

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 162

Press

~~Mis.~~

266-270

Dated. 30-1-1948

9/10

Not to be folded or roughly handled

*Proceedings of the Madras Government, Judicial Department,
30th January 1865.*

Read the following papers :—

No. 265. From W. M. CADELL, Esq., Collector of Tanjore, to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George; dated Tanjore, 3rd January 1865, No. 2.

I have the honor to acknowledge the receipt of the orders of Government, under date the 21st ultimo, No. 1862, calling upon me to state under what circumstances the persons alluded to, in the 2nd paragraph of the accompanying letter from the Acting Registrar to the High Court, were placed on the Jury list.

2. In reply I beg to state that the appointment of "educated" men, to serve as Jurors in the Tanjore Zillah, is a matter of very great difficulty. Amongst the Mahrattah population in the Fort of Tanjore and the surrounding villages, the number of educated persons is very small, and the large and wealthy land-holders in the neighbourhood are for the most part "Kallars," and who as a class do not appreciate the advantages of education. In the preparation of the list of Jurors and Assessors, I can, however, assure the Government, every attention has been paid to secure the services of men of respectability and of ordinary intelligence, though I very deeply regret that, in the case of one of the parties alluded to by the Session Judge, a most unfortunate mistake has been made.

3. In the case of this individual, I may, however, state that at the time he was nominated nothing whatever was known against him; he was a man of some property, and although his name was published in the usual manner, and the list which contained it affixed in all the Courts and offices at Tanjore according to Law, no objections were made, and in due course the list was promulgated. In fact, it was not till after the receipt of the Extract from the Proceedings of the Session Court in November, that I was made aware that there was any thing against the man, and it then appeared that the individual in question had, in the month of August last, admitted before the Session Court that he had been convicted and punished. This fact, I submit, ought to have been communicated at once to my office, when of course the name of the individual would have been removed. I may, however, add that after a long and laborious search amongst the old records of the abolished Taluq of Paupanassum, it was found that the individual, referred to, had been punished 19 years since for possessing stolen cattle, and escape from custody.

4. I deeply regret the mistake thus most unintentionally made; but I must submit that in the selection of persons for the important duty of Jurors, Collectors have a right to expect such aid and assistance from the Ministerial officers of the Session Court, as from their position they are and must be capable of giving.

5. Recent changes in our administration, and especially the enlargement of our Taluqs, with the reduction of both our Revenue and Magisterial establishments, have very much reduced the means the Collector had, of becoming familiar with the people of his District, and I submit that we may fairly claim the aid and assistance of the Courts, in finally selecting parties for the responsible office of Jurors. I would, therefore, take leave respectfully to suggest that the Judges of the Session Court should, with the aid of their Ministerial servants, be requested to examine the proposed lists of Jurors and Assessors, and to bring to the notice of the Collectors the names of any such parties as may be known to them to be objectionable or unfit.

6. In conclusion, I may be permitted to observe that even in England, where the Jury system has obtained for such a length of years, and where it is considered necessary to keep the Jury locked up till their verdict is delivered, the "*gentlemen of the Jury*" do sometimes deliver a verdict contrary to the most clear and satisfactory evidence; how much greater then must the risk be in this country in the case of Jurors, who, as a rule, are altogether averse to taking a part in the administration of Justice, and who, during the investigation of a case (and which frequently lasts several days), are at liberty to go where they please, and to hold free and unrestrained communication with all around them.

No. 266 From E. W. BIRD, Esq., Session Judge of Tanjore, to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George; dated Tanjore, 9th January 1865, No. 24.

By the courtesy of the Collector of the District, I have been this day favored with copy of his letter to Government of the 3rd January, in reply to the Proceedings of Government, Judicial Department, of the 21st December 1864, No. 1842. I have the honor to request you will be pleased to submit to Government the following explanation on the subject of the correspondence, because, it appears to me, Mr. Cadell's letter will convey an impression that, in reference to the unfortunate case in question, the Session Court establishment in general, and I myself in particular, have not cordially co-operated with the Collector (as in duty bound) in the selection of Jurymen, and are to blame for allowing the individual, alluded to, to continue on the Jury list, after August last.

2. I beg to state that the man in question appeared before me as a witness for a prisoner on the 3rd August last, in the trial of a heavy dacoity case disposed of at that Sessions. He was not then known individually either to myself or to the Court officials then in Court; the Court itself having but recently (November 1862), been transferred to Tanjore, and the man being a resident of an outlying village, eight miles from Tanjore. He had never sat in August last, as a Juror, and it did not then transpire that he was one of 207 Jurymen on the list. It was only after he had appeared in November, for the first time as a Juror, and acquitted (I believe by his evil influence on the grossly ignorant co-jurors he was associated with), that it then transpired through the accidental recognition of the man by the Duffadar of this Court, that he was the individual who had, in August last, admitted his own conviction as a receiver of stolen property, and that he "had been punished with rigorous imprisonment for one year." I can safely say I did not myself recognise the man in November (when 56 others appeared before me as witnesses at the Sessions), and seeing there were four Sessions held from August to November last, with 213 witnesses examined, I am only surprised the Duffadar should, in November, have recollected the individual.

3. I trust, therefore, the Government will fully acquit me and this establishment of all blame and want of apparent co-operation, which, I cannot but see, the Collector of the District somewhat unjustly deems to attach to us. The instant I was aware of the evil character of the Juror, and the gross ignorance of his co-judges at the trial, I brought the matter, as in duty bound, to Mr. Cadell's notice, and urged his revision in person of the whole list. Copy of the Proceedings is submitted for information.

4. I beg to state, further, that the ex-convict in question admitted, in August, before me, that he had been convicted and punished for possessing stolen cattle ten or fifteen years ago. By the discovery of a conviction prior to that again, nineteen years ago, as stated by the Collector, I am inclined to believe the man in question has been twice punished; and surely such circumstances as these might have attracted notice in the Revenue Department, and been brought to the knowledge of the Collector when the list was prepared. Personal questioning of the man by the Collector, or an Assistant, might have elicited the damaging admissions.

5. I am informed, though, of course, I cannot affirm this as a fact, that the selection of the names of Jurors on this Court's lists has rested mainly hitherto with the Karnams of a village; and that in scarcely any instance is the selected person personally interrogated or examined by the Collectors, or their European Assistants. I beg respectfully to point out that this is, if it obtains, a very bad arrangement. Such selection of Jurors never can be safe. It will not keep out of the lists men of blemished character like the person in question, and it is sure to allow the admission of numbers who, being unable to read or write, I must distinctly affirm, are unfit, as grossly ignorant, to be trusted with the responsible functions of Jurymen. With men of fair character, and of ability to read and write (no high standard certainly), I can state, from two years' experience of the system in this District, that perverse verdicts are the rarest exception. Indian Jurors (in Tanjore at least) are very ready to adopt the direction of the Judge, and in my experience are only prone to convict indiscriminately (in the heinous offences in which alone they have jurisdiction) where such convictions, on evidence produced, would appear, in my view, unsafe. But with Jurors such as those in the case in question who are led by a man whose sympathies are wholly with a robber, the ends of public justice must ever suffer defeat. To obviate it, the only remedy seems to be the careful *personal* selection of the men by a European officer, and not the delegation of that duty to Native officials, who will never comprehend, in the infancy of the system of trial by Jury especially, the immense importance of their duty in its effect on the administration of Criminal Justice in the Mofussil.

Extract from the Proceedings of the Session Court of Tanjore, dated 12th November 1864.

Paragraph 3. The next case calling for remark is Session No. 42 of 1864, wherein one Ramasawmi Naik was indicted on a charge of dacoity. The case was a very simple, perfectly clear and conclusive one, and though the man was proved to have been taken in the very act of torch light gang robbery, or dacoity, and stolen property was then and there found on his person, the Jury sitting at the trial acquitted him in the face of the Judge's charge, which was strongly for a conviction. The Session Judge would wish the Committing Officer, Subba Row, 2nd Class Sub-Magistrate of Pattucottai, to be informed that the lamentable failure of public Justice which has occurred in this trial, is, in no way, attributable to him, but that the record shows his conduct was, in all respects, quite satisfactory.

4. The fault lay entirely with the Jury. They were men of no intelligence, hardly any of them could write, and one of them, by name Ramasawmi Tencondan, admitted before this Court, in August last, when examined as 1st witness for 1st prisoner in Session Case No. 31 of 1864, that, several years ago, he suffered one year's rigorous imprisonment, for possession of stolen Cattle. The Court was not aware, when this trial, No. 42, began, that the same individual was present as a Member of the Court. But, what the Session Judge would especially wish to impress

on the District Magistrate now is, that it is utterly subversive of all hope of public Justice, if convicted felons like this man are permitted to remain on the Jury List. It is very possible and highly probable, that this ex-convict influenced the present most ignorant Jury to acquit the

* Ramasawmi Tencondan, son of Colandai Tencondan of Sata-noor.

No. 66, Naranapien, son of Cooparien, of Tandangorai.

No. 67, Narraina Pillai, of Annappanpetai.

No. 100, Renganada Davai, son of Subbaroya Davai, living in Tanjore Fort.

No. 43, Keshia Bhut, son of Kasinada Bhut, living in Tanjore Fort.

dacoit who was tried. His name* should at once be removed from the list as unworthy of being included therein among Honorable men, and the other four Jurors also (as per margin) ought, in the opinion of this Court, to be struck out of the same as disqualified, from want of education and intelligence, to be trusted henceforth with the important functions of a Judge in cases such as these, where their verdict is final. It would be very desirable if the entire Jury and Assessors List could be, at once, revised, and only such men allowed to remain on it, as after personal examination by the District Magistrate or his Assistants, may be found to be qualified by education and average intelligence to be trusted with the duties of a Juror.

(True Extract).

(Signed) E. W. BIRD,
Session Judge.

(True Copy).

(Signed) E. W. BIRD,
Session Judge.

No. 267. From W. M. CADELL, Esq., Collector of Tanjore, to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George; dated Tanjore, 12th January 1865, No. 33.

I regret much having again occasion to trouble Government with reference to their Proceedings of the 21st December last; but having been furnished by the Civil and Session Judge with a copy of his letter to Government of the 9th instant, I presume that Government will require me to offer some explanation on the allegations contained in that letter.

2. I may, in the first instance, be permitted to state that in my former letter I wished to throw no imputations on the Session Judge or his establishment. I, however, did think, and do think, that when the list of proposed Jurors and Assessors is, as required by law, fixed on the wall of the Court, it should be made the duty of some of the Officers attached thereto, to inform the Collector of any objectionable persons, who may, by oversight or mistake, have been entered therein. The Criminal Record-keeper of the Session Court and also the Criminal Javabnavis must must have the means, if any one has, of ascertaining who are convicted felons or not, and I submit that in the case of the individual referred to in this correspondence, the Session Judge might have instituted a search into his records, and informed me of the crime and time when the individual was punished. As I have already informed the Government, after the most careful search made in our Taluq records, nothing could be found against the character of the man for the past 19 years, and yet now in paragraph 4 of his letter Mr. Bird asserts that the man has been punished twice, and that "the damaging admissions" might have been elicited by a personal questioning by the Collector or his Assistants.

3. I do not presume to offer any remarks on this opinion of the Session Judge; but I proceed to reply to Mr. Bird's Statements in paragraph 5.

4. Mr. Bird states that he is informed that the selection of Jurors and Assessors has rested mainly on the Karnam. Mr. Bird has declined to give me his authority for this statement; but I presume that an officer in the position of a Civil and Session Judge would not have laid such a Statement before the Government, had he not some real or supposed grounds for making it. However this may be, I meet the statement with a flat and unqualified denial, and I can assure the Government that the selection of Jurors and Assessors is made by myself, and by myself, only. In the beginning of the year 1863 the Jury List was enlarged, at the request of Mr. Bird's predecessor, Mr. Walhouse, and the selection was made by myself in personal communication with the local Tahsildar. After the discovery made in November, the list was at once revised, and to assist me in so doing, I sent for the Tahsildar of Negapatam (and who was well acquainted with the Taluq of Tanjore having been Tahsildar nearly six years). The name of each party was carefully read over, and several names expunged, and after this I forwarded the amended list to Mutusami Aiyar, Deputy Collector, who was then moving about the Taluq, and requested him again to ascertain by personal and local inquiry the fitness of the parties so named. This led again to the removal of several names from the list; and the list, thus twice revised, forms the List of Jurors and Assessors for the year 1865.

5. I, therefore, submit that the allegations made by Mr. Bird are altogether unfounded. I had hoped Mr. Bird on my informing him of these facts would have seen fit to withdraw his allegations; and I only regret that an Officer in the position Mr. Bird is placed, and who is personally and deservedly held in such respect, should have gone out of his way to make an attack on myself.

6. On one other point, I may be permitted to offer a few remarks. Mr. Bird lays stress on a personal examination of the Jurors and Assessors by the Collector or his Assistants. I submit, however, that the law does not require this, and even if the Collector had the leisure (and which he has not) would I think it be desirable, that he should be called on to offer opinions on the character and qualifications of individuals, and for which, according to Mr. Bird's theory, the Collector would be held personally responsible.

7. All that a Collector is called upon to do as it seems to me by the law, and all that he really can do is to select persons for the office of Jurors and Assessors, who from their property and position in the District, as also from their general character and repute, appear to be fitted for the office, and the introduction of a system of examinations, and for which the Examinees are as a matter of course to be held responsible, seems to me utterly impracticable.

No. 268. From E. W. BIRD, Esq., Civil and Session Judge of Tanjore, to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George; dated Tanjore, 13th January 1865, No. 33.

With reference to paragraph 5 of my letter, No. 24 of the 9th instant, I have the honor to state that, by a communication from the Collector, I observe I am wrong in saying the Court Jury Lists are prepared by the Village Karnams. I find that the names on the lists are selected and "revised" by the Tahsildar, the Native Deputy Collector and the Collector; but that, if I understand aright, this selection and revision does not involve the personal examination by the European Officers

of Government of the selected Jurors, to ascertain their fitness for the office. This, in my view, is *the* important point; and I think it ought not to be left for the Judge at the trial to observe (too late) that the men selected are, when drawn by lot in Court, utterly inefficient, from ignorance or other cause.

2. I would willingly, if it were legal, undertake the labor of personally revising the list; but as Government are aware, this is not, by law, my duty. On one point, there can be no doubt, that the sooner such revision of the list as I advocate be made, the better for the public service. If indeed a failure of justice should again take place in my Court from the unfitness of Jurors, I shall deem it my duty, through the proper channel, respectfully to request the Government to abolish trial by Jury in this Court's jurisdiction; not because I think the people are yet unfit for it (for they are I think quite fit), but because of a radical defect in the mode of selection, which, I am sure, may be obviated by a few days labor, once for all, on the part of even the most inexperienced *European* Assistant of the Collector.

No. 269. ORDER THEREON, 30th January 1865, No. 162.

The Governor in Council is not prepared to act on the suggestion in the 5th paragraph of Mr. Cadell's letter of the 3rd instant. He does not consider it advisable that the Court servants should be in any way concerned or responsible for the selection of persons to be placed on the Jury List. The duty is one which, by law, devolves on the Collector; and there can be no question that, by giving a few days to a careful revision of the list, improper selections may be avoided. Mr. Cadell appears to have taken sufficient precautions in revising the Jury List for 1865.

(True Extract).

Chief Secretary.

To the Collector of Tanjore.
„ Civil and Session Judge of Tanjore.

Exd. J. H. Burns.

Judicial.

N^o.

The Hon'ble Sir Colley Harman Scotland, K^t;
Chief Justice of
H. M. High Court of Judicature,
Madras.

Hon'ble Sir -

I am directed by
H. E. the Governor in
Council to transmit to
you the annexed copy of
a letter dated 3rd instant
N^o 2 received from the
Collector of Tanjore in
reply to Pros: of Court. of
the 21st ulto. N^o 1842-8
to request that you will
be so good as to favor
the Court with your opi-
nion as to the expediency
of carrying out the sug-
gestion made by Mr. Ca-
dell in para 5.

MM
WON JP

1 A

Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Cancelled

Recd the following papers
from the Collector of Tanjore ———— Here enter 3rd 12th January 1865. 1st 2nd
— Civil and Session Judge of } ———— 9th and 15th January 1865. 1st 2nd
Tanjore } 24 and 33.

Order thereon January 1865. 1st

The Governor in Council
is not prepared to act on the sugges-
tion in the 3rd para of Mr. Cadell's
letter. ^{of the Assistant} He does not consider it ad-
visable that the Court Servants
should be in any way concerned
in the selection of persons who
placed in the jury list. It
duty is one which by law devolves
on the Collector and there can
be no question, that by giving
a few days to a careful

revision

W.D.V.
R.

9
revision of the list, and personally
examining the persons whom it
may be proposed to place upon
it, improper selections may be
avoided. It is a matter in which
the sub collector and Head
Assistant may render the col-
lector useful aid. Mr. Caldwell
will proceed without delay to
revise the jury list keeping
in view the instructions now
given.

To the Collector of Tanjore
— Civil and Session Judge
of Tanjore

2062 1/2

not done yet

Indra 1865. Department.

No. 112

PROCEEDINGS of GOVERNMENT.

Dated 30 January 1865

Judicial Department.
Holland. Admiration
that was a copy of
in advance of the
in the

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following papers -

Letter from the Collector of Tanjore. Here entry 3rd Jan'y 1865. N^o 2
+ 12th January 1865. N^o 33.
from the Civil & Sessions Judge of Tanjore. - G^o + 13th Jan'y 1865. N^{os} 24 + 33.
Order thereon 30 January 1865. N^o 162.

The Governor in Council is not prepared to act on the suggestion in the 5th paragraph of Mr. Cadell's letter of the 3rd instant. He does not consider it advisable that the Court servants should be in any way concerned or responsible for the selection of persons to be placed on the jury list. The duty is one which, by law, devolves on the Collector; and there can be no question that, by giving a few days to a careful revision of the list, improper

to be done

improper elections may be
avoided. Mr. Casell
appears to have taken
sufficient precautions in
revising the jury list
for 1865.

[Handwritten signature]

[Faint handwritten notes]

To the Collector of Tanjore
The Civil & Session Judge of
Tanjore. } desd 31/

186 . Department.

No.

PROCEEDINGS of GOVERNMENT.

Dated