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MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	84.35	Press Mis=
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Dated	11- 1-	1860

Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department, for the month of January 1860.

Read the following papers :—

No. 1. From H. FORBES, Esq., Member of the Legislative Council ; to T. PYCROFT, Esq., Chief Secretary to the Government of Fort Saint George, dated Fort William, 7th September 1859.

1. I have had the honor to receive your letter of the 22nd ultimo, re-transmitting to me the Madras Police Bill with the amendments which the Government of Madras desire should be introduced, a memorandum or collection of notes, on the several Sections requiring notice, shewing the reasons of the proposed alterations, and the reason for which the Government object to the changes and omissions made in the Bill by the Select Committee, or for which they deem the provisions of the Criminal Procedure Code to be insufficient or inapplicable. You were at the same time instructed to request that the Bill, as revised by the Madras Government, might be brought before the Legislature, and that I would endeavour to secure the enactment of it, as revised by Government, in place of that settled by the Select Committee.

2. After fully considering your letter, and the papers which it enclosed, I determined to lay them before the Select Committee on the Madras Police Bill, and to recommend to the Committee that they should report the Bill to the Council with the amendments proposed by the Madras Government, on the grounds stated in a draft report which I prepared for the Committee's adoption. This proposal met with general approval, and at the next meeting of the Council I presented the Committee's report, and I now enclose a copy of it for the information of the Government of Madras. At the same time I obtained a suspension of the standing orders of the Council, to enable me to pass the Bill through a third reading before the then expected recess, in event of my being successful in getting it through Committee.

3. The great length to which discussions on the several provisions of the Criminal Procedure Code were carried, prevented my proceeding further with the Bill until the 6th instant, when the Council were so considerate as to hold a special sitting in order that I might bring the measure forward. I have already acquainted you by Telegraph that I succeeded in obtaining all that the Government wished, and the assent of His Excellency the Governor General, given before the Council separated, has made the Madras Police Bill law.

4. Two or three very trifling amendments in the Bill were proposed by the Chief Justice, and there were not wanting, circumstances which led me to consider that it would be more prudent to concede these verbal alterations, rather than incur a risk of rousing opposition to some principle which the Madras Government would consider important, by insisting on the Bill being passed without even a literal alteration.

4. The amendments I refer to were as follows :

Section VI. The substitution of " Governor in Council" for " local Government" in line 9.

Section VII. The insertion of the words " not inconsistent with this Act," between the words " powers" and " which" in line 1.

Section VIII. The substitution of the word " vest," for the word " appoint" in line 11, and of the words " with all or any of the powers of" for the words " to be," in line 13. The omission of the words " if so appointed shall act in that capacity" in lines 16 and 17, and the insertion of the words " shall exercise the power with which he shall be invested."

Section XVI. The insertion of the words " by suit in any competent Court, or by the distress and sale of the goods of the defaulter" after the word " recoverable," in line 10, and the omission of the word " distress," the proviso in this Section has also been omitted, as the omission of the words " according to Act II of 1839" by the Government of Madras, rendered its retention useless.

Section XXII. The Select Committee inserted the word " always" between the words " be" and " on" in line 4 of this Section, and omitted the words " at all times and in all places" in accordance with a suggestion made by the late Chief Justice when the Bill was

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read a second time, to obviate the misapprehension which Sir James Colville, was of opinion might arise that it was supposed possible for a Policeman to be on duty in all places at one and the same time. The Madras Government appears to have wished that the original words should be retained, but the amendment of the Select Committee has been preferred by the Council, the words "and shall have the powers of a Police Officer in any part of the General Police District" having been added after the word "duty" Clause 6, Section XXIII, the words "assault," "resist," "aid" and "excite" have all been made singular, to agree with the change made by Government of "any person" for "all persons,"—and lastly in Form A of the Schedule "Act of 1859" has been substituted for "the Madras General Police Act," in consequence of Section LVIII having been struck out of the Bill by Government.

5. In the sixth paragraph of your letter under acknowledgment you refer to the Code of Criminal Procedure, you remark on the omission to transmit to the Madras Government a copy of the Code as amended by the Select Committee, express the opinion of Government that it should have been re-published and time afforded for an expression of opinion on its merits by the local Governments, and their conviction that both the Code and the Bills for the constitution of the Courts which were prepared in connection with it, and with the Code of Civil Procedure, are so at variance with the several Judicial institutions of Madras that their introduction, if attempted, must seriously affect the good Government and well being of the Presidency.

Paragraph 7. In the following paragraph you observe that the Bills have been drawn with exclusive reference to Bengal, but that the functions and duties of the tribunals in that Presidency, and in Madras, are so widely different, from the lowest village tribunal to the Court of highest jurisdiction, as almost to preclude the possibility of instituting any comparison. I am finally requested to notice the remarks which the Government have made, and the observations of the Sudder Court of Adawlut, and to move the Council, to except the Madras Presidency from the operation of the Code, and of the Bills for re-constituting the Courts, as those enactments, if put in force in the Madras Provinces, must produce results which will affect injuriously the entire machinery of the Civil and Criminal administration throughout the length and breadth of the Presidency.

6. As I do not find that the observations of the Sudder Adawlut apply to the principle of any of the three Bills referred to, I shall confine myself at present to the remarks made by Government, referring the Court's letter in ordinary course to the Select Committee on the Code.

7. As regards your remarks upon the omission to transmit to Madras the Code as amended by the Select Committee, and the opinion of the Government of Madras, that it should have been re-published, I would beg you to bring to the notice of Government that, as a Select Committee can decide nothing, but can only recommend their views for adoption by the Council, it would be very inexpedient that they should publish a Bill between its report to the Council, and its passing through a Committee of the Council, as the Public would be led to believe that provision of Law had been adopted by the Council, when in fact they had only been recommended by a small section, and were subject to discussion, and rejection when brought forward in a Committee of the Council. If any principle of a Bill is altered, or if any such alteration made by a Select Committee is adopted by a Committee of the whole Council, the Bill is invariably re-published before it is read a third time, and the Code of Criminal Procedure having received very numerous, and important alterations, will be now re-published for a period of three months, but you must assure the Government that no irregularity was committed in the non-transmission to them of the Bill as amended by the Select Committee, and the non-republication of the Bill before it had been discussed in a Committee of the whole Council.

8. In the remarks of the Government on the Code of Criminal Procedure, I have been unable to discover that objection is taken to the principle of any of its provisions excepting such as concern the Police, and as the Madras Police has been now excepted from the operation of the Code, I am led to conclude that, as far as the Bill affects the Courts, no material dissatisfaction is felt.

9. The Bills for reconstituting the Courts have not been brought in, and the great expense that would, not improbably, follow their adoption, appears to offer, for the present, a bar to their

introduction. The Government, in your letter under reply, express an opinion that the Bills have been drawn solely with reference to Bengal, where the functions and duties of the tribunals, from the lowest to the highest, differ so widely from those in Madras, as to prevent even the possibility of comparison. The office of the head of a Village which is an important one in Madras and Bombay does not exist in Bengal, but provision has been made in the Codes both of Civil and Criminal Procedure for the retention of the jurisdiction of the Village Moonsiffs, and the head of the Village, and as their jurisdiction is preserved, it is obvious that the institutions are to remain, and that their omission from the Bills for the constitution of the Court are accidental, and will be supplied before the Bills are introduced.

10. The Courts of the Village Moonsiff, and the Village Magistrate having been then preserved, I believe that I do not perceive so clearly as I would wish in what respect it is that these Bills apply so exclusively to the existing state of affairs in Bengal as the Government suppose, or in what way their becoming law would so injuriously affect the entire machinery of the Civil and Criminal machinery of Madras, as the Gvernment appear to apprehend.

11. The Bill for the Civil Courts provides for a Sudder Court, which there is at present in Madras, as in Bengal and Bombay, an upper District, to correspond with the Civil Courts, common also to the three Presidencies, a lower District Court, corresponding with that of the Principal Sudder Ameen, and a Divisional Court corresponding with that of the present District Moonsiffs. On the Criminal side the proposal is to have a Sudder Court, a Sessions Court, and a Magistrate's Court, which all exist at present, Courts also of Deputy Magistrates of two classes, the first to be filled by the young Assistants, and present Deputy Magistrates, and the second by the present Tehsildars, so that as far as the order and succession of the Courts are concerned, there does not appear to me to be such entire novelty as the Government seem to suppose.

12. As regards the composition of the Courts, there is a change proposed in as much as it is intended that the upper District Court should be presided over by three Judges, but this is not a novelty in Madras as such Courts existed there up to the year 1843, and it is not this probably to which the Government object, as I observe that Courts similarly constituted are recommended in the Memorandum drawn up by the Honorable Mr. Morehead, on the 15th of May last, a copy of which was forwarded to me by His Excellency the Governor of Madras. The result of my own experience in the provinces of the Madras Presidency is that there is no act of the Government which the people have so generally regretted as the substitution of a single Civil Judge for the former Courts of appeal presided over by three Judges.

13. There remains to be considered the powers and jurisdiction of the proposed Courts. On the Civil side the Divisional Court, which is identical with the present Moonsiff's Court, is to have the jurisdiction now exercised by Moonsiffs in Madras, the unappellate jurisdiction in suits not exceeding 20 Rupees being of course preserved to that Presidency; the lower District Courts are to have jurisdiction to the same amount as is now enjoyed by the Principal Sudder Ameens by whom these Courts will probably be filled, and the upper District Courts, and the Sudder Courts, are in like manner to remain unaltered as far as amount of jurisdiction is concerned. On the Criminal side it is not very easy to draw a similar comparison, because the Code of Criminal Procedure, and the Penal Code are not yet settled, and it is on the settlement of those Codes that the powers of the Courts of Session are in some degree to depend. To the Magistrates, enlarged powers are given, and I freely admit that it will be a source of much disappointment to me, if the very limited powers of the Magistracy in Madras, both European and Native, remain longer unextended. The Madras Magistrates are men of considerable experience, and if they were not Magistrates they would be Sessions Judges, so that it is difficult to perceive why they may not, as Magistrates, be entrusted with powers to imprison for 2 years when, if they were Sessions Judges, a position to which their standing in the service would entitle them had they entered the judicial branch of the service, they would have passed a sentence seven times more severe. Deputy Magistrates of the first class are to have no higher power than Assistant Magistrates can even now exercise under Section LIV of Act VII of 1843, and although the

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powers now exercised by the Tehsildar would, under the proposed law, be enlarged from confinement for 10 days to imprisonment for one month, I cannot avoid the expression of my opinion that the change is extremely desirable.

14. It is possible that the Government of Madras may have considered that these Bills are applicable only to Bengal from supposing that, as in that Presidency the Magistrate is a separat Officer from the Collector, he has time to devote to Criminal trials which the Collector and Magistrate in Madras has not, but if this impression should exist, it is founded on a mis-apprehension as the Offices of Collector and Magistrate have been this year re-united in Bengal under Orders from the Home Government. It may still, no doubt, be argued with very great truth that the Collector and Magistrate of a large Province in Madras has more to do than a similar Officer in the smaller Districts of Bengal, but it must be remembered that, as the Deputy Magistrates of the 1st class will, under the proposed law, be competent to decide all cases which do not call for a more severe sentence than six months' imprisonment, and as all such Deputy Magistrates may, at the pleasure of the Government, be invested with the full powers of a Magistrate, the Magistrate of the Zillah will seldom be called upon to exercise his extended Criminal powers, while the advantage to the people of having Criminal Courts in different parts of the District will be one that will be highly appreciated.

15. I have dwelt long on the provision of these Bills in consequence of the very strong language in which the Government have expressed their opinion that they are applicable to the state only of the Bengal Presidency, and that their enactment would derange the whole Judicial system of Madras, and before laying before the Council any expression of the wish of the Government that the Madras Presidency should be excepted from the Procedure Code and from the Bills to reinstitute the Courts, I wish to be more fully acquainted than I am at present with the peculiarities of that Presidency which, in the opinion of the Government, render the Bills in question so wholly inapplicable to its wants.

16. The Madras Government is perhaps not entirely aware of the difficulties that would attend an attempt on my part to obtain the exceptions they require. The Government have noticed in the papers to which this letter refers, that while the Madras Village Police only are excepted from the Procedure Code by the Select Committee, the exception extended to the District Police in Bombay, and they may be surprised to learn that at the last meeting of the Council the position held by the two Presidencies respectively, was wholly reversed, and that while in consequence of being able to argue that a different Police system to be introduced at Madras required a different procedure, and being prepared with a separate Code to suit the Madras system, the Council extended the exemption in Madras from the Village to the District Police, it, at the same time, considerably restricted the exception formerly accorded to Bombay.

17. There is a very strong desire to make the Procedure as uniform as possible throughout the Regulation Provinces of India, and having had the support of the Judges of the Supreme Court to the principle of the Madras Police Bill when it was read a second time, I had to encounter their opposition when I brought forward the proposal to give Madras a distinct Procedure.

To the Honorable the Legislative Council.

We, the Select Committe on the Bill "for the better regulation of the Police within the territories subject to the Presidency of Fort Saint George" have the honor to submit the following Report.

Extract from Mr. R. Montgomery's Report on the Administration of Oude.
From Chief Secretary to Government of Fort Saint George, dated 6th May 1859, and enclosures.
From Lieutenant Colonel Larcom, Deputy Secretary, Dublin, on the relations between the Irish Constabulary and the Irish Magistrates, dated 7th February 1859.
Memorandum by Mr. R. S. Bedgrave, Clerk in charge of the Police Department, at the Home Office, London, upon the relation between the English County Police and the English Magistrates.
Compendium of Rules for the Oude Military Police.

2. The papers noted in the margin have been communicated to us. We have carefully considered these communications, and have made alterations in the Bill, the most important of which we proceed to notice.

Proceedings of the Madras Government, Judicial Department, for the month of January 1860.

3. Sections I to XX.—The amendments proposed by the Select Committee in this portion of the Bill, relate chiefly to the supervision and control of the Police Force which it is the object of these provisions to organize. The leading feature in the change of system originally proposed was described to be the "entire separation of the Police from the Revenue and Magisterial Departments, and its constitution as a distinct department under the immediate control of Government;" and the Original Bill, which was introduced in order to give the requisite legislative authority to the new system, after noticing in its Preamble the expediency of separating the judicial functions of the Magistrate and his subordinates from duties relating to matters of Executive Police, and after enacting that the entire superintendence of the Police Force should be vested in the Governor in Council, and that the administration of this Force should be the Chief Commissioner and his subordinates, transferred to the Police authorities, to be appointed under the Act, all powers of Police belonging to the existing authorities, and provided that no Police Functionary should possess or exercise any judicial authority.

4. The effect of these provisions, had they become law, would have been that the Police would have been altogether removed from the orders of the Magistrate, and committed to another Officer responsible to a Chief Commissioner, a general Superintendent of Police, and that all authority by the Magistrate over the Police would have ceased.

5. It is, however, doubtful if the Madras Government, when it advocated the introduction of the measure, contemplated any such result.

6. The relative position of the Magistracy and Police under various systems are described in the papers which have been referred to us. In the letter from the Chief Secretary to Government of Fort Saint George, dated the 6th May 1859, the relation in which it is contemplated by that Government, that the Police of a District under its local Superintendent shall stand to the Magistrate, is thus described—first, the former is to be entirely under the orders of the latter; second, the functions of the Commissioner or Inspector General are to be confined to the organization of the establishment, and to maintaining it in a state of efficiency by a proper attention to promotion, discipline, and other details of management, the object being said to be to place an improved instrument for the prevention and detection of crime, at the disposal of the Magistrate.

7. While a majority of the Select Committee concur in these views, they are unanimous in thinking that, on a question so intimately connected with Government, as the organization and administration of the Police, the Government which is responsible for the peace and good order of the country, should be allowed to introduce the system which it deliberately considers to be best adapted to the attainment of these ends. We have therefore adopted the views of the Madras Government, and have introduced amendments in the Preamble, and in Sections V to X, which appear to be calculated to adapt the provisions of this Bill to the intended system as above described.

8. Section XL.—The Original Bill gives to the Chief Commissioner the appointment and dismissal of all Police Officers. We have, to some extent, modified this provision, because it appears to us to be essential to the functions of the District Superintendents that some power of appointing and dismissing the inferior Officers should be vested in them.

9. Section XIII.—(Police Superannuation Fund.) This Section remains in the shape in which it received the sanction of the Madras Government. The Select Committee were at first not disposed to recommend its retention, but as the system appears to be in full and efficient action in the Presidency Police Force, constituted under Act XIII of 1856, both in Calcutta and Madras, they do not recommend that any alteration be made.

10. Sections XXIII to XXVIII and XXXI to XLIV.—These Sections of the Bill, conferring the requisite powers on the Police, and regulating their procedure in the exercise of such powers, we were not at first, unanimous in proposing to retain, as their objects appeared to be sufficiently provided for in the Code of Criminal Procedure now under the consideration of the Council, but the Government of Madras having expressed a wish that the Bill, as amended by the Select Committee, should be seen by them before it was reported, and having, in returning it, stated in the strongest terms their opinion that the great experiment they are about to

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try in the re-constitution of the Madras Police, will not be fairly developed under the procedure laid down in the Code, and that a separate and distinct system of Police requires, in some respects, a separate and distinct procedure, we have resolved to leave these Sections in the Bill, and to recommend to the Council that they be retained. The system to be introduced in Madras is, at all events as far as that Presidency is concerned, at present an experiment, and we are of opinion that the Government which has resolved to try it, should not be fettered in its course of action in matters of mere detail. It is true that some parts of the Bill are, in principle, identical with parts of the Code, and have indeed been taken from it, but if the course of procedure upon any points is to be laid down in the Bill, it appears better that the Bill should be complete in itself, and embrace all points, the Madras Police being excepted from the operations of the provisions of the Criminal Procedure Code.

(Signed) H. FORBES,
(„) J. OUTRAM,
(„) P. W. LEGEYT,
(„) H. B. HARINGTON,
(„) A. SCONCE.

No. 2. MINUTE by the Honorable W. A. MOREHEAD.

A great deal in the Criminal Procedure Code which we formerly deemed objectionable, has been removed by the enactment of the Madras Police Bill, and by the preservation to the Heads of villages of their Judicial and Magisterial powers. The Code therefore as it now affects this Presidency is no longer the injurious measure it was then considered to be, and its introduction into this Presidency may, with some further alterations, be safely assented to.

Mr. Forbes in his letter dated the 7th September last, states that the objections taken to the Bill by the Judges of the Sadr Court have still to be considered. I shall only therefore notice that portion of the Bill, connected with the proposed Criminal Courts, which ought not in my opinion to be introduced into this Presidency.

The Bill or Code contemplates the transfer to the Magistrates of this Presidency of the Criminal powers which have been hitherto exercised by the Subordinate Judges and Principal Sadr Amíns, a measure which I am satisfied cannot succeed. Our Magistrates are already over worked, so much so that they rarely exercise the extended powers vested in them by Section LIV, Act VII of 43, and it does appear to me singular that Mr. Forbes, although he must have been well aware of the above fact, should in the 13th and 14th paragraphs of his letter have pressed upon this Government the adoption of this course. The reasons which he assigns for so doing, are that the Magistrates are generally men of experience, and that the Bengal Magistrates who already exercise these extended powers have lately been also made Collectors.

Regulations X of 16 *and VI of 22.*

It is not that our Magistrates lack experience, nor from any apprehension that they cannot safely be trusted with the contemplated extended powers, that I object to this portion of the Code. I object to it because a Collector and Magistrate in Madras has no leisure to hold such important trials, his duties being too multifarious and onerous to permit of his so doing. The greater part of the year his revenue duties compel him to be moving about in his district. The want of a stationary Criminal Court would be much felt. Parties seeking redress would not know where to find these Magistrates' Courts, and when found they would have to follow them from one place to another until their business, frequently occupying many days, was concluded. The work would under such circumstances be badly done, delays must necessarily occur, and the inevitable result would be confusion and general dissatisfaction. By the introduction of the measure, I can see no advantage held out. We really gain nothing, whilst we assuredly incur a positive risk of swamping our Magistracy. In Bengal none of the difficulties I have mentioned exist. The revenue system is different, the districts are small, and the Collector and Magistrate is seldom or never absent from his head quarters, no comparison therefore can be institut-

ed, in regard to this measure, between the two Presidencies. In thus objecting to the Magistrates being vested with the Criminal powers of the Sub and Principal Sadr Amíns' Courts, I do not desire to advocate the retention of these Courts. I would require the three Judges of the Session Court to dispose of all criminal cases that involved a jurisdiction higher than that at present exercised by the Magistrates. One Session Judge should decide all cases hitherto decided by the Sub Judge and Principal Sadr Amíns, and this duty might be taken in rotation, for a month at a time, by the Judges of the Session Court.

The Session cases should be forwarded, by the Magistracy of the District, direct to the Session Court. The Magistrates being no longer vested with the control of the Police in the performance of its detective duties, renders such a course unobjectionable. Sections 15, 34 and 106 of the Code, make special reference to a Deputy Magistrate, but no allusion is made to Joint or Assistant Magistrates.

In various Sections it is said the Magistrate or other Officer may do so and so, but all such Sections apply to the issue of Warrants &c., not to the holding of trials or Judicial Proceedings of any kind. Section 118, allows a Magistrate to direct an enquiry to be held by his Assistant, a Deputy Magistrate, or one of the Local Police Officers previous to the issue of a process, but I nowhere find that our Joint Magistrates or Assistant Magistrates or Thasildars could hold any Judicial investigations. In fact in Bengal no such functionaries exist, therefore the Code has no provision for them; if I am right in this, Mr. Forbes' attention should be called to it. We can spare none of our Magisterial machinery. In Bengal the want of this machinery led to their vesting District Munsiffs with Criminal jurisdiction, a measure which was extended to this Presidency by Act XII of 1854, but as it was not required, it has hardly ever been brought into operation. Section 205, refers to a class of Courts styled Subordinate Criminal Courts, and it may be intended that the Government should declare the present Courts of the Joint, and Assistant Magistrates to be, after the passing of the Code, such Courts. To do this possibly no objections may exist, but as the jurisdiction of these Courts must be in excess of that at present exercised by the Tahsildars, it does not appear what Court, if any, is to be substituted for them. If no Court is to be provided to dispose of petty cases beyond the jurisdiction of Village Munsiffs, in such cases the parties concerned will have to go to the distant Sub Criminal Court, for redress, instead of obtaining it as now at the Taluk Court of the Tahsildar. To obviate this as well as the other serious public inconveniences, which I have pointed out, it appears to me, that this Government should, as I have before suggested, inform our Legislative Member that we desired that the Judicial functions of our Magistrates and their Subordinates should remain unaltered.

(Signed) W. A. MOREHEAD,

No. 3. MINUTE by the Honorable the PRESIDENT.

I entirely concur.

(Signed) C. E. TREVELYAN,

Gindi, 21st December 1859.

No. 4. MINUTE by the HONORABLE E. MALTBY, dated 26th December 1859.

This question comes before us in a perplexing shape, since the new Courts and their precise powers will not be known until the Penal Code and the Court's Bill are passed.

The principal point now under discussion is the proposed abolition of our Subordinate Judges and the transference of their powers to the Magistracy. I agree with Mr. Morehead that the Magistrates are not *at present* able to undertake such a duty. But when the new Police is fully organised, and each District has its establishment of Covenanted and Deputy Magistrates, I am of opinion that the proposed system would be practicable and in many respects beneficial.

If there are to be 3 Judges of the Upper District Court, one of them in monthly rotation, might dispose of the subordinate cases sent up from the neighbourhood in accordance with Mr. Morehead's suggestion. This arrangement would not be inconsistent with the enlargement of

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the Magistrate's powers and would virtually strengthen the Magistracy of the District by enabling the Assistant and Deputy Magistrates to be stationed in the remoter Taluqs, and would facilitate the adminis ration of justice in a satisfactory manner.

Instead therefore of excepting Madras from the Criminal Procedure Code, I am inclined to propose that the time of its introduction should be left to the discretion of the Local Government.

(Signed) E. MALTBY.

No. 5. MINUTE by the Honorable W. A. MOREHEAD, dated 26th December 1859.

There is no desire to except Madras from the Criminal Procedure Code, all that is asked is to alter, in some slight degree, the Code in question, so as to adapt it to the immediate requirements of this Presidency.

(Signed) W. A. MOREHEAD.

No. 6. ORDER THEREON, 11th January 1860, No. 34.

Ordered that the following letter be despatched.

(Signed) T. PYCROFT,
Chief Secretary.

No. 7. To H. FORBES, Esq., Member for Madras of the Legislative Council of India; dated Fort St. George, 11th January 1860, No. 35.

I am directed by the Honorable the Governor in Council to acknowledge the receipt of your letter of the 7th September last.

2. In the first part of this letter you mention the course which you had adopted, on receipt of my letter of the 22nd August last, to carry out the wishes of this Government for the enactment of the Madras Police Bill as revised by them, and you explain the circumstances which led you to concur in the few and slight modifications which were made in the Bill, in its progress through the Legislative Council.

3. The Bill in question has since become law as Act XXIV, 1859. It is therefore unnecessary for this Government to notice this part of your letter further than to express to you their acknowledgments of your exertions in the matter. It is presumed of course that the provisions of the Act will not in any way be affected by those of the Criminal Code Procedure Bill, if it should become law, but as it is most desirable to avoid all misunderstanding on that head, an explicit declaration to that effect should be inserted in the Code.

4. In the second part of your letter you reply to that part of my letter which communicated to you the objections entertained by this Government to the Criminal Procedure Code then, as now, before the Legislative Council.

5. On this I am directed to remark that much of this Code which was before deemed objectionable has been removed by the enactment of the Madras Police Bill. The Code therefore, as it now affects this Presidency is no longer the injurious measure it was then considered to be, and its introduction into this Presidency may, with some further alterations, be safely assented to.

6. From your letter it appears that the objections to the Bill taken by the Judges of the Foujdárí Court have still to be considered by the Council. This Government will consequently notice only that portion of the Bill connected with the proposed Criminal Courts which ought not in their view to be introduced into this Presidency.

7. The Bill or Code contemplates the transfer to the Magistrates of this Presidency of the Criminal powers which have been hitherto exercised by the Subordinate Judges and Principal Sadr Amíns. This measure cannot succeed here. Our Magistrates are already overworked,

so much so, that they rarely exercise the extended powers vested in them by Section LIV, Act VII of 1843.

8. The reasons which you have advanced for the adoption of this measure in the Madras Presidency are, that the Magistrates are generally men of experience, and that the Bengal Magistrates who already exercise these extended powers have lately been also made Collectors.

9. It is not, I am instructed to state, because our Magistrates lack experience, nor from any apprehension that they cannot safely be trusted with the contemplated extended powers, that Government object to this portion of the Code. They object to it, because a Collector and Magistrate in Madras has no leisure to hold such important trials, his duties being too multifarious and onerous to permit of his so doing. The greater part of the year his revenue duties compel him to be moving about in his District. The want of a Stationary Criminal Court would be much felt. Parties seeking redress would not know where to find these Magistrates' Courts, and when found, they would have to follow them from one place to another until their business frequently occupying many days, was concluded. The work would under such circumstances be badly done, delays must necessarily occur, and the inevitable result would be confusion and general dissatisfaction. By the introduction of the measure, the Government can see no advantage held out; they really gain nothing, whilst they assuredly incur a positive risk of swamping their Magistracy. In Bengal none of the difficulties mentioned exist. The revenue system is different, the Districts are small, and the Collector and Magistrate is seldom or never absent from his head quarters, no comparison therefore can be instituted, in regard to this measure, between the two Presidencies.

10. In thus objecting to the Magistrates being invested with the Criminal powers of the Sub and Principal Sadr Amín's Courts, the Government must not be understood to advocate the retention of these Courts. In the scheme for the amalgamation for the Supreme and Sadr Courts and for the improvement of the Judicial system in this Presidency generally, which the Madras Judicial Commission have just laid before Government, it is designed that the chief Court in each District, or Zillah Court for the despatch of Civil and Criminal business, shall be composed of three Judges. Supposing this carried out, this Court should dispose of all Criminal cases that involved a jurisdiction higher than that at present exercised by the Magistrates. One Session Judge should decide all cases hitherto decided by the Sub Judge and Principal Sadr Amins, and this duty might be taken in rotation for a month at a time by the Judges of the Session Court. The Session cases should be forwarded by the Magistracy of the District, direct to the Session Court. The Magistrates being no longer vested with the immediate direction of the Police in the performance of its detective duties, renders such a course unobjectionable.

11. Supposing such a Court of three Judges established in each Zillah with jurisdiction and mode of procedure as above described, there might in that case be no objection, on the new Police system being fully organized, and the District establishment covenanted and uncovenanted being at the prescribed standard, to the Magistrates and Joint Magistrates being vested concurrently with the Session Court, with the jurisdiction now exercised by the Sub Judges and Principal Sadr Amins. Cases falling within such jurisdiction might be disposed of by the Magistrate when they occurred in the vicinity of a place where he happened to be at the time of their occurrence. Cases arising in other parts of the District might be sent for trial to the Session Court. Authority should be given by the Bill to the Local Government to carry out this arrangement when circumstances might in their judgment render it advisable, the criminal jurisdiction in excess of that now possessed by Magistrates, being until then, reserved wholly to the Sessions Court.

12. From your letter indeed it would appear that it is intended that the Upper District Court or Sessions Court to be established in each Zillah should consist of three Judges, but it is further stated that the Bill for constituting these and the other Courts for carrying out the new Civil and Criminal Procedure Codes has not been brought into the Council, and that the great expence that would not improbably follow their adoption, appears to offer for the present a bar to their introduction.

Council will probably shortly

13. According to the scheme devised by the Judicial Commissioners at Madras, the expense of the Judicial establishments belonging to their plan—which, as already said, provides for Zillah Courts of three Judges—will be little if at all in excess of the present charge. As it is, the Criminal Procedure Code, as it now stands, provides no such Courts, and recognizes no intermediate tribunal between the Sessions Court and the Magistrate. On the latter Officer there must devolve the jurisdiction now vested in the Sub Criminal Judge, and I have to repeat that such an extension is, quite inapplicable to the circumstances of this Presidency.

14. In your letter, paragraph 13, you observe that the Code of Criminal Procedure and the Penal Code are not yet settled, and it is on the settlement of those Codes that the power of the Courts of Sessions are in some degree to depend. This uncertainty, I am desired to remark, applies to other parts of the Code. Thus mention is made of Subordinate Courts *i. e.* Courts Subordinate to the Magistrate. From your letter, as well as from the Bill, a copy of which has been sent to this Government by the Clerk of the Legislative Council, it would seem that these Courts are to be of two grades, Courts of the Deputy Magistrate of the first class, and Courts of the Deputy Magistrate of the second class. The first with a jurisdiction equal to that now given to Magistrates by Section LIV, Act VII, 1843, are to be filled by the present Assistants and Deputy Magistrates, and the second with the present ordinary jurisdiction of a Magistrate are to be filled by the present Thasildars. But the Act which is to establish these Courts has not yet passed nor is likely soon to pass, and it does not appear what is to be done in the interim.

15. It is true that by Section 317 of the Criminal Code Bill, the jurisdiction and procedure of District *Police* Officers in the Presidency of Madras are preserved, by which it is probably intended to save to the Thasildars of this Presidency their present powers in the trial of petty cases and the committal of more serious offences to the higher Courts. But by Act XXIV, 1859, Thasildars in Districts where that Act is introduced cease to be *Heads of Police* or to have any executive Police powers. Their functions are to be Judicial or Magisterial and there seems nothing in the Criminal Procedure Code, (apart from the Court's Bill, the enactment of which is altogether uncertain) to confer on them or continue to them any Magisterial or Judicial jurisdiction. The same remark may indeed be made in respect to the Heads of Village Police or Village Moonsiffs who possess Judicial powers for the adjudication of petty cases in addition to their Police powers. It is of course essential that their Judicial and Magisterial powers should be preserved to the Thasildars and Village Moonsiffs and that this should be so clearly expressed in the Code that no doubt may arise upon it.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. F. Cartledge.

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and the Code of Criminal Procedure having received very numerous, and important alterations, will be two republished for a period of three months, but you must assume the Government that as irregularity was committed in the non transmission to them of the Bills as amended by the Select Committee, and the non republication of the Bills before it had been discussed in a Committee of the whole Council.

8. In the remarks of the Government on the Code of Criminal Procedure they have been unable to discover that any reference is taken to the existence of any of the provisions relating to such as concern the Police, and as the Madras Police has been exempted from the operation of the Code, provided it conducts that as far as the Bill affects the Courts, no material dissatisfaction is felt.

9. The Bills for reconstituting the Courts have not been brought in, and the great object that is sought, and unfortunately, following their addition, appears to affect, for the present, a bar to their introduction.

[illegible] Council will probably shortly

the Government, in their letter in reply, entertain an opinion that the Bill have been drawn solely with reference to Bengal, where the procedure and duties of the Tribunal, from the lowest to the highest, differ so widely from those in Madras, as to preclude even the possibility of comparison. The office of the Head of a Village which is an important one in Madras and Bombay does not exist in Bengal, but provision has been made in the Codes of Civil & Criminal Procedure for the retention of the jurisdiction of the village Monsiffs, and the Head of the Village; and as their jurisdiction is preserved it is obvious that the Institutions are to remain and that their omission from the Bill for the Constitution of the Courts are accidental, and can be supplied before the Bills are introduced.

10. The Courts of the village Monsiffs, and the village Magistrate having been thus preserved, it is clear that Ld. not perceive so clearly and would wish to obtain relief in this

that

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Minute -

In their letter 22 Aug/59 to their Members of the Legislative Council, the Madras Govt strongly objected to the extension of the Criminal Procedure bill now before Council, to the Madras Presidency -

2 The Points objected to by them in their letter of 7 Sept last -

3 The papers were referred to H Ex the Governor and I have just received his Minute upon them -

4 The subject requires early attention, as the Amendments which the Bill was to be published have expired, & the Council will probably shortly

Resume the discussion of the
5/ The question is indeed mixed
up with that of the Scheme of
Courts & Code of Procedure desi-
-red by the Madras Judicial
Commission - but it is the proper
mind not to allow it to affect our
account -

6/ Then Mr Lushington states that
he demurs absolutely to the abolition
of the Subordinate Judge's Courts &
P.S. Amendships of the Sessions
Courts of the Judges recommend-
-ed by the Commission be adopted -
From Mr Forbes letter it appears
that the establishment of such
Courts is demanded by the public
but cannot now be carried out
for financial reasons -

7 Unless Government thinks how-
-ever it is the criminal jurisdiction

however exercised by the Sub Judges
and P.S. Amens to be provi-
-sional for. It cannot be
thrown upon the Sessions Judges,
and Mr Lushington has
shown reasons for objecting
to the Police plea of devolving
it on the Magistrates & their
Assistants -

J.P.

C 5 Jany/60

A great deal in the Criminal Procedure Code which we formerly deemed objectionable, has been removed by the enactment of the Madras Police Bill, & by the restoration to the Heads of Villages of their Judicial & Magisterial powers.

The Code therefore as it now affects this Presidency is no longer the injurious measure it was when considered here. & Its introduction into this Presidency may after certain further alterations be safely assented to.

Mr Forbes in his letter dated the 7th ult. states that the objections taken to the Bill by the Judges of the Sudr Court have still to be considered. I shall only therefore notice that portion of the Bill connected with the proposed Criminal Courts which ought not in my opinion to be introduced into this Presidency.

The Bill is to [illegible] the

[illegible]

to the Magistrates of this Petty Sessions
of the Circuit of Jones which have
been selected and directed by the Sub-
Regulations of 16 & 22 Division Judges & Municipal Laws &
Ordinances, & Orders which from date
hereof become part of the Magistrates
duties already mentioned, so much to
that purpose as relates to Petty Sessions
of the Peace by Act VIII of 43 - & which
it does appear to the Magistrates
that Mr Jones who must have been
duly aware of the above part should
by the 13 & 14 paras of his letter have
applied before this Court the order stated
of this Petty Sessions - The reasons which
he alleges for so doing, are that the
Magistrates are generally aware of the
Powers & Duties of the Stipendiary Magistrates who
Majority of the Petty Sessions Jones
have lately been appointed to the Circuit -
It is not that our Magistrates lack
experience

a proper copy of the directions that they have
duly received to the duties
of Police & Petty Sessions but of part
to their portions of the Code - I think it
also a Magistrate to have for
Clerk a Magistrate who has
important
duties to hold each week - his duties
except the Petty Sessions
to prevent his absence -
frequently
consequently
many days
The Police would thus be kept entirely
Powers be badly done, delay & much
necessarily caused & the most valuable
Code would be confusion &
Several

dissatisfaction - By the introduction
2 more of the Measures Steps do no
advantage held out [illegible]
[illegible] Justly
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] a positive risk
of [illegible] our Magistracy -
The Principal Power of the disposable
Force Remains and Rests. The Reserve
System is dispersed, the distributes
and Heads of the Detectives [illegible]
[illegible] delaying or even depriving
Head Quarters - not only [illegible]
[illegible] [illegible] to Civil Measures, between the two
Presidencies - [illegible]
[illegible] [illegible] [illegible]
[illegible] - In this Appeal to the
Magistracy [illegible] [illegible]
Criminal Powers of the Police Court, I do not deem [illegible]
the selection of these Courts - I would
require the Three Judges of the Police
Court & this Power of the Criminal
Court -

that unchecked exercise of
Power [illegible] at Independent
Dated 4 the Magistracy - One
Section Leaves Choice to decide
latter Refers to decided 4 the
Lord J. & P. Statutes - And this
duty Power to be taken for a
Month at a time 4 the
Judges of the Police Court -
The Sessions Cases - should be
forwarded 4 the Magistracy
of the District direct to the Police
Magistrates Court - The [illegible]
[illegible] Powers to decide,
Reports to Court Personally
Sects 34 - 15 & 16 Vict. c. 106 - Power to a Deputy Magistrate
Reference to an Deputy Magistrate
but no allusion is made to Joint
or Visit Magistrates
Instructions stations it is said the
Magistrate or other Officers may
do not to but all such Powers

apply to the issue of warrants &c. — ~~to ...~~ not to the holding of trials or judicial proceedings of any kind — Sect 118 allows a Magistrate to direct an enquiry to be held by his Assist. or Dept. Mr. or one of ~~the~~ local Police Officers previous to the issue of a process but I nowhere find that any Joint Magistrate, or Asst. Mr. or Tahsildar could hold any judicial investigations — in fact in Bengal no such functionaries exist, there for the Code has no provision for them. If Tahsildars in the [illegible] elsewhere should be added to it, we have no [illegible] of our magisterial machinery in Bengal — the want of this machinery led to the vesting the District Moonsiffs with ~~[illegible]~~ criminal jurisdiction ~~[illegible]~~ powers

a measure which was extended to this Presidency by Act XII of 54 but as it was not required it has hardly ever been brought into operation. Sect 205 refers to a class of Courts styled Subordinate Criminal Courts — and it may be intended that the Court should declare the present Courts of the Joint & Asst. Magistrates to be so after the passing of the Code, such Courts — to this possibly no objections may exist, but as the jurisdiction of these Courts must be in excess of that at present exercised by the Tahsildars, it does not appear what ~~[illegible]~~ Court if any is to ~~take the place of these Courts~~ be substituted for them — If no Court is to be provided to dispose of petty cases beyond the jurisdiction of Tahsildars the parties would have to go to the distant Sub. C. C. for orders instead of ~~to obtain~~ obtaining them as now at the ~~local~~ district Taluk Court of the

Madrid 6 Dec 1859

I entirely concur
Lt Morgan

Simla 21 Dec 1859

(Copy)

Judicial Department.

Minute by the Honorable W. A. Morehead.

A great deal in the Criminal procedure Code which we formerly deemed objectionable, has been removed by the enactment of the Madras Police Bill, and by the preservation to the Heads of Villages of their judicial and Magisterial powers. The Code therefore as it now affects this Presidency is no longer the imperfect measure it was at first considered to be, and its introduction into this Presidency may, with some further alterations, be safely assented to.

Mr Forbes in his letter dated the 7th September last, states that the objections taken to the Bill by the Judges

Madras 6 Dec 1859

I coincide in this decision as well as the other serious Inconveniences which I have pointed out, it appears to me that this Court should as much as possible be spared, in common our Legislature have been that we are desired that the Judicial functions of our Magistrates & Police Officers should remain undisturbed

W Morehead

judges of the Sadr Court have still to be considered. I shall only therefore notice that portion of the Bill, connected with the proposed Criminal Courts which ought not in my opinion to be introduced into this Presidency. —

The Bill or Code, contemplates the transfer to the Magistrates of this Presidency of the Criminal powers which have been hitherto exercised by the Subordinate Judges and Principal Sadr Ameens, a measure which I am satisfied cannot succeed — our Magistrates are already overworked, so much so that they rarely exercise the extended powers vested in them by Section LIV Act VII of 43 — and it does appear to me singular that Mr Forbes, although he must have been well aware of the above fact, should in the 13 & 14 paras: of his letter

Regulations X of 16 and VI of 22

letter have pressed upon this Government the adoption of this course — The reasons which he assigns for so doing are that the Magistrates are generally men of experience, and that the Bengal Magistrates who already exercise these extended powers have lately been also made Collectors.

It is not that our Magistrates lack experience, nor from any apprehension that they cannot be trusted with the contemplated extended powers, that I object to this portion of the Code — I object to it because a Collector and Magistrate in Madras has no leisure to hold such important trials — his duties being too multifarious and onerous to permit of his so doing. The greater part of the year his revenue duties compel him to be moving about in his district. The want

of

of a stationary Criminal Court would be much felt. Parties seeking redress would not know where to find these Magistrates Courts and when found they would have to follow them from one place to another until their business frequently occupying many days, was concluded. The work would under such circumstances be badly done, delays must necessarily occur, and the inevitable result would be confusion and general dissatisfaction. By the introduction of the measure I can see no advantage held out, we really gain nothing, whilst we assuredly incur a positive risk of swamping our Magistracy. In Bengal none of the difficulties I have mentioned exist. The revenue system is different, the districts are small

small, and the Collector and Magistrate is seldom or ever absent from his head quarters. No comparison therefore can be instituted in regard to this measure between the two Presidencies. In thus objecting to the Magistrates being vested with the Criminal powers of the Sub and Principal Sadr Ameen Courts, I do not desire to advocate the retention of those Courts. I would require the three Judges of the ~~Sadr~~ Court to dispose of all Criminal cases that involved a jurisdiction higher than that at present exercised by the Magistrate. One Session Judge should decide all cases hitherto decided by the Sub Judge and Principal Sadr Ameens. And this duty might be taken in rotation for a month at a time by the Judges of the ~~Sadr~~ Court.

Session

Session

The Session cases should be forwarded by the Magistracy

Session

Magistracy of the District, direct to the ~~Law~~ Court. The Magistrates being no longer vested with the control of the Police in the performance of its detective duties, renders such a course unobjectionable. Sections 15, 34 & 106 of the Code make special reference to a Deputy Magistrate, but no allusion is made to Joint or Assistant Magistrates.

In various Sections it is said the Magistrate or other officer may do so and so - but all such Sections apply to the issue of Warrants &c, not to the holding of trials or judicial proceedings of any kind - Section 18, allows a Magistrate to direct an enquiry to be held by his Assistant - a Deputy Magistrate - or one of the local Police officers previous to the issue of a process, but I no where find that our Joint Magistrates or ~~Assist.~~ -ant Magistrates or Tahsildars could hold any judicial investigations - in fact in Bengal no such functionaries exist, therefore the code has no provision for them - if I am right in this Mr Forbes' attention should be called to it - we can spare none of our Magisterial Machinery - the Bengal the want of this Machinery led to their vesting District Moonsiffs with criminal jurisdiction - A measure which was extended to this Presidency by Act XII of 1854 - but as it was not required it has hardly ever been brought into operation. Section 205 - refers to a class of Courts styled Subordinate Criminal Courts - and it may be intended that the Government should declare the present Courts of the Joint and Assistant Magistrates to be, after the passing of the Code, such Courts. To do this possibly

possibly no objections may exist, but as the jurisdictions of these Courts must be in excess of that at present exercised by the Tahsildars, it does not appear what Court if any is to be substituted for them. If no Court is to be provided to dispose of petty cases beyond the jurisdiction of Village Moonsiffs, in such cases the parties concerned will have to go to the distant Sub Criminal Court for redress, instead of obtaining it as now at the Taluk Court of the Tahsildar. To obviate this as well as the other serious public inconveniences which I have pointed out, it appears to me, that this Government, should as I have before suggested, inform our Legislative Member that we desire that the judicial functions of our Magistrates and their subordinates should remain unaltered

unaltered

(Signed) W. Moorehead

(Signed) W. Moorehead

This question comes before us in a perplexing shape, since the new Courts & their precise powers will not be known when the Penal Code & the Courts Bill are passed.

The principal point now under discussion is the abolition of our Subordinate Judges & the transference of their powers to the Magistracy. I agree with Mr. Morehead that the Magistrates are not at present able to undertake such a duty — But when the new Police is fully organised, & each District has its establishment of Covenanted & Deputy Magistrates, I am of opinion that the proposal is practicable & in many respects beneficial.

If there are three Judges of the Upper District Court one of them in monthly rotation might dispose of the Subordinate cases sent up from the neighbourhood in accordance with Mr. Morehead's suggestion. This arrangement would virtually strengthen the Magistracy of the District by enabling the Assistant & Deputy Magistrates to be

C 5 Aug/60

Ordained in the Remote Talugs, & ways
facilitate the administration of justice
in a satisfactory manner -

- Sentence therefore of excepting Murders
from the Criminal Procedure Code
seem inclined to propose that the time
of the introduction should be left to the
discretion of the Local Government

- I. Hartley

26 Dec 1859

There is no desire to exempt
Murders from the Criminal
Procedure Code all
Murders should be dealt
in the same speedy manner
under one Code, and
adopt it to the immediate
requirements of this

Defendency

Increased

26 Dec
/59

- Mr Forbes understood from what was written that he was to propose
Murders being excepted from the Criminal
Procedure Code - see 05 of his letter -

Ellis

2 9 G

Judicial Department.

Proceedings of the Madras Government

Read the following papers.

From the Member for Madras of the Leg. Council.	Here enter 7 Septr 1859. No.	)
Minute by the Hon. W. Morehead.	/	" "
——do—— Hon the President	/	" 21st Decr 59.
——do—— Hon E. Maltby	(	" 26— " — "
——do—— Hon W. Morehead	(	" 26— " — "

Order thereon 11th January 1860. No. 34.

Ordered that the following letter be despatched.

To
H. Forbes Esqre
Member for Madras of
the Leg. Council — / Here enter 11 January 1860 No. 35. /

GL

WMc

GP

C Stary/60

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Dispd 13th

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Judicial Department

1064

No 35.

To

W. Forbes Esqre
Member for Madras of the
Legislative Council of India

Sir,

I am directed by the Honorable the Governor in Council to acknowledge the receipt of your letter of the 7th September last.

2 In the first part of this letter you mention the course which you had adopted, on receipt of my letter of the 22nd August last, to carry out the wishes of this Govt for the enactment of the Madras Police Bill as revised by them, and you explain the circumstances which led you to concur in the few and slight modi-

fications

modifications which were made in the Bill, in its progress through the Legislative Council.

3. The Bill in question has since become law as Act XXIV. 1859. It is therefore unnecessary for this Government to notice this part of your letter further than to express to you their acknowledgements of your exertions in the matter. It is presumed of course that the provisions of the Act will not in any way be affected by those of the Criminal Code Procedure Bill, if it should become law. but as it is most desirable to avoid all misunderstanding on that head, an explicit declaration to that effect should be inserted in the Code.

4. In the second part of your letter you reply to that

that part of my letter which communicated to you the objections entertained by this Government to the Criminal Procedure Code then, as now, before the Legislative Council.

5. On this I am directed to remark that much of this Code which was before deemed objectionable has been removed by the enactment of the Madras Police Bill and by the preservation to the Heads of villages & to the District Police of their judicial and magisterial powers. The Code therefore, as it now affects this Presidency is no longer the injurious measure it was then considered to be, and its introduction into this Presidency may, with some further alterations, be safely assented to.

6.

6. From your letter it appears that the objections to the Bill taken by the Judges of the Fouj'dari Court have still to be considered by the Council. This Government will consequently notice only that portion of the Bill connected with the proposed Criminal Courts which ought not in their view to be introduced into this Presidency.

7. The Bill or Code contemplates the transfer to the Magistrates of this Presidency of the Criminal powers which have been hitherto exercised by the Subordinate Judges and Principal Sadr Ameens. This measure cannot succeed here. Our Magistrates are already overworked, so much so, that they rarely exercise the extended powers vested in them by Section LIV Act VIII of 1843.

8. The reasons which you have advanced for the adoption of this measure in the Madras Presidency are, that the Magistrates are generally men of experience, and that the Bengal Magistrates who already exercise these extended powers have lately been also made Collectors.

9. It is not, I am instructed to state, because our Magistrates lack experience, nor from any apprehension that they cannot safely be trusted with the contemplated extended powers, that Government object to this portion of the Code. They object to it, because a Collector and Magistrate in Madras has no leisure to hold such important trials - his duties being

Two

too multifarious and onerous to permit of his so doing. The greater part of the year his revenue duties compel him to be moving about in his district. The want of a Stationary Criminal Court would be much felt. Parties seeking redress would not know where to find these Magistrates' Courts - and when found, they would have to follow them from one place to another until their business frequently occupying many days, was concluded. The work would under such circumstances be badly done, delays must necessarily occur, and the inevitable result would be confusion and general dissatisfaction. By the introduction of the measure, the

Government

Government can see no advantage held out; they really gain nothing, whilst they assuredly incur a positive risk of swamping their Magistracy. In Bengal none of the difficulties mentioned exist. The revenue system is different, the districts are small, and the Collector and Magistrate is seldom or never absent from his head quarters. No comparison therefore can be instituted, in regard to this measure, between the two Presidencies.

10. In thus objecting to the Magistrates being invested with Criminal powers of the Sub and Principal Sadr Ameens' Courts, the Government must not be understood to advocate the retention of these Courts.

In

In the scheme for the amalgamation of the Supreme and Sadr Courts and for the improvement of the Judicial system in this Presidency generally, which the Madras Judicial Commission have just laid before Government, it is designed that the Chief Court in each District, or Zillah Court for the despatch of Civil and Criminal business shall be composed of three Judges. Supposing this carried out, this Court should dispose of all criminal cases that involved a jurisdiction higher than that at present exercised by the Magistrates. One Session Judge should decide all Cases hitherto decided by the Sub Judge and Principal Sadr Ameens, and this duty

duty might be taken in rotation for a month at a time by the Judges of the Session Court. The Session Cases should be forwarded by the Magistracy of the Session District direct to the Session Court. The Magistrates being no longer vested with the immediate ~~Control~~ direction of the Police in the performance of its detective duties, renders such a course unobjectionable. Supposing such a Court of three Judges established in each Zillah with jurisdiction and mode of procedure as above described, there might in that case be no objection, on the new Police System being fully organized, and the District establishment covenanted and uncovenanted being at the prescribed standard, to the Magistrates

See for further

Magistrates and Joint Magistrates being vested concurrently with the Session Court, with the jurisdiction now exercised by the Sub Judges and Principal Sadr Ameens. Cases falling within such jurisdiction might be disposed of by the Magistrate when they occurred in the vicinity of place where he happened to be at the time of their occurrence. Cases arising in other parts of the District might be sent for trial to the Session Court - Authority

12 From your letter indeed it would appear that it is intended that the Upper District Court or Sessions Court to be established in each Zillah should consist of three Judges - but it is further stated that the Bill for constituting these and the other Courts for carrying out

should be given by the Bill to the Local Govt to carry out this arrangement whenever circumstances might in their judgment render it advisable - the jurisdiction in excess of that now possessed by Magistrates, being until then, vested wholly in Session Court

out the new Civil and Criminal Procedure Codes has not been brought into the Council, and that the great expence that would not improbably follow their adoption, appears to offer for the present a bar to their introduction

13. According to the scheme devised by the Judicial Commissioners at Madras, the expence of the Judicial establishments belonging to ~~this place~~ which as already said provided for Zillah Courts of three Judges - will be little if at all in excess of the present charge. As it is, the Criminal Procedure Code as it now stands, provides no such Courts and recognizes no intermediate Tribunal between the Sessions Court and the Magistrate - On the latter Officer there must devolve

devolve the jurisdiction now vested in the Sub Criminal Judge, and I have to repeat that such an extension is ~~for the present at least~~ quite inapplicable to the circumstances of this Presidency.

14 In your letter para 13, you observe that the Code of Criminal Procedure and the Penal Code are not yet settled, and it is on the settlement of those Codes that the power of the Courts of Sessions are in some degree to depend. This uncertainty, I am desired to remark applies to other parts of the Code. Thus mention is made of Subordinate Courts. ie Courts subordinate to the Magistrate. From your letter, as well as from the bill a copy of which has been sent to this Government by the Clerk of the Legislative

Council, it would seem that these Courts are to be of two grades, Courts of the Deputy Magistrate of the first Class, and Courts of the Deputy Magistrate of the second Class. The first with a jurisdiction equal to that now given to Magistrates by Section XIV Act VII - 1843 are to be filled by the present Assistants and Deputy Magistrates, and the second with the present ordinary jurisdiction of a Magistrate are to be filled by the present Thasildars. But the Act which is to establish these Courts has not yet passed nor is likely soon to pass, and it does not appear what is to be done in the interim.

15 It is true that by Section 317 of the Criminal Code Bill, the jurisdiction and procedure of District Police Officers

Officers in the Presidency of Madras are preserved by which it is probably intended to save to the Thasildars of this Presidency their present powers in the trial of petty cases and the committal of more serious offences to the higher Courts. But by Act XXIV. 1859 Thasildars in Districts where that act is introduced cease to be Heads of Police or to have any executive police powers. Their functions are to be judicial or Magisterial and there seems nothing in the Criminal Procedure Code, (apart from the Courts Bill the enactment of which is altogether uncertain) to confer on them or continue to them any Magisterial or Judicial Jurisdiction. The same remark may indeed be made in respect to the Heads of Village

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Village Police or Village Moonsiffs who possess judicial powers for the adjudication of petty cases in addition to their Police powers. It is of course essential that their judicial and Magisterial powers should be preserved to the Thasildars and Village Moonsiffs and that this should be clearly expressed in the Code that no doubt may arise upon it.—

I have &c.

Fort Saint George,
11th January 1860.

J.C.

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Judicial 1860 Depart

No 35

To

H. Forbes Esqre

Member for Madras

of the Legislative Council

of India

Dated 11th January 1860.

F.P. No 482-

-- 925/61.

Acknowledges the

receipt of his letter of

the 7th September last

regarding the Bill,

for the better regula-

tion of the Police within

the territories subject

to the Presidency of

Fort St George, and

offers certain observa-

tions thereon.

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