M.R.O. 1—22,000—18-11-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 1130 Press Mis.

281-283

Dated 26.7. 1884

4/5

Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department,
26th July 1864.

Read the following papers:—

251. From J. W[illegible]YKES, Esq., Magistrate of Nellore; to the Honorable ARBUTHNOT, Chief Secretary [illegible]t, Judicial Department-

[illegible]udúru, 3rd March 1864

In [illegible]t of my letter
mit for the co[illegible]ation of Gover[illegible]igh Court, refusing to assist th[illegible]tracy by authoritative rulings on doubtful points.

2. In the former instan[illegible]ruling was refu[illegible]
sidered virtually an appeal against the decision of the Sessions Judge; in the p[illegible]
it is refused [illegible]s not the province of the High Court to advise the Magis-
" tracy to the extent and use of their powers."

3. Reference is further [illegible] the duties of the [illegible]
and the advantages derivable therefrom. But this is no [illegible]
has always been incumbent, and has doubtless hitherto been duly taken
ration, when the assistance applied for was invariably given.

[illegible] England, where changes [illegible]cedents abound, Cou[illegible]
appeal have [illegible]mper themselves by authoritative rulings other tha[illegible]
is deducible from published decisions. But in this country the circum[illegible]
are different.

[illegible]f my [illegible]

it will be seen, I sought, not in the [illegible]
tative ruling as to the construction to be pl[illegible] the Revenue law of 1802.
as our Courts, Civil and Crim[illegible]hen been completely cha[illegible]
times, the application, it seems t[illegible]grounds to support [illegible]
trate would happily look for in vain.

5. I trust the Government will excuse my asking for early orders o[illegible]
of the 3rd ultim. I would not willingly press for an answer. But as it i[illegible]
necessary I should be instructed as soon as possible thereon, inasmuch
sent a case is, I am informed, pending before the Assistant Magis[illegible]ecisely
similar to the case which originated this difficulty, and, as matters stand [illegible]nt,
I am unable to instru[illegible]ubordinate what to do with it. I have no doub[illegible]
full right to make further inquiry; but on the other hand if I instruct Mr. P[illegible]
ton to that effect, and the Court hold to its original decision, then to commit a
case to be similarly disposed of to the former would be simply hurtful to the public
interests.

From J. W. D. [illegible], Esq., Magistrate of Nellore, [illegible]IAMIER, E[illegible]
the High Court of Judicature, Madras, dated Udaya[illegible] February 1864, No. 41.

Under Section 17, Regulation XXVIII of 1802, cases of clandestine removal of [illegible] under attachment are triable by the Courts of Adawlut. With reference to a case now pen[illegible] before the Deputy Magistrate of Nayadupet, I have the honor to request you be will so good as to obtain for me the orders of the High Court:

1st.—As to whether the Civil Court is the only Court of Adawlut to which such cases may be committed.

2nd.—Whether where the property ha[illegible]
the provisions of Section 188 of the Indian P[illegible]

"Nellore." dated 7/8/64

2. The provisions of Regulation XXVIII of 1802 being the orders of Gov[illegible] promulgated and well known, their infringement, I have instructed the Deput[illegible] the orders of the High Court, may be treated as an offence triable under Section 188 of the Penal Code and so disposed of.

3. Whilst as regards the case that calls [illegible] this reference, I beg to state it has [illegible] in the Venkatagiri Zemindari. And with reference to the changes now tak[illegible] large Zemindari of some 2000 square miles, it is, I regret to add, probably only [illegible] other cases of a like nature; a state of things that renders it desirable there should be no uncertainty as to the proper course to pursue, and the powers available where the Zemindar's rights [illegible]

Proceedings of the High Court of Judicature at Madras, 29th February 1864.

Read letter, dated the 6th instant, from the Magistrate of Nellore, submitting the questions:

1st.—Whether the Civil Court is the only Court of Adawlut to which cases of clandestine removal of crops under attachment may be committed.

2ndly.—Whether, where the property has been attached by a renter and not a public servant, the provisions of Section 188 of the Indian Penal Code are applicable.

1. The Magistrate states, that as many cases of this nature are likely to arise within the Venkatagiri Zemindari, it is desirable that there should be no uncertainty as to the proper course to pursue, and the powers available where the Zemindari rights are infringed.

2. The proper mode of giving certainty and correctness to the administration of justice, is the careful consideration by officers entrusted wi[illegible] powers of the various enactments [illegible] the extent and use of their pow[illegible] advise the M[illegible]

(True Extract.)

(Signed) C. F. CHAMIER,
Registrar, Appellate Side.

To the Magistrate of Nellore.

(True Copies)

(Signed) J. W. B. DYKES,
Magistrate.

Referred to the Government Pleader for his opinion on the points proposed by the Magistrate of Nellore in his letter to the Registrar of the High Court, dated 6th February last, No. 41.

FORT SAINT GEORGE,
7th July 1864.

(Signed) J. D. SIM,
Secretary to Gov[illegible]

No. 28 From C. DALE, Esq., Government Pleader, Madras; to J. D. SIM, Esq., Secretary to Government, Fort Saint George, dated Madras, 18th July 1864, No. 149.

I have the honor to acknowledge the receipt of the Proceedings of Government, under the date noted in the margin.

2. The first of the questions referred to me is by no means free from difficulty and doubt, owing to the alterations which, since 1802, have taken place in the constitution and names of the several Courts of Justice in the Mofussil, and to the [illegible]d by the Legislature in effecting such cha[illegible]

3. In the 17th Section of Regulation XXVIII of 1802, where referring to the Court that should have jurisdiction in the matter, the term "Court of Adawlut" is used, six months previously to the passing of that Regulation, the Regulations II, IV and V of 1802 had been passed.

4. Regulation II is styled: "a regulation for establishing and defining the "jurisdiction of the Courts of Adawlut or Courts of Judicature for the trial of Civil "Suits in the first instance." By Section 2 it was enacted that Courts of Adawlut should be established in the several Zillahs specified, and that they were to be denominated after the Zillah in which they were respectively established. By this Regulation the jurisdiction of the Zillah Courts extended to all Civil Suits arising within the Zillah.

5. By Regulation IV of 1802 four Provincial Courts of Appeal were established. These are not in any part of the Regulation referred to under the term "Adawlut." In Section 6 original jurisdiction was given to these Courts to try and determine in the first instance any suit, &c. which might be transmitted to them by the Sudder Adawlut.

6. And by Regulation V of 1802 the Court of Sudder Adawlut w[illegible]tab-lished.

7. These were the only Courts for the trial and disposal of Civil cases which were in existence in the Mofussil when the Regulation XXVIII of 1802 was passed.

8. In 1809 Regulation XII of that year was passed, whereby the jurisdiction of the Zillah Courts over Civil Suits was limited to those in which the cause of action did not exceed the sum of Rupees 5000: suits in which the cause of action exceeded that amount being cognizable by the Provincial Courts.

9. By Regulation I of 1821 the Government were empowered to establish or abolish Provincial and Zillah Courts, to alter stations, and to extend or contract the limits of the jurisdiction of those Courts. I do not, however, understand that any thing has been done under that Act which could in any manner affect the question now under consideration.

10. By Regulation I of 1827 the Government was empowered to establish Auxiliary Courts.

11. And by Regulation VII of 1827 to establish Sudder Ameens' Courts.

12. Under the provisions contained in Act No. VII, of 1843 the Provincial and Zillah Courts have been abolished, and the existing Courts established.

13. At first sight it appeared to me that the term "Court of Adawlut," as used in the 17th Section of Regulation XXVIII of 1802, must be read as confining the cognizance of the acts there referred to, to the Courts of Adawlut which had been so recently established by Regulation II of 1802, and that in consequence it would be necessary to ascertain whether in the subsequent Legislation the powers and jurisdiction of those Courts had been transmitted to the Courts since established.

14. A more deliberate consideration of the Regulation has, however, led me to the conclusion that the term "Court of Adawlut" ought to be read in its more enlarged signification, and as intended to include generally all Courts of Justice; and moreover that it should not be confined to the Courts then in existence.

Proceed *Judicial Depart*

26th July 1864.

15. I am th ion that the existing (have ju
cases of the descripti referred to by Mr. Dykes, and that the qu whether
the Zillah or Subordinate Court has jurisdiction
of the subject matter in dispu

cogniza

gards the second question put by Mr. Dy
in cases where property has been attached by a renter, and not a public servant, Section 188 of the Indian Penal Code is not applicable.

18. I return all the papers laid before me.

No. 283. ORDER THEREON, 26th July 1864, No. 1130.

Ordered that a copy of the Government Pleader's letter be furnished to the Magistrate of Nellore.

(True Extract.)

Secretary to Government.

To the Magistrate of

Exd. J. Tulloch.

Judicial.

Proceedings of the Madras Govt.

Read the following letters —

From the Magistrate of Nellore — Inter 2 Mar '64 No 9.
" the Govt.
Pleader — 18 " July — 149.

Order — 26 July 1864 No 1130.

Ordered that a copy of the Govt. Pleader's letter be furnished to the Magistrate of Nellore.

JP

The Magistrate of Nellore. } dispd 7/8/64

186. *Department.*

No. 1130

f GOVERNMENT.

Dated 26 [illegible]

[illegible] 283

c224
r24