

# MADRAS RECORD OFFICE.

Government of Madras.

*Judicial* DEPARTMENT.

G.O. No.

372

Press

~~Mis.~~

48-49

Dated

6. 3. 1862

~~10~~

4/5

Not to be folded or roughly handled

372

*Proceedings of the Madras Government, Judicial Department,  
6th March 1862.*

No. 48. Read the following letter from Colonel W. I. BIRDWOOD, Deputy Chief Engineer S. C.; to Lieutenant Colonel W. H. HORSLEY, Chief Engineer and Secretary to Government, P. W. D., Fort Saint George, dated 8th February 1862, No. 10,387.

\* No. 188, dated 29th October 1861.

ENCLOSURES 6.

- 1 Letter from District Engineer, No. 188, dated 29th October 1861, with 3 Enclosures.
- 1 Proceedings of the Board of Revenue, No. 6,935, dated 12th December 1861.
- 1 Letter from Government Pleader, No. 5, dated 8th January 1862.

I have the honor to submit for the consideration and Orders of Government, a letter\* from the District Engineer of Tanjore, enclosing copy of an order of the Magistrate of that District, inflicting a fine of Rupees 5, on Sub-Overseer Ponnaya Mudali.

2. The particulars of the case are briefly these: A very objectionable practice obtains in the Tanjore District of building temporary dams across irrigative and drainage channels, to facilitate fishing operations, which being most detrimental to the works, was brought to the Collector's notice, by the District Engineer in November 1860. Mr. Cadell replied, that "throwing up banks across channels is neither allowed nor intended to be recognized by the terms of the leases, granted to the fish renters, the practice is therefore unauthorized and illegal;" a Circular prohibiting the practice was then published by the Collector in the local Gazette of the 15th December 1860.

3. But in direct disobedience of this prohibition, a temporary dam was built by fishermen across the drainage stream, recently opened from the Nállár in the Tritnapundi Taluq, and removed by Sub-Overseer Ponnaya Mudali, under orders from the Sub Engineer in charge of the range. A complaint was then made by the fishermen to the Tahsildar, who referred the matter to the Magistrate, by whom the Sub-Overseer in question was fined in the sum above mentioned.

4. As Mr. Cadell exceeded his authority in inflicting a fine upon a Subordinate of this Department acting in the performance of his duty and under the orders of his immediate superior, without reference\* to the District

\* Vide paragraph 11, Proceedings of Government, No. 2,703, dated 19th November 1859.

† No. 7,545, dated 23rd November 1861, from Chief Engineer.

‡ No. 6,935, dated 12th December 1861.

and observed that the appeal in such cases lies to the Sessions Judge. Whereupon the Government Pleader§ was addressed on the subject,

§ No. 8,908, dated 24th December 1861, from the Chief Engineer.

Engineer, the Board of Revenue were requested† to order the remission of the fine, and instruct the Magistrate to take up the case *de novo* in communication with the District Engineer. But they replied‡ that they "have no jurisdiction in the matter of sentences passed by Magistrates, to the Sessions Judge. Whereupon the Government Pleader§ was addressed on the subject, whose opinion is given at length, in his letter No. 5, dated 8th January 1862, herewith forwarded.

5. In drawing particular attention to paragraphs 2 and 8 of the above letter, I beg than Government will be pleased to issue the necessary orders, to the Magistrate at Tanjore, to remit the fine to Sub-Overseer Ponnaya Mudali.

No. 49. ORDER THEREON, 6th March 1862, No. 372.

The Government consider that Mr. Cadell would have acted more correctly in bringing the conduct of the Sub-Overseer to the notice of the District Engineer rather than by proceeding against him Magisterially, especially if it appeared that he had been acting under the orders of his official superior. It is not however clear from the Magistrate's Takeed whether the Sub-Overseer advanced that plea in his defence in the inquiry before the Sub-Magistrate, and it is observed that the Magistrate did recognize the validity of the plea in the instance of the 2nd Defendant in the case.

Proceedings of the Madras Government, Judicial Department,  
6th March 1862.

2. As however Mr. Cadell has thought proper to deal with the matter judicially in his capacity as Magistrate, the Government cannot interfere with his proceedings. The Sub-Overseer should seek the reversal of the sentence by appealing in the regular manner to the Session Court.

(Signed) T. PYCROFT,  
Chief Secretary.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letter  
from the Deputy Chief  
Engineer J. C. thro' the P.W. Secy.

Let the appeal be made  
to the Session Court

Here enter 8 Feby. 1862 No. 10387

Order there on 6th March 1862 No. 372

It appears to me that this  
does not meet the case  
Mr. Cadell has evidently acted  
improperly and illegally,  
he has fined a man for  
doing his duty under the order  
of his superior officer, and  
now is proposed to shelter  
him under the plea that he  
has acted judicially -  
and further from the report  
of the Govt Pleader no appeal  
can properly be entertained  
then it is evident that some  
alteration must be made in  
the law for it is in the power  
of the Magistrate to commit  
a man for such a most  
flagrant injustice with  
impunity -  
I think that in this case  
Mr. Cadell should be severely  
reprimanded. Had the  
man to pay back to the house the amount of the

The Govt. consider  
that Mr. Cadell would  
have acted more correct-  
ly in bringing the con-  
duct of the Sub Over-  
seer to the notice of the  
District Engineer rather  
than by proceeding co-  
munitally, especially if it  
appeared that he had  
been acting under the  
orders of his official  
superior. It is not  
however clear from  
power I should cause the  
amount of the

him which he has literally  
inflicted - & which at all  
events ought to be remitted  
the attention of the Superior  
Judge should be called to  
this case however by the  
Sub Overseer - In other cases an  
unwarranted interference on  
the part of the Department of Revenue  
& Public Works by which  
the interests of Gov<sup>t</sup> are  
prejudicially affected and  
should not fail to point  
out reprehension and  
punishment to officers  
of either Dept<sup>t</sup> who suffer  
either private prejudice or  
departmental jealousies  
to interfere with the due  
execution of their duty

*MM*  
- The draft seems to me  
appropriate & an appeal  
to the Supreme Court should  
have been made by the  
Sub Overseer, on his being  
dissatisfied with the Magistrate's  
sentence - Any further  
feeling of antagonism between  
the 2 Departments was active  
on this occasion, I will not  
here attempt to decide, but

the Magistrates takes  
whether the Sub Overseer  
advanced that  
plea in his defence  
in the inquiry before  
the Sub Magistrate,  
and it is observed that  
the Magistrate did re-  
cognize the validity  
of the plea in the  
instance of the 2<sup>nd</sup>  
Defendant in the case.

2. As however Mr  
Cadell has thought  
proper to deal with  
the matter judicially  
in his capacity as  
Magistrate the Govt.  
cannot interfere with  
his proceedings. The  
Sub Overseer should  
seek the reversal  
of the sentence by  
appealing

it is important to observe appealing in the re-  
that the Sub Overseer was  
decidedly wrong & aggressive  
in the first instance - Session Court  
Even supposing the fishing  
nets were improperly supported  
by a dam, the Sub Overseer  
ought to have lodged a complaint  
& obtained an order from a Magisterial Officer  
for their removal - In removing them himself  
he exceeded his authority, encroached on the juris-  
diction of the Magistrate & thus caused the present trouble  
- The nets were just & proper by a party who rented  
the fishery for a considerable sum & was therefore  
entitled to catch the fish - Whether the nets  
were fixed in an improper way is a disputed  
point - the Magistrate shows that according  
to the evidence given before him they were not  
so - Had the Sub Overseer lodged a complaint  
instead of improperly taking upon himself to  
remove the nets, this point would have been  
at once cleared up - I agree with the Draft  
that Mr Cadell would  
the Department Public Works, have acted more judiciously  
(with 6. Enclomures read) first brought to  
before 6<sup>th</sup> if he had dealt with the Sub Overseer  
for this wrong conduct through the hands  
of his Dept instead of at once taking up  
the case Magisterially, but this is a matter of opinion  
the Magistrate might argue that he had no other option after a formal  
order of the Magistrate had been made - *Edw R. O. M. B. 110*

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The Govt ~~secret~~ under fore <sup>1</sup>  
in this case - I agree with  
the remarks made by Mr  
Hoddy - why was the L. P. ~~not~~  
substituted?

Office of Madras  
No. 1862. Department

No. 342.

PROCEEDINGS of the MADRAS  
GOVERNMENT.

1862

Defaming Mr. Dwyer  
Mr. Dwyer, who was  
in the charge of the  
of Bangalore for removing a dam  
in the channel for the  
navigation, that he  
had caused to be built in the  
middle of the river against  
the dam.