

MADRAS RECORD OFFICE.

Government of Madras.

Advisal DEPARTMENT.

G.O. No. <i>643</i>	Press <i>Mis</i>
<i>217-218</i>	
Dated <i>29. 4. 1865</i>	

35/34

Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department,

29th April 1865.

No. 217. Read the following letter from C. DALE, Esq., Government Pleader, Madras, to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George; dated Madras, 19th April 1865, No. 73.

With reference to the Order of Government, under the date and number noted in the margin, I do myself the honor of reporting; for the information of the Honorable the Governor in Council, that the Civil Petition, No. 251 of 1864, on the file of the High Court, came on for hearing on the 4th of February last, when the case was fully argued, and the Judges reserved their Judgment.

2. I have since obtained a copy of the order which their Lordships have promulgated, and do myself the honor of enclosing a copy.

3. In my opinion this order is erroneous; but I am not aware that there is any remedy; and if there was, it is not a case in which I should advise Government to carry the matter further; the more so as I understand it is contemplated to introduce into the new Civil Procedure Code a clause to remove a doubt which has been raised, whether, prior to the final hearing, the Courts have the power to dismiss suits with costs as against particular Defendants.

4. On that point a question has been several times raised in the High Court, in the exercise of its original jurisdiction, but a decision has never been pressed, parties having preferred allowing the suits to proceed to final hearing.

5. As I propose offering some observations regarding this order of the High Court, it may be desirable I should state shortly the circumstances connected with it, which may enable His Excellency in Council the more readily to follow me.

6. In 1863, one Sambalinga Moorthy, who described himself as the Priest of the Devanga community, instituted an original suit in the Civil Court of Salem, which was No. 1 of 1863. In that suit the Magistrate of Salem was made the 27th Defendant. The suit was instituted by the Plaintiff, for the recovery of Rupees 12,000, for damages and expenses, alleged by the Plaintiff to have been incurred by him, consequent on his having been prohibited from proceeding with his caste Insignia through a certain street of Shevapett in the Town of Salem.

7. This same Plaintiff in 1852, had instituted an original suit in the Court of the Moofly Sudder Ameen of Salem, which was No. 387 of 1852. That suit was instituted for the purpose of obtaining a declaration from the Court of his, the Plaintiff's, right to pass in his palanquin, in procession, through certain streets and thoroughfares in the Town of Salem, accompanied by his disciples, bands of music, banners, &c. That suit was carried to the Civil Court of Salem in Appeal Suit No. 70 of 1855, and to the Sudder, in Special Appeal Suit No. 141 of 1857, by which Court it was held that the Plaintiff had a right to proceed as prayed, in such way as the Magistrate might not object to as dangerous to the public safety.

It is unnecessary for my present purpose to follow the Plaintiff through the different steps pursued by him under the Decree in Special Appeal Suit, No. 141 of 1857. It will suffice to notice that the subject of Original Suit, No. 1 of 1863, arose out of that Decree. The Honorable Mr. Arbuthnott in his letter to Government, dated the 2nd April 1863, No. 42, details the steps pursued.

9. To return now to the Original Suit, No. 1 of 1863:—

10. On the 2nd September 1863, the suit came on for first hearing, when the Civil Judge, Mr. Cherry, passed an Order (set out in the Proceedings of Govern-

ment of the 29th September 1863, Judicial Department, No. 1 of 1863, in which he states that finding on a perusal of the Decree in the Sudder (in Special Appeal Suit No. 141 of 1857, referred to in paragraph 7) that in such Decree it was declared that the rights of the Plaintiff were to be exercised "in such way as the Magistrate may not object to as dangerous to the public safety," he (the Civil Judge) removed the name of the Magistrate from the list of Defendants, and directed that his costs should be paid to him by the Plaintiff.

11. No action appears to have been taken on that order by the Government Vakcel at Salem until August 1864.

12. In the interval, issues in the Original Suit, No. 1 of 1863, were settled between the Plaintiff and the first 26 Defendants, and the suit was heard on the 18th of December 1863, when a Decree was passed in favor of the Plaintiff, as against those 26 Defendants, with costs.

13. No mention is made of the Magistrate (the 27th Defendant) in that Decree, further than that in the title of the cause his name is retained as the 27th Defendant.

14. No appeal was preferred against that Decree.

15. In August 1864, the Government Vakcel at Salem presented to the Civil Court a Petition, No. 118 of 1864, praying for the issue of a Warrant for the recovery of the costs, Rupees 370-8-0, incurred by the Magistrate, as the 27th defendant, in defending the Original Suit, No. 1 of 1863, together with interest from the date of decision.

16. On that petition the Civil Judge, on the 4th of August 1864, passed an order in the following terms:—"A moiety of the Vakcel's fees is disallowed, as the Collector, the 27th defendant, was struck off the suit, before framing the issues in the case." A warrant to issue for the collection of the other moiety of the Vakcel's fees, and other costs incurred by the petitioner (Collector) in the suit, together with interest on the costs, allowed.

17. It was against that order that the appeal embraced in the Civil Petition No. 251 of 1864, was preferred.

18. I obtained from the Collector of Salem certified copies of the Civil Judge's Order, dated the 2nd September 1863, and of the Decree passed in the Original Suit No. 1 of 1863, and filed them in the High Court.

19. It will be remembered that by the Order of the 2nd September 1863, made on the first hearing of the suit, the Civil Judge removed the name of the Magistrate from the list of defendants, and directed that his costs should be paid to him by the plaintiff.

20. In our English Courts, there is no proceeding analogous to that at hearing" provided for by the Civil Code. In our Courts of Equity most suits come before the Court for two and sometimes for more hearings. The first time, the plaintiff must establish his right to relief, when, if inquiry is necessary, a reference was made to the Master to investigate the facts, "reserving further directions." On the suit so coming before the Court the second time, it was technically called the "hearing," and when it came before the Court on subsequent occasions, it was called the "hearing on further directions." It is a constant practice for our Courts of Equity, on a suit coming before them for "hear-

ing," to dismiss such suit as regards particular defendants with costs, and afterwards to proceed with the suit, so purged from superfluous parties. There is no express enactment for such a course, but the Courts pursue it under the general powers which all Courts possess of removing superfluous matter and unnecessary parties from their records; and, as I understand the matter, it is not from any doubt of his power at the first hearing to dismiss a suit as against particular defendants, who may have been improperly made parties, that Mr. Justice Bittleston has not acted on the occasions referred to in paragraphs 3 and 4, but more from a doubt whether by the Code he was not precluded from awarding costs as against the plaintiff at that stage of the proceedings.

21. The only provision in the Code relating to the costs is contained in the 187th Section, and in that it is enacted that the judgment shall, in all cases, direct by whom the costs of each party are to be paid, &c., and the Court shall have full power to award and apportion costs in any manner it may deem proper.

22. It has been contended that, under that Section, the Courts are restrained from awarding costs in any other manner than in their judgment, but I believe no decision has been passed in this Presidency.

23. The Civil and Mofussil Courts are, however, bound by such of the Regulations and Acts as have not been repealed; and by Regulation XIV of 1816, Section 26, Clause 2nd, it is enacted that if the suit of the plaintiff should be dismissed, whether upon an investigation of the merits, or otherwise, the plaintiff is to be charged with the fees of the Pleader of the defendant; while in Act No. I of 1846, Section 7, provision is made for the mode in which costs are to be awarded to parties in regular suits when decided on the merits or otherwise. Neither of these have been repealed, indeed the Counsel for the plaintiff relied on the latter, while I relied on the former. I am therefore clearly of opinion that, if the Civil Judge had the power to dismiss the suit as against the Magistrate at the first hearing, and the better opinion seems to favor such a conclusion, he had full power to award costs to the Magistrate against whom the suit was so dismissed.

24. The order of the 2nd September 1863 has not been appealed against, and for a very good reason, because by Section 363 of the Code it is enacted that "no appeal shall lie from any order passed in the course of a suit, and relating thereto prior to Decree, but if the Decree be appealed against, any error, defect, or irregularity in any such order, affecting the merits of the case, or the jurisdiction of the Court, may be set forth as a ground of objection in the Memorandum of Appeal," and it has been held by the High Court that the negative words in that Section preclude a right of appeal unless where such right is given by express words in the Code.

25. If there had been a right to appeal against the order of the 2nd September 1863, the time would have expired on the 1st December 1863.

26. The Decree in Suit No. 1 of 1863, was not appealed against; the time expired on the 17th March 1864, consequently the plaintiff had not the opportunity of setting forth to the Court any error, defect, or irregularity, which he might have conceived existed in the order of the 2nd September 1863.

And by Section 364 of the Code it is enacted "No appeal shall lie from any order passed after Decree and relating to the execution thereof, except as is hereinbefore expressly provided."

28. An appeal in such a case as arises under the order of the Civil Judge, dated the 4th of August 1864, is not provided for by the Code; consequently, under the Code, there was no appeal.

29. In his petition, No. 251 of 1864, the plaintiff claimed to have a right of appeal under the 11th Section of Act No. XXIII of 1861.

30. By that Section, it is enacted that any question arising between the parties to the suit in which the Decree was passed, *and* relating to the execution of the Decree, shall be determined by order of the Court executing the Decree, which order, shall be open to appeal.

31. On the petition, No. 251 of 1864, coming on for argument, I took two preliminary objections, during the discussion of which, and without any objection having been taken by the opposite Counsel, and before argument, Mr. Justice Innes expressed a very decided opinion that the Civil Judge had no jurisdiction whatever to make the order of the 2nd September 1863, that it was illegal, &c., &c. In paragraphs 3, 4, and 20, I have referred to the objections on this point, which have been raised on the Original Side of the Court, the practice pursued by the English Courts, and the opinion expressed by a Judge whose opinion is entitled to some respect. As the only question then before the Court was my preliminary objections, it was not the proper time for arguing the point thus raised by Mr. Justice Innes; but I intimated to the Court that if my preliminary objections were over-ruled, and the opposing Counsel formally took that objection (which I did not anticipate he would), I should be prepared to argue that, under the general power possessed by all Courts of purging their records of all extraneous matter and unnecessary parties, and under the regulations, the Civil Judge had full power to make the order of the 2nd September 1863.

32. The preliminary objections raised by me were over-ruled; the petition came on on its merits; the objection so raised by Mr. Justice Innes was not formally taken by the opposing Counsel, and, consequently, the power of the Civil Judge to make that order of the 2nd September 1863 was not fully argued.

33. My reasons for saying that the order which accompanies is erroneous are that, whether the Civil Judge had or had not the power to make the order of the 2nd September 1863, it had been made and was final, all power to inquire into the propriety of such an order being expressly taken away from the High Court by the Code; that, as regards the order of the 4th of August 1864, whether right or wrong, all power to inquire into its propriety is likewise expressly taken away from the High Court by the Code; and because, as regards this case, jurisdiction is not given to the Court by the 11th Section of Act No. XXIII of 1861, inasmuch as that Section only gives jurisdiction in cases where questions arise between the parties to the suit in which the Decree was passed, "*and* relating to the execution of the Decree." To give the Court jurisdiction there must be a question relating to the execution of the Decree; that element is wanting in the case under consideration. As already mentioned the Magistrate's name was struck off the list of defendants at the first hearing; he in fact from that time ceased to be a party to the suit, and the Decree is entirely silent regarding him. The question, therefore, raised by the Plaintiff in his petition, No. 251 of 1864, was not a question relating to the execution of the Decree, but related to the execution of the order of the 4th August 1864, which is not a Decree.

34. Mr. Justice Frere designated it as an extraordinary case; but on what grounds he founded his opinion he did not state. The course pursued by Mr. Cherry was in accordance with the practice pursued prior to the passing of the Code, and I should have imagined that as a Subordinate Judge, and as a Civil Judge, Mr. Frere must have been called upon to pass many such orders. I have shewn it is in accordance with the practice adopted by Courts of Equity, and it appears to me it is in accordance with strict justice;—a party is unnecessarily made defendant to a suit, and the Judge dismisses the suit as against him—it appears to be but common honesty that the plaintiff, under such circumstances, should pay to the defendant the costs to which the plaintiff, by his improper act, has subjected the defendant. I do not see anything extraordinary in the proceeding: If the suit had proceeded to a hearing, it would then have been dismissed as against the Magistrate with costs.

35. I do not understand why the Government Vakeel at Salem did not take action on the order of the 2nd September 1863, as soon as passed, or long previously to the month of August 1864.

P. S.—I return the several enclosures which accompanied the Proceedings of Government noted above.

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

Saturday, the fourth day of February, one thousand eight hundred and sixty-five.

PRESENT.

The Honorable Mr. Justice FRERE.

AND

The Honorable Mr. Justice INNES.

Civil Petition, No. 251, of 1864.

SAMBALINGA MURTI, Petitioner.

AND

Collector of Salem, Counter-petitioner.

Appeal against the order of the Civil Court of Salem, dated the 4th August 1864.

This appeal coming on for hearing, upon perusing the grounds of appeal, the order of the Civil Court, and upon hearing the arguments of Mr. Mayne, Counsel for the petitioner, and of Mr. Government Pleader, for the Counter-petitioner, the Court made the following order:—

ORDER.—The proceedings of the Civil Judge, Mr. Cherry, in this case have been extremely irregular. His order of the 4th August 1864, directing the collection of the costs of the Collector, the 27th defendant, from the Plaintiff, must be taken to have been issued in execution of the decree passed in the suit, for otherwise there is no provision of the Law which gave him jurisdiction. But on reference to the judgment itself, we find no such provision made for the payment of the costs of the 27th defendant by the plaintiff, as prescribed by Section 187 of the Code of Civil Procedure. It is clear, therefore, that the order now appealed against cannot stand, and we resolve to cancel it accordingly.

2. It is, accordingly, ordered that the order of the Civil Judge, dated the 4th August 1864, be, and the same hereby is, reversed

By the Court.

(Signed) P. P. HUTCHINS,
*Acting Registrar,
Appellate Side.*

No. 218.

ORDER THEREON, 29th April 1865, No. 643.

To be recorded.

(True Extract).

A. J. ABBUTHNOT,
Chief Secretary.

Exd. J. H. Burns.

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Under Secretary

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Salem 16 July 1862.

To

J. W. Cherry Esq.

Civil Judge of Salem.

Sir,

I have the honor to acknowledge
Extract from Proceedings of the Civil Court
of Salem under date 1st Instant & to inform
you that having made arrangements with
the Supt of Police it is my intention to allow
the procession to take place on the understand-
ing that the party engaged in the procession
shall give one clear weeks notice to the police
of the day & hour on which the procession is
to take place failing this notice the police have
orders to stop the procession.

2. I take this opportunity of pointing out
to the Court (with all due respect) that
altho the Court has declared the right
of an individual to go in procession, it cannot
the Magt. to carry out such decrees and

it is the undoubted duty of the to watch the
exercise of such right as is not to
and, a breach of the law.

The Civil Court should bear in mind
that if any disturbance were to occur a Civil
Court decree would form no excuse for a
Magistrate who allowed the procession to take place,
and as the Civil Court is in no way responsible
for the peace of the district the expressions
of disapproval by the Civil Court in parces
No 6 regarding the fears of the Magistrate
that imaginary disturbances are all
ed for.

I have &c

(Signed) D. Arbuthnot.

Collector.

True Copy

D. Arbuthnot

Magistrate

1885-
No 926.

No 245

Office of the Supt of Police

Salem 21st July 1886

Lieutenant Henry J. Hill

Superintendent of Police Salem

The Honorable, D. Arbuthnot

Magistrate of Salem

Sir,

With reference to your letter No 166
of the 16th Instant to the address of Mr. Chetty
the court judge, copy of which you forwarded
to me for information, I have the honor to
inform you that Goroos Shambalinga
Moorthy has this day presented a petition
to me notifying his wish to procure a pro-
cession through the Streets of Thevappett
on Friday the 1st August next. I have in-
formed him that he will be allowed to
proceed in procession, and have taken steps
to have a sufficient body of Police present
to

to preserve the peace.

2 I would wish to suggest the propriety of taking security from the head men of both the Devangum or Goo's party and the Salier party to which the procession is obnoxious, binding them over to keep the peace and thus to more effectually prevent any breach of the peace.

I have &c

(Signed) Henry J. Hill Esq.

Supt. of Police.

True Copy

W. H. Mott

Magistrate

Extract from the Proceedings of the Civil Court of Salem
made on the 1st July 1862.

Read again Verge from the Master Suer
Amin relative to the execution of the decree
O. L. - #387 of 1857 in the file of his Court.

Read also return together with its
accompaniments from the Magistrate of Salem
dated 14th May 1862 in answer to the
Court's extract of the 26th April requesting
a continuation of the Magistrate's Proceedings
in interfering with the execution of the above
mentioned decree.

1. The Magistrate will be so good
to state distinctly whether in his opinion, he con-
siders the execution of the decree in question
will be really attended with a breach of
public peace and likely to cause a disturbance
and whether in that event he requires
the assistance of the Police to enforce it.

1865
pp 26.

The Civil Judge deems the *Fajdani*
absolute ruling quoted by *Magli* in
applicable to the present case, in much
that refers to the interference
whereas here, the Civil Judge
appealed to who holds seems,
be put in possession of his Civil rights.

3. As regards the *Ensignia* of
consultation the Court begs to refer him to
Prag in which it is clearly stated. Further
though the principle that every man has
full right to the free use of it.

to his property as he pleases
so that he does not give any real cause
"annoyance to others" or generally speaking
to do any acts not repugnant to decency and
morality, nor prohibited by Law is a sound
principle and such as the officers of Govt.
should never fail to assert whenever they
may be appealed to on proper occasion.

"may arise yet, it is
"should go out of the way to enforce the
"application of the principle: It will suffice
"that it is temperately but resolutely
"held, whenever opportunities for asserting
"it may present themselves, fairly and in
due course."

4. In the present case the *Gorro's* right
to have the disputed street with the castle
Ensignia and his followers has been "fairly
and in due course" expressly recognised by the
decree of a Court of Law, & that decree has
been confirmed by the highest Judicial
Tribunal, the *Lid. Ecclesiastical*.

5. It would be a great injustice to the *Gorro*,
if after all the expenses and annoyance to which
he has been subjected for a series of years, in
establishing his right to the privilege in question,
he should now be interdicted in the exercise of
that privilege, in consequence of an apprehension

2. The Civil Judge deems Rajdani

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execute the decree so that I could neither prevent
arrangements with Mr. J. for Police for the
preservation of the peace nor could I lay the
objections Mr. Brett had to the Gooroo passing
in procession through the disputed street, before
the Court for their consideration. Under the
circumstances I had no alternative left at the
last moment, but to pursue the course I did.

I have &c

(Signed) D. Arbuthnot

Collector.

True copy,

D. Arbuthnot
Magr

by the Magt. that the execution of the judgment
might create a disturbance.

6. The Court considers that the
this case having been formally declared it is the
duty of the Magt. to use his best
to see the same enforced, & not to throw obstacles
in the way of its being carried out, merely from
fear of an imaginary disturbance.

Before, therefore, taking further steps in this matter
the Court wishes clearly to learn from the Magt. as
to whether he is or is not able to put force
to the law, as declared in his particular case.

Ordered that extract from these
proceedings be sent to the Magistrate of
Salem for his information and guidance.

(True extract)

(Signed) J. J.

True to copy

[Signature]
Magt.

N^o 119

Salem 14 - May 1862.

To

J. W. Cherry Esq.

Civil Judge of Salem.

With reference to an Extract from the
proceedings of the Civil Court of Salem dated the 26th
Ultimo requesting me to explain under what Circum-
stances the execution of the decree passed by
the Principal Sudra - Amin in O.S. N^o 387
1857 has already been interposed with and why
the decree should not at once be enforced,
I have the honor to inform you that my pre-
decessor was of opinion that if the Gorroo
were allowed to pass in procession through the dis-
puted Street, a serious disturbance would un-
doubtedly take place. I was not made aware
any, accidentally of the mostly Sudra - Amin's intention
to execute the decree till the evening of the day -
previous to ^{one} the one which it was intended to be
executed

Proceedings

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1857 on the file

in a case issued by the Sudder
but in final appeal 41 of 57.

This decree recognised the said
plaintiff's right to pass through the main street
in procession. The Sudder (Kinn) issued
a Precept for the enforcement of the decree
but the defendant contended that the decree
was void on account of the non-attendance
of the

the execution to cause

disturbance, and owing also to an order

By the Magistrate of Salem.
To The Head Quarter Inspector of Police
and all other Police officers.

It having been brought to my notice that Sambalinga Murthy a priest of Parangum Castle is going to proceed in procession against an order passed by Mr. Brett the late Magistrate of Salem, dated the 31st October 1861, I do hereby command you to prevent the said Sambalinga Murthy from proceeding in procession through either Parangetty street or through that part of the main street in Shenapett in which the Sahib reside.

Given under my hand and the seal of the
Magistrate's Office at Salem this 8th Day
of April 1862

April 1862
Signed J. Arbutnoton
Magistrate

Dune City
~~J. W. Whitman~~
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Wm. A. Smith

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The Petitioner is hereby prohibited from passing in procession either Paranchetti street or through that part of the main street in Shevafett in which the Salsiers reside.

The Petitioner will understand that this order refers only to his passing through the streets in procession. The Petitioner is at liberty to pass any of the public streets in the same manner as other people, and no one will prevent his so doing.

31st October 1861-

Jed/ A. A. Brett.
Magistrate.

True copy

J. H. Mott
Magte

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the other dependants

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Can you bring the amount of \$

And red up. Print

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not Judge

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Cost incurred by

Value of Paul's labors

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Betta Lee

Costs incurred by the Defendants

... ~~the~~ and ...

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403

Costs incurred by the 11 and 12 Pendants

presented by Government Agent Narasiah on behalf of the Collector of Salem the
 24th Defendant in O. S. No 1 of 1883

O. S. No.	Range of the parties	Date of decree	Appealed or not	Amount to be recovered	On whom to be recovered	Prayer
118 of 1883	Plaintiff Sankar. Kinga Kandy, which of Oungo Cadi 1864 24th Defendant Collector of Salem			Lock amount by the Cistern Inscribed Rs 370 on from date of decision	Rs 370	For the issue of a warrant for the recovery of the half fine amount of Rs. and the whole
				Value of within 3 days	80	Order for

Signed Narasiah

Government Agent Narasiah

[Signature]
 17th August 1884

For the issue of a warrant for the recovery of the half fine amount of Rs. and the whole
 cited in of the Cistern
 Column 7 with sub-Signed by the Cistern
 against Civil Judge
 inscribed 17th August 1884

Amount to be
 822 8
 to be

Defendants 405 12
 Decree sealed and dated December 1883.

shall have been taken to be in
 force within three years next preceding the
 application for such execution

Signed Civil Judge

[Signature]
 Judge

Deere of the law

12

men

no more 387

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d.

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of the law

of the law

Judgment

It is evident

in giving for a declaration

in the manner described, did not enter

of the law

Law

1864

Copies of the
of the law

1864

unlawful & against the law

means of the law

mission to the law

is one to the law

text and it has

been him in its exercise show some law

or custom using the force of law

ing revenue.

In the recent case

defendants would urge The Plaintiff

is of law in

1st. ing

little

merit of the law

2nd

or

slat

4th

suffice to say that

tended for was the

certain idols him is no

question in this case the "aim"

desiring to pass in a palanquin the

hammers and instruments

the Magt. not object to

dangerous to the public safety. Mr.

therefore the Plaintiff caught in 1852

as through it in such possession

defendants also and presented

1st

2nd

an

3rd

4th

to affirm that of the Muzti Sudo ameen
ordering that defendants pay all costs in
appeal and special appeal.

Signed/ C. F. Chamier
as Registrar

[True Copy]

Signed/ George Arbuthnot
as Deputy Registrar

[True Copy]

Signed/ J. W. Chany
Civil Judge

True copy

D. Arbuthnot
Magistrate

to deny, that having been
passed through the worst business circum-
stances of an insurrection
hastened
number of years, would not
sign to use it
want of. to put therefore,
and

[REDACTED]

before
madder
m O. 10307 of 10
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10 10 1 of 1857

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How

L.I.

Sh. Appellant versus Special to
Bahiga Morthy army to
Chetty

off. night
priest of the people of the waranga
faste to blich his right to pass in his
alangu procession through certain
and thoroughfares in the town of Salen
companies by 'disciple' and music
be
he had his been 'salit' rap
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tempting visit certain houses
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Defendants on the other
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see 1. be Plaintiff to be an imm town, and
denies that it has the sanction of custom, and
with the Plaintiff or his

decision in proceeds
locality. In such cases one one
+H"

2. Defendants further urge that the
1 this suit has been already adjudicated
and file the decrees/documents on ground
to which they agree decree/11

one
thing

in remains ounds decision
arr. 1 but before dis action
there raised, it proceeds to refuse what
private an but trust, and
then determined that the road

now under blue wrong

1.1 at the same time was the same

proceeds as not proven

not sanctioned by custom

"In the former suit" and 2

Defendants filed the same reason

erring the suit on

same caste as

thought of

upon the right of the
 state we same, though we govern
 it is on all of the
 sawny, but the local
 the interests involves a
 it is a question of the
 has an consider
 into, but if the facts are
 so analogous, it was not competent
 + is one well
 one decree of
 The Court does
 stance must could
 side from led
 aided the Moorsiff in adjudicat,
 a question
 "The theory advanced
 that the Court is a thorough-
 the Court is a
 us
 almosty liberal a
 reverse the thorn cause
 of all shades of
 due

arising therefrom
 are to be resorted consistently with equal
 toleration to all sects and parties, in
 course of the defence given of
 provide the class in direct
 or the admitted and immemorial
 then.
 The question therefore is not simply
 whether the road is a private or public
 to men the Moorsiff would limit it,
 in the it has hitherto been the custom
 Plaintiff and his people to
 their proceedings through such thoroughfare
 to offence and in violation of the
 feelings of the other sects or classes residing
 there. It is undisputed that since the
 year 1810, neither the Plaintiff or his followers
 have ever been permitted the privilege
 an attempt been made to
 raised, and the
 it to it and though these
 tions strategy carry them no
 test.
 rest another important question
 namely that of immemorial custom

question of the competence of the
court to consider a plaintiff who is
of caste has no right
many a fifth

hence it is not Court to order as
privilege that which is claimed as
relation

the power

Deba for
to
only

must

cause the
had been previously
self. graduated, and indeed
issue any of
plaintiffs
statute of limitation the presentation
from the time he had at
from his cause
rose who
right was interfered
trated at times may
no power might stop any person or process
paying the highway, if they had caused
to a breach of the peace, the
time could certainly not interfere
vested rights, and still less would
rest any private party with the right to
do. In England such case comes ne.
to Com. but even under Hindu
law is incumbent on the party who
to show with a counter claim right to
Hindu law or custom which
the exercise of such a right is so
won't rest

the ones
land on but clearly wrong,
the ones probandi clear lies with the
who seeks to interfere with
one is in the presence
Things is even a custom, as
or indubitable, law
not and taking the part
it we resist them as stipulated in preventing
as at all hazards even if we know this
custom is so opposed to public
law that no one could uphold it
as regard the question of the
in an appeal sent at 20th of 1857, the decree
shows and it is also alleged that plaintiff
as no party to the suit who does not
his right through the
claim cannot be based on any
decision in it. Therefore claim
cannot be affected by the principle of
new law. case goes on as
to be made and
and decided
to the same
the street, there was through a
and through he decided against

Carts were forbidden to go through the
same street with idols; without entering
into the merits of that decree, as pronouncing
how far the Plaintiff might stand affected
thereby in the event of his attempting to do
the same thing, it may suffice to say that
the right therein contended for was the
privilege of carrying certain "idols" touching
which there is no question in this case; the
Plaintiff merely desiring to pass in a palanquin
with banners and instruments of music,
in such way as the Legislature may not ob-
ject to as dangerous to the public safety.
When, therefore, the Plaintiff sought in 1852
to pass them, the
the Defendants obstructed and prevented
him; they did so without any apparent
frauds, and at their own peril if they
could not show their right by law or
Custom to do so. That they had no such
right by law has been already shown;
that they had none by Custom is in the
opinion of the Court equally clear. They
do not pretend to prove any such either by
documentary evidence, in the way of
ancient ruling, permission by competent
authority, or agreement between the parties
concerned; they merely assert and prove that
the Plaintiff does not care to deny
many

7 years he
 Street, but the owner
 dual not personally
 incur highway for
 would not return with his right base it on
 please
 therefore resolve to reverse the decree
 appeal, and to affirm that it is
 And do hereby ordering that defendants
 all costs in appeal and special appeal
 1st
 1 True Copy
 and

W. Warner
 Secretary

Truro

to be done in 1857
 1st of 1857
 1857
 1857

right to pass in procession
 through the public street in question
 on the grounds that it was not advisable
 as such processions might lead to riot, and
 a breach of the peace, but the principle
 laid down by law is that through a public
 street, so far as is admitted to be, every one
 has a right to pass
 that his inherent and inalienable right,
 a right that cannot be affected by any
 of his stations, or any previous adjudication
 as to which he was not a party
 Mr. Dale for the defendants
 in that this was a question of custom
 that was of showing some custom lay
 with the Plaintiff; that the Judge of the
 Lower Court had found that Plaintiff
 had failed to prove that by custom he
 had any such right as that he now sought
 to establish; also that claiming through
 his predecessor in the office of priest, he
 must be barred as having been ^{already} ~~decided~~
 decided against in 1804. That the
 issue was identical with the
 one presented; that the decree
 it was binding and precluded Plaintiff
 or any of his caste-people from carrying
 idols through, or by effigies

Pro. 8th Dec. 1864 - 110

Madras
To Government
To Chief Secretary to Government

Dated 19 April 1865

No 73

(With ~~the~~ Inclosure)
No 426

Forwarding a copy
of an Order passed by the
High Court in Civil
Petition 251 of 1865

To be recorded.

FILED

21 April
217-218

8

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Special Dependence
Indians

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meaning for a declaration of
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