D

Revenue Department

Minutes of Consultation

27th July 1858.

Sack No. 38 & 39

Cinder No. 1026 & 24 27th July 1858

No. 38. Read the following Extract from the Minutes of Consultation in the Judicial Department, under date the 12th July 1858, No, 943.

Read the following letter from C. PELLY, Esq., Magistrate of Bellary; to T. PYCROFT, Esq., Chief Secretary to Government, Judicial Department, Fort Saint George, dated 22nd June 1858, No. 39.

Sir,

In accordance with the instruction contained in Minutes of Consultation under date 7th May 1858, I have the honor to inform you that I appealed to the Court of Foujdary Udalut against the order of the Sessions Court of Bellary dated 22nd March 1858, using the same arguments as I did in my report to Government under date the 8th April last, I have the honor now to annex the decision of the Court of Foujdary in the matter as contained in their proceedings under date the 16th Instant. The Right Honorable the Governor in Council will observe that the Higher Court is of opinion that the order of the Session Judge of 22nd March 1858 is correct. The Court consider that I was wrong in making an order as Magistrate decreeing Anadanapah to give up the Choultry to the Officers of Government, and that I should have proceeded as Collector to take legal measures for the assertion of any rights which the Government might possess.

2. I have therefore now the honor to request, with reference to my former letter,* that I may be instructed by Government as to the course they would desire me to pursue, to recover possession of the Choultry at Humsagur; which I believe to be the property of Government.

* *No. 25, dated 8th April 1858.*

3. The Government will observe that the Court of Foujdary Udalut think it unnecessary to give an opinion in the other case† referred to by me and which I considered of the same nature as the one appealed, and in which like proceedings on my part had been confirmed by the Session Court.

† *Case No. 1 regarding the village Choultry at Moraghirry.*

4. But the Court however remark, "that the two cases present primâ facie very different "features and that it may be doubted whether mature consideration would discover them to be "analogous in principle."

5. Upon this remark I would merely beg permission to observe, that the principle involved was the right of the Magistrate to interfere in securing the property of Government from encroachment. Both cases came before the Magistrate in his Magisterial capacity, and as Magistrate in both cases I gave the order to the trespasser to quit. My order in the one case has now been finally set aside, in the other it has been confirmed by the Session Court, and virtually so by the Court of Foujdary Udalut.

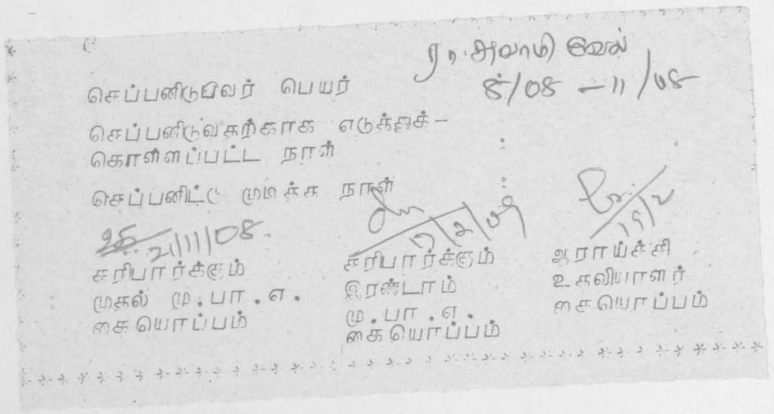
6. I presume I may now, in the case at Moragherry, take measures for forcibly ejecting the merchant and removing his shop.

7. There is one point I would beg to direct the attention of Government to. The Court of Foujdary Udalut observe that "Anadanapah whether rightfully or not is admitted to have been "for some considerable time in ostensible possession of the premises." Three or four months, he is admitted to have been in possession. But a question arises whether supposing he had been in possession a shorter time without the cognizance of the authorities the order of ejectment passed by a Magistrate would have been upheld, and if so, is there any time limited which would justify a summary order of a Magistrate to eject a trespasser. There are many old temples, choultries and public buildings of that kind, clearly the property of Government, but not always in use, or only occasionally used. Any body might take possession of these, and being undisturbed for a short time might claim a right to them, and under the decision now passed the Magistrate could not interfere.

8. The duties of a Magistrate in cases of trespass such as those that have now come under notice seem to require a clearer definition than at present exists to guide him as to when he ought to interfere, and when he ought to let parties go to the Civil Courts for redress.

Extract from the Proceedings of the Foujdary Udalut, under date the 6th June 1858.

Read letter dated the 1st Instant, from the Session Judge of Bellary, forwarding an appeal petition of the Magistrate of Bellary, from the order of the Session Court setting aside an order of the Magistrate dated 27th January 1858.



Fort Saint George, Revenue Consultation of 27th July 1858.

1. The Court of Foujdary Udalut are of opinion that the order of the Session Judge of the 22nd March 1858, now appealed against is correct. They observe that Anadanapah whether rightfully or not is admitted to have been for some considerable time in ostensible possession of the premises and upon the strength of his alleged ownership to have sought the Magistrate's protections against Sungapah as a forcible trespasser, enquiry not only led the Magistrate to dismiss the complaint as between the parties, but in his own opinion disclosed the fact that neither had a title and that the Choultry &c. in question was Government property, the occupation of which it was his duty as Collector to have prevented, and thereupon he proceeded to make an order in the case before him as Magistrate, decreeing Anadanapah to give up and deliver the same to the Officers of Government. In this the Court consider the Magistrate was clearly wrong; he should have contented himself with dismissing the case before him as Magistrate and have proceeded as Collector to take legal measures for the assertion of any rights which he might imagine the Government to possess. The Court resolve therefore to confirm the order appealed against.

2. The Magistrate has submitted with his appeal the record of another case which he considers to be of the same nature as the present one, and in which like proceedings on his part were *confirmed* by the Session Judge on the 15th January 1858. Upon this it is not necessary that the Court should give an opinion, as it has not, and cannot now come in appeal before them, the parties having acquiesced in the decision. It may be remarked however, that the two cases present primâ facie very different features and that it may be doubted whether mature consideration would discover them to be analogous in principle.

(True Extract.)

(Signed) C. F. CHAMIER.
Acting Register.

(True Copy.)

(,,) P. IRVINE,
Session Judge.

(True Copy.)

(,,) C. PELLY,
Magistrate.

Order.—In his letter of the 8th April last, No. 25 *Mr. Pelly* submitted for the consideration and orders of Government the record of two cases, which had been disposed of by him as Magistrate. The reversal by the Sessions Judge of the sentence in the latter of these cases had left the Magistrate in some doubt, as to the course he should pursue in future for securing the property of Government against encroachment.

2. In the first case, it appears, there had formerly been erected at the village of *Moragherry* a certain public *Choultry*. This the *Reddies* and *Curnum* surreptitiously pulled down, and handed over the site, for a pecuniary consideration, to a certain Shopkeeper. Other headmen in the village objecting, a disturbance ensued, when, the whole matter coming before him, the Magistrate prohibited the Shopkeeper from taking possession, and, on the latter persisting and going so far as to erect a small bazar on the premises, he directed its removal within one month; an order which was upheld in appeal by the Sessions Judge.

3. In the second case, a certain *Soucar* of *Humpasagur* complained that another *Soucar* had constructed a *pyal* in front of his (complainant's) *Choultry*, to the injury of his trade and with a view to excite a disturbance. The *Taksildar* reported that the Choultry was not the complainant's property, but that of the Government by whom it had been formerly used as a *Thâna* for the Peons of the Customs' Department. Concurring in this view the Magistrate summarily called upon complainant to vacate the building, and left the question involved in the original plaint altogether undecided. The Session Judge set aside this sentence, on the ground that the Magistrate had no jurisdiction to pronounce on the title of the plaintiff, who, it was admitted, was in the occupancy of the *Choultry*.

4. This decision, the Magistrate contended, was in direct opposition to that passed by the same Judge in the case first mentioned, wherein the Magistrate's proceedings had been upheld, and he desired to know what course he should now pursue.

V/1216

JUDICIAL DEPARTMENT.

No. 943.

Extract from the Minutes of Consultation under date the 12th July 1858.

Read the following letter from C. PELLY, Esq., Magistrate of Bellary; to T. PYCROFT, Esq., Chief Secretary to Government, Judicial Department, Fort St. George, dated 22nd June 1858, No. 39.

SIR,

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2. The Magistrate has submitted with his appeal the record of another case which he considers to be of the same nature as the present one, and in which like proceedings on his part were *confirmed* by the Session Judge on the 15th January 1858. Upon this it is not necessary that the Court should give an opinion, as it has not, and cannot now come in appeal before them, the parties having acquiesced in the decision. It may be remarked however, that the two cases present primâ facie very different features and that it may be doubted whether mature consideration would discover them to be analogous in principle.

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(Signed) C. F. CHAMIER,
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(,,) P. IRVINE,
Session Judge.

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Magistrate.

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3. This decision, the Magistrate contended, was in direct opposition to that passed by the same Judge in the case first mentioned, wherein the Magistrate's proceedings had been upheld, and he desired to know what course he should now pursue.

5/1236

4. In reply, the Government instructed him to appeal in due course to the *Foujdary Udalut*. This he has now done and the Higher Court confirm the award of the Sessions Judge. They observe that the *first* case presents very different features from the *second*; but, without going into that question (for the 1st case is no longer appealable) they are clear that it was Mr. Pelly's duty, first, to dispose of the dispute between the two *Soucars* as a Magistrate, and then to proceed as Collector to assert any right which he might conceive belonged to the Government in the said premises.

Extract Minutes Consultation, No. 606, dated 11th May 1858

5. *Mr. Pelly* should accordingly have referred the latter question for the decision of the Board of Revenue, and not brought it before Government. The Government now to save delay resolve to furnish (through the Revenue Department of the Secretariat) copies of the whole of the correspondence that has passed in the case to the Revenue Board, and to desire them to take such measures as may be necessary for the due appropriation of the *Choultry*, if they consider the same to come within the scope of Regulation VII of 1817.

(True Extract and Copies.)

Chief Secretary.

To the Revenue Department.
,, Magistrate of Bellary.

Ext. F. Cartledge.

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Ex. M. C., No. 606, dated 17th May 1858.

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(True Extract and Copies.)

(Signed) T. PYCROFT,
Chief Secretary.

No. 39. ORDER THEREON, No. 1026; dated 24th July 1858.

Communicated to the Board of Revenue.

(Signed) T. PYCROFT,
Chief Secretary.

Lett. Dy to Govt 11th May 58 p. 30
731

Rec. from the Bd of Revs
D/4th Dec. 53 Col. No. 1898.
Inbound 11 Vol. 50-51.

9601

No. 38489.

Revenue 1858 Dept.
Dy. to Govt. 27th July

No. 1169.

Extract from the
Mins. of Govt. in the
Judicial Department

Dated 12th July 1858.
Rec'd 20th

1 Enclo:

Resolving to furnish
to the Board of Revenue Copies of the
whole of the correspondence that
has passed in the case of a
Choultry at Benn saughlim in the
possession of a Sahoocar whose
rights of ownership is disputed
and requesting them to take
such measures as may be
necessary for the due appro-
priation of the Choultry, if
they consider the same to come
within the scope of Regulation
VII of 1817.
No. 1036. 24th July 1858. With an Order

Lett.

No. 1026
Communicated
to the Board of Revenue
Fort St. George
24th July 1858

3 Copies to the Bd of Revs. Dist. 26th
with a Copy of P. Mr. C's Letter