

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No.	1411	Press
		Mis.
	109-00	
Dated	6 - 8 - 1864.	

Not to be folded or roughly handled

*Proceedings of the Madras Government, Revenue Department,
6th August 1864.*

No. 109. Read the following letter from J. W. B. DYKES, Esq., Magistrate of Nellore, to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Judicial Department, Fort Saint George, dated Krishnapatnam, 23rd March 1864, No. 12 :—

SIR,

1. The Board having, in their Proceedings of the 30th December 1863, No. 8,178, taken upon themselves to especially condemn the course I had adopted in trying and disposing of a case as a Magistrate in which I myself, as Collector, was prosecutor,* I brought to the notice of the

Board that I had adopted this course as the Magistrate of the District, and requested the censure might be withdrawn, as in that capacity I was not subject to the authority of the Board of Revenue.

2. I also brought to the notice of the Board that my proceedings as Magistrate in the case in question had come before the Sessions Judge in due course, and had been passed by the legally constituted tribunal without comment, from which it might be inferred, first, that the course I had pursued was the correct course ; and secondly, that the conviction, which the Board also disputed, was equally in accordance to law.

3. In their Proceedings of the 10th, the Board do not reply to my request, but "decline to alter their opinion,"† a point on which I had made no application. And under these circumstances, I do myself the honor to submit the correspondence, and request the orders of Government, whether the Board are competent to pass and record an opinion either for or against my conduct as a Magistrate, because the case adjudicated on happens to be a "Stamp" case.

4. The Board argue‡ that as Section 52 requires that in every instance it shall be at the suit of the Collector that offences are proceeded against under the Stamp Act, therefore this provision is exceptional, and the Board have no doubt precludes a Collector from adjudicating as Magistrate. I, on the other hand, respectfully beg to submit for the consideration of Government that there is nothing in the Act to warrant this view, and that the disqualification the Board would establish must be, otherwise, based on the Procedure Code to be legal.

5. As a rule every Magistrate would rather have cases in which he was prosecutor tried by some one else than himself. But in the case in question, I could not carry out the more agreeable course. Shama Ravu, the Deputy Magistrate in charge of the Zemindary tract, is a Sub-Magistrate of the 1st Class in the Division of the District under my immediate charge. I considered he had disposed of a case for corrupt motives. It was essential to the due maintenance of order that the case should not be allowed to be so disposed of, and I accordingly called

it up.|| In commencing the case in the first instance, without my orders as Collector, Shama Ravu acted irregularly, and, so far, the case was from the first irregular ; but on this point the Board make no comment ; and it does not in any way, I presume, vitiate my subsequent proceedings.

6. The Board further urge that the grounds taken up by me are incompatible with the powers conferred on them, and the provisions of Section 35 of Act X of 1862 would be nugatory if they could not object to my acts as Magistrate. On which I would observe that to "especially condemn" is something more than to object. And that finally, objection or condemnation are neither of them either necessary or in accordance with the law, if, as I read it, Section 52 simply means no prosecution shall be instituted save at the instance of the Collector, &c., to prevent

Proceedings of the Madras Government, Revenue Department,
6th August 1864.

people being needlessly annoyed, and Section 35 that such acts, like all other acts of that Officer, are wholly under the control and subject to the authority of the Board.

Transferred to the Revenue Department.

Fort Saint George,
12th April 1864.

(Signed) W. H. KERR,
Deputy Secretary to Government.

No. 110.

ORDER THEREON, 6th August 1864, No. 1,411.

Separate Revenue, No. 72.
Stamps.

Recorded, with reference to G. O. 12th April 1864,
No. 618.

(True Extract.)

(Signed) C. G. MASTER,
Deputy Secretary to Government.

~~To the Board of Revenue,~~
~~the Collector and Magistrate of Nellore.~~

Exd. S. T. Augustin.

³
Revenue Department

No.

Proceedings of the Board of Revenue
dated 10th March 1864.

Read letter from the Collectors
of Nellore dated 25th February, 1864.

No. 52.

I have the honor to acknowledge the
receipt of the Board's Proceedings of the 5th,
No. 804, and request they will be pleased to
reconsider their several orders in the matters
referred to.

2 In their Proceedings under acknow-
ledgment, "the Board are doubtful whether they
rightly understand what it is on which I
request orders" in my letter of the 27th ultimo.
And then informing me that they have no
intention

intention of laying down laws for my guidance
as a Magistrate, they proceed to inform me
what it is they intended I should do as Collector.

3 I think the whole *Collector's letter to Board No. 408 dated
27th November 1863.
Correspondence noted has 2 Board's Proceedings thereon No. 8178 dated
30th December 1863.
arisen from a confusion of 3 Collector's letter to Board No. 9 dated
11th January 1864.
my acts in these two very 4 Board's Proceedings thereon No. 243 dated
18th January 1864.
different capacities. When 5 Collector's letter to Board No. 18 dated
27th January 1864.
I submitted for the considera- 6 Board's Procs. thereon No. 804 dated 5th
February 1864.
tion of the Board the misconduct of Shama
Rai, the Deputy Magistrate in charge of the
Zemindari tracts, there were two aspects to the
case, one its fiscal with which the Board had
very little to do, the other its Magisterial of which
they had only partial cognizance; and had this
distinction been attended to, in all probability,
I should not have had to trouble the Board
again

again and for the fourth time on this subject.

4 On information received I called
up a Stamp case pending before Shama Rai
Deputy Magistrate in charge of the Zemindari
tracts; I fined the accused Rupees 100, and,
considering that Shama Rai was as well able
as I was to see the guilt of the accused and had
deliberately closed his eyes to it, I reported
him to the Board.

5 In their Proceedings on this report the
Board inform me that they do not take the
same view of the case as I took. "They do not
condemn the Seller of the Stamp or the Deputy
Magistrate who absolved him from blame, and
they do not approve of the Collector's proceedings
in the matter" all points coming fully within
their cognizance. But the Board do not
stop

stop there. They go on "specially to condemn the course I adopted in trying and disposing of a case as a Magistrate in which I myself as Collector was Prosecutor" And herein the Board seem to have forgot the two aspects, and the distinction involved.

6 How the Board could either acquit or "condemn" the seller of the stamps I do not know. There had been no trial before them. They were not competent to institute such. But the Deputy Magistrate's conduct having been brought before them for censure or such notice as might be deemed necessary, they are competent either to acquit or condemn him. And, having acquitted him, had they refrained from criticizing me, there would have been

no necessity for further correspondence.

7 It is true there are circumstances in the case in question that might I think have been taken as some what in favour of my not being so altogether in the wrong as the Board concluded. There were some very awkward gaps in the Deputy Magistrate's inquiries. There was a curious coincidence to be observed in his taking up a case at seven or half past seven in the morning, not to begin a long and troublesome inquiry, but to close an inquiry that had been begun in hot haste and had been subsequently languishing its slow length along in most unseemly delay till that particular morning which followed the despatch of an express from me the night before. It was curious that morning dispensation of justice should

just

just preserve the receipt of the Express despatched
by me the evening before to send the case in.
Still more curious was it, that the decision
the morning light saw given to the Court should
have been written the day before by the Deputy
Magistrate but not pronounced. And, finally,
supposing the Deputy Magistrate had
written his decision and kept it to sleep over it
though I have only a rough knowledge of Shizu,
still using it familiarly every day of my life,
the Board I think might have given me
credit for knowing something of the language
I have to use so often and if they discredited
my powers of discrimination, still might have
given some weight to the involuntary and
unmistakeable evidence of the man I had
fined a 100 Rupies, who, a Chetti, evidently
thought

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thought I was so near the mark in the
interpretation the Board and Shama Dain
took a different view of that he did not think
it worth his while to appeal.

8 But be all this as it may, the
Board came to the opposite conclusion, and
condemned my conduct as Magistrate in the
strongest terms they could well use and on as
grave grounds of objection as could well be
raised, whilst in the very next paragraph,
they of their own accord state that they have
no right to even to question my acts in my
Magisterial capacity.

9 In reply to these Proceedings, I simply
asked the Board's orders as to who I was to
prosecute before infituro, and brought to the
Board's notice that "Prosecutors and Judge" might
be

x 11th January
1864, No. 9.

he considered the normal state of things in this country.

10 The Board thereon ruled that prosecutions for a breach of the Stamp laws should be conducted before any one of my Magisterial Subordinates.

11 And on my pointing out to the

Board that as Prosecutor I could not elect where I would have my case tried, the Board

find themselves in the difficulty, described in the Proceedings under acknowledgment,

and referring still to my Subordinates, do not see that the case on which this objection

arose was not a question of Subordinates, of

transferring cases from one Magistrate to another

but to a subordinate from myself. The case

had been called up by me in my capacity

x Board's Proceedings

No. 343. 18th Jan^y

1864.

of Magistrate of the District, and could only be transferred from my Court, at my instance as Prosecutor, in the event of Prosecutors in Stamp Cases being invested with special powers, as pointed out in the 2nd paragraph of my letter of the 27th Ultimo, No. 18.

12 I have, I trust, now made clear what the Board were in doubt about; and in other words, that if the Board had been "legally" empowered to censure me, the censure was unfounded, because, as Magistrate, having called up the case, it was thereby in my Court, and as Prosecutor, I had no power to move it.

13 But as the Board themselves admit "legally," they had no right to question my acts as Magistrate at all. And I have therefore the honor to request that the Board will be pleased

to with draw the licence passed or submit
the whole correspondence for the orders of Govern-
ment, to whom I have applied for orders as
regards Pullaya now that the Sepins Court
has passed without comment the conviction
of his accomplice in the sale.

Mr. Dykes appears to the Board
to have mis-apprehended altogether his position
and the grounds on which the Board proceeded
in the case in question.

From the documents submitted to
them the Board were and still are of opinion
that the individual who was accused by
Mr. Dykes to be liable to punishment for
selling Stamps without a licence, had bonâ fide
obtained

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obtained the stamps in an authorized manner
"for use and not for sale" and therefore was
not liable under Section 48 of the Stamp Act
No. 10 of 1862.

They also consider that under Section
35 of the Stamp Act they are competent to
decide whether any prosecution under the
Stamp Act shall be proceeded with by Collectors
or not, altho' Section 52 of the Act requires
that the prosecution shall be at the suit of the
Collectors of Stamp revenue only, unless in the
case of a specially authorized Officer other than
the Collectors.

They also pointed out to the Collectors
that he being appointed by the law to prosecute
in such cases, is clearly not competent to adjudicate
in

in such cases as Magistrate, and they objected to his having done this, as again they consider they were perfectly competent to do. Mr. Dykes assumes that he having as Magistrate called for the case from the Deputy Magistrate the Board were powerless to interfere, an interpretation of the law which would at once render nugatory the provisions of Section 35.

Mr. Dykes's attention is called to G. O. dated 6th November 1863 No. 1995 in Board's G. O. (standing) dated 10th Idem.

He appears to the Board to proceed on an utterly wrong assumption when he argues that in many cases he as Magistrate is both prosecutor and Judge. The Board believe that in all such cases the legal

9
legal fiction is that the Queen prosecutes - altho' the Judge or the Magistrate may direct that she suet he prosecuted but they have no doubt that the provision in the Stamp Act (Section 52) is peculiar and exceptional, and precludes the Collector from adjudicating as Magistrate in such cases of Statutory revenue offences.

In the particular case under reference, the Board consider that the conduct of the party charged, was altogether inconsistent with the assumption of a fraudulent intent and their opinion is not affected by the fact that he did not appeal from Mr. Dykes's decision. It is quite compatible with the Board's view that altho' the man had no fraudulent intent he may have supposed that

that he had unwittingly infringed the law
and rendered himself liable to fine. altho
in the Board's opinion, he was not so liable,
the charge should not have been prosecuted.

The Board see no necessity
to refer the whole correspondence for the orders
of Government, but as Mr Dykes appears
to have addressed Government direct in the
matter - Copy of these Proceedings will be
submitted for their information and they
will doubtless call for the further papers
if they require them.

/ A True Extract /

/ Signed / W. Huddleston.

Secretary.

To
J. W. B. Dykes Esquire
Collector of Kelsoe.

10
/ True Copies /

W B Dykes
Collector

Comd. J. W. B.

Enclosure

In a letter from the Registrar of
 Affairs to the Chief Secretary to Govt.
 Fort St. George, dated 23rd March
 1864. No. 12.

— Rev: ²⁸⁷~~229~~ /
 la Com.

Proceedings of the Board of Revenue

Dated: 10th }
 Read: } March 1864.

No.

Referring to alter the provisions
 the case of illegal sale of stamps
 as stamps, and stating that
 there is no necessity for referring
 the case of the stampholders on
 the subject to Government: —

[Signature]
 Secy to Govt.
 No 621

[Signature]
 Secy to Govt.
 No 621

Received by the Secretary of the
Board of Prisoners Aug. 9 1864
No. 8279

Transferred to the
War Department
12th Dec 1863
W. H. M. M.
As Secretary

1. From the Brigadier of
the 1st Cavalry of the
Army -
12th Dec 1863
In com.

Recd 12th Dec 1863
12th Dec 1863
In com.

No 638
Enclosure in
transmitting for com.

Consideration of the Board of Prisoners
reference to certain correspondence
with the Board of Prisoners (enclosed)
the Board are competent to find
a record in opinion either for or
against the conduct as being
because the case adjourned in
the same to be a "long" case -
with an order of
transferred

11-11 28-11-11

Recorded with reference to G. O.
12th April 1864 No 618.

From W. H. M. M.
12th Aug 1864
1864
1864

14

No 109 & 110

C. H. M. M.