M.R.O. 1—39,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	1337	Press ~~Mis.~~
40-42		
40-42 Dated	8-9-	1864

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Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department, 8th September 1864.

Read the following papers :—

No. 40. From G. A. BALLARD, Esq., Magistrate of Malabar; to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Judicial Department, Fort Saint George, dated Calicut, 15th August 1864, No. 110.

At the request of the Acting Joint Magistrate I have the honor to submit the enclosed letter* for the orders of Government.

* Dated 12th August 1864, No. 158.

From J. H. GARSTIN, Esq., Acting Joint Magistrate of Malabar; to G. A. BALLARD, Esq., Magistrate of Malabar, dated Tellicherry, 12th August 1864, No. 158.

I have the honor to request you will submit the following points for the consideration of Government, with a view to having the Advocate General's opinion taken on them.

(1.) Can a fine imposed on an European British subject, under the provisions of Regulation II of 1820, Act VII of 1853, and 53 Geo. III, C. 155, by a Justice of the Peace be levied by the distress and sale of his real property ?

(2.) Has a Justice of the Peace under the above Acts and Statute power to commit an European British subject to Jail, or keep him in custody, in the event of his not finding bail either on the adjournment of the inquiry, or pending the return to a warrant of distress issued in consequence of the non-payment of the fine imposed ?

(3.) Supposing that a portion only of the fine imposed can be levied, must the European British subject be discharged, or can he be imprisoned for a portion of the period mentioned in the sentence proportionate to the amount of fine not realized ?

2. Section 25 of Chapter II of the Criminal Procedure Code provides that no person shall be exempt by reason of birth or descent from the rules of Procedure contained in that Act ; but Section 42 declares that nothing in that Chapter (II) shall interfere with the jurisdiction given by Act VII of 1853, and 53rd Geo. III, C. 155, Section 105, and that Section (105) provides that if the fine imposed be not paid, it may be realized by the distress and sale of *any* property of the party so convicted which may be found in the District, and that in the event of *no such* property being found, then that he may be imprisoned.

3. The wording of the Statute does not, in my opinion, admit of an European British subject's being committed to Jail in default of the immediate payment of the fine after conviction, nor does it specially limit his personal property as being only liable to be sold by distress.

4. Of course if the inquiry is adjourned bail can be *demanded* under the provisions of Section 203 of the Criminal Procedure Code, as that does not interfere with the jurisdiction of the 53 Geo. III ; but if it is not forthcoming, I do not see how the British subject can be committed to Jail under that Section, seeing that no warrant of imprisonment, *even after conviction*, can issue, until the return to the warrant of distress, (Section 105, C. 155, 53 Geo. III.)

5. The words "no such property" seem to me to leave no room for any further proceedings against the British subject, if only a portion of the fine be realized by distress.

Referred for the opinion of the Advocate General.

FORT SAINT GEORGE,
25th August 1864.

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

No. 41. From J. R. BOYSON, Esq., Government Solicitor, Madras ; to J. D. SIM, Esq., Secretary to Government, Madras, dated 1st September 1864, No. 489.

I have the honor to acknowledge the receipt of the order of Government noted in the margin, with its enclosures, requesting the Advocate General's opinion as to the mode of levying a fine imposed

Dated 25th August 1864, and made on letter from Magistrate of Malabar to Government of 15th idem, No. 110.

upon a European British convict; and as to the power of a Justice of the Peace to commit to Jail or keep in custody a European British subject, in the event of his not finding bail, pending inquiry, or return to a warrant of distress.

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

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

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

COPY—OPINION.

In reply to the three questions proposed to me, I think:

1*st*. That a fine can be levied on any property of the offender found within the District.

2*nd*. I do not think that the Justice of the Peace can apply Section 203 of the Criminal Procedure Code to this case. The whole of Chapter XII refers to the Procedure in "cases triable by the Court of Session," which this is certainly not. But I think that he may commit the accused to safe custody from time to time while the case is under inquiry, and that he may also so act pending the return to the warrant against his property by virtue of the special Acts under which he has jurisdiction to try the offender. I think also that he would be justified in accepting bail if tendered. It appears to me that all powers necessary for enforcing an Act which creates punishment by fine and imprisonment must be necessarily implied, notwithstanding the Act is silent as to the precise course of procedure. Otherwise the Act would be a mere nullity.

3*rd*. I think that imprisonment can only be awarded if *no* property of the offender is found within the District. I do not think the words "such property" can be read "such property as shall be sufficient to satisfy the warrant;" but must be referred to what immediately precedes, *i.e.*, "any property of the party."

2. Had the Legislature intended that imprisonment should be awarded if some, but not enough property to satisfy the fine were forthcoming, the wording would, I think, have been, "and if no *sufficient* property," &c. I do not think, therefore, that there can be any apportionment of imprisonment.

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

30*th August* 1864.

(True Copy.)

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

No. 42. ORDER THEREON, 8th September 1864, No. 1337.
Communicated to all Magistrates of Districts.
(True Extract.)

J. D. SIM,
Secretary to Government.

To the Magistrate

Ed. J. Tulloch.

Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letters—

From the Magistrate of
Malabar——— Enter 15th Aug. 64 No. 110.
" the Govt. Solicitor——— 1st Septr. ——489.

Order— 8th September 1864 No. 1337.

Communicated to all
Magistrates of Districts

The Magistrates of the several Districts. despd 15/9

Judicial 1864. Department.

No. 1337.

PROCEEDINGS of GOVERNMENT.

Feb. 1992

Dated 8th September

Govt. No. 1993

to the Secy.

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