

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 14/14	Press
114-116	Mis.
Dated 19. 11. 1861	19

5/6

Not to be folded or roughly handled*Shy / 10/6/1900*

*Proceedings of the Madras Government, Judicial Department,
19th November 1861.*

Read the following papers:—

No. 114. Proceedings of the Sudder Court, dated 5th October 1861, No. 101.

Read letter dated the 24th ultimo, from the Session Judge of Coimbatore, submitting copy of a letter with its accompaniments received from the Joint Magistrate of Wellington, requesting who is to defray the transit expenses of a European Prisoner and a Constable from Bangalore to Wellington, and that of the latter for returning to Bangalore.

The case having been taken up by the Joint Magistrate in his capacity of Justice of the Peace, he should have addressed the Government direct on the subject of the expenses incurred in conveying the prisoner from Bangalore to Coonoor and back. But as delay would occur if the papers were returned to that Officer, the Judges resolve to forward them to the Government for their orders.

(True Extract.)

(Signed) C. F. CHAMIER,
Registrar.

To the Chief Secretary to Government, Fort Saint George.

From E. B. THOMAS, Esq., Magistrate of Coimbatore; to S. N. WARD, Esq., Session Judge of Coimbatore, dated Ootacamund, 19th August 1861, No. 211.

I beg to forward for your perusal original papers from Captain Nicholas, Joint Magistrate of Wellington, and to request the favor of your opinion, as to who should pay the enclosed Bill, Captain the Honorable J. Colborne or Government.

From Captain J. NICHOLAS, Joint Magistrate of Coonoor and Wellington; to E. B. THOMAS, Esq., Magistrate of Coimbatore, dated 15th August 1861, No. 94.

- 1 Copy of a letter from me to Captain the Honorable J. Colborne, 3rd, 60th Rifles.
- 1 Original letter from Captain Honorable J. Colborne, 3rd, 60th Rifles.
- 1 Original letter with a Bill from the Superintendent of Police at Bangalore.
- 1 Copy of letter from me to the Superintendent of Police at Bangalore.
- 1 Original letter from the Superintendent of Police at Bangalore.

In forwarding the accompanying correspondence as per margin, I have the honor to inform you, that Captain the Honorable J. Colborne preferred complaints against his Servant Patrick Doyle for breach of trust and theft; on enquiry the first charge for breach of trust was not proved, on the 2nd charge for theft, viz., one pair of old boots, as the boy was a British subject, I should have been compelled to commit him to the Supreme Court of

Madras, and as I was extremely doubtful whether Government would sanction the expenses to and from Madras, of a Prosecutor and several European witnesses together with the Prisoner for such a petty theft, I therefore dismissed the case.

The Superintendent of Police at Bangalore, has charged for the conveyance, by Transit, of a Prisoner and a European Constable from Bangalore, and the return of the Constable to Bangalore, and requested me to recover the amount from the complainant, but he declines to pay it. I therefore request your instructions on the above subject.

From Captain J. NICHOLAS, Joint Magistrate of Coonoor and Wellington; to Captain the Honorable J. COLBORNE, Her Majesty's 3rd Battalion, 60th Rifles, Wellington, dated 25th May 1861, No. 59.

I have the honor to inform you, that a lad named Patrick Doyle has been apprehended at Bangalore, and the authorities have written to me, for a warrant to send him up here. I however must decline issuing a warrant till I know of what he is accused, as I do not consider myself justified in having him brought two hundred miles on trivial grounds, I hear he absconded with the clothes he was in the habit of wearing, I should like to know the value and whether

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any wages were due to him, and if so the amount—also whether he had not a right to consider the clothes he wore as his own property.

(True Copy.)

(Signed) J. NICHOLAS, Captain,
Joint Magistrate.

From Captain J. COLBORNE, 60th Rifles; to Captain NICHOLAS, Joint Magistrate, Wellington, dated 27th May 1861.

I beg to acknowledge the receipt of your letter of the 25th instant. The clothes with which Pat. Ryan absconded were certainly not his as they were "Livery," nor had I in any way given them to him. So far from his being owed wages he had had 6 Rupees advance. He has played the same trick to two other people with whom he served, viz., Mr. Scott, Ootacamund, and a Coffee Planter who followed him to Barracks accusing him of running away with his clothes, &c., &c., he never applied to me for discharge nor had he the slightest grounds for acting in the manner he has. He was enticed away by a Soldier who had bought his discharge, and I presume fancied he could act thus with utter impunity, as my last maty "Lazaar" after cheating me escaped without punishment. I positively state that in no way was the boy given the least cause to complain, and the work he had to perform was quite trifling, so I really hope it may be in your power to have him brought back as the servants in Wellington seem to think they are at liberty to act towards their masters just as they please; apologizing for having troubled you so far.

From Lieutenant J. A. CAMPBELL, Superintendent of Police; to Captain J. NICHOLAS, Joint Magistrate of Coonoor and Wellington, dated Bangalore, 21st June 1861, No. 406.

With reference to your letter No. 64, dated 10th instant, I have the honor to forward the accompanying Bill for the sum of Rupees (134) one hundred and thirty-four, being the amount of expenses incurred in forwarding to Wellington the Prisoner Patrick Doyle, and I request you will have the goodness to recover the amount from the complainant for remittance to this Office.

Captain J. Nicholas, Joint Magistrate of Coonoor and Wellington.....Dr.

1861.	1st.	To hire of a Transit Coach from Bangalore to Ootacamund for a European Prisoner and Constable and Peon...	Rs.	A.	P.
June...	"	Do. do. from Ootacamund to Wellington for do. ...	60	0	0
	"	" Batta for Prisoner Patrick Doyle for 4 days at 4 Annas per day...	1	0	0
	"	" Hire of a Transit Coach from Wellington to Ootacamund for a Constable and Peon...	10	0	0
	"	" Hire of a do. from Ootacamund to Bangalore for do. do. ...	48	0	0
Total Rs. one hundred and thirty-four...			134	0	0

(Signed) J. A. CAMPBELL,
Superintendent of Police.

BANGALORE, POLICE OFFICE,
21st June 1861.

From Captain J. NICHOLAS, Joint Magistrate of Coonoor and Wellington; to the Superintendent of Police, Bangalore, dated 24th July 1861, No. 86.

With reference to your letter of the 21st ultimo, No. 406, I have the honor to return the Bill, which Captain the Honorable J. Colborne has declined to pay, I only received a reply yesterday or should have answered you sooner.

Captain Colborne will very shortly be going to China to join the 2nd Battalion Her Majesty's 60th Rifles, I believe.

(True Copy.)

(Signed) J. NICHOLAS, Captain,
Joint Magistrate.

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From Lieutenant J. A. CAMPBELL, Superintendent of Police; to the Joint Magistrate of Coonoor and Wellington, dated Bangalore, 8th August 1861, No. 490.

I have the honor to acknowledge the receipt of your letter No. 86, dated the 24th ultimo, in which you return the bill forwarded with my letter No. 406, dated 21st June 1861, as Captain the Honorable J. Colborne refuses to pay it.

The expenses set forth in the bill were incurred by this Department entirely on the faith of your warrant; and in a case similar to this which occurred in the time of my predecessor, when a complainant declined to pay certain charges made by the Commissioner of Police at Madras for sending a prisoner thence to this station, the Madras Police Authorities, after pointing out the practice invariably followed both at the Presidency and in the Mofussil, requested that if the complainant still declined to pay the amount, it might be made good by this Department which had issued the process.

I beg therefore to return the bill, and to request you will have the goodness to remit the sum of Rupees 134, debiting the same to your department.

(True Copies.)

(Signed) S. N. WARD,
Session Judge.

Referred to the Government Solicitor for the opinion of the Advocate General.

(Signed) J. D. SIM,
Secretary to Government.

FORT SAINT GEORGE,
9th October 1861.

No. 115. From JOHN MILLER, Esq., Acting Government Solicitor; to J. D. SIM, Esq., Acting Chief Secretary to Government, Madras, dated 12th October 1861, No. 742.

Order dated 9th October 1861, and endorsed on — 1. I have the honor to acknowledge the Proceedings of the Sudder Court, dated 5th October 1861, No. 101, Judicial Department. Order of Government noted in the margin, and its enclosure.

2. I submitted them for the consideration of the Advocate General, and now forward a copy of his opinion.

3. I also return the Order above adverted to, with its enclosure.

COPY—OPINION.

It would be convenient if the point or question intended to be "referred" for my opinion, were stated in the Order of reference. Here there is nothing but the word "referred," and the papers laid before me contain several matters, viz., firstly, Captain Nicholas' most extraordinary manner of dealing with a clear case of theft by a domestic Servant—an old offender too—namely dismissing the case because he doubted if Government would like to be put to the expense of forwarding the prisoner to Madras; secondly, Captain Campbell's application to Captain Nicholas for the expenses incurred by the Mysore Police; thirdly, Captain Nicholas' refusal to pay them; fourthly, Captain Nicholas' application to Captain Colborne to pay them, and that Officer's refusal, and lastly, the reference to the Judges of the Sudr Udalt, and their refusal to deal with the reference. What out of all this, is the matter intended to be "referred" to me?

2. Captain Nicholas' proceeding was most illegal and objectionable though it seems to have been unnoticed by the Sudr Judges. It is sufficiently notorious how very unmanageable Servants on the Neilgherries have become, since the delivery of some (doubtless much misunderstood) remarks addressed to the Natives there by Sir C. Trevelyan, when he visited Ootacamund; but a very few acts like those of Captain Nicholas, would render them utterly unbearable. The motive assigned by Captain Nicholas for his dismissal of the case is even more blameable than his act.

3. To dismiss a case of theft by a domestic Servant when clearly proved, and the Servant shown to be an old offender, is a sufficiently grave error in any Magistrate; but to do so knowingly and wilfully, in order to meet the supposed wishes of Government or to avoid the supposed

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or apprehended displeasure of Government on account of the necessary expense attendant upon the Magistrate doing his duty—and to avow, in express terms, that he regulated his proceedings in the administration of public justice by such motives, argues a lamentable degree of ignorance of his duty, and unfitness for his office.

4. I think it the more necessary to call attention to this case, because, in the main, I have every reason to believe Captain Nicholas to be a highly conscientious and painstaking Magistrate, anxious to discharge to the uttermost his duty as he understands it. It is plain that in acting on the motive, the grounds and reasons, so explicitly avowed by him, he really believed he was only doing his duty. This is, I fear, by no means an isolated instance of Magisterial, and even judicial decisions, being influenced by a regard for the real or supposed wishes or interests of Government, but it is the only one that I can remember where this motive has been candidly and openly avowed; and therefore it is that I would point the attention of Government to it, and submit for their consideration the propriety of warning Magistrates that no such motives ought ever to be allowed to affect their decision in the administration of public justice.

5. Upon the other points I can only observe that Captain Colborne is clearly not legally liable for the expenses of the Mysore Police or for any expense incurred in forwarding the thief from Bangalore to Jackatalla, Wellington that is. I cannot think how such an idea could have arisen. A Magistrate can bind a Complainant over to prosecute but cannot compel him to pay the expenses of either arresting the culprit, or of bringing forward witnesses against him.

6. The order issued in May last by the Governor General directing the Commissioner of Police in Calcutta to defray at three different rates (the highest being 8 Annas a mile, 5 Rupees a day Hotel expenses, and 2 Rupees a day Carriage hire) the expenses of prosecutors and witnesses coming from the Mofussil to Calcutta to attend Criminal trials, seems in spirit clearly applicable to a case like the present. The same order seems to have referred it to the Local Governments "to issue such subsidiary orders for the guidance of Magistrates as may be necessary to give effect to this arrangement."

7. There is no matter or point of law here on which I can offer any opinion.

(Signed) THOS. SYDNEY SMYTH,
Advocate General.

(True Copy.)

(Signed) JOHN MILLER,
Acting Government Solicitor.

10th October 1861.

No. 116. ORDER THEREON, 19th November 1861, No. 1,414.

The expenses of the Prisoner and Constable will be paid by Government and the Bill for Rupees 134 is accordingly sanctioned.

2. With reference to paragraph 1 of the Advocate General's opinion, the Government observe that it did not occur to them that there would have been any doubt as to the point on which his opinion was desired. The question [referred, viz., as to the party by whom the expenses should be defrayed is very clearly put in the Proceedings of the Sudr Court and the letter of the Magistrate of Coimbatore, both of which were before the Advocate General.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. F. Catledge,

From Sudr Court 5 October 1861. P. 101
for Advocate 12 do 742

Journal

Order Thereon 19 November 1861. 20/11/61

The reference seems clear enough but perhaps on the whole the papers were forwarded. The Advocate Genl. felt bound to look into all the points of the case and he has commented on very proper points upon the conduct of Capt. Nicholas in dismissing the case. Capt. Nicholas a perhaps Magistrate generally should be warned that then he must do his duty without fear or favour. I suppose that as Capt. Colborne is not liable for the expenses the Govt. must pay them. W. W.

The Prisoner & Constable while he is paid by Govt. and the Bill for Rs. 134 is accordingly sanctioned.

2 With reference to para 1 of the Advocate Genl's opinion the Govt. observe that the case could not have been properly laid before him by the Acting Govt. Solicitor, if he was left in doubt as to the point on which his opinion was desired. The question referred is

It appeared to be a question of law itself and it was necessary to refer it to the Advocate General.

it did not occur to them that there would have been any doubt as to the point on which his opinion was desired.

as to the party by whom the expenses should be defrayed.

Proq. 1807
Judicial 861 Aftt.

Nov 11/14

Proceedings of Court

27/19 November 1806

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