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MADRAS RECORD OFFICE.

Government of Madras.

Public DEPARTMENT.

G.O. No.	1311	Press
		Mis.
Dated	18-10-	1870
		19

Not to be folded or roughly handled

*Proceedings of the Madras Government, Public Department,
18th October 1870.*

No. 110. Read the following letter from the Government Solicitor, Madras, to the Under Secretary to Government, Fort Saint George, dated Madras, 9th September 1870, No. 495 :—

I have the honour to acknowledge the receipt of the Order of Government noted in the margin, together with its enclosures, requesting the Advocate-General's opinion as to the validity of the claim preferred by certain fishermen of Madras to fish in the Cooum river, and to pick up shell-fish from the bed of the river.

2. I submitted the papers for the consideration of the Advocate-General, and have also conferred with him thereon; and

3. I now forward a copy of his opinion, and return, herewith, the enclosures above noted.

O P I N I O N .

Two rights appear to be claimed: one of fishing, the other of wading to pick up shell-fish from the bed of the river. The fishermen claim both on the ground of immemorial custom. The Superintending Engineer of the 4th Division knows nothing of the origin of the latter practice, and only speaks from hearsay as to that of the former, his records showing nothing on the subject. The Government has issued an order which prohibits fishing within certain limits, but is silent as to collection and exposure of shell-fish.

2. I could not undertake to advise on the legality of the fishermen's claim without more evidence respecting it, on one side and the other, than the pure statements.

3. But, for the purpose of advising the Government on the present occasion, it may be conceded, for the sake of argument, that the fishermen have a legal right, acquired either by actual grant or prescription. I still think that the practice may be put down as a public nuisance. It may well be that there was nothing deleterious to the public health in the practice when it first began, or for many years; but if, from more buildings having grown up on the banks, or from the bed of the river having become saturated with sewage, the disturbance of the water and the mud has now become dangerous to public health, the private right must give way to the public, and may be put down as a nuisance.

4. I assume that the medical and municipal evidence will fully substantiate the fact that the gases set free by fishing and wading, and by the rotting shells and putrid matter on the banks of the Cooum, are dangerous to the public health, and likely to breed cholera and fever.

5. I think the case clearly falls within Section 268 of the Indian Penal Code. No length of time will sanctify a nuisance. The only question under this section would be whether the practice was injurious to the public.

6. By Act XXI of 1864 (extended to Madras under Section 6 by Order of Government, June 21st, 1864), offences under Section 268 of the Penal Code may be disposed of summarily by a Magistrate of Police.

Proceedings of the Madras Government, Public Department,
18th October 1870.

7. The Order already passed by the Government, prohibiting fishing within certain specified limits, is of no effect. Government cannot either destroy private rights or abate a nuisance by proclamation; and I would advise that, in replying to the petitioners, no reference be made to the Order of 21st May 1870, No. 647, but that they be simply informed that any one fishing or wading for shell-fish, or exposing them on the banks, will be summarily proceeded against for a nuisance according to law.

8. It may be that it will not be necessary to interfere with fishing, &c., throughout the whole course of the Cooum: the matter may present one aspect between the Government House Bridge and that by the Cemeteries, and quite a different one between the Government House Bridge and the Marine Villa. In one locality it may be dangerous, in another harmless; and it is evidently desirable to interfere with these poor people's means of livelihood as little as possible. The question of nuisance or no nuisance is one to be decided by the competent judgment of Medical and Municipal Officers.

9. The Municipal Commissioners, as such, have no power to prosecute; for the conservancy of the Cooum appears to be vested, not in them, but in the Engineer's Department.

10. It is not expedient to amend Acts when it can be avoided; and I think that every end will be gained if the course I have defined be pursued; and the proper person to prosecute is, I think, the Engineer of the 4th District.

(Signed) J. B. NORTON,
Advocate-General.

5th September 1870.

No. 111. ORDER THEREON, 18th October 1870, No. 1311.

The Government have had under their consideration the petition presented by the persons interested in fishing in the Cooum river, and in collecting and drying shell-fish on the banks of the river, and who pray that the prohibition contained in the G. O. dated 21st May last may be removed.

2. The Government have also considered the opinion of the Honourable the Advocate-General, to the effect that, if the Municipal Commissioners and the Medical Advisers of Government are satisfied that the practice is injurious to the public health, it can, under Section 268 of the Indian Penal Code, be prevented as a nuisance.

3. Before taking further action in this matter, the Government resolve to appoint a Commission, consisting of the Acting President of the Municipal Commission, the Sanitary Commissioner, and Dr. Bidie, Secretary to the Inspector-General, Indian Medical Department, who will, at an early date, submit to Government a report on the following points:—

1st.—As to the necessity, on sanitary grounds and for the protection of the public health, of prohibiting fishing in the Cooum River and the collection and drying of shell-fish on the river banks.

2nd.—If no absolute prohibition is necessary, the limits which should be fixed as those within which no such fishing or shell-gathering and exposure shall be allowed.

Proceedings of the Madras Government, Public Department,
18th October 1870.

3rd.—Whether the prohibition should be for the whole year or only during certain months of the year.

(True Extract.)

R. S. ELLIS,
Chief Secretary

To the Government Solicitor.
„ Officiating President of the Municipal Commission, Madras.
„ Sanitary Commissioner.
To Surgeon G. Bidie, M.B.
To the Acting Commissioner of Police.

Exd. J. H. Burns.

N^o 495.

Madras 9th September 1870.

From

H. G. Richard

Government Solicitor,
Madras.

To

H. E. Stokes Esq^r

Under Secretary to Government,
Public Department,
Fort St. George,

Sir,

1. I have the honor to acknowledge the receipt of
the Order of Government noted in the margin,
together with its enclosures, requesting the Advocate
General's opinion as to the validity of the claims
preferred by certain fishermen of Madras to fish
in the Cooum river and to pick up shell fish
from the bed of the river.

Dated 26th August
1870. H. E. Stokes Esq^r
Public Department

2. I submitted the paper for the consideration
of the Advocate General and have also conferred
with him thereon.

I now forward a copy of his opinion and
return in a letter the enclosures above noted.

I have the honor to be,

Sir,

Your most Obedient Servant,

H. G. Richard

Government Solicitor.

Bequith

Obt. of 1870; 311

PUBLIC.

To
THE GOVERNMENT SOLICITOR,
Ac., Ac., &

Dated October, 18th.

Recd.

Encl.

G. O., 18th October 1870, No. 1311.

OCTOBER.
Nos. 110-111.

Appointing a Commission to report on cert
points connected with the subject of fishing in
Canaan River.

Opinion.

Two rights appear to be claimed, one of fishing, the other of wading to pick up shell fish from the bed of the river. The fishermen claim both on the ground of immemorial custom. The Superintendent Engineer of the 4th division knows nothing of the origin of the latter practice, and only speaks from hearsay as to that of the former. His Records, showing nothing on the subject. The Government has issued an Order which prohibits fishing in certain limits, but is silent as to collection and exposure of shell fish.

2. I could not undertake to advise on the legality of the Fishermen's claim without more evidence respecting it; on one side and the other, than the mere statements.

3. But for the purpose of advising the Government on the present occasion, it may be conceded for the sake of argument that the fishermen have a legal right, acquired either by actual grant or prescription. I still think that the practice may be put down as a public nuisance. It may well be that there was nothing deleterious to the public health in the practice, when it first began, or for many years. But if from more buildings having grown up on the banks or from the bed of the river having become saturated with sewage, the disturbance of the water and the mud has

Ans 25 June 1890 - 103-104
 27 July - 94-100
 9-28 July - 94-100
 26 July - 100-104
 21 Aug - 102-104

Public 1890. Sept.

At the 1890-1891 Session of the Government the Public Health Bill was introduced and the following resolution was passed:

Resolved, That the Government should take steps to prevent the nuisance of shell fishing in the river.

No. 1068

No. 1065.

In Council 1890.

Forwarded Copy of the above to the Secretary of the Public Health Bill, as to the validity of the claim, and in order by the Government to prevent the nuisance of shell fishing in the river. The Government should take steps to prevent the nuisance of shell fishing in the river.

has now become dangerous to public health, the private right must give way to the public, and may be put down as a nuisance.

4. I assume that the Medical and Municipal evidence will fully substantiate the fact that the gill-nets set free by fishing and wading, and by the rotting shells and putrid matter on the Banks of the Coorn are dangerous to the public health; and likely to breed cholera and fever.

5. I think the case clearly falls within Section 268 of the Indian Penal Code. No length of time will sanctify a nuisance. The only question under this Section would be whether the practice was injurious to the public.

6. By Act ~~XXI~~ of 1864 (extended to Madras under Section 6 by Order of Government dated 22nd 1864) offences under Section 268 of the Penal Code may be disposed of summarily by a Magistrate of Police.

The Order already passed by the Government prohibiting fishing within certain specified limits is of no effect. Government cannot either destroy private rights or abate a nuisance by proclamation: and I would advise that in replying to the Petitioners, no reference be made to the Order of 21st May 1870 N^o 647, but that they be simply informed that any one fishing or wading for shell fish, or exposing them on the banks will be summarily proceeded against for a nuisance according to law.

It may be that it will not be necessary to interfere with fishing &c throughout the whole course of the Coorn: the matter may present one aspect between the Government House and bridge and that by the Cemeteries, and quite a different one between the Government House Bridge and the Marine Villa. In one locality it may be dangerous, in another harmless; and it is evidently desirable to interfere with these poor people's means of livelihood as little as possible. The question of nuisance or no nuisance is one to be decided by the competent judgment of Medical and Municipal Officers.

9. The Municipal Commissioners, as such, have no power to prosecute; for the conservancy of the Coorn appears to be vested not in them but in the Engineer's Department.

10. It is not expedient to award costs when it can be avoided; and I think that every end will be gained if the course I have defined be pursued; and the proper person to prosecute is I think the Engineer of the 4th District.

/Signed/ John Bruce Norton
Adv. Genl

5th September 1870.

/True Copy/

A. L. Richards
Government Solicitor

Jan 18 1890
L. A. 1890

Procedure in the
the Government's
Secretary to the
Public Health
Jan 18 1890
Jan 18 1890

Office of the
Opinion dated 5th
September 1890

I question the
Norton's line of argu-
ment is that even
if they have a right
by prescription or grant
the practice can be
lost from the person
to hold it.
I think it could
be the case as shown
contains many folios -
to a point a headi-
cal con. So

Memorandum
looking at the
in the Court
It will be seen that the opinion
of the Advocate General is given
on the admission which is probably
correct that the fishermen
have a prescriptive right to
fish & collect shells in the
Cowan River.
Admitting this, the Advocate
General is of opinion that
if the Municipal Council
& the Medical officers
of fact are satisfied that
the practice is injurious to

to the public health it
is under the Penal Code
be put a stop to, as a
nuisance (Sec. 268)
such that the proper person
to bring a charge against
the fishermen is the
Magistrate of the District.
The order of the District
Magistrate is not considered
by the Advocate General
to be of legal force. &
he advises that in replying
to the letter no notice be
taken of the Govt order

but that they be simply
informed that any one
fishing or washing for shell
fish or exposing them on
the banks, within the pro-
hibited limits, or making
other limits as fish may
think fit to determine
be summarily proceeded
against according to law.
It is submitted that
before fixing these limits
deciding absolutely whether
any prohibition should be
made the same should be

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letter from the
Government Solicitor,
Madras 879 Sept. 17th 1870

Order thereon 18 October 1870 No. 1311

The Government
have laid under their con-
sideration the Petition pre-
sented by the persons in-
terested in fishing in the
Cooum River, and in
collecting and drying
shell fish on the banks of
the river, and who pray
that the prohibition con-
tained in the G.O. of 21st
May last may be removed.

2. The Government
have also considered
the opinion of the Honble
the Advocate General to
the effect that if the
Municipal

and the President of the
Muni: Corp: be furnished
with the Advocate General's
opinion and be desired
after consultation to advise
Govt.

1st As to the necessity of
continuing the prohibition
2nd As to the limits it
should be fixed - as
there is no other which
fixing a shell gathering
area can be fixed

3rd Whether this prohibition
should be absolute, or only
for certain months in the
year.

24/10. 25/10.

MR

four 1

Municipal Commissioners
and the Medical Advisers
of Govt. are satisfied that
the practice is injurious
to the Public Health.
It can under Sec. 268 of
the Indian Penal Code be
punished as a nuisance.

3. Before taking further
action in this matter the
Government resolve to
appoint a Commission
consisting of the Asg. President
of the Municipal Commn.

The Sanitary Commissioner
Secretary to the Inspector General, Indian Medical Deptt.,
and Dr. Bidie, who will at
an early date submit to
Govt. a report on the following
points

1st. As to the necessity,
or sanitary grounds
and for the protection
of the public health
of prohibiting fishing
in

79
in the Cooum River and
the collection & drying shell
fish on the river banks.

2nd. If no absolute pro-
hibition is necessary, the
limits which should be
fixed as those within which
no such fishing or shell
gathering and exposure
shall be allowed.

3rd. Whether the prohi-
bition should be for the
whole year or only during
certain months of the year

To

The Government Solicitor.

- Offg. President?

Asst. Commr. Madras.

disps 24/10

- Sanitary Commissioner.

Surgeon G. Bidie M. B.

- Commissioner of Police.

1874-1875

2-12-11
1874

Cont. of 118 Squares.

To Public
Jas Good. Secretary

Dated Dec 18. 1874
Recd. 1874 No. 111.

Nos. 110. 111.

Appointments of persons to?
by order on certain front's
conducted with the object
of finding out the persons who