M.R.O. 1—23,000—15-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial **DEPARTMENT.**

G.O. No. 1316	Press Mis.—
60/32 Dated 10-9-	19 1932

6/7

Not to be folded or roughly handled

No. 60. Read the following Proceedings of the Board of Revenue, dated 8th September 1864, No. 5859.

Read the following papers:—

From J. W. B. DYKES, Esq., Collector of Nellore; to W. HUDLESTON, Esq., Secretary to the Board of Revenue, dated 19th August 1864, No. 274.

I have the honor to request permission to defend, at the public expense, a suit brought against Bandla Ramaswamy, Sub-Magistrate of Venkatagiri, by the Zemindar.

2. The complaint and proposed answer are enclosed, and the Board will observe the Zemindar charges the Sub-Magistrate with having intentionally insulted him, because some requests to assist friends had not been complied with.

3. The Zemindar some time ago forwarded the letters on which he bases the charge, and I returned them, informing the Sub-Magistrate that "he had no business to write them, and would learn in time that a Sub-Magistrate compromises himself when he makes such requests."

4. But I do not for a moment believe that the Sub-Magistrate's official acts have had any reference to the said requests, and I look on him as a thoroughly upright, honest public servant.

5. He has been wanting in discretion, and I have repeatedly warned him on this point in connection with which, and the enclosed copy of a Memorandum from the Civil Judge, I also request the Board's instructions, and beg to be informed whether it is, the Board considers, to the public interests such orders should be shown. The Zemindar has applied for copies of my orders censuring the Sub-Magistrate. If the Sub-Magistrate had applied for my orders to prove he had acted in accordance to them, there could be no doubt on the point; but where the opposite side applies for them, it seems to me that is putting them to a use they are not intended for, and it is not to the public interests they should be put to. It is to the interests of the public service that the opinion of the Magistrate should be freely expressed to his subordinates, but that freedom will be interfered with if the production of these remarks can be claimed by others.

6. I further regret to state that the Vernacular reports on which my orders were written in English are missing from my records.

ENCLOSURE No. 1.

Original Suit No. 7 of 1864.

To the Civil Court in the Zillah of Nellore.

Undi Rajahaya Raji Velugoti Kumara Yachama Naidu, Bahadur, Zemindar of Venkatagiri ... ... Plaintiff.

Bandla Ramaswamy Naidu, of Madras, at present Sub-Magistrate of Venkatagiri, a Sudra by caste, and gaining his livelihood by service ... ... Defendant.

Arzi presented by Komanduri Venkata Krishnama Chari, Pleader on behalf of the plaintiff.

After the defendant came as Sub-Magistrate of Venkatagiri, he made recommendations that the affairs of his friends may be settled favorably, and the plaintiff has acted up to his recommendations in such affairs as were not contrary to justice.

2. The defendant requested to confirm the adoption made by one of the partners of the Periapattu Agraharum, but it being one which should be determined on according to the "Dharmasastrum" Hindu law, and impossible for the plaintiff, it was not done according to his wishes, and consequently the defendant entertained an ill-feeling towards the plaintiff.

3. He caused a complaint to be brought before him in No. 12 of 1864, in the Magisterial side by one Ayana, a Kurnum of Kalavalapudi, purporting that the produce belonging to the said Ayana was attached by the late Mazumdar of the plaintiff, entered all at a sudden on the morning of the 8th January 1864 into the Taluq Cutcherry situated in the Nagallu, palace of the plaintiff, and searched the records there. The servants having said that it should be informed to the plaintiff, he not only used disrespectful language towards the servants and the plaintiff, but also apprehended Rayasam Ramaya, the "Rayasam" (Javabneviss) of the plaintiff, took him to his Cutcherry, kept him in custody and caused much disgrace, and issued warrants to both Kallipali Rama Row, the Seristadar and Dhuli Venkata Subbaya, Mazumdar of the plaintiff.

4. Whilst there was no objection for the plaintiff to send, if intimated for, the documents, if any required, for evidence from the plaintiff's records in this case, which is of a Civil nature, it was irregular on the part of the defendant in having, contrary to the orders of the District Magistrate, proceeded to search in the above manner his (plaintiff's) records without his knowledge, and injured his dignity.

5. Owing to the ill-will the defendant entertains towards the plaintiff, and with a strong view to injure the dignity and respect of the plaintiff, on the 10th January 1864, he made a false report to the Magistrate that 100 people of the plaintiff have combined together and raised a disturbance in front of his Cutcherry, and that this was at the instigation of the plaintiff. And the plaintiff also informed the Magistrate that it was false that any disturbance was raised, that the 10th January was a Sunday, and a day on which there is no Cutcherry of the Sub-Magistrate.

6. The irregularities and disrespect observed by the defendant respecting the plaintiff's record, entering the palace, and in respect to the plaintiff himself and his servants will be manifest by the Arzi which the defendant wrote to the District Magistrate, and the Hukum the Magistrate issued to the defendant; and attested copies will be produced before the time of hearing.

7. Moreover, I will cause the recommendatory letters which the defendant wrote to the servants of the plaintiff regarding his friends to be produced by the said servants naming them as witness.

8. I beg to request that you will be pleased to examine into the irregularities and restraints used by the defendants as stated in paragraphs 3 and 5 above, and to pass a judgment awarding Rupees 25,000 from the defendant to the plaintiff, being the amount of loss sustained by the plaintiff in his dignity, together with costs of the suit.

4th May 1864. (Signed) K. VENKATAKRISHNAMA CHARLU,
Pleader.

I, Ambarukana Srinivasa Row, Vakeel on behalf of the plaintiff in the above suit, do declare that to the best of my knowledge and belief the circumstances mentioned above are true.

(Signed) AMBARUKANA SRINIVASA ROW.

Presented in Court on the 4th and filed on the 5th May 1864.

(Signed) E. STORY,
Civil Judge.

(True Translation.)

(Signed) J. W. B. DYKES,
Collector.

ENCLOSURE No. 2.

No. 7. of 1864.

On the file of the Civil Court of Nellore.

ANSWER.

Plaintiff. *versus* *Defendant.*

Unde Rajahaya Raji Velugoti Kumara Yatchama Nayadu, Bahadur of Venkatagiri Samastanam. — Bandla Ramasawmy Naidu, Sub-Magistrate of Venkatagiri.

I did not recommend any of my friends to the complainant, nor did he assist any in pursuance to my recommendation.

2. I did not request the complainant to confirm an adoption made by one of the shareholders of the Periavaram Agraharum. The complainant wrote to the Collector that I recommended to him a case of adoption made by Madabuchi Rangama of Periavaram. If this be the subject of the 2nd paragraph of the complaint, I beg to state that I did not request its confirmation, nay I am prepared to prove that this adoption was made with the complainant's consent, before I came as 2nd Class Subordinate Magistrate of Venkatagiri.

3. I did not ask Ayana, the Kurnum of Kalavalapudi, to lodge a criminal charge, No. 12 of 1864. But Kurnum Ayana having himself complained to me that the Serishtadar and Mazumdar of the complainant attached his grain, and that they not only threatened him, but also wrote a Takid to the Vantudar that his grain should not be released until he had executed a deed binding himself to pay an old balance of 15 Puttees of grain (which was lost sixty years ago) his complaint was taken into my file (No. 9 of 1864).

4. A practice obtains in this Zemindary of re-calling at the end of each month all the Takids issued to subordinate local authorities, and recording them in the Huzur or Taluq Cutcherry. The Takid of attachment above alluded to being most essential to this case, it was my duty first to secure this by some means or other, and with this object I went into the Taluq Cutcherry and asked the Rayasam (*i. e.*, Gumastah that writes and enters all Takids) for certain entry books, of which he gave me two, and refused to obey my orders any more. Although I went into the Cutcherry by virtue of the authority vested in me by Sections 114 and 128 of the Criminal Procedure Code, yet considering how difficult it is to search the immense records of the complainant, I stopped my proceedings, and made no search. Police Constable Purnasing and my Cutcherry Peon Chode Subbaya were in attendance.

5. When I went into the Taluq Cutcherry of the complainant, I put certain questions to the Rayasam, who having refused to answer, I brought him into my Court and proceeded in his case under Section 192 of the Criminal Procedure Code.

6. I issued warrants to the Serishtadar and Mazumdar because the charge preferred by Ayana was a case *in which a warrant shall issue*, the offence falling under Section 385 of the Indian Penal Code.

7. There is no provision in the Criminal Procedure Code authorizing me to write letters for the production of documents essential to any case, nor does it provide punishment for disobedience to answer such letters. Besides there was every reason to believe that, from the nature of the document, it was such that would be made away with if publicly called for. Under these circumstances it was my object to secure it without exciting alarm, which plan having failed, I did not institute a search for reasons stated in paragraph 4.

8. That I wrote a report to the District Magistrate to the effect that about 100 men belonging to the complainant assembled before my Court and created a disturbance, I admit; and it is a true one. Three-fourths of the men that formed the assembly were servants of the complainant; and the District Magistrate having had sufficient grounds to believe my report, warned the complainant against the repetition of such act. I am ready to prove that there was a large assembly of men before my Court, who were dispersed with difficulty. Besides, I have punished three of the most impertinent among the number under the Penal Code.

9. There is no private enmity between the complainant and myself; we were on good terms up to the date of Ayana's complaint. I did not as alleged use disrespectful language towards the complainant, or his servants; and I am prepared to disprove the allegation. The District Magistrate has written me many orders on the several subjects herein alluded to, but he has nowhere condemned my proceedings as illegal, or contrary to law. When I obtained the Degree of B. A., I was sworn *to be honest in my relations with my fellow countrymen;* and I can prove that I have been invariably honest and conscientious in the discharge of my official duties.

10. Having in vain tried his best to prejudice the District Magistrate against me, and if possible to get me removed, the complainant has now filed this suit because I do not overlook the illegal acts of himself and his servants, and because I cannot be made subservient to his interests by the influence of his money.

11. From what I have above stated, the Court will be pleased to observe that the several subjects of complaint are all official acts done *bonâ fide* by virtue of the authority conferred on me, as 2nd Class Subordinate Magistrate of Vencatagiri, by the new Penal and Procedure Codes; and such being the case, I seek the protection of Act XVIII of 1850, which is a bar to Magistrates, &c. being sued for damages, even when they should exceed their jurisdiction, and I most humbly beg that the Court will dismiss the case under the abovesaid Act, and order the complainant to pay my costs.

VENKATAGIRI,
2nd August 1864.

(Signed) B. RAMASAWMY NAIDU,
2nd Class Subordinate Magistrate.

(True Copy.)

(Signed) J. W. B. DYKES,
Collector.

ENCLOSURE No. 3.

From E. STORY, Esq., Civil Judge of Nellore; to the Collector of Nellore, dated 8th August 1864, No. 200.

In forwarding herewith copy of Miscellaneous Petition No. 527 of 1864, presented by the plaintiff in Original Suit No. 7 of 1864, the Civil Judge has the honor to request that the Collector of Nellore will have the goodness to furnish the petitioner with copies of the papers therein mentioned, as the said papers are material to the plaintiff's case.

(True Copy.)

(Signed) J. W. B. DYKES,
Collector.

From the same Officer, dated 25th August 1864, No. 278.

I have the honor to state the missing* Vernacular reports in the Zemindar's case have been found, and I submit for the Board's information the orders I wrote on these when received.

* Letter to Board, 19th instant, No. 274, paragraph 6.

2. The first report had reference to searching the Zemindar's records, and this was the order passed thereon calling for explanations, and censuring Bandla Ramasawmy for referring to a general assurance that he should always have my support so long as he acted in an upright manner, when bringing to notice a specific act on which I had to decide as Judge.

Order passed by the Magistrate on Vernacular Report, No. 4, dated 18th January 1864, from Bandla Ramasawmy Naidu, 2nd Class Subordinate Magistrate of Venkatagiri.

You could only enter under Section 128 to have search made. By whom had you it made? You could only question the Rayasam as a complainant, a witness, or accused. In the former case you should examine on oath. Did you? In the latter he need only answer as he thought fit. With reference to what section. Did you act under Section 163? But as regards the offence, take at once a clear statement as to where the property is; when it was put there; by whom; and under whose custody it now is. Your appeal is wholly improper. I have to do what is right.

3. The second order was passed on the explanations afforded, and gives the Board, I believe, a correct view of what took place, and in what Bandla Ramasawmy was blameable. He defends himself, the Board will see, in the answer proposed to be filed, by referring to a practice in the Zemindary of re-calling orders; but here again he was acting on information he had not on record before him; and, in this as throughout, he has been led away by want of reflection, and has insulted the Zemindar, when seeking to redress private wrongs without taking due precautions to ascertain the precise nature of these wrongs.

rder passed by the Magistrate on Vernacular Report, No. 8, dated 31st January 1864, from Bandla Ramasawmy Naidu, 2nd Class Subordinate Magistrate of Venkatagiri.

You have not acted with discretion. From an educated man, I should have thought more dgment might have been looked on as certain; and had you considered what was the case at sue, and simply applied common sense to the solution, you could not have failed to see that bstantial justice was to be done without insulting one holding the position of the Zemindar of enkatagiri. I do not doubt the ryots are afraid to come forward. It would be the same anywere, and under any circumstances. It is still more likely, when they see the Sub-Magistrate, ho takes up their case, show so little discretion.

An Accountant complains his crop has been put under seal; some one heard a peon tell the mplainant that an order to that effect had been received by the Vantudar, and the Vantudar nfirms this to the complainant. According to the complainant, the order had been written by e Vaidyula Narasinga Row, lately Mazumdar, and, in addition, certain demands had been made him in connection with the attached grain by another servant of the Zemindar, viz., Kallapalli ma Row, late Head Munshi in the Head Assistant's office of this Collectorate. And, thereon, e Accountant by his own showing having been already once dismissed, the Sub-Magistrate inks fit to insult the Zemindar by entering his Cutcherry to look for the drain instead of at once xamining the Vantudar, and searching his house if necessary for the original Takid. In the Magistrate's opinion neither course was requisite.

On the receipt of the complaint, if considered well founded, Bandla Ramasawmy should have at once obtained the attendance of the Moonsiff and Peon. If they denied having attached the crop, all that remained for the Sub-Magistrate to do was to tell complainant to take away his grain, unless complainant proved that they had obstructed him, and, in that case, or in the event of their admitting the obstruction, and throwing the blame on the Vantudar, then the Vantudar should have been summoned, and the inquiry prosecuted in the same manner. The Sub-Magistrate is more likely to place matters on a sound footing by proceeding quietly, and showing the strength of the law, than jumping at conclusions, and leaving untouched the main point at issue, viz., whether the grain had really been attached.

And when he has got the case definitely settled on the main features, it will then be time for him to take up the collateral case against Kallapalli Rama Row.

4. As I have already stated, I do not for a moment suppose that the conduct for which I rebuked Ramasawmy was to avenge private grievances, that Bandla Ramasawmy intentionally insulted the Zemindar, because the Zemindar would not assist certain people he had recommended to the Zemindar; and I did not transfer him to another charge when he had made the mistake, because I thought it to the public interest an independent Magistrate should be retained at Venkatagiri. I hoped to succeed in showing him, how he could act up to his duty without giving the Zemindar grounds for complaint, and finally it was a good school for the Sub-Magistrate himself, who in Venkatagiri would be compelled to learn discretion.

From the same Officer, dated 29th August 1864, No. 281.

I have the honor to acknowledge the receipt of your Official Memorandum of the 26th instant, No. 730, and state that to-day was the date assigned for filing the answer to Original Suit No. 7 of 1864, on the file of the Civil Court of Nellore, referred to in my letter of the 19th, No. 274.

2. I enclose, for the information of the Board, extracts of correspondence with the Civil Judge, applying for an adjournment of the hearing of the suit till after the September Criminal Sessions of the Court, which will commence on the 1st proximo.

ENCLOSURE No. 1.

From J. W. B. DYKES, Esq., Collector of Nellore; to E. STORY, Esq., Civil Judge of Nellore, dated 19th August 1864, No. 737.

The Collector has the honor to acknowledge the receipt of the Civil Judge's Memorandum of 8th instant, No. 200, and state that two of the documents called for cannot be found, and it be desirable that the orders of the Board should be obtained in respect to the production of d the defence of the suit brought against the Sub-Magistrate at the public expense.

2. The Collector understands that the trial has been fixed for the 29th. If an adjournment could be granted till after the next Sessions, it would give time to make the requisite reference, and the Collector hopes to recover the missing reports.

From E. STORY, Esq., Civil Judge of Nellore; to J. W. B. DYKES, Esq., Collector of Nellore, dated 23rd August 1864, No. 215.

* * * *

2. The Civil Judge has further to observe, with regard to paragraph 2 of the Memorandum under acknowledgment, that it should not have been included in the Memorandum in question, and that the request for an adjournment should in the usual way be preferred before the Court by the party himself, either in person or by his Vakeel.

From J. W. B. DYKES, Esq., Collector of Nellore; to E. STORY, Esq., Civil Judge of Nellore, dated 29th August 1864, No. 756.

* * * *

3. And as regards the concluding remark of the Memorandum under acknowledgment, the Collector has the honor to observe that he adopted the course animadverted on, because not yet a party to the suit, but with reference to public interests desirous of informing the Court of the official steps taken in the matter.

4. Another time this shall be done through the Government Vakeel. In the present instance the Collector believes the defendant's Vakeel will move the adjournment.

(True Copies and Extracts.)

(Signed) J. W. B. DYKES,
Collector.

Ordered that the above papers be submitted for the decision of Government.

2. The Board believe that it necessarily devolves on them to receive and transmit such applications, although when, as in the present instance, the suit is brought against a Magisterial Officer for alleged abuse of his powers as such, it is scarcely in the Board's province to pronounce an opinion on the case.

3. It appears to them that in the present instance the Sub-Magistrate showed great want of discretion, but they are willing to believe that he was actuated by no bad motive; and as the Collector advocates the defence of the suit at the public cost, and exonerates the Sub-Magistrate from any intentional abuse of his powers, the Board recommend that the sanction of Government be granted accordingly on the usual terms.

4. As regards the papers applied for by the Zemindar, the Board consider that the Collector should decline to grant copies of them as being privileged communications which it is not for the public interests should be placed at the disposal of any private individual.

5. The papers can of course be produced in Court for the inspection of the Judge if required by him.

(True Copies and Extract.)

(Signed) W. HUDLESTON,
Secretary.

To J. D. Sim, Esq., Secretary to Government, R. D., with two enclosures.

No. 61. Proceedings of the Board of Revenue, dated 9th September 1864.

Read Telegram from the Collector of Nellore, dated 8th September 1864.

Suit against Sub-Magistrate of Vencatagiri fixed for hearing on 16th instant, and further postponement not to be granted. Answer requested to letters 274 and 278.

Submitted for the information of Government, in continuation of Board's Proceedings, No. 5859, dated 8th September 1864.

(A true Copy and Extract.)

(Signed) W. HUDLESTON,
Secretary.

To J. D. Sim, Esq., Secretary to Government, Revenue Department.

No. 62. ORDER THEREON, 10th September 1864, No. 1346.

The Government are unable to sanction the defence of the suit at the public expense, as it is entirely of a personal character.

2. When the suit is decided they will determine whether the expense shall be borne by the State or not.

3. The Government concur in paragraph 4 of the Board's Proceedings of the 8th instant.

(True Extract.)

J. D. SIM,
Secretary to Government.

To the Board of Revenue.

Exd. J. Tulloch.

Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following Proceedings of the Board of Revenue.

(Here entered 8th September 1854)

Order thereon 10th September 1854 No. 1346.

1st The Government are unable to sanction the dismissal of the Assistant the public Officer, as it is entirely of a personal character.

2nd When the matter is decided they will be determined whether the Officer shall be borne on the State or not.

3rd The Government concur in Board's proceedings of the 8th Inst.

Sd/ Jno Smith Sec.

To Board of Revenue dispatch

Judicial 1864. Department.

No. 1346

PROCEEDINGS *of* GOVERNMENT.

Dated 10 September 64