

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	506	Press ~~Mis.~~
Dated	6-4-1918	

46-48

Not to be folded or roughly handled

11/12

1

Proceedings of the Madras Government, Judicial Department,
6th April 1866.

Read the following papers:—

No. 46. Proceedings of the Board of Revenue, dated 7th March 1866, No. 1576.

Read again Proceedings, dated 9th December 1865, No. 7887.

Letter from the Collector of Malabar, to the Acting Secretary to the Board of Revenue; dated Calicut, 7th November 1865, No. 239.

1. Some time ago, a question having arisen as to the liability of Batta Peons to pay the fees leviable at the different

* Vide Malabar District Gazette, dated 2nd September 1864, page 219.

ferries in the District, I published* a

Notice in the District Gazette, stating

that, as Batta Peons were not public servants, they were liable to payment of fees.

2. A reference to the High Court was made, in connection with the question, by the Civil Judge of Tellicherry, and the High Court pointed out the course to be pursued, so that the charges might be properly met.

3. It is with some surprise, therefore, that I learn that a Batta Peon, attached to the Small Cause Court of Tellicherry, who had been charged, as usual, at one of the rented ferries, filed a suit in the Tellicherry Small Cause Court, to recover the amount, and that the Court, though the defendant quoted the Collector's authority for the charge, and referred to the Official Gazette sanctioning it, decreed for the plaintiff with costs.

4. The Renter has, accordingly, had to pay Rupees 3-15-2, for collecting a sum of two Pice, which he was distinctly authorized, by competent authority, to collect.

5. I would suggest, that the High Court be moved to issue the necessary orders to the Tellicherry Small Cause Court, to prevent such suits being entertained in future.

6. And I would also request sanction for the refund to the Ferry Renter of the sum of Rupees 3-15-2, of which he has been mulcted in so peculiar a manner.

† Dated 27th ultimo, No. 247, (for return).
‡ Translation enclosed.

7. I have the honor to enclose a Report† from the Acting Sub-Collector, and its enclosure‡ on the subject.

From the Acting Sub-Collector of Malabar, to the Collector of Malabar; dated Tellicherry, 27th October 1865, No. 247.

In the Zillah Gazette of the 2nd September 1864, page 219, a Notice was published by you, stating that all Batta Peons were bound to pay the fees leviable at the different ferries in the District, as they were not public servants.

2. The Notice was issued in consequence of a reference from me on the point, and you concurred with me in thinking that, as a Batta Peon was not a person in receipt of Government allowances, he was not a Government Officer.

3. The Renter of the ferries on the Cannanore and Tellicherry, and Cannanore and Kutaparamba roads, accordingly levied the usual fee from a Batta Peon, conveying a summons from the Small Cause Court of Tellicherry, in September last.

4. The Peon apparently protested against paying the fee, and then filed a suit in the Small Cause Court, to recover the amount, two Pice, with 2 Rupees damages, for illegal detention.

5. The Court decreed for the plaintiff for the amount sued for (less the damages), with costs, amounting to Rupees 3-15-0, in spite of the defendant filing a certificate, bearing my seal and signature, certifying that Batta Peons were bound to pay such fees under your orders, and referring to the page of the Zillah Gazette, where such Notice would be found.

*Proceedings of the Madras Government, Judicial Department,
6th April 1866.*

6. The Renter has accordingly had to pay Rupees 3-15-2 for acting up to your orders, and I, therefore, beg to suggest that the matter be laid before Government, with a view to steps being taken, through the High Court, to prevent such suits being entertained in future.

7. I enclose the Court's notice to the defendant, and the Renter's petition to me, on the subject.

NOTICE.

Some uncertainty appears to prevail as to the liability to Batta Ameens and Peons to pay toll at the Government ferries, &c.

2. The Collector, therefore, gives notice that such persons, inasmuch as they are not Government servants, but the employes of private individuals, are liable to demand of toll.

(Signed) G. A. BALLARD,

Collector.

CALICUT, 2nd September 1864.

To the Malabar Sub-Collector's Cutcherry.

Urree of ANANTHA MALLEEN and MANAT CHERIAMBUKAN, Renters of Kuda-kadavu and 11 other Ferries.

Tirumangalath Chandu, a Batta peon attached to the Tellicherry Small Cause Court, brought an action in that Court, under No. 1422 of 1865, against Manath Pockan and another, our sub-renters of the Mampuram Kadavu Ferry, for the recovery, with costs, of the toll collected from him for crossing the Mampuram Kadavu Ferry, on the service of one of the parties in a suit (in the abovementioned Court).

The defendants pleaded that a suit brought against the lawful collection of toll could not be entertained.

The order, dated 14th September, passed on a petition presented by us to this Cutcherry, regarding Ferry toll, was produced before the Court at the hearing of the case, and perused by the Court.

Objection to the entertainment of the suit was also raised, on the strength of the order in the Malabar Government Gazette therein adverted to. The Court rejected all this, and adjudged payment of Rupees 3-15-2, being amount of toll, and costs Rupees 3-15-0.

2. As the decision was not appealable, and to avoid being obliged to go to Jail, the decree amount was paid.

3. We beg to lay before your honor, as a proof of what we represent, the notice issued to the defendants by the above said Court.

4. The power exercised by the renters and the rules enforced by them are, of course, in conformity with the agreement entered into by them, under the orders of the Collector and Magistrate; and it is most clear that neither we nor our sub-renters have in any way departed from such agreement.

It is a matter of grievance, as well as of heavy loss, so far as the income of the Farm is concerned, that this decree should have been passed in a suit brought against an act done under orders.

5. Since this decision, Batta Peons, Ameens, &c., have not only been refusing payment of toll, but also threatening the renters, by saying that they would file suits against them.

6. As this decree affects the agreement entered into between the sub-renters and ourselves, all those who have undertaken the Farm object to pay their rent in full.

7. We are, therefore, unable to pay to Government the full amount of rent due by us, and are subjected to great hardship, loss, and grievance.

8. We beg, therefore, you will have the goodness to take the necessary steps to grant us, for the loss sustained and anticipated, an adequate remission from the amount of demand, and thus redress our grievance.

(True Translation.)

21st October 1865.

(Signed) G. A. BALLARD,

*Proceedings of the Madras Government, Judicial Department,
6th April 1866.*

ENCLOSURE No. 2.—Vernacular paper.

The Collector is requested to submit translation of the Court's notice and decree, as the Board have not a Malayalam Translator on their own Establishment. Mr. Ballard will please to bear this in mind, in future, and will invariably forward translations of any Vernacular documents which he deems it necessary to place before the Board.

(True Copies and Extract).

(Signed) G. BANBURY,

Acting Sub-Secretary.

To G. A. Ballard, Esq., Collector of Malabar,

with a Vernacular paper and Sub-Collector's original letter returned.

Read also the following letter from the Collector of Malabar, to the Secretary to the Board of Revenue; dated Calicut, 6th February 1866, No. 42.

Adverting to the Proceedings of the Board of Revenue, No. 7887, dated 9th

December 1865, I have the honor to

submit copies of a Memorandum from the Acting Sub-Collector, dated 2nd

instant, No. 31, and a Decree of the Tellicherry Small Cause Court, in the

case noted, as well as the Court's notice in the case to the defendant, together with a translation in English.

No. 31.

MEMORANDUM.

Adverting to the Collector's endorsement on the Board's Proceedings, dated 9th December 1865, No. 7887, the Acting Sub-Collector has the honor to forward, herewith, copy of the Decree of the Court of Small Causes of Tellicherry, in Suit No. 1422 of 1865, obtained and furnished to him by one of the defendants.

2. He begs to inform the Collector that, on application being made, under his orders, by the Government Vakeel at Tellicherry, for a copy of the Decree, the Court refused to give one, observing, as will appear from the enclosed report from the Government Vakeel, that applications of this description were to be made by the Collector himself, or through one of the Vakeels of the Court.

(Signed) J. H. GARSTIN,

Acting Sub-Collector.

CANNANORE, 2nd February 1866.

To G. A. Ballard, Esq., Collector of Malabar, Calicut.

TRANSLATION.

No. of Suit 1422 of 1865.

IN THE COURT OF SMALL CAUSES, TELLICHERRY.

Tirumangalath Chandu..... Plaintiff.

Mampuram Kadavu Ferry-men,
Manath Pockan and another, residing at } Defendants.
Makreri Amshom, of Cherikal Taluq.

To the abovementioned defendant Pockan.

Whereas, the abovementioned plaintiff has instituted a suit in this Court against you, for the recovery, with damages, of money received from the said plaintiff on the 16th Chingum 1040,

Proceedings of the Madras Government, Judicial Department,
6th April 1866.

You are hereby summoned to appear in this Court, in person, on Tuesday the 19th September 1865 to answer the abovementioned plaintiff, and as the day fixed for your appearance is appointed for the final disposal of the suit, you must be prepared to produce all your witnesses on that day, and you are hereby required to take notice that, in default of your appearance on the day before-mentioned, the suit will be heard and determined in your absence; and you will bring with you any document on which you intend to rely in support of your defence.

Given under my hand and seal this 7th day of September 1865.

(Signed) G. R. SHARPE,
Judge.

	RS.	A.	P.
Amount of suit.....	2	0	2
Cost.....	3	15	0
Total...	5	15	2

If you pay into the Court the amount and costs demanded, you will not be liable to pay any further costs.

Should you admit only a part of the sum demanded, and pay into Court such part with proportionate costs, you will not be liable to pay any further costs, if the plaintiff does not establish against you, at the hearing of the case, a debt beyond the amount paid.

If, in default of your appearance, the suit be decided *ex-parte*, the decree will be enforced against your person, or property, if the amount of debt and costs be not paid within one week from date of Decree.

Summons can be obtained for the production of any books or papers for your defence.

If you are desirous to set off against the claim of the plaintiff any amount due to you by the plaintiff, you should, at the time fixed for your appearance, tender a written statement containing the particulars of your demand. If you wish to show that the suit is barred by the statute of limitation, or that you are a pauper according to the Insolvent Act, you should attend the Court; if not, you should show sufficient cause for your non-attendance. When you attend the Court, you should bring with you the copy of this summons.

The amount of warrant ought not to be paid to the Batta Ameen or batta Peon, unless the receipt is in your presence separated from the foot of the warrant and given to you. If you do so you are liable to pay it again.

(True translation.)

(Signed) G. A. BALLARD,
Collector.

IN THE COURT OF SMALL CAUSES—ZILLAH TELLICHERRY.

PRESENT:—G. R. SHARPE, Esq., Judge.

Suit No. 1422 of 1865.

Tirumangalath Chandu..... Plaintiff.
1. Manath Poekan..... } Defendant
2. Cheratody Cannan, Ferry-men of the Mampuram Ferry... }

RS. A. P.

2 0 2.

Illegal exaction of Tolls.

Proceedings of the Madras Government, Judicial Department,
6th April 1866.

Decree.

For plaintiff for 2 Pice and costs.

	RS.	A.	P.
Amount adjudged...	0	0	2
Stamp...	1	0	0
Peon's batta...	2	0	0
Expenses to witnesses	0	15	0
Total...	3	15	2

Given under my hand and the seal of the Court at Tellicherry, this 19th day of September 1865.

(Signed) G. R. SHARPE,
Judge.

L. S.

Copy applied for 25th January 1866.

Paper furnished 26th do. do.
Copy ready 26th do. do.
Copy delivered 26th do. do.

(Signed) G. R. SHARPE,

Judge

(True Copy).

(Signed) G. R. SHARPE,
Judge.

Ordered that the foregoing papers be submitted for the consideration and orders of Government, with the Board's recommendation that steps be taken to prevent a recurrence of such unseemly conflict of authority.

2. It will be observed that the Collector notified in the Gazette that Batta Peons, not being Government servants, are liable to pay the toll at ferries, the terms of the Ferry Farm requiring the lessee to carry only Government servants across the ferries, free of charge.

3. The Judge of the Tellicherry Small Cause Court has, however, thought fit to admit a Suit preferred by a man working as a Batta Peon for parties to Suits in his Court, to recover the toll levied from him, and has decreed in his favor with costs, the toll recovered being 2 Pice, and the cost Rupees 3-15-0.

4. The subject matter of the Suit is stated in the Decree to be "illegal exaction of tolls," but as Small Cause Judges record Decrees only, and not Judgments, it is not apparent whether the Judge disallows the Government right to levy tolls at ferries, or asserts his own right to define who are, and who are not, exempt from the liability to pay them. In neither case, however, can the case be allowed to rest where it is.

5. Sanction is requested for remitting to the Ferry Renter the sum of Rupees 3-15-2 recovered from him.

(A true Copy and Extract).

(Signed) W. HUDLESTON,

Secretary.

To the Secretary to Government, Revenue Department.

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*Proceedings of the Madras Government, Judicial Department,
6th April 1866.*

Transferred to the Judicial Department.

(Signed) J. GROSE,

Acting Under Secy. to Govt.

17th March 1866.

No. 47. Proceedings of the Board of Revenue, dated 13th March 1866, No. 1721.
From G. A. BALLARD, Esq., Collector of Malabar, to the Secretary to the Board of Revenue; dated Calicut, 6th March 1866, No. 79.

In continuation of my letter, dated 6th ultimo, No. 42, I have the honor to submit copy of one just received from the Acting Sub-Collector, dated 2nd instant, by which it appears that the defendant in the Small Cause Court did not plead justification of the charge of fees from the Batta Peon.

2. The award against defendant may, therefore, to some extent be looked on as a right punishment for his carelessness.

3. An order, however, to the Small Cause Court, informing it that Batta Peons are not public servants, and are liable to tolls, which should be charged in the costs of a suit, is desirable.

From the Acting Sub-Collector of Malabar, to the Collector of Malabar; dated Tellicherry, 2nd March 1866, No. 63.

In continuation of my letter of the 27th October last, No. 247, I have the honor to inform you that I have since learnt from Mr. Sharpe, that the defendant, who appeared in his Court, made no defence, beyond saying he was very sorry for having levied the fee from the Batta Peon, and would not do it again.

2. On learning this, I sent for the petitioner (the Ferry Renter), and questioned him closely, and he then admitted that he had never been into Court himself, but had deputed some one to appear for him, and that the man had not obeyed his instructions.

3. The point of whether a Batta Peon was a public servant or not, was, therefore, not raised.

4. I regret I omitted to send this further information before; but owing to moving about, and a press of business, I quite forgot to do so.

5. All that appears to me to be needed, is an order from the High Court to the Small Cause Court that Batta Peons are to pay the tolls at ferries, and the charge is to be included in the costs of the suit.

Submitted for the information of Government, in continuation of Board's Proceedings, dated 7th March 1866, No. 1576.

(True Copies and Extract).

(Signed) W. HUDLESTON,

Secretary.

To the Secretary to Government, Revenue Department.

Transferred to the Judicial Department.

(Signed) J. GROSE,

Acting Under Secretary to Government.

19th March 1866.

No. 48. ORDER THEREON, 6th April 1866, No. 506.

The foregoing papers relate to a suit filed by a Batta Peon, employed by the Small Cause Court of Tellicherry, for recovering a small sum collected from him by a Ferry Renter in the District of Malabar. The Court decreed for the plaintiff, with

*Proceedings of the Madras Government, Judicial Department,
6th April 1866.*

7

costs, and the Renter has accordingly had to pay Rupees 3-15-2, for collecting a toll of 2 Pice, which he was competent to levy under the terms of the Ferry Farm.

2. It appears, however, that the defendant, viz., the Renter, did not plead the terms of his lease, in justification of the toll he levied, but, on the contrary, virtually admitted the claim against him. The judgment passed against him being, therefore, as observed by the Collector, the result of his own carelessness, he is clearly not entitled to the compensation he claims.

3. With reference to the suggestion that the High Court should be moved to issue the necessary orders, declaring that Batta Peons are not public servants, and are liable to tolls at Ferries, it seems sufficient to observe that, the point not having been raised in the suit, it is unnecessary to take any action in the matter at present. If the Renter had made a proper defence, and raised the point involved in the case for decision, the probability is the Court would have dismissed the suit, and affirmed the principle contended for by the Collector.

(True Extract).

Chief Secretary.

To the Revenue Department, with a Malayalam Notice returned.

Exd. J. H. Burns.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 9th December 1865.

Read the following letter from G. A. BALLARD, Esq., Collector of Malabar, to R. A. DALYELL, Esq., Acting Secretary to the Board of Revenue, dated Calicut, 7th November 1865, No. 239:—

1. Some time ago, a question having arisen as to the liability of Batta Peons to pay the fees leviable at the different ferries in the District, I published* a Notice, in the District Gazette, stating that as Batta Peons were not public servants, they were liable to payment of fees.
2. A reference to the High Court was made, in connection with the question, by the Civil Judge of Tellicherry, and the High Court pointed out the course to be pursued, so that the charges might be properly met.
3. It is with some surprize, therefore, that I learn that a Batta Peon, attached to the Small Cause Court of Tellicherry, who had been charged, as usual, at one of the rented ferries, filed a suit in the Tellicherry Small Cause Court to recover the amount, and that the Court, though the Defendant quoted the Collector's authority for the charge and referred to the Official Gazette sanctioning it, decreed for the Plaintiff with costs.
4. The Renter has accordingly had to pay Rupees 3-15-2, for collecting a sum of two pice which he was distinctly authorized, by competent authority, to collect.
5. I would suggest, that the High Court be moved to issue the necessary orders to the Tellicherry Small Cause Court, to prevent such suits being entertained in future.
6. And I would also request sanction for the refund, to the Ferry Renter, of the sum of Rupees 3-15-2, of which he has been mulcted in so peculiar a manner.

* Dated 27th ultimo, No. 247, (for return).
† Translation enclosed.

7. I have the honor to enclose a report† from the Acting Sub-Collector, and its enclosure† on the subject.

ENCLOSURE No. 1.

From J. H. GARSTIN, Esq., Acting Sub-Collector of Malabar, to G. A. BALLARD, Esq., Collector of Malabar, dated Tellicherry, 27th October 1865, No. 247.

1. In the Zillah Gazette of the 2nd September 1864, page 219, a Notice was published by you, stating that all Batta Peons were bound to pay the fees leviable at the different ferries in the District, as they were not public servants.
2. The Notice was issued in consequence of a reference from me on the point, and you concurred with me in thinking, that as a Batta Peon was not a person in receipt of Government allowances, he was not a Government officer.
3. The Renter of the ferries on the Cannanore and Tellicherry, and Cannanore and Kutaparamba roads, accordingly levied the usual fee from a Batta Peon conveying a summons from the Small Cause Court of Tellicherry, in September last.
4. The Peon apparently protested against paying the fee, and then filed a suit in the Small Cause Court to recover the amount two pice, with two Rupees damages for illegal detention.
5. The Court decreed for the Plaintiff for the amount sued for, (less the damages,) with costs, amounting to Rupees 3-15-0, in spite of the Defendant filing a certificate, bearing my seal and signature, certifying that Batta Peons were bound to pay such fees under your orders, and referring to the page of the Zillah Gazette, where such Notice would be found.

Handwritten notes and signatures at the bottom right of the page.

6. The Renter has accordingly had to pay Rupees 3-15-2 for acting up to your orders, and I, therefore, beg to suggest that the matter be laid before Government, with a view to steps being taken, through the High Court, to prevent such suits being entertained in future.

7. I enclose the Court's notice to the Defendant, and the Renter's petition to me, on the subject.

ENCLOSURE No. 2.—Vernacular paper.

The Collector is requested to submit translation of the Court's notice and decree, as the Board have not a Malayalam Translator on their own establishment. Mr. Ballard will please to bear this in mind in future, and will invariably forward translations of any vernacular documents which he deems it necessary to place before the Board.

(True Copies and Extract.)

(Signed) G. BANBURY,
Acting Sub-Secretary.

To G. A. Ballard, Esq., Collector of Malabar,
with a Vernacular paper and Sub-Collector's original letter returned.

Edw. J. Wright.

Requesting to submit translation of decree on suit filed by a Batta Peon in the Small Cause Court of Tillecherry for the recovery of certain sum from a ferry renter.

No. 7,887.

Dated 9th December 1865.

PROCEEDINGS OF THE BOARD OF REVENUE.

No.

1865.

Department.

Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read Proceedings of
the Board of Revenue.

(Here enter 7th and 13th March/66
No. 1576 & 1721)

Order thereon

As the terms of the

Ferry Tariff do not require the
lessees to carry ~~only~~ ~~Government~~
~~Government~~ ~~Servants~~ across the
any persons not being Govt. Servants
ferries free of charge, and
as Batta Peons are not
Government Servants but
were hired to work for
Sutors in the Courts, the
tolls they have to pay

I should be directed when crossing ferries must
to make to the High Court. clearly be charged to the
any com. at all in their ^{proportion} Sutors
matter, and would leave
the ferry renter to suffer
the loss which he has incurred

Suitors at whose instance
the Peons are employed
and should merge in the
costs of the suit.

2. The Governor in
Council resolves to com-
municate the foregoing
papers to the Honorable
the Judges of the High Court
with a request that they
will issue the necessary
orders on the subject for
the guidance of the Courts
concerned.

BR

by his own disregard
of the S.C. Court's jurisdiction.
The High Court cannot
assume the duty of any Court
to include or exclude items of
any kind as costs of suit.
Section 187 of the Civil Code
giving full powers in this
respect to the Court having
jurisdiction - and it seems
doubtful whether the
Act of 23 of 1861 would
enable the High Court to do
as was suggested by the
Att. Gen. if at all. (Cause
can be regarded as a Court
"subordinate" to the High
Court - but in reality, the
Court is the Court - was
agreed the Party Pleader was
calculated to raise, has
not been raised; for the
Dept. through the person
who represented him, ad-
mitted the Dept's claim -
had he appeared in person,
he might have shown the
futility of the claim, & have
not lost much in his own
case. As I view the case, Mr.
Sharp, the S.C. Court Judge
cannot but help himself to
was bound as counsel to
to lose a cause for the
claimant. W.D.

29. 3. 66

To the R. Dept. Judge of the
Honble the High Court.

x In para 2 of Mr Ballou's letter
of the 7th Nov 65. mentioned in para
of Board of Revenue of 9th December -
by R
to him, but we don't know
whether it was indicated
W.D.

xx
In Section V, Act XLII of 1860 -

The above Act has been
repealed 1871

6
Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read Pro. of the
Board of Revenue.

Here enter yth & 13th Mar 1866.
No. 1576 & 1721.

Order thereon 6 April 1866 No. 505.

The foregoing papers
relate to a suit filed
by a Batta ^{employed by} ~~von~~ in the
Small Cause Court of
Tellicherry, for recovering
a small ^{sum} ~~fee~~ collected
from him by a ferry
renter in the District
of Malabar. The Court
decreed for the Plaintiff
with costs and the Renter
has accordingly had to
pay Rs 3-15-2 for
collecting

query for in
"referred by"

JP

WDR

No.

PROCEEDINGS OF GOVERNMENT.

Dated

Press No. 2755, G. M.—14-11-65—500.

collecting a toll of 2 pice which he was competent to levy under the terms of the Ferry Farm. ~~(and under authority from the Collector)~~

2. It appears, however, that the Defendant, viz the Renter, did not plead the ^{terms of his lease} ~~Collector's order~~ in justification of the toll he levied, but, on the contrary virtually admitted the claim against him. The judgment passed against him being therefore, as observed by the Collector, the result of his own carelessness, he is clearly not entitled to the compensation he claims.

With

I am not sure that this should be admitted. The terms of the lease are not being made the Court would have to determine whether the defendant is liable or not. It is not clear from the Collector's order that the Collector would not have decided in favor of the defendant.

3. With reference to the suggestion that the High Court should be moved to issue the necessary orders, declaring that Batta Peons are not public servants and are liable to toll at ferries, it seems sufficient to observe that the point not having been raised in the Suit, it is unnecessary to take any action in the matter at present. If the Renter had made a proper defence and raised the point involved in the case for decision, the probability is, the Court would have dismissed the Suit and affirmed

affirmed the principle
contended for by the
Collector.

[Large handwritten signature]

To the Rev. Dept. - with
a Malay, Alban, & other returns
Edw. 17/4

48248.

Revised at 1/18

Philippine

Judicial 1863. Department.

No. 576.

PROCEEDINGS OF GOVERNMENT.

Dated 6th June 1866

Press No. 2765, G. M.—141.65—660.