MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 1223	Press Mis.
81-82	
Dated 8-11-1859	

Not to be folded or roughly handled

No. 81. Read the following letter from T. CLARKE, Esq., Magistrate of Madura; to T. PYCROFT, Esq., Chief Secretary to Government, Fort Saint George, dated 18th October 1859, No. 217.

I have the honor to enclose a letter received from my Deputy Magistrate Mr. Hayes. A person has been brought before the Deputy Magistrate charged, under Section VII, Act XXVIII of 1857, extended by Act XIX of 1859, with offering Arms for sale without a License, and has been convicted. He pleads ignorance of the Law as the excuse for his offence. Another Merchant who possesses a License for the sale of Ammunition has been found not to have kept the Register required by Section IX of the Act under which he obtained his License. He also pleads ignorance of the Law.

2. Mr. Hayes, from the enquiry that he has made, is of opinion, that the accused parties as well as the Native population generally, are ignorant of the existence of Act XIX of 1859, continuing the operation of Act XXVIII of 1857 to the close of the present year, and he, therefore, questions the justice of enforcing against the parties accused the severe penalties which they have incurred under the former Act. I conceive it is discretionary with Mr. Hayes to remit any part of the full penalties incurred by the parties, and to inflict such an amount of punishment as he may consider they deserve. The Arms offered for sale consisted of a large Elephant Rifle, a Saloon Pistol, and a case containing 2 stocks and 3 barrels to be screwed on to both the stocks. The Pistol and the last set of instruments contained Ammunition, and I think that a slight fine and a warning to both Merchants, and an additional requisition from the 1st that he inform the Magistrate before he sell the Arms in his possession, would sufficiently meet the cases of these parties.

3. It has, however, occurred to me whether the Magistrate has any power to proceed under Act XIX of 1859, until the Order of the Government in Council referred to in Section XXXIII, shall have been repeated. Such Order was necessary under Act XXVIII of 1857, which expired on the 11th September 1857, and I am in doubt whether it is not equally necessary, under the Act of 1859, continuing this Act. If it be necessary, it seems to me its omission may be deemed to vitiate any proceedings taken by the Magistrate, who was only empowered to act by an Order of Government passed under the provisions of an Act, which ceased to exist on the 11th September last.

From J. W. HAYES, Esq., Deputy Collector and Magistrate; to T. CLARKE, Esq., Collector and Magistrate of Madura, dated 13th October 1859, No. 2.

I have the honor to submit, that it has come to my notice that Arms have been offered for sale by a Native* Cloth Merchant, residing in this town, and that he holds no License to do so, as required by Section VII, Act XXVIII of 1857.

* Oudeemootoo Maistry also his Agent, Balasoondra Pillay.

2. I have further discovered that one Appavoo Pillay, a Shop-keeper of this place, who obtained a License in conformity with the Act quoted above, for the sale of Ammunition alone, has omitted to keep a book, and make the entries of all the stock in trade and sales, effected by him from time to time, as required by Section IX of the aforesaid Act.

3. The Act in question which received the assent of the Governor General, on the 11th September 1857, was originally intended to be temporary, its duration having been fixed for two years. On this Act being passed, a Notification was published by beat of drum throughout this District.

4. By Act XIX of 1859, which was passed on the 12th August 1859, Act XXVIII of 1857 is continued in force until the end of the year 1859, but the parties named by me in paragraphs 1 and 2, declare their utter ignorance thereof, and from a full enquiry instituted by me, I feel assured that they, as well as the Native population of this town generally, have been in ignorance of the last mentioned Act.

above title may be dealt with

5. Under the foregoing circumstances, I feel dubious as to the justice of enforcing the severe penalties which the parties aforesaid have incurred under Act XIX of 1859, and, therefore, request you will be so good as to favor me with your opinion, as to how I should deal with the cases adverted to.

(True Copy.)

(Signed) T. CLARKE,
Magistrate.

No. 82. ORDER THEREON, 8th November 1859, No. 1523.

The Government agree with the Magistrate, that the cases alluded to in the above letter, may be dealt with in the manner proposed at the end of paragraph 2.

2. The Honorable the Governor in Council does not consider it necessary that the Order of Government, issued under Section XXXIII, Act XXVIII of 1857, should be repeated. Act XIX, 1859, which continues in force the previous Act, continues also in force any order issued under it.

3. The Magistrate should, however, take measures for the provisions of both Acts being made known generally throughout his District.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. F. Cartledge.

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I have the honor to be
Sir
Your most obedt Servt
J Clarke
Magistrate

Madura
18th October 1859

Order thereon 8 November 1859 No. 1523.
The Govt agree with the Magistrate that
that the cases alluded to in the
above letter may be dealt with

Judicial 1859 No 4 to
from the Magistrate
Prov[ince] of Cape Town to the Lieut
Governor
Cape Town
Dated 18th October 1859
Rec'd 24th — " —
No 217

(3)
Three Letters and
Encl 1748

Reporting that
a person who offered
arms for sale without
a license and another
who professes one for
sale of ammunition
but failed to keep a
Register of the Sale & Stock
plead ignorance of the
Existence of Act XXVIII
of 1857 continued by
Act XXII of 1859 and
requesting to be informed
whether a slight fine &
a warning to both parties
or an additional
requisition from the
With an order

first that he inform
the Magistrate to forbear
to sell the arms in
his possession unless
he sufficiently meet the
orders of those parties

Lieut of 18th Rod[s]

81482

37 Orders
127 Vars

out of hand 2 —
2. That the Civil Commissioner
& Resident Magistrate of Graaff
Reinet & Somerset East
under Sections III. & XXVIII of
1857 & Section 2 of Act
XIX. 1859 which continues &
for the purpose of the said
Ordinance
also to forward
under
Seal —

1. The Chief Clerk is authorized to
transmit to the proprietors of both the
Newspapers published at Worcester
Paarl & Wellington
Copies of
Government Notice No 2