M.R.O. 1—32,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 46 Press Mis.

26-27

Dated 11-1-1928

Not to be folded or roughly handled

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

No. 26. Read the following letter from H. D. PHILLIPS, Esq., Commissioner of Tanjore ; to T. PYCROFT, Esq., Chief Secretary to Government, Fort St. George, dated Papanassem, 8th December 1857, No. 255.

SIR,

Adverting to my letter dated the 14th Ultimo, No. 250, reporting that I had been cited to give testimony in the Suit noted marginally ; I have the honor to state that yesterday, I duly appeared at the Sub Court of Combaconum and gave evidence on a point which might just as well have been established by any East Indian writer or Native Goomashta in charge of certain papers, as by my personal attendance and deposition.

O. S. No. 29 of 1856.

2. To comply with the citation of the Sub Court, it was necessary I should proceed from Nunnillum to Combaconum, a distance of 23 miles, and as I could not reckon on any definite leisure during the day, I sent my office establishment from Nunnillum 25 miles, to meet me at this station, where I arrived this morning.

3. Yesterday, therefore, was a sort of dies non ; but the time actually lost by me in going to and from the Court, and giving evidence there, was two hours. I considered that not having been employed on public duty during these two hours, I was not justly entitled to draw pay for that time, and I therefore demanded from the Sub Judge such compensation, payable by the Plaintiff, who had caused me to be summoned, as would equal the salary due to me for two hours, assuming eight hours per diem to be the minimum time during which I employ myself on public duties. It was my intention, of course, to pay into the public treasury the sum realized as compensation ; but the Sub Judge adverting to the letter of the law, would not make the order unless I could show that I had sustained actual loss by appearing as a witness in the suit. He however admitted that, if under orders by Government, my salary for the two hours were not to be drawn he would feel bound to call on the Plaintiff to make good my loss, and it is on this point I now beg to address you.

4. The suit in question is obviously intended to be a vexatious one, and I have reason to believe that the Plaintiff is a mere puppet moved by a Bramin of large property, who has a clever, well-educated younger brother employed in a high situation in the Sub Court. The object they have in view, as I take it, is to try the point at issue in this, an action for Rupees 22 and odd, and if successful, use the precedent in fresh litigation respecting other and more important Enams which have been affected by the arrangements made for their temporary sequestration by the late Commissioner.

5. From what I have observed of the proceedings in several other matters, of the Bramin to whom I advert, he is disposed to be most litigious, aided as he is by the knowledge of the Regulations which his brother possesses. It therefore seems to me to be right in no way to spare the Plaintiff, who, if I had thought fit to travel to and from the Court in a palankeen from any point in the District, would have had to pay the hire of the bearers.

6. My object is to check the system of citing a Collector unnecessarily, by establishing the precedent of holding the summoning party liable for payment of the Collector's salary in the manner above stated, and I do so the more readily that when the Plaintiff's pleader failed in eliciting certain information on a question to which the Sub Court took objection and which after all, was not put, he pressed it on the plea that it might save the necessity of his having the Collector up again.

7. If I am again cited, I shall not hesitate, wherever I may start from, to use a palankeen, (if for no other reason) as interfering less with the other calls on my time than a different mode of travelling ; as however, the probability of another citation impends, it may seem to the Government to be desirable to determine whether or not a public officer is entitled to his salary during the period he attends a Court as witness for the benefit of either a Plaintiff or Defendant, and I beg therefore respectfully to solicit orders on the subject. An order to the effect that he is not entitled to it, would justify a Court in directing an equivalent to be realized from the suitor liable, and if eventually it were found that the amount could not be collected by reason of the suitor evading the Court's process, or by his real poverty, the order under those circumstances

would necessarily remain in abeyance, and the public officer would not be mulcted of any part of his pay.

(Signed) H. D. PHILLIPS,
Commissioner.

No. 27. ORDER THEREON, No. 46; dated 11th January 1858.

Resolved that a copy of the foregoing letter be furnished to the Court of Sudder Udalut, with a request that they will issue circular instructions to all Judicial Officers to observe the course laid down in C. O. S. U. 25th August 1823, when the evidence of a Collector or any of his European Subordinates may be required by a party to a suit, and will satisfy themselves that the fact to be established by such officer's testimony is material, and that sufficient evidence thereon is not obtainable without his appearance; in the event of these points being determined in the affirmative, and the witness not being at the Court station or in its immediate vicinity, they will direct the party to apply to have the evidence taken by Commissioner under Act III of 1841.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. F. Cartledge.

No. 255.

Tanjore Commissioner's Office
Papanassum 8th December 1857.

From H. D. Phillips Esq
Commissioner of Tanjore

To T. Pycroft Esq
Chief Secretary to Government
Fort St. George.

Sir,

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the sum realized as compensation; but the Sub Judge adverting to the letter of the law, would not make the order unless I could show that I had sustained actual loss by appearing as a witness in the suit. He however admitted that if under orders by Government, my salary for the two hours were not to be drawn he would feel bound to call on the Plaintiff to make good my loss, and it is on this point I now beg to address you.

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6. My object is to check the system of citing a Collector unnecessarily by establishing the precedent of holding the summoning party liable for payment of the Collector's Salary in the manner above stated - and I do so the more readily

readily that when the Plaintiff's Pleader fails in eliciting certain information on a question to which the Sub Court took objection and which after all was not put, he frames it on the plea that it might save the necessity of his having the Collector up again!!-

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the subject. Are order to the effect that he is not entitled to it, would justify a Court in directing an equivalent to be realized from the Debtor liable, and if eventually it were found that the amount could not be collected by reason of the Debtor evading the Court's process, or by his real poverty, the order under those circumstances would necessarily remain in abeyance and the public officer would not be mulcted of any part of his pay.

I have the honor to be
Sir
Your most obedient Servant.

Tanjore
Papanasam.
8th December 1857.

R. D. Mecklin
Commissioner

To
The Chief Secretary
to Government
Fort St. George.

Political Department

No 1176

From
The Commissioner of Tanjore
Dated 8th December 1857.

For Orders.

It may clearly become a practice for the purpose of annoyance to summon collectors to attend & it will be well if not possible might claim to Govt the arbitrarily be remunerated for the loss of the time of their appearance.

European Sub. may be required by Parties to a suit - to observe the course laid down in C.O. Cl. dated 25th May 1823 & to satisfy themselves that the fact stated = lished by such Officiers testimony is material & that sufficient evidence cannot be obtained without his appearance, and when these points have been determined the application, unless the European Officer is at the Court Quarters or in the immediate vicinity should issue Party to safely to have the evidence taken by Commission, under Act VIII of 1861 -

The course pursued by the Commissioner appears to be in every way unexceptionable -

Indl - 28th

Crespigny

H

[illegible] especially the easiest way of [illegible] the

Summons - which - by shortening terms of their

stay - & thus their expensive re-imbursement.

Still the further summonsing them -

But it will be a complicated business

& perhaps legally questionable -

H

The plan must be restricted to special

cases only such as that reported by Mr Phillips

of the 4th Cav. before May 11th 1861

I should decide copy of the foregoing letter

to the Sindia - & request them to issue

a mandate requiring the Jackeral officers

when the evidence is taken, or any of their

Judicial Department

No 46

Extract from the Minutes of Consultation
dated 11th January 1858

Read the following Letter
from the Commissioner of
Tanjore.
(Here enter 8th Dec/57 p. 255.)

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and will
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sufficient evidence thereon is
not obtainable without his
appearance; ~~and that,~~ on the
event of these points being de-
termined in the affirmative
and the witness not being at
the Court station or in its
immediate vicinity, they will
the party to apply & have the
evidence taken by Commission
under Act VII of 1841.

JP

Copy to Court of Zayou } Disp. 20th
" Turbo Resident. }

Judd's Treaties Engd 30th June
No 9 of 1858 - Para 29

Law Dept to Govt 12th Jany
Judicial 1858 Despatch

No 116

Extract Minutes of Plans

Jany 11th January 1858

26 – 27