M.R.O. 1—30,000—16-10-19.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 1132. 1133 Press —Mis—

10-20

Dated 20-8-1919.

Not to be folded or roughly handled

Read the following papers.

No. 10. From H. FORBES, Esq., Member for Madras of the Legislative Council; to T. PYCROFT, Esq., Chief Secretary to the Government of Fort St. George, dated Fort William, the 18th July 1859.

Your telegraphic message of the 14th Instant reached me on the 16th, but too late to enable me to comply with your request by the Mail which closed that day. I shall endeavour to meet the wishes of the Government, by the after packet to be despatched to-day to Kedgeree.

2. I am informed by your message that the Government attach "increased importance to the Police Bill not being emasculated," and it is therefore wished that it should be seen by Government in the form in which it has been altered by the Select Committee, and before it passes through a Committee of the whole Council. I am not informed from what the Government had been led to anticipate that the Bill has been mutilated by the Select Committee, and I may be permitted to assure them that they would not have been left uninformed of the fact by me, had any such mutilation been effected.

3. I now enclose a copy of the Bill as it has been amended by the Select Committee, and I will make such observation on the few alterations which have been introduced as will put the Government in possession of the intentions of the Committee in their introduction.

4. The alteration of the preamble of the Bill is in accordance with the decision of Government as given in your letter of the 6th of May last, No. 632. This is no doubt a departure from the principle of the original Bill, and it is this change which has probably given rise to the information given to Government that the Bill has been "emasculated" by the Committee; but as the change was made at the express desire of the Government, it will not be a matter of surprise to them, and it was unnecessary that I should specially report an alteration which the Government themselves had sanctioned.

5. I have been informed by the Member for Bombay that his Government have declined to adopt the principle of the original Bill, as he had recommended that they should, and have expressed themselves well contented to maintain their Police on its present footing, the same namely, as that now proposed for Madras.

6. In the first Section the word "Police" is interpreted to include the "Village Police" and no change has been made in this, but I have been led to doubt whether the Government desire that the interpretation should be as comprehensive as it now is, and I shall be guided by any information which I may receive in reply to this letter.

7. Section III has been struck out because it was considered that it would find a more fitting place in the Bill to amend Act III of 1857, (The Cattle trespass Act) which is now before the Council. This Bill will pass before the Madras Police Bill, and the amendment now entered in Section III will be introduced.

8. The alterations which immediately follow are verbal and do not affect the principle of the Bill.

9. The change made in Section VIII is also immaterial to the working of the Law. As a Justice of the Peace acts under the Queen's Commission, it was thought that the Indian Legislature had not power to limit the jurisdiction of the Office. The Commission in India is either for the Presidency town or for the whole Presidency, and the Select Committee considered that it would be beyond the power of the Legislative Council to enact that any Officer should be a Justice in the Mofussil, and at the same time to put a limit upon the exercise of powers which, as Justice, he would derive, not from them, but from the Crown. It will be for the Government to give such instructions to the Inspector General as they may deem proper.

10. The alterations made in Section XI were introduced in order to give efficiency to the Police administration. It appeared to the Committee that it would be impossible for the In-

spector General really and truly, himself to appoint every Police Officer, including as they apparently will, all the village watchers and that even were it possible, it was most undesirable that by such an intensified centralization of power, all authority should be denied to the local Superintendent of Police. The Section as it now stands retains to the Inspector General all the chief patronage, and leaves an appeal to him open even in cases where the power of original dismissal and appointment is given to the District Superintendents.

XXIII, XXIV, XXV, XXVI, XXVII, XXVIII, XXXI, XXXII, XXXIII, XXXIV, XXXV, XXXVI, XXXVII, XXXVIII, XXXIX, XL, XLI, XLII, XLIII, XLIV. XLVIII.

11. The Sections noted in the margin, refer exclusively to Procedure and already form a part of the Criminal Procedure Code. This Code has passed through a Select Committee and will now very shortly be brought before a Committee of the whole Council and as it is obviously unnecessary to introduce word per word into the Madras Police Bill the provisions of a Law already prepared for the whole of India, it is proposed to strike all these Clauses out of the Bill. In the copy which I now forward, the corresponding provisions of the Procedure Code are indicated, and may be referred to in the copy of the amended Procedure Bill which I also take leave to submit. The Sections of the Police Bill were taken from the original Procedure Bill as forwarded to Mr. Robinson by me, and I informed him at the time that I transmitted it, that it would probably undergo some alteration in Committee. When it is finally passed, as it is hoped that it soon will be, the Inspector General will be able to select all the parts which will affect the Police, and form them into a manual for easy reference and guidance.

12. Section XLIX has been rendered less necessarily general in its application than was the case in the original Bill, while at the same time power has been reserved to Government to extend its operation at pleasure. It was thought that a very wide door to oppression would be opened if the Police had authority to apprehend and convey before a Magistrate any person who might keep a cart standing on any "road" or who offered fruit for sale, or who washed or bathed in any tank not "set apart for that" particular "purpose," the Section was taken from Act XIII of 1856, which applies to the Presidency cities only, and although appropriate to large and populous towns, seems wholly inappropriate to the open country where, if enforced, it would enable the Police to practice great oppression in the name of a Law.

13. Section LIV has been struck out as needless in the Mofussil, it is applicable to cases of constructive trespass under the English Law, and is introduced in Act XIII of 1856, from which it has been taken, only because that Law is enforced within the limits of the Supreme Court.

14. Sections LV and LVI it is also proposed to omit as unnecessary in a Mofussil Police Law; such provisions have not hitherto been extended to the Provinces and seem more applicable to the limits of the Supreme Court.

15. The only alteration made in the Schedule has been the removal of Section IX of Regulation IX of 1816, from the Law repealed, and this has been done in accordance with the wishes of Government.

No. 11. From H. FORBES, Esq., Member for Madras of the Legislative Council; to T. PYCROFT, Esq., Chief Secretary to the Government of Fort Saint George, dated Fort William, the 8th August 1859.

I had the honor to receive on the 5th Instant, a telegraphic message from you, without date, requesting that, as the Commissioner of Police has represented that the provisions of the Criminal Procedure Code are not suited to the system of Police sanctioned for the Madras Presidency, the Bill might not be passed until the Government had addressed the Legislative Council by the second Steamer of this month.

2. I am not informed to what part of the Code it is that the Commissioner objects, nor whether the Government concur in his objections; but it is to be presumed that he refers to some part more immediately connected with the Police, and as some of the Sections which are

intended to guide the Police were under discussion, and were modified in Committee on the 6th Instant, I take leave to forward them, as amended, in the hope that in their present form they will not be objected to by Government.

3. The Committee was engaged for seven hours on the 6th Instant, in discussing and amending only the three Sections 82, 83 and 84, and having come to a decision after so prolonged a consideration, I cannot but entertain some doubt whether the Council will be willing to depart from the principles which they have now adopted.

Section 90.

Section 95.

Page 119.

4. As the Sections stood in the original Code prepared by Her Majesty's Commissioners in England, the Police was to take and record the substance of all material information obtained from any witnesses deposing before them, and were to forward to the Magistrate the statement made by the party complaining and the depositions of all witnesses. In a note the Commissioners explained that, considering the extensive jurisdiction of the Magistrates, the facilities which exist for the escape of all parties concerned in serious crime, and the necessity for the immediate adoption, in many cases, of the most prompt and energetic measures, they had decided that it was necessary to arm the Police with some such powers as they now possess of examining the complainant, issuing process of arrest, summoning witnesses, examining the accused, and forwarding the case to the Magistrate.

Sections 82, 87

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5. The Select Committee so far altered these provisions as to omit all reference to depositions, and to confine the Police to writing down the substance of what was said by the witnesses, and in the form which the Section has assumed in Committee of the whole Council, the Government will see that it has been definitely laid down that the statements made by the witnesses shall not be signed by them, nor considered as part of the record of the case, nor used as evidence. It was considered on the one hand that the Police but too often had recourse to practices in obtaining the statements of witnesses which ought to prevent such statements when made before them being received as evidence, while on the other hand it was absolutely necessary for the performance of even the most elementary part of their duty that they should be able to ascertain by enquiry who and what an accused party might be, what was the charge made against him, and by whom and how it was to be substantiated, and also that, as the sole check upon their proceedings the Police should be obliged to keep some record of their acts.

6. The other amendments made by the Committee refer mainly to confessions, and it is now intended that no confession made by an accused person while he may be in the custody of the Police shall be admitted as evidence against him, but if an accused person should give information which should lead to the discovery of any fact, as for instance, a person accused of murder pointing out where he had concealed the body, then such information may be given in evidence by the Police Officer to whom it may have been communicated, and who, in consequence of such communication, may have discovered the fact which it referred to.

7. The Committee sat seven hours on the 6th Instant, and disposed of only three Sections, it will continue to meet on every Saturday until the whole Bill has been disposed of, and the third reading cannot be moved until the Saturday following the conclusion of the Committee's labors. Although there is not reason to suppose that the progress of the Committee will on any future occasion be so limited as on the occasion of its last meeting, it is not improbable that the promised despatch of the Government may reach the Council before the third reading is moved, but if it should not, I shall endeavour to obtain such further time as may be needed to put the Council in possession of the views of Government.

8. I foresee so much difficulty, if not impossibility, in inducing the Council to omit the Madras Presidency from the operation of a Code which it is so earnestly desired by the Government at Home and the Government of India should be passed as speedily as possible for the whole of India, that I will venture again to express a hope that the Government may find that the objections taken by the Commissioner of Police are not of sufficient importance to induce them to move for an exemption, as an additional argument against granting which will no doubt

be adduced the fact that the Bombay Government whose Police is on the footing of that now to be introduced at Madras anticipates no difficulty in bringing the Code into operation.

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82. The examination of witnesses by the Police shall be taken on the spot where the enquiry is held in the presence of the head Officer of a Police station or, in the event of his absence, in the presence of any Officer above the rank of a Peon or Burkundauz. It shall be lawful for the head or other Officer of Police to examine orally any person who is supposed to be acquainted with the facts and circumstances of the case, but the statement made by the person so examined shall not be signed by him or treated as part of the record or forwarded or used as evidence. Provided that nothing in this Section shall preclude such head or other Officer of Police from reducing to writing the statement made by any witness.

83. No Police Officer or other person shall offer any inducement to an accused person by threat or promise or otherwise to make any disclosure or confession.

83 A. It shall not be competent to a head or other Officer of Police to record any admission or confession of guilt which may be made before him by a person accused of a criminal offence. Provided that nothing herein contained shall preclude any such Officer from reducing any such admission or confession to writing for his own information or guidance.

83 B. No confession or admission of guilt made to a head or other Officer of Police shall be used as evidence against a person accused of any criminal offence.

83 C. No confession or admission of guilt made by any person accused of a criminal offence whilst such person is in the custody of the Police shall be used as evidence against the prisoner.

83 D. When any fact is deposed to by a Police Officer as discovered by him in consequence of information received from a person accused of any criminal offence, then so much of such information whether it amounts to a confession or admission or not as relates distinctly to the fact discovered by it may be given in evidence.

84. The head or other Police Officer shall complete the enquiry with as little delay as possible if the person arrested appears from the information obtained to have committed the offence charged and the offence is not bailable, he shall be forwarded under custody to the Magistrate; and the head or other Officer of Police shall bind over the prosecutor and witnesses to appear on or before a fixed day before the Magistrate. But when in any case a subordinate Officer of Police has made the enquiry, he may be required by the head Officer of Police to submit his proceedings to him or may do so without such instructions, and the head Officer shall then proceed as if he had made the enquiry himself.

(Signed) H. FORBES.

No. 12. From W. ROBINSON, Esq. Chief Commissioner of Mofussil Police; to T. PYCROFT, Esq., Chief Secretary to Government, Fort Saint George, dated 30th July 1859, No. 17.

1. With reference to the Draft Police Bill, as altered in Select Committee, and the Criminal Procedure Code, in accordance with which the former must be worked should it become Law, I venture to remark that it appears to me, that throughout the new Procedure Code the broad principle of separation between the duty of judicial investigation and the ordinary function of the Executive Police has been lost sight of. It is, therefore, at variance with the change proposed in regard to administration of Police in this Presidency. The obvious confusion in regard to the names of different Officers and the functions assigned to them, arises from the same cause.

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2. The Code has been cast with reference to the system prevailing in Bengal; where there is a Magistrate with adequate establishment and with a jurisdiction of reasonable area; whose functions are confined solely to Police matters, where there is, in short, a working European Police Magistrate or a Civil Commandant of Constabulary, who, with his subordinates, is wholly unconnected with Revenue administration; and through whom alone cases can be committed for trial. But such a Code will be found unsuited to this Presidency, where the really working Magistrates are the now over-worked Native Revenue subordinates; over whom the European Magistrate and Collector exercises only a general supervision.

3. It is scarcely possible that our Magistrates should give to Police the attention this Code would demand. The following tabular Statement shows how very small a portion of the offence and crime of the country really comes either judiciously or for committal before the European Magistracy in the Presidency. The statement shews an average of 3 years, 1853 to 1855.

Nature of Cases.		Entertained by		Proportion.	Total.
		Native Police.	European Magistrates.		
Petty Cases...	Persons.....	1,78,474	4,425	40	1,82,899
Crimes, &c.	Cases... ...	7,600	915	8	8,515
Committals for Trial....	.....	6,591	646	10	7,237

Not one in 40 persons now brought before the Police comes before a Magistrate; one in 10 cases of committal only, is managed by a Magistrate before being placed before a judicial tribunal. Even this degree of personal attention to Police matters is found more than the European Magistracy of this Presidency can well give, amidst their other multifarious duties. The operation of the Code will be to bring matters to a crisis.

4. Such general terms as "other Officer empowered on that behalf" and "head Officer of a Police station" &c., are used; but it is obvious that these terms apply to such Officers as Daroghas and Tahsildars; and the Code confers on them full Police powers and means of interference with and of control over the Police. It is the principal object of the proposed change to divest them of such powers. On the other hand the Code gives to Police Officers, of what grade it is not very clear, powers of judicial investigation, of making up Records, &c., powers and duties which are entirely alien to their proper functions, and will have the effect of making our superior Officers of Police mere office men rather than active detectives, engaged only in hunting down crime. Our Tahsildars will make admirable Judicial Magistrates for entertaining, trying, and committing charges; but they must have no power to use the Police except for the execution of Warrant and Criminal processes in specific cases. On the other hand, the Police has inherent powers for entertaining charges of heinous offence; but they only extend to seeing that there is *primâ facie* ground for sending it before a Judicial Magistrate and for taking steps under their general powers in anticipation of the Warrant, which is, however, taken out by the Police as quickly as possible. No Police Officer should be empowered to issue a Summons, or even to entertain a charge in which Summons only will issue. This clear position has not been observed in the Code.

5. It also occurs to me to remark, with reference to the terms "other Officers duly empowered in that behalf" and "head Officer of a Police station" that a good deal of uncertainty exists, and that when the Fouzdárí Adálat is asked to read the Law, we may find, that it will be ruled that the Officers of the Police, such as we are constituting, have no place whatever in the Law, as about to be enacted, the spirit of which clearly refers to Officers in the position of our Tahsildars or the heads of Police in all these Sections.

6. I miss allusion to the Village Magistrate and Village Police in the body of the Code. The last Section saves the former from extinction. It is impossible to exaggerate the importance of both and either of these Officers in the administration of this Presidency. Their powers should be extended.

7. I would further remark that the injurious and vexatious hindrances to the course of justice which occur even now from the checks we meet in following up criminals, in consequence of requiring endorsement, &c., on entering each different jurisdiction are continued and multiplied by this Code. Enlightened Legislation in other countries is tending towards the bridging over these inconveniences, and facilitating the course of a criminal judicial process once issued. In our Police Bill we sought to remove them altogether, by making a criminal process, once issued by a Magistrate run throughout the Presidency without further local endorsement or formality, and enacting "that the Police be everywhere assisting in the execution of such process." A Zillah has hitherto been deemed the smallest division of the country within which these checks and inconveniences in regard to jurisdictions, boundaries, and local endorsements met the Executive. It appears to me, however, that the spirit of this Code multiplies these difficulties many fold in each Zillah. Each Joint Magistrate, Head Assistant and passed Assistant is now invested with "jurisdiction in particular parts of the District." We have several Deputy Magistrates besides; and no doubt the words "the other Officer as aforesaid" and the spirit of Section 98 by which every Officer "authorized to receive cases without reference from a Magistrate or Deputy Magistrate in charge of a Division," will be found to include every Tahsildar and Town Police Ameen in the country; and thus it appears to me that by this Code every Taluk and town may perhaps be deemed a legal "Division" with all the intricacies of endorsement and re-endorsement of Warrant, &c., (Sections 38, 39,) and of bringing the person when arrested before every such petty endorser. If the powers of the Police, instead of being concentrated, are to be thus frittered away, and dissipated further than they are under even existing circumstances, the hopes we entertained of effective Police administration, of relieving the Military, &c., may prove mere illusion.

8. It is proposed to substitute certain Sections of the Criminal Procedure Code. With reference to the Clauses of the Police Bill, which it is proposed to omit in favor of others contained in the Criminal Code, I would remark that Clause 4 of Section XXIII of the Police Act, ought to stand or to be transferred to the Code. The protection of public property is essentially a duty of the Police, and we know how frequently these are damaged from wilful mischief, under circumstances that preclude the possibility of proceeding by Warrant or Summons previously obtained.

9. Clause 5 should be retained or be transferred to the Criminal Procedure Code. The Police must have powers for the detention of vagrants and suspicious characters in a country situated as this. Care will be taken to prevent abuse, but the power must be conceded. Each person so arrested will be brought before a Magistrate.

10. I would remark with reference to the subject of arrest without Warrant, that the restriction contained in Section 54 of the Criminal Procedure Code, must operate most adversely to the ends of justice. A murder is being committed in a house within the hearing of the Police, or a suicide is occurring or likely to occur, but this house cannot be broken into by a Police Officer without a Warrant, which probably cannot be got till next day. A thief against whom the hue and cry has been raised gets into a house and the latch cannot be raised (a legal breaking) in pursuit without a Warrant, even by a Policeman. In England a felon, or person accused of felony, may be followed wherever he goes, and if he take refuge in a house, the Constable may break open the doors to get in, if unable to get in otherwise. He is however enjoined to resort to this latter step only in urgent cases. In this country a Magistrate may often be 10 to 20 miles distant and public sympathy is generally with the criminal. Why then add these restrictions to the difficulties the public Officer has to contend with? The mere knowledge that the doors may be broken leads to their being opened as a general rule.

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11. Section XXIV should be retained. It applies specially to our system; and need not be transferred to the Criminal Procedure Code which treats in Chapter VIII of a Police of a wholly different character, one making judicial investigation, a *quasi* Court of Records, not to such a Police as we are constituting.

12. The same remarks apply to Sections XXV, XXVI and XXVII. They must be retained as our Police is not such a body as is contemplated in Chapter VIII, and would not have a *locus standi* under its provisions.

13. I earnestly trust that Section XXXI may be retained. We are curbing the license of the Police. There is a Judicial Magistracy, Village Talook and District, for the entertainment of petty charges; and the direct interference of the Police with petty Police cases must be absolutely forbidden. The Schedule of offences given in Chapter VIII, makes no difference between grave and petty offences of the same class. The powers of taking cognizance conceded, are required for the Tahsildars, &c., but the utmost license will creep in unless the distinction be maintained in regard to the interference of Police. The Police can only take actions in case of grave offence. This will be no hardship to the public. They will still be able to go to the Tahsildar with their complaints; and Summonses will be executed by the Police; but the public must not call in the Police in every petty matter as they now do.

14. Section XXVII ought likewise to stand. The Police, as we are constituting it, is not the Judicial body contemplated in Chapter VIII of Criminal Procedure Code, which takes cognizance of offences. Its members are the official watchmen of the country, report all sorts of inconveniences and public offences; but they act under Warrant of the Magistracy; and I doubt the policy of giving to its spontaneous action in the matters to which this Section refers.

Section XXXIV. 15. The Sections of the Criminal Procedure Code which refer to the endorsement of Summonses and Warrants will prove inconvenient and require simplification. Every such process ought to be directed to *any* Police Officer who may be present in the Court and not, as contemplated in Section 34, to a superior Officer only, to be endorsed by him to his own subordinate only, for execution. Such process must then be executed throughout the force by endorsement of superior Officers of Police indiscriminately. This will include head Constables, Commanding Police parties, Village Inspectors. The execution must not be restricted as here to the subordinates of the particular Officer named. The only Officer to whom every individual of the force is subordinate is the Superintendent, and it is impossible that all such processes should be directed to him. Any restriction of general character will produce confusion. It is quite competent to the Magistrate to direct that any particular process, to which peculiar circumstances attach, shall be executed by a particular individual and none other, an injunction which will always be obeyed.

16. It is proposed to substitute for Section XXXV of the Police Bill, Section XXVII of the Criminal Procedure Code, but this last Section omits two most important points for which the Police Bill provided, viz. *Service*, by affixing a copy of the Summons on the house, and *penalty* for contempt in neglecting to obey Summons.

17. In regard to the first, nothing is so common as for the person summoned to keep out of the way; and an adult male member of his family is not always to be met with at the usual place of abode. What then is to be done with the Summons? The Police Officer is to waste public time and to hunt the man from house to house and village to village for days, molesting people on the plea that the man has concealed himself, &c., and when he is come up with, he gets rough usage for giving so much trouble. Now, the sole object of a Summons is to convey to a certain man, *notice* that he is required to attend at a Magistrate's Office at a particular time. Personal service cannot be in the slightest degree necessary for this. Indeed with a Police such as we have in India, I would, in every way, discourage personal interference. Let the Police Officer charged with the service affix a copy of the notice on the wall of the house and call out the purport to the household of the person summoned as he passes, and you will have far less

oppression than now exists in regard to these processes. I trust that the Government will urge that this provision be retained, save public time and protect the people.

18. I added in our Police Act a penalty for not obeying a Summons which I earnestly trust will still be asked for. No one in this country really respect the processes of the Law. Scarcely any one would take the trouble of attending to a Summons served as a Summons. The consequence is that every Summons is executed much as a Warrant would be. Every Police Peon knows that if he does not stop and take the man with him, he will not attend as required; and that besides a good scolding from the Tahsildars for failing to secure attendance of the summoned man, he will have to travel over the same ground with a 2nd Summons or a Warrant; so the fellow quarters himself on the individual till he can accompany him or seizes him and walks him off. Nothing demoralizes the Police so much as practically forcing them to exceed their powers. The imposition of a small fine in default of appearance will secure attendance without further pressure or will pay for the public time wasted in consequence of what is virtually a very serious contempt of Court.

Demi-Official.
I pointed out this new provision fully to Mr Peacock and he concurred in the usefulness of such a provision.

19. The jurisdiction in these cases being in the hand of Judicial tribunals, before whom the Police will appear as prosecutor, will secure impartial justice in the adjudication of such cases and the Police will be careful that the service fulfil the conditions of the Law.

20. It appears to me that Section 62 of the Criminal Procedure Code throws unnecessary difficulty in the way of search. The power of search is one inherent in the Police when in quest of articles connected with grave crime and reasonably suspected to be concealed in any premises. The head of the village now searches houses in his Police capacity and the Village Police Inspector must have the same power. But it seems to me doubtful whether any search can take place without the formal Warrant of an Officer having "jurisdiction" should this Code become Law in the present form..

21. The distinction taken in regard to "Peon," "Burkundauz" and different grades of Police will lead to complication. A Constable of whatever rank is amenable to the same Law and restraints and ought to have the same lawful powers in such matters. The distinction is not taken in England. In practice searches will be made by the Village Inspector, head Constable or Inspector of General Police and not by Privates; but no distinction should be allowed in this Law.

Section XLVII. 22. We must add to the offences punished under this Section the grave one of *cowardice*. The Police are as much bound by their contracts to use ordinary courage in putting down civil commotion or riot, marauding violence and fanatical out-break as the Soldier is in war. The most disastrous consequences have followed from the cowardice of the Police. This penal guarantee is absolutely necessary and the punishment should be very severe.

Section L. 23. It is impossible to preserve the peace unless the Police have some power to regulate such matters intrusted to them at least on emergency. I discussed this matter with Mr Forbes when I was in Calcutta and he then saw the necessity of granting the powers I applied for and I trust the Government will still insist on this.

24. The instruction of Government and of the late Honorable the Court of Directors have been explicit on the subject of the Village Police.

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Proceedings of the Madras Government, Judicial Department, from 20th to 26th August 1859.

No. 13. MINUTE by the HONORABLE W. A. MOREHEAD, dated 20th August 1859.

Much of the confusion that exists in the draught of the Police Bill, now sent to this Government for their consideration, appears to me to arise from Mr. Forbes, having assumed as stated by him in his letter of the 13th July, that the Government had departed from the principle of the original Bill, and had given up their intention of separating the Judicial functions of the Magistracy from the Executive functions of the Police.

Acting on this assumption Mr. Forbes has apparently felt justified, in consenting to the omission by the Select Committee from the present Bill, of the Sections in the original Bill, which defined the duties of Police Officers, and in permitting them to substitute in their room the Rules laid down for that purpose in the new Criminal Code of Procedure.

That Mr. Forbes should thus have acted is to be regretted, the more so as I do not discover any thing in the letters from this Government, addressed to him on the 6th of May, and the 20th of June, that led to the conclusion, that the Government had ceased to deem the separation of Judicial investigation from the functions of the Executive Police, an advisable measure.

The explanation afforded by this Government to Mr. Forbes in regard to the amount and nature of the control and supervision to be exercised by the Magistrate over the Police Force is explicit, and perfectly compatible with the principle of the original Bill, and it is certainly most annoying, when we are endeavouring to obtain a Legislative Enactment to bring into operation a system of Police, which has, after much discussion, been sanctioned by the Home Authorities, to find the Bill we had submitted changed into a Law, which not only does not effect what we desire, but perpetuates the evils sought to be removed.

I have had prepared a copy of the Police Bill altered to the extent that it appears to me we can accept, and which, if approved of, can be forwarded to Mr. Forbes for further submission to the Legislative Council.

I have likewise set out in a Memorandum the grounds why the Sections of our Bill which have been objected to by the Select Committee, are still by us considered essential to the well working of our new Police.

The Bill for the proposed Code of Criminal Procedure and its attendant Bills for the constitution of Courts of Criminal Judicature, are in their provisions, so at variance with the present numerous Judicial Institutions of this Presidency, that their introduction if attempted, must, in my opinion, seriously affect the good Government and well being of this Presidency.

The Bills in question, have evidently been prepared exclusively with reference to Bengal, and doubtless are suited to the constitution of its different Judicial Tribunals, but which Tribunals differ so essentially from the Tribunals of this Presidency as almost to preclude the possibility of instituting a comparison between them. In name, in some few instances they are the same, but in their functions and duties they widely differ, a difference which extends from our lowest Village Tribunal, to Court of Highest Jurisdiction.

To discuss such Bills, therefore, Section by Section, when all is error, seems to me needless.

The Bill for the constitution of Courts of Civil Judicature is in like manner inapplicable to this Presidency, and I do not think we can too strongly protest against measures, which if carried out must produce results, that will affect injuriously the entire machinery of our Civil and Criminal administration throughout the length and breadth of this Presidency.

I have received from Mr. Robinson a Memorandum pointing out in some detail, the objections that exist to the Criminal Procedure Code in connection with our Police Bill. I have carefully considered them and find they are quite in accordance with the estimate I have formed of the Bill; if deemed necessary the Memorandum may be forwarded to Mr. Forbes.

There is one other point that seems to me to call for serious notice, and that is the very short time that has been afforded to this Government for the due consideration of the important Bills now before us. This circumstance should be brought to the notice of Mr. Forbes in order that its recurrence may be prevented, and the inconvenient haste we have now been compelled to adopt to secure the arrival of our proceedings in Calcutta before the final disposal of the Bills, be hereafter avoided.

(Signed) W. A. MOREHEAD.

No. 14. MINUTE by the HONORABLE WALTER ELLIOT, dated 20th August 1859.

I have carefully considered Mr. Morehead's Minute, and I beg to express my general concurrence in all he has advanced. It is quite impossible for me to do more than this, the papers being urgently required for immediate transmission by the expected Mail Steamer.

(Signed) WALTER ELLIOT.

No. 15. NOTES ON THE POLICE BILL AS PROPOSED TO BE SUBMITTED BY THE SELECT COMMITTEE.

Section I. "*Police.*"—The late Honorable Court ordered under date 9th June 1857, that the reorganized *Village Police* should become "part of the force under the superintendence of the Chief Commissioner and his District Deputies." The Government of Madras wish that effect be given to this principle in the Bill, which is essential to the working of the Police system, it is their desire to introduce. It is further requested that Section VII of Regulation VI of A. D. 1831, be added to the Schedule.

Sections V and VI. The alterations in these Clauses are not merely verbal. The Clause referring to the administration of the Police should stand—"Inspector General," &c., being substituted for "Chief Commissioner," &c. It is intended by Government to vest the Inspector of Police with the administration of that body, and they therefore wish the Act so to run.

Section VII. Should stand, as conferring the requisite general powers on the Police; and providing a restriction on the exercise of Judicial powers by Police Officers, which it is absolutely necessary to maintain. In the Draft Act, as originally transmitted, the restriction applied likewise to *Revenue* powers; and it is all important that should be again admitted into the Law.

Section XI. Should remain as now amended; it gives the Governor in Council the power of dealing with the point as he deems best.

Section XVII. Embodies an adaptation of 1 and 2 William 4th, Chapter 4, to the circumstances of this country. It contains, further, useful indication of the circumstances under which alone these provisions should be put in force. The terms proposed to be substituted are more general than are at all necessary; and fail to lay down the requisite mode of procedure. It is therefore necessary to retain the Section as originally drawn.

Section XXIII. Arrest without Warrant, Clauses 1 and 2. The Clauses 51, 52, 53 of the Criminal Procedure Code, may be construed to include the occasions on which it was intended to empower the Police to act without Warrant by the Police Bill; but, much pernicious uncertainty must result from basing their actions on *their* judgment as to "an offence for which a Warrant may issue." Chapter III of the Code of Procedure leaves this point in a most discretionary state; and it will be scarcely possible to explain the Law to the Police, if it be based on a principle so uncertain as this, whether a Warrant may or may not issue in a case in which they are called on to act. These provisions of the Criminal Procedure Code were before the Madras Government where the Police Bill was drawn; but it was thought better to enunciate as positively as circumstances admit of, *the* cases in which the Police should act without Warrant; rather than adopt the provisions of the Criminal Procedure Code, which left so much to the discretion of the Police.

Clause 4. No part of the Criminal Procedure Code provides for the matters alluded to in Clause 4 of Section XXIII of the Police Bill. It must, therefore, be allowed to stand. The protection of public property is essentially a duty of the public Police. In this ryot-warri Presidency, the public works included in this Section are very generally the property of Government, and they are constantly damaged from wilful mischief under circumstances that preclude the possibility of proceeding by Warrant or Summons previously obtained. Frequently the immediate action of the Police will prevent irreparable damage being done.

Clause 5. Clause 5 must stand. In a country situated as India, with its numerous predatory tribes, and professional thieves, these powers must be entrusted to the Police, and they are so by the Law now in force. Their exercise will be

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jealously watched; but the legal power must not be withdrawn. The Section is framed as in accordance with 7 & 8 George 4th, Chapter 75, Sections 7 & 20, 3 Vict. Chapter 7, Section 64.

Clause 8. This Clause must be retained. It is framed in accordance with 3 and 4 Vict. Chapter 41, Sections 63 & 69.

Section XXIV. Section 57 of the Procedure Code does not meet all the provisions of this Section, which lays down the course to be observed by the Head Officer of the Police station, as well as by the Police Officer having an individual under arrest, it is drawn with reference to the administration of a peculiar organization of Police. It must, therefore, stand. The provision of the Code of Procedure, where adverting to the powers and duties of any part of the Police force to be established in Madras, will be found inapplicable, from the fact that the separation between Judicial and Magisterial investigation and Executive Police duty, has not been observed, and that its constitution is different from that of the Police to which the Code refers.

Section XXV. May be insufficiently provided for by Sections 86 and 89 of the Criminal Procedure Code, but it is plainly objectionable to omit this Section from the Police Bill, which should be complete in itself and not have reference to a Code of Procedure which is generally so inapplicable to it.

Section XXVI. Is provided for by Section 93 of the Criminal Procedure Code save, that it was not intended to empower any Police Officer to issue Summons and Warrants. His duty is that of a mere detective agency, securing attendance of the necessary persons for the prosecution alone.

Sections XXVII, XXVIII. Must be retained. They give no dangerous powers to the Police, but serve as guides of procedure to them.

Section XXXI. Great importance attaches to the retention of this Clause. Chapter VIII of the Procedure Code Bill treats of a Police "taking cognizance of offences," issuing Warrants and Summonses, Search Warrants, examining witnesses, taking depositions, submitting despatches to the Magistrate, &c., &c., a Police in short, of the present mixed character. Such a Police, must naturally receive any charge which the Law allows to be preferred to the subordinate investigating Magistracy, without reference to its gravity or trivial nature; for such a Police, is indeed the Local Magistracy. But under the constitution of Police proposed for this Presidency, the Subordinate Local Magistracy will be a distinct body. The present Tahsildars, &c., and Village Magistrates or Potails without Police powers are the proper persons to entertain such complaints and issue the proper processes for investigation *exclusively* before themselves, and no such investigation of petty offences, should be held by the Police. In the Madras Presidency, a Magistrate's office exists in every village, to call in therefore the interference of the Police in petty cases, is unnecessary, and is opposed to the intention of the Bill, the very object of which is to curb the license of the Police, and to render them really available for their *proper* duty by relieving them of the mass of office work which the "petty charge business" of the country now entails on them to the detriment of their really important, responsible and arduous duties; the Law must, therefore, absolutely forbid their entertaining petty charges. Petty thefts are of course felonies, and will be taken up by the Police.

Section XXXII. By this, provision is made for the Executive Police becoming the public informer in case of any breach of the Law, without, at the same time, sanctioning any jurisdiction over the cases so reported. This is an important function of the Executive Police and the provision of the Police Bill should stand.

Section XXXIII. The Government is entertaining and training, at a large cost, regular Official individuals for the execution of all criminal Executive duty, placing them under strict control and subjecting them to severe penalties for breach of duty. For the protection of the public, the service of all processes should be restricted to such official individuals alone. The latitude allowed by Sections 33 and 36 of the Criminal Procedure Code, will prove most dangerous. Under these Sections a subordinate Native Official may use a private

servant to execute his official processes; and so long as such nominee is present, any number of bystanders may be required to aid in a reckless execution of an illegal process.

This Section of the Police Bill should stand as a protection to the public.

Section XXXIV. This Section is one of purely administrative arrangement, and should stand for the Madras Police, to whose constitution it is adapted. The more so as the provisions of the Criminal Procedure Code are not quite clear on this important matter of administration. Sections 38 and 39 refer to the execution and endorsement of Warrant, &c., by Magistrates and "other Officers duly empowered in that behalf;" and when read together with Sections 29, 30 and 31, they seem to multiply the vexatious hindrances now existing in effectually following up offenders in consequence of endorsement being required, to enable the Police to execute a criminal process, if the individual be within a different jurisdiction. Enlightened legislation is everywhere tending towards removing these obstructions. Section XXXIV of the Madras Police Bill, is intended to remove them entirely, and to secure the secret and prompt execution of criminal processes once issued, and to enable the Police of the Presidency to act as one body. The operation of the Criminal Procedure Code will multiply these difficulties many fold in each Zillah or District, for every Officer "authorized to receive cases without reference from a Magistrate" is to be considered a Magistrate (Section 98) to whose jurisdiction all the contingencies affecting "Divisions" apply, and by Section 38, a Warrant of a Magistrate, whether the original or endorsed Warrant, will be valid for execution only within the jurisdiction of the Magistrate, whose name may appear on it either as having issued or endorsed it, as the case may be.

The object of these restrictions is not clear, if under Section 81, a Police Officer may pursue persons accused of certain offences any where, and a Magistrate may under certain circumstances have his search executed out of his own jurisdiction without endorsement (Section 64.)

Section 34 of the Criminal Procedure Code refers to endorsements of criminal processes amongst Police Officers themselves, and will prove wholly unsuited to the constitution of the Police Force. In every properly constituted force, there must be different companies, &c., with a view to the due discipline and management of the body, the only individual to whom the whole District force is subordinate is the Superintendent, it will be impossible to issue every process in his name, and captious objections may be taken under the wording of this Section in case of trial for resistance, escape, &c.

On the whole the Section (XXXIV) of the Madras Police Law, drawn specially to meet the condition of the new Police and of the country, best provides for the objects intended, and should stand.

It may be advisable to add to Section XXXIV of the Police Bill, a proviso in the spirit of Section 114 of the Criminal Procedure Code; and to require, that a person arrested out of jurisdiction of the Magistrate issuing the Warrant, be taken before the Magistrate within whose jurisdiction the arrest was made to be formally made over or to have bail taken.

Section XXXV. Sections 27, 115, 118, 119, 120 and 121 of the Criminal Procedure Code, refer to the service of Summons and the means of compelling attention to these processes of the Law. In the 1st (Section 27) service of Summons "by affixing a copy thereof on some conspicuous part of the usual place of abode" is omitted; but it must be secured for this Presidency. A Summons is merely a *notice* that the individual named, is required to appear before a Magistrate for a certain object therein named; and for this, *personal* service cannot be, in the slightest degree, requisite; indeed, with a Police at all times inclined to exaction, it were safer to discourage in such instances, all interference with the persons of individuals that can possibly be avoided, irrespective of all consideration of the waste of public time, in following up such an individual all over the country. It should be moreover borne in mind, that this mode of proceeding by istiarnamah is an usual and well understood mode of proceeding.

Sections 115, 118, 119, 120 and 121 provide for attachment of property and fine in case of contumacious conduct of a witness in absconding or concealing himself to avoid service after issue of a Warrant, on proof of Summons having been served, under Section 119. But the Police Bill

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likely to occur, or a furious fanatic or incendiary have taken possession of it and be preparing for mischief under its shelter. A robber against whom "the hue and cry" (Section 53) has been raised, gets into a house and the latch cannot be raised even by a lawfully constituted Police Officer without a Warrant, which it may frequently take a day or more to procure. In England a felon or person accused of felony, may be followed wherever he goes, and if he take refuge in a house, the Constable may break open doors to get in if unable to get in otherwise. He is enjoined, however, to resort to this latter step only in case of emergency, but the mere knowledge that doors may be broken open leads, as a general rule, to their being opened. These powers are now possessed and exercised by the Police and must not be withdrawn where the difficulties of the public Officer are enhanced by prevailing sympathy with the criminal, in addition to difficulties arising from distance, &c.

Section 62. As a general rule, a Magistrate will be requested to direct the Search Warrants to the Village Inspectors of the Village or place in which search is to be made, and these Officers will be aided by one or more Constables in giving effect to the Magistrate's Warrant; but the greatest inconvenience will arise by these attempts to individualize any part of the Police.

Section 63. Perpetuates and multiplies all sorts of intricacies in regard to endorsement and validity of Warrants, &c., with multiplicity of "jurisdiction" which even now constitute the felon's security. The cause of criminal process will be at a dead-lock, where a perfunctory or antagonistic spirit prevails in every petty "jurisdiction" of some individual empowered to issue a Warrant or required to endorse it.

Section 64. Will, it is true, enable a *wise* Magistrate to get all his processes effectively executed. He will understand, that all Search Warrants are really matters of emergency. A practical detective knows to what use a few minutes notice can be turned by a felon.

Section 67. One respectable credible witness suffices to establish any fact in evidence, except in the mind of Mùfti. The Return, with a list of property found, &c., should be endorsed on the back of the Warrant and be made without report. These directions scarcely require legislation.

Section 68. "Property seized by Police Officers under suspicious circumstances" must remain with the Police for a certain time, for identification and to enable them to trace the crime.

Section 69. Seems an unnecessary repetition. Sections 61 and 62 provide for all or may easily be modified, to include so obvious a matter.

Chapter VIII. Perpetuates all the existing vices of Indian Police administration, and means of Police oppression, annoyance, and dishonesty; of fabrication of cases; of issuing Summons, Warrant and Search Warrant; of trumping up evidence; "managing" depositions; making convenient records; eliciting admissions and confessions, all of which are to be recorded, the latter to be duly *witnessed*, and to be made use of as Judicial record and matter of evidence at the further trial; of detaining men in custody till they have completed the inquiry; or until they are "satisfied that there is ground for believing that the accusation is not well founded" (Sections 85, 86) &c. There is not one existing source of evil which this Chapter does not deliberately re-enact. It leaves what ought to be an active, detective, and preventive agency practically the working office Magistracy of the country. The real Magistracy is that which first entertains the case *for record*.

N. B.—This seems to contravene the spirit of Sections 14 *and* 15 *of Chapter XV of the original Bill V, page* 63.

Section 95. Police men are not the proper Coroners of the country. The Magisterial and Judicial head of the village (Section XIII of Regulation XI of 1856) or his Magisterial superiors, are the proper Coroners. The Executive Police gives notice to these, trial or Judicial superiors, of the discovery of a body, a fitting subject for an Inquest, and attends to take Orders, Warrants, or to follow up clues as detective Officers; but they should have nothing to do with convening Inquests, or conducting such inquiry.

Section 97. Seems by implication to render useless for purposes of execution of criminal processes the whole Village Police. As a general rule, Summons not requiring emergent execution will be carried down by the daily Patrol Police Officer, endorsed over to the Village Inspector within whose circle the individual summoned resides, to be executed by the Village Police man.

Section 110. The inquiry must be conducted by one of the subordinate Magistracy* here designated "Local Police Officer," but no Constabulary Officer can be otherwise employed than as a detective or Police Agent, and this may be either by the Magistrate or by any Officer subordinate to the Magistrate (Chapter XIV) who may be conducting such inquiry under the Magistrate's order.

* Chapter XIV.

Chapters XI, XIII The subject of issuing process for causing attendance of accused persons and witnesses might be greatly simplified, the provisions contain some features requiring modification. The object to be kept in view must be effectually to secure prompt and respectful attention by every and any person, whether accused or witness, to *every process* of the Law, whatever it may be; and to prevent the waste of public time and money by allowing failure to obey, except under unavoidable circumstances, to pass with impunity. The more especially as all processes in criminal cases are executed without charge to the parties and witnesses (Section 97) in the first instance.

Sections 118, 181. Proved neglect or refusal to appear, should subject to a fine as well as the issue of a Warrant.

Sections 119, 178. This should be left at the discretion of the Magistrate, who will judge, from circumstances and presumptions, not likely to be before him in evidence.

Sections 134, 10th line Substitute "every" for "any."

Section 181. Throws unnecessary difficulty in the way of following up a neglected Summons by a Warrant.

Section 188. The defaulting accused must pay the charges of giving the complainant and witnesses notice of the deferred trial.

Section 195. Public costs ought to be allowed; and be paid into the Police Fund to meet the charge incurred in serving processes. A vast mass of the petty litigation of the country is carried on at a public charge and constitutes an *unjustifiable* expenditure of public monies, besides employing the time of public Officers really entertained for graver duties than serving Summons arising out of of petty vexation or at least profitless and vindictive litigation.

Sections 202, 203, 217. It is requisite to see that such charges can be brought and prosecuted before the Magistracy by the Police, the proper guardians of the peace, and proper prosecutors, in the event of its being menaced or broken. The Madras Police Bill Section provides for this.

Sections 206 and 207. To these apply the general observations in regard to enquiry under penalty of fine, prompt obedience.

Section 287. Removes from the operation of this Code the proceedings of the head of the Village, the village Magistrate and head of Police, within the Madras Presidency. Two Codes of Procedure and jurisdiction will, therefore, have to be kept up, the old for the village, the new for the District and superior Officers. But as the initiative, in criminal matters, is, by the Law, which is to continue to rule the village servant generally, taken by these, and as they are probably as one hundred to one of the superior Officers, a curious complication will be the result.

The Bombay Presidency saves both its District and Village Officers from the operation of the Code, in fact its whole subordinate constitution. The Code will, therefore, have a very limited operation, as a Code of Procedure, except in Magistrates and Criminal Courts.

In neither Presidency is the Code intended to be a guide to Officers in charge of Cantonment Police, where, if any where, from circumstances too obvious and notorious to require enumeration, some Manual of Procedure is most required.

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further provides for a moderate fine in case of failing or neglecting without satisfactory cause to obey a Summons; and it is most desirable that this provision be conceded. No one in this country respects the processes of the Law, and scarcely any Summons served merely as a Summons is obeyed. The server knows that he will be found fault with, if the individual summoned do not attend, and that he will have to travel over the same ground with a 2nd Summons or Warrant. The consequence is that, the Police really serve many Summonses as Warrants; quartering themselves on the individual till he does accompany the Police Officer; or he at once requires him to accompany him (the Police Officer) to the Magistrate's Office practically under custody. Nothing so demoralizes a Police as practically to force them to exceed their powers; and on the other hand no individual has a right to treat contemptuously even the milder process of the Law, and cause useless waste of public time. The fear of a small fine, will secure attendance without undue pressure, and will pay for the public time wasted, by what is virtually a very serious contempt of Court. The burden of proof of service will fall on the Police and as the adjudication of this point is to rest in this Presidency with a Judicial, not a Police Officer, impartial justice will be secured, and the condition of the Law in regard to service will be very carefully fulfilled. Section XXXV of the Police Code was drawn with this view and ought to stand.

Sections XXXVI to XLIV. Sections XXXVI, XXXVII, XXXVIII, XXXIX, XL, XLI, XLII, XLIII and XLIV of the Police Bill, are sufficiently provided for by Sections 28, 29, 43, 44, 45, 47, 48, 49 and 50 of the Criminal Procedure Code, respectively. Still as the provisions of the Code are generally inapplicable to the Police Bill, the Sections in question should be allowed to stand.

Sections XLV, XLVI and XLVII. The fines to be imposed under these Sections must be proportioned to the status of every grade of Police Officers. Some Inspectors will draw 200 Rupees per month. They should, therefore, be fixed at, not exceeding 3 months', 6 months' and 12 months' pay, respectively, of the individual subjecting himself to such penalty.

Section XLVII. In Section XLVII the words "who shall be guilty of gross cowardice" must be inserted after the words "or who shall attempt to commit any of the offences aforesaid." A Police Officer is as much bound by his contract of service, to exhibit ordinary courage in the execution of his duty, as the Soldier is in the execution of his. Sad disaster has frequently resulted from the rank and criminal cowardice of the Police, and this penal guarantee is absolutely required.

Section L. The Magistracy has under the general regulation the power sought for the Police also, in this Section. It is not necessary to re-enact it for the Magistracy and the restriction "subject to the orders of the Governor in Council" is not called for. Some power of this kind, at least on emergency, must still be conceded to the Police. Section LIV may be omitted.

Sections LV and LVI. The protection sought by these Sections, is reasonable and required, and therefore they should stand.

No. 16. NOTES ON PARTS OF THE CRIMINAL PROCEDURE CODE, WHICH REFER TO THE NEW POLICE OF MADRAS, &c.

Chapter III. Section 23, *et passim*, who is the "other Officer duly empowered on that behalf" and "other Officer as aforesaid," "other Officers" (32, &c.,) "Officers subordinate to a Magistrate" (42)? "Darogah of Police" are the words for which this general term has been substituted; and Chapter VIII clearly shows that those words are meant to be synonymous with "Police Officers" (Section 71, &c.,) "head Officers of Police stations" (Section 72, &c.) "head Officer" (79) "head or other Police Officer" (81 & 84) "any Officer above the rank of a Peon or Burkundaz" (82) "local Police Officers" (Section 110). Is that to apply to "the Police" of Chapter VIII? These Officers are empowered to "take cognizance" of every complaint (Sections 23, 70) with certain exceptions (Section 70); without reference to its nature whether grave or trivial (Sections 25, 73); to reduce such complaints to writing (Section 23); issue Summons or Warrant and dismiss the charge on their own judgment

(24); they are declared to have a certain "jurisdiction" (38) within which their endorsement is required to give a Warrant effect (38 & 39); to take bail in cases of arrest under the Warrant of another such "other Officer" (41) to enquire, eitheir on their own motion or under orders of the Magistrate, into any criminal case (Sections 71, 110); with all the accessories of issue of Summons and Warrants to parties and witnesses and of requiring "other Officers" to do so (Sections 75, 76, 77, 78 and 80); to examine witnesses, record depositions and from a record (82); to complete the inquiry; come to a judgment on the value of the evidence adduced (84); to hold to bail or commit to the Magistrate, with reference to the *merit* of the case as established before him; to report to the Magistrate with the record of his proceedings (85, 86, 87, 88 and 123); to act as Coroner at Inquests (95), &c., &c.

Such mixed Judicial and Police powers have hitherto been exercised by the Police of this Presidency; they have been sadly abused—proceedings held by an Executive Police have been found devoid of truth, and untrustworthy—and it has been determined to re-organize the whole Police on the model of the English Constabulary, to which, wisely, no such powers are conceded. It is intended that the Police shall be an organized, but wholly extra-Judicial body, a mere detective and preventive agency, entertained and kept at the disposal of the Judicial Magistracy to whom alone the powers and procedure above sketched belong. This distinction has not been observed and the Code is throughout at variance with the spirit of the institution as purposed for this Presidency. The operations of Chapter VIII would be to reduce the upper grades of an Executive Police, intended to be active, to what now exists, mere office drudges.

Section 34. Great Executive inconvenience will arise from any attempt to distinguish different grades of Police by such vague terms as "superior Officer of Police," "subordinate to such superior Officer," (34) "head Officer of Police Division" (pass.) "any Officer subordinate to such head Officer above the rank of a Peon or Burkundaz," (62, 79, 82 and 96) "subordinate Officer" (73) "Peons and Burkundazes at the Police station" (97) *(this would probably not include the Village Police)* &c., in the Law. If these distinction are to be used, they should have reference to the existing constitution of the service of the country or to the grades, &c., of the Police Agency intended to be established. But either is objectionable. Processes directed to the Police or action to be taken by the Police should be described under the general terms Police Officers. The Rules for Police administration will be drawn so as to prevent improper Officers from undertaking duties which would be better and more safely executed by others. The change to be made will be as slight as possible from what now exists. Warrants will be executed by the general Constabulary; Summons, where possible, by the Village Police. Searches will always be conducted by the Village Inspector (the *Police* head of the Village) an Officer of much importance in our organization. Charges received for the cognizance of Magistracy, *(not of Police Officers,)* and refused, will be received or refused by the Village Inspector (Police Potail, head of the Village,) or the head Constable of a Police District. Police detective Officers of the grade of Inspectors or head Constables will visit every scene of crime and use every endeavour to forward the prosecution as a Police Agency in collecting, *not recording*, evidence; will attend all Coroner's Inquests held by the Magisterial head of the Village; will take out Warrant, when not empowered by the Law to act without Warrant, &c., just as in England, but these are matters of general administration to which Rules will apply that will be drawn to amplify Section XXII of the Police Bill under the sanction of Government.

Section 54. The restriction contained in Section 54, must operate most adversely to the ends of justice, and under the constitution of the Presidency, most unnecessarily so; for we shall have Police heads of Villages every where at hand; and, if requisite, a Village Magistrate likewise; these latter now do precisely what this provision will most gratuitously take away the power of doing.

Under this Section a Warrant must be got for a "head Officer of a Police station," who will be an Officer generally residing many miles off, and will not under the new organization be an Officer who can issue Warrants, so that a Warrant cannot be got short of the station of a Magistrate. The effect of the restriction will be that a house cannot be broken open even if a murder is being committed in the hearing and sight of a Police Officer, or a suicide is occurring or

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It must be borne in mind, that the Bill for constituting Courts of Criminal Judicature, is silent, in regard to that invaluable and indispensable part of the administrative constitution of the Madras Presidency, the Village Magistracy, and this virtually sweeps it away. The Madras Police Bill, if allowed to become Law, will save the Village Police.

No. 17. MEMORANDUM ON THE FOLLOWING BILLS, WITH REFERENCE TO THEIR BEARING ON THE WORKING OF THE POLICE AND MAGISTRACY OF THE MADRAS PRESIDENCY.

I.—Bill to constitute Court of Criminal Judicature.

II.—Criminal Procedure Bill.

III.—Madras Police Bill.

I. Criminal Judicature Bill Sacrifice of unity of administration.

Necessity of numerous Magisterial Courts.

1. This Bill will affect unfavorably that unity of administration and control in each District, which has been deemed a great advantage in the constitution of this Presidency. The Courts of the Deputy Magistrates must be as numerous and accessible as those of the present heads of District Police and Town Ameens; or great inconvenience will result from any change.

Sweeps away the Village Magistracy.

2. The grave objection, however, which renders this Bill not only inapplicable to Madras, but wholly inadmissible, is that it ignores entirely a most valuable element of our local and municipal constitution, the head of the village in his Judicial and Magisterial capacity. It sweeps away in short, the whole numerous and useful body of the local Justices of the Peace (to use an English analogy) of the country; and it substitutes a few expensive Stipendiary Deputy Magistrates in their place.

Opposed to the Policy of the administration.

3. The wise Policy of the Government of this Presidency, is to foster and fully recognize the value of this part of the ancient polity of the country, and no change in the Law can now be tolerated that alters this position or ignores the institution.

Powers to be extended.

Occasion should be taken to have the powers and trust of the Village Magistracy extended, now that they are to be relieved from Executive Police duty by the Village Police Inspector, a link in the chain of Police Agency of the same local and municipal character.

II. Criminal Procedure Code.

4. The provisions of the Code of Criminal Procedure are likewise unadapted to the Madras Presidency and inconsistent with the changes adopted in regard to Police administration.

Distinction between Police and Judicial functions, not observed.

1stly. It does not draw the clear line of distinction which is intended between the functions of the Constabulary, as a Preventive, Detective and Executive Police Agency, and those of the more judicial agency that takes cognizance cases, entertains charges of all kinds, holds enquiry and, so far as the preliminary steps are concerned, judicially disposes of matters on their merits. This Code perpetuates that confusion of function which lies at the root of all the inefficiency, corruption, and oppression, that characterizes Indian Police administration. It has been finally and authoritatively condemned as regards this Presidency, and effect should now be given to the resolution by the Law; but this will not be the effect of the Criminal Procedure Code. The continuance of this confusion is the more objectionable in this Presidency as the really working Police and Magistracy of the country are, the Native Revenue Subordinates, whose systematic abuse of their powers, as Police Officers, is a matter of world wide notoriety.

N. B.—Official Returns show that 39 out of every 40 persons brought up for petty offences, are tried by them alone; that 9 of every 10 cases of grave crime come before them for Magisterial investigation; and that 7 out of every 8 cases sent for trial before Judicial tribunals are committed by them without the intervention of any European Magistrate.

Re-enacts every vicious feature of existing Police Procedure.

2ndly. The Code re-enacts every vicious feature of the existing Police administration, every source of distrust on the part of Judicial tribunals, and every means of abuse on the part of the Police. It authorizes Officers of Police to take cognizance of *all* complaints, petty as well as grave (with certain exceptions); to issue Summonses, Warrants, Search Warrants; to hold legal examination

of witnesses; to record depositions; to take down admissions and confessions, and have them duly attested for production at the trial; to hold Inquests, &c. All of which are functions that belong to Magistrates sitting judicially, and not to professional and interested detective Officers.

Constabulary Officers will become mere office drudges.

3rdly. Under its operation the superior Constabulary Officers must become what the higher grades of Police Officers now are, *mere office drudges* instead of active preventive and detective Inspectors of Police.

4thly. It unnecessarily increases the labours, and consequently the cost, of the Police, and the difficulty of effectual pursuit of offenders, by multiplying petty local jurisdictions and making numerous local endorsements, requisite to give validity to Warrants passing in the hands of the Police from one petty jurisdiction into another, by preventing the Police from effecting an entry to a house in pursuit of even a felon, by not facilitating the service of Summons, and enforcing obedience to every process of the Law duly executed.

5thly. The principle, that in the eye of the Law, every Police Officer, as regards his proper preventive, detective and executive duties, stands on the same footing, has the same responsibilities and powers, and incurs the same penalties, has been lost sight of; and an attempt is made to individualize and assign different duties to different grades of the Constabulary without any reference to existing or intended organization, and distribution. This, in a general Law, must lead to confusion. The processes of the Law have to be executed in the manner most effectual, expeditious and least oppressive; and by those Officers who are least likely to abuse the powers with which they are armed; but these principles must be carried out by administrative regulations, to be framed under the orders of Government, or if they must be defined by Law, it must be by a Law having special reference to the organization and circumstances of the service.

6thly. The existence of the Village Police so important a feature in the Police, administration of this Presidency as an Executive agency, has apparently been generally lost sight of.

Complicates matters by keeping up 2 Laws of Procedure.

7thly. The last Section (287) of the Bill *saves* from the operation of the Code the Jurisdiction and Procedure—1st, of the heads of Villages in Madras—2nd, of District and Village Police in Bombay—and 3rd, of the Cantonment Magistracy and Police throughout both Presidencies. So that were the Bill Law; two Codes of Procedure must still be observed in every village and in every case (for the Law throws the initiative generally on the heads of Villages) and the old Law must stand good, for by far the greater number (for in Bombay for nearly the whole) of the lower subordinates. Cantonment Police and Magistracy, are still to be left to the play of that varying discretion, which marks so unfavorably their ordinary proceedings.

III. Madras Police Bill.

Suited to the constitution of the country and principles of administration intended.

5. The Madras Police Bill was drawn to give effect to the resolution of the Executive Government, in regard to the reorganization of the Constabulary and Village Police of the Presidency, on the principles of the English and Irish Constabulary and of European Police administration. It is complete in itself, supplies an effective Police Procedure Law, and has reference to the existing Law, Procedure and constitution of the country and its institutions.

Two Laws wholly incompatible.

6. The Criminal Procedure Code is utterly at variance with the objects, provisions and spirit of this Bill. The two Laws cannot be grafted the one on the other, or be worked together as they now stand. A very large Schedule of repeals and modifications and exceptions in regard to the Criminal Procedure Code would have to be appended to the Police Law.

7. These remarks have been confined to Police and Magisterial matters.

Madras, 12th August 1859.

(Signed) W. ROBINSON,
Chief Comr. of Mofussil Police.

No. 18. From C. F. CHAMIER, Esq., Register to the Court of Foujdaree Udalut; to T. PYCROFT, Esq., Chief Secretary to Government, dated 20th August 1859, No. 21.

1. I am directed by the Judges of the Foujdaree Udalut to submit the following remarks on the Bill for simplifying the Procedure of the Courts of Criminal Judicature, for the consideration of the Government and transmission, should they see fit, to the Legislative Council of India.

2. In Section 12 it is from the marginal abstract alone that it becomes apparent that the Section relates to persons who may have returned from transportation or banishment.

3. The Judges persume that the loss spoken of in Section 17 is a pecuniary loss, and that under this Section it is not contemplated that compensation in the case of an assault may be awarded. The matter should, however, be made clear.

4. In Sections 18 and 101 measures of punishment are specified; but it appears to the Judges that such matters belong more appropriately to the Penal Code.

5. The marginal abstract of Section 34 contains the word "Darogha," which has been replaced in the Section itself by the term "superior Officer."

6. The word "Nazir" has been omitted from the body of Section 36, but is retained in the margin.

7. The Court observe in regard to Sections 70 to 98, and Section 110, that they understand it to be the great object of the reform of the Police, which the Government are aiming to secure for this Presidency, that the function of arresting the criminal and tracing out the evidence against him, and that of enquiring, whether judicially or ministerially, into the charge brought against him, should be placed in different hands: that is, that the Police should be purely an executive body, unarmed with Magisterial powers. Here, however, these offices to a certain and considerable extent are blended together; and so far the proposed Law will not be applicable to the condition it is hoped to secure for this Presidency. The head Officer of a Police station is expected to take down written statements of evidence and written confessions; he is to send in abstract statements of the examinations held by him; he is to be referee of the Magistrate for inquiring into the truth of criminal charges preferred; he may take security for the preservation of the peace; and hold Inquests. In fact, after being responsible for the discovery of crime and the arrest of the criminal, as a Police Officer, he is to be largely concerned with the progress of the examination held over the criminal, as a Magistrate. He will be an executive in the field, and at the same time extensively a desk-man, in the office. The evils caused by the union of these two functions, which it is wished to guard against, will thus be perpetuated, and the object of the new Police Act for Madras greatly defeated.

8. It is provided by Sections 125, 170, 191, 192 and 242, that the Magistrate, in enquiring into cases committable to the Session Court, and in trying those in which he may himself pass sentence, is to have written depositions taken down. This is also to be the rule in examinations before the Session Court. In cases in which the punishment does not exceed six months' imprisonment, the Magistrate is to be at liberty to confine the record to his notes of the evidence. In their communication of the 4th December 1858 on the Civil Procedure Bill, paragraphs 17 to 22, the Court argued strongly for making the notes of the examining Judicial Officers the only record of the evidence; and therefore on this occasion they need only call attention to the observations already made by them on the subject. The recourse to such a mode of examination is authorized in the present Bill, and this in appealable cases, to a certain extent; and the Court are unable to see why, if the method be considered beneficial thus far, its advantage, when applied over a further range, and by superior functionaries, is to be held in doubt.

9. The Judges find the terms of Section 137 somewhat perplexing. It appears contemplated that, after closing his own investigation, the Magistrate may subject the case to a further Judicial enquiry. The Judges can only conclude that he may commit it to the Session Court; but at the same time they observe that the case is referred to as one which, from want of proof, does not "require committal." It is possible, however, that the committal here spoken of, may mean a committal to Jail. This further Judicial enquiry, by commitment as the Judges presume to the Session Court, may seemingly be called out notwithstanding this want of proof, or, as it is put, where there may appear to the Magistrate no "reasonable grounds for believing that the accused has been guilty of the crime imputed to him." The Court think such an investigation very objectionable, its direct tendency being to lead to careless examination and committal by the Committing Officer. The check entrusted to him between the charge and the committal should be a real, and not a nominal one; and no one should be subjected to the odium and inconvenience of a trial before the Session Court, but on reasonable expectation that a conviction will be obtained.

10. With respect to Sections 161, 163, 164, 260 and 261, the Judges think it objectionable to multiply charges upon the act attributed to the accused, and particularly so to leave it in doubt, even when judgment is passed upon him, as to what particular offence he is chargeable with. This course must be perplexing to an ignorant Native, and its tendency will be to create laxity of judgment in the Judicial tribunals. Unnecessary labor is also involved in the setting out of such charges. The natural and comprehensible rule, that the minor charge is included in the major, appears to the Judges all that is requisite. Thus a charge of murder should include homicide or assault, or one of house-breaking and theft should include simple theft or reception of stolen property. The judgment should distinctly declare what particular offence has been proved against the accused. The Judges have also to notice what appears to be a redundancy in Section 260, namely, the repetition in line 15 of the words, "the verdict shall be that the accused is found guilty," which already appear at line 12.

11. The Judges observe, from Sections 232 and 233, that if the Jury are unanimous for conviction, their judgment prevails: if unanimous for acquittal, the Court is to exercise judgment, and, should it differ, refer the case for the decision of the Sudder Court. If a majority of the Jury convict, and the Court is for an acquittal, the judgment of the Court prevails. If a majority of the Jury acquit, and the Court is for convicting, the case has to be referred to the Sudder Court. These distinctions in the weight to be given to the verdict of a Jury appear to the Judges scarcely reasonable. They do not see why the unanimous Jury should be trusted, for a conviction and not for an acquittal; or why the Court, if called upon to exercise its voice in judgment upon three forms of verdict by the Jury, should not equally do so on the fourth. It seems to the Judges a simple and preferable rule to provide that the case shall be referred to the Sudder Court where the Court differs from the verdict of the Jury. The Judges have arrived at the above conclusion of the effect of the different forms of verdict of a Jury, from deduction, rather than from the precise terms of the Bill. They think its language should be more explicit. The Judges observe that the Jury is to consist of not less than three persons nor more than nine. It is not provided that it shall always be of an uneven number; but as so much is made to depend upon the verdict being by a majority, this provision appears necessary.

12. The Judges do not consider it desirable to introduce the system prescribed in Section 253 of the Judge giving a direction to the Jury. It is scarcely possible for even a skilful Judge so to set out the evidence as to avoid giving some indication of his opinion thereon; and in unskilful hands the risks of this result will be very great. Every Jury would be liable to bias in such case, and a Native Jury especially so. Whatever may be the value expected from the operation of a Jury, its amount will be much reduced if the Jury are subjected to be commonly led by the Judge. And further, few Judges would be competent to address a Jury in the vernaculars of this Presidency, in the manner here contemplated, and in a way which would be intelligible to the Jurymen.

13. In referring to the Sudder Court, under Section 255, a case in which the accused is liable to a sentence of death, the Session Court, besides sending up the record and its reasons for the sentence proposed to be passed in the case, is to communicate also the substance of its direction to the Jury. The Judges think the latter a work of supererogation. If the reasons for the sentence are well drawn up, these with the record will afford the Sudder Court every needful assistance in disposing of the case.

14. Section 257 provides that in deciding on a referred trial the Sudder Court is to be composed of three Judges. For a Court consisting of but three Judges, as that of Madras, this rule will prove highly inconvenient. The Court is already over-burthened with work, and in a considerably larger ratio than that of Bengal, to which so much special assistance has of late been afforded. How much its labors will be reduced by the new Procedure Acts remains still to be seen. Apart from this particular objection to the rule, the Judges think it one in itself not calculated to work well. They doubt whether so close a scrutiny can be given to the record, when read before the Judges on the bench, as when perused leisurely by each Judge in Chambers; and if the record has to be sent round for the inspection of three Judges in succession, and the case has then to be posted, to be decided upon the bench, the delay in disposing of cases will be very materially increased. It appears to the Judges that the present rule is amply sufficient

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for practical purposes. That is, if a single Judge of the Sudder Court coincides in opinion with the Session Judge, the case goes no further, unless a sentence of death be called for, when the concurrence of a second Judge is necessary.

15. It is not stated in Sections 271 to 274, of how many Judges the Sudder Court is to be composed, when exercising its powers of revision. It appears to the Court that it should require two Judges to over-rule an opinion of the Session Court. It is here laid down that where the Sudder Court observe an error of Law in the proceedings of the Session Court or of any inferior tribunal, they cannot remedy the same without sending for the whole Record. This will involve great, and in many instances, needless trouble and delay. The Judges think that it should be left to the Sudder Court to seek such means as may be necessary to enable it to come to a conclusion on the apparently faulty point, whether by calling for explanation or for a portion or the whole of the Record. It is reserved that the Sudder Court is not to interfere with the Judgment of a Session Court on the facts of a case. This would lead to the inference that after questioning the decision of a tribunal inferior to the Session Court, on a point of Law, and sending for the Record pursuant to Section 273 to correct such fault, the Sudder Court may over-step all bounds and pronounce upon the case on all its merits. The Judges think that the revision should be alike in all cases, and confined to questions of Law. For instance, if a party be convicted upon the crimination of another of the accused, or on hear-say evidence, or on evidence not involving the presumption drawn from it, the Sudder Court should be allowed to declare, should such be their judgment, that any remaining evidence in the case, on which the lower Court may also have depended, does not suffice to establish the fact declared by the lower tribunal to be proved. The Judges think therefore that it would be advisable to omit the limitation in the concluding part of Section 274. The Judges consider that the power of revising by the Sudder Court should extend to regulating the measure of punishment awarded, so far as to reduce the same, if excessive. It is possible, however, that the Penal Code may be so framed as to render such check unnecessary.

16. The Judges think that it should be made clear, in Section 276, whether under the term "Criminal Court," the Session Court is included, so as to bring its judgments under review on appeal to the Sudder Court. The use of the term in the Bill for constituting the tribunals charged with the cognizance of crime, would lead to the inference that the Session Courts are included therein. On the other hand, while the constitution of the Session Courts in exercising appeal over the tribunals below it is provided for, no mention is made of the constitution of the Sudder Court when so acting. The Judges find also in Section 280 no provision that orders passed by Session Courts are to be appealable. The Judges are against multiplication of appeals where the Court of first instance is properly constituted. The Judges observe that the Appellate Court may enhance the sentence passed in the Court below upon the accused. The exercise of such power is against the principle hitherto recognized, that the Appellate Court may interfere for the benefit of the accused, but not to his detriment; and this principle the Judges consider a valuable one.

17. It is provided by Section 283 that a Session Court or Magistrate observing, on revision of proceedings without appeal, any error of Law committed by the tribunal below, cannot rectify the same, but must submit the matter for adjudication by the Sudder Court. This appears to the Judges to be throwing labor needlessly on the latter tribunal. If the Session Court and Magistrate may be trusted with judgment on points of Law, occurring in the proceedings of the lower tribunals when brought before them in appeal, the Judges do not see why they may not be equally trusted when they observe such error on revising these proceedings in the course of exercising their general powers of supervision.

18. The foregoing remarks are founded either on the unanimous opinion of the three Judges or on that of the majority. On certain Sections of the Bill, however, observations have been recorded by single Judges, which, though not concurred in by their colleagues, they deem of sufficient importance to be adverted to in this communication; and I am accordingly instructed to lay them before the Government.

19. Mr. Strange observes, in regard to the preamble and Sections 1, 2, 3 and 230, that this Bill, in like manner as the Civil Procedure Act, is not applicable to the Courts established

by Royal Charter, and European British subjects charged with crime in the interior, will have to be brought, as now, to the Presidency towns for trial. This limitation of the range of the Bill, and exception of jurisdiction over European British subjects, are not consonant, he remarks, to the reformations contemplated for this Presidency. Messrs. Hooper and Phillips, on the other hand, consider it inexpedient that European British subjects should be rendered amenable to the criminal authorities in the interior to a greater extent than they are at present.

20. Mr. Strange further notices that double jurisdictions are created by Sections 5 to 10. An offender may be tried where his act was committed, or where its consequence has ensued. An abetment may be tried where the primary offence was perpetrated, or where the abetment occurred. An offence begun in one district or division and completed in another, may be tried in either district or division. An offence committed in any wheeled conveyance, &c., or boat, during a journey or voyage, may be tried in any district or division through any part of which such conveyance or boat may have passed in the course of the journey or voyage. A person found with property stolen or unlawfully appropriated, may be tried where found with such property, or where the theft or appropriation took place. He thinks these rules uncalled for by any practical difficulties that have occurred, and that they are likely to prove inconvenient: that there may be clashings or evasions of jurisdiction, where such latitude is allowed, and conflict of judgments where different branches of crime arising out of the same act are tried before different tribunals. Sections 13 and 14 appear to Mr. Strange to contain all requisite provision against difficulties as to the Revenue; namely, that the Sudder Court is to solve such difficulties, and may change the Revenue where expedient. On this point Messrs. Hooper and Phillips remark that the enlargement of jurisdiction here legalised will, in their opinion, facilitate the punishment of crime. In respect of the offence of receiving stolen property, great inconvenience has, they believe, been experienced from the want of the power now provided by Sections 9 and 10. They think that Sections 13 and 14 will not operate so readily and conveniently as the system sanctioned by Sections 5 to 10. The two former Sections supply a medium through which relief will be secured where doubts as to jurisdiction have arisen. Under Sections 5 to 10 Magistrates and others will take action at once. If Sections 13 and 14 only, be retained, reference to the Sudder Court will be frequently necessary. These will now be avoided, except in rare cases of doubt.

21. With respect to Sections 38 and 39 Mr. Strange remarks that the tenth Section of another Bill, for constituting the Courts of Criminal Judicature, confers upon Deputy Magistrates of the second class powers embracing those exercised by the present heads of District Police; that Section 287 of the Criminal Procedure Bill keeps alive the jurisdiction of the heads of Village Police, but not that of the heads of District Police; and that this class of judicatories, as such, will therefore apparently be abolished. To replace them Deputy Magistrates of the second class must, he apprehends, be a numerous body, though of course not necessarily so numerous as are the heads of District Police. The limits of their jurisdiction are described in Section 31, as divisions of the Zillah. By Sections 38 and 39 the Warrants these and other Officers entrusted with Magisterial functions may issue, cannot be executed out of the limits of their local jurisdiction, unless endorsed by the functionary of the neighbouring or other division, in which it may be necessary to carry out the Warrant. Thus a Peon having in view an individual proclaimed to him by Warrant as an offender, and seeing him step over the border into an adjoining division, cannot further pursue him, but must proceed in the direction of the office of the Deputy Magistrate of the said division to get an endorsement on his Warrant, before he can make further use of it. The offender by this time may have got out of the division, and then another endorsement will be necessary before he can be followed up. These limitations are therefore, it appears to Mr. Strange, calculated to give rise to great inconvenience and to defeat the ends of justice. He is unable, on the other hand, to see what advantage is expected from them. He observes by Section 59 that a person once arrested and breaking from arrest, may be followed up into any jurisdiction, and he cannot understand when a Police Officer has equal certitude of the necessity of making the arrest, primarily, under the Warrant furnished to him in the first instance, why he should not be allowed in like manner to follow up the party any where, without being hindered or hampered by having to fortify his Warrant with another official signature. Section 81 would, on the face thereof, seem to give Police Officers such liberty, but Mr. Strange presumes that this

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provision must be governed by the preceding ones, and that the action of the Police Officer spoken of in Section 81, can only take effect upon a duly endorsed Warrant.

Messrs. Hooper and Phillips do not see that the difficulties and embarrassments referred to by Mr. Strange must arise under the circumstances supposed. The words in Section 38 "unless it be specially otherwise provided," are inserted between brackets; the meaning, they observe, evidently being, that the Officer issuing the Warrant can, if he sees fit, so word it that it may run in such neighbouring limits, as the party sought to be arrested is likely to enter. They have known many grave irregularities arise from Police Officers being permitted to wander about with a Warrant, whose endorsement rendered it valid for execution over a wide range of District, and certainly the inconveniences of possible occurrence under the system prescribed by this Bill will, in their opinion, be balanced by the security of person that is likely to result from the decrease of authority for evil, which is so often created by a Police Officer's retaining in hand and using for his own ends a Warrant entrusted to him by a Magistrate or other Officer at a distance.

To this view of the matter Mr. Strange replies, that the Clause in brackets is, he considers, inserted to meet exceptional cases only. Such exceptional cases are described in Section 40, pursuant to which if a Magistrate has information that the person to be arrested is in another jurisdiction, he may send his Warrant to the Magistrate of that jurisdiction. The endorsement of the latter is still wanted, and the Warrant can run only within his bounds. A similar exceptional rule, Mr. Strange observes, appears as to Search Warrants in Section 64. He thinks it clear that none of these Warrants can, pursuant to this Bill, have the unchecked operation over surrounding limits, without endorsement, which his colleagues consider may be given to them.

22. Mr. Strange notices, in regard to Section 34, that it allows of a superior Officer of Police handing over to one of his subordinates a Warrant addressed to himself, but does not provide that he may pass it on to an Officer in a corresponding grade to himself. Mr. Strange conceives that the Warrant should be authority to any Police Officer, wherever located, or of whatever grade, to give it effect. When the Peon, or other, having the Warrant, is incapacitated by exhaustion, sickness, or ignorance of the country, for proceeding further with it, he should be allowed to transfer it for execution to the nearest Police Officer at hand. The Police over the whole Presidency should be viewed so far as a united body, and not have their functions hindered by being restricted within a narrow sphere. Messrs. Hooper and Phillips however think it would be a bad system to acknowledge the power of a Peon, entrusted with a Warrant, to hand it over to another Peon for execution. They would accept no plea by which such transfer might be supported. If a Peon be incapacitated by any cause whatever for the duty entrusted to him, he should, as they view the matter, report himself to the nearest Police Officer of a superior grade. The latter would then exercise his discretion or powers in securing the original object of the Warrant.

23. Under Section 54 no house, Mr. Strange observes, can be broken into for the purpose of making an arrest (without Warrant), except upon a special Warrant for that end. The remedy of a Peon, when the party pursued by him shuts himself up in a house, is to watch the house and send for the required Warrant to allow of his forcing a way into it. While watching one side of the house, the party pursued may effect his escape from the other side. Or the Peon may find the neighbours sympathising with the pursued, and have no one to send for the Warrant he needs. After all, the Warrant would always be furnished on the Peon's representation, and Mr. Strange does not see what is to be gained by the form of making him apply for it, while the forcing him to do so will, as already observed, give the pursued every chance of escape. Messrs. Hooper and Phillips remark, on this point, that the course indicated by the Section requires to be followed only in cases where it may be desired to arrest a person without Warrant. They think it would be placing a dangerous weapon in the hands of the subordinate Police Agents to afford them the sanction and support of the Law for breaking into a house, because an individual had entered it, whom a Peon, for any reason whatever, real or otherwise, might say he desired to apprehend on a mere view. The necessity for applying for a Warrant in such a case is, to their minds, a safe and well judged necessity, and should be firmly upheld.

24. It appears to Mr. Strange that, under Sections 61 to 63, a search for stolen property can only be made under a Warrant; and that if the search has to be carried on in a neighbouring or other jurisdiction, the Warrant must be endorsed by the Magisterial Officer of such jurisdiction. Thus where Peons in pursuit may see a party pursued throw stolen property into a dwelling house, they are precluded from searching the house for the property, until armed with a Warrant for the purpose, by which time the goods would be removed elsewhere. Or, if thrown into a bush over the border of the jurisdiction, the Peon would have to go to the Officer of the Division for an endorsement on his Warrant before be could return to take up the goods, supposing that they should still be left there. The Police, Mr. Strange thinks, should certainly be allowed in all cases to act without a Search Warrant, where instant action may be necessary; and when a Warrant is issued there should be no restraint in carrying it out in any direction. For abuse of authority the Police would always be held answerable; and that is the only check which in cases of the nature under consideration it appears to him necessary to provide. As respects the difficulties which Mr. Strange describes, it occurs to Messrs. Hooper and Phillips that they would be materially obviated, if an Officer, when issuing a Search Warrant, adopted the course provided by Section 64 for cases of emergency, where the thing to be discovered is supposed to be concealed out of that Officer's jurisdiction. An Officer would generally be able to judge whether the application for a Warrant called for the immediate direct action justified by that Section.

25. With respect to the Court's remarks in paragraph 7 of this letter, on Sections 70 to 98 of the Bill, Mr. Phillips observes that the objections raised are doubtless strong, but so little is yet known of the intended nature and extent of Police reform, and of the separation of the present Police and Magisterial powers, which are said to be at hand, that he is averse to arresting the progress of an instalment of improvement such as this part of the Bill provides. The Magistrates in the interior, and many others not now in actual employ as such, are, he understands, very generally distrustful of the assumed advantages of the new Police system still in embryo; and for his own part, speaking as an old Magistrate, he has very strong misgivings whether the change will not tend to make matters worse than they now are.

26. In regard to the observations on Sections 125, 170, 191, 192 and 242 contained in the eighth paragraph of this letter, Mr. Phillips remarks that he was not a party to this Court's letter to Government of the 4th December 1858, and has not the strong feeling in favor of mere *notes* of evidence, taken by the judicatories in the interior, which seems to have influenced the then Sudder Judges. He observes that in the Criminal Procedure Bill now under notice, the Magistracy are directed to have depositions recorded in a narrative form. They are also directed to record their own notes, as the cases proceed, in a way which will serve to indicate that as the investigations before them have progressed, they were acquainted with the bearings of the matter under trial. The improvement thus introduced is a great one. Whatever may be done to shorten and lighten work and depositions in civil proceedings, Mr. Phillips is particularly averse to their unrestricted curtailment in Magisterial and criminal proceedings of an important nature, involving sentences of imprisonment exceeding six months.

No. 19. ORDER THEREON, 20th August 1859, No. 1132.

Ordered that the following letter be despatched.

(Signed) T. PYCROFT,
Chief Secretary.

No. 20. To H. FORBES, Esq., Member for Madras of the Legislative Council of India, Calcutta, dated Fort Saint George, the 20th August 1859, No. 1133.

I am directed by the Honorable the Governor in Council to acknowledge the receipt of your letter of the 18th Ultimo, and of a copy of the Madras Police Bill as settled by the Select Committee, as also of your subsequent letter of the 8th Instant, and of its enclosure.

2. In your first letter you have explained, generally, the nature and design of the alterations made by the Committee. You account for the omission of many of the Sections of the Bill, on the ground that these refer exclusively to Procedure, and already form a part of the Criminal Procedure Code. This Code has passed through a Select Committee, and will now very shortly be brought before a Committee of the whole Council, and, you state, that, as it is obviously unnecessary to introduce, word for word, into the Madras Police Bill, the provisions of a Law already prepared for the whole of India, it is proposed to strike all these Clauses out of the Bill. A copy of the Criminal Procedure Code accompanied your letter.

3. In reply, I am instructed to state, that this Government have very carefully considered the Police Bill, as it has come from the Select Committee, and those Sections of the Criminal Procedure Bill which are meant to supplement it. They regret, however, that they cannot accept it in its present form, or regard it as now presented to them, as sufficient for the important purposes which it is meant to accomplish.

4. To set this question in the clearest light, I am desired to transmit to you, the enclosed copy of the Bill as it passed its first (and second) reading, with the alterations which this Government would wish to make in it. I enclose also a Memorandum or collection of notes on the several Sections requiring notice, showing the reasons of the proposed alterations, and the reasons for which the Government object to the changes and omissions made in the Select Committee, or for which they deem the provisions of the Criminal Procedure Bill, which the Committee would substitute for parts of the Police Bill, to be insufficient or inapplicable. In more particular reference to this latter point, I am directed to enclose a second Memorandum discussing more in detail those several provisions of the Procedure Code, and pointing out the objections which attach to their adoption.

5. I am instructed to request, that the Bill as now revised by the Madras Government may be brought before the Legislative Council, and that you will endeavour to secure the enactment of it as thus revised, in place of that settled by the Select Committee.

6. I have to take this opportunity of addressing you upon the Criminal Procedure Bill generally, independently of those parts of it which are connected with the Police Bill, and here, I have to remark, that this Government have been placed at much disadvantage from the short time allowed them for the consideration of this large and important measure. The Criminal Procedure Bills for the several Presidencies, as read a second time, were published in the Calcutta Gazette in the first months of 1857, or more than two years ago. From the disturbed state of the times, and from other causes, the progress of these Bills was for a long period suspended. Ultimately, however, the Select Committee, on these several Bills, have laid the present single Bill (which is stated to be for the most part in its details, founded on those Bills) before the Legislative Council with their joint Report on the 30th April last. The Bill, however, although laid before the Council on that date, was not forwarded to Madras until last month, where it was received from the Clerk of the Council on the 11th Ultimo. The Government cannot but think, that when a measure so comprehensive and important had been resumed after so long a period of suspension, the Bill as settled by the Select Committee should have been re-published, and ample time afforded for any expression of opinion on its merits from the Local Governments. At present, however, they can only state, that the Bill for the proposed Code of Criminal Procedure and its attendant Bills for the constitution of Courts of Criminal Judicature, are in their provisions, so at variance with the present numerous Judicial institutions of this Presidency, that their introduction, if attempted, must seriously affect the good Government, and well being of this Presidency.

7. The Bills in question, have evidently been prepared exclusively with reference to Bengal, and doubtless are suited to the constitution of its different Judicial tribunals, but those tribunals differ so essentially from the tribunals of this Presidency, as almost to preclude the possibility of instituting a comparison between them. In name, in some few instances they are the same, but in their functions and duties they widely differ, a difference which extends from the lowest village tribunal to the Court of highest Jurisdiction. To discuss such Bills, therefore, Section by Section, where all is unsuitable would be needless, even did time admit of it.

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At present all that this Government can do is, to request your attention to these remarks, as well as to the observations of the Court of Sudr Adawlut, in their accompanying letter, and to request that the Madras Presidency be excepted from the operation of the proposed Bills for regulating Criminal Procedure, and the constitution of the Courts, Civil and Criminal, as these enactments, if put in force in the Madras Provinces, must produce results that will affect injuriously the entire machinery of our Civil and Criminal administration, throughout the length and breadth of this Presidency.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. F. Cartledge.

6. In the first section the word Police is interpreted to include the Village Police and no change has been made in this, but I have been led to doubt whether the Government desire that the interpretation should be as comprehensive as it is, and I shall be guided by any information to that may receive in reply to other letters.

Section III has been struck out because I was considered that it would find a more fitting place in the Bill to amend Act III of 1854 (the Cattle Trespass Act) which is coming before the Council. This Bill will pass before the Madras Police Bill and the amendment now ordered in Section III will be authorized.

The alterations which immediately follow are verbal and do not affect the principle of the Bill.

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9. The change made in Section VIII is also immaterial to the working of the Law. As a justice of the Peace acts under the Queen's Commission it was thought that the Indian Legislature had not power to limit the jurisdiction of the office. The Commission in India is either for the Presidency town or for the whole Presidency, and the Advocate General considered that it would be beyond powers of the Legislative Council to enact that any officer should be a justice in the Mofussil,

No Appeal

and at the same time to put a limit upon the
exercise of powers which as Justice Mannerd
observed, are taken from them, but from the Govern-
ment. It will be for the Government to give such
instructions to the Inspector General as they
may deem proper.

10. The alterations made in Section
XL were introduced in order to give efficiency
to the Police administration. It appeared
to the Committee that it would be impossible
for the Inspector General really and truly
to exercise over every Police Officer in
charge as they apparently will all the village
Watchmen and that even were it possible it
were most undesirable that by such an
intensified centralization of power all authority
should be denied to the local Superin-
tendent of Police. The Section as it now stands
retains to the Inspector General all the
real patronage, and leaves an appeal to him
open even in cases where the power of original
dismissal and appointment is given to the
District Superintendents.

11. The Sections noted in the margin
XXIII, XXIV, XXV, XXVI, XXVII
XXVIII, XXX, XXXII, XXXIII,
XXXIV, XXXV, XXXVI, XXXVII
XXXVIII, XXXIX, XL, XLI,
XLII, XLIII, XLIV, XLVIII
refer exclusively to Procedure and
already form a part of the Criminal
Procedure Code
This Code has passed through a Select Committee and

15A

and will now very shortly be brought before
a Committee of the whole Council and
as it is obviously unnecessary to introduce
word for word into the Madras Police Bill
the provisions of a Law already prepared
for the whole of India, it is proposed to strike
all these Clauses out of the Bill. In the
copy which I now forward the corresponding
provisions of the Procedure Code
are indicated, and may be referred
to in the copy of the amended Procedure Bill
which I also take leave to submit. The skeleton
of the Police Bill was taken from the original
Procedure Bill as forwarded to Mr. Robinson
by me, and I informed him at the time
that I transmitted it, that it would probably
undergo some alterations in Committee
when it is finally passed, as it is hoped
that it soon will be, the Inspector General will
be able to select all the parts which will affect
the Police, and form them into a manual
for easy reference and guidance.

12. Section XLIX has been rendered by
necessarily general in its application than
was the case in the original Bill, while
at the same time power has been reserved
to Government to extend its operation at pleasure.
It was thought that a very wide door to oppression
would be opened if the Police had authority
to apprehend and convey before a Magistrate

any person who might keep a Cart standing on a road" or who offered fruit for sale, or who washed or bathed in any tank not "set apart for that" particular purpose" the Section was taken from Act XIII of 1856 which applies to the Presidency Cities only, and although appropriate to large and populous Towns, seems wholly inappropriate to the open country where enforced it would enable the Police to practice great oppression in the name of a law.

13. Section LIV has been struck out as needless in the Mofussil. It is applicable to cases of constructive trespass under the English law and is enforced in Act XIII of 1856, from which it has been taken only because that law is enforced within the limits of the Supreme Court.

14. Sections LV and LVI are also proposed to omit as unnecessary in a Mofussil Police law, such provisions have not hitherto been extended to the Provinces, and seem more inapplicable to the limits of the Supreme Court.

15. The only alteration made in the Schedule has been the removal of Section IX of Regulation IX

of

A. Forbes Esq
Secy to Govt
Calcutta

+ as also of your subsequent letter of the 8 inst. and its enclosure

Well

You account for the omission of many of the sections of the bill on the ground that they correspond closely to provisions already in force in the Criminal Procedure Code. This Code has been framed through a Select

I am directed to acknowledge your letter of the 18 ultimo and a copy of the Madras Police Bill as settled by the Select Committee+

2. In your letter you have explained generally the nature & design of the alterations made by the Committee - & have pointed out the means of the sections of the original bill have been omitted as the object for which they were intended to provide will be equally

Committee and will commence shortly in hospital before a Committee of the whole Council, and you state that as it is obviously unnecessary to introduce word for word into the Madras Police bill the provisions of a law already prepared for the whole of India, it is proposed to strike all the clauses out of the bill.

Bill now before the Council and shortly to be passed for regulating Criminal Procedure in Courts of Law under Royal Charter

Cumi Proc Code

A copy of this bill accompanied your letter.

3. In reply I am instructed to state that this Govt. have very carefully considered the Police bill as it has come from the Select Committee, and those sections of the Criminal Procedure Bill which are meant to supplement it. They regret however that they cannot accept it in its present form, as they consider it, as now printed to be, as sufficient for the important purposes which it is intended to

4. To see this printed in the Calcutta Gazette they desire to transmit to you the enclosed copy of the bill as it passed the first (& second) reading with the alterations which this Govt. would wish to make in it. I am also to enclose a Minute on a collection of notes on the several sections explaining notice, showing the reasons of the proposed alterations, and the reasons for which this Govt. objects to the changes and omissions made in the Select Committee, or for which they desire the provisions of the Crim. Proc. Bill which the Committee substitute for parts of the Police Bill, to be applicable or inapplicable

⊕ In order particularly to point out the amendments to the Police Bill, and pointing out the objections which attach to this adoption.

5. I am instructed to request that H. Bill as now amended by H. Lords Committee may be brought before H. Leg. Council, and that you will endeavour to amend H. ~~constitution~~ act as there suggested, in place of that settled by H. Select Com.

6. I seize this opportunity of addressing you upon ~~the subject of~~ smuggling H. Civil Service Bill, ~~&c.~~ its dependencies ~~&~~ connection with H. Police Bill. And here I have to mark that it has not been pleased Almighty to grant to this Island the capacity for consideration of this large & important question. The Civil Service Bill as it stood when first brought in & the second time ~~was~~ now pending before H. Lords Committee,

[illegible] H. Police Bill

month 1 [illegible]

Gazette of H. first, 1857 or more than two years ago. From the distressed state of the times and from other causes the property of this Island has for a long period been much ~~diminished~~ ultimately ~~Each successive year~~ known ~~to have been~~ ~~declining~~ by H. Select Committee, ~~the~~ or steps should be proposing at this (which in fact was ~~same~~ precisely identical) period. And H. present single Bill, before H. Leg. Council with their Special Report on H. 30 April last. H. Bill known as No. 1 last before H. Council on that day was ordered to lie [illegible] until 2nd month, when it was moved at point H. Clerk of H. Council on H. 11th inst. H. first clause

The Bill for the pro-
-posed Code of Criminal
procedure and its attes-
-dant Bill for the consti-
-tution of Courts of Criminal
Judicature, are in their
provisions, so at variance
with the present numerous
Judicial institutions of
this Presidency, that their
introduction if attempted
must ~~in many opinions~~
seriously affect the good
Government and well being
of this Presidency.

The Bills in question,
have undoubtedly been pre-
-pared exclusively with
reference to Bengal, and
doubtless are suited to the
constitution of its different
Judicial

he think that what is
meant to compre-
-hend is important
had been withdrawn after
so long a period of
suspension, & which
as settled by the Select
Committee should
have been upon Notice
-ed and a opportunity
afforded for any objec
-tion of Natives to
meet from the Local
Govt - at present how-
-ever they can only form
-mit & enclose the Ob-
-jections - not for
received from the
Court of Sudder Adawlut
and request that they
may receive the
serious attention &
be considered by
Council

that the Bill for the
proposed Code of Cri-
-minal Procedure
In opposite half
sheet -

Jurisdiction -
To discuss this likely
to occupy Section by Section
which all is unnecessary
would be needless - as
the Court did not admit to
it -

Judicial tribunals, but those tribunals differ so essentially from the tribunals of this Presidency as almost to preclude the possibility of instituting a comparison between them. In name, in some few instances they are the same, but in their functions & duties they widely differ, a difference which extends from the lowest village tribunal to the Court of highest Jurisdiction.

20

I presume it is that this Court can do is to submit your attention to the remarks & ask as to the observations of the Court of Sudr Adawlut in their accompanying letter and to request & that the proposed Bills for regulating the procedure & the Constitution of the Courts of Civil & Criminal Judicature in this Presidency may be passed into a Law.

That the Undersigned Members may be excepted from the operation of

and Criminal as this enactment will if put in force in the Madras Provinces must produce the result that will affect very materially the entire machinery of our Civil & Criminal administration throughout the length & breadth of this Presidency.

J.P.

No 1132 Judicial Dept

Proceedings of the Madras Government 21A

Dated 20 August 1859.

Read letter from Member for Affairs of the Legislative Council 18 July & 8 Augt 1859

Read letter from Chief Com: of Municipal Police - 1 August 1859 -

Minute by Honorable W. Morehead 20 August 1859 -

Do by Hon'ble W. Elliot 20 Augt 1859 -

Note & Memo referred to in Hon'ble Mr Morehead's Minute -

Letter from Registrar S.C. Faridabad - 20 August 1859 -

Ordered that the following letter be despatched -

To

A Forbes Esqr

Member for Affairs of the Legislative Council —

Hon'ble —

Dispatch to Bo. 2/6.

224

Judicial Deptt

No 1133.

To
H Forbes, Esqre
Member of the Legislative Council of India
for Madras.

Calcutta.

Sir,

I am directed by the Honble the Governor in Council to acknowledge the receipt of your letter of the 18th Inst. and of a copy of the Madras Police Bill as settled by the Select Committee, as also of your subsequent letter of the 21st Inst. and of its enclosure.

2. In your first letter you have explained generally the nature and design of the alterations made by the Committee. You account for the omission of many of the Sections of the bill on the grounds that these refer exclusively to procedure, and already form a part of the Criminal Procedure Code.

His

This Code has passed through a Select Committee, and will now very shortly be brought before a Committee of the whole Council, and you state, that as it is obviously unnecessary to introduce, word for word, into the Madras Police Bill, the provisions of a law already prepared for the whole of India, it is proposed to strike all these clauses out of the bill. A copy of the Criminal Procedure Code accompanied your letter.—

3. In reply I am instructed to state that this Govt have very carefully considered the Police Bill as it has come from the Select Committee, and those sections of the Criminal Procedure Bill which are meant to supplement it. They regret however that they cannot accept it in its present form, or regard it, as now presented to them, as sufficient for the important purposes which it is meant to accomplish.—

4. To set this question in the clearest light, I am desired

desired to transmit to you the enclosed copy of the bill as it passed its first (and second) reading with the alterations which this Govt would wish to make in it. I enclose also a Memo or Collection of Notes on the several Sections requiring notice - showing the reasons of the proposed alterations, and the reasons for which the Govt objects to the changes and omissions made in the Select Committee, or for which they deem the provisions of the Criminal Procedure Bill which the Committee would substitute for parts of the Police Bill, to be insufficient or inapplicable. In more particular reference to this latter point I am directed to enclose a second Memo: discussing more in detail those several provisions of the Procedure Code, and pointing out the objections which attach to their adoption.—

5. I am instructed to request that the Bill as now revised by the Madras Govt

may

may be brought before the Legislative Council, and that you will endeavor to secure the enactment of it as thus revised in place of that settled by the Select Committee.

6. I have to take this opportunity of addressing you upon the Criminal Procedure Bill generally, independently of those parts of it which are connected with the Police Bill. And here, I have to remark that this Govt have been placed at much disadvantage from the short time allowed them for the consideration of this large and important measure. The Criminal Procedure Bills for the several Presidencies, as read a second time, were published in the Calcutta Gazette in the first months of 1857 or more than two years ago. From the disturbed state of the times, and from other causes, the progress of these bills was for a long period suspended. Ultimately however the Select Committee, on these several bills, have laid the present single bill (which is stated to be for the most part in its details founded on those bills) before the Legislative Council with their Joint Report on the 30 April last. The bill however although laid before the Council on that date, was not forwarded to Madras until last month, when it was received from the Clerk of the Council on the 11th ultimo. The Govt cannot but think that when a measure so comprehensive and important had been resumed after so long a period of suspension, the bill as settled by the Select Committee, should have been republished and ample time afforded for any expression of opinion on its merits from the Local Govts. At present however they can only state that the Bill for the proposed Code of Criminal Procedure and its attendant Bills

Bills for the Constitution of Courts of Criminal Judicature, are in their provisions, so at variance with the present numerous judicial institutions of this Presidency, that their introduction if attempted must seriously affect the good Governments and well being of this Presidency.—

7. The Bills in question, have evidently been prepared exclusively with reference to Bengal, and doubtless are guided to the constitution of its different Judicial tribunals, but those tribunals differ so essentially from the tribunals of this Presidency as almost to preclude the possibility of instituting a Comparison between them. In name, in some few instances they are the same, but in their functions and duties they widely differ, a difference which extends from the lowest village tribunal to the Court of Highest Jurisdiction.

To discuss such bills therefore section by section where all is unsuitable would be needless. even did time admit of it. At present all that this Govt. can do is to request your attention to these remarks as well as to the observations of the Court of Sudr Adawlut in their accompanying letter, and to request that the Madras Presidency be excepted from the operation of the proposed Bills for regulating Criminal procedure and the Constitution of the Courts, Civil & Criminal as their Enactments if put in force in the Madras Provinces must produce results that will affect injuriously the entire machinery of our Civil and Criminal Administration throughout the length and breadth of this Presidency

Fort St George,
20 August 1859.

Prov. of Govt 26 Augt

Judicial 1859. Dcfrom &c

No. 1133.

To
The Member for Madras
of the Legislative Council
of India

9/20 Augt 1859
T.E. No. 1411.

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