M.R.O. 1—50,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 1271 Press Mis.

190-192

Dated 29-8-19 1864

3/4

Not to be folded or roughly handled

Read the following papers:—

No. 190. From A. HATHAWAY, Esq., Magistrate of Bellary; to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George, dated Camp Gooty, 28th July 1864, No. 28.

I have the honor to request that I may be favored with a legal opinion as to whether an Assistant to the Collector and Magistrate, who has passed the examination for neither standards, is, if authorized by the Magistrate to make a preliminary inquiry into a charge of bribery preferred against a Reddi, competent to administer an oath as Assistant Magistrate; also, whether parties, after taking an oath thus administered, can be subsequently tried under Sections 193 and 205, Indian Penal Code, for intentionally giving false evidence.

2. Section 5, Regulation IX of 1816, which empowers a Magistrate thus to employ his Assistant, has not been repealed by Act XVII of 1862; and witnesses examined under such circumstances may, it is presumed, be legally bound to attend to such transferred authority, and give evidence when called upon. Government have also, in their Proceedings of 11th February 1864, paragraph 3, ruled that "sitting by themselves they should investigate petty Magisterial cases," which would involve the administering of an oath.

3. An oath, as defined by Clause 2, Section 51, of the Indian Penal Code, includes any declaration required or authorized by law to be made before a public servant, or to be used for the purpose of proof whether in a Court of Justice or not.

4. Mr. Mayne in his Commentary on the Penal Code, page 112, states that if the party making the statement were under a legal obligation to speak the truth, even without an oath, the offence described in Section 191 would be committed, even although the oath were unnecessarily and improperly administered by an incompetent person.

5. The latter part of Section 193, and the explanation 2 to it brings the offence within the limits of the inquiry supposed to have taken place.

6. The questions then which remain for solution are: 1st, whether, as above asked, an Assistant Magistrate, who has passed the examination for neither standards, is competent to administer an oath; and, 2ndly, if on an oath thus administered parties in a preliminary inquiry, ordered by the Magistrate to be made by an Assistant Magistrate, are legally bound to dispose and thus become liable to be tried under Section 193 and Section 205, Indian Penal Code.

Referred to the Advocate General for his opinion.

(Signed) J. D. SIM,
Secretary to Government.

FORT SAINT GEORGE,
16*th August* 1864.

No. 191. From J. R. BOYSON, Esq., Government Solicitor, Madras; to J. D. SIM, Esq., Secretary to Government, Madras, dated 22nd August 1864, No. 473.

I have the honor to acknowledge the order of Government noted in the margin, requesting the Advocate General's opinion as to the competency of an Assistant to a Collector and Magistrate (not qualified for either of the standards of

Dated 16th August 1864, and made on letter from Magistrate of Bellary to Government, dated 28th July 1864, No. 28.

Assistant Collector and Assistant Magistrate) to administer oaths, as an Assistant Magistrate, under the authority of the Magistrate, and as to the operation of Sections 193 and 205 of the Indian Penal Code on evidence given on such oaths.

2. I submitted the matter for the consideration of the Advocate General; and,

3. I now forward a copy of his Opinion and return the order above noted.

(Signed) H. G. PRICHARD,
For Government Solicitor.

COPY—OPINION.

I am of opinion that whenever an Assistant is deputed by the Magistrate to discharge any duty under Section 5 of Regulation IX of 1816, all the consequences attached to persons giving false evidence before him, as would, were the Magistrate trying the case himself.

(Signed) J. B. NORTON,
Advocate General.

20th August 1864.

(True Copy.)

(Signed) H. G. PRICHARD,
For Government Solicitor.

No. 192. ORDER THEREON, 29th August 1864, No. 1291.

Communicated to all Magistrates of Districts.

(True Extract.)

J. D. SIM,
Secretary to Government.

To the Magistrate of

Exd. J. Tulloch.

Judicial Department. 6 to Govt. 11-2-64

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letters—

From the Magistrate of Bellary — Inter 28 July '64 No. 28.

" the Govt. Solicitor — 22 Aug. — 473.

Order — 29 August 1864 No. 1291.

Communicated to all Magistrates of Districts.

I D I

The Magistrate of Salem 27/9/64.

Judicial 1864. Department.

No. 1291

PROCEEDINGS of GOVERNMENT

Dated 29th August 1864.

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