M.R.O. 1—89,900—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial **DEPARTMENT.**

G.O. No. 1692 Press ~~Mis.~~

172-173

172-173.

Dated 22.12.1860 ~~19~~ .

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Not to be folded or roughly handled

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Proceedings of the Madras Government Judicial Department,
22nd December 1860.

No. 172. Read the following letter from J. FRASER, Esq., Magistrate of South Canara, to the Chief Secretary to Government, Fort Saint George, dated Mangalore, 30th November 1860, No. 40.

I have the honor to request the opinion of the Government on the following course of action taken by me as Magistrate, and on the difference of opinion between myself and the Sessions Judge in regard to it.

2. About a fortnight ago, a complaint was made to me, by certain of the Hindoo community, that the inhabitants living close by the spot on which the Hindoos had burned their dead from a very old date, were attempting to exact a fee for each act of cremation; and had also encroached on it by planting cocoanut trees.

3. To enable me to judge of the rights of the question, I visited the spot, and found, to my astonishment, that it was one surrounded by houses on all sides but one, where it was bounded by the river: that it was not more than 40 yards from a main road or street: that some of the houses were not above 15 yards distant from positions where bodies had recently been burned; and that in short a more objectionable locality for such a purpose could scarce be imagined. On questioning some of the neighbouring residents, they complained that the smell of the burning bodies was, as may be imagined, most offensive; and the Cuctherry servants informed me that it was frequently perceptible and disgusting in the Office, distant more than 300 yards from the spot.

4. My inspection determined me at once to prohibit any further cremation on the usual spot, which I did by proclamation and beat of tom tom, and I informed the Hindoos, a deputation of whom shortly waited on me at the Cutcherry, that they were at liberty to burn their dead on the sandy spit between the river and sea, which would only necessitate the transport of the bodies by boat for a distance of about 200 yards. I also pointed out another available locality. To both of these places they objected: to the first, because they said they could not reach it during the monsoon; to the second, as too distant. I explained to them that on only one point was my mind made up, viz., that burning of the dead at the usual spot must at once and for ever be abandoned on sanitary grounds. That if they would themselves point out *any* suitable spot beyond a certain minimum distance from the town, it should be at once made over to them if Circar, or procured for them, if private property. They declined positively to render any assistance in the matter by making a selection themselves; and further much narrowed any choice by declaring that none but a spot on the bank of the Netravaty river would do. As I had already pointed out such, to which there was no present valid objection, I have contented myself with enforcing my prohibition as to the customary locality.

5. The parties concerned appealed to the Sessions Judge, and I append copies of the correspondence between us. It appears to me that Act XXI of 1841 is not applicable to what may be called a religious ceremony, though the observance of it is a most decided nuisance on the ground where the Hindoos claim to perform it.

6. I am fully persuaded that this tenacious adherence to a particular spot is in this case based in obstinacy only; for the Hindoos have never once made an objection on religious grounds to my proposal to them. I solicit the orders of Government for my guidance on the whole question, and also permission to purchase at a reasonable price any available piece of ground for the burning of their dead which the Hindoos may select with my approval.

No. 1.

SESSIONS COURT. L. S. MANGALORE.

TO THE MAGISTRATE OF SOUTH CANARA.

Herewith you will receive an Extract from the Proceedings of the Sessions Court of Mangalore, of this date, to the orders contained in which you are required to conform, returning this

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Precept so executed, or good and sufficient reason why it has not been executed, and what you may have done in pursuance hereof within III days, to forward the proceedings connected with the case.

Given under my hand and seal of the Court at Mangalore this 17th day of November 1860.

(Signed) R. CHATFIELD,
Sessions Judge.

Extract from the Proceedings of the Sessions Court of Mangalore, under date the 17th November 1860.

Read Petition No. 67 presented by the Hindoo inhabitants of Mangalore appealing against an order of the Magistrate, No. 207, directing the Tahsildar of Mangalore to prohibit the burning of dead bodies of the Hindoos on a certain place called "Sangama."

To enable the Sessions Judge to dispose of this Petition.

Ordered that the Magistrate of South Canara be required by Precept returnable in III days, to forward the proceedings connected with the case.

(True Extract.)

(Signed) R. CHATFIELD,
Sessions Judge.

In Return to the foregoing Precept accompanied by an Extract from the Proceedings of the Sessions Court of Mangalore dated 17th instant, the Magistrate has the honor to state that beyond the order complained of, there are properly speaking no proceedings whatever.

The attention of the Magistrate was first drawn to the burning ground in question by a complaint of the Hindoos that the residents in the vicinity of the spot were trying to exact a fee for every corpse burned there. The complaint induced the Magistrate to visit the spot when he became aware for the first time of its very objectionable position for the ceremony of cremation. It is on the edge of the Neitrawerty river, between the groin and the South Eastern extremity of the quay in front of the Custom House; within 40 yards of a public street and within 15 of some of the houses near the spot. A more inappropriate locality could hardly exist for such a purpose, and the Magistrate is only surprised that it has been tolerated so long. The sea breeze must waft the odour of burning corpses over the Town and Fort every day that such a ceremony takes place, and this is not only disgusting but positively prejudicial to health.

In forbidding the Hindoos to burn their dead there any longer, the Magistrate personally informed many of the principals that he would agree to any other spot at a sufficient distance from the Town which they might select for their purpose. They not only refused to do this, though told that ground would be purchased if no Government waste were available, but narrowed the Magistrate's choice of a spot very considerably by declaring that none but one on the edge of the Neitrawerty would answer. The Magistrate is perfectly aware that this declaration is caused by blind obstinacy; as in many other localities in Canara, burning bodies on the bank of such a stream as the Neitrawerty must be impossible. He has now therefore confined himself to positively interdicting further cremation on the spot in question and also within a certain distance of the Town and left the Hindoos to select a spot for themselves for future use.

Given under my hand and seal at Mangalore this 20th day of November 1860.

(Signed) J. FRASER,
Magistrate.

Proceedings of the Madras Government, Judicial Department,
22nd December 1860.

No. 2.

Extract from the Proceedings of the Sessions Court of Mangalore, under date the 22nd November 1860.

Read Petitions &c., from a large body of Hindoos complaining of an order of the Magistrate prohibiting the burning of their dead at the place where, for a century and more, they had been accustomed to do so.

Read also Return of the Magistrate to this Court's Precept of the 17th instant requesting information on the subject of the preceding complaint.

The Magistrate, for sanitary reasons, has prohibited the burning of dead bodies at the customary place, and promised to defray any necessary expense in the purchase of ground on Petitioners pointing out some unobjectionable spot at a distance from the town. The Sessions Judge, fully concurs with the Magistrate in thinking it desirable that any place for burning the dead should be removed as far as possible from the houses of the living; but he believes there are considerable difficulties in the present case which have been overlooked, and must be overcome, before the order of a "peremptory prohibition" can be carried out; and that it would have been desirable, previous to issuing the order, to have discovered and secured a locality where the necessary rite might be performed without objection to any body. The Sessions Judge is not aware of any spot, within reasonable distance of the town which would not be objectionable, and until the Magistrate has discovered and procured a spot more suitable for cremation, it will be absolutely necessary that the Hindoos should continue to resort to the present. The order complained of must be accordingly held in abeyance, until the difficulty alluded to is satisfactorily surmounted.

Ordered that Extract from these Proceedings be sent to the Magistrate of South Canara, for his information.

(True Extract.)

(Signed) R. CHATFIELD,
Sessions Judge.

No. 3.

From J. FRASER, Esq., Magistrate of South Canara, to R. CHATFIELD, Esq., Sessions Judge of Mangalore, dated 26th November 1860.

Dated 22nd November 1860.

1. I have the honor to acknowledge the receipt of an Extract from your Proceedings in the matter of the prohibitory order issued by me against burning dead bodies at the hitherto customary locality on the brink of the river.

2. I have the honor to state that as an unobjectionable locality for cremation has been pointed out to the Hindoos, no necessity for keeping the order complained of in abeyance exists, and I have therefore directed that it be enforced.

3. I would also observe that my order appears to me to come within the scope of the Circular of the Foujdary Udalut,—vide their proceedings of the 6th July 1854. Though the cases are not identical, they are paralled, and as such I believe that my order is not properly appealable to you. I shall at once lay the matter before Government however, and abide by their decision till when I have directed the Superintendent of Police to carry out my instructions.

(True Copy.)

Signed J. FRASER,
Magistrate.

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Proceedings of the Madras Government, Judicial Department, 22nd December 1860.

No. 4.

Extract from the Proceedings of the Sessions Court of Mangalore, under date the 29th November 1860.

Read letter from the Magistrate of South Canara in reply to this Court's Proceedings of the 22nd instant.

In this letter the Magistrate states that he considers his order prohibiting the Hindoos from burning their dead in a certain locality was not appealable to the Sessions Court, but came under the rule laid down in the Circular Order of the Foujdary Udalut under date 6th July 1854. This decision of the Foujdary Udalut manifestly refers to the Magistrate as the responsible conservator of the peace, and in that capacity his orders would not be generally appealable, but any Proceedings for abating a nuisance fall under Act XXI of 1841, by the 4th Clause of which provision is especially made for an appeal to the ordinary tribunals.

Ordered that Extract from these Proceedings be sent to the Magistrate of South Canara for his information.

(True Extract.)

(Signed) R. CHATFIELD,
Sessions Judge.

(True Copies.)

(Signed) J. FRASER,
Magistrate.

No. 173. ORDER THEREON, 22nd December 1860, No. 1,692.

With this letter, the Magistrate of South Canara submits a corresspondence with the Sessions Judge, relative to the former having interdicted the burning of corpses in the usual spot in the town of Mangalore.

2. In the Proceedings of the Zillah Court on a petition from the Hindoo inhabitants of the town, the Sessions Judge expressed his full concurrence in the opinion of the Magistrate, that the burning place should be remote from the houses of the living, but ruled that, until a suitable spot for the rite could be discovered and secured, the Magistrate's order should remain in abeyance. The Magistrate stated in reply that an unobjectionable locality for cremation had been pointed out by him to the Hindoos, that there was no necessity for his order remaining in abeyance, and that he had therefore ordered it to be enforced. He submitted that his prohibition was not appealable to the Sessions Court under the Circular Order of the Foujdaree Udalut of the 6th July 1854. The Sessions Judge on the other hand pointed out that that decision "referred to the Magistrate as the responsible conservator of the peace, whereas any "proceedings for abating a nuisance fall under Act XXI, 1841, by the 4th Clause of which "provision is especially made for an appeal to the ordinary tribunals."

3. At this stage, Mr. Fraser has submitted the case for the opinion and Orders of Government. It appears to Government that the view taken by the Sessions Judge is correct, that the case does fall under the Act XXI, 1841, indicated by Mr. Chatfield, and consequently that if the Magistrate be dissatisfied with the injunction contained in the Proceedings of the Court of the 22nd November last, he should appeal from it to the Court of Foujdaree Adawlut. The Government, however, would be glad to hear that the Hindoo community of Mangalore had on further consideration consented to use the burning place proposed by the Magistrate or that some other spot had been found which was acceptable to them, and thereby that a reference to the Foujdaree Udalut had been rendered unnecessary. They resolve also to forward to Mr. Fraser copies of two pamphlets which have lately been drawn up at Madras on the subject of the health of towns and intramural interment and cremation. The Magistrate will distribute them in Mangalore and have translations made and distribute them also.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. F. Cartledge.

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spit between the river & sea, which would only necessitate the transport of the bodies by boat for a distance of about 200 yards. I also pointed out another available locality. To both of these places they objected: to the first because they said they could not reach it during the monsoon; to the second as too distant. I explained to them that on only one point was my mind made up viz; that burning of the dead at the usual spot must at once & for ever be abandoned on sanitary grounds. That if they would themselves point out any suitable spot beyond a certain minimum distance from the town, it should be at once made over to them if Govt, or procured for them, if private property. They declined positively to render any assistance in the matter by making a selection themselves; and further much narrowed any choice by declaring that none but a spot on the bank of the Netravaty river would do. As I had already pointed out such, to which

there

there was no present valid objection, I have contented myself with enforcing my prohibition as to the customary locality.

5. The parties concerned appealed to the Lefteins Judge, and I append copies of the Correspondence between us. It appears to me that Act XXI of 1860 is not applicable to what may be called a Religious ceremony, though the demeanor of it is a most decided nuisance on the ground where the Windows claim to perform it.

6 I am fully persuaded that this tenacious adherence to a particular spot is in this case based in obstinacy only, for the Windows have never once made an objection on religious grounds to my proposal to them. I solicit the orders of Government for my guidance on the whole question, and also

The Magistrate ought to go to the Fls — & to Head-Court to decide upon the matter as it now stands —

The Magistrate seems to have been premature in the issue of his proclamation —

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Judicial Department.

Proceedings of the Madras Government.

Read the following letter from the Magistrate of South Canara.—

(Here enter 30th Nov.r 1860 No. 1740.)

Order thereon 22. December 1860, No. 1692.

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With this letter, the Magistrate of South Canara submits a correspondence with the Sessions Judge, relative to the former having interdicted the burning of corpses in the usual spot in the town of Mangalore.—

2.— In the Proceedings of the Zillah Court on a petition from the Hindoo inhabitants of the town, the Sessions Judge expressed his full concurrence in the

the opinion of the Magistrate, that the burning place should be remote from the houses of the living, but ruled that, until a suitable spot for the rite could be discovered and secured, the Magistrate's order should remain in abeyance.— The Magistrate stated in reply that an unobjectionable locality for cremation had been pointed out by him to the Hindoos, that there was no necessity for his order remaining in abeyance, and that he had therefore ordered it to be enforced.— He submitted that his prohibition was not appealable to the Sessions Court under the Circular Order of the Tanjore Adalut of the 6th July 1854. The Sessions Judge on the other hand pointed out that that decision "referred "to the Magistrate as the responsible conservator of the "Peace, whereas any proceedings "for abating a nuisance fall "under Act XXI - 1841, by the "4th Clause of which provision is "especially made for an appeal to "to the ordinary Tribunals."—

3.— At this stage, Mr. Fraser has submitted the case for the opinion and orders of Govt. It appears to Govt. that the view taken by the Sessions Judge is correct, that the case does fall under the Act XXI - 1841 indicated by Mr. Chatfield, and consequently that if the Magistrate be dissatisfied with the injunction contained in the Proceedings of the Court of the 22nd November last, he should appeal from it to the Court of Sanjadaree Adawlut.— The Govt. however would be glad to hear that the Hindoo community of Mangalore had on further consideration consented to use the burning place proposed by the Magistrate or that some other spot had been found which was acceptable to them.— and thereby that a reference to the Sanjadaree Adalut ~~was~~ had rendered unnecessary.— They

To the Magistrate of South Canara
Collector Court.—

Dupd 24th
Reader also to forward to Mr Fraser copies

1724-73

of the pamphlet which
I have lately been drawn
up at Boston on the
subject of the health of
towns and intramural
interment and crema-
-tion - The magistrates
with the district Stone a
Mangeler & Law Com-
-plations made & dis-
-tributed there also.