M.R.O. 1—30,000—16-10-33.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial **DEPARTMENT**

G.O. No. 1551 Press Mis

36-37

Dated 18-11-1936

Not to be folded or roughly handled

No. 140

From Clement Dale Esquire Government Pleader Sub. Udalut

To Thomas Pycroft Esquire Chief Secretary to Government

Madras 10th November 1859

Sir,

Para 1 — I do myself the honor of acknowledging

3d November 1859 No 1478 — receipt of the Order of Government of Date and Number noted in the Margin, and of stating for the information of the Honorable the Governor in Council that I am preparing a Motion for presentation to the Court of Foujdaree Udalut as I am therein directed. Previously however to my being able to present the Motion, I must be furnished with authenticated Copies of the joint Magistrate's Order as also of the Orders of the Sessions Judge appealed against, of the several Dates also noted in the Margin. Probably such Copies may be in the possession of Government

Order of Joint Magistrates 8th June 1859.
Order of Sessions Judge Pelladum 14th July 1859
Do 13th September 1859

2. It will be very desirable that I should have before me, Copies of the 2 Miscellaneous Petitions presented to the Sessions Judge, one by Moya Coodoomben and No. 56 of 1859; the other by the Reverend J B Doncall and No. 79 of 1859; as also a Copy of the Joint Magistrates letter to the Reverend J Rapatel referred to in the Sessions Judge's proceedings of the 13th September 1859, the Copies referred to in this Para can be furnished at Convenience before the hearing

3. I should also wish to have, for my own guidance, Copies of the Orders of Government referred to

by Mr. Clarke as bearing dates the 29th August 1854 No. 614; 8th September 1854. No. 643; 6th October 1854; all in the Judicial Department; and the 26th March 1859. I likewise deem it desirable that I should be referred to the particular Judgment of the Fouydaree Adalut to which Mr. Clarke alludes in para 6.

4. I think it right to state, that it does appear to me to be an anomaly for the Magistrate to be the Petitioner, against an Order passed, reversing the Order made by the Joint Magistrate. Formerly References were made by letter to the Registrar of the Fouydaree Adalut, soliciting an authoritative opinion or decision on any point on which doubt might arise similar to that under consideration, and it was the practice of the Court to interpose as solicited; Those References did not partake of the character of regular proceedings, but were mere Expositions by the Higher Court, for the guidance of the Judges and Magistrates who were subordinate to it; The Course which it is now proposed should be adopted, is a proceeding in Court, and is to be adopted not by a Suitor, or any person who is, or conceives himself to be, aggrieved by the Order of the Sessions Judge, but by the Magistrate whose (subordinates) Order has been annulled. It is an unusual and on general principles an objectionable, Course, for a Functionary Exercising Judicial powers to become a Complainant, or Appellant, in a Court of Justice for the purpose of upholding his own Orders, passed in a matter in which he has no interest beyond the faithful discharge of his Duties; Of course I shall not raise the question before the Court, but I apprehend if any of the parties interested in upholding the Order of the Sessions Judge, should be permitted to appear by Counsel or Pleader, the point will be raised. In the Tinnevelly Case parties conceiving themselves aggrieved by the Order were the Appellants.

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

Govt Pleader &c

Pr. 10 Nov/59 Nº 1140

Copy of Letter 29 Nº
Judicial 1859 Departt.
From Govt Pleader S.A.
To Chief Secretary to Govt
Dated 10th November/59
Rec. 11 —

10 Nov 1859

Nº 1140
(Enclosure none.)

Nº 1869

States that he is preparing a motion for presentation to the Court of Foujdaree Adawlut on the power of the Magt. to instruct a Christian proceeding going down a certain street in Madura, & requests to be furnished with copies of certain papers connected with it.

With an Order.

Nº

Ordered that copies of the orders of Govt. referred to in para 3. of this letter be furnished to the Govt. Pleader.

2. The Magistrate of Madura will furnish, without delay, the authenticated copies of the orders required in para 1 — & afterwards, copies of the papers described in para 2. He will likewise furnish the information called for in the concluding sentence of para 3.

The Magistrate of Madura.
" Govt. Pleader.

List of 25 Rods

1551/59

30

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

No. 36. Read the following letter from CLEMENT DALE, Esq., Government Pleader, Sudr Udalut; to THOMAS PYCROFT, Esq., Chief Secretary to Government, dated 10th November 1859, No. 140.

3rd Novr. 1859, No. 1478.

Paragraph 1. I do myself the honor of acknowledging receipt of the Order of Government of date and number noted in the margin, and of stating for the information of the Honorable the Governor in Council, that I am preparing a motion for presentation to the Court of Foujdaree Udalut as I am therein directed; previously, however, to my being able to present the motion, I must be furnished with authenticated copies of the Joint Magistrate's order as also of the orders of the Sessions Judge appealed against, of the several dates also noted in the margin; probably such copies may be in the possession of Government.

Order of Joint Magistrate	8th June	1859.
Order of Session Judge of Madura,..	14th July	"
Do.	13th Septr.	"

2. It will be very desirable that I should have before me, copies of the 2 Miscellaneous Petitions presented to the Sessions Judge, one by Moya Coodoomben and numbered 56 of 1859. The other by the Reverend J. B. Trincall and numbered 79 of 1859; as also a copy of the Joint Magistrate's letter to the Reverend J. Rapatel referred to in the Sessions Judge's proceedings of the 13th September 1859; the copies referred to in this paragraph can be furnished at convenience before the hearing.

3. I should also wish to have, for my own guidance, copies of the Orders of Government referred to by Mr. Clarke as bearing dates the 29th August 1854, No. 614; 8th September 1854, No. 643; 6th October 1854; all in the Judicial Department; and the 26th March 1859. I likewise deem it desirable that I should be referred to the particular "Judgment of the Foujdaree Udalut" to which Mr. Clarke alludes in paragraph 16.

4. I think it right to state, that it does appear to me to be an anomaly for the Magistrate to be the petitioner, against an order passed, reversing the order made by the Joint Magistrate. Formerly references were made by letter to the Registrar of the Foujdaree Udalut, soliciting an authoritative opinion or decision on any point on which doubt might arise similar to that under consideration, and it was the practice of the Court to interpose as solicited. Those references did not partake of the character of regular proceedings, but were mere expositions by the Higher Court, for the guidance of the Judges and Magistrates who were subordinate to it. The course which it is now proposed should be adopted, is a proceeding in Court, and is to be adopted not by a suitor, or any person who is, or conceives himself to be, aggrieved by the order of the Sessions Judge, but by the Magistrate whose (subordinate's) order has been annulled. It is an unusual, and on general principles an objectionable course for a functionary exercising Judicial powers to become a complainant, or appellant, in a Court of Justice for the purpose of upholding his own orders, passed in a matter in which he has no interest beyond the faithful discharge of his duties; of course, I shall not raise the question before the Court, but I apprehend if any of the parties interested in upholding the order of the Sessions Judge, should be permitted to appear by Counsel or Pleader, the point will be raised. In the Tinnevelly case parties considering themselves aggrieved by the order were the appellants.

No. 37. ORDER THEREON, 15th November 1859, No. 1551.

Ordered that the 5th, 1st and 2nd enclosures received with the letter 12th Ultimo, No. 213, from the Magistrate of Madura, together with copies of the Orders of Government, cited in the margin of paragraph 16 of the same letter, be forwarded to the Government Pleader, in reference to paragraphs 1 and 3 of the foregoing communication.

2. The Magistrate of Madura will furnish copies of the papers called for in paragraph 2 of the Government Pleader's letter, and also the information required in the concluding sentence of paragraph 3.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. F. Cartledge.

List

Judicial

Proceedings of Madras Govt.

Read letter from the Govt. Pleader — Enter 10th Novemr 1859, No. 140.

Order — 15th November 1859. No 1551.

Ordered that the 5, 1, 32 Enclosures received with the letter 12th Ulto. No. 213, from the Magistrate of Madura, together with copies of the Orders of Govt. cited in the margin of paras 16 of the same letter, be forwarded to the Govt. Pleader in reference to paras 1 & 3 of the foregoing communication.

2. The Magistrate of Madura will furnish copies of the papers called for in para 2. of the Govt. Pleader's letter, & also the information required in the concluding sentence of para 3.

The Govt. Pleader with the documents & copies. } Dispd 16th
" Magistrate of Madura }

Liste of 25 Boxes

Copies of Corr. 20 & Vols

Judicial 1857 Depart &c

No 1551.

Proceedings of Govt

of 15th November 57 —

Ent. 1982-

" 2013 - Lodged

" 1581/57

Furnishing the Government Pleader with certain Documents to enable him to prepare a Motion for presentation to the Court of Enquiry - A dafut on the Power of the Magistrate to enter the Christian Procession going from a certain street in Pondicherry - Request the Magistrate of Pondicherry to furnish copies of other papers called for by Mr Dale -

No 4 of 12-12-

15.11.57

28-8-57

30.8.57

8-9

2-10-57

15.10.57

36437