

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	886	Press
	79-80	~~Mis.~~
Dated	2-7	10-10-8

Not to be folded or roughly handled

Fort St. George, Judicial Consultation, 2nd July 1858.

Read the following papers.

No. 79. Extract from the Proceedings of the Sudder Udalt under date the 22nd June 1858,
No. 45.

Read Extract from the Minutes of Consultation under date the 19th April 1858, forwarding copy of a Despatch from the Honorable the Court of Directors, and requesting the Foujdaree Udalt to review the Proceedings held by the Magistrate of Coimbatore, in the matter of Bowany Lalah.

Read also, the letter of the Acting Magistrate, dated the 7th May 1858, transmitting the original record of the said case.

Read also, Return of the Acting Magistrate to the Precept of the Foujdaree Udalt, under date the 25th May 1858, calling upon that Officer to state how the Memorialist, Bowany Lalah, was held in custody from the 23rd December 1854, to the date of his sentence, and how that sentence was carried out.

Read also letter from the Acting Magistrate, dated the 10th Instant, forwarding copy of a document attested by Bowany Lalah at Coimbatore on the day of the unlawful assembly; and also mentioning that the said individual died on the 24th September 1857.

1. The object of the present reference is to obtain the opinion of the Judges on the proceedings taken by the Magistrate of Coimbatore against one Bowany Lalah, in consequence of a wilful violation by the latter of certain orders issued by the Magistrate, for the maintenance of the peace, during the joint celebration of the Mohurram and Dusserah festivals in the year 1854.

2. This opinion is required to enable the Honorable the Court of Directors to dispose of a Memorial transmitted by the said Bowany Lalah, charging Mr. Thomas (the Magistrate) with having treated him harshly and illegally; and praying for his removal from the District.

3. The proceedings received from the Magistrate's office show, that there having been a disturbance of the public peace the year before, on the occasion of the Mahomedan and Hindu festivals of the Mohurram and Dusserah falling together; and the said festivals again happening together; the Magistrate, under date the 2nd September 1854, acting on a Government Circular Order, prohibited the processions attendant on these festivals; unless security should be given by the chief people of both persuasions, Mahomedan and Hindu, that they should be conducted without disturbance of the peace.

4. It appears that certain chief people on each side (not named) were accordingly called upon to deposit respectively Rupees 2,000, by way of such security; that the persons so called upon declined to make the said deposit; that, in spite of the Magistrate's prohibition, both parties carried out their processions on the 30th September and 1st October of the said year; and that, on the 26th September, the Magistrate issued a summons to the Memorialist (a Hindu) and six others, Mahomedans and Hindus, to appear before him for "a certain investigation," but of what nature and on what grounds was not stated; and that this summons was ineffectual.

5. The proceedings were hindered up to the 22nd December, as explained by the Magistrate in his letter to the Government of the 12th September 1856; but, it seems that on 23rd December, the Memorialist and the six others were forwarded to the Magistrate under custody; that, on the 5th January 1855, the evidence of six witnesses was taken, whereby it was established that the Memorialist had conspired with others to carry out the processions in question in spite of the Magistrate's interdictory order; and that thereon, under date the 6th January 1855, the Memorialist and the other six sent up with him, were required to produce each two sureties, in Rupees 100 each surety, to keep the peace for a year.

6. It further appears that, on the day on which the said sentence was passed, the Magistrate required the head of Police to ascertain what truth there might be in the allegation of the Memorialist and three others of the accused, that they were not present at Coimbatore at the time of the said festivals; whereupon the head of Police, under dates the 11th and 13th January, took evidence which proved the said allegation to be untrue.

7. On the 12th January 1856, or a year after the passing of the above sentence, the Magistrate seems to have taken evidence, which showed that the Memorialist was present (as a spectator) at the time that the Mahomedan procession was conducted; but what led to this evidence being taken does not appear on the record.

Fort St. George, Judicial Consultation, 2nd July 1858.

8. The error of the Magistrate in issuing a general summons to the accused, and the delay that took place in prosecuting the enquiry held, have already been commented upon in the previous correspondence. The Judges now find the Magistrate to have committed the serious error of concluding the case and passing sentence on the accused, without calling upon them to establish the alibi pleaded by them; and of seeking evidence counter to this plea, from another functionary, the head of Police, by whom it was put in some days after the said sentence had been passed.

9. The Judges are furthermore of opinion, that an appropriate sentence was not given in the case. The processions had been carried out, and the public peace was not threatened at the time; so that there was nothing before the Magistrate to call for the precautionary measure of requiring security from the parties against a breach of the peace. The proper sentence to have passed, it appears to them, was to have subjected the parties to fine, for having conspired to set at nought the Magistrate's order prohibiting the processions; and such a measure would doubtless have had a wholesome effect in deterring the parties from future practices of the kind.

10. From the Acting Magistrate's Return to the Court's Precept of the 25th May last, it appears that Mr. Thomas, in a letter to the Government, under date the 28th July 1856, described the nature of the restraint to which the Memorialist was subjected, viz., that of being merely placed under the surveillance of a Peon; and the Judges presume that this explanation was satisfactory to the Government, as it appears to be to them.

11. The Judges thus see irregularities and want of judgment evinced by the Magistrate, but nothing to warrant the accusation of the Memorialist that the Magistrate dealt with him harshly. On the contrary, the sentence of the Magistrate is, they think, to be objected to not only for its inappropriateness, but also on the score of its leniency.

12. The Judges observe that the offence of the Memorialist was one calculated to lead to the gravest consequences, and should, in their opinion, have been visited by a heavy fine, especially as it appears by previous proceedings, namely by reports made by the Town Police Ameen to the then Acting Magistrate, Mr. Underwood, under dates the 21st February and 3rd March 1852, that the Memorialist was an influential and turbulent character; and had then acted in defiance of orders prohibitory of such processions as are herein adverted to.

(True Extract)

(Signed) C. F. CHAMIER,

Acting Register.

To the Chief Secretary to Government.

No. 80. From J. R. ROYSON, Esq., Honorable Company's Solicitor; to the Chief Secretary to Government, dated June 5th 1858, No. 293.

Minutes Consultation, dated 19th April 1858, No. 501, Judicial Department.

SIR,
With reference to the Extract from Minutes of Consultation, noted in the margin, I have the honor to report that neither of the judgments delivered by the Supreme Court at Madras in the action brought by Bavany Lallah against Mr. Edward Brown Thomas, of the Madras Civil Service, when on the 18th June 1856, His Lordship the Chief Justice sitting alone gave a verdict for the plaintiff with 1000 Rupees damages and when on the 3rd October 1856 their Lordships the Chief and Puisne Judges, sitting together, set aside that verdict and ordered a verdict to be entered for the defendant (Mr. Thomas,) was previously written and I am therefore unable to obtain an authentic copy of either of them; but I send herewith for transmission to the Honorable Court of Directors the issues of the *Athenaeum* newspaper on the 21st and 24th June and 7th October 1856, and the issues of the *Spectator* newspaper on the 19th and 20th June and 6th October 1856 which contain reports of the trial and of the subsequent argument of the rule to set aside the plaintiff's verdict and enter a verdict for the defendant, I likewise enclose a copy of the rule Nisi and of the rule making it absolute.

I have read the reports in the accompanying newspapers above adverted to and have also compared them with Counsel's notes and although they contain some inaccuracies, they are in my opinion sufficiently correct in all substantial points, for the purpose for which the Honorable Court requires them.

St. George, Judicial Consultation, 2nd July 1858.

No. 3262 of 1856.

IN THE SUPREME COURT OF JUDICATURE AT MADRAS.

the Grace of God of the United Kingdom of Great Britain and Ireland,
HEN, Defender of the Faith.

Fourth Term, 12th September 1856.

Soucar. } UPON the motion of Mr. Salmon of Counsel for the Defendant
THOMAS. } and upon hearing read the Record of the Issue joined between
the said parties, It is ORDERED that the Plaintiff upon notice
of this rule to be given to his Attorney shall shew cause to this Court within
four days after service thereof why the verdict obtained in this action should
not be set aside and a nonsuit entered on the ground that under the provisions
of the Statutes XXI, George 3rd, Chapter 70, Sections 24 and 25 and XXXVII
George 3rd, Chapter 142, Section 14 the Charter of the Supreme Court of Madras
and the Regulations in force in the Presidency of Fort Saint George, the said
liable to the Supreme Court in an action for damages the acts proved appearing
to have been done by him as a Provincial Magistrate exercising a Judicial office in
with the Judicial office of Magistrate of Coimbatore a place within the Presi-
dent George, and the said Plaintiff being a Hindoo subject to his jurisdiction,
ORDERED that in the mean time and until this Court shall otherwise order
judgment upon the said verdict be stayed.

By the Court.

(Signed) WILLIAM A. SERLE,

Prothonotary.

BOYSON and MILLER,

Defendant's Attorneys.

No. 3544 of 1856.

IN THE SUPREME COURT OF JUDICATURE AT MADRAS.

the Grace of God of the United Kingdom of Great Britain and Ireland,
HEN, Defender of the Faith.

At a Court held this 3rd day of October 1856, in
the vacation after the 4th Term 1856.

Present.

SIR CHRISTOPHER RAWLINSON, *Knight, Chief Justice.*

and

SIR WILLIAM WESTBROOKE BURTON, *Knight,*

One of Her Majesty's Justices.

Sowcar } FORASMUCH as upon hearing read a Rule Nisi made in this
THOMAS. } action on the part of the Defendant bearing date the 12th day
of the last, whereby it was ordered that the Plaintiff, upon notice of the said
rule given to his Attorney should shew cause to this Court within four days
after service thereof why the verdict obtained in this action should not be set aside and
entered on the ground that under the provisions of the Statutes XXI, George
3rd, Chapter 70, Sections 24 and 25, and XXXVII George 3rd, Chapter 142, Section
14 the Charter of the Supreme Court of Madras and the Regulations in force in the
Presidency of Fort Saint George the said Defendant was not liable to the Supreme
Court in an action for damages the acts proved appearing in evidence to have been
done by him as a Provincial Magistrate exercising a Judicial office in a country Court
with the Judicial office of Magistrate of Coimbatore a place within the Presidency
of Fort Saint George and the said Plaintiff being a Hindoo subject to his jurisdiction
it was further ordered that in the mean time and until this Court should

Fort St. George, Judicial Consultation, 2nd July 1858.

otherwise order the entry of final Judgment upon the said Verdict should be stayed. A motion was this day made by Mr. Salmon and Mr. Ritchie of Counsel for the said Defendant for an order that the said Rule Nisi should be made absolute. And upon Mr. Norton of Counsel for the said Plaintiff appearing upon the said motion and shewing cause against the same. It is ordered that the said Rule Nisi be made absolute.

(By the Court.)

(Signed) BOYSON and MILLER,
Defendant's Attorneys.

(Signed) WILLIAM A. SERLE,
Prothonotary.

No. 81. ORDER THEREON, No. 886; dated 2nd July 1858.

Resolved, that copies of the foregoing communications be furnished to the Honorable the Court of Directors, in reference to their Despatch of 16th February, No. 3 of 1858.

(Signed) T. PYCROFT,
Chief Secretary.

Judicial Department

No 886

*Extract from the Minutes of Consultation
dated 2nd July 1858.*

Read the following Papers:-

*Exh. from Proc. of the London Board
(Here enter 22nd June/58 No 45)
Letter from the Honble Co's. Solicitor
(Here enter 5th June/58 No 293)*

*Resolved that copies of
the foregoing communications
be furnished to the Honble the
Court of Directors in reference
to their Despatch of 16th Feb
No 3 of 1858.*

*Attest
T. Pycroft
Chief Secretary*

1858-46 JP

R. Lane: 22 July.

Procedural 1858 Report

1858

W. H. by the day
1858

Extract from 1858

C. No. 39

1858

1858

1858

79 @ 81

c 26 June
R 1 July