M.R.O. 1—38,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 1208 Press Mis-
124-125

Dated 20-9- N1860.

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Not to be folded or roughly handled

9. The duties of Magistrates are so fully and clearly defined by many recent writers, that one who studies them can scarcely err to any extent.

10. The penalties to which Magistrates are liable are heavy and severe, but if the Orders of Government are at variance with the principles distinctly laid down by the Law authorities, a Magistrate is liable to be placed in a labyrinth of difficulties.

11. The same authority (Saunders) enjoins that every witness whose deposition is sent up to a Superior Court must be bound over in due form to appear and give evidence at the time and place of trial. Consequently the instructions contained in the latter part of para. 4 of the Order of Government just forwarded to me are perplexing, compelling as it does the Magistrate to choose between two evils, either to incur the censure of the Supreme Court and possible attendant penalties for illegal procedure, or subject himself to the displeasure of the Government.

12. The case had been in the hands of the Police, whose duty it is thoroughly to investigate these matters and arraign such parties as they may deem right before the Magistrate upon such indictments as their inquiries and information may lead them to think fit, and as likely to be supported by evidence.

13. The getting up (as it is called) of cases does not rest with the Magistrate but with the Police, the latter having all the means and appliances in the way of subordinate and detective Officers at his command; whereas the Magistrate has barely sufficient establishment to conduct the routine work of his Court and *his* duty is to record the evidence given by the parties sent up from the Office of the Commissioner.

14. Colonel Boulderson informs the Government that the Inspector and the Jemadar of the Division ("the only Officers who could afford any assistance") were put in charge of the case.

15. All I can say with regard to the above is that they gave me no information whatever, and so far from exciting any suspicion in my mind that Syed Abdullah might be in any way implicated in the matter they allowed him to leave the Court after his profession of ignorance in the case without enlightening me in the smallest degree upon the subject.

16. It is very easy for the Commissioner of Police to say that he sent the Inspector and the Jemadar to me, but were they instructed to afford information and assistance, if so, why was it not rendered in the usual way which is spontaneously to tell the Magistrate the leading facts of the case and to draw his attention to any peculiarities regarding it? This was never done.

17. Mr. Edward Elliot as Superintendent of Police sent me on several occasions cases to commit for trial to the Supreme Court and they were invariably accompanied by a written synopsis giving an insight into the matter.

18. Colonel Boulderson and Mr. Campbell have also occasionally adopted this plan but not in this case—and (as I have more than once shown) that in the case under consideration both principal and receiver being distinctly charged by name from the Office of the Commissioner where every inquiry must have been supposed to have taken place, (nothing to the contrary inducing) how could I possibly (uninstructed) be led to look for another receiver in Syed Abdullah a witness.

19. There was no hint to me of there being more than one receiver and that one was, by the Officer supposed to be fully and intimately acquainted with the case, entered as Rookiah Bee and not Syed Abdullah.

20. I observe that the Commissioner of Police says that the name of Syed Abdullah was entered as a witness because there was "no sufficient evidence to sustain a charge of kindnapping against him then forthcoming."

21. Colonel Boulderson in his letter to Government dated 18th of August last, appears to have said that Thayer Sahib, in whose house some of the kidnapped children were found, died two or three years ago and that Syed Abdullah married Thayer Sahib's daughter and occupies the house which is called by his name.

Proceedings of the Madras Government, Judicial Department,
20th September 1860.

22. Whether the Commissioner ascertained these points, before or after the committal of the kidnapping case it is impossible for me to say. But if he was so informed previous to the sending the case before me, why was not Syed Abdullah's name entered as a prisoner instead of a witness when I should have had an opportunity of weighing every particle of evidence against him and committing or discharging him as I might deem advisable; and the evidence for the prosecution being ample against the principals and the receiver without the testimony of Syed Abdullah the case would have been in no way injured, and it would have been in my opinion by far the more advisable course to pursue.

23. If on the other hand the information regarding Thayer Sahib's house and Syed Abdullah's connection with and residence in the family was not obtained until after the Sessions—surely the Commissioner and not the Magistrate is to blame, the former as I said before has confidential Hurkarahs and expert detectives by which all such information might and should be obtained; the Magistrate has none; and even if he had, I do not consider it his duty to perform this very necessary part of collecting every information connected with cases for committal to the Supreme Court.

24. Every case which comes into my hands receives my most careful and earnest attention and I am ever anxious that it should be creditably and efficiently conducted.

25. It is therefore extremely painful to me to see censure (at least implied) where I feel that whatever has been erroneous has not emanated in any way from me, and I do most earnestly hope that the Honorable the Governor in Council will after this explanation see fit to modify their recorded opinion.

No. 125. ORDER THEREON, 20th September 1860, No. 1,208.

The Government perceive nothing in the above letter to induce them to modify the remarks made in their Order of the 30th ultimo, as to the manner in which the investigation of the cases of the kidnapped children was conducted at the Royapettah Court.

2. Several of the witnesses who were examined in those cases, deposed that the children had been found concealed in the house of Thayer Meerzah. It merely was a natural and obvious course for the Magistrate to inquire who, and where, this man was, and if he were dead who had succeeded to the ownership or charge of his house. A few questions addressed either to the witnesses or to the Police Officers in charge of the case would have elicited this information, but no such questions were put.

3. Again it was presumable that Syed Abdoollah would not have been forwarded by the Commissioner of Police, unless there were reason to believe him to be in possession of some information on the subject. On his disavowing all knowledge, it was but natural to ask of the Police Inspector, who he was, why sent as a witness, and on what points he might have been expected to give testimony. Yet nothing was done beyond recording his mere declaration of pure ignorance.

4. The Government cannot think that such a mode of procedure was sufficiently strict and careful, or such as was called for by the gravity of the charge under inquiry—the offence, that of robbing parents of their children to apply them possibly to the vilest purposes, being one of the most heinous on the catalogue of crimes.

5. That the Police Officers did not volunteer information, that the Commissioner of Police did not, as he is stated to do occasionally, send up a written synopsis of the case, does not in the opinion of Government, affect the question. The Commissioner of Police is not bound to forward such synopsis, although they may be useful. The Police Officers were in Court, and might have been applied to, and the nature of the evidence taken and of the case generally was such as naturally to lead the Magistrate to apply to them for any assistance that they could give, or any light that they could throw upon the subject.

6. The course suggested in paragraph 4 of the Proceedings of the 30th ultimo, or that of forwarding the deposition of witnesses whose testimony does not seem to be of value, without binding them over to appear personally before the Court, is, the Government understand, practised at other of the Madras Police Courts. It appears proper and reasonable in itself. If the Judges of Her Majesty's Supreme Court object to it, it should, of course, not be persevered in. Referring however to the authorities quoted in the margin, the Government do not anticipate that they will object.

Archbold's Justice of the Peace, 4th Edition, page 289.
Archbold's Criminal Pleadings, eleventh Edition, page 150.

(Signed) T. PYCROFT,
Chief Secretary,

Exd. F. Cartledge.

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of Police says that the name of Syed Abdullah was entered as a witness because there was "no sufficient evidence to sustain a charge of kidnapping against him then or thereafter".

21.——Colonel Robertson in his letter to Government dated 18th of August last appears to have said that Mayer Sahib in whose house some of the kidnapped children were found did two or three years ago and that Syed Abdullah married — Mayer Sahib's daughter and occupies the house which is called by his name.

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Judicial Department.

Proceedings of the Madras Government.

Read the following letter from the Senior Magistrate of Police.

(Here enter 5th Septr 1860, No 10.)

Order thereon 20th Septr 1860 No 1208.

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2.— Several of the Witnesses who were examined in those cases, deposed

deposed that the children had been found concealed in the house of Hayer Meerzah. It merely was a natural and obvious course for the Magistrate to inquire who, and where this man was, and if he were dead who had succeeded to the ownership or charge of his house. A few questions addressed either to the witnesses or to the Police officers in charge of the case would have elicited this information - but no such questions were put.

3. Again it was presumable that Syed Abdoollah would not have been forwarded by the Commissioner of Police, unless there were reason to believe him to be in possession of some information

information on the subject on his disavowing all knowledge, it was but natural to ask of the Police Inspector - who he was, why sent as a witness, and on what point he might have been expected to give testimony. Yet nothing was done beyond recording his mere declaration of pure ignorance.

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Archbold's Justice of the Peace - 4th Edition page 289 -
Archbold's Criminal Pleadings Eleventh Edition - page 150 -

J.P.

To the Magistrate - Royapettah Police Court. } Dated 22

Indorsement

Pors of Sept^r

Judicial Department 1860.

No. 1268

Proceedings of the Madras

Government.

Dated 20 September 1860

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