M.R.O. 1—39,000—16-10-19.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 1070-1071 Press ~~Mis~~

14-18

Dated 8 — 8 — 19 18 8.19

Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department, from 6th to 12th August 1859.

Read the following letters.

No. 14. From Messrs. B. CUNLIFFE, C. DENISON and others; to T. PYCROFT, Esq., Chief Secretary to Government, Fort Saint George, dated July 1859.

Having addressed the Commissioner of Police with a view of terminating an annoyance to which we are subject, by the playing on Native instruments in the house opposite to that in which we reside, and having received a reply from him of his inability to interfere, though he obligingly forwarded a copy of our remonstrance to the Chepauk Agent; and that Officer having also unsuccessfully endeavoured to obtain a compliance with our wishes, by writing to the owner of the house in question, the Begum Azeem-ul Nissa, a widow of the late Nuwab, we beg respectfully to approach the Government, with a request that means may be taken for the abatement of that which has become a real nuisance to the neighbourhood.

2. The noise commences at day-break, continues at intervals during the day and again in the evening. We have borne with it for one month, and as there is every appearance of its permanency, we must solicit the Government to protect us from this inconvenience.

3. Putting aside the question of either of us, or of our neighbours, being in ill health, or indisposed, we must submit that it is, under any circumstances, unreasonable, that we, as Europeans, should be thus annoyed by those who have voluntarily taken up their abode amongst us.

4. Did we choose to inhabit that portion of this City, which is occupied by the Native population, we must, we acknowledge, tolerate their customs, however distasteful to us, but when one of that class elects to reside in the European quarter, we submit that he should not be permitted, even under cover of following the usages of his nation, to annoy and seriously inconvenience his neighbours.

Forwarded for the report of the Commissioner of Police.

Fort Saint George,
25th July 1859.

(Signed) T. PYCROFT,
Chief Secretary.

To the Commissioner of Police.

No. 15. From Colonel J. C. BOULDERSON, Commissioner of Police; to T. PYCROFT, Esq., Chief Secretary to Government, Fort St. George, dated 26th July 1859, No. 102.

1. I have the honor with reference to an Order of Government received from you, with a letter signed by B. Cunliffe, Esq., and others, complaining of annoyance to which they had for a long time been subjected, by the playing of Native instruments of music in the house of the Begum Azeem Oon Nissa, to state, that having no power to put a stop to it as Commissioner of Police, I wrote to Doctor Balfour and requested his interference, as Government Agent at Chepauk, to put a stop to the nuisance complained of. It was the second occasion on which I have had to address him on the same subject, the first complaint of a similar nature was made by W. H. Crake, Esq., copy of the correspondence which took place is annexed for your information. Complaints of a like kind are frequent, and attempt is always made to induce the parties to cease from annoying their neighbours, sometimes with success, sometimes without.

2. I will now quote the only Section of the Police Act which gives to the Commissioner of Police any authority, and you will observe, that it is limited to offences committed in any public street, road, thoroughfare or place of public resort.

Section LXXXI.
Penalty for the following offences in public streets, &c.

Whoever, within such limits as shall be from time to time defined by the Commissioner of Police, with the sanction of the Local Government, in any public street, road, thoroughfare, or place of public resort, commits any of the following offences, shall be liable to a fine not exceeding twenty Rupees.

Beating drums, tom-toms, &c.

Clause 12.—Whoever beats a drum or tom-tom, or blows a horn or trumpet, or beats or sounds any brass or other metal instrument or utensil, except at such times and places as shall be from time to time allowed by the Commissioner of Police.

Fro

3. In consequence of the number of complaints that had reached this Office, and the inconvenience which many persons had been put to, and my being unable to interfere with authority for their relief, I availed myself of the opportunity offered by the Order of Government under date 28th April, in which I was directed to state, what amendments to Act XIII of 1856 were in my opinion necessary, and with reference to the subject under notice, to submit the following remark, and I trust the Honorable the Governor in Council will afford his powerful support in aid of the request which I then made, viz., that Clause 12 be removed from the preamble of Section LXXXI.

Section LXXXI.

13. "The usefulness of Clause 12 of this Section might be much extended, and that to the great advantage and comfort of the public, by merely removing it from the preamble of the Section and that because it is a common practice here in many pagodas, and for Native gentlemen of rank, especially Mahomedans, at certain seasons, for days and weeks together, to beat tom-toms and other noisy musical instruments at untimely hours of the night, whereby the rest of their neighbours is much disturbed. It seems to me necessary that the Commissioner of Police should be vested with power to preserve certain hours of the night sacred to rest, and thereby to put a stop to a nuisance which has caused much complaint."

Resolved that the above letter with that on which it reports, be forwarded to the Advocate General for his opinion, whether under Act XIII, 1856, the Commissioner of Police has power to abate the nuisance complained of—and if not, whether there are any other means whereby it might be abated.

Fort Saint George, 30th July 1859.

(Signed) T. PYCROFT,
Chief Secretary.

To the Government Solicitor, with letter from Mr. B. Cunliffe, and others.

No. 16. From J. R. BOYSON, Esq., Government Solicitor; to the Chief Secretary to Government, dated 2nd August 1859, No. 1355.

I have the honor to acknowledge the Order of Government, dated 30th July 1859, on letter from the Commissioner of Police to Government, dated 26th Idem, No. 102.

I submitted same for the consideration of the Advocate General, and

I now forward a copy of his opinion.

COPY—OPINION.

I am clearly of opinion that the Commissioner of Police has no jurisdiction or power under the Police Act XIII of 1856, (Section 81, Clause 13,) to put a stop to this nuisance. It was on this ground that in my opinion of the 13th June last, I recommended that Clause XIII should be made a separate Section by itself, independent of, and unqualified and unrestricted by the commencing words of the 81st Section, which render many of the subsequent provisions quite nugatory and inoperative as in the present instance.

There are, however, three other aways in which the sufferers from this nuisance, destructive as it is of comfort during the day, of sleep at night, and consequently (as most Medical men I apprehend would testify) of health, might proceed to put a stop to it.

1stly.—By Indictment.—There is a very old case, *Rex v. Smith*, 2 Strange, 704, (it is Vol. I in some editions) in which the "making great noises in the night with a speaking trumpet to the disturbance of the neighbourhood" was held to be a nuisance.

2ndly.—By a Civil action for damages, *Rex v. Dewshep and another*, per Lord Ellenborough, 16 East, 196. Any person who could prove that the noise was such in the day as to prevent him from attending to his regular official or professional business, or such in the night as to prevent him from sleeping, and thereby to injure his health; or the proprietor or renter of the house in which these gentlemen reside, called I believe "Club Chamber," if he could prove that the *noise* had *driven away any of his lodgers*, would, I conceive recover damages from the perpetrator of the nuisance.

Proceedings of the Madras Government, Judicial Department, from 6th to 12th August 1859.

3rdly.—By applying to the Supreme Court in its Equity jurisdiction for an Injunction to restrain the party from committing or continuing this nuisance. Lord Eldon in *the Attorney General v. Nichol*, 16 V, 342, refers to Lord Hardwick's decision (1st Dickens, 164) in a similar case, and says that the ground of the Court's interference is, "that sort of material *injury to the comfort of the existence* of those *who dwell in the neighbouring house*, requiring the application of *a power to prevent* as well as remedy an evil for which damages, more or less, would be given in an action at law." In this case, however, Lord Eldon *refused* an Injunction on the ground that an action at law was pending; and in general, if there be *any* doubt as to the right to damages, the Court of Chancery requires the plaintiff to establish his right at law, *before* it will interfere by way of Injunction. Lord Cranworth and the Lords Justices of Appeal have laid down the law very fully and clearly in the case of *the Attorney General v. the Sheffield Gas Company*, 17*th Jurist*, 577.

(Signed) THOS. SYDNEY SMYTH,
Advocate General.

August 1st, 1859.

(True Copy.)

(Signed) J. R. BOYSON,
Government Solicitor.

No. 17. ORDER THEREON, 8th August 1859, No. 1070.

Resolved that a copy of the letter from the Commissioner of Police and of the opinion of the Advocate General, be communicated to Messrs. Cunliffe, Denison and others, in reference to their letter, and that they be informed, that in the event of the annoyance of which they complain continuing, and of their electing to proceed against the Begum, in any of the modes pointed out by the Advocate General, the Government will be prepared to grant them the consent required by Act XXXVII of 1858.

2. Resolved also, that the papers be communicated to the Government Agent at Chepauk, and that he be instructed to inform Azeem-Oon Nissa Begum, that if she continues to disturb the neighbourhood in the manner complained of, and proceedings are in consequence instituted against her in the Supreme Court, the Government will not afford her protection under the Act.

3. Resolved also, that these papers be forwarded to the Member for Madras of the Legislative Council, in reference to the letter from this Government under date 24th June last.

(Signed) T. PYCROFT,
Chief Secretary.

No. 18. To H. FORBES, Esq., Member for Madras of the Legislative Council of India, dated Fort Saint George, 8th August 1859, No. 1071.

From Messrs. B. Cunliffe, C. Denison and others, July 1859.
From the Commissioner of Police, 26th Idem.—*Enclosures in manuscript.*
Advocate General's opinion, 1st August 1859.

In continuation of my letter, 24th June last, No. 860, I am directed to transmit to you copy of the correspondence noted in the margin, with reference to para. 13 of Colonel Boulderson's letter, 31st May last, to the Government Solicitor, and para. 17 of the Advocate General's opinion, 13th June last, which were communicated to you with the letter cited above.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. F. Cartledge.

Baker's Gardens
Poonamallee Road
Madras, 18th April, 1857.

Colonel J. C. Boulderson
Chief Commissioner of Police
Madras

Sir,

I have the honor to bring to your notice the very serious inconvenience suffered by myself and family in common with others residing in the immediate neighbourhood of my House, from the constant beating of Drums and tom-toms by the Servants of the Native Family residing opposite my Compound Gates.

In the hope that this nuisance would be of a short duration, I have been reluctant to apply to you for assistance in obtaining its abatement, but it has now continued for some weeks, and I have no hesitation in asserting that unless it is put a stop to, the value of the property in its immediate neighbourhood will be deteriorated - it will compel people to quit their houses and tenants will be unwilling to occupy premises in the immediate vicinity of a noise, that amounts to a nuisance to people in health, but which is absolutely intolerable to persons suffering from illness.

I trust it may be in your power under the new Police Act to forbid the continuance of this nuisance or at least direct that the instruments be beaten on the Southern side of the Compound as remote as possible from the High Road and the residences of other people.

I have the honor to be
Sir
Your most obedient
Servant
(Signed) W.m Hamilton Drake

From

No 233.

From
Colonel J. C. Boulderson
Commissioner of Police

To
C. G. Balfour Esqre
Government Agent at
Cheplauk

Sir,

I have the honor to forward for your perusal a letter* to my address from Mr William Hamilton Drake in which he complains that the rest of his family is constantly disturbed by the frequent beating of tom-toms in the Garden opposite to the house in which he resides on the Poonamallee Road occupied at the present time I believe by Her Highness the Nabob Begum.

Will you do me the favor to take such measures as you may deem necessary to cause the abatement of the nuisance complained against and permit me to say that I think it is expedient in order to avoid the question of the right to beat tom-toms at unreasonable hours by the family of his late Highness being mooted, and publicly disputed, that it would be prudent for them to endeavour to render their place of residence as little disagreeable to their neighbours as possible.

I have the honor &c
Sd/ J. C. Boulderson
Commissioner of Police

Madras Police Commissioner's Office
23rd April 1857.

Government

* to be returned

No 162 of G. A.

Government Agents Office
9th June, 1857.

From
Surgeon C. G. Balfour
Government Agent at Cheplauk

To
Colonel J. C. Boulderson
Chief Commissioner of Police

Sir,

With reference to your Communication of the 23rd April last and its enclosure, herewith returned, I have the honor to enclose a reply from Her Highness Khyre oon Nyssa Begum.

It appears my duty to mention as my opinion that priority of occupation should decide this Case.

I have the honor to be &c
Signed/ C. Balfour
Government Agent

(True Copies)

Commissioner of Police

* Requested to be returned.

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To

J. Pycroft Esqr.

Chief Secretary to Government

Fort Saint George.

Sir,

I having addressed the Commissioner of Police with a view of terminating an annoyance to which we are subject, by the playing on Native instruments in the house opposite to that in which we reside, and having received a reply from him of his inability to interfere, though obligingly furnished a copy of our remonstrance to the Chepauk Agent, and that Officer having also unsuccessfully endeavoured to obtain a compliance with our wishes by writing to the owner of the house in question the Begum Ayeemah Nissa, a widow of the late Nuwab, we beg respectfully to appeal to the Government, with a request that some means may be taken for the abatement of that which has become a real nuisance to the neighbourhood.

2. The noise commences at daybreak, continues at intervals during the day and again

1859 Dispt

Enclosure in a letter from the Commissioner of Police dated 20th July 1859. Recd 30th July 1859.

From
W. St. Clair Esqre
Acting Commissioner of Police
Madras.

Dated 20th July 1859.
Rec'd 30th July 1859.

Having reference to notice this day issued by Himself & Council in consequence of the numerous complaints made to the Commissioner of Police, from Residents in the neighbourhood of Chepauk & adjacent Streets & Lanes, of the annoyance occasioned by the Playing of Native Musicians on Festival days and Nights, the Police Force is hereby directed to abate the same as much as possible.

Madras
the 19th July 1859.

W. St. Clair
Acting Commissioner of Police

Resolved that the above letter with that on which it reports be forwarded to the Advocate General for his opinion whether under Act XIII. 1856 the Commissioner of Police has power to abate the nuisance complained of — and if not whether there are any other means whereby it might be abated

Fort St George
30 July 1859.

Chief Secy

Sol Solicitor — with letter from Mr B. Ouchterlony dtd 30th
Returned 30 July. Instructed and returned 29 Aug. 59.

again in the evening. We have borne with it for one months, and as there is every appear:ance of its permanency, we must solicit the Government to protect us from this inconvenience.

3. Putting aside the question of either of us, or of our neighbours, being in ill health, or indisposed, we must submit that it is, under any circumstances, unreasonable that we, as Europeans, should be thus annoyed by those who have voluntarily taken up their abode amongst us.

4. Did we choose to inhabit that portion of this City, which is occupied by the Native population, we must, we acknowledge, tolerate their customs, however distasteful to us, but when one of that class elects to reside in the European quarter we submit that he should not be permitted, even under cover of following the usages of his nation, to annoy and seriously inconvenience his neighbours.

We have the honor to be,

Sir,

Your most Obedient Servants

Madrid,

July 1859

R. Cunliffe

Thos. Dennison

W. H. Kinkelly

6

C. W. Cunliffe Merryn

Lieut

A. B. Stephanie

W. H. Hill

Lieth
Council 5/8/59.

Judicial Department

Proceedings of the Madras Government.

Read the following letters

From Messrs Cumliffe Denison & others — Here enter — July 1859
the Commissioner of Police — " " 26th " " No 102.
Government Solicitor — " " 2d August " " 1055.

Order thereon 8th August 1859. No 1070.—

Resolved that a copy of the letter from the Commissioner of Police and of the opinion of the Advocate General, be communicated to Messrs Cumliffe, Denison, and others in reference to their letter, and that they be informed that in the event of the annoyance of which they complain continuing, and of their electing to proceed against the Begum, in any of the modes pointed out by the Advocate General, the Govt will be prepared to grant them the consent required by Act XXXVII of 1858.

Resolved

14

No 1406 of 1859.
Public Department
Fort St George 25th July 1859.
From
H. Cumliffe Esq
Messrs Denison & others
To
The Chief Secretary
to Government.

No 1218.

Under the circumstances represented by Messrs Cumliffe, Denison & others in the letter from the Commissioner of Police dated 23d instant, I am directed to submit for the consideration of the Right Honble the Governor in Council the accompanying letter from Messrs Cumliffe, Denison & others, requesting that the consent of Government may be given to their proceeding against the Begum of Sardhana in the Supreme Court of Calcutta, under the provisions of Act XXXVII of 1858.

I have the honor
to be
Sir
Your most obedient
humble servant
[illegible]

Forwarded for the consideration of the Commissioner of Police

Sec to Govt
25 July 1859

J Lyon
Chief Secy

Com. of Police Dept 25th
Entd 26th July 1859
J Maseman
Commissioner of Police

2. Resolved also that the papers be communicated to the Government Agent at Chepauk and that he be instructed to inform Azeem ~~on~~ Nissa Begum, that if she continues to disturb the neighbourhood in the manner complained of, and proceedings are in consequence instituted against her in the Supreme Court, the Government will not afford her protection under the Act.

3. Resolved also that these papers be forwarded to the Member for Madras of the Legislative Council in reference to the letter from this Government under date 24th Inst. last.

Mr. Cunliffe - Division
Lt. Col. Chepauk
Lt. Colleton

Dispd 11th Dec. 1856

J.P.

Lt. Col.

Rec'd 26 Aug.
Rd. 24th June 1859 Aug. 31.

Rec'd from Govt. 12 Aug.
Judicial Cons. 18th Aug. 1859
No. 9 of 1859.

Proceedings of Govt.

Judicial Dept. 12th Aug. 1859.
No. 1071.

To The Members for Madras of the Legislative Council.
Dated 8th Augt. 1859.

Transmitting copy of the correspondence noted in the margin.

Judicial Cons. 5/8/59

Judicial.

No. 1071.

H. Forbes Esqre.
Member for Madras of the
Legislative Council of
India.

Sir-

In continuation of my letter, 24th June last, No. 860, I am directed to transmit to you copy of the correspondence noted in the margin with reference to para 13 of Col. Bowdon's letter, 31st May last to the Govt. Solicitor & para 17 of the Advocate General's Opinion, 13th June last, which were communicated to you with the letter cited above.

From Messrs. B. Cunliffe, C. Denison & others, July 1859.
" the Commissioner of Police, 25th Idem. — Enclosures in manuscript.
Advocate General's Opinion, 1st Augt. 1859.

Fort St. George
8 August 1859.

We have letters to you
12

Lib 26 Enclosures

Pro: of Govt 12 Augt

Judicial 1859 Sept

No 1071

To
The Member for Medina
of the Leg: Council
of Judicia

of 8th August 1859

14 @ 18