

## MADRAS RECORD OFFICE.

Government of Madras.

*Judicial* DEPARTMENT.

G.O. No. 1547

Press

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Dated

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1921

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

Read the following letters.

No. 30. From CLEMENT DALE, Esq., Government Pleader, Sudr Udalt; to THOMAS PYCROFT, Esq., Chief Secretary to Government, dated 26th October 1859, No. 133.

Letter from Government Pleader, to Chief Secretary, 22nd August 1859, No. 106. Proceeding of Government, 24th August 1859, No. 1139, Judicial Department.

Paragraph 1. With reference to the letter and Proceedings of Government noted in the margin, on the subject of a petition presented to the Court of Foudaree Udalt, on behalf of 11 inhabitants of Tinnovelly, appealing against the order of the Sessions Judge, dated the 3rd January 1859, on the subject of certain streets in that town being public thoroughfares, I now do myself the honor of reporting for the information of the Honorable the Governor in Council, that the petition referred to (which was numbered 57 of 1859), was heard on Saturday the 22nd Instant, before the three Puisne Judges of the Court of Foudaree Udalt, when their honors reversed the Sessions Judge's order, under the authority of a ruling of the Foudaree Udalt, dated the 6th July 1854, where it was held, that a Sessions Judge has no jurisdiction in respect of an order, made by a Magistrate, founded on his belief that any act which he there forbids, would lead to a breach of the peace.

2. Mr. Strange concurred in this order, feeling himself bound by the ruling of 6th July 1854.

3. The objection on which the case was decided was not raised in the petition, nor in the argument of the petitioners' Counsel.

4. The case having gone off on that point, the real question remains undecided; and very much in the state it was before Mr. Story's order.

5. The objections in the petition were founded on the question, whether the street (Poodoo teroo) was a public highway, and open to all Her Majesty's subjects, for all purposes. The argument of the petitioners' Counsel was, that the street was a highway for all purposes, except the carrying of corpses of deceased persons of the Weaver caste. He contended that the Sessions Judge had proceeded on the ground that the street in question was a highway, but that in dealing with a question of highway, a different rule must prevail in India, from that which exists in England, because of caste, religious prejudices, &c., &c. He, however, contended that there was no evidence before the Sessions Judge, that the street in question was a highway, that it might be a street, and yet not a public highway for all purposes; and instanced the Duke of Bedford's Estate in London, where on forming new streets on his Estate, His Grace had foreborne from dedicating them to the public, for all purposes, by erecting gates across the streets at the boundary of his Estate. Mr. Norton argued for the legality of Mr. Bird's order, which (he contended) prohibited the use of the street for the purpose of corpses of deceased Weavers, and submitted to the Court that such order was the starting point. He, further, contended the onus of shewing that this was a highway lay with the other side; that it was a new street, and unless dedicated to the public, was not a highway, which he contended had not been done, because it had never been used for the purpose of carrying corpses of deceased Weavers.

6. These arguments were very ably met by Mr. Mayne, who appeared for Mr. Serjeant; and on Mr. Norton's objection the Court decided. I could not address them, the Government having no *locus standi* in this matter.

7. I, however, informed the Court that the street in question was constructed by Convict labor; and as I believed, from copies of public records which I had seen, the soil was the property of Government.

8. It appears to me, that Mr. Norton's argument was fallacious throughout and from what fell from the Court during the argument, I inferred that if the question of highway, or no highway had been properly before them, and within their cognizance, their honors would have decided in favor of the street in question being a public highway.

9. It was not judicially decided, but it appeared to me to be conceded, that the Magistrate's order did not extend beyond the particular occasion to meet which it was made, and that his power to make any such order, did not extend beyond making provision for the preservation of the peace. It is clear he has no jurisdiction on the question of highway. It follows, therefore,

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that the orders made by Mr. Bird and Mr. Ames are no longer in force; neither ought they to be used as any authority for the guidance of the Magistrate on future occasions; if a case should arise, in which the then Magistrate should consider it necessary to interfere, with the view of preventing a breach of the peace, he ought to act on the circumstances which may then arise, and without entering into the question of the street being a public highway or otherwise.

10. If it be desired by Government to set at rest the question, whether the street referred to is a public highway fully dedicated to the public, and to the use of which all Her Majesty's subjects are entitled for all legal purposes, it can be readily done. If I be correct in my supposition that the soil forming the street is the property of Government, and that the street was constructed by Government, for in such case Government can now publicly proclaim, for the purpose of removing doubts, if any there be, that the street has been and is so dedicated.

No. 31. From CLEMENT DALE, Esq., Government Pleader, Sudr Udalut; to THOMAS PYCROFT, Esq., Chief Secretary to Government, dated 7th November 1859, No. 139.

Paragraph 1. In continuation of the letter I had the honor to address as noted in the margin, I now do myself the honor of forwarding herewith a copy of the order passed by the Court of Foujdaree Udalut under date the 22nd Ultimo.

2. With reference to the 9th paragraph of my letter noted above, and to the concluding part of the order herewith sent, it would appear that I was mistaken in the conclusion on which I penned that paragraph. I have, however, heard that Mr. Levinge has rescinded the orders appealed against.

*Extract from the Proceedings of the Foujdaree Udalut, under date the 22nd October 1859.*

Read Miscellaneous Petition presented on the 5th April 1859, by J. B. Norton, Esq., and Caroonagara Menon, Pleaders on behalf of Soobramanyah Pillay and 10 others of Zillah Tinnevely.

(Here enter F. M. P. No. 57 of 1859.)

1. Petitioners appeal from the proceedings of the Session Judge under date the 3rd January last cancelling the order of the Magistrate in charge, whereby the latter Officer interdicted the carrying of the dead body of a Native Christian through a certain road in Tinnevely to the place of burial.

2. The Court are under the necessity of setting aside the order of the Session Judge appealed from. The Magistrate interdicted the passage of dead bodies of Christians through the street in question, being of belief that such use of the street would lead to a breach of the peace. The Session Judge over-ruled this interdiction on the ground that the street was a public highway open to such use. The Session Judge has, it here appears to the Court, based his decision upon view of a civil right existing in the parties desiring to make the use in question of the street and has thereby gone out of his province of Session Judge. As respects the ground upon which the Magistrate's order was actually founded, it has been ruled by the Foujdaree Udalut, under date the 6th July 1854, that the matter is lying purely within the discretion of the Magistracy with which the Session Judge has not authority to interfere. It will rest, therefore, with the Magistrate to determine when to withdraw the interdiction in question.

No. 32. MINUTE by the HONORABLE the PRESIDENT:

I doubt the expediency of stirring this question again. Popular excitement has been allayed and the Government has been placed in a favorable position by the recent amnesty, but the subject would enter into a new phase if we came forward and proclaimed the street a public highway. It has practically been so treated, and the matter has been placed on a proper foot-

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ing for the future by making the Magistrates primarily responsible in reference to the preservation of these ulterior questions being disposed of by suit in Court.

Mr. Dale's letter should, I think, be circulated to all Magistrates.

(Signed) C. E. TREVELYAN.

2nd November 1859.

No. 33. ORDER THEREON, 12th November 1859, No. 1547.

Resolved that a copy of the above letters and of the previous letter\* from the Government Pleader, with its enclosure, be forwarded to the Magistrate of Tinnevely for his information.

2. With reference to paragraph 10 of Mr. Dale's letter of the 26th Ultimo, it is perceived from paragraph 6 of Mr. Levinge's letter of the 31st December last, that he has declared the Poodoo Teroo to be a high road open to all. It is consequently available to all castes and classes for the ordinary and necessary purposes of life, and will continue to be so, and no further notification is necessary.

3. The Judges of the Court of Faujdari Adalat will be requested to circulate their Order of 6th July 1854, to all Judges and Magistrates for their guidance.

(Signed) T. PYCROFT,  
Chief Secretary.

Exd. F. Cartledge.

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From for. Chase 26 Oct 1859  
7 Nov 4 -

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Resolved that a copy  
of the above letters &  
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with its enclosure  
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Magistrate of Tinner  
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2. With reference  
para 10 of Mr Dale's  
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3: The Judges of the  
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of 6 July 1854 to

Fonjdarial Adalat all Judges & Magis-  
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Gt Pleader

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Haines - After that time that the  
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to all - and no further publication  
is necessary - The success of the  
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- question of the date of the order  
of 6 July 1854 - it will be seen  
and the date of the order  
published -

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