M.R.O. 1—30,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 1501–1502 Press ~~Mis.~~

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34-38.

Dated 6.12.1861 ~~19~~

6/7

Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department,
6th December 1861.

Read the following papers :—

No. 34. From THOMAS WILKINS, Esq., Acting Deputy Registrar of the Sudder Court; to T. PYCROFT, Esq., Chief Secretary to Government, Fort Saint George, dated 16th November 1861, No. 114.

Adverting to the Orders of Government, dated the 21st September last, referring copy of a letter from the Member of the Legislative Council for Madras, requesting the particular attention of the Sudder Court to the Bill to repeal certain Regulations and Acts relating to Criminal Law and Procedure, I am directed by the Judges to submit the following observations on the said Bill.

2. Section VIII, Regulation III and Section XX, Regulation IV of 1802, are superseded by the provisions of Sections 169, 171 and 172 of the Code of Criminal Procedure, Act XXV of 1861.

3. The following Regulations and Acts which have already been repealed appear to have been inadvertently entered in the Schedule among those now to be repealed, viz. :—

Section 32, Regulation VII of 1802, Clause 5, Section VIII, Regulation XV of 1803.	By Section 1, Act VIII of 1856.
Section 12, Regulation IX of 1816, Sections 3 to 7, 15 to 18, 21 to 26, Clause 2, Section 29, Sections 35, 38 to 41, and Sections 48 and 55, Regulation XI of 1816.	By Act XXIV of 1859.
Sections XII and LII, Regulation XI of 1816...	By Act III of 1857.
Section III, Regulation IV of 1821......	By Act XXIV of 1859.
Regulation I of 1832..............................	By Act X of 1861.
Section 35, Act VII of 1843......	By Act XIX of 1848.
Section 40, do.	By Act XXIV of 1859.

4. As it is proposed to repeal Section 30, Regulation VII of 1802, which requires the Session Courts to report to the Sudder Court any neglect or misconduct of the Magistrates, the Judges are of opinion that so much of Section 24, Regulation VIII of 1802, as authorizes the Sudder Court to proceed on such report should also be repealed.

5. Section VIII, Regulation XI of 1802 should also be repealed, as it is proposed to repeal Section XII, Regulation XII of 1802, and the punishment for the offences there described are provided for in Section 161 of the Penal Code.

6. The offences described in Section 49, Regulation VI of 1816, being punishable under Sections 183 and 184 of the Penal Code, this Section should also be repealed.

7. The Judges presume that the 2 Clauses entered at the end of the 3rd column of the Schedule opposite to Regulation VIII of 1827, refer to the 3rd and 4th Clauses of Section XIV of that Regulation.

8. Section V, Regulation VIII of 1831, is virtually repealed by Section 398, Act XXV of 1861.

9. The provisions of Clause 1, Section II, Regulation III of 1833, and Act XII of 1854, should be repealed as the Government are empowered under Section 23, Act XXV of 1861 to invest any Sudder Ameen or District Moonsiff with the powers of a Magistrate or of a Subordinate Magistrate.

10. As it is proposed to repeal Section III, Regulation VIII of 1829, and provision is made in Sections 168 and 171 of Act XXV of 1861, for the commitment of cases of perjury, Act XXIII of 1837 should be repealed.

11. Act XXX of 1837 should also be repealed as Section XL, Regulation XI of 1816, therein referred to has been repealed by Act XXIV of 1859.

12. Acts III and XXVI of 1858 are now obsolete and should be repealed, a Principal Sudder Ameen having been appointed to Cochin under Section XLVII, Act VII of 1843, and the Principal Sudder Ameen's Court at Sircy having been abolished.

No. 35. From Captain C. S. HEARN, Acting Inspector General of Madras Police; to T. PYCROFT, Esq., Chief Secretary to Government, Fort Saint George, dated Calicut, 11th November 1861, No. 1840.

General Department.

I have the honor to submit a few remarks with reference to the proposed "Bill to repeal certain Regulations and Acts relating to Criminal Law and Procedure" as it affects Act XXIV of 1859.

2. The Sections of Act XXIV proposed to be repealed are as follows: Sections 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42 and 43.

3. Mr. Robinson in his letters marginally noted, (the latter of which is accompanied by the legal opinion of Mr. Mayne), has fully explained the particulars in which Act XXV of 1861 conflicts with certain vital principles of our Police working. My object is merely to request attention to one or two points involved in the Cancelling Bill.

8th March 1861.
19th August ,,

4. I would suggest that Section 22, Act XXIV of 1859 might stand. It forms a clear and simple guide to the cases in which arrest without warrant is authorized. It is true that these cases are provided for in Sections 100 to 105 of the Criminal Procedure Code, as also in the Schedule attached to that Act. The Schedule however consists of 40 pages; and in working with a Constabulary containing many men of imperfect education, and limited intelligence, it is important to present each duty in as clear and concise a form as possible.

5. Section 160 of the Schedule to Act XXV of 1861 provides that persons "committing affray" shall not be arrested without warrant. But it may be presumed that there is no bar to arrest (under Section 152 Penal Code) if they virtually resist the authority of the Police Officer by continuing to break the peace in his presence. Clause 3, Section 22, Act XXIV is therefore quite compatible with the Procedure Code.

Section 105, Criminal Procedure Code, provides that a Police Officer may interpose for the prevention of any injury attempted in his view to any public building, &c. Should this interposition be resisted or disregarded by the offenders, they would be liable to arrest. Consequently Clause 4, Section 22, Act XXIV does not interfere with the new Criminal Procedure.

The action of Clause 5, Section 22, Act XXIV is confined in the Criminal Procedure Code to the Officer in charge of a Police Station. Should this restriction be deemed indispensable, Clause 5 might be cancelled.

Clause 8 contains a useful provision. It does not trench on the principles laid down in Act XXV of 1861, and there seems no reason why it should be laid aside.

I trust that Section 22, Act XXIV of 1859 may be permitted to stand; except Clause 5 which may be cancelled if necessary.

6. Section 31 establishes a most judicious course of action by "information laid," which appears in no way incompatible with the working of the Procedure Act, and which it is highly desirable to retain. It secures the co-operation and guidance of the Magistracy during the whole process of tracing out a crime. It guards against undue hastiness or indiscretion on the part of the Police. The intelligence and authority of the Magistrate are from the outset brought to bear on the case. The Section is well adapted to the complete system of Sub-Magistracy which exists in this Presidency; and the Police are taught to lay information in all cases where direct action is not absolutely necessitated by the exigency of circumstances. The personal responsibility of the Police in arresting without warrant is thus more clearly defined and intensified, and it becomes an absolute duty to obtain the advice and sanction of Magisterial authority whenever practicable. Section 48, which applies to Towns, is worked generally in connection with Section 31; a course which is obviously advisable when the personal liberty of respectable inhabitants may be involved. Section 31 imposes a wholesome restraint on the Police, without cramping vigorous action on occasions of emergency. I respectfully submit that it should be allowed to stand.

7. Section 3, Regulation IV of 1821 was cancelled by Act XXIV of 1859. The Cancelling Bill now under consideration proposes to re-establish this Section. The Magisterial wants of the country are well provided for by the numerous Taluq Magistrates, and the additional Sub-Magistrates lately appointed. The class of officials swept away by the cancellation of Section 3, Regulation IV of 1821, has not been missed, nor do I think they are now required; especially considering the superior description of Police Officers in the grades of Inspector and Head Constable now placed at the disposal of the Magistracy. It seems unnecessary to re-introduce the regulation quoted; but I advance this opinion with diffidence, as it is a point rather of Magisterial than Police working.

No. 36. From Captain C. S. HEARN, Acting Inspector General of Madras Police; to T. PYCROFT, Esq., Chief Secretary to Government, Fort Saint George, dated 27th November 1861, No. 1,933.

General Department.

With reference to Memorandum, No. 461, dated 25th November 1861, I have the honor to explain that since Mr. Forbes in his letter of the 31st August stated that the proposed re-enactment of Clause 1, Section XI, Regulation XI 1816, was in accordance with Mr. Robinson's expressed wishes, I considered the matter finally settled. I therefore made no allusion to it in my letter No. 1,840 of the 11th instant.

2. In the first general scheme for re-modelling the Village Police it was proposed to institute a class of men termed Village Inspectors (under Section VI Act XXIV of 1859) to control the Village Police in Circles of 4 or 5 Villages each, and to perform the executive Police functions formerly entrusted to Heads of Villages. In some Districts these Village Inspectors have been appointed, and are now working. Under Section 28 of the Act XXIV of 1859, (to which Sections 127 and 142, Act XXV of 1861 are somewhat analogous, though narrower in scope) they are competent to exercise the powers given to Heads of Villages under Clause 1, Section XI, Regulation XI of 1816, which was repealed.

3. But the experiment of Village Inspectors is of doubtful success. In some crime-ridden Districts it has been found necessary to replace the Village Police under the control of Heads of Villages and to make these functionaries strictly responsible, (as before) for all crime occurring in their range. It is probable that this principle will form the basis of the future Village Police system. The Village Watch will be reorganized, but it will be subordinate to its customary chief, who alone possesses real power and influence under the present constitution of Native Village communities.

4. The re-introduction of Clause 1, Section XI, Regulation XI of 1816, is a step in this direction; since Heads of Villages hold no appointment or powers under Act XXIV of 1859. In submitting this explanation, I must observe, that I have no personal knowledge as to the nature of the communication made by Mr. Robinson, to Mr. Forbes on this subject.

No. 37. ORDER THEREON, 6th December 1861, No. 1,501.

Ordered that the following letter be despatched.

(Signed) T. PYCROFT,
Chief Secretary.

No. 38. To the Member for Madras of the Legislative Council of India, dated Fort Saint George, 6th December 1861, No. 1,502.

I am directed to transmit to you, in reply to your letter 31st August last, copies of letters from the Sudder Court, dated 16th November, No. 114, and from the Acting Inspector General of Police, dated 11th and 27th ultimo, Nos. 1,840 and 1,933.

Proceedings of the Madras Government, Judicial Department,
6th December 1861.

2. The Government concur in Captain Hearn's views, in respect to the retention of Section 22, Act XXIV, 1859—except Clause 5—as also in regard to the retention of Sections 31 and 48.

3. The Government see no objection to the re-establishment of Section 3, Regulation IV, 1821.

(Signed) T. PYCROFT,

Exd. T. O'Connor.

Judicial Department.

PROCEEDINGS *of the* **MADRAS GOVERNMENT.**

Read the following letters—

From the Sudder Court—Enter 16th Novr. 61.
No. 114.
" the Inspector Genl. of Police —— 11th & 27th do.
No. 1840 & 1933.

Order—d/6th December 1861 No. 1501.

Ordered that the following letter be despatched—

Jud. Letter to England of
17th January No. 2 of 1862
Replied to No. 10 of 1862

Judicial 1861. Department.

No. 507

PROCEEDINGS OF GOVERNMENT.

Dated 1 Decr 1861

Directing to forward certain correspondence to the Member for Madras of the Legislative Council for India regarding the Bill to repeal certain Regulations and Acts relating to Criminal Law and Procedure.

4093] Madras—Printed at the Government Press.

C: 30th Novr
R. 4 Decr

Despd. 7 w/ Enclos.

Judicial.

No. 1502

The Member for Madras of the
Legislative Council of India.

Sir,

I am directed to transmit to you, in reply to your letter, 31st Aug. last, copies of letters from the Sudder Court, dated 16th Novr. No. 114, & from the Acting Inspector Genl. of Police, dated 11th & 27th ~~Instant~~ ultimo, No. 1840 & 1933.

2. The Govt. concur in Captain Hearn's view in respect to the retention

retention of Section 22 - Act XXIV - '59 - except Clause 5 - as also in regard to the retention of Sections 31 & 48.

2. The Govt. see no objection to the re-establishment of Section 3. Regn. IV - 1821. ~~It may be as well that Magistrates should have the power given by that Section, altho' it may not be often called into action.~~

Fort St George
6th Decr 1861

Judl. Letter to England dy
17th January No. 2 of 1862
Replied to - No. 10 of 1862-

Procgs. [illegible]

Judicial No. 1 Departt.

No. 1502

To
The Members of the [illegible]
of the
Leg. Council of India

Dated 6 December 1861

Transmitting copies of letters from the Sudder Court and from the Ag. Inspector General Police regarding the repeal of all Laws affected by the Penal & Criminal Procedure Codes.-

34 @ 38

C - 30 Novr
R 4 Decr