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MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 781 Press —MR.—

37-38

Dated 6—6— 1837

Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department,
from 1st to 10th June 1859.

No. 22. Read the following letter from C. W. READE, Esq., Agent to the Governor, Vizagapatam, to T. PYCROFT, Esq., Chief Secretary to Government, Fort St. George,
dated 17th May 1859, No. 26.

I have the honor to forward with Extract from Minutes of Consultation of date 26th March
1859, Judicial Department, sent for my information and guidance.

2. On receiving the instructions of Government conveyed in those Proceedings, I must state
that I was under the impression that the principle which was at variance with a recent ruling of the Court of
Sudder Adawlut was one that the parties to a Suit

be guided solely by a regard to the public peace of which he is the guardian, in every question relating to the external rights of individuals, though of these latter he is entitled to every support they can claim to be upheld at all risk.

14. The Government will pass no other orders. The appellant is at liberty if he can establish the contrary of the declaration on a question of some moment will be kept open to him.

No. 28. ORDER THEREON, 6th June 1839, No. 751.

The Governor in Council has attentively considered the special decree of the Court of Sudder Adawlut, No. 181 of 1837, alluded to in the above letter, but he fails to see that it contains any degree at variance with the orders passed by Government in Patent Masters Cases dated 30th March last.

2. In those orders it was stated that if a party's own trustees, or the Zillah Judge and the like incipients would be likely to excite disturbance, the Magistrate in the exercise of the public peace should certainly prohibit it, and that any person who should in this manner disturb the Patent Master would be liable to create a riot and lost to a breach of the peace, and should be peremptorily interdicted and the custom before followed in such matters be again enforced."

3. In the suit instituted before the District Moonsif of Salem and brought to a hearing on special appeal contentiously before the Zillah Judge and Court of Sudder Adawlut, the Moonsif decreed in favor of the plaintiff on the evidence of the witnesses of another caste to establish the right to perform the ceremony of tying the marriage ornaments round the bridegroom's neck, and to the exclusion of the defendant, who was a Vellala. The Moonsif decreed in favor of the plaintiff on the grounds of the evidence of witnesses, pleaded that a right to perform the ceremony was established by the evidence of witnesses of another caste. The Judge reversed the decree of the Moonsif, and dismissed the plaintiff's suit, on the ground that the plaintiff had not established his own right to perform the ceremony, and that the evidence of witnesses of another caste was not sufficient to establish the right of the plaintiff's caste to perform the ceremony.

4. The decree of the Judge was reversed by the Court of Sudder Adawlut on the ground that the plaintiff had not rested his case on the plea of custom, but had merely asserted a right, and that proof that others might have exercised the same right was insufficient to establish the right of the plaintiff's caste. The Court observed that "the law is inherent in every subject of the State that he shall not be disturbed in any act which is not forbidden by the laws of the country, and that it is not necessary for the party claiming the benefit of law to depend on the existence of that right, and that such a right may exist although it has not been exercised for many years, it has not been exercised."

5. It will be remarked that in all this, the right of the Magistrate to interfere was not called in question, the general impolicy, to prevent breaches of the peace, and to maintain the public safety, in any where called in question. It was admitted by the Court, as by Mr. Mayne, that "the Magistrate might exercise that discretionary power, possession passing from the right of user that decision was not to be considered a breach of the peace," and in the decree of the Court it was distinctly stated that the plaintiff merely desired to pass a procession which was not calculated in such way as the Magistrate might not object that "he was not to be considered as a party to the suit, and that the right sued for was a natural right, which was not to be affected by the decision of the Court. The Magistrate was

Plaintiffs declare, & the
Magistrate, that the Magistrate
should enquire on Oath
of such persons as they
should nominate for that purpose
the Magistrate should give
Plaintiffs notice of the
time & place of such Enquiry
at which Plaintiffs should
attend with their Witnesses
and the Magistrate should
administer to such Witnesses
such Oath as the Plaintiffs
should require, and take
their Depositions in Writing
the Magistrate should certify
the Depositions so taken
to the Clerk of the Peace
for the County in which
the Magistrate shall reside
to be kept by him among
the Records of the Peace
for the said County
and the Magistrate
shall be entitled to
receive from the Plaintiffs
for his Trouble in the
premises the Sum of
Five Shillings

Clerk of the Peace
Clerk's Office for X Cty
Qu.

Whenever the Clerk of the
Court of Pleas shall receive
a certificate from any
Magistrate of the Depo-
sitions taken before him
pursuant to the Act
he shall enter the same
in a Book to be kept
for that purpose and
shall endorse on the
Certificate the Number
of the Page in the
Book where the same
is entered and shall
file the Certificate
among the Records
of the Court
1. Whenever any
Summons shall be
issued by any Justice
of the Peace upon
the Oath of any
Plaintiff against any
Defendant for any
Debt or Demand
not exceeding the
Sum of Forty Shillings
the Plaintiff shall
pay to the Justice
issuing the Summons
the Sum of Two
Shillings and Six
Pence and the Justice
shall enter in a
Book to be kept
by him for that
purpose the Name
of the Plaintiff
and Defendant
and the Sum
demanded