returned to him the same evening, and a second time given to the Goomastah on the morning of the 10th, who on opening the door, discovered that a theft had been committed, and property to the value of 2,700 Rupees abstracted.

4. By their circular order of the 20th May 1853, the Court of Sudr Udalut directed that all jewels, money, &c. forwarded to the Courts should invariably be at once secured in the Court cash chest, and Mr. Cotton was called upon to explain, why the orders of the Court upon this subject had been disregarded, and how property of such value had been allowed to remain in the hands of the Nazir, or how it had come to be secured any where but in its proper place of deposit, the Court cash chest.

5. The Judges regret that Mr. Cotton's explanations on this point are most unsatisfactory and insufficient. He states generally that the rule laid down by the Court has been observed, but adds that a practice has always prevailed in his Court for the Nazir to retain in his charge jewels, warrant monies, &c., until inventories have been made and accounts closed, and that it was in pursuance of this practice that the sums received by the Nazir on account of the items

*No. 4.

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mentioned in the margin* had been retained by him and had not immediately on receipt been forwarded to the Court treasury. The Judges have only to observe that this delay is quite unnecessary and that such a practice is most reprehensible and totally opposed to the directions laid down in the circular order above quoted, and that it was the duty of the Judge in both cases to have directed the sums when paid in to be at once deposited in the Court treasury.

6. As regards the gold Pagodas which form so large a portion of the property stolen,

Mr. Cotton's explanations are if possible still more unsatisfactory. It appears that these Pagodas were originally secured in the Court cash chest; that it was intended that they should be sold by public auction; that the 9th of the month was the day fixed for their sale by the Judge, and that four days previous to this, on the 5th, they were given over to the charge of the Nazir. The Nazir appears to have kept them sometimes at his own house, sometimes at his office, to have showed them to parties at both these places, and to have sold twenty five of them by private sale two days before the day advertized for their sale by public auction.

7. The very imprudent and irregular proceeding of delivering these Pagodas to the Nazir several days before the time appointed for the sale, Mr. Cotton states was not suggested to him by the Nazir, but was in conformity with the usual routine practised in his Office, a practice which the Judges have to remark is decidedly opposed to the spirit of the circular order quoted, which distinctly enjoins that such property should at all times be secured in the Court treasury.

8. With respect to the other gross irregularities of which the Nazir was guilty in the matter of these Pagodas, by taking them away from his office, by keeping them in his own house for several nights, and in disposing by private sale at his own house of property ordered to be sold by public auction, Mr. Cotton has offered no explanation beyond observing that as the Court house was a mile distant from the town, the Nazir by keeping the Pagodas at his own house in the town gave a better opportunity to intending purchasers to examine them, and that he deserved credit for the high price he obtained for those that he sold. From Mr. Cotton's remarks the Judges conclude that these proceedings, if not actually and positively sanctioned by him, at least, did not meet with his disapproval.

9. Of the other items of property stolen on the occasion, the gold ornament was delivered to the Nazir with the Pagodas for sale by auction. The sums collected on account of Madras Fusiliers and deposited for security in the office not being entered in the receipt of the Court, no explanation was required on this head.

10. The Judges are well aware how difficult and even impossible it is for the head of a Court personally to superintend in each instance the carrying out of directions such as are laid down in their circular order regarding the securing of Court property, and are equally aware that in such matters much of responsibility is properly delegated to the ministerial officers of the Court; but the Judges cannot consider that the head of an office is thereby absolved from all and every responsibility, and it must always be his duty to see that such rules are understood and generally followed by his subordinates. In the present instance Mr. Cotton appears not only to have exercised no such supervision, but also to have been aware of and to have sanctioned such irregularities and positive infringements of rules laid down for his guidance, as have in the opinion of the Judges afforded facilities for the commission of this theft and consequent loss of a large amount of property, which could not otherwise have occurred.

11. The Judges have only to add, that as this loss has been occasioned by Mr Cotton's

No. 1.	{ Gold Pagodas.....	2,047 - 8 - 0	disregard of the stan-
	Sale proceeds of 25 do.....	112 - 8 - 0	ding rules and orders
No. 3.	A gold ornament.....	64 - 6 - 4	of this Court, and by
No. 4.	Sale proceeds of waste paper.....	183 - 12 - 0	the absence of all
No. 5.	Warrant monies.....	268 - 0 - 0	efficient supervision
			on his part, it is
			their opinion that he
			should be held res-
			pensible for the loss
			which will otherwise
	Rupees. 2,676 - 2 - 4		

fall upon the Government.

SUDDER UDALUT
REGISTER'S OFFICE,
12th May 1858. }

I have the honor to be, &c.

(Signed) C. F. CHAMIER,
Acting Register.

(True Copy.)

(Signed) C. F. CHAMIER,
Acting Register.

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C.

MASULIPATAM, 10th June 1858.

From,

J. J. COTTON, Esq.
Civil Judge of Masulipatam.

To,

T. PYCROFT, Esq.
Chief Secretary to Government,
Judicial Department,
Fort St. George.

Sir,

1. In acknowledging the receipt of an Extract from the Minutes of Consultation dated 22nd Ultimo, No. 671, passed upon a letter from the Acting Register of the Court of Sudr Udalut reporting the perpetration of an impudent robbery, committed in the office of the Nazir of this Court, and directing that I shall be held responsible for the loss to the extent referred to, viz. Rupees 2,676 - 2 - 4, I beg respectfully to bring forward the following circumstances for the favorable consideration of His Lordship in Council and which I trust may induce them to look with more leniency upon the alleged dereliction of duty pointed out by the Sudr Court in their letter of the 12th Ultimo, copy of which has been forwarded with the above Extract from the Minutes of Consultation for my information.

2. There are one or two points upon which I would particularly request the attention of His Lordship which are not apparent upon a primary perusal of the Sudr Court's letter.

3. The property stolen from the Nazir's office was taken by *choice*, (if I may use such an expression,) from among others which were purposely left intact, clearly indicating that the robbery was committed by some party or parties well aware of the difference between them, as beyond items Nos. 5 and 6 enumerated, which amounted in the aggregate to Rupees 319 - 8 - 0, the whole of the rest was property the value of which had not been credited as an asset, to Government, while other monies &c. left untouched were either on account of batta collected during the previous month and payable to peons &c. or a balance to a tradesman in the town upon the auditing of his accounts, for certain manufactures of brass utensils ordered for the use of the convicts in Jail.

4. It must not be argued that the fact of such sums &c. also being retained in the hands of the Nazir is a dereliction of the "spirit" of the circular order quoted by the Sudr because it should be known that the Nazir of a Court is the executive officer whose duty it is to carry out the orders of the Judge for the preparation and manufacture of articles required for the use of the departments generally, and monies are placed in his hands with this object, for which he becomes responsible, particularly when they are of inconsiderable amount.

5. With reference to paras. 2 and 5 of the Acting Register's letter, it might lead to the inference that a practice has always prevailed in this Court for the Nazir to retain in his charge jewels and "valuable property" of the extent and worth of the gold Pagodas, lately stolen. The jewels alluded to in the Nazir's return forwarded with my return of the 21st April last consist generally of joys, &c. individually valued at a few Annas or at most of a Rupee or two each, found on prisoners committed to Jail for short periods, a note of which is always immediately entered in the Court diary, and Jail memorandum book, and the monies detained by the Nazir also, referred to warrant and other deposits for which he is responsible while passing through his hands into the Court cash chest, and during which the reports are prepared, and batta &c. calculated. The circular order alluded to by the Court has *no* reference to such property or monies, but refers to unclaimed property, which may eventually escheat to Government.

6. The Nazir of a Court is a highly responsible officer, one in whom confidence and trust is more necessary than perhaps any other subordinate of the Court, this is mutually felt by all parties concerned and therefore though I should feel myself to a degree responsible for the honesty of this individual, especially if he happened to be, as in the present case, one of

5

my own appointing, the case is different when without his or my cognizance an impudent theft is committed, by parties inimical to him to throw the blame on his shoulders, and property selected from among others is thus carried away, in the shameless way pointed out (no clue to the robbery has yet been found).

7. With regard to the circular order Sudr Udalut, dated 20th May 1853, in "wanton disregard", of which I am accused of having acted, I beg particularly to point out that the Pagodas in question regarding which the Sudr Court are the more urgent in their censures upon my conduct were originally transmitted to the Court by the Magistrate in accordance with a precept from this Court on the 14th November 1855, (they had been secured by that Officer in 1853,) and they were almost immediately forwarded for safe custody to the Collector's treasury, whence they were again received only on the 4th November 1857 in order to carry out the orders of Government for their sale, dated 13th October 1857. On the following day the 5th November they were handed over to the executive officer, the Nazir of the Court, for sale. The date of such sale was originally left to this functionary's discretion. However subsequently (on the following evening) it was resolved to sell these Pagodas by outcry on the ensuing Monday the 9th. In the interim the robbery took place.

8. I respectfully submit that I can hardly be accused of a "wanton", that is I presume a wilful disregard of the circular order in question by my proceedings as above. Government property is repeatedly consigned to private salesmen for disposal, several days before the date of sale, and the delivery of the Pagodas, &c. to the public executive officer of the Court for a similar purpose *after* sanction had been received from the Government for the purpose, might, I should hope, bear a more favourable construction than has been placed on the act by my immediate superiors and the Government who have adopted the same view.

9. The circular order alluded to directs that every thing connected with unclaimed assets should be hereafter "carefully entered in the civil diary of the day, and that invariably when jewels or money are forwarded to the Court, such be at once secured in the Court cash chest." I respectfully submit that this order has been strictly and literally obeyed by me and my subordinates ever since I assumed charge of this Court, and there is nothing in the above order which appears to me to indicate that *such property should at all times be secured in the Court treasury*. How indeed could this be effected where a sale of such is ordered.

10. On a previous occasion upwards of 4,000 Rupees worth of property consisting of jewelry, pots and pans, and brass utensils to an immense extent, (originally attached as unclaimed property on behalf of Government) was ordered to be sold by the Sudr Court on behalf of those concerned. After the receipt of the above orders the property in question was sent for duty from the Collector's General Treasury where it had been long deposited for security, and delivered to, and remained thereafter in the charge of the Court Nazir until the sale was completed, and I certainly never imagined for a moment that by so acting I was infringing the "spirit" of the circular order alluded to, as it now appears I must have unwittingly done.

11. The office of the Nazir is equivalent to that of the Sheriff in the Supreme Court and his duties and records are entirely distinct from those of the Civil Court. He has special responsibilities, which he is aware of, and has under his control the Court peons as a guard to protect such property, &c. as may come into his hands primarily, before they are passed on to the Court. His office is a detached one, usually in a separate quarter of the Court house, and is provided with boxes and almirahs fitted with a variety of locks, and bolts sufficient to secure any ordinary property that may be passing through his hands, and as for public monies, &c. what are his responsibilities as compared with that of the Revenue Officers of the 2nd and 3rd grade? being moreover under the immediate surveillance of the Court Sheristadar, in the first place, and directly of the Civil and Session Judge.

12. The practice of this Court so severely animadverted on by the Judges in para. 2 of their letter, I imagine is universal, simply from the necessity that exists, for such sums therein alluded to being paid through the office of the Nazir.

13. With regard to para. 8 of the Court's letter in which they observe that I have offered no explanation on the gross irregularities of which the Nazir was guilty, &c., I confess I had none to offer beyond the plain statement of the facts of the case. The object was to realize the best prices procurable for the property in question, and the Pagodas were placed in the hands of one whom I believed to be a trustworthy (public) agent for this purpose; and the sums realized by him by private sale were considerably in excess of those offered on the previous day for the whole lot. It is a well known characteristic of Natives that they are most unwilling to purchase valuables, especially gold, without ascertaining practically its intrinsic worth.

14. I now come to place before the Government another point on which I would pray for their favorable and lenient consideration.

15. Of the large sum noted in the margin of the Court's letter for which the Government have resolved to hold me personally responsible for reasons, which I trust I have, to no inconsiderable extent, explained away, it is observable that with the exception of Rs. 268 - 0 - 0 the remainder (Rupees 2,408 - 2 - 4) consists of sums, never credited as assets at all to Government and consisted of items claimed arbitrarily by them in their prerogative, for want of better claimants thereto. (The value of the Pagodas not sold was roughly and certainly widely estimated at the rate of Rupees 4½ each, because 25 of the best had been sold at that rate, and so of the other unclaimed property mentioned.) The item No. 4 on account of waste paper proceeds, is another, against which there is the same negative claim. The paper was ordered to be destroyed. This was carried out to an extent by its being torn into four or more pieces but was afterwards sold to merchants in the town. It was my intention to devote the sums so realized to the payment of a temporary establishment to index the voluminous records in this Court, and was kept for that purpose, when a most useful and necessary record would have been prepared without cost or expence to the state.

16. From the above explanation it will be seen that the actual "loss" to Government on which much stress is laid in the concluding para. of the Acting Register's letter is merely *in prospectu*, no assets belonging to the Government having been lost, at all.

17. With regard to the remaining item (Rupees 268 - 0 - 0) No. 5, as the Government would be responsible for such sum, I trust that a refund to this amount, for which I confess that either I or my subordinate should be held liable may be deemed by the Right Honorable the Governor in Council, a sufficient punishment for any dereliction of duty that can be placed to my charge.

18. The existence of the circular order of 20th May 1853 is as well known throughout the office as it is to myself, and the unfortunate delay of the Nazir in paying in the amount received by him just before he was attacked with illness, into the Court treasury, was a contretemps which has eventuated in a certain loss, which must be made good. But with regard to the other items, I trust after what has been stated His Lordship in Council may be induced to take a lenient and liberal view of the circumstances, and give the subject of this correspondence, a favorable re-consideration.

MASULIPATAM }
CIVIL COURT, }
10th June 1858. }

I have the honor to be,
Sir,
Your most obedient Servant.
(Signed) J. J. COTTON,
Civil Judge.

D.

JUDICIAL DEPARTMENT.

No. 984.

Extract from the Minutes of Consultation under date the 21st July 1858.

Read again letter from the Civil Judge of Masulipatam, dated 10th June 1858.

Read also the following letter from the Acting Deputy Register to the Court of Sudder Udalut.

Submitting the remarks of the Court with reference }
to the letter addressed to Government by Mr. Cotton, Civil Judge of Masulipatam, on the subject } (Here enter 10th July 1858, No. 52.)
of a theft lately committed in his Court. }

Order.—The Government see no reason to modify their orders of 22nd May 1858, No. 671,

holding Mr. J. J. Cotton answerable for the value of the property stolen from the office of the Nazir of the Court of Masulipatam.

(True Extract.)

(Signed) T. PYCROFT,
Chief Secretary.

To the Civil Judge of Masulipatam.
„ Judges of the Court of Sudder Udalut.

E.

JUDICIAL DEPARTMENT.

No. 1056.

Extract from the Minutes of Consultation under date the 4th August 1858.

Read the following letter from J. J. COTTON, Esq., Civil Judge of Masulipatam; to T. PYCROFT, Esq., Chief Secretary to Government, Judicial Department, Fort Saint George, dated 27th July 1858, No. 359.

SIR,

1. I have the honor to acknowledge the receipt of an Extract from Minutes of Consultation, under date the 21st Instant, No. 984, rejecting my application for a more liberal interpretation of the proceedings held with reference to the responsibility charged against me, in the matter of the robbery of certain unclaimed property, &c., from the custody of the Nazir of this Court.

2. As being the party most deeply concerned in the above result, I have the honor to request that you will, with the sanction of Government, favor me with a copy of the remarks of the Court of Sudr Udalut, dated 10th instant, alluded to in the above Minutes.

Order.—The Government will not object to furnish Mr. J. J. Cotton with a copy of the letter from the Court of Foudaree Adawlut, under date the 10th Ultimo, but Mr. Cotton will understand that it is sent only for his information—that the question to which it relates, is closed, and that the Government will not receive any further communications from him respecting it.
(True Extract and Copy.)

(Signed) T. PYCROFT,
Chief Secretary.

To J. J. Cotton Esq., Civil and Session Judge of Masulipatam.
Exd. F. Cartledge.

F.

Fort St. George, Judicial Consultation, 27th July 1858.

Read again letter from the Civil Judge of Masulipatam, dated 10th June, and recorded in consultation, 2nd July 1858.—No. 3. Read also the following letter from G. F. FULLERTON, Esq., Acting Deputy Register to the Court of Sudr Udalut; to T. PYCROFT, Esq., Chief Secretary to Government, dated 10th July 1858, No. 52.

SIR,

1. I have the honor by direction of the Judges of the Court of Sudr Udalut to acknowledge the receipt of copy of a letter addressed to Government by Mr. Cotton, Civil Judge of Masulipatam, on the subject of a theft that was lately committed in his Court and forwarded to this Court for the remarks of the Judges.

2. I am directed to state that there is nothing set forth in Mr. Cotton's letter to induce the Judges to alter or modify the opinion expressed in their letter to Government of the 12th May, viz., that it was owing to Mr. Cotton's disregard of the rules laid down by this Court for the securing of money and valuables forwarded to the Courts, that facilities were afforded for the commission of this theft, which could not otherwise have been effected; the rules in question being clearly intended to apply to the care of property forwarded to the Courts under the circumstances that the property now referred to was entrusted for security to the Civil Judge of Masulipatam.

3. In bringing this matter to the notice of Government, the Judges felt it to be their duty to state their opinion as to the degree of culpability attaching to Mr. Cotton, but they consider it out of their province, to make any suggestions or remarks on the request of Mr. Cotton that the penalty imposed by Government should be remitted, as an act of grace; but while refraining from any observation as to the advisability or otherwise of acceding to the request, the Judges must express their entire dissent from the principle upon which Mr. Cotton urges his claim to be so relieved.

4. In the 15th para. of his letter Mr. Cotton urges, as a reason, why favorable consideration should be showed to him, that the property in the coins, &c., had not actually vested in Government, at the most could only be "arbitrarily" claimed by it in virtue of its prerogative, and that consequently, as it had not yet been brought to the credit of Government, no actual loss was sustained by its theft. Even if this were the case, the Judges consider the remission of the penalty on such grounds would be most objectionable, as doubt or uncertainty as to the real ownership of valuable property entrusted to a Court for security can never be allowed to form a valid excuse for carelessness on the part of those bound to take all proper measures for its care. But it is clear that loss in such case does fall upon Government, for until duly brought to account, Government was responsible for its value to any one who might establish his claim to it, and when once brought to the credit of Government, no matter in virtue of what prerogative, it forms as much a part of its assets as revenue derived from any other source.

No. 4. Order thereon, No. 984; dated 21st July 1858.

The Government see no reason to modify their orders of 22nd May 1858, No. 671, holding Mr. J. J. Cotton answerable for the value of the property stolen from the office of the Nazir of the Court of Masulipatam.

(Signed) T. PYCROFT,
Chief Secretary.

(True Copies.)
(Signed) T. PYCROFT,
Chief Secretary.

G.

C. O. SUDR UDALUT, No. 128.
20th May 1853.

1. The Court of Sudr Udalt having reason to believe that irregularity exists in the mode of disposal of unclaimed property, resolve to call the attention of the Courts having charge of the same to the provisions of Clause VII Section XVI Regulation III of 1802,* and to direct that these be strictly observed.

2. The Court further direct that everything connected with such estates be hereafter entered carefully in the Civil Diary of the day; and that invariably when jewels or money are forwarded to the Court such be at once secured in the Court cash chest.

(True Copies.)
J. J. COTTON.

Masulipatam Collectorate Press.

Civil & Session Judge

Judicial Department.

N^o 375
Memorandum.

The Chief Secretary to Government requests that the Registrar to the Court of Sudr and Foujdare Udalut, will be so good as to state, who is the Nazir of the Civil and Sessions Court of Masulipatam, from whose Office certain Jewels &c. were recently stolen, and whether he is the same person who was the head of Police of Bundar in 1852.

Fort St. George
7th October 1858

Signed T. Pycroft
Chief Secretary

To The Registrar to the Court of
Sudr and Foujdare Udalut.

R. J. P. J. P.

C. No. 29-33
25/6/58

Ex Libris No. 4
8/2/59 9c

No 1409.

W
H

Mr S. S. Cotton will be desired
to submit his Memorial - in triplicate -
to the address of the Honble the Court of
Directors in manuscript - The Court
decline to receive printed Memorials

For S. S. Cotton
9 October 1858

J.P.

Copy to Mr S. S. Cotton
Civil Judge & Magistrate

3 Sep 14th

Handwritten note in cursive script, possibly a signature or a note related to the document's history.