M.R.O. 1—39,000—16-10-22.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 1478 Press Mis.

11—12

Dated 3—11— 1925

Not to be folded or roughly handled

Listed

Proc. of Govt. 18th Nov.r

Judicial 1859 Departt.

№ 1479

Proceedings of Govt.

Dy 3rd November 1859.

13414

No. 11. Read the following letter from T. CLARKE, Esq., Magistrate of Madura; to T. PYCROFT, Esq., Chief Secretary to Government, Fort Saint George, dated 12th October 1859, No. 213.

I have the honor to submit the accompanying correspondence* with the Session Judge, in which the power of the Magistrate to interdict a procession, going down a certain street, on the ground that thereby ill-blood was gendered, animosities created, and the public peace endangered, is denied and to add to it a communication† since received from the Joint Magistrate. It appears from the Joint Magistrate's proceedings, which led to the interference of the Session Court, that the contending parties are Christians and Hindoos, that the carrying the procession down the street objected to is a novel procedure, that the 'Hindoos' prejudices and passions are inflamed by this act, that, though they have, with a view of not disturbing the peace, allowed the parties carrying the procession to proceed down the street in question, for two years, they have done so under protest, that, in the present year, there was a disturbance, which was brought under the cognizance of the Joint Magistrate, who has, after enquiring into the matter and on being satisfied that the carrying the procession down the street was not usual, and that the Christians have streets round their church, down which the procession had hitherto been carried, issued his interdict appealed against.

* Enclosures Nos. 1 to 5.

† No. 6.

2. The Joint Magistrate has observed that the "innovation is not the only objection raised, but the passage of the procession, along the Pagoda street, is offensive to the prejudices of the Hindoos and therefore must give rise to much excitement, and be a productive source of ill-feeling, the ebullition of which, will necessarily result in disturbance, and serious breaches of the peace, to prevent which is the evident duty of the Magistracy."

3. The Session Judge, in reviewing the Joint Magitrate's order adverting to the admissions that the road in dispute was a public thoroughfare, used indiscriminately by Hindoos and Mahomedans, and that the Christians had also used it for the last two years, observed that the Joint Magistrate "had exceeded his authority in depriving the latter of the vested rights, and that, while Mahomedans are permitted to carry the procession along the Pagoda street, the prejudices of the Hindoos towards the Christians, cannot be accepted, as a ground for depriving them of their common Law-right."

4. He denies the competency of the Joint Magistrate "to dispose of the question of the right of way," and rules that "if the Hindoos consider they have an exclusive right to the street in question, they must prove that right, before they can be justified in interfering with others, for using the thoroughfare." He admits it to be the "undoubted duty of the Magistrate to prevent disturbances and breaches of the peace, but until it is clearly shewn that the right of way is restricted, by Law to a certain class of people, all have clearly a common Law-right to use the thoroughfare and should be protected, the energies of the Magistracy being directed against those, who would unlawfully molest parties acting in prosecution of their rights."

5. These proceedings of the Session Judge were furnished to the Joint Magistrate, who verbally intimated to the Magistrate his intention of soliciting a review of them.

6. The Joint Magistrate appears to have been prevented carrying out his purpose by ill-health, which necessitates his leaving the country; but he intimated to the Roman Catholic Priest at Dindigul, his intention to appeal and therefore his inability to permit the Christians' procession to proceed along the road in question.

7. From this decision, the Reverend J. Rapatel appealed to the Session Judge, who animadverted on "the improper course adopted by the Joint Magistrate, who, "he remarked," had entirely forgotten his position as a Magistrate, he could not or should not have any interest in the matter at issue, his clear duty being to obey the orders of the superior Court, leaving the interested party to appeal against them if they see fit."

8. On the receipt of these proceedings I submitted to the Session Court that this was not a mere question between parties, but one in which the public interest and those affecting the maintenance of the peace were concerned and referred him to the Order of Government of the 26th March 1859.

9. It did not appear to me that processions could be deemed "vested rights" or "common Law-rights," and I questioned the propriety or safety of allowing the continuance of customary processions, when the doing so would lead to a breach of the peace or inflame the prejudices or passions of an ignorant and fanatical people.

10. The Session Judge in reply declared himself "bound in his judicial awards by the Law and not to be influenced by Government Orders, and remarked that he could not imagine that the Government for an instant intended to dictate to the Courts of Law the course they should pursue in disposing of cases."

11. Referring to the decision of the Civil Court in Appeal Suit, No. 141 of 1857, dated 9th December 1857, the Session Judge observes "he is bound to accept it, as the true exposition of the Law, that caste processions cannot be interdicted the use of the public roads, provided they are conducted in a proper or orderly manner, and those who obstruct or prevent them without shewing their right by Law do so at their own peril," and he leaves it to the Magistrate to carry out the order of the Court in such a manner as may be necessary to maintain authority.

12. It appears to me the Session Judge, in his proceedings, mixes up and confounds public duties with private rights. The Joint Magistrate was acting solely as a disinterested public Officer, anxious for the comfort and well-being of the community, and therefore bound to prevent not only actual breaches of the peace, but such acts as have a tendency to provoke or excite others to create it. The Session Judge appears to me also to have overlooked a most important Clause in the Decree quoted by him and of which he makes such large use.

13. It runs thus—"In such a way as the Magistrate may not object to as dangerous to the public safety." Further, I question whether the case laid down in the Decree quoted by the Session Judge is strictly analogous to the one under reference. In that case the subject of the procession was a gooroo, in this the insignia and emblems of religion were being paraded about.

14. Again the Session Judge's order interferes materially with the discretionary power vested in Magistrate and Police Officers as guardians of the peace, and which is so essential to the efficient discharge of their duties as Officers of the peace.

15. It is the undoubted duty of the Magistrate to protect every man in the exercise of his just rights and civil liberties, but it does not appear to me that to carry a procession down a street with noisy demonstrations, having a tendency to provoke and excite animosities and ill-feeling and violence, constitutes any part of a man's civil liberties, and I hardly think a Magistrate would be warranted in resorting to extreme measures to support a party who insists by unusual and offensive proceedings, in infringing on the liberties of his fellow-men.

16. The order of the Session Judge therefore appears to me not only to be at variance with the declared judgment of the Foujdaree Udalut and to contravene the Orders of Government quoted in the margin,* but also very seriously to cripple and impair the powers of the Magistrate as the conservator of the peace.

* Minutes Consultation 20th August 1854, No. 614, Judicial Department, paragraph 4
Do. 8th Septr. 1854, ,, 643, do. do. ,, 2
Do. 6th Octr. 1854, do. do.

17. The Court of Foujdaree Udalut have more than once declined expressing an opinion on a reference from the Magistrate and seem to prefer that the questions should come before them in appeal in regular form.

18. Should the Government be satisfied that the order of the Session Judge enunciates principles and doctrines tending to impair the efficiency of the Magistracy, I would respectfully submit for their consideration whether it would not be desirable to direct the Government Pleader to move the Foujdaree Udalut to cancel the order and issue the instructions, which appear necessary, to the Session Judge in regard to the duties and powers of the Magistrate.

Proceedings of the Madras Government, Judicial Department, for the month of November 1859.

Extract from the Proceedings of the Session Court of Madura, under date the 14th July 1859.

Read Miscellaneous Petition No. 56 of 1859, presented 1st July, by Moya Coodoomben, complainant in Register No. 26 of 1859 on the Joint Magistrate's file, appealing against that Officer's decision in a charge of assault, and his prohibiting petitioner making use of a certain thoroughfare.

Read also the order appealed from.

The petitioner complained against certain parties for preventing the passage of a Christian procession through one of the streets in the Village of Balasamoodrum and with assaulting and beating him.

The Joint Magistrate discredited the evidence to the assault, and acquitted the accused, and directed that the Christians should limit themselves on the occasion of their religious processions to the customary route by the "kosoova theroovoo" or Potter's street.

The Session Judge has given the case his best attention, as regards the acquittal of the accused on the charge of assault, the Joint Magistrate being competent to dispose of the charge, it is necessary to remark further that it would appear that there was a disturbance, and riot consequent on the accused interfering with the progress of the Christian procession down a certain admitted thoroughfare.

The question before the Court is, whether the Joint Magistrate can legally deprive the petitioner of a common right of way, along a public thoroughfare. He states that "it is evident that the custom of carrying the images of the Roman Catholic Christian Church in procession along the streets through which the right of way is now claimed for them, has not hitherto obtained."

"*It is true that the Christians have done so for the last 2 years, but under protest,* as is clearly indicated by two reports of the Natamgar to the Head of Police in 1856 and 1857."

"The innovation is not the only objection raised, but the passage of the procession along the Pagoda street *is offensive to the prejudices* of the Hindoos, and therefore must give rise to much excitement, and be a productive source of ill-feeling, the ebullition of which will necessarily result in disturbances, and serious breaches of the peace, to prevent which is the evident duty of the Magistracy."

"He further admits that processions of the different sects of the Hindoos, and *also those of Mahomedans* pass along the street, yet from their being customary, they have not been objected to."

The petitioner states that in former years the street was paraded by the Christian processions, and in reply to the Joint Magistrate's statement, denies that when the procession went through the streets *last year*, there was any objection made, and avers that the Natamgar's reports alluded to, had no reference to the present dispute, but to certain disturbances between the right and left hand castes. That no orders were issued prohibiting petitioner bringing round his procession, nor were the Peons, as alleged by the Joint Magistrate, sent by the Police Ameen, to *stop* the procession, but to prevent disturbance, that the parties who object to the procession have nothing to do with the street in question, or are residents of it; that the street which the Joint Magistrate has restricted him to, is too narrow to admit of the procession passing with ease. That it is unjust to allow some parties, and prohibit others to use the public road, he therefore prays that he may be allowed to proceed unmolestedly through the street as usual.

In the present case it is admitted, not only that the road is a public thoroughfare, but used indiscriminately by Mahomedans as well as Hindoos, and that the Christians have also used it for the last 2 years. It appears, therefore, to the Session Judge that the Joint Magistrate has exceeded his authority in depriving the latter of their vested rights, and that while *Mahomedans* are permitted to carry their processions along the Pagoda street, the *prejudices* of the Hindoos towards the Christians, cannot be accepted, as a ground for depriving them of their common Law-right. The reports of the Natamgar, presuming their purport to be as stated by the Joint Magistrate, cannot affect the question, nor is the Joint Magistrate competent to dispose of the question of right of way, the accused, or Hindoos, if they consider they have an exclusive right to the street in question, must prove that right, if questioned, before they can be justified in interfering with others, for using the thoroughfare. It is doubtless the duty of the Magistrate to prevent disturbances, and breaches of the peace, but until it is clearly shewn that the right

of way is restricted by Law, or custom having the force of Law, (and so adjudicatedly a competent tribunal) to a certain class of people, all have clearly a common Law-right, to use the thoroughfare, *and should be protected*, the energies of the Magistracy being directed against those who would unlawfully molest parties, acting in prosecution of their rights.

Having admitted that for the last 2 years, the Christians have used the street in question, even though under protest, the Joint Magistrate could not deprive them of its use, if the protest was made, the Officer receiving it should have referred the protesting parties to the Civil Courts, who could alone decide the matter, as laid down by the Sudder Udalut in Appeal Suit No. 41 of 1857, the right of way through a public thoroughfare "is inherent" in every subject of the State, and it lies upon those who would restrain him in its exercise to shew some "Law" or "custom" having the force of Law depriving him of the privilege. The Session Judge therefore resolves to annul so much of the Joint Magistrate's order appealed from, as affects the petitioner's right of way, through any public thoroughfare.

Extract from the Proceedings of the Session Court of Madura, under date the 13th September 1859.

Read Miscellaneous Petition No. 79 of 1859, presented 12th September 1859, by the Reverend J. B. Trincall, Roman Catholic Missionary, appealing against the order of the Joint Magistrate, prohibiting the use of a certain thoroughfare declared public by the Session Court in appeal.

Read letter from the Joint Magistrate to the Reverend J. Rapatel of Dindigul, dated 20th August, No. 46, objecting to the order of the Session Court, dated 14th July, and intimating *he intends* to *appeal* against it, and that consequently he cannot permit the Christian procession to proceed along the road in question.

Here enter Extract Proceedings, Session Court, 14th July 1859.

The Session Judge on a consideration of the above, is of opinion, that the Joint Magistrate has entirely forgotten his position; as a Magistrate he cannot have, or should not have, any interest in the matter at issue, his clear duty is to obey the orders of the superior Court, leaving the interested parties to appeal against them, if they see fit.

As pointed out in the proceedings of the Session Court, above noted, he cannot deprive any one of a right of way, and is bound to protect him in that right, and uphold authority, to say that a man is not to go a certain road, because another man will oppose him, is futile; the Magistrate's duty is to protect a man in his rights, not to deprive him of them, on the plea that if he exercises them they will lead to opposition; the party who would forcibly interfere with the proclaimed vested rights of another, must be prevented by the strong arm of the Law; and if he persists, punished accordingly. If the Joint Magistrate anticipates any disturbance, it is his duty to proceed to the spot, and see that the Law is upheld, and that those resisting it, are punished; he has no power to suspend the order of the Session Court, and if he does so, it must be on his own responsibility: instead of directing petitioner to explain to his congregation, the grounds on which the restriction has been ordered, the Joint Magistrate should have himself, or through his subordinates, informed the opposite party, that the Session Court having decided, that the road was a public thoroughfare, he could not allow any resistance to be made, so long as legitimate use was made of it; but that if dissatisfied with the Court's order, *they* should proceed in the regular way, by appeal, to have it reversed, but that till reversed by higher authority, he was bound in duty to uphold it and that those who chose to resist would do so at their own peril.

The Session Court has had no intimation of any appeal having been preferred, and seeing no cause for altering the views already expressed, declines to suspend the order passed, after full hearing, and which till suspended or reversed by *some higher authority* the Joint Magistrate is bound to carry out.

(True Extracts.)

(Signed) R. R. COTTON,
Session Judge.

To the Magistrate of Madura.

(True Copies.)

(Signed) T. CLARKE,
Magistrate.

Proceedings of the Madras Government, Judicial Department, for the month of November 1859.

RETURN.

The Magistrate has the honor to acknowledge the receipt of an Extract from the Proceedings of the Session Court of Madura, under date 13th September 1859, animadverting on the proceeding of the Joint Magistrate in not carrying out the order of the Session Judge of the 14th July last, allowing certain Christians to proceed in procession down a street in the Village of Balasamoodrum.

2. The Joint Magistrate, it appears, objected to the order of the Session Judge and intimated to the parties, in whose favor it was passed, that he intended appealing against it, and that consequently he cannot permit the Christian procession to proceed along the road in question.

3. The Session Judge has ordered that his order be carried out at all risks. The Magistrate is bound to submit to the order of the Session Court, and will issue instructions to the Joint Magistrate accordingly.

4. The Magistrate is not prepared to subscribe to the course the Joint Magistrate has pursued in this matter, it was clearly his duty to have submitted his reasons, for objecting to the Session Judge's order, for the consideration of that Officer, and, if needs have been, to have referred the matter to the Foujdaree Udalut and Government, but the state of the Joint Magistrate's health which renders it necessary for him to seek a change of climate is, the Magistrate believes, the reason he has been unable earlier to submit his remarks.

5. The Magistrate would observe that this is not a mere question between parties, but it is one in which the public interests and those affecting the maintenance of the peace are concerned.

6. And as the conservator of the peace, the Magistrate feels bound to question the correctness of the doctrines laid down in the Session Judge's proceedings of the 14th July last, and those now under acknowledgment.

7. In the former proceedings the Session Judge remarks on the Joint Magistrate "depriving the petitioner of a common right of way," that he "has deprived the Christians of vested rights" and of "their common Law-right" and observes that "the Joint Magistrate is not competent to dispose of the question of right of way; that, though it is doubtless the duty of the Magistrate to prevent disturbances and breaches of the peace, yet that until it is clearly shewn that the right of way is restricted by Law or custom having the force of Law and so adjudicated by a competent tribunal to a certain class of people, all have clearly a common Law-right to use the thoroughfare, and should be protected, the energies of the Magistrate being directed against those who would unlawfully molest parties in prosecution of their rights." The Magistrate cannot do better in this instance than refer the Session Judge to the Order of Government of the 26th March 1859, nor can he clothe his views in more appropriate language than is there found.

"The public high streets in all towns are the property not of any particular caste, but of the whole community, and every man, be his caste or religion what it may, has a right to the full use of them, provided that he does not obstruct or molest others in the use of them, and must be supported in the exercise of that right."

"By the full use of the streets, in the above passage was meant their full use for necessary and ordinary purposes, of which the carrying out of a dead body quietly for interment was clearly one. The same principle will regulate other cases. Thus in those instanced by Mr. Ratliff, every man must be regarded as having a natural right to proceed along the public highway in his usual conveyance, or to add an upper story to his house, and no obstruction to the exercise of such rights as these can be tolerated."

"The Gooroo, to whom the Acting Magistrate alludes, must, on the same principle, be regarded as at liberty to press along the public streets, in the same manner as other people, and is not to be prevented from so doing."

"But it does not follow that he is to be permitted to traverse the streets in procession, with flags and the like insignia, and if such a proceeding would be likely to excite disturbance, the Magistrate as the guardian of the public peace, should certainly prohibit it."

"Speaking generally, to use the public streets for the ordinary avocations of life, and to such an extent as the comfort and convenience of the individual may require, or to do any acts of a like character, is one thing, to go beyond this, as for example, to carry out processions or get up demonstrations hitherto unusual, thereby needlessly offending the prejudices of others and affording provocation and raising excitement, is another. In the latter case, the comfort and convenience of the public are in no way interested, and if such processions or demonstrations would be likely to create a tumult, and lead to a breach of the peace, they must be peremptorily interdicted, and the custom heretofore followed in such matters be rigidly maintained."

8. The people can have no common Law-right to proceed down streets with provocations to disputes and disturbance of the peace, nor does the Joint Magistrate, in preventing their so proceeding in any way interfere with rights of way or vested rights.

9. The Joint Magistrate had given this case a patient enquiry, he found that the procession of the Christians down the street "was only lately commenced," that "it was offensive to the prejudice of the Hindoos," "was productive of ill-feeling," and "was likely if persisted in to result in disturbances and serious breaches of the peace;" to prevent which, he most justly observes is the evident duty of the Magistrate.

10. He shews that though the Christians have for 2 years carried their procession through the street, it has been under protest.

11. The Session Judge has set aside all these weighty arguments and insists that his order of the 14th July shall be carried out on the ground that he is maintaining "common Law-rights," "vested interests" and "right of way."

12. Surely, processions are no vested rights nor common Law-rights, when they have been allowed for a long series of years and form part of the custom of the people; and, when they can be continued without infringing the public peace, of course, they may be permitted, but the Magistrate questions whether it is just in principle or wise in policy, to allow any parties even to continue such processions when they would create tumult or lead to a breach of the peace or inflame the prejudices or passions of an ignorant and fanatical people. Of course, when legal and just rights are interfered with and infringed, it is the duty of the Magistrate to protect the injured party and to prevent such injuries by all the means and appliances at his disposal; but this rule cannot, and does not, apply to practices causing just and real annoyance to others.

13. The Magistrate will issue an order to the Joint Magistrate to permit the procession to proceed and to call out to his aid, if necessary, the Military; but on the receipt of the Joint Magistrate's intended appeal he shall deem it his duty to make a reference on the subject to Government with a view to ascertain how far it is their wish their instructions above referred to should be carried out, and whether they may not deem it necessary to apply, through the Law Officer, to the Foujdaree Udalut for the issue of instructions to the Lower Courts in the matter. The Magistrate conceives the order of the Session Judge to be opposed to all the orders of the Government issued on the subject of processions, and quoted below.

Minutes Consultation, 29th August 1854, No. 614, Judicial Department, paragraph 4.

Minutes Consultation, 8th September 1854, No. 643, Judicial Department, paragraph 2.

Minutes Consultation, 6th October 1854, Judicial Department.

Given under my hand and the seal of the Magistrate of Madura, this 21st day of September A. D. 1859.

(Signed) T. CLARKE,
Magistrate.

To the Session Judge of Madura.

(True Copy.)

(Signed) T. CLARKE,
Magistrate.

Proceedings of the Madras Government, Judicial Department, for the month of November 1859.

Extract from the Proceedings of the Session Court of Madura, under date the 23rd September 1859.

Read return made by the Magistrate under date 21st September 1859, to the Proceedings of the Session Court, dated 14th July and 13th September.

Here enter Extract Proceedings of the Session Court, 14th July and 13th September.

1. The Magistrate contends that the orders of the Session Court, are at variance with the Orders of the Government, to whom he purposes appealing, and states that since the Court directs its order to be carried out, he will issue instruction to the Joint Magistrate, that it be so, and to call out the Military if necessary.

2. The Court would briefly observe, that it has no possible objection to the Magistrate acting as proposed should he think fit.

3. The Court in its *Judicial awards* is bound by *the Law*, and cannot be influenced by Government Orders, nor can it imagine that the Government, for an instant, intended to dictate to the Courts of Law the course they should pursue in disposing of cases.

4. It has been decided by the Court of Sudder Udalut, whose decisions the Lower Courts are bound to accept as the true expositions of the Law, that caste processions, cannot be interdicted the use of the public roads, provided *they are conducted in a proper and orderly manner*, and that those, who would obstruct or prevent them, without showing their right by Law or Custom, having the force of Law, (which does not exist) do so at their own peril. *Appeal Suit, Sudder Udalut, No.* 141 *of* 1857, *dated 9th December* 1857. The Court desire is not indifferent to the Orders of Government, which it is bound to respect, and in its to obey which, so long as they are compatible with the Law, it will yield to none, but it would most respectfully submit, that it cannot allow itself to be influenced by them, to act, or give a Judicial award, contrary to the principles by which it is sworn to administer justice.

5. As regards the measures which the Magistrate may consider it necessary to take to enable him to maintain authority, the Court has no concern, the Court is responsible for the order only; the Magistrate for the manner in which he carries it out.

6. The Court would remark further that the Proceedings of the 14th July were before the Magistrate, fully two months ago, and entertaining the views he now propounds, it was evidently within *his* province as *Chief* Magistrate, to have objected at once, as he now does, to the Court's proceedings. The Court cannot accept the excuse, made for the Joint Magistrate, who appears to have been in sufficiently good health, to have, without reference to the Court, issued his instructions, *that the Court's orders should not be carried out*, a line of conduct altogether indefensible, and one which of all others, was that, which would inevitably have led to a breach of the peace, which he tries to impress upon the Court, it was his object to prevent; for he could never have imagined, that the petitioners before the Session Court, having obtained order in their favor, from the Session Court, would submit to abide by that of the Joint Magistrate *which had been* over-ruled; while their opponents, seeing that they were backed up by the local authority, would not have hesitated to resist the passage of the procession. Fortunately, however, the petitioners brought to light the conduct of the Joint Magistrate and thus it is to be hoped prevented a riot, which would doubtless have taken place between the *contending parties*, but which, *now* if it takes place at all, which the Court has no reason to anticipate, will be between rioters and the authorities deputed to keep the peace.

(True Extract.)

(Signed) R. R. COTTON,
Session Judge.

To the Magistrate of Madura.

(True Copy.)

(Signed) T. CLARKE,
Magistrate.

JOINT MAGISTRATE'S REGISTER, No. 26 OF 1859.

Prosecutor.	*Defendants.*
Meyyakudumben.	1. Karruppan.
	2. Vellayan.
	3. Cooppun.
	4. Cooppan.
	5. Terumalai.
	6. Govinden.
	7. Kalee.
	8. Ramen.
	9. Chitren.
	10. Pathanjalee Iyen, Zilladar.

MISDEMEANOR.

Charge.—That the defendants did, on the night of the 23rd of April 1859, forcibly prevent the passage of a Christian procession along one of the streets in the village of Balasamoodrum, Iyempully Talook, and, at the same time and place, did assault and beat the prosecutor and others who accompanied him on the occasion.

Sentence.—It is very evident from the proceedings in the case that the custom of carrying the images of the Roman Catholic Christian Church in procession along the streets through which a right of way is now claimed for them, has not hitherto obtained. It is true that the Christians have done so for the last two years, but under protest, as is clearly indicated by two reports of the Natamgar to the Head of Police in 1856 and 1857.

The innovation is not the only objection raised, but the passage of the procession along the Pagoda street is offensive to the prejudices of the Hindoos, and therefore must give rise to much excitement and be a productive source of ill-feeling, the ebullition of which will necessarily result in disturbances and serious breaches of the peace, to prevent which is the evident duty of the Magistracy. Although it is stated that the processions of the different sects of the Hindoos as also those of the Mahomedans pass along the street, yet this appears to have been the custom and therefore not objected to. The customary route of the procession, viz., that termed the "kosova teroovoo" which leads from the Roman Catholic Church and back to it, can be followed, and the same object attained as by the more extended and circuitous course objected to, and to the former the Christians are directed to limit themselves on occasion of their religious processions.

It was owing to the Christians' obstinate persistence in resisting authority and continuing to traverse the street after being warned by Peons deputed by the Police Ameen to stop the procession, that the disturbance which took place arose.

The Joint Magistrate considers the evidence adduced against the accused is too precise and in detail to be the true statement of facts, when the circumstances of the confusion on such an occasion are taken into consideration, and he discredits it on this account and acquits them of the specific charge.

(Signed) A. P. HODGSON,
Joint Magistrate.

8th June 1859.

(True Copy.)

(Signed) T. CLARKE,
Magistrate.

From A. P. HODGSON, Esq., Joint Magistrate; to T. CLARKE, Esq., Magistrate of Madura, dated 30th September 1859, No. 53.

With reference to Extract from the Proceedings of the Session Court, under date 14th of July 1859, on Miscellaneous Petition No. 56 of 1859, appealing against my Magisterial

Proceedings of the Madras Government, Judicial Department, for the month of November 1859.

decision in a charge of assault and prohibiting petitioner making use of a certain thoroughfare in the Village of Balasamoodrum, in the Iyempully Talook, I have the honor to suggest the expediency of a reference being made to the Foujdaree Udalut with a view to the consideration of the propriety of the Session Judge's order, as I am of opinion, that it trenches on the discretionary power vested in me as Magistrate and guardian of the peace, and affects most seriously the influence which I should possess for the preservation of good order and quiet in my Division.

2. It would appear, that the Session Judge mistook the grounds on which my decision was passed, and, seemingly, considered it an interdiction of the ordinary use of a thoroughfare.

3. The procession along the main street was strictly an innovation, and, although it had taken place on two former occasions, yet protests were made against it through the Village Officers to the Head of Police but, apparently, without effect.

4. The people, consequently, on the attempt by the Christians to make use of the street for the 3rd time, opposed forcibly the passage of the procession, a proceeding which gave rise to a breach of the peace and the after enquiry by me.

5. The occurrence of the procession on 2 former occasions without interruption or forcible resistance cannot, in my opinion, be deemed sufficient to constitute a custom; nor does the fact of some of the sects of Hindoos and the Mussulman's using the street without impediment, for their processions, give the Christians any right to adopt the same course, inasmuch as the latter unlike the former have not custom and usage on their side.

6. In addition to this, the plea of necessity cannot be set up by the Christians for they have the streets around their church for their processions, and these they have hitherto used for this purpose. They urge the insufficient width of these streets, but in 1853, on a like plea being put forth, it was decided they had no grounds for complaint on this score.

7. The Christians by my order are not interdicted the use of streets for their processions, but are only confined to those which they have been in the habit of using.

8. If obstructions arise to prevent their free use of these streets, the Magistracy will of course interfere to clear away such obstructions, and give a free passage through those streets.

9. As I have mentioned before, I did not dispute the right of way to all along a public thoroughfare, but I do contend that it is not to be obstructed by processions when, as in the present case, they are both offensive to the people and not customary.

10. In addition to this, the Magistracy, as guardians of the peace, have, I believe, certain discretionary power given them in cases in which they apprehend a breach of the peace, but if the Courts are to interfere in matters of Police arrangements for the prevention of disturbances and riots, the Magistracy certainly cannot be held answerable for quiet and good order being preserved within their jurisdictions.

11. The Suit No. 141 of 1857, which the Session Judge quotes, and which led him to the opinion he formed and the Law he enunciated, treats of a right to pass along a street in a palankeen with banners, &c., this being founded on custom disused for a certain period. True it is, a public thoroughfare is declared free to all, even to its use for ordinary civil procession, but in the Decree in the Suit above mentioned, the question of religious processions is avoided and therefore the Decree cannot be taken as the Index of the Law in the present case.

12. The objection on the ground of fear for the public tranquillity, does in my opinion, present itself to the Christian procession being allowed to pass along the main street of the Village.

13. I have, since the Session Court's order was passed, refused to permit the Christian procession to take any other than the prescribed route, and I intimated to the Roman Catholic Priest, who called upon me to carry out the Court's orders, that I grounded my refusal on the Government Order* which was directly opposed to the Court's ruling,

* March 26th 1859.

and which I felt myself bound to obey, but, at the same time, I informed the Reverend Gentleman, that it was my intention to refer the question to the Foujdaree Udalut for their decision. Frequent illness, press of business and other circumstances caused some delay in carrying out

my intentions, but I trust you will consider the question under report involving a principle of such importance as to require definite settlement.

(True Copies.)

(Signed) T. CLARKE,
Magistrate.

No. 12. ORDER THEREON, 3rd November 1859, No. 1478.

Resolved that copies of the above letter and its enclosures, be forwarded to the Government Pleader—and that Officer be directed to move the Judges of the Foujdarí 'Adálat to cancel the order of the Session Judge. The late ruling of the Foujdarí Court on the Petition from Tinnevelly, reported by Mr. Dale in his letter of 26th October, would appear to be quite apposite to this case.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. F. Cartledge.

Dis

6

No. 1478 – 3d November/59.

Resolved that copies of the above letter and its Enclosures be forwarded to the Govt. Pleader – & that officer be directed to move the Judges of the Foujdari Adalat to cancel the order of the Session Judge, ~~in reference to their late ruling in the Tinnevelly Case.~~

The late ruling of the Foujdari Court on the Petition from Tinnevelly reported by Mr Dale in his letter of 26th ultimo would appear to be quite apposite to the case.

The Govt. Pleader.
" Magistrate of Madura.
GP