M.R.O. 1—39,000—18-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial **DEPARTMENT.**

G.O. No. 1667 Press Mis.

Dated 22 11 19 85

13/14

Not to be folded or roughly handled

No. 182. Read the following letter from the Magistrate of Bellary, to the Chief Secretary to Government, Fort Saint George; dated Bellary, 4th November 1865, No. 78.

I have the honor, at the request of Major G. N. Johnstone, Staff Corps, and late Cantonment Magistrate of Bellary, to submit for the consideration of Government, an original letter from him of the 19th ultimo to your address.

2. His covering letter to me of this day's date accompanies, explaining as it does the reason of his preferring the above request, and of the letter in question bearing so old a date.

From Major G. N. JOHNSTONE, Madras Staff Corps, to the Chief Secretary to Government, Fort Saint George; dated Bellary, 19th October 1865.

With reference to the Proceedings of Government as per margin, I have the honor to request that the following statement of the circumstances of the case referred to may be submitted to His Excellency the Governor in Council.

Proceedings of the Madras Government, Judicial Department, dated 16th August 1865.

II. In making this request I trust it may not be inferred that I wish to question the decision of Government as regards the tenure of my appointment, fully conscious of the irregularity I committed in antedating the warrant, which for one moment I have never attempted to conceal. I bow to the decision. At the same time I cannot but hope that a simple statement of the facts of the case as they really occurred will show that, with the exception of that one unpremeditated act, my conduct as a Magistrate has not been deserving of the severe terms of reprehension in which the decision is conveyed, and that a reconsideration of the case will induce His Excellency in Council to modify the severity of the Judgment passed upon me.

III. Prior to the 9th December 1864, I had on several occasions received information from the Police that they believed certain person or persons in the Cowl bazaar at Bellary had in their possession a document purporting to bear my signature and seal of office, and which authorized gambling at an Arrack shop within Military limits, which bear a notorious haunt of all the disreputable character in and around Bellary, situated in an isolated spot beyond the Cavalry Lines.

IV. The Arrack shop had frequently been reported as a nuisance by the Regimental authorities, and the Superintendent of Police, who urged its removal; as from its position it could not be kept under effectual supervision.

V. As gambling was strictly prohibited not by any Local Regulation framed by me, as appears to be supposed, but by Section 5 of the Local Rules quoted in the margin established by Government "for the maintenance of good order at Military Bazaar Stations," which was then in force, I, in accordance with the Order of Government, as I had frequently done before, gave orders to Inspector Brew and the Head Constable Doorgapersaud, to bring before me any parties found gambling, and seize the document said to bear my signature and official seal if found.

G. O. G., No. 126, dated 27th June 1851, page 181, Section 5, "Gambling is prohibited, and any one allowing gambling to "be carried on in his premises will be liable to punishment."

VI. On the morning of the 10th December 1864, on my visiting as usual the Station house Cowl Bazaar, Inspector Brew and the Head Constable reported to me that on the previous evening at 7½ o'clock, a number of Sepoys and others had been found gambling at the Arrack shop, a document of the description alluded to found, and the Arrack vendor and his servant arrested.

VII. These two men Vencataputty Naidoo and Erannah were arraigned before me the same day at 11 o'clock A. M.

VIII. Eight witnesses were examined for the prosecution, the first being the Head Constable Doorgapersaud; his deposition and that of the other witnesses was made in Telegoo, the recording of which took up a considerable time.

IX. As regards my having permitted the Head Constable to state unchallenged that the arrest was made under warrant, I can only solemnly repeat what I stated in the Court, that I never dreamt for one moment of any possible reference to a written warrant which had no existence.

X. That I could have had no idea of any written warrant at the time the depositions were taken will be apparent from the fact that the rough draft of the warrant was without my knowledge subsequently written in my Court on the same day, 10th December 1864, about 1 o'clock P. M. by Inspector Brew himself, given by him to my 2nd Clerk to fair copy, the Head Constable himself took the warrant from my Court and personally delivered it to Inspector Brew the same evening, as will be seen on a reference to Mr. Brew's deposition on oath given before the Deputy Magistrate and Sessions Judge; this I did not become acquainted with until after I had received the Proceedings of Government; moreover the office Diary shows that the warrant was written on the 10th of December 1864, and despatched from my Court at 6 o'clock P. M. the same day.

XI. I would further urge, with reference to the Head Constable's deposition, that the case under investigation was one that could not be tried or disposed of by me, but had to be submitted to the higher Court, where every document and statement connected with it would be thoroughly sifted, it is not possible that a statement so inaccurate as that the arrest had been made under a written warrant, which had then no existence, could have been deliberately accepted and recorded without question or remark, with a full knowledge that its glaring inaccuracy would have been at once detected in the other Court.

XII. When the warrant thus got up by the Police was put before me for signature, I objected to the date enteced on it, as the parties had already been arrested and were under trial; but I regret to say I permitted my judgment to be overruled by Soobiah, then Head Clerk in my office, who had been 35 years in the Department, and who informed me that the antedating the warrant was not illegal under the circumstances, I having previously given an order for the arrest, and that it was necessary to cover the action of the Police.

XIII. This man was subsequently dismissed for gross irregularity in a case which was then under investigation. I have no doubt that he deliberately persuaded me against my better judgement to sign the warrant, in order to get, as he conceived, a hold over me, and thus screen himself from the consequences of his misconduct in suppressing an important document, in a case which had been under trial in my Court, which, though not then known, came to light in the course of the investigation.

XIV. On the 14th December, when the depositions of the first 8 witnesses on the prosecution had been recorded, the prisoners, viz., the Arrack Vendor, Vancataputhy Naidoo, and his servant, Erannah, volunteered to confess the truth if they were pardoned, and as it was of more importance to discover the real delinquent than the less guilty puppets, I tendered a pardon to them, under the provisions of Section 209 of the Criminal Procedure Code, and on the close of their examination, *late* on the afternoon of the 14th December, or *five* days after their apprehension, I issued a warrant for the arrest of J. Gooramoorty Naidoo.

XV. Up to this time there had been no allusion whatever made by any of the witnesses to this individual; nor had I any idea that he was in any way connected with the document purporting to authorize gambling under my authority and signature.

XVI. From the Proceedings of Government, an impression appears to exist, that, J. Gooramoorty Naidoo was one of those arrested in the first instance; whereas he was not arrested until late on the afternoon of the 15th December 1864, on my warrant given to Inspector Brew the previous day: the only parties arrested on the 9th December were, as before stated, the Arrack Vendor Vencataputty Naidoo, and his servant, Erannah.

XVII. From the wording of paragraph 4 of the above Proceedings, it is also clearly inferred that the object from the very first was to fix criminality on J. Gooramoorty Naidoo; that the case was got up against him from malice; and that a pardon was offered to the approver in order to secure a conviction against him; and that I took up the case on insufficient grounds.

XVIII. In refutation of this, as it affects my conduct as a Magistrate, I would state that the approvers volunteered to confess if pardon were given to them; it was not offered to them; that it was clearly my duty to discover the perpetrators of the fraud; that up to the time of their making their depositions, as stated before, there had been no mention whatever made before me of Gooramooty's name; that as to the existence of the document, and the improper use that had been made of it in encouraging a violation of the order against gambling there was no question: this document was produced in Court; it had a resemblance to my signature, and an impression purporting to be my seal; and moreover, it was sworn to by 3 sepoys and a drummer of a Native Infantry Regiment, who had been gambling at the shop, as the document shewn to them by the Arrack Vendor's servant as the authority for gambling; and further that the statement of the approvers that J. Gooramoorty Naidoo was the author of the document was neither improbable nor unsupported, as it was proved by other witnesses that Gooramoorty Naidoo was part owner with his brother of the Dungherhutty arrack shop, and a sharer in the profits from the sale of liquor, and thus would have a personal interest in encouraging gamblers to frequent his shop, and thus bring up the Arrack sale, which had fallen off latterly from the suppression of gambling to its original extent.

XIX. I would further remark that from the notes on the trial of Gooramoorty Naidoo by the Sessions Court, recorded in the Proceedings, it is manifest that there was a strong *prima facie* case against him; that I did not exceed my duty in committing the case for trial; and that although he was not convicted, yet the Sessions Judge was by no means satisfied as to his innocence.

XX. The Inspector General of Police in his letter, No. 1072, dated 5th June 1865, to the Chief Secretary to Government, commences by premising that, "party feeling is running very "high at Bellary with reference to the Abkari Contract. The contract had long been peace- "fully held by a certain party; recently competition arose, and the contract passed into other "hands; the new contractor has had, I believe, great difficulties to contend against.

XXI. Such statement could have had no other object than to convey the inference, that Gooramoorty Naidoo was the new contractor; that he had recently ousted, by competition, the former contractor, and on that account was the object of malevolent persecution, and that I had played into the hands of the rival competitor for the Abkari Contract by taking up, on insufficient grounds, a frivolous charge against a very respectable Native, whose position and wealth rendered it in the highest degree improbable.

XXII. Such is the fair inference from Mr. Robinson's statement; otherwise it would have no meaning or reference to the subject of his letter, and I conclude that it was under that very erroneous impression he made that representation to Government.

XXIII. To remove such an impression, and shew its inaccuracy, I would only state that the Abkari Contract was then held by a wealthy Native named Vencat Rungiah Chetty, who also held it the previous year; that Gooramoorty Naidoo was neither a partner in the Contract, nor even an agent for the contractor; he is a man of limited means; he was employed by the Contractor' Agent as a writer, and, as before stated,* part owner with his brother of the arrack shop, where gambling was carried on; as to his character I will only say that there was nothing in his antecedent to render the charge made against him improbable; it is simply ridiculous to suppose that the charge could have been got up against him in order to injure the Abkari Contractor, the result of such an attempt would not have affected him in the slightest degree.

* Paragraph 18.

XXIV. As regards the endorsement on the warrant by Mr. Brew and the Head Constable, referred to by Mr. Robinson, it was made by them after it had been taken from my Court by the Head Constable, and not until the document was put into my hands in the Sessions Court did I become aware of such endorsement.

XXV. In paragraph 5 of his letter Mr. Robinson states that Mr. Inspector Brew deliberately stated on oath before me, that the search was made under my warrant dated the 9th, and

this he again repeats in the 10th paragraph ; both are incorrect ; as Mr. Brew was not present at the arrest of the Arrack Vendor, and consequently made no deposition whatever before me on the subject, the only depositions made before me regarding the arrest were, as before stated, the Telegoo depositions of the Constables ; Mr. Robinson has been led into this inaccuracy by his evident anxiety to prove the Head Constable an injured man by my proceedings.

XXVI. In paragraph 8 of Mr. Robinson's letter, as also in paragraph 6 of the Proceedings of Government, allusion is made to my having had a private interview with Mr. Brew, and persuaded him to go before the Sessions Court and withdraw the deposition previously made regarding the warrant, I will therefore state exactly what occurred with reference to it, for fear it might be supposed that I had some personal motive in communicating with Mr. Brew ; whereas my sole object was the conscientious desire that the truth might be elicited, and that there might be no attempt whatever at concealment, or misleading the Court.

XXVII. When returning from the Sessions Court on the 10th January 1865, I met the Head Constable, Doorgapersaud and told him of the error committed by Mr. Brew in his deposition before the Sessions Court on the previous day, regarding the date on which the warrant was issued from my Court, and cautioned him not to be led into the same mistake should he be examined; yet this man, notwithstanding my warning, immediately afterwards when examined on oath, deliberately stated that he had obtained the warrant on the morning of the 9th of December shewn it to Inspector Brew, retained it in his possession the whole day, and taken it with him in the evening when he went to the gambling shop, and I am stated to have led him to commit perjury. I am totally at a loss to understand the motive for such conduct on his part.

XXVIII. Subsequently I sent for Mr. Brew, the Inspector, repeated to him what the Sessions Judge had told me of the inaccuracy of his statement the previous day, and advised him to apply to the Court for permission to amend his statement.

XXIX. I suppose it was natural for Mr. Busteed, as a paid Advocate bound to make the best case he could for his client on the appeal, to try and make out that I and not the Head Constable Doorgapersaud had committed perjury ; but I question whether it was the duty of the Inspector General of Police to accept that gentleman's statement without first ascertaining their accuracy.

XXX. I trust from the foregoing explanation it will be seen, that in my effort to put down gambling I was but carrying out the Orders of Government, not private regulations framed by myself ; that the antedated warrant originated with the Police and was not prepared by my order ; that my signing it was not a "*deliberate act of deception*," but an unpremeditated act wherein I unfortunately allowed my judgment to be overruled ; that I received and recorded the Telegoo depositions of the Constables regarding the arrest without the slightest idea that any reference could ever be intended to a written warrant which had no existence ; that as regards the case against Gooramoorty Naidoo I had no personal feeling in the matter whatever, and had full and sufficient grounds for investigating it and sending it for trial to the Sessions Court ; that as a Magistrate I was bound to discover and bring to justice if possible the framer of a document authorizing a direct violation of the Orders of the Government, under my supposed signature, and of the improper use of which at the Arrack shop, I had direct evidence from the sepoys and drummer present; that in pointing out to the Head Constable and the Inspector the mistake made by the latter in his deposition made before the Court, I was solely actuated by a desire that the whole truth should be elicited.

XXXI. I will now leave my case for the consideration of His Excellency the Governor in Council, trusting that His Excellency's sense of justice, while condemning the irregularity of which I am now fully conscious and deeply regret, will induce him to exonerate me from the other serious imputations recorded against me, and the censure conveyed in the Proceedings of Government adverted to. I may be permitted to add, that this is the first mark of disapprobation received during the two years and a half I have held the office of Cantonment Magistrate ; the arduous and responsible duties of which I have performed to the best of my ability. I further beg

respectfully to represent that the censure of Government may prove detrimental to my prospects in the Staff Corps, after a service of upwards of twenty years in India performed hitherto without reproof from any quarter.

XXXII. I regret much the length to which this explanation has extended; but the case has been represented against me in so unfavorable a light from every point of view that detail is unavoidable to place the subject clearly before Government.

From Major G. N. JOHNSTONE, Staff Corps, to the Magistrate of Bellary ; dated Bellary, 4th November 1865.

I have the honor to request you will do me the favor to forward for submission to His Excellency the Governor in Council the accompanying letter to the address of the Chief Secretary to Government, containing an explanation of my conduct with reference to Proceedings of Government, Judicial Department of 16th August 1865.

2. I beg to state that my letter was forwarded on the date it bears, through the Military authorities for submission to His Excellency in Council ; but has been returned to me with instruction to submit it through the channel which passed on the previous paper in my case, and to which my letter refers.

No. 183. ORDER THEREON, 22nd November 1865, No. 1667.

The Magistrate of Bellary will inform Major Johnstone, that the Governor in Council has carefully considered the statements made in his letter of the 4th instant, but has no reason to question the correctness of the remarks recorded in paragraph 9 of the Proceedings of the 16th August last regarding Major Johnstone's conduct in the case therein referred to, or the propriety of his removal from his appointment.

(True Extract).

Chief Secretary.

To the Magistrate of Bellary.

Exd. R. H. Lee.

Bellary 19th October 1865

24

From

Major P. H. Simpson
Madras Staff Corps

To

The Chief Secretary
to Government
Fort St George

Sir

Proceedings of the Madras Government Judicial Department dated 15th August 1865.

With reference to the Proceedings of Government on your Diary, I have the honor to request that the following statement of the case may be submitted to His Excellency the Governor in Council

In making this request I trust it may not be inferred that I wish to question the decision of Government as regards the tenure of my appointment, fully conscious of the irregularity I committed in antedating the warrant, which for one moment I have never attempted to conceal, I bow to the decision; at the same time I cannot but hope that a simple statement of the facts of the case, as they really occurred, will show that with the exception of that one unpremeditated act, my conduct as a Magistrate has not been deserving of the severe terms of reprehension in which the decision is conveyed, and that a reconsideration of the case will

to direct His Excellency in Council to
modify the severity of the judgement
passed upon me.

Prior to the 9th December 1854. I had
on several occasions received information
from the Police that they believed
certain person or persons in the Canal
Bazaar at Bellary had in their
possession a document purporting to
bear my signature and Seal of Office,
and which authorized gambling at
an Arrack Shop within Military Limits.
Such was a serious charge
for disreputable characters
around Bellary, I directed the most
vigilant Search to be made by the
Police and Cavalry Patrols.

III.

The Arrack Shop had frequently been IV.
represented as a Nuisance by the Regimental
Authorities, and the Superintendent of
Police, who urged its removal, as from
its position it could not be kept
under effectual Supervision

As Gambling was strictly prohibited V
not by any Local Regulation framed
by me, as appears to be supposed,
but by Section V of the Local Rules
Granted to the Bangle Established
by Government for the Maintenance
of good order at Military
"Bazaar Stations." Which was
then in force, & in accordance with

P.S.G. Pt 125. dated
27th June 1851. Page 181
Section V. "Gambling is
"prohibited and any
"one allowing gambling
"to be carried on in
"his premises will be
"liable to punishment

admitting this much in this
examination as respects
gambling - under the Regulation about
summons &c
cited, & heard upon the
subject to that purpose
produced - the Offence
charged forgery, was
any custom to rule - their
degree like so many Satans
was worth as between Servant
unpunishable wrong wheel.

VI.

I suppose Servants and Coolies were
paid by their Masters on the
Pay VII. 1832 - Sec. 5 VI C 2
& 5 XIII - and
would have for
Damages
suppose 5
Lawful Fees
of 2 and

the Crew of his Vessel had been
seized by
Pharaoh's Crew
this purpose -

the order of Government, as I had
frequently done before, gave orders to
Inspector Brew and the Head
Constable Doorgapersaud, to bring
before me any parties found gambling,
and seize the Document said to
bear any Signature and official Seal,
if found.

On the morning of the 10th December 1854.
on my visiting as usual the Station
Canal Bazaar, Inspector Brew
and the Head Constable reported
to me that on the previous Evening
at 7½ O'Clock, a number of Coolies
and Others had been found Gambling
at the Arrack Shop, a Document of
the description alluded to found,
and the Arrack Vendor and his
Servant arrested.

VII. These two men Venkatapathy Naidoo
and Eramah, were arraigned before
me the same day at 11 O'Clock A.M.

VIII. Eight witnesses were Examined for
the Prosecution, the first being the
Head Constable, Doorgapersaud,
his deposition and that of the other
witnesses was made in Telegoo the
recording of which took me up a
considerable time.

leaable Punishment it
may be, but not to arrest
under a warrant or rather
formal Document".

IX. As regards my having permitted the
Head Constable to take the Cheat
that the Arrest was made under
Warrant, I can only solemnly repeat

What I stated in the Court, that
I never dreamt for one moment of
any possible reference to a written
warrant, which had no existence.
That I could have had no idea of X
any written warrant at the time the
depositions were taken, will be apparent
from the fact that the rough draft
of the warrant, was without any knowledge subsequently written in my Court
on the same day, 10th December 1864.
about 1. o'clock P.M. by Inspector
Brew himself, given by him to my
2nd Clerk to fair copy, the Head Constable
himself took the warrant from my
Court and personally delivered it to
Inspector Brew the same evening as
will be seen in a reference to Mr
Brew's deposition on oath given
before the Deputy Magistrate, and
Sessions Judge; this I did not become
acquainted with until after I had
received the Proceedings of Government,
moreover the Police Diary shews that
the warrant was written on the 10th
of December 1864, and despatched
from my Court at 6 o'clock P.M.
the same day.
I would further urge, with reference XI
to the Head Constable's deposition
that the case under investigation was

one

was then under investigation; I have no doubt that he deliberately perverted the ends of justice & rendered himself liable to) dismissal
& punishment, in order to get, as he conceived, a vote over me, and thus screen himself from the consequences of his misconduct, in suppressing an important document, in a case which had been under trial in my Court which though not then known came to light in the course of the investigation.

On the 14th December when the depositions XIV
of the first & witnesses on the prosecution had been recorded the Prisoners, viz, the Accused Venkata Seetha Reddy and his Servant, Ramudu were ordered to enter upon their defence, but it was of more importance to discover the real delinquent than the less guilty participants, I tendered a pardon to them under the provisions of Section 209 of the Criminal Procedure Code, and on the close their examination, late on the afternoon of the 14th December or 5 days after their apprehension, I issued a warrant for re-arrest of J. Gooramoorty Naidoo.

Up to this time there had been no XV
allusion whatever made by any of the witnesses to his individual, nor had

ground, that at the time of their
making their depositions, as stated
before, there had been no mention
what ever made before the Coroner or
Jury, that as to the existence of the
document and the impression use
that had been made of it, in
discouraging & intimidating the other
against gambling there was no question:
This document was produced in Court,
it had a resemblance to my signature
and an impression purporting to be
my seal, and moreover it was proved
by my 3 Servants and a Drummer of
a Native Infantry Regiment, who
had been gambling at the Shop, as the
document shewn & proved by the Serjeant
Major's Servant in the Authority for
gambling: and further that the
Statement of the deposition that
a Coorumarty Naiken was the author
of the document was inadmissable
& unsupported, as it was proved
by other witnesses, that Coorumarty
Naiken was part owner with his
Brother of the Slaughterhouse Arrack
Shop, and a Sharer in the profits
from the sale of Liquor, and thus
would have a personal interest in
discouraging gambling & preserving his
Shop, and thus bring up the Arrack
sale which had fallen off latterly

from

In Para 8 of Mr Robinson's Letter as also in Para 6 of the Proceedings of Government allusion is made to my having had a private interview with Mr Brew, and persuaded him to go before the Sessions Court, and withdraw the deposition previously made regarding the warrant, I will therefore state exactly what occurred with reference to it. for fear it might be supposed that I had some personal motive in communicating with Mr Brew, Whereas my sole object was the conscientious desire that the truth might be elicited, and that there might be no attempt whatever at concealment or misleading the Court. XXVI

When returning from the Sessions Court on the 10th January 1865. I met the Head Constable. Doorgaprasad, and told him of the error committed by Mr Brew in his deposition before the Sessions Court on the previous day, regarding the date on which the warrant was issued from my Court, and cautioned him not to be led into the same error should he be examined, yet the Brew notwithstanding my warning, immediately afterwards when examined on oath, deliberately stated that he had obtained the warrant on the morning of the 9th December, shewn it to Inspector Brew, retained it in his possession the whole XXVII

Dft 4/11/85

From
Major C.H. Johnstone
Staff Corps
Off'g A. Asst Adjutant Genl
Magistrate
Bellary

Dated 4th November 1885

To the Chief Secretary
to Government
Madras
No. 78 dated
4th November 1885

Subject
Forwards for submission
to Government letter of
explanation with reference
to Mr Thurston's Bank
dated 15th August 1885.

Letter from
Major C.H.
Johnstone
of the Madras
Staff Corps dated
4th November 1885

Jud. 1885 D
No. 2405

The order of the 16 August last was passed during my absence from Madras & HE the President & Mr Pitchfords who took the proceedings of the Sessions Court before them and on their attention being called to the particulars of the case they dismissed -

I have made a few remarks in pencil in the margin of Major Johnstone's letter. He has not submitted any affidavit to confirm the statements contained in it, but he has submitted a blank warrant, having issued a blank warrant and abscounded the country to avoid his having been acting under a warrant which he knew not to be the case, remains at Gooty where Major J. is expected until the Magisterial Court -

I propose to recommend that he may have credit given for the Civil Court Stamp duty which he has paid on the Petition of Appeal in the case, but that he be informed that he was not authorized by Govt: Order of 26 Aug 1862 to issue Warrants in the manner he has done -

Pro. 15th June 1865 - Ct. 115 - 116.
" 24th do " - Ct. 220 - 227
" 10th August " - Ct. 120 to 122
" 13th do " - Ct. 139 - 140.

Jud. Pro. of Nov.

1865 DEPARTMENT. (4)

From,

The Collector of Bellary.

To,

The The Chief Secretary to Govt. Jud. Dept. Madras

Dated 4th } December 65
Received 8th }

No. 78

Enclosure. 1

No 2405

At the request of Major Johnstone I submit for the consideration of Govt. an original letter from him to the address of the Chief Secy to Govt. respecting his conduct in the Case for which he was censured by Govt.

Prov. of Kutch

Judicial 1865. Department.

No. 1667.

PROCEEDINGS OF GOVERNMENT.

Dated 22nd November 1865

182-183.