M.R.O. 1—39,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial **DEPARTMENT.**

G.O. No.	1335	Press Mis.
33-37		
33-37 Dated	8-9-	19 18.64

31/32

Not to be folded or roughly handled

Read again letters from the Magistrate of Malabar, dated 20th, 21st and 24th June 1864, Nos. 71, 72 and 74, and recorded in Proceedings 28th June 1864, Nos. 271—274.

Read also the following papers:—

No. 33. No. 121.

MEMORANDUM.

With reference to the Order of Government in the Judicial Department, No. 953, dated 28th June 1864,* the Commander-in-Chief has the honor to forward, for the information of His Excellency the Governor in Council, the within report of the Officer Commanding Cannanore, relating to the suspension of the Cantonment Joint Magistrate, and other matters therein mentioned.

* Military Department, dated 29th June 1864.

2. Brigadier General Babington's letter was forwarded for the observations of the Judge Advocate General, whose report on the case is also herewith submitted.

3. The Commander-in-Chief observes that, under existing orders, the Cantonment Joint Magistrate is subordinate to two separate authorities, Civil and Military. It is therefore very necessary that it should be at once clearly laid down, whether he can act independent of the Officer Commanding, or question that Officer's authority over him.

4. His Excellency thinks that Brigadier General Babington did not exceed the *power* vested† in him, in ordering the dismissal of the two Clerks of the Cantonment Joint Magistrate's office.

† By Regulation VII of 1832.

5. Sir Hope Grant submits, for the consideration of Government, that he is of opinion that it is very desirable that at all Military stations the Cantonment Joint Magistrates should be under the orders of the Officers Commanding—in the same manner that Commissariat Officers exercising Police authority at those stations used to be.

ADJUTANT GENERAL'S OFFICE, (By Order.)
OOTACAMUND, (Signed) C. COOKE, Lieut.-Colonel,
5th July 1864. *Deputy Adjutant General.*

To the Secretary to Government, Military Department.

From Brigadier General D. BABINGTON, Commanding Malabar and Canara; to the Adjutant General, Head Quarters, Ootacamund, dated Cannanore, 22nd June 1864, No. 188.

I have the honor to request that you will be so good as to lay before His Excellency the Commander-in-Chief, for submission to Government should His Excellency see fit, the case stated below, elucidated by the documents accompanying it, as per margin.

Marked A. Official Memorandum from Brigadier General Commanding the Cantonment of Cannanore, to the Cantonment Joint Magistrate of Cannanore, dated 17th June 1864, with letter attached from Brigade Major to the Joint Magistrate, explaining that the Memorandum was not drafted as, or intended to be, "confidential."
B. Letter from Cantonment Joint Magistrate, to Brigadier General Commanding, dated 18th June 1864, with copy of do. from do. to Magistrate of Malabar.
C. Original letter to Brigadier General Commanding Malabar and Canara from Inspector General of Police, dated 24th February 1864, accompanied by a report made to that functionary by the Superintendent of North Malabar, Captain Blomfield, on Cantonment Joint Magistrate's office, Clerks "Pires" and "Syed Abdoolah," the subjects of Mr. Robinson's above letter to the Brigadier General.
D. List of Cantonment Joint Magistrate's establishment Cannanore, wherein the said Clerks appear as appointed (very long ago) under Regulation VII of 1832.
E. Proceedings of Madras Government, Military Department, 4th November 1862, No. 3797. Please ultimately return.
F. Do. on Memorandum from Adjutant General, 22nd December 1863, No. 373, with "Order thereon," dated 9th January 1864, No. 88.

2. When I entered upon this Command, I had some official correspondence with Mr. Robinson, Inspector General of Police, on the then working of his new force in this "Military Cantonment," as apparently not, in some respects, suitable to the latter's wants. After some private correspondence, and, subsequently, personal communication on the same subject with Mr. Robinson, who exhibited the fullest and most courteous disposition to assist me in adjusting all difficulties, as he has ever since most cordially evinced in every practicable way,

a manner which its such inveteracies as the old Police office here have been long coming to need of *feeling*; more especially since it has been the declared will of Government that *all* its Officers, Civil and Military, who are in a position to do that public duty so required of them, should fairly support the new Police.

14. In conclusion I would solicit that Mr. Robinson should be referred to as to his considerable knowledge of the matters herein involved, as he has officially addressed me thereupon as the (local) authority *he* looks to for remedy of the public evil which it comprises.

15. As both my own authority here, and the future local guardianship of public justice are at issue in this case (where late serious events have proved the existence of demand for a firm hand in the Commandant), I have felt it necessary somewhat to argue it at a length for which I respectfully apologise.

P. S.—It appears, since writing the above, that insuperable difficulties* arise in the way of Captain Douglas being sworn in either as Magistrate or Justice of the Peace, he *not having been Gazetted by Government*. I have therefore restored Captain Clay to his functions pending result of this report; but respectfully suggest that Mr. Sullivan (just now residing here) be required to *explain* how he could assign *that* objection; where Major Ewart has been *twice so* sworn by him or his predecessor, *as emergently appointed by me* and, of course, afterwards confirmed by Government, and by *which* (sudden) objection the public service is now, and *may often be*, seriously obstructed.

* See Captain Douglas' letter attached.

A.

OFFICIAL MEMORANDUM.

From circumstances that have had my own cognizance, I concur in the officially conveyed opinion of the Inspector General of Police that the present writer, Mr. Pires, and the Deputy clerk Syed Abdoolah, otherwise called Ameer Sahib, ought not to continue in their public employment at Cannanore any longer, and that highly detrimental consequences to the public interest proceed from their doing so. I have endeavoured for some time, and have urged the late and present Joint Magistrate to re-place them by substitutes from a distance. I think it my public duty now to record my *order* that they be discontinued from the 31st proximo, peremptorily, and that the interval be employed by the Joint Magistrate to obtain efficient substitutes for them, if from Madras all the better.

2. I request that the Joint Magistrate will advertise for them if necessary.

CANNANORE,
17*th June* 1864.

(Signed) D. BABINGTON, Brigadier General,
Commanding Malabar and Canara.

(True Copy.)

(Signed) E. BODDAM, Major,
Acting Brigade Major, M. and C.

From Major E. BODDAM, Acting Brigade Major, Malabar and Canara; to the Cantonment Joint Magistrate of Cannanore, dated 21st June 1864, No. 253.

I have the honor to inform you that the term "confidential" should not have been affixed to the Official Memorandum of the 17th instant, to your address from the Brigadier General Commanding. It was entered thereon, I regret to say, by me under a misconception that such a communication was intended to be confidential, whereas in fact it was not so intended by Brigadier General Babington, and as it is an error on my part I beg you will erase the word confidential.

(True Copy.)

(Signed) E. BODDAM, Major,
Acting Brigade Major, M, and C.

B.

From Captain A. D. CLAY, Joint Magistrate of Cannanore; to the Brigadier General, Commanding Malabar and Canara, dated Cannanore, 18th June 1864.

I have the honor to acknowledge the receipt of your confidential* Memorandum of the 17th instant, directing me to dismiss from the 30*th instant* two of the subordinates in my office, and I trust I shall not be considered wanting in deference to you, as the Officer Commanding this Garrison, if I respectfully but most strongly object to and protest against this order being carried out, before a reference has been made to Government, through the Magistrate of Malabar.

* An error.—D. B.

31st proximo is the date fixed by the Brigadier General.

2. I have most carefully perused all the orders constituting the office of the Cantonment Joint Magistrates, and throughout the whole correspondence the Officers Commanding the various Cantonments are not even mentioned; the entire work has passed through the Collectors and Magistrates of the Districts, the Board of Revenue, and the Secretary to Government, and I most respectfully submit that the order I have received can only properly emanate from the Civil authorities. In support of my opinion, I would observe that the appeal from any acts of mine does not lie to the Officer Commanding the Garrison, but to the Magistrate of Malabar and the Sessions Judge of Tellicherry, my immediate superiors.

3. As regards the subordinates ordered to be removed, I would submit that during the four months that I have held my appointment I have been perfectly satisfied with them, and I must urge that if there are charges against them, such charges should be made before me, and form the grounds of a proper investigation. It is possible that it may be *expedient* to remove them, but I should be sorry to see justice sacrificed to expediency.

4. I would also submit that the order now respectfully protested against tends to lessen my influence among my own subordinates, and with the public generally.

5. In conclusion, I have to observe that in every respect I come under the Regulations of the Civil Service as a Magistrate. I draw my pay from the Civil Budget, through the Civil Paymaster, and I come under the Civil Rules as regards leave, &c., and from this I infer that in all matters pertaining to my office and duties as a Magistrate, I am responsible to the Civil powers of the District, in this case, the Sessions Judge of Tellicherry, and the Collector of the District, as the Chief Judicial and Magisterial Officers respectively, and I have therefore thought right to address the Magistrate on the subject, and I append a copy of my letter.

6. In the mean time I have, as ordered, advertized in the *District Gazette* for two other Clerks.

From Captain A. D. CLAY, Joint Magistrate of Cannanore; to the Magistrate of Malabar, Calicut, dated Cannanore, 18th June 1864.

I have the honor to inform you, as Chief Magistrate of the District, that I have received peremptory orders from the Brigadier General Commanding Cannanore, to dismiss Mr. Pires, my Head Clerk, and Syed Abdoolah, my Deputy Clerk, from *the 1st proximo*.† I have no complaint to make against either of these men; on the contrary, during the four months I have been in this office, they have given me every satisfaction and assistance, and I beg to protest most strongly against this order being carried out. I am addressing the Brigadier General on the subject, but with little hope of success, and I therefore request your doing me the favor of submitting the matter for the opinion of Government, and of your giving me your instructions for my guidance in the interval, as if these men are dismissed I shall have no alternative but to close my office until their place is supplied.

†31st proximo is the date fixed by the Brigadier General.

(True Copy.)

(Signed) A. D. CLAY, Captain,
Joint Magistrate.

C.

From W. ROBINSON, Esq., Inspector General of Madras Police; to Brigadier General D. BABINGTON, Commanding Malabar and Canara, dated Trichendur, 24th February 1864.

I venture to draw your attention to the condition of the Cantonment Joint Magistrate's office.

1. English Writer, J. Pires.
2. Matusuddi, Ameer Saib.

2. I allude to the conduct and character of the two subordinates noted marginally.

3. When in Cannanore I inquired with care into various circumstances connected with cases lost in that Court, and other matters affecting these individuals, the result was that I found a general feeling of uncertainty in the administration of justice through the influence of these men. They are thoroughly untrustworthy, and exercise their influence in subversion of justice.

4. The former once served in the Police, and we know something of him.

5. The Superintendent of Police report most unfavorably of both, and I feel sure that these irregularities and this want of confidence cannot fail to have been the subject of anxiety and sorrow to you; for the impression cannot have failed to have reached one so intimate with all matters at Cannanore.

6. It may be said that they are mere ministerial servants of the Court. But when the officer is so frequently changed, is generally ignorant of the language and manners of the peculiar races of Malabar and not deeply versed in the law, men of this stamp can and do exercise great influence—influence the more dangerous by being unostensible and irresponsible.

N. B.—I enclose a Memorandum by Superintendent of Police.

(Signed) W. R.

MEMORANDUM.

The Roster Book of the Havildar Major, 18th Regiment, was placed in the cash chest for security. It was placed there with the clear knowledge of the Head Writer, Mr. Pires, who was the only person who ever opened the cash chest, he having one key, the Joint Magistrate the other of separate padlocks, both new Chubb's locks. Mr. Pires must have known it was there, and it was his duty to have attached it to the record.

CANNANORE, *9th February* 1864. (Signed) H. T. CAMPBELL, Major.

MEMORANDUM.

A case of house-breaking and theft, which occurred in the house of Captain Morris of the 18th Regiment was dismissed by Sessions Court three months ago on account of defective committal. In this case most of the property (valued over Rupees 400 was recovered) and a gun valued Rupees 200 found in the well of a wealthy Moplah residing near Eddakad. This man, a relative of one of the Bilis Tharisters, was committed by the Joint Magistrate along with the principal defendants, on a charge of receiving stolen property.

The 1st defendant (four committed altogether) was a notorious burglar (named Putty Kutti), who had been previously 14 years in Jail. The whole of the prisoners were released before the trial was concluded.

2. Case of house-breaking and theft in the house of a Subadar of the 40th Regiment N. I., property stolen valued at Rupees 600. The suspected thief, the former Jemadar Adjutant of that Regiment named Mahomed Modeensiah.

Case originally brought up before the Joint Magistrate's Court, where the defendant was released for want of proof against him.

Extract from the Superintendent's Diary, dated 8th January 1864.

"The Magistrate's notes of this case, as taken down by himself, and reported to the Brigadier do not correspond with the record of preliminary inquiry, as made out by his writers and transmitted to the Sessions Judge, nor with the diary, also made out by writer, and brought to the Magistrate for signature.

"In both these the man is down as having been tried by a Court of final jurisdiction and acquitted, and of course cannot be tried again on the same charge.

"The real charge, as made by the Police, was that of house-breaking and theft of Rupees 600 triable by Court of Session alone, and the prisoner was released for want of proof after preliminary inquiry by the Magistrate and can be brought up again at any time.

"I suspect the Head Writers in the office of cooking these records in order to give the man a defence. The English Writer, Pires, who was formerly in the Police, brought forward these documents to-day to show that no further evidence could be received in the matter, and that the the case had been disposed of."

3. Case of abetment of house-breaking and theft, receipt of stolen property, and suppression of information against Havildar Major of the 18th Regiment N. I., committed by Joint Magistrate to Sessions Court.

In this case a document, deposited by Superintendent at the outset of the case in the Joint Magistrate's Court, was not transmitted with the other papers in the case, and had the Superintendent not despatched an Inspector specially to make search for it, the prisoner would have been entitled at once to his release in consequence.

The document was eventually found, by the Inspector despatched for the purpose, in the Joint Magistrate's cash chest, to which the English Writer, Mr. Pires, only had access, and it was his duty to have forwarded it, as per certificate attached herewith from the former Joint Magistrate with whom the document (a thick book, in pamphlet form, not likely to escape observation) was deposited.

Mr. Pires, when first questioned on the subject by the Inspector, asserted that he had forwarded it, having given it into the hands of a Deputy Constable of the Police force, enclosed in a gummed cover with the other records, and stated his suspicion that the Deputy Constable had made away with it. He also offered to give a deposition before the Joint Magistrate to that effect. He was taken by the Inspector before the then Joint Magistrate (Major Ewart) for that purpose, but that officer declined interfering in the matter.

This trial before the Sessions Court is not yet concluded.

The defendant (Havildar Major) in this case, before the production of the document, based his defence principally upon the necessity for its production. His disappointment at its appearance appears evident, as he does not allude to it in his defence.

Most of the criminal sentences of importance, passed during the past year by the Joint Magistrate of Cannanore, have been reversed on appeal before the Sessions Judge. This may be partly attributable to the inexperience of the Magistrates; but the universal belief of the respectable inhabitants of the neighbourhood is that these cases principally break down through collusion between the office Clerks and interpreters, and the defendants. The corruption of the office is notorious, and is the more remarkable as it is the only one out of ten Magisterial establishments I have officially to deal with, in which such is reported to exist.

(Signed) C. G. BLOMFIELD, Captain,
Superintendent of Police.

TELLICHERRY, 14*th February* 1864.

D.

List of the Establishment of the Joint Magistrate of Cannanore.

No.	Designation and Names.		Under what authority.
1	Head Clerk.....	M. D. Pires....	Under Regulation VII o 1832.
2	Deputy do...	Syed Abdoolah....	
		2 Peons.....	
1	Clerk.	M. Lutchmenen.....	Under Regulation IV of 1847.
2	Dufterbund.	T. Coonjee Amboo.....	
3	Massalchy.	M. Ramen.	
1	Jailer.	D. G. Mendouce.	No. 1778, dated 16th February 1861, Government of India.
		2 Head Warders.	
		4 Warders.	

JOINT MAGISTRATE'S COURT,
CANNANORE,
17th June 1864.

(Signed) A. D. CLAY, Captain,
Joint Magistrate.

No. 34. From Colonel J. M. PRIMROSE, Officiating Adjutant General; to the Officer Commanding Mysore Division, dated Fort Saint George, 27th June 1863, No. 2452.

In reply to the letter from the Officer Commanding Malabar and Canara Division, Diary No. 513, dated 22nd instant, I have the honor by order of the Commander-in-Chief to observe, that the Cantonment Joint Magistrate at Cannanore acts apparently under Act IV of 1847, not under Act III of 1857—Vide the Proceedings of Government, Nos. 3797 and 4306, dated respectively 4th November and 17th December 1862, copies of which are enclosed for the information of Brigadier Babington.

2. These enclosures will, perhaps, sufficiently clear up the uncertainty in regard to the points referred to in the letter under reply; if not, a further reference can be made to this Department.

No. 513.

Transferred to the Officer Commanding Malabar and Canara.

HEAD QUARTERS, BANGALORE,
29th June 1863.

(Signed) G. MAGOT, Captain,
A. Adjut. Genl., Mysore Division.

E.

Proceedings of Government in the Military Department.

Read the following papers:—

From the Secretary to the Government of India.

Requesting to be informed what is the practice pursued in this Presidency as regards the control of Military Bazars and Police, and whether the introduction of the Bengal system, by which the charge of Sudder Bazars, Police, &c., is separated from the Commissariat would not be an advantage by confining Commissariat Officers to their legitimate duties. } (Here enter 23rd July 1861, No. 907.)

From the Commissary General, Madras.

Submitting observations on the above letter. } (Here enter 5th September 1861, No. 184.)

From the Adjutant General of the Army.

Stating that Major-General Budd deems it very desirable that the Bengal system, under which the charge of the Sudder Bazars, Police, &c., is separated from the Commissariat, should be introduced in this Presidency. } (Here enter 19th September 1861, No. 639.)

From the Controller of Military Finance.

Submitting for consideration that all Commissariat Executive Officers, now holding the Office of Joint Magistrate or Police Master, be relieved from the performance of such extraneous duties, and suggesting that their places be taken by unemployed Officers of the Staff Corps. } (Here enter 19th August 1862, A.)

From the Controller of Military Finance.

Forwarding statements showing the Officers of the Commissariat Department, who are employed as Joint Magistrates in Military Cantonments. } (Here enter 3rd October 1862, C.)

Order, No. 3797, *4th November* 1862.

On full consideration of the subject, the Governor in Council is of opinion that, to ensure the continued efficient performance of their proper departmental duties, Executive Commissariat Officers, exercising also Judicial and Police functions, should be relieved of both the latter, which, under existing circumstances, it is neither necessary nor expedient they should be required to perform.

2. The stations immediately concerned are, Bellary, Cannanore, Secunderabad, Trichinopoly and Wellington. At Bellary, Cannanore and Wellington the Commissariat Officers are also Joint Magistrates and exercise jurisdiction under Act IV of 1847; while at Secunderabad and Trichinopoly the powers of the Commissariat Officer in charge are, apparently, restricted to those conferred by Regulation VII of 1832.

3. Officers, selected if possible from the unemployed Members of the Staff Corps, will be appointed, as early as practicable, to the above stations (Secunderabad excepted) for these special duties, in relief of the Commissariat Officers, and will be designated, if empowered under Regulation VII of 1832, "Cantonment Joint Magistrates," and, if under Act IV of 1847, "Military Joint Magistrates."

4. Officers appointed Military Joint Magistrates will receive, for the present, the allowance (Rupees 70 per mensem) and be granted the establishment sanctioned in the Proceedings of Government in the Judicial Department, No. 1136, dated 18th July 1862. A similar allowance will also be passed until further orders to the Cantonment Joint Magistrate at Trichinopoly, for whom an Establishment as per margin, being that recommended by Mr. Pelly in paragraph 27 of his letter, recorded in the above Judicial Proceedings, is sanctioned in lieu of the two Writers on Rupees 25 and Rupees 10-8-0 respectively now employed. These charges, amounting to Rupees 132 per mensem, will be paid out of the Trichinopoly Abkary revenue.

BELLARY AND CANNANORE.

	RS.
3 Writers at Rupees 35,20 & 15.....	70
1 Dufterbund..	7
1 Massaljee and Sweeper...	5
2 Peons at Rupees 6.....	12
Rupees...	94

WELLINGTON.

	RS.
2 Writers at Rupees 35 and 20...	55
1 Massaljee and Sweeper...	5
2 Peons at Rupees 7.....	14
Rupees...	74

TRICHINOPOLY.

	RS.
1 Clerk	35
1 Do.	15
2 Peons.....	12
Total..	62 per mensem.

5. As regards Secunderabad, the Government of India will be requested to appoint an Officer to relieve the Local Commissariat Officer of his Police functions. The allowances appear to be paid by His Highness the Nizam's Government.

To the Secretary to Government of India, Military Department. } (Here enter 4th November 1862, No. 3798.)

(True Extract.)

(Signed) H. MARSHALL, Colonel,
Secretary to Government.

(True Copy.

(Signed) C. COOKE, Lieut. Colonel,
Deputy Adjutant General.

Proceedings of Government, in the Military Department.

Read the following papers:—

Proceedings of the Madras Government, Judicial Department.

Read the following Proceedings of Government in the Military Department.

(Here enter 4th November 1862, No. 3797.)

ORDER THEREON, 5th December 1862, No. 1971.

Under the above Order, Commissariat Officers will be relieved of the duties which hitherto devolved on them in Military bazaar stations, and Officers of that Department will not in future be vested with Magisterial powers.

2. Referring to the Orders of the 18th July last, No. 1136, Judicial Department, it is observed that the Commissariat Officers at Bellary and Cannanore are Cantonment Joint Magistrates, and that the Commissariat Officer at Wellington is a Military Joint Magistrate. On other Officers being appointed to these stations and to Trichinopoly, in lieu of these Commissariat Officers, the Magistrates of the Districts concerned will apply to the Government in the Judicial Department, in view to their being vested with Magisterial powers under Act IV of 1847, and being also appointed Justices of the Peace if they are not already in the Commission.

Bellary, Malabar, Coimbatore, Trichinopoly.

3. The jurisdiction of the Joint Magistrates at Bellary, Cannanore, and Trichinopoly will not extend beyond the limits of the Cantonment. That of the Joint Magistrate at Wellington will be specified by the Magistrate of Coimbatore in his application to the Government.

(True Extract.)

(Signed) A. J. ARBUTHNOT,
Chief Secretary.

Telegram from the Military Secretary to Government, Fort Saint George, 9th December 1862, No. 4234; to the Military Secretary to the Government of India.

Please intimate by telegraph, whether the nomination of Cantonment Joint Magistrates in Bengal rests with the Commander-in-Chief or His Excellency the Governor General; and if the latter, whether appointments are made in Civil or Military Department.

Telegram from the Secretary to the Government of India, Military Department, Calcutta, 11th December 1862; to the Secretary to Government, Military Department, Madras.

Your message of the 9th instant received. The nomination of Cantonment Joint Magistrates in this Presidency rests with the several local Governments, and the appointments are made in the Civil Department.

Order, No. 4306, 17*th December* 1862.

Communicated, with the telegram replied to by the Government of India, to the Departments concerned, with reference to Proceedings No. 3797, dated 4th November 1862.

(True Extract.)

(Signed) H. MARSHALL, Colonel,
Secretary to Government.

(True Copy.)

(Signed) C. COOKE, Lieut. Colonel,
Deputy Adjutant General.

F.

Proceedings of Government, in the Military Department,

Read the following papers:—

Memorandum from the Adjutant General, Fort Saint George, 22nd December 1863, No. 373; to the Secretary to Government, Military Department.

The Commander-in-Chief has the honor to forward, for the consideration and orders of Government, the within letter from the Officer Commanding Malabar and Canara, relative to the powers to be exercised by the Officer appointed Military Joint Magistrate at Cannanore.

From the Officer Commanding Malabar and Canara, Cannanore, 11th December 1864, No. 333; to the Adjutant General, Head Quarters.

Adverting to your letter of the 27th June 1863, number and subject as per margin, and its annexments, I have the honor to submit to His Excellency the Commander-in-Chief, specially referring to paragraph 3 of Order of Government, No. 3797, dated 4th November 1862, that

No. 2452.
In reply to reference from Officer Commanding Malabar and Canara as to the powers of local Joint Magistrates.

it is brought to my notice that only Joint Magistrates designated in their appointments "*Cantonment* Joint Magistrates" are empowered under Regulation VII of 1832; those designated "*Military* Joint Magistrates" being empowered under Act IV of 1847; and that Major Campbell was appointed in G. O. G., 1st May 1863, No. 151, "*Military* Joint Magistrate" of Cannanore, wherefore he can only exercise Act IV of 1847, and *not* VII of 1832.

2. As it is under VII of 1832 *only*, I believe, that petty *Civil* suits of 20 Rupees can be adjudicated by a Joint Magistrate; and as it is almost chiefly important in a Military station like this, that such Civil jurisdiction should reside in its Magistrate, I respectfully request that His Excellency the Commander-in-Chief may be pleased to move the Government (if my above view be correct as to its necessity) to alter the designation of the Joint Magistrate here to "Cantonment Joint Magistrate," *or* to confer on the existing "Military Joint Magistrate" the powers of Act VII of 1832, as well as those of Act IV of 1847—*if the latter* powers, which he already possesses, do *not* include Civil adjudication as far as 20 Rupees.

3. A telegraphic decision hereon from Government would be an essential favor; the petty Civil jurisdiction being urgently wanted here.

Order, No. 88, 9*th January* 1864.

The Governor in Council observes that Military Officers, appointed* as Joint Magistrates to perform the Magisterial and Police duties formerly entrusted to Executive Commissariat Officers, exercise all the powers that were vested in those Commissariat Officers, including those defined by Regulations VII of 1832. Officers to whom the powers specially conferred under Act IV of 1847 are granted in addition to those

* Military Proceedings, 4th November 1862, No. 3797.

defined by Regulation VII of 1832 "are designated 'Military Joint Magistrates' at places which are not Military Bazar stations, and 'Cantonment Joint Magistrates' in such stations."† Cannanore being a Military Bazar station,‡ the designation of Major Campbell will be altered to Acting "Cantonment Joint Magistrate of Cannanore," and the necessary notification made in G. O.

† Judicial Order, 18th July 1862, No. 1136, paragraph 2. See also Judicial Orders, 5th December 1862, No. 1971, paragraph 2, and 9th February 1863, No. 207, paragraph 4.

‡ G. O. G., 1st June 1832, No. 139.

(True Extract.)

(Signed) H. MARSHALL, Colonel,
Secretary to Government.

(True Copy.)

(Signed) C. COOKE, Lieut. Colonel,
Deputy Adjutant General.

To the Officer Commanding Malabar and Canara for information, with reference to his letter, dated 11th December 1863, No. 333.

No. 59.

MEMORANDUM.

Forwarded for the information of Majors Ewart and Campbell, and to be returned.

(By Order.)
(Signed) E. BODDAM, Major,
Actg. Brig. M. of M. and C.

CANNANORE,
15*th January* 1864.

From Captain W. DOUGLAS, Staff Corps; to Brigadier General D. BABINGTON, Commanding Malabar and Canara, Cannanore, dated 22nd June 1864.

With reference to letter No. 257 of yesterday's date from the Brigade Major, directing me to receive over charge of the Cantonment Joint Magistrate's office from Captain Clay, I have the honor to inform you that I saw Mr. Sullivan, Civil and Sessions Judge of Tellicherry this morning, and he informed me that he could not administer the oath to me as a Magistrate, it being necessary to do so in Court, and the Sessions Court being at present closed. He also at the same time declined to administer the oath to me at all, unless I were regularly appointed to the office by Government.*

* NOTE.—I have *twice before* had to appoint Magistrates on *lapses*, lest the station should be without any tribunal *sine die*, and the Judge *sworn them* in. I am not competent to call upon him to explain this; but I submit that he *is* so called on, the public service *now* suffering an obstruction *not then raised* (my appointments being afterwards confirmed by Government of course.)

(Signed) D. BABINGTON,
Brigadier General.

2. I believe Mr. Garstin, the Sub-Collector, is now on leave, so that there is no other Magistrate within reach who could be asked to officiate in the matter.

No. 107.

MEMORANDUM.

Forwarded with Proceedings of Government, Military Department, No. 2242, dated 29th June 1864, for the observations of the Judge Advocate General.

(By Order.)

ADJUTANT GENERAL'S OFFICE,
OOTACAMUND, 2*nd July* 1864.

(Signed) C. COOKE, Lieut. Colonel.,
Deputy Adjutant General.

No. 396 of 1864.

MEMORANDUM.

The Judge Advocate General has the honor to return the papers received with the Adjutant General's Memorandum, No. 107 of 2nd instant, in the case of Captain Clay, Acting Cantonment Joint Magistrate of Cannanore.

2. The Order of Government, No. 3797, 4th November 1862, Military Department, relieved Executive Commissariat Officers of the Judicial and Police functions, which they held under Regulation VII of 1832, in Military Bazaar stations, and of those some of them held in addition, under Act IV of 1847, as did the Commissariat Officer at Cannanore.

3. The same Order of Government directed that officers of the Staff Corps, selected and appointed to relieve these Executive Commissariat Officers of Judicial and Police functions, should be designated, if empowered under Regulation VII of 1832, "Cantonment Joint Magistrates," and, if under Act IV of 1847, "Military Joint Magistrates."

4. Major Campbell, Staff Corps, was accordingly in G. O. G., 1st May 1863, No. 151, appointed Acting "Military Joint Magistrate of Cannanore," and it was presumed with powers only under Act IV of 1847.

5. The Officer Commanding Malabar and Canara, in his letter No. 333 of 11th December 1863, brought this to notice, and complained of the want of jurisdiction in petty Civil suits, extending to Rupees 20, of the "Military Joint Magistrate," and as he was aware that under Regulation VII of 1832 powers to determine such suits were vested in any officer exercising judicial functions under it, he requested the designation of Major Campbell might be altered to that of "Cantonment Joint Magistrate," which would confer on him powers under Regulation VII of 1832.

6. In consequence of this application, an Order of Government, No. 88, 9th January 1864, Military Department, was issued, explaining that Military Officers appointed as Joint Magistrates to perform the Magisterial and Police duties formerly entrusted to Executive Commissariat Officers, exercise all the powers that were vested in Commissariat Officers, including those defined by Regulation VII of 1832.

And that officers to whom the powers specially conferred under Act IV of 1847, are granted in addition to those defined by Regulation VII of 1832 are designated "Military Joint Magistrates" at places which are not Military Bazaar stations, and "Cantonment Joint Magistrates" in such stations, *i. e.*, Military Bazaar stations.

And that Cannanore being a Military Bazaar station, the designation of Major Campbell will be altered to Acting "Cantonment Joint Magistrate of Cannanore," and the necessary notification made in General Orders.

7. Major Campbell, as "Acting Cantonment Joint Magistrate of Cannanore" was vested consequently with powers under Regulation VII of 1832, and Act IV of 1847. He was subsequently removed from his office, and Captain Clay appointed to succeed him, it is presumed with the same designation and powers: though that officer in the letters in this correspondence signs himself as "*Joint Magistrate*" only; but he is addressed by others as "Cantonment Joint Magistrate."

8. By the Orders of Government, Military Department, 5th December 1862, No. 1971, and 17th December 1862, No. 4306, it is directed that on officers being appointed to relieve Commissariat Officers of the Magisterial duties that devolved on them in Military Bazaar stations, as Bellary and Cannanore, where they were also "Cantonment Joint Magistrates," the Magistrates of the Districts concerned will apply to Government in the Judicial Department, in view to their being vested with Magisterial powers under Act IV of 1847, and being also appointed Justices of the Peace, if not already in the Commission; and it fixes their jurisdiction as not extending beyond the limits of the Cantonment, and shows their appointment rests with the Government, and are made in the Civil Department.

9. Those portions of the duties conferred by Act IV of 1847 on the "Cantonment Joint Magistrate of Cannanore" are subject to the control of the Chief Judicial and Magisterial Officers of the District.

And those portions conferred by Regulation VII of 1832 are subject to the control of the Officer Commanding the station of Cannanore, as a Military Bazaar station, under Section 3 of that Regulation.

10. The Officer Commanding at Cannanore, on the representation of the Inspector General of Madras Police, as per margin, considered it necessary to direct the discharge of the Head Clerk and Deputy Clerk of the Cantonment Joint Magistrate's Court, and as these individuals are borne on the establishment under the authority of Regulation VII of 1832, as shown in the list from the Cantonment Joint Magistrate, it would appear he had power to do so under that Regulation, and by G. O. G., No. 169 of 26th August 1853, as per margin. But whether it would not have been more advisable to have first made known to them the accusations made by the Police against them, and some of those included in the Memorandum of the Superintendent of Police would have been capable of proof, is a matter for His Excellency the Commander-in-Chief to decide; as these men appear to have served for considerable periods. One says he is entitled to a pension, the other asserts that under a Government Order, No. 421 of 5th May 1851, in every case of dismissal, the specific ground on which it is proposed to dismiss any servant is required to be reduced to writing and furnished to him, and his answer or defence similarly taken, and the final decision of the superior also recorded. This has not been done.

"When in Cannanore I inquired with care into various circumstances connected with cases lost in (the Cantonment Joint Magistrate's office,) and other matters affecting those individuals, the English Writer, J. Pires, and Mutasuddi Ameer Sahib. The result was that I found a general feeling of uncertainty in the administration of justice, through the influence of these men. They are thoroughly untrustworthy, and exercise their influence in subversion of justice."

The Right Honorable the Governor in Council directs it to be notified that for the future the appointment of Kotwal of a Military Bazaar will be made by the Commissariat or other officer in charge, under the authority of the Officer Commanding the station, whose decision regarding the employment or dismissal of the Kotwal and all others connected with the Police under his orders will be final.

11. Next as to the suspension of Captain Clay from his office of Cantonment Joint Magistrate. From what is recorded in paragraph 8 of this Memorandum, it is doubtful if the officer Commanding Malabar and Canara is vested with power to effect it; in the case of a Joint Magistrate under Act IV of 1847, although he appears to consider he is justified in so doing from having resorted to a similar measure in the case of Major Campbell who was afterwards removed without remark. It would seem advisable that the power should be conferred, and the point definitely settled.

12. As regards the refusal of the Civil and Sessions Judge of Tellicherry to administer the oath, required from a Magistrate, to Captain Douglas until he was regularly appointed to the office by Government, it appears to me that he was correct in so refusing. But under Section 37 of the Regulation VII of 1832, the Officer Commanding at Cannanore is empowered, in the temporary absence of the officer exercising Magisterial powers under that Regulation, to appoint another officer to act, and himself to administer to him certain oaths for the purpose.

13. It would appear that the Cantonment Joint Magistrate of Cannanore has been in the habit of exercising jurisdiction solely under Act IV of 1847. This, however, was not intended All persons amenable to Regulation VII of 1832 should have been dealt with under that Regulation, and only others, not so amenable, under Act IV of 1847. Thus having obviated the necessity for obtaining the confirmation of the Officer Commanding at Cannanore to punishments awarded by him, the Cantonment Joint Magistrate has been led to consider himself solely under the control of the Civil authorities of the District, who alone can supervise his proceedings under Act IV of 1847.

(Signed) H. PRITCHARD, Colonel,
Judge Advocate General.

OOTACAMUND, 4*th July* 1864.

Transferred to the Judicial Department.

(Signed) H. MARSHALL, Colonel,
Secretary to Government.

FORT SAINT GEORGE,
11*th July* 1864.

No. 35. MINUTE by the Honorable T. PYCROFT, dated 21st July 1864.

Captain Clay as Military Joint Magistrate exercising jurisdiction within the Cantonment of Cannanore acts under two enactments.

2. He acts under Act IV of 1847 as regards his general powers as a Magistrate. He acts under Regulation VII of 1832 as respects certain special classes of offences and of offenders.

3. So far as he acts under Act IV of 1847, he is solely under the control of the Magistrate of the District and of the Session Court. So far as he acts under Regulation VII of 1832, he is to a certain extent subject to the authority of the Officer Commanding Cannanore, that is by Section 18, the sentences passed by him beyond a certain limit are subject to the approval of that officer.

4. By a Memorandum, dated 17th June 1864, the Brigadier Commanding Malabar and Canara ordered Captain Clay peremptorily to dismiss two of his servants by the 30th July, and to advertize for others to re-place them.

5. These two servants are borne on the list of the Joint Magistrate's establishment as entertained under Regulation VII of 1832, but they were no doubt not employed simply in the disposal of cases falling under that Regulation, but in that of those coming under the Joint Magistrate's general jurisdiction.

6. So far as they may be considered as employed by the Joint Magistrate under Act IV of 1847, the Brigadier clearly had no authority over them. And it must be very doubtful whether he had any under Regulation VII of 1832. They cannot in any sense be said to be Police officers, but mere Magistrate's Clerks.

7. Any how, the Brigadier's proceedings towards them were very harsh and arbitrary. No explanation was afforded, no charge made, and no defence allowed, the men being servants of 10 and 19 years' service.

8. The Brigadier seems to have thus acted in consequence of a letter written to him by the Inspector General of Police. Mr. Robinson's letter is very vague, but it encloses a Memorandum from the District Superintendent of Police, containing allegations against the men, some of which as remarked by the Judge Advocate General would have been capable of proof. The Brigadier himself says that the two servants were "obnoxious to specific imputations of corruption and malversation," and therefore should have been arraigned upon them.

9. On receipt of this Memorandum Captain Clay obeyed it, so far as it admitted of being at once obeyed, and he advertized in the *District Gazette* for two other Clerks. The dismissal of his present Clerks was not to have effect until the 30th of this month.

10. Captain Clay at the same time wrote to the Magistrate of the District stating the case and requesting instructions, and he addressed a letter to the Brigadier protesting against being considered under his orders. The protest seems to me to have been couched in as respectful language as such a document could be. The Brigadier required him to withdraw it, and on his refusal, suspended him from his office as Joint Magistrate, and appointed another officer to carry on his duties. The Judge of Tellicherry, however, very properly declined, in the absence of any appointment by Government, to swear the new man in, and the Brigadier thereon reinstated Captain Clay.

11. Even if the Brigadier had power—which seems to me questionable—to suspend Captain Clay so far as he was acting under Regulation VII of 1832, and

to inhibit him from acting under that Regulation, he had clearly no power to debar him from the exercise of his general Magisterial functions under Act IV of 1847.

12. His proceeding too was altogether precipitate. There was no urgency or cause calling for such haste. He might have reported the matter in the usual way and awaited instructions. To suspend the only Magisterial Officer in Cannanore having original Criminal and Civil jurisdiction, was an extreme measure, likely to lead to much public inconvenience.

13. It seems to me that this should be pointed out to the Brigadier, and that he should also be required to prefer charges against the two servants which should be fully investigated. The Cantonment Joint Magistrate should also, as observed in the last paragraph of Colonel Pritchard's Memorandum, be required to conform to the provisions of Regulation VII of 1832 as respects cases disposed of by him under that Regulation.

14 The proper remedy for the present anomalous state of things will be found in the repeal of that clumsy Regulation VII of 1832, and the application to this Presidency of the late Cantonment Act No. XXII of 1844, with any necessary modifications.

15. The Commander-in-Chief, I perceive, submits that "it is very desirable that at all Military stations, the Cantonment Joint Magistrate should be under the orders of the Officer Commanding, in the same manner that Commissariat Officers exercising Police authority at those stations used to be;" but in this I cannot at all agree. The system under the Commissariat Officers has not worked so well that we need desire it to be perpetuated. Moreover, the Cantonment Magistrates will not exercise any *Police* authority. They are simply to be Judicial Officers, trying cases Civil and Criminal, and as such should be under the same control as other officers of their class without Cantonments. It will be seen that while by the Cantonment Act, Section 11; "the administration of the *Police* within the limits of any Cantonment in which there shall be a Cantonment Magistrate is vested in the District Superintendent (of Police) subject to the general control and direction of the Commanding Officer of the Cantonment"—the Cantonment Officer himself is, Section 3, "to be subject to the control of the Magistrate of the District in which the Cantonment is situate." It is not probable that the Government of India would, for the Madras Cantonments, authorize a different, and, as I must think, a retrograde policy.

(Signed) T. PYCROFT.

No. 36. MINUTE by the Honorable E. MALTBY, dated 25th July 1864.

I concur in Mr. Pycroft's Minute. The two Clerks may be undeserving of confidence, and their removal from the Cannanore Cantonment may be desirable even if no specific misdoings should be formally established by them by legal evidence. But they ought to hear of what they are accused and be allowed to make their defence. The Brigadier General's suspension of Captain Clay was both unnecessary and erroneous, in my opinion, but he was led into a wrong position by Mr. Robinson, who ought to have addressed Captain Clay regarding the supposed characters of the two Clerks in question.

So do I.
(Signed) W. T. DENISON.

(Signed) E. MALTBY.

No. 37. ORDER THEREON, 8th September 1864, No. 1335.

The papers above recorded relate to a controversy which has taken place between the Brigadier General Commanding at Cannanore and Captain Clay, Cantonment Joint Magistrate at that station, in the course of which the Brigadier General suspended Captain Clay from his office, but subsequently restored him.

2. Captain Clay, as Cantonment Joint Magistrate exercising jurisdiction within the Cantonment of Cannanore, acts under two enactments: first, under Act IV of 1847, by which he is invested with the general powers of a Magistrate; and, secondly, under Regulation VII of 1832, by which he is empowered to deal with certain special classes of offences and of offenders. As respects those cases which he deals with under Act IV of 1847, he is solely under the control of the Magistrate of the District, and of the Session Court; in those cases in which he acts under Regulation VII of 1832, he is to a certain extent subject to the authority of the Officer Commanding Cannanore, inasmuch as by Section 18 all sentences passed by him under that Regulation beyond a certain limit are subject to the approval of that officer.

3. It appears that on the 17th of June last, Brigadier General Babington recorded an order peremptorily requiring Captain Clay to dismiss two of his Clerks by the 31st July, and to advertise for others to re-place them. These two servants are borne on the list of the Joint Magistrate's establishment as entertained under Regulation VII of 1832, but they were doubtless employed not only in the disposal of cases falling under that Regulation, but also in connection with those coming before the Joint Magistrate in the exercise of his general jurisdiction. In so far as these servants may be considered to have been employed by the Joint Magistrate under Act IV of 1847, the Brigadier General had clearly no authority over them, and it must be very doubtful whether he had any such authority under Regulation VII of 1832, for they cannot in any sense be said to be Police officers, being mere Magistrate's Clerks. Under any circumstances the Governor in Council cannot but consider that the course adopted by the Brigadier General, with reference to these Clerks, was very harsh and arbitrary. No explanation was given as to the grounds of their dismissal, no charge was made and no defence was allowed, although the men were public servants of 10 and 19 years' service respectively. The Brigadier General appears to have thus acted in consequence of a letter written to him by the Inspector General of Police. Mr. Robinson's letter, which should have been addressed to the Cantonment Magistrate, is very vague, but it encloses a Memorandum from the District Superintendent of Police containing allegations against the two Clerks, some of which as the Judge Advocate General observes would have been capable of proof, and the Brigadier General himself says that the two Clerks were "obnoxious to specific imputations of corruption and malversation," in which case they should clearly have been arraigned upon definite charges.

4. On receipt of the Brigadier General's Memorandum, Captain Clay obeyed it, so far as it admitted of being at once obeyed, by advertising in the District Gazette for two other Clerks; he at the same time wrote to the Magistrate of the District, stating the case and requesting instructions, and he addressed a letter to the Brigadier General protesting against being considered under his orders. The protest was couched in language perfectly respectful. The Brigadier General called upon Captain Clay to withdraw it, and on his refusal suspended him from his office as Joint Magistrate and appointed another officer to carry on the duties. The

Judicial Department

Memorandum

for orders.

Pros. of Govt. Judicial Dept. 28th June 1864. N.° 953.

Memo. from the Adjutant General of the Army 5th July 1864. N.° 121.

These papers relate to the
suspension of Captain Cla
Cantonment Joint Magis
Wake of Cannanore, by
Brigadier General Babingto
Commanding that station
On the 17th June last Genera
Babington recorded an
Order peremptorily requiri
Captain Clay to dispense
with the services of his
Writer and Deputy Clerk
from the 31st July, and
to employ the interval
in

Capt Clay appears to
have been under the
impression that 30. June
was the date. but 31 July
is the correct date -

in obtaining efficient substitutes for them, advertising for such if necessary. Captain Clay advertised accordingly, but protested against the order being carried out until a reference had been made to Government through the Magistrate. He maintained that he (as Cantonment Joint Magistrate) was not under the Brigadier General's authority, but subordinate to the Magistrate and Judge; that during the four months he had acted as Joint Magistrate, the men had given him satisfaction; that if there were charges against them, the charges should be preferred before him and properly investigated; and that such an order tended to lessen his influence over his subordinates and with the public generally. Captain Clay at the same time enclosed copy of a letter which he had addressed to the Magistrate. General Balmain called on Captain Clay to withdraw this letter and admit his authority, and, on his declining to to do this, suspended him and appointed Captain Douglas to act for him, pending orders from Government. The Judge, however, refused to swear Captain Douglas in, and Captain Clay was allowed to resume his office.

2.

2. The first question is, Captain Clay's status. Cannanore is a Military Bazaar Station, and Regulation VII of 1832 is in full force within the limits of the Cantonment. Section III of this Regulation vests "Police authority and the maintenance of the peace" in the Officer Commanding; and Section IV declares that "the immediate charge of the Police within the said limits under the orders of the Officer Commanding, shall be vested in the Senior Commissariat Officer of the Station, or in such other Officer as may be specially appointed by the Government."

In

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In 1862, the Government determined on relieving Commissariat Officers from these duties, and appointed others to perform them. The Officers thus appointed, (and Captain Clay is one of them) are clearly the "specially appointed" Officers of the Regulation. Act IV of 1847 further enables Government to appoint any Military Officer a Magistrate or Assistant Magistrate in one or more Zillahs, and to confer on any Assistant Magistrate, by a special order, any of the powers of a Magistrate. The Government have brought this Act into operation as regards the Military

Magistrate

Magistrate of Cannanore. Hence, the Officer holding that appointment comes under both Regulation VII of 1832 and Act IV of 1841; acting, under the former, (and under it only) in all cases in which it is applicable, and in other cases under the latter law.

3. The next question is, whether, under Regulation VII of 1832, Colonel Babington had authority to suspend Captain Clay under the circumstances stated above. The only part of the Regulation which is, or indeed can be, quoted as seeming to give this power, is Section III; but it seems to me that the vesting of "Police authority and the maintenance of the peace" in the Commanding Officer, cannot be held to give him power to suspend the local Magistrate. If he can suspend, why not also fine or dismiss him? But the mere fact that the Magistrate holds his appointment from the Government, seems to me to place him, in this respect, beyond the power of the Commanding Officer. Cases may, of course, occur, where such a power may be exercised; as, for instance, if a Cantonment Magistrate suddenly became insane. But the present case seems to me to have nothing exceptional in it, warranting such extreme measures.

4. As already stated, Captain Clay obeyed the order

order, so far as immediate obedience was called for, by at once advertising for fresh servants; the order itself does not run out until the 31st instant, and is not disobeyed if before that date Captain Clay removes the peccant individuals. Captain Clay, in fact, has, as yet, done no more than question Colonel Babington's power to issue that order, and referred the point through one of his superiors. +

+ It seems to me that Colonel Babington's act is both ultra vires and unwarranted by the circumstances of the case

5. The next question relates to the writers themselves.

Colonel

Colonel Pitchard considers that, as the men are borne on the Establishment under Regulation VII of 1832, the Commanding Officer had power to order their dismissal, and he quotes an order of Government declaring that the decision of a Commanding Officer of a Military Bazaar, station regarding the employment or dismissal of "Kotwals and all others connected with the Police under his orders, will be final". This order is certainly extensive enough to include Mr Robinson himself; but it seems to me that it cannot include Writers in the Magistrate's Office, no longer connected with the

the Police. The opinion of an Officer in Brigadier General Babington's position would, of course, carry great weight with the Government, but this is still short of the power claimed of absolute dismissal without trial or appeal. It seems to me that these men should have an opportunity afforded them of saying what they can in their own defence before they are summarily turned adrift after, in one case 19, and in the other, 10 years service. Mr. Robinson's letter is vague and has an unpleasant dash of soft sawder about it; but there can be no difficulty, surely, in getting up something specific against the men, so

so as to admit of Government deciding whether they shall be dismissed or transferred elsewhere. Colonel Pitchard, it will be seen, while considering that General Babington possesses the power of dismissal, significantly questions the propriety of the mode in which the power has been Exercised.

6. It will be observed that reference is made to Major Campbell's suspension by the Brigadier General which passed "unchallenged". There is nothing on record in the Government office on this case, except the order of the Brigadier General placing Major Campbell "in arrest," and its confirmation by Govt.

The

The Brigadier General can of course place Captain Clay, as a Military Officer, under arrest for any military offence, for which that measure is allowable. In the present instance, however, Captain Clay appears only in his magisterial capacity.

7. General Babington also wishes the Civil and Sessions Judge to be called upon to explain why he refused to swear Captain Douglas in. As Colonel Pitchard points out, this refusal was quite correct, seeing that Capt. Douglas had not been regularly appointed Magistrate. Colonel Pitchard adds that under Section 37, Regulation VII of 1832, General Babington could have appointed and himself sworn in an Officer. But the section gives this power only "during the temporary absence" of the officer; and this could not be said, in any sense, of Captain Clay.

8. The Commander in Chief suggests that the Joint Magistrates of Military Cantonments should be placed under the orders of the Officer Commanding, in the same way as Commissariat Officers exercising Police powers used to be. This they are, in all cases coming under Regulation VII of 1832; but in the exercise of their judicial functions,

ak

it is essential that they should be independent. Whatever extent of power it may be necessary to give to the Military authorities, the local judge should at least be independent there as elsewhere. It must be remembered that Cantonments are no longer merely standing Camps, but contain a civil popu-lation often far out-num-bering the Military.

I take this opportunity of drawing attention to the designation and powers of these Military Magistrates under other enactments than Regulation VII of 1832. or Regulation II of 1827 vests Sub Collectors with Magis-terial powers, and declares that in the exercise of those

Sec. Sec. XVIII. Act

Certain Officers are subject to the Civil Courts Jurisdiction - but the Civil Court is incompetent to try the Conduct of Officers acting in the discharge of Official duties

Sec. Sec. VII & XVIII

Note, that if in his Cantonment Capacity the Civil Officer should find him, he is not independent.

Assuming one Capacity under Act VIII of 1832 - as above, & experience he cannot be Magistrate & has been appointed - Under what Act & Clause does he exercise Powers.

Sec. under Act IV of 27

those powers they shall be termed "Joint Magistrates". The Madras Code recognizes no other Joint Magistrates, and the term of Cantonment Joint Magistrate is first used in the (Imperial) Act III of 1859. But Captain Clay does not come under that Act; so that the term is, I think, wrong. But however this may be, Act IV of 1827 only gives Government power - as I read it - to appoint Military men to be Magistrates or Assistant Magistrates; - it seems to me to be still necessary, under Sections 22 & 23, to define the powers of the Officer so appointed. It can, I presume, scarcely be intended that an Officer with - as must often happen

no

no judicial training or experience should at once step into the powers of a full Magistrate – 2 years imprisonment, fine 1000 Rs or both. An Assistant who has passed by the first standard has only the powers of a Sub Magistrate of the 2d Class; and those who have passed by the second standard, the powers of 1st Class Sub Magistrates. I cannot find that any step of this kind has been taken as regards Military Magistrates, but Mr Arbuthnot (to whom the papers will go) will be able to say. —

E.C.I.

Secretary of State
Public Department
Nov 22 1883.

Judicial 6 1862 Dept.

Minute by the Hon'ble
C. Maltby
Dated 25 July 62.

No 1855

Observations on the case
of Captain Clay, late
Cantonment Joint Magistrate
of Ramnaggur, by Brigadier
Babington

36

Catalogued
R 22 "
C 22 "
R 25 "
C 25 "

28-20

1

Capt^n Clay as Mili tary
Joint Magistrate exer-
cising jurisdiction
within the Cantonment
of Ramnaggur acts
under two enact-
ments —

2 He acts under
Act IV of 1849 as
regards his general
powers as a Magistrate
& acts under Reg VII
1832 as respects cer-
tain special classes
of offences and of
offenders.

3 So far as he acts
under Act IV-1849 he
is wholly under the con-
trol of the Magistrate
of the District and of
the Sessions Court —

So far as he acts under Reg. VIII. 1832 he is a certain extent subject to the authority of the Officer Commanding Cantonment: that is by Sect. XVIII. He can not be punished by him beyond a certain limit and is bind to the approval of that Officer.

4 By a Memo dated 17 the Brigadier Comm.g Malabar & Canara ordered Capt.n Clay peremptorily to dismiss two of his servants by the 30 Inst. and to advertize for others to replace them. The two servants are born in the list of the Joint Magistrates establishment as entertained under Reg.

was no doubt intended to plead simply in his disposal of cases falling under that Reg.n, but in that of those coming under the Joint Magistrates jurisdiction.

6 So far as they may be considered as employed by H.M.'s under Act IV. 1847 the Brigadier clearly had no authority in the case. It must be very doubtful whether he had any under Reg.n VIII. 1832. They cannot in any case be said to be Police Officers but mere Magistrates' clerks —

7 Any how the Brigadier's proceedings towards them were very hasty and unfeeling. No explanation was afforded no charge made, and no defence allowed. The men being servants of 10 & 19 years stand-

8) The Brigadier seems to have
[illegible] acted in consequence
of a letter written to him by
the Inspector General of
Police - The Robinson's
letter is dated 6 June, but
it encloses a Memo. from
the District-Sup.t of Police
containing allegations
against the Mayor, some
of which is remarked
by the Judge Advocate-Genl
would have been capable
of proof - The Brigadier
himself says that the
letter contains "Abusive
comments, specific imputa-
tions of corruption &
malversation" and
therefore should have
been enquired upon
before -
9 On receipt of this Memo
Capt. Clay should, so
far as it admitted of
being at once obeyed,
and he should in
the District forgotten
the other Charges - The Di-
minish of this memo

effect until the 30th
this month -
10 Capt. Clay, after the
time when the Magis-
trate of the District, sta-
ting the case and requir-
ing instructions, and
he addressed a letter to
the Brigadier protesting
against being consider-
ed under his orders - The
protest seems to have
been concluded in
as respectful language
as such a document
could be - The Brigadier
requires him to with-
draw it, and on his
refusal, suspended him
from his office as Joint
Magistrate, and ap-
pointed another Officer
to carry on his duties - The
Judge of Zillicherry
[illegible] any property
declined, in the absence
of any appointment
by Govt, to [illegible] the
[illegible] of the Brigadier

thereon committed Capt Clay.

11 Even if the Brigadier had power - which seems questionable - to suspend Capt Clay as he was acting under Reg VIII. 1832 and to inhibit him from attending Court Martial Regulation - had he any such power to debar him from the exercise of his spiritual & magisterial functions under Act IV. 1847.

12 His proceedings too were altogether precipitate - There was no urgency or cause called for such haste. He might have suspended the matter in the usual way & awaited instructions. To suspend the only Magisterial Officer in Cawnpore having original criminal

measure like & Co[illegible] lead to much public inconvenience.

13 It seems to me that this should be pointed out to the Brigadier & that he should also be required to prefer charges against the two servants which should be fully investigated — The Cawnpore Court Martial Proceedings should also be called in & the 2nd para of Col Pitcher's Memo be required to conform to the provisions of Reg VIII. 1832 as respects all cases disposed of by him under that Reg.

14 The proper remedy for the present anomalous state of things will be found in the repeal of that clause of Regulation VIII. of 1832, and the application to this Presidency of

the Cantonment Act
No XXII. 1864 — with any
necessary modifications —
I do not propose
to submit that it
desirable that all Mili-
tary Stations, Cantou-
ments and Municipalities
should be under the orders
of the Officer Commanding,
in the same manner
that Commissarial
Officers exercising Police
authority at those Sta-
tions attached to the
military Command at all
ages — The system under
the Commissariat Offi-
cers has not worked
so ill that we need
desire it to be perpetu-
ated — however the
Cantonment Magistrates will not
exercise any Police
authority — They are
simply the Judicial
Officers, trying civil
and Criminal

be under the same Control
as other Officers of this
class in Mofussil Canton-
ments — It will be seen
that while by the Canton-
ment Act Sect XI the
administration of the
Police within the limits
of any Cantonment
which there shall be a
Cantonment Magis-
is vested in the District
Supt of Police) subject
to the general control
and direction of the
Comg Officer of the Can-
-tonment — the Canton
-ment Officer is under
is, Sect III, to be subor-
-te control of the Magis
of the District in which
the Cantonment is situ
-ate — It is not proba
that the post of Judica
would for the Madras
Cantonments and to
-ire a different Law
ment than a ratio
-pals policy

21/7/65 J Ryan

Judicial Deptt.

Proceedings of the Madras Govt.

Read again the following ~~papers~~ letters from the Brigr. of Cannanore

~~Proceedings of Govt. Jud. Deptt~~ of 20 June 1864. No. 755 } Recorded in
" 21 " " 772 } Nos. 25 June 1864
" 24 " " 774 } Nos. 277-279.

Read the Memo: from the Adjutant General of the army. of 5 July 1864. No. 121.

Minute by the Hon. T. Pycroft ——— 21 ——— do ———

do ——— E. Maltby ——— 25 ——— do ———

Order thereon. 8th September 1864. No. 1535

The papers above recorded relate to a controversy which has taken place between the Brigadier General Commanding at Cannanore and Captain Clay, Cantonment Joint Magistrate at that station, in the course of which the Brigadier General suspended Captain Clay from his office, but subsequently restored him

2. Captain Clay, as Cantonment Joint Magistrate exercising jurisdiction within the Cantonment of Cannanore, acts under two enactments - first under

Judicial Dept.

Minute by the Hon. T. Pycroft

do E. Maltby

Read the Memo: from the Adjutant General of the Army

Proceedings of Govt. Jud. Deptt

No. 1535

Letter from the Brigr. Genl. Cannanore dated 22nd Augt. with

No 1864

Memorandum with the Proceedings of the Govt. of Madras in the Judicial Department

= dated 8th September 1864 No. 1535

= Lieut. Colonel Clay, Cantonment Magistrate Cannanore

= Lieut. Colonel Knight, Brigade Major

= Lieut. Colonel Cannanore, & Brigadier Malabar

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under Act IX of 1847 by which he is invested with the general powers of a Magistrate, and, secondly, under Regulation VII of 1832 by which he is empowered to deal with certain special classes of offences and of offenders. As respects those cases which he deals with under Act IV of 1847 he is solely under the control of the Magistrate of the District, and of the Session Court; in those cases in which he acts under Reg. VII of 1832, he is to a certain extent subject to the authority of the Officer Commanding Cannanore inasmuch as by Section XVIII all sentences passed by him under that Regulation beyond a certain limit, are subject to the approval of that officer.

3. It appears that on the 17th of June last, Brigadier General Babington recorded an order peremptorily requiring Captain Clay to dismiss two of his Clerks by the 31st July and to advertise for others to replace them. These two servants are borne on the list of the Joint Magistrate's Establishment as entertained under Reg. VII of 1832, but they were doubtless employed not only in the disposal of cases falling under that Regulation but also in connection with those coming before the Joint Magistrate in the exercise of his general jurisdiction: In so far as these servants may be considered to have been employed by the Joint Magistrate under Act IV of 1847 the Brigadier General had clearly no authority over them, and it must be very doubtful whether

General protesting against being considered under his orders. The protest was couched in language perfectly respectful. The Brigadier General however called upon Captain Clay to withdraw it and on his refusal suspended him from his office as Joint Magistrate and appointed another officer to carry on the duties the Judge of Tellicherry; however very properly declined, in the absence of any appointment by Govt. to swear in the officer appointed by the Brigadier General, and the latter thereupon reinstated Captain Clay.-

5. The Governor in Council considers that the Brigadier General was not warranted in suspending Captain Clay. Even if he had the power, which is questionable, to suspend

Captain Clay from the performance of his duties under Reg. VII of 1832, he had clearly no power to debar him from the exercise of his general magisterial functions under Act IV of 1847. Moreover, in the circumstances of the case, the adoption of such an extreme measure was altogether precipitate and uncalled for. There was no emergency calling for such haste. The Brigadier General might have reported the matter in the usual way and awaited instructions.- The suspension of the only Magisterial officer in Cannanore having original Criminal and Civil jurisdiction was an ill-advised act and one likely to lead to much public inconvenience. The Governor in Council directs that the Brigadier General

General be apprized of the opinion which the Govt. have formed of his conduct in this matter, and that he be required to prefer charges against the two Clerks which shall be fully investigated. The Cantonment Joint Magistrate will be required, as suggested in the last paragraph of the Judge Advocate General's memorandum, to conform strictly to the provisions of Reg. VII of 1832 as respects all cases disposed of by him under that Regulation.

6. The Governor in Council is unable to concur in the opinion of H.E. the Commander-in-Chief that "at all "Military Stations the "Cantonment Joint Magis- "trate should be under "the orders of the Officer "Commanding, in the same

"manner that Commissariat "officers exercising Police "authority at those Stations "used to be." The system of investing Commissariat officers with Police and judicial authority did not work by any means satisfactorily and it is not desirable to revert to it. In the opinion of the Governor in Council the proper remedy for the present anomalous state of things will be found in the repeal of Reg. VII of 1832 and in the application to this Presidency of the Cantonment Act XXII of 1864 for which purpose a Bill is now in course of preparation. Under this Act the Cantonment Magistrates will not exercise any Police authority. They will simply be judicial officers trying cases civil and Criminal

criminal and as such they should clearly be under the same control as other officers exercising similar powers elsewhere. Under the new Act the administration of the police, within the limits of any Cantonment in which there shall be a Cantonment Joint Magistrate, is vested in the District Superintendent of Police, subject to the general control and direction of the Commanding Officer of the Cantonment, but the Cantonment Magistrate himself is to be subject to the control of the Magistrate of the District in which the Cantonment is situate, and it is not probable that the Govt. of India would be disposed to authorize for the Madras Cantonments a different and, in the opinion of the Governor in Council,

a retrograde policy.

G/K

To the Military Deptt.
" Magistrate of Malabar } desptd 15/9 25
" Inspector Genl. of Police }

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