

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 460	Press ~~Mis.~~
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Dated 18.4.1860	19 .

6/7.

Not to be folded or roughly handled

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

No. 78. Read the following letter 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, 13th March 1860.

I have the honor to acknowledge the receipt of your letter of the 11th of January last, No. 35.

2. To those parts of your letter which refer to the Madras Police, to the constitution of the Courts, and to the powers confided to the Judges, it is not necessary that I should now particularly advert. Act XXIV of 1859 has satisfactorily provided for the Police, and further discussion on the constitution and powers of the Courts may be reserved until some Bill upon the subject may be before the Legislature.

3. In the third paragraph of your letter a wish is expressed that an explicit declaration, that the provisions of Act XXIV of 1859 are to be in no way affected by the Criminal Procedure Code, should be inserted in the Code itself, in order that all misunderstanding should be avoided. It has however appeared to me that Section 317 of the amended Code fully provides for this, and I have to request that you will draw the attention of the Government to its terms.

4. In the seventh and some following paragraphs of your letter exception is taken to any transfer to the Magistrates of Madras of the Criminal powers now vested in the Subordinate Judges and Principal Sadr Ameens, and the grounds of the objections felt by Government are said to be, not that the Magistrates lack experience, or that any apprehension exists that they cannot be safely entrusted with the extended powers, but that they have no leisure to hold important trials, their duties as Collectors being too multifarious, and requiring them frequently to move about their districts, so that the want of a Stationary Criminal Court would be much felt and parties seeking redress would not know where to find the Court, and would, when they had found it, be obliged to follow it from place to place, until their case was decided. The Government anticipate that delays would necessarily occur, that confusion and dissatisfaction would result, and that no advantage would be gained.

5. ~~As no proposition is at present before the Council to change the existing constitution of the Courts,~~ provision should be made in the Code for retaining, in Madras, the present jurisdiction of the Subordinate Judges and Principal Sadr Ameens, and to this point attention will be attracted when the Code is again before the Council, but with reference to the impression under which the Government apparently are, that the Code contemplates the transfer to the Magistrates of Madras of the

Paragraph 7. Criminal powers which have been hitherto exercised by the Subordinate Judges and the Principal Sadr Ameens, I would request that attention may be given to the first Section of the Code, which declares that "the Criminal Courts of the several grades shall take cognizance of all offences according to the powers vested in them respectively by any Law for the time being in force." This Section, it appears to me, restricts the Madras Magistrates to the exercise of their present powers and sufficiently effects the object which the Government have in view. The same principle moreover is to be found in other parts of the Code, as will be seen by referring to Section 178, by which the action of the Magistrate is restricted to "cases triable by him," and to Section 186, under which the Magistrate is to stop proceedings in any trial in which it may appear at any stage that the case is not one "which the Magistrate is competent to try." All

Section 178.

Section 186.

cases therefore which may call for a more severe sentence than is provided by Section LIV of Act VII of 1843 which vest in the Magistrates of Madras the largest powers they can exercise, would be among those "not triable by a Magistrate," and which "a Magistrate is not competent to try."

7. Although the question of enlarging the Magistrate's powers does not arise in connection with the Code of Procedure, yet as it is discussed in the letter to which I am replying, I would ask the Government to consider whether, though they object to an entire transfer, concurrent

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jurisdiction with the subordinate Courts might not be given, not only without entailing the evils which the Government have supposed would follow the entire transfer, but with great benefit to the people.

8. The chief ground of the objection taken by the Government to any further extension of the Magistrate's judicial powers, is that those officers, would be overwhelmed with work, and in order to ascertain, as accurately as possible, how far this anticipation would be realized in practice, I have referred to the report on the administration of Criminal Justice printed by the Fajdarí Court of Adalat for 1856, the latest year to which I have access. In that report it appears that the total number of Criminal trials held by all the subordinate Judges and Principal Sadr Ameens was 3682, giving, for twenty-three Courts, an average of 160, and even supposing that the transfer of jurisdiction were complete, and that the Subordinate Courts ceased altogether to hold Criminal trials, that amount of work divided among a Magistrate, a Joint Magistrate, two Covenanted Assistants, and four Deputy Magistrates, would give to each only 20 cases in a year, that is, 1 in eighteen days, or 5 in every three months. That even this number of trials would not be overwhelming is shewn by another statement in the same report, by which it appears that, in Tanjore, 65 trials, or 5½ a month, were actually held by the Magistrates under their extended powers, and as there were then no Deputy Magistrates, and as I was myself the Magistrate, and was not in the habit of keeping any of the detailed work in my own office, I am able to assert that all those trials were held by the Covenanted subordinates. The case is still stronger if reference be made to the report for 1853, when the number of cases decided by the Magistrates under Act VII of 1813 was 91, and that they were not hurriedly or carelessly done as proved by the fact that, in 5 cases only, was the decision interfered with on appeal.

9. But this calculation of the number of trials that would be entailed on the Magistrates is far in excess of what would be the fact, because the measure which I advocate is not an entire transfer, but only a grant of concurrent jurisdiction, and as the Subordinate Courts would continue to dispose of all cases committed for trial in the vicinity of their Courts, and of all which, from any peculiar circumstances, it might be expedient to make over to them for trial the number to be disposed of by the Magistrates would be comparatively few.

10. But the Government are further apprehensive that inconvenience would result from parties to a trial having to follow the Magistrate's office when the revenue settlement called the Collector into Camp, and that parties seeking redress would not know where to find the Court.

11. The utmost that we can expect in human affairs is to adopt what will necessitate the least amount of inconvenience, the hope altogether to avoid it is visionary. But the argument that there would be inconvenience in attending a moving Court appears to me only to support the view which I would advocate. The Magistrate of Cuddapah is sometimes more than 80 miles from the Court, and the Joint Magistrate's Head Quarters were, and although lately changed, still are, that distance from Cuddapah. Now of course a Magistrate's office is not always on the move, but supposing that it were, which would give the greater inconvenience to parties in a case arising in a distant talook when a Magistrate's office might temporarily be to accompany the office in a 10 mile march, or to go 100 miles to Cuddapah and back? I have no doubt that many wrongs are suffered in silence from the unwillingness of the injured to undergo all the trouble, inconvenience, and delay, that attend a journey to a distant Court, and that more crime would be punished, and, it is to be hoped, more thereby prevented, if the people had more ready access than they have to the Criminal Courts.

12. As regards the last objection urged, that parties seeking redress would not know where to find a Court that was not stationary, it must be remembered that a Criminal Court is not a Court of first instance to which injured parties complain, but a Court of reference to which

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Criminals are sent, and even were it otherwise, parties desirous of being heard have certainly never been kept from the offices of the Covenanted servants of Government by ignorance of their whereabouts.

13. Lastly it must be remembered that there would be nothing more compulsory in an enlarged concurrent jurisdiction than there is in its present modified form under Section LIV of Act VII of 1843. The Magistrates are not compelled to take up cases under the powers vested in them by that Law, nor would they be so were their powers enlarged; but that they would be able to do so is a measure which I am convinced is highly desirable for the convenience and welfare of the people, and one which by facilitating the punishment of crime, would tend, in some measure to its repression.

14. It will not I hope be supposed that I am insensible to the nature of the duties of a Collector and Magistrate in Madras, but I practically knew the office when its sphere of duty included the Public Works, and the Police, before the addition lately made to its staff of subordinates, and before the introduction of many changes all intended to result in a diminution of a Collector's labor, and I have shewn that even then, a greater number of trials was disposed of by the Magistrates of one Province* than would ordinarily arise in a District, while the means of performing the work have lately been much enlarged.

* Tanjore.

15. In my letter of the 7th of September last to which yours under reply is an answer, I expressed an opinion that it was very desirable that the powers now exercised by Heads of District Police should be enlarged to those now exercised by the Magistrates under Sections XXXII and XXXIII of Regulation IX of 1816, and as the Government have not taken exception to this when objecting to an enlargement of the Magistrates' powers, I would hope that, if they can admit the latter change, they would be willing to concede the former. Now that the Police is a separate body, the Chief Native Officer in a Talook may well be entrusted with some judicial powers more in accordance with the extent of his revenue trust than he at present has.

16. With reference to the last paragraph of your letter, I have to request that I may be informed of the designation which the Government would wish should be in future borne by the Head of District Police and Village Moonsiff, now that Act XXIV of 1859 has left them with only Judicial functions.

ORDER THEREON, 18th April 1860, No. 460.

No. 79.

Resolved, that a copy of the above letter and of that to which it replies be forwarded to the Inspector General Mo-

fussil Police, who will give his opinion whether the provisions of Act XXIV of 1859 be sufficiently saved by Section 317 of the Criminal Procedure Code as quoted in the margin, and if not, in what manner they should be further guarded.

317.—Nothing in this Act shall be held to alter or affect the jurisdiction or procedure of the Heads of Villages or of the District or Village Police officers in the Presidency of Madras; or the jurisdiction of District or Village Police officers in Criminal cases which they have power to try under the provisions of the Bombay Code, or their procedure in such cases, or the jurisdiction or procedure of a single officer duly authorized and appointed under the Laws in force in the Presidencies of Fort Saint George and Bombay respectively, for the trial of petty offences in Military Bazaars at Cantonments and Stations occupied by the Troops of those Presidencies respectively.

2. With regard to the question discussed in paras. 4 to 14, the Government remark, that they have already in their letter of the 11th January last, para. 11, stated that, in the event of a Court of three Judges being established in each Zillah with the jurisdiction and mode of Procedure which they had described, and on the New Police being fully organized, and the District establishment Covenanted and Uncovenanted brought to the prescribed standard, there would

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for the month of April 1860.

then be no objection to Magistrates and Joint Magistrates being vested concurrently with the Session Court with the jurisdiction now exercised by Subordinate Judges and Principal Sadr Amíns. In para. 5 of his letter Mr. Forbes writes that in any proposition which may be brought before the Council to change the existing constitution of the Courts, attention will be drawn to the necessity of retaining at Madras the present jurisdiction of the Sub Judges and Principal Sadr Amíns. If Subordinate Judges and Principal Sadr Amíns are retained, the Government would not object, on the New Police and District Establishment being on a proper footing and at full strength, if such concurrent jurisdiction were given to Magistrates and Joint Magistrates. The exercise of these larger powers as of those now conferred under Section LIV Act VIII, 1843, would of course not be imperative on those officers in all cases, but only to such extent and under such circumstances as would not prejudice the discharge of their other duties.

3. The Government approve the proposal to enlarge the powers of Heads of District Police to those now exercised by Magistrates under Sections XXXII, XXXIII, Regulation IX of 1816. They consider that in the Districts into which Act XXIV of 1859 has been introduced, such officers may appropriately be termed "Talook Magistrates" and Village Moonsiffs "Village Magistrates."

(Signed) T. PYCROFT,
Chief Secretary.

Exd. F. Cartledge.

It may be as well to refer this point
to the Session Court from which I have lately
heard from the Session Court, it seems very
Judicial Department.

Proceedings of the Madras Government

Read the following letter from the
Member for Madras of the
Legislative Council of India.

(Here 13th March 1860.)

Order thereon 18th April 1860, No. 160.

Resolved that a
copy of the above letter
and of that to which
it replies be forwarded
to the Inspector General
Mofussil Police who will
give his opinion whether
the provisions of Act
XXIV of 1859 be sufficient-
ly saved by Section 317
of the Criminal Procedure
Code as quoted in the margin,
and if not in what
manner they should
be further guarded.

2. With regard to the
question discussed in
paras. 4 to 14, the
Government

317. - Nothing in this Act shall be held
to alter or affect the jurisdiction or proce-
dure of the Heads
of District or Village Police officers in the
Presidency of Madras, or the jurisdic-
tion of District or Village Police offi-
cers in Criminal cases which they
have power to try under the provi-
sions of the Bombay Code, or their
procedure in such cases, or the ju-
isdiction or pro-
cedure of a single
officer duly autho-
rized and appoint-
ed under the laws in force in the Pre-
sidencies of Fort St. George and Bombay
respectively, for the trial of petty offences
in Military Bakhars at Cantonments and
stations occupied by the troops of those
Presidencies respectively.

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January last para: 11
stated that, in the event
of a Court of three Judges
being established in each
Zillah with the jurisdic-
-tion and mode of Pro-
-cedure which they had
described, and on the
New Police being fully
organized, and the Dis-
-trict establishment
furnished and the neces-
-saries brought to the
prescribed standard
there would then be no
objection to Magistrates
and Joint Magistrates
being vested concurrently
with the Session Court
with the jurisdiction
now exercised by the
Subordinate Judges and
Principal Sadr Amiens.
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Mr. Forbes writes that
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which

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which may be brought
before the Council to
change the existing con-
-stitution of the courts
-attention will be drawn
to the necessity of retain-
-ing at Madras the pro-
-sent jurisdiction of the
Sub Judges and Principal
Sadr Amiens. If Subor-
-dinate Judges and Prin-
-cipal Sadr Amiens are
retained, the Government
would not object on
the New Police and Dis-
-trict Establishment
being on a proper foot-
-ing and full strength,
if such concurrent ju-
-isdiction were given
to Magistrates & Joint
Magistrates. The exercise
of these larger powers
as of those now con-
-ferred under Section 14
Act VIII-1843 would of
course not be impera-
-tive on those officers
in all cases but only
to such extent and under
such circumstances as
would

would not prejudice the discharge of their other duties.

3.- The Government approve the proposal to enlarge the powers of Heads of District Police to those now exercised by Magistrates under Section XXXII,

XXXIII Regulation IX of 1876.

They consider that in the Districts into which Act XXIV of 1859 has been introduced such officers may appropriately be termed "Taluk Magistrates" and Village Moonsiffs "Village Magistrates."

JP

To the Inspector General
Mofussil Police. } Dated 21st
with Judicial No 35

Sudama

20 April 1850

Judicial and Admiralty

No. 460.

Proceedings of Court

29/10/1841/100-

of the 10/10/1841/100-

125/101

Directing that a copy

of the letter from the

Members of the Legislative

Council, 13/10/1841 and

that to which it refers

respecting the abolition

of the Court of Admiralty

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