IX

Mayor's Court records

Letters Sent (No. 28)

1789

25,000—4-5-12.

Block 7

Rack No.

Shelf No.

Serial No. 56

General No.

780

Charles Nicholas White Esqr.

Secretary

Sir

I am directed by the Hontble the Mayors Court to acknowledge the Receipt of your Letter under date the 10th Ultimo with its Enclosures, and as the Hontble the Mayors Court have in Consequence thereof found it necessary to address the Hontble the Court of Directors I am further directed to request that the accompanying Letter may be sent a number in the Packet by the Ship now under Dispatch.

I am Sir

Your Most Obedient

Humble Servant

[Signed] James Taylor

Regr.

Town Hall

2. Feby 1789.

To the Honorable Court of Directors for affairs of the Honble
United Company of Merchants of England trading to the
East Indies

Honorable

Since the Courts address to your Honors of the 6th Decembr the Register has received a Letter from the Secretary to the President and Council dated the 10th Instant together with Extract of Consultation under date 12th September last with Extract of a Letter from Mr. Benjamin Sullivan to Government dated 3d Instant Copies of which are hereunto annexed.—

The Court beg leave again to assure your Honors that it is the furthest from its Intention in any instance whatever to abuse the Powers with which it is vested by Charter.—

The Extract of Mr Benjamin Sullivans Letter contains a Variety of Remarks and Annotations on the Courts' address of the 6th Decembr to your Honble Court— The Propriety of the mode which your President and Council have adopted on the present Occasion rests with your Honors

The Mayors Court have always studiously avoided every Discussion that might lead to an Altercation with the President and Council so contrary to the Spirit and meaning of its Institution— the entering therefore into a Refutation of Mr. Benjamin Sullivans Quotations

be a duration from that line of Conduct which the Court have hitherto observed, and which they see the necessity of preserving on the Present Occasion.—

The Court having already assured your Honors that the Orders which gave Occasion to the address of the 6th Decembr were the Result of every mature deliberation, do not think it necessary to trouble your Honors with any further Explanation on the Subject— We have the Honor to be

Honourable

Town Hall
Febry 3. 1789.—

Your most Obedient
Humble Servants

Signed By Order of the
Mayors Court
[Signed] James Taylor
Regr

Minute of Mr. Alderman Ross

After the Letter to the Court of Directors had been agreed to, Mr. Alderman Ross offered the following Minute to be Recorded.

He having entered his Dissent on the 6th. September last, to the Resolutions of the Court respecting the Conduct of Appeals from Interlocutory Orders, and given it as his Opinion, that no Appeals ought in any Case, to lie, to the Court of Appeals or to his Majesty in Council, from an Interlocutory Order of this Court, but only from a final Judgment, Sentence or Decree; and one way deviating from that Opinion, he might still rest satisfied with the general reference which he then made to the Authority of his Majesty's Charter, yet now finding that extraordinary pains seems to be taken, to render the Subject more intricate than is any way necessary or proper, he wishes (in further support of his Opinion) that such of the Papers as he read from the Bench at the time that the Resolutions of the Court were formed, and are the most applicable to the occasion, may now be annexed to this minute to wit.

Extract from Jacob's Law Dictionary, Title Plantation.
Extracts from the Records of this Court under the former Charter.
The Opinions of Mr. Newman and of Mr. Sealy, both Barristers at Law in the Supreme Court of Calcutta on the Subject of Appeals from Interlocutory Orders.
also an Opinion of Sir Elijah Impey relative to Demurrers.

Mr. Ross would further beg leave to remark that the late Mayor, when this matter was Debated in Court, at the same time that he read (from one of the Reports of the Committee of the House of Commons appointed to inquire into the Company's affairs in 1773) an Extract of a Letter from the Secretary at the India House to the President and Council of Calcutta, in favour of the right of Appealing from Interlocutory Orders, did also read from the same Report, Opinions given to the Court of Directors on that Subject by Mr. De Grey & Sir Fletcher Norton; which seemed to vary so much from the Doctrine contained in the Secretary's Letter, as must raise doubts in the minds of unprejudiced men as to the validity of that which was conveyed by the Secretary; and Mr. Ross (as he then declared and has always thought) does now say that it appears to him to be on the side of the two Learned Counsel tending to the discouragement of Appeals from Interlocutory Orders, a practice which he deems to have been a great detriment to the Course of Justice in this distant Settlement and very prejudical to honest Suitors who are thereby, at an enormous expence not only Kept out of their Right for a most unreasonable length of time but may easily be, and no doubt some times have been deprived of every chance of recovering it; besides the mortification of being harrassed by such vexatious delays to the discouragement of fair dealing, and to the great detriment of the Community at large. Nor does it seem improper on this Occasion to observe that the practice of appealing from Interlocutory Orders of this Court was hardly if at all attempted or Known before it took place in certain instances during the Subversion of the Government, twelve years ago when it was found a convenient course to be adopted by those Officers against whom Lord Pigot had entered Prosecutions for Damages in this Court; and as the Jurisdiction to which these Appeals were made in the first instance confessed themselves to be Parties and could not therefore decide upon it the issue answered the intended purpose of foiling the injured Person in his Claims: and that this has been the case in most, if not all the instances which have since occured is more than presumptive so that the conduct of the Court, (which in reason may be presumed to be best acquainted with the detriment arising from the practice) in the course which they are now attempting with a view to check so pernicious a practice cannot but appear laudable whatever doubts may arise as to the regularity of the present Resolutions of the Court in deviating from the Rule prescribed by the Charter (as the present Dissenting Member Contends that it does) by admitting Appeals in

in any Cases but only from a final Judgment Sentence or Decree.—

Town Hall /Signed/ Andrew Ross
28th January 1789.—

Jacobs Title Plantation.

N°1 The Courts of Justice abroad, cannot transmit a matter or Cause to the King and Council here for Difficulty, but are to determine the Right and give Judgment one way or other. But on an Appeal brought in the Plantations the Party appealing must procure the Proceedings to be transmitted, and proceed within a year after the appeal allowed there, or it shall be dismissed with Costs. 2 Lds Raym: 1464.

N°2 From the Records of the Mayors Court

1741
Dec 8th Devacunde Jango against Nairo Ratt Chitty

The Defendants Attorney desires to Know of the Court whether the minute made in this Cause on the 1st Current is intended as a ground for a Peremptory Decree or only an Interlocutory one, and assigns for reason for his asking the Question That if it is Peremptory, he is ordered to appeal from it.—

He is answered by the Court that they intended at the time of making it and now deem it Interlocutory.

1741/2
Jan 12th Devacunde Jango against Nairo Ratt Chitty—

An order made in this Cause on the 1st Dec last read

The Registers Report and an account thereto annexed made in pursuance of the said Order read and Confirmed by the Consent of both Parties.

And for as much as it appears to this Court by the said Order of the 1st Dec that the Chest and Keys mentioned in the Pleadings in this Cause together with the several Goods and Effects therein were thereby Ordered to be delivered to the Pff which order has not as yet been performed. and on Examination had of the matters in this Cause what was alledged by the Attorneys on either side and due Consideration had thereon this Court doth therefore think fit to Order and Decree and doth accordingly Order and Decree that the said Chest and Keys together with the several Goods and Effects therein contained, shall be delivered to the said Plaintiff and that the Defendant do pay the Plaintiff the Sum of P°. 6 (appearing to be due by the said Account annexed to the said Report) and also the Costs of the Suit.—

Appealed to the President and Council.—

1744
June 26 Thomas Eyre and others against Christopher Craddock—

A Note from the Clerk of Appeals acquainting the Register that the Defendant Appeals from an order made in this Cause on the 12th Instant read—

July 3 Thomas Eyre and others against Christopher Craddock.—

A Note from the Clerk of Appeals acquainting the Register that the Hontle the Court of Appeals have thought proper not to admit the Petition of Appeal of the Defendant Christopher Craddock, which he had lodged the 26th Ultº read.—

1744
Nov 14th Thomas Eyre and others— against Christopher Craddock.—

Summons returned served &c— The Defendant does not appear.

and it appearing to this Court that the Defendant hath been served with the beforementioned Order of the 21st Ultº and Copy of the said Exceptions and also the Regular Precps to enable a better Answer to the Complainants Bill, But wilfully and obstinately refusing so to do. This Court doth therefore on due Consideration had, think fit to order and Decree and doth accordingly Order and Decree, that the Defendant shall pay unto the Complainants what remains unpaid of their full Principal and Premiums, & also the Costs of this Suit.

N3 Appealed to the President and Council.—

N3 From these Extracts it appears that appeals from Interlocutory Orders were not formerly allowed either by the Mayors Court or the Court of Appeals.—

A True Extract
/Signed/ Andrew Ross

№3

The Opinion of M.r Newman in respect to Appeals from Interlocutory Orders of the Mayors Court.—

I am clearly of Opinion from the Construction of the Charter at large, that the Liberty of Appeal was never designed in Interlocutory matters, but solely on final Judgment or Decree, because that whole part of the Charter respecting the Appeals adverts to Damages to be recovered, which can only be on Trial or Hearing of a Cause; the Quantum in Dispute which can only be ascertained by final Judgment, and the enforcing Executions which are the Effect of final Judgments and Decrees, neither of which can be effected by Interlocutory matters, or ascertained by a Decision on a Demurrer. I am therefore of Opinion that an Appeal does not lie under the Charter in Question but upon the final Judgment or Decree made in a Cause.

(Signed) Chas. Newman

6.th January 1777.—

I have again Considered the Subject of the Appeal and Cannot alter of my former Opinion that his Majesty never intended every Interlocutory Order of the Court as it took place should be subject to so long a Suspension as an Appeal to England would occasion it; but it possibly may be, that if at the final termination of a Cause an Appeal takes place and on that Appeal any of the Interlocutory Orders appear irregular or improper it might supercede the whole, as much care therefore as possible should be taken to have the proceedings regular and accurate.

[Signed]

Chas. Newman

Calcutta 27.th Jan.y 1777.—

W. Sealys Opinion relative to Appeals from Interlocutory Orders of the Mayors Court.—

The order made upon overruling the Demurrer mentioned in this Case, is certainly nothing more than an Interlocutory Order The Charter of the 26.th of his late Majesty King George the 2.d by which the Mayors Court and Court of Appeals at Madras are Established allows an appeal only against a Judgment, Sentence or Decree of the Mayor's Court to the Governor & Council, and an appeal against the Judgment, Sentence, or Decree of such Gov.r and Council to his Majesty in Council, provided the matter in Dispute amounts to one Thousand Pagodas, and in other Cases where the Governor & Council are Interested on certain terms therein mentioned— The Mayors Court as well as the Court of Appeals at Madras must one doubt be governed by the plain Sense and Construction of the Charter and not by the practice of Courts held by different Tenures and in different parts of the World: In England Appeals may be very proper and Convenient in Cases in which In India they would be contrary to every Principle of Justice and totally destructive of the Assistance which his late Majesty by his Charter intended to afford his Subjects; and which I humbly conceive has been the Reason of restricting Appeals in the manner they are restricted by the Charter. Were Interlocutory Orders of the Mayors Court at Madras to be appealable it would be in the power of every Defendant, (the matter in Dispute exceeding one Thousand Pagodas) to prevent a final Judgment being given against Him. And after saying this much it seems hardly necessary for me to add, that I am of opinion that an appeal does not by any means lie to the Governor and Council of Madras or to his Majesty in Council against an Interlocutory Order of the Mayors Court of Madras.—

(Signed) Chas. Sealy

No 4

Extract of a Letter from Sir Elijah Impey Chief Justice of the Supreme Court at Calcutta to Mr. John Turing Mayor of Madras. Dated Calcutta 10th January 1777.

You state that a Demurrer has been taken off the file and the Defendant Ordered to answer I would recommend to you in future Cases that if the Demurrer has been received and is not voluntarily withdrawn to compell the adverse party 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 declare the above to be true Extracts and Copys

(Signed) Andrew Ross

True Copies of the Papers which accompanyed Mr. Alderman Ross's Minutes

(Signed) James Taylor
Regr.

To Mr. Thomas Pearce Accomptant General of the Honble
the Mayor's Court

Sir

Be pleased to acquaint the Honble the President in Council that the Honble the Mayor's Court have ordered the Sum of Two Hundred Pagodas (Pags. 200.-) to be Deposited with the Cash and Effects of the United Company of Merchants of England trading to the East Indies by Arnagerry Mondelly which said Sum is to be carried to the Credit of the Cause of James Daniel by his attorney Nathaniel Edw.d Kindersley vers.s Arnagerry Mondelly.

I am Sir
your most Obedient Servant
(Signed) James Taylor
Regr.

Town Hall
25th March 1789

To The Honble John Holland Esquire
Governor in Council at
Fort George

Honble Sir

I am directed by the Honble the Mayor's Court to draw upon your Honor for the Sum of Nine Hundred and Ninety Pagodas to defray the Necessary Charges attending that Corporation. I am with the greatest Respect
Honble Sir
your most Obedient
Humble Servant
(Signed) James Taylor

Town Hall
24th April 1789

To W.m Secretary White

Sir

I am directed by the Hon.ble the Mayors Court to acknowledge the receipt of your Letter of the 28.th of March last, and to acquaint you, that they cannot consistent with the Constitution of the Court interfere in the matter contained in that Letter.—

I am

Sir

Your most Obedient

Humble Servant

/Signed/ James Taylor

Town Hall

May 2. 1789.—

To W.m Charles Nicholas White

Clerk to the Hon.ble the Court of Appeals

Sir/

I am directed by the Hon.ble the Mayors Court to acknowledge the receipt of your Letter of the 13.th Instant and in reply thereto I am desired to say that all Extracts from their Proceedings and Papers which relate to the two Orders of Court from which appeals have been Lodged in the Suits Paul Benfield by his attorney John Turing against Mathew Horne and Charles Edward Jones Pl.t Contra have been regularly transmitted to the Hon.ble the Court of Appeals, agreeable to long established Practice and the Standing Orders of Court and that the above Suits by Proxy subsequent to such appeals are now nearly at Issue.—

I am/ Sir

Your most Obedient

humble Servant

Town Hall

20.th may 1789.—

To W.m Charles Nicholas White

Clerk of the Hon.ble the Court of Appeals

Sir

I have laid your Letter of the 23.d Ultimo before the Hon.ble the Mayors Court and am directed to say that the mode which has been Adopted in transmitting the Orders passed in the Causes Paul Benfield by his attorney John Turing against Mathew Horne and Charles Edward Jones is Agreeable to long Established Usage and Precedent— the Papers filed in these Causes previous to the appeals have never been Read before the Mayors Court one Order Consequently whatever can have passed upon their merits for the Judgment of the Hon.ble the Court of Appeals.—

I am Sir

your most Obedient

Humble Servant

/Signed/ James Taylor

Town Hall

29.th June 1789.—

To W.m Thomas Peare

Accomptant General to the Hon.ble the Mayors Court

at Madraspatnam

Sir

Be pleased to acquaint the Hon.ble the President in Council that the Hon.ble the Mayors Court have this Day ordered the Sum of Pags 264. 26. to be deposited with the Cash and Effects of the United Company of Merchants of England trading to the East Indies which said Sum of Pags 264. 26. is to be carried to the Credit of the Cause of George Binney by his attorney Charles Binney versus Gondala Cuttaka Swamy.—

I am Sir

your most Obedient

Humble Servant

/Signed/ James Taylor

Town Hall

7.th July 1789.—

To Mr. Thomas Pearce
Accountant General to the Honble the Mayors Court
at Madraspatnam

Sir

Be pleased to acquaint the Honble the President in Council that the Honble the Mayors Court have this day Ordered the Sum of Pagodas 19,321. 29. 20 to be deposited with the Cash and Effects of the United Company of Merchants of England trading to the East Indies which said Sum of Pagodas 19,321. 29. 20 is to be carried to the Credit of the Cause of Benjamin Min and Thomas Cotton by their Attorneys William Balfour John Spalding and Oliver Bell vers Patrick McIntyre.

Town Hall
5th Augt 1789.

Iam Sir
Your most Obedient
Humble Servant
[Signed] James Taylor
Regr

To Mr Thomas Pearce
Accountant General to the Honble the Mayor Court

Sir

As the several Sums of money which were paid into the Honble the Mayors Court by Daniel Hetty ats Cuthbert Fenwick Joseph Letardo ats Joze Antonio de Riviera Hugh Darley ats Narrain Iyer as particularized in the accompanying Extracts from the Minutes of Court were not deposited in the Honble Company's Cash, but paid back to the Suitors conformably to the Orders of Court, you will be pleased to write the same off your Books.

Fort St George
14th 19th 1789

Iam Sir
your most Obedient
Humble Servant
[Signed] James Taylor
Regr

To Mr. Thomas Pearce
Accomptant General To Honble the Mayors Court
at Madraspatnam

Sir

Be pleased to acquaint the Honble the President in Council that the Honble the Mayors Court have this Day Ordered the Sum of Pagodas 7321. 30. to be deposited with the Cash and Effects of the United Company of Merchants of England trading to the East Indies which said Sum of Pags. 7321. 30 is to be carried to the Credit of the Causes of Miguel Joannes vers Ibrahimjee Noorbey and Mirsejh Bagram vers Ebrahimjee Noorbhay.

Town Hall
29th September 1789.

Iam Sir
Your most Obedient
Humble Servant
[Signed] James Taylor
Regr

To Mr. Thomas Pearce
Accomptant General to the Honble the Mayors Court
at Madraspatnam.

Sir

Be pleased to acquaint the Honble the President in Council that the Honble the the Mayors Court have this Day Ordered the Sum of Pagodas 12. 11. 20 to be deposited with the Cash and Effects of the United Company of Merchants of England trading to the East Indies which said Sum of Pagodas 12. 11. 20 is to be carried to the Credit of the Cause of Robert Rickards vers Nagaiah Chitty.

Town Hall
17 Novr 1789.

Iam Sir
your most Obedient
Humble Servant
[Signed] James Taylo

To W. Thomas Deane
Accomptant General to the Honble the Mayors Court
at Madraspatnam

Sir

Be pleased to acquaint the Honble the President in Council that the Honble the Mayors Court have this Day ordered the Sum of Pagodas 7055. 6. 20 to be deposited with the Cash and Effects of the United Company of Merchants of England trading to the East Indies which said Sum of Pag.s 7056. 6. 20 is to be carried to the Credit of the Causes of Miguel Johannes vers Ibrahimjee Noorbay & Moses Bagram vers Ebrahimjee Noorbhay.—

Town Hall
16.th Dumber 1789

I am
Sir
Your most Obedient
Humble Servant
(Signed) James Taylor
Regr