

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. <i>813</i>	Press ~~MIS.~~
<i>171-173</i>	
Dated <i>24.6.1861</i>	<i>HP</i>

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Not to be folded or roughly handled

*Proceedings of the Madras Government, Judicial Department,
24th June 1861.*

Read the following papers :—

No. 171. From Lieutenant Colonel H. COLBECK, Senior Magistrate of Police; to T. PYCROFT, Esq., Chief Secretary to Government, Fort Saint George, dated Royapet, 8th June 1861, No. 17.

1. I have the honor to request the Honorable the Governor in Council will sanction my obtaining, from the Law Officers of the Government by their order, a distinct legal opinion as to whom certain jewels, now lying in custody at my Court, are to be delivered, in order that I may be absolved from any pecuniary responsibility and possible harass by recal from Ootacamund in my present delicate state of health.

2. The circumstances under which the jewels (matter of reference) came into my possession, are briefly these :—

*Chengamalum.
Hamamboojum.
Appala Charry.*

3. About the month of March last, certain parties named respectively in the margin, were charged with feloniously stealing certain jewels (list annexed.)

4. The case was committed by me in due course, and the jewels (as customary in all such cases) retained in the hands of the Record-keeper of this Court, and produced at the trial in the Supreme Court.

5. Prisoners were acquitted and the jewels returned into my custody without any observations from the Judge, by which I might have been influenced in the disposal of them.

6. Section 5, Act XLVIII of 1860, empowers the Magistrate to order the restitution of such property, only in case of conviction, and makes no provision for a case similar to the one now under reference.

7. The usual course has been, however, in like cases to restore the property to the parties from whom it was taken or received, and such mode of proceeding I intended to adopt in this instance and communicated such intention to the Attorneys to the several Claimants.

8. Mature reflection however and the receipt of further applications for the delivery of the property have made me pause until I shall be, by the advice of the Law Officers of the Government, guided and supported in this matter.

9. Four legal applications on account of this property accompany my letter.

10. In conclusion I have the honor to request, that should legal proceedings be instituted against me in the matter of the disputed jewels, the Law Officers may be instructed to do all that is necessary in the case.

Referred to the Advocate General.

(Signed) T. PYCROFT,
Chief Secretary.

10th June 1861.

No. 172. From T. SYDNEY SMYTH, Esq., Advocate General; to the Chief Secretary to Government, Fort Saint George, dated 14th June 1861.

I have the honor to acknowledge the receipt this day, of a reference bearing your signature, under date the 10th instant, in the case of an application from Lieutenant Colonel Colbeck, Senior Magistrate of Police, transmitting four letters as per margin, and requesting that he may be "guided and supported by the advice of the "Law Officers of Government" and, further, that "should legal proceedings be instituted against him, the Law Officers may be instructed "to do all that is necessary in the case."

1. From Messrs. Boyson and Miller, dated 26th April, claiming certain property on behalf of Chengamalum Ummall.
2. From Mr. Thompson, same date, claiming same property on behalf of one M. Kistna Iyengar.
3. From Mr. Thompson, dated 1st June 1861, proposing to file a Plea in Trover that then Colonel Colbeck shall bring the property into Court, and call on the other claimants to interplead, and be paid his costs.
4. From Mr. Thompson, dated 6th June, demanding delivery of the property to his Client.

request

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2. I observe with pleasure that the matter is simply "referred to the Advocate General," and that I am not directed either to advise Lieutenant Colonel Colbeck, or to undertake his defence, and I have to submit most earnestly that it is highly inexpedient that I should be directed by Government to do either the one or the other.

3. This is simply a renewed attempt on the part of Lieutenant Colonel Colbeck, to induce Government, *in the teeth of numerous decisions to the contrary, come to after mature deliberation*, to place the Advocate General and Government Solicitor at the disposal of the Magistrates as their legal advisers, and standing counsel and attorney; and if this present request of his be complied with, I cannot see on what grounds a similar permission in all cases whatsoever can be refused to any Magistrate. There is nothing in the present case which Lieutenant Colonel Colbeck's long experience ought not to have enabled him easily to dispose of (especially after receiving Mr. Thompson's letter of the 1st June 1861), and if he feels incompetent to act without legal advice, he ought, I submit, to be left to obtain it from his own Solicitor or counsel, *as the Police Magistrates in London and throughout Great Britain have to do in similar cases.*

4. If this application be granted, Government may be sure that no Magistrate will act for himself, but will in all cases seek (as was so often done in former times) for the advice and direction of the Law Officers of Government in every case—in other words, make the Law Officers do their work, while they draw their pay and allowances for sitting like automata in their offices so many hours a day.

5. I submit that well paid appointments like those of the Police Magistrates ought to be no exception to the general rule that Officers are expected to qualify themselves to discharge the duties of their appointments. If ignorant of such duties they should learn them, I submit, or vacate their appointments for others who know, or will learn, how to discharge the duties thereof. Neither the Attorney or Solicitor General, nor the Solicitor to the Treasury are accustomed to act as the advisers of the Police Magistrates of London or Dublin, and such law books and legal advice as Police Magistrates require are as easily obtainable in Madras as in those Capitals.

6. My predecessor, Mr. George Norton, during the later years of his tenure of office, and myself during the earlier years of mine, had repeated occasion to represent to Government the inexpediency of allowing its Law Officers to act as the legal advisers of, and to undertake the defence of the Magistrates in general; whereby Government on merely *ex parte* representations, which *must*, almost inevitably, convey a partial and one sided view of a case, and therefore leave them in ignorance of the real merits, commit themselves, in the dark, to an advocacy of, and identify themselves with the acts of an Officer, who may ultimately prove, when the merits of both sides come to be fully and fairly heard in open Court, to have been grossly and inexcusably in the wrong. The general body of the subjects of a Government have quite as much claim to its protection and assistance as have well-paid Magistrates; and the former in India often estimate the prestige and weight of Government influence more highly than the facts at all warrant, or than Englishmen can well conceive, and feel much aggrieved to see that fancied influence, and the purse of Government, and the legal talent at its command, all flung into the scale against them when they merely appeal to the public tribunals of the country and the law of the land for redress against real or supposed injury. In such cases, when the Court decides against the Magistrate, Government may find that it has unwittingly made itself the accomplice or abettor of acts which, however plausible they may seem in the *ex parte* statement made by the Magistrate on his own behalf (and a case must be a singularly bad one which could not be plausibly represented in a favorable light by a Magistrate, however honorable and conscientious, unless singularly exempt from the general weaknesses of human nature) may prove to have been quite unwarrantable and highly injurious or oppressive.

7. Government may also find that when, in a case of this kind, they have identified themselves with the Magistrate's acts, the damages are awarded rather with a view to the means of Government, than to those of a private individual of small means.

8. I would also submit that to permit to Magistrates a facility of obtaining legal advice from the Law Officers of Government has a natural tendency to weaken the efforts they would

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otherwise feel compelled to make to learn their own duties; while a belief or expectation on their part that their defence would always be undertaken by Government through its Law Officers, would have a similar tendency to render them far less careful about their official acts than they would be compelled to be if conscious that Government would never interfere in their favor while legal proceedings against them were pending, or until a Court had decided in their favor.

9. The above are some of the general considerations which my predecessor and myself have so frequently submitted to Government in reply to application like that now made by Lieutenant Colonel Colbeck, and upon which Government has so often decided, following the line laid down by the Supreme Government in similar cases, that it will, if desired, advance funds to a Magistrate to enable him to defend himself, and will desire their Law Officers to watch and report upon the proceedings and the decision of the Court, and will *then* decide whether the Magistrate should be left to bear his own expenses, or whether they should be borne by the Government, but that it declines to interfere further while legal proceedings are in progress or even in contemplation.

10. Here also I would submit that as a perfectly impartial report must naturally be desired as much by Government as by the party opposed to the Magistrate, every thing that has any tendency, however slight, to militate against such impartiality, must be, *pro tanto*, unsatisfactory both to Government and to the great body of its subjects, and though the Law Officers would doubtless do their best to submit a perfectly impartial report, it would be much better I submit that they should not be exposed to the influences of the *proverbial* bias of a lawyer in favor of his own client.

11. In the present case I am quite ignorant, and so I apprehend must be Government, whether Lieutenant Colonel Colbeck was right or wholly wrong in taking possession of the property in question from parties who have been acquitted of obtaining possession of it in a criminal way, and whether he ought not rather to have referred the other claimant to a civil action for redress.

12. One thing however is quite clear, viz., that when he received the written demands of the 26th April, he should *at once*, have made up his mind as to the course he ought to pursue. It is now between six and seven weeks since those applications were made, and for that length of time has the rightful owner been wrongfully kept out of his property—a detention wholly unnecessary, and for which the Court will probably award damages, which if awarded will have been incurred solely by Lieutenant Colonel Colbeck's delay.

13. I submit that Lieutenant Colonel Colbeck should be informed that Government declines to interfere in cases like the present where legal proceedings are in progress or in contemplation; but that it will, if he desires, advance him funds to enable him, as it has done for other Magistrates, to act and to conduct his own defence as he may be advised; and that after the proceedings have terminated it will consider whether such advances should be recovered from him, or the expenses of his defence be borne by Government.

No. 173. ORDER THEREON, 24th June 1861, No. 813.

Resolved that Colonel Colbeck be informed, in reply to his letter of the 8th instant, that he must act upon his own judgment in regard to the delivery of the Jewels lying in custody in his Court. The Government will not take the opinion of their Law Officers on the point.

2. In regard to the request contained in the last para. of his letter, that should legal proceedings be instituted against him in the matter of the disposal of the property, the Law Officers may be instructed to do all that is necessary in the case, he will be informed, that his application cannot be granted. In the event of an action being brought against him, he must conduct his own defence, as he may be advised. The Government will, if he desires it, as they have done for other Magistrates, advance him the funds requisite for the purpose, and after the proceedings have terminated, they will consider whether such advances should be recovered from him or the expense of his defence be borne by Government.

(Signed) T. PYCROFT,

Chief Secretary.

Exd. T. O'Connor.

request

Judicial Department.

Read the following letters.

From Lieut. Col. H. Colbeck, Senior
Magistrate of Police. } (How entered 8th June 1861, 407.)
From the Advocate General / — " — 14th — " — " — " — /

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JP

To Lieut Col A. Colbeck
(with original papers) despd 24th
To the Advocate General
and the Police & District

For the Advocate General
to be sent to the
Advocate General
to be sent to the
Advocate General

Recd of 5 July

Prosser

Practical 1861. Department.

No. 813.

PROCEEDINGS of the MADRAS
GOVERNMENT.

Dated 24 June 1861

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