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Series
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Mayor's Court records
(Letters received)
(Vol No. 18)

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Block 7

Rack No.

Shelf No.

Serial No. 18

General No. 12184

Sir

You fill a conspicuous Station with such approved abilities so much to your own honor and the general Satisfaction, that I flatter myself you will excuse the trouble of this addreſs, and comply with my Request in favoring me with your opinion and advice upon some matters of a Publick tendency,

I happen at this time to be Mayor of Madras but must Acknowledge I have too much Reason to be conscious of my inability to Discharge the Duties of so important an office—

As we are made Judges by neceſsity and not inclination, We Act upon our conscience according to the best of our Judgement, which is doing all that can Reasonably be expected—

In points of Law we are frequently at a loſs, and have wished to apply to your Court for information, but were doubtful of the Propriety of such a measure, untill lately Speaking upon the Subject to Mr. Le Maistre, he aſsured me you would Readily afford us any aſsistance—

The Mayors Court has hitherto confined their Decisions to Civil Suits and Actions between Party and Party and granting Probate of wills — The Receipt of Presents and usury are made misdemeanors by the late Act of Parliament and are expreſsly therein directed to be prosecuted in the Mayors Court—

In case an information should be prosecuted for a misdemeanor against this Act— I wish to be informed Whether such Actions are to be Determined by a Jury, or by the Judges themselves?

Whether Actions brought for Damages for false Imprisonment or upon any other account are to be tried by Jury or not?

Whether Actions for Crim. Con. can be brought before the Mayors Court?

Whether the Court has authority in particular Cases to demand Publick Records?

The Clerk of the market who is appointed by the Court has hitherto exercised an authority over Bakers only— I wish to be informed whether his Power may be extended to every Article sold in the markets of this Settlement? And Whether this Court has a legal right to settle the Price of Provisions?

Whether the Judges of the Supreme Court of Judicature at Calcutta, will on a Publick application from the Mayors Court, give their opinions individually upon any general Point?

In case you should be of opinion this Court has a legal right to appoint Jurys, as the Process will be new we shall be at a loss in regard to the Regular forms, therefore I should be exceedingly obliged if you would be so kind as to let me know your mode of proceeding in such cases—

The Charter authorises the President and Council to fill up Vacancies, Accept the Resignation and upon sufficient complaint to dismiss the Members of the Mayors Court— A Revolution has lately happened in this Settlement which may occasion in the mind of the Court, Doubts of the legality of the Present Government— I shall be happy if you can consistently give me your opinion and advice Whether the Court ought to admit a Member nominated under such Authority?—

These Sir are the most material Points I wish to

Submit to your consideration—

If upon a review of our Charter you should be of opinion I have omitted to state any other case wherein the Court can lawfully extend their Authority, I doubt not but your regard for the Publick welfare, will induce you to point out the means, the better to enable us to answer his Majestys gracious intention in granting the Charter—

Madras
13th Septr 1776

I have the Honor to be
Sir
Your most Obedient humble Servant
J. T.

P. S. the favor of a speedy Answer is earnestly Requested—

To John Turing Esqr

Sir

I Yesterday Recd the favor of yours and as far as my private Opinion will go, shall ever be Ready to obviate any difficulties that may occur in the execution of the important trust committed to the Mayors Court, not deeming it improper so to do on general Questions which cannot come before me in Judgment. My Opinion must be understood not as carrying any authority with it from my Station, not have any greater ground to it than that of a Council in England on a case laid before him. That being premised I will answer the matters Stated in the order in which they are arranged according to the best of my Judgment.

1st The Mayors Court have very properly confined their decisions to Civil Suits and Actions between party and party and to the granting of Probates of Wills (I presume Administration to intestate Estates is meant to be included in the Powers executed by the Court) It is a Court of mere Civil Jurisdiction and no Criminal Authority whatsoever either expreſsed or implied is granted to it by the Charter by which it is erected, and as the Charter erecting a Corporation and defining its Powers is the Sole law and Rule of action for that Corporation they cannot execute any Powers not granted to them by the Charter. The Mayors Court therefore cannot aſsume any Criminal Jurisdiction—

2 Tho' the Receipt of Presents and taking exceſs of usury is made penal by the late Act of Parliament, that Act will not in my Opinion Authorize the Mayors Court to proceed by indictment. Before the Act it could not impannel a Jury and the Act gives them no Authority so to do. Suits for these offences must be carried on exactly in the same manner as the Civil Suits which the Court now entertains. The Judges of the Court as in all other cases and not a Jury must determine them—

3 By the words of the Charter the Mayors Court is authorized to try all Civil Suits Actions and pleas between party and party" these words comprehend all Actions on Contract expreſsed or implied and for all injuries to the Person Property or Character whether in those Actions a specific Sum be to be Recovered or Discretionary Damages for an injury. I mention Damages Particularly because when I was at Madraſs a member of the Mayors Court informed me that an idea had prevailed that the Mayors Court had no Jurisdiction in cases where Damages ought to be given understanding it to be the province of a Jury not a Judge to aſseſs Damage—

In England that position is true these in Trials by the Common Law the province of the Judge and Jury is kept distinct by this maxim The Judges are to answer to Questions of Law, the Jury to Questions of Facts. To what amount a man has been injured by a Contract not being fulfilled, by having been beat and aſsaulted, by false imprisonment or by Criminal Conversation with his Wife is only to be collected from the Particular facts and circumstances of the case and can by no means be resolved into a Question of Law. It therefore (according to the above maxim) can only be Determinable by a Jury but the Reason of this is because of the Separation of the office of a Judge from that of a Jury. A Judge in England cannot more Determine on the fact of the execution of a Bond, whether a contract has or has not been executed whether an Aſsault or Battery has or has not been committed whether a man hath or hath not been imprison'd whether the Act which constitutes Criminal Conversation hath or hath not been Committed than he can Judge of the extent of an injury and aſseſs Damages for the recompence of it—

In the Mayors Court the province of the Judge and Jury are united; The members of the Mayor's Court are Judges both of Law and Fact, were they not there must be a total failure of Justice they are ordered to try all Civil Suits, Actions and Pleas, no Civil Suit Action or plea could be Determined did they not take upon themselves to Determine matters of fact, as well as matters of law, without that, the execution of a Bond could not be proved before them. There is nothing more peculiar or sacred in Judging from Facts that Damages or in other words Compensation ought to be given to indemnify an injured Person, then to draw any other conclusion from matters of fact, The Mayor and Aldermen of the Mayors Court supplying the place both of Judge and Jury are as competent to give Damages by their Judgment as any Specific Sum Demanded in the original Action—

th Actions for false imprisonment assaults and Batteries and other Actions for Personal injuries must be tried by the Judges without Jury and they by their Judgment should give much recompence for the injury as under the Particular Circumstances of the case and of the Parties they may think Reasonable—

th An Action of Crim: Con: comes within the general Discription of the words Civil Suit in the Charter and may most clearly be brought in the Mayors Court: they must be proceeded in, in like manner as other Actions where Damages are to be given by the Judges without Jury, tho' the Answers to the 4th and 5th Articles are involved in what I before said, to avoid mistakes I answer them Separately

6th The Court has a right to be furnished with all Evidence necessary for the Determination of matters in dispute before them, If that Evidence be the Contents of any Public Record a Copy of it examined with the Record will be Sufficient. To which Copy the Parties interested Paying for the same having first obtained a proper order or process of the Court will be entitled. But the Court should be cautious that such order or process be only made use of for the purposes of Justice—

7th I cannot see any Power given to the Mayor's Court with Respect either to the Clerk of the Market or the regulation of the price of Provisions, I cannot therefore see any right the Court has either to extend the Powers of the Clerk of the Market or regulate the price of Provisions, as I know of no other law or Rule of Action for the Members of the Court than the Charter. It contains special Powers delegated by the Crown which Powers must be strictly Pursued—

8th I and I believe the other Judges of the Supreme Court will ever be willing to render such assistance to the Mayors Court as is consistent with our Judicial Authority, but any Advice we give must be understood Private and not ex officio— The Supreme Court of Judicature at Fort William in Bengal is not a Court of Appeal from the Judgment of the Mayors Court and no Court of Law can give a Judicial Opinion except on Appeal or a Cause Originally instituted before it—

9th — The Mayors Court hath no Pretence of Right to appoint Juries in any Case, it is therefore unneceſsary to Direct the forms of impannelling of them—

10th — The Supreme Court of Judicature at Fort William in Bengal hath both Criminal and Civil Jurisdiction; when Actions are brought either to recover Specific claims, Debts Penalties or Damages it proceeds without Jury In case of Indictments it iſsues Proceſs for and impannels Juries both Grand and Petty in the same manner and form as Courts of Oyer and Terminer and Goal Delivery in England—

11th — As to the Appointment by the President and Council to Vacancies in the Mayors Court was I a Member of that Court I should not think myself at liberty to Judge of the legality of the Government — I would acknowledge the Alderman appointed by the Present existing Government, I would not enter into the distinction of de Jure or de Facto. I think it would be a dangerous President and Subversive of its Constitution should the Mayor's Court take upon themselves to Judge of the legality of the Power under which the President and Council for the time being may Act, this might be a Pretence of rejecting an Alderman appointed by the most unquestionable Authority — I must desire not to be understood to Say any thing that may be construed into the Slightest Opinion of the legality or illegality of the Present Government at

Madraſs

Madraſs — I have no materials to Judge by and if I had it would be highly improper in me to intimate about one way or the other. I have I believe answered all the matters of which any doubt has been Suggested to me, I have confined myself strictly to them except with regard to giving of Damages, as doubts had been entertained as to that which must create manifest obstructions to that Justice which you have a clear right and therefore ought to administer I thought it proper as a Servant of the Public to obviate them as far as is in my Power — As to any other matters relative to the Charter as no difficulties are Particularly Stated I do not know how to suggest any remedies; whenever those difficulties occur and the nature of my office will allow me, I shall ever be ready to give clear and explicite answer — As you mention in your Letter that a revolution has taken Place at Madraſs and some of your Questions may have some Relation to the Present Situation of affairs there, that I may not appear to hold a partial Correspondence or to give advice which both Parties there may not be apprized of I must take the liberty to request that both your letter to me and this my Answer may be laid before the President and Council at Madraſs and before my Lord Pigot

I am Sir
With great Respect
Your very Obt. Humble
Servant
E. Impey

Fort William
Octr. 4th 1776—

Sir Elijah Impey

Sir

I have been honored with your Letter of 20th October explaining your former Opinion Respecting the Prosecution of a Suit for a Penalty, in which you pleased to Say the Plea or answer of the Defts must neither be prayed to be or be taken upon oath but in other Respects you think the Suits made Penal by the late Act of Parlt and also Prosecutions for Damages much be carried on exactly in the same manner as the Civil Suits which the Court now entertain—

So great an instance of attention and your obliging offer of assistance to obviate any doubt or difficulty that might be Suggested encourages me to trouble you again—

The Charter Directs that if any Person or Persons shall think him her or themselves aggrieved by any Judgment, Sentence or Decree of the Mayors Court that such Person or Persons shall or may within fourteen Days after such Judgment Sentence or Decree of the said Court shall be entered of Record appeal to the President and Council—

There can be no doubt of an appeal going from any final Judgment, Sentence or Decree of the Court but when an appeal is made from an Order for Issue joining or in any other stage of the Process merely to gain delay or deprive either party of examining Evidence I have ever thought it incumbent upon the Court (when there was not just cause of exception) to

Discountenance

Discountenance such Proceedings and allow Witnesses to be Examined—

It may so happen that a Person in order to evade Justice may endeavour to avail himself of those means which were only intended to protect the innocent— as for Instance a Prosecution is commenced against a Man for a Civil Injury— who instead of making any answer or defence Demurs to the Suit upon a Groundless Dilatory Plea— The Plt moves for the Judgment of the Court whether he ought to join in Demurrer— The Court upon due Consideration think fit to suppress and take the Supposed Demurrer off the File— and order the Defts to answer— The Deft thinks he has a Right to appeal from this order of Court— Now the Query is whether such an appeal would be regular and ought to be allowed— And would in fact render the authority of the Court nugatory— And if it tantamount to a failure of Justice as the Plt or Deft— And the witnesses may die before the return of the appeal from England—

In matters of Equity appeals are common in every stage of the Process but I believe are never admitted in matters of Law— A Civil Injury or a Suit for Damages being a matter of Law Query whether in such Cases an appeal ought to go from any Process ordered by the Court, or only from a Judgment

The Practice of the Court hither to has been to take Evidence by the examiner Query ought this practice to be continued— or ought the Court acting as Judge and Jury to take evidence themselves Viva Voce

I am

Sir
Elijah Impey

Sir

I have had the honor to Receive your letter Dated 4th Ultimo containing clear and explicite answers to the different Points submitted to your Consideration;

I beg you will accept my particular thanks for your ready Compliance with my Request, which you have done in a manner that gives me entire satisfaction—

I have furnished Lord Pigot and Mr Stratton with Copies of both Letters which I have also circulated in the Settlement that the Publick may reap all the Benefit of advice given with so much Candour and

Should any doubt or difficulty hereafter occur in the Execution — of my office I shall avail myself of the advantage you are pleased to allow me in having Recourse to your Assistance—

Madras
5th Novr 1776

I have the Honor to be
Sir
Your very Obedient
humble Servant
John Turing

Sir

As in my Letter to you of the 4th Instant I have said that the Suits in the matters made Penal by the late Act of Parliament must be carried on exactly in the same manner as the Civil Suits which the Mayors Court now entertains to obviate any Error that may be adopted from that Opinion I think it proper to explain it by saying that I meant only that the Judges of the Court as in all other Cases and not a Jury must Determine them, and to add that where the Suit is for a penalty, the Plea or answer of the Deft must neither be prayed to be, or be taken upon Oath the universal maxim of the English Law being that no Man is bound to accuse himself But if the Oath is waived and the Answer taken without Oath, in my Opinion you may proceed to Judgment as in other Civil Suits—

It did not occur to me when I answered yours that you took answer upon Oath—

I am Sir
With great Respect
Your very obedient humble
Servant
E. Impey

Fort William
Octr 28th 1776

I am very solicitous to be favored with your Opinion Relating to the Jurisdiction of the Court in the above points. I entirely agree with you in thinking the Purposes of Justice are best answered by a strict adherence to the Powers under which it is administered, yet where these Powers are clearly ascertained it equally becomes the indispensable duty of the Court to exercise their Powers the furtherance of real and speedy Justice—

I have communicated your Letters to me and also Copy of your Letter Dated 11 October to Mr Andrew Ross— to my Brethren upon the Bench who have in deference to your Candour Abilities and attention ordered them to be entered of record in their Registry

In a few Days I shall be released from my Present Office by Mr Andrew Majendie who is the Mayor elect

I have the Honor to be
Sir Your most Obedient and Obedient
humble Servant
J. Turing

Madras
15th December 1777—

Duplicate

Sir

I am favored with yours and am sorry that I am obliged to decline giving you the full satisfaction which I wished, some papers sent to me by a friend in Calcutta stating the same Questions you did me the Honor of Submitting to me gave me to understand that the same Questions were Particularly applicable to a cause then instituted in the Mayor's Court, and that Opinions of advocates of the supreme Court had been received upon them, both these Circumstances rendered it improper for me to give any Opinion. To general Questions abstracted from any Particular causes I shall for the sake of expediting Justice be always willing to answer according to the best of my abilities. I shall never be more agreeably employed than when I am fortunate to be able to assist Gentlemen in the + + + + + + + Discharge of so important a trust as that which is committed to the Mayor's Court you will Readily perceive the impropriety of Receiving an Opinion from me and from an Advocate of the Court when they are of equal Authority and may differ,

By what I see in the papers before attended to I fear some of my insufficient explanation may Mislead + the Members of the Mayor's Court into a mistake by saying that the Oath ought not to be taken of the Deft two the Action is for a penalty which is a Punishment, I did not mean to include an action for Damages, which are a compensation, and I see that observation is applied to Damages. I do not mean to say the Proceedings in such a case would be vitiated by not Requiring the Oath but that there would be no occasion for the Pl to decline Demanding it

As to the Question concerning the Examiner I do not see why your Proceedings should of Necessity be altered as to his Stating the Examinations in any case. Tho' you may undoubtedly in all cases examine your witnesses in open Court, and in my Opinion if it be practicable it is the most Satisfactory Method —

You state that a Demurrer has been taken off the file and the Deft. ordered to answer. I would Recommend to you in future cases that if the Demurrer has been Received and is not afterwards withdrawn to compell the adverse to join in Demurrer, and after hearing both parties to decide upon it

If a Rule has been made in Pursuance of the instructions sent out with the Charter to avoid Demurrers you cannot be much troubled with them hereafter. It seems to be a very Prudent Rule —

I must apologize to you for the length of time which has elapsed since I had the Honor of Receiving your Letter, from the business which I am at Present engaged in which has so occupied my attention that the time Slipt away imperceptibly and I did not recollect the charge of neglect which I was incurring. would I have answered fully I should certainly not have delayed so long, but the Gentlemen that write for me are too ill to give me their Assistance —

Calcutta
10th Jany. 1777

I have the Honor to be
Your very Obedient humble Servant
E. Impey

Sir Elijah Impey

Sir

Sometime ago I was favored with the Duplicate (the Original has never come to hand) of your Letter of 10th January, And by your excuse for not replying sooner —

I am concerned any circumstances should have happened to render it improper for you to give me the full Satisfaction I wanted so much to Receive by your opinion Respecting appeals from Interlocutory Judgments however I must acquiesce with your Reasons for declining the Question and have many thanks to return for the trouble you have so kindly taken —

Considering our Correspondence to be of a publick nature I have agreeable to your former desire furnished my Lord Pigot, and Mr. Stratton with Copies of my last Letter and your answer —

I have the Honor to be
Sir Your very Obedient and most humble
Servant
John Turing

Fort St. George
22 March 1777

Honble. Sir and Sirs

We have been honored with your Letter of the 17th of this month Containing a Narration of the Circumstances which have brought the Government of Fort St. George into its Present State and inclosing an Extract of a Letter from that Presidency together with a Copy of the Commission of Government granted by the Company on the Appointment of Lord Pigot to be President of the Council there —

As we have the Strongest Inclination to give all the
assistance

Assistance in our Power to every Department of Government under the East India Company We feel Ourselves embarrassed by our Inability to afford it in the Present Instance. The Queries which the Gentlemen who are in possession of the Government at Madras have desired you to propose to Us necessarily involve the legality or illegality of the Acts already done by them and of the Authority by which they Administer the Government We have not sufficient materials before Us to form any Judgment and were we ever so completely furnished with them We should think it highly improper in this case to give any Opinion it ought to have no legal weight and from the unsettled State of that Presidency if more weight were given to it than a private Opinion Deserves it might create mischiefs that We foresee and many that cannot possibly be foreseen—

We therefore hope We shall be Be excused for declining to say more upon the Subject than that we Suppose the Gentlemen there had fully considered the legality of their Conduct in Assuming the Government before they executed that measure and that if they had been right in that the Powers of Acting as "Judges of Quarter Sessions Oyer and Terminer and of Goal delivery and Judges of the Court of Appeals and Judges of the Peace" vested at to the President and Council or each of them as by their Seniority Answer the Description of the Royal Charter According to the Respective powers Granted by the Same

We

We have the Honour to be &ca

Fort William
19th October 1776—

E. Impey
Robt Chambers
S. C. Le Maistre
John Hyde

To the Honble George Stratton Esqr President &ca
and the rest of the Gentlemen in Council—
at Fort St George

Gentlemen

Agreeable to the Request Contained in your Letter the 25th Ultimo We immediately Referred the Two first Paragraphs thereof to the Consideration of the Judges of the Supreme Court of Judicature briefly Stating to them all the Previous Occurrences which had induced you to Assume the Government of the Presidency of Fort St George and requested to be favoured with their Opinion upon the Question which you had proposed. Having Received their Answer to our Letter We beg leave to Transmit you a Copy of it inclosed—

We are
Gentlemen
Your Obedient humble Servants

(Signed)
Warren Hastings
J. Clavering
Richd Barwell
P. Francis