M.R.O. 1—39,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 639 Press ~~Mis.~~

180-181.

Dated 24.4.1862 ~~19~~

5/6

Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department,
24th April 1862.

Read again Proceedings, 5th April 862, No. 559.

No. 180. Read also the following Endorsement by the Sudr Court :—

No. 52.

The Judges observe that the remarks of the Government of India contained in this letter are not applicable to the Sub-Magistrates of the Madras Presidency, whose procedure as regards the committal of Cases to the Session Courts is regulated by the special Law contained in Section 356 of the Code of Criminal Procedure.

(By order of the Court.)

(Signed) C. F. CHAMIER,
Registrar.

10th April 1862.
To the Chief Secretary to Government.

No. 181. ORDER THEREON, 24th April 1862, No. 639.

To be recorded.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. T. O'Connor.

Judicial Department.

Proceedings of the Madras Government
dated the following letter.
Pc. 1395.

From

A. D. Maitland, Esquire,
Under Secy. to the Govt. of India,

To,

The A. Shaw Stewart, Esquire,
Acting Secy. to the Govt. of Bombay.

Sir;

Dated Fort William, the 15th March 1862.

Home Department
Judicial.

I am directed to acknowledge the receipt of your letter No. 13. dated the 21st of January, transmitting for the consideration of the Government of India a Resolution from the Sudder Foujdary Adawlut of Bombay regarding the Officers who have the power to prepare and Commit Cases for trial to the Sessions under the Code of Criminal Procedure, Act XXV of 1861.

2. Your Communication having been submitted to the Governor General in Council, I am directed to state.

state for the information of the Government of Bombay that His Excellency in Council is of opinion that the Sudder Foujdarry Adawlut of Bombay is right in considering that every Subordinate Magistrate, and every Officer invested with any of the powers of a Magistrate, is not authorized to commit for trial under the Rules of Criminal Procedure.

3. The Governor General in Council is also of opinion that the Court is right in saying that Chap. XII is not free from ambiguity in this respect, and that if it stood alone and unqualified the inference to be drawn from it would be that every such Officer as above described is invested with full powers of Committal.

4. But as it must be admitted, the Governor General in Council is not of opinion that the omission to give the power to all such Officers arose from oversight, or that it is a defect in the Code of Criminal Procedure.

5. If it be considered right that every Officer who has any Magisterial power should have power to commit to the Sessions Court, the Government has the remedy in its own hands by investing all such Officers respectively in the Order appointing them, or by separate Order, with power to commit to the Sessions. Any Officer thus respectively authorized will be clearly a Magistrate within the meaning of Chap. XII or of the Interpretation Clause, and no inference will arise from any of the Clauses cited by the Court or from any other Clause in the Code, that he was not intended to exercise the power of Commitment.

6. The only reason for inferring that all Officers exercising any of the powers of a Magistrate have not authority to commit is the fact that in some of the provisions of the Code it is clearly assumed that there are some Officers exercising some of the powers of a Magistrate who have not power to commit. Besides Sections 171 and 176 cited

it does at present with the Govern-
ment.

I have the honor to be,

&c &c,

Your most obedient Servant,

(Signed) A. Th. Monteath.
Under Secy to the Govt of India.

No. 1396.

Copy forwarded to the Government of Madras
for information.

(Signed) A. Th. Monteath.
Under Secy to the Govt of India.

Order thereon 5th April 1862 No. 559.

A copy of this letter will
be forwarded to the Sudder Court, who
will suggest what orders should be issued
in reference to it, and on what Officers
exercising some of the powers of a
Magistrate should be conferred the power
of Committal to the Sessions Court.

(True Extract)

(Signed) T. Pycroft.
Chief Secretary.

To
The Sudder Court (One Copies)

C. S. Clarke.
Registrar

Ex Establishment

Proc^s 5th April 1862 No. 537

Proceedings of the Madras Govt.
Read again Proc^s 5th April '62 No. 559.
Read also Endorsement by the
Sudder Court — Enter 10th do No. 52.
Order — 24th April 1862 No. 39.

Copy to be recorded.

G. H. Will Sd/ Sec^y

1862 V 187

C/5 Mail

Proc^s April
Ind^l 1862 Dep^t

From

The Registrar of
the Sudder Court. 52.

Dated 10th
Rec^d 11th April 1862.

No. 718

Submitting the remarks of the Judges on the order of Govt requesting information as to what officers exercising some of the powers of a Magistrate should have the power of Committal to the Sessions Court conferred on them — as to what orders should be issued in reference to the letter from the Govt of India on the subject.

With an Order.

Criminal Genl
Dept

No. 52

The Judges observe that the remarks of the Government of India contained in their letter are not applicable to the Sub Magistrates of the Madras Presidency, whose procedure as regards the Committal of Cases to the Sessions Courts is regulated by the special law contained in Section 356 of the Code of Criminal Procedure.

By Order of the Court.

C. A. Clamier.

10th April 1862. Registrar.

To The Chief Secretary
to Government.

No. 1997

From

The Chief Secretary
to Government.

Dated 5th
Rec^d 7th April 1862.

Enclosure 4.

Forwarding a letter from the Government of Madras and requesting the Sudder Court to suggest what orders should be issued in reference to it and on what officers exercising some of the powers of a Magistrate should be conferred the power of Committal to the Sessions Court.