M.R.O. 1—39,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial **DEPARTMENT.**

G.O. No.	1342	Press ~~Mis.~~
51-53 Dated	8-9-	19 1864

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Not to be folded or roughly handled

R-4-30

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

Read the following papers :—

No. 51. From C. W. READE, Esq., Magistrate of South Arcot; to J. D. SIM, Esq., Secretary to Government, Judicial Department, Fort Saint George, dated Tindevanum, 18th August 1864, No. 44.

I solicit through Government a solution of the following question by the Advocate General :—

CASE.—An East Indian claiming the rights of a British subject under the legal opinion quoted in Extract Minutes of Consultation, dated 16th February 1859, No. 210, Judicial Department, prays to be tried before the High Court at Madras; the case is accordingly investigated before a Justice of the Peace, and the accused is finally committed to that Court for trial at the next October Sessions. After committal, but before the papers and the parties have left the station, the prisoner desires to waive his claims as a British subject, and begs that he may be committed for trial before the local Sessions Court.

QUESTION.—After the case has been once closed before a Magistrate and Justice of the Peace, and the prisoner has been committed to take his trial before the High Court, can such committal be cancelled, and the prisoner, as desired by himself, be sent for trial before the local Sessions?

2. In the case of an Englishman of course the question could not arise because the Law is clear as to the jurisdiction to which alone he is amenable for felony; but in the case of an Eurasian or East Indian the question is suggested by reason of the competency of the class to waive their rights as British subjects; at the same time I can hardly suppose that those rights once asserted and conceded it can be open to an accused party to shift his ground; still the question has been actually raised in a case personally investigated before my Head Assistant; and as it is one of general interest, some ruling or exposition of the Law on the subject would appear desirable.

3. I addressed the Advocate General direct, but he declined to express any opinion except on the requisition of Government through the usual channel.

4. The High Court is now adjourned and the local Sessions do not re-open till next month, so that pending an answer to the present reference, I have directed the prisoner in the case referred to, to be detained at Cuddalore.

Referred for the opinion of the Advocate General.

FORT SAINT GEORGE,
25th August 1864.

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

No. 52. From J. R. BOYSON, Esq., Government Solicitor, Madras; to J. D. SIM, Esq., Secretary to Government, Madras, dated 3rd September 1864, No. 491.

I have the honor to acknowledge the receipt of the Order of Government noted in the margin, requesting the Advocate General's opinion as to the right of an East Indian Convict, whose claim to the

Dated 25th August 1864, and endorsed on letter from Magistrate of South Arcot to Government of 18th idem, No. 44.

privileges of a British subject has been conceded by a Mofussil Magisterial Court for the purpose of his being committed to take his trial at the Criminal Sessions of the High Court, to waive such claim and require his trial before the Local Sessions Court after having been so committed.

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 above noted.

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

COPY—OPINION.

Having procured a copy of the Minutes of Consultation, 16th February 1859, No. 210. Judicial Department, the want of which has given rise to some delay, I am now in a position to give my opinion on the point referred.

2. The terms of the Magistrate's letters are such as to render it difficult to know what the facts really are. The term "East Indian" is legally applicable to a class distinct from that known as "British subjects" or "European British subjects" under the Acts and Charters applicable to India.

3. "British subjects" are either those subjects naturally born in Great Britain, or the legitimate offspring of a father or mother so born, intermarrying with a native of this country, and their descendants.

4. "East Indians" are the offspring of a "British subject" and a native of this country, who have not married, and their descendants.

5. In the present case the accused must be either the one or the other. He is either an "East Indian" or a "British subject." He cannot be both.

6. I assume that upon the accused pleading that he was a British subject, the Magistrate satisfied himself of the validity of that plea, in pursuance of the directions in the late Mr. Ritchie's opinion, before committing him to take his trial at the bar of the High Court on its original side; and that the evidence on which the Magistrate admitted the plea, has been recorded.

7. If the accused is a "British subject," he *must* be tried by the High Court. The Mofussil Court has no jurisdiction under the Code of Criminal Procedure.

8. I am at a loss to understand what the Magistrate means by the statement that it is competent to the "Eurasian" or "East Indian" class to "waive their rights as British subjects."

9. If a "Eurasian or East Indian" commit a crime in the Mofussil, he *must* be tried by the Mofussil Court of the District. He has no option to be tried either by that tribunal or the High Court at his pleasure. If a British subject so act, he *must* be tried by High Court, as I have stated above. There is no other Court of competent jurisdiction to try him.

10. With reference to paragraph 3 of the Magistrate's letter, I would beg to remark that I declined to answer his former letter to me, not through any want of courtesy to the Magistracy, but because the ordinary and proper course for obtaining the opinion of the Advocate General is through the Government, as pointed out by the Advocate General of Calcutta, the late Mr. Ritchie, in his opinion now before me. During the short period of my incumbency of office, I have had several references made to me direct; some through the telegraph. I have invariably declined to answer them.

11. In case of any pressing emergency, I conceive it would be my duty to advise an Officer of Government consulting me directly; but it is obvious that if the ordinary formal method of communication be departed from, it would probably lead to a host of references on trivial questions as to which Magistrates would prefer acting upon the responsibility of the Advocate General

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

ther than their own. And in the case of telegraphic communications there is the chance of ais further mischief, that brevity may breed obscurity, and important qualifying facts may be ltogether omitted from the question.

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

1st September 1864.

(True Copy.)

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

No. 53. ORDER THEREON, 8th September 1864, No. 1342.

Ordered that the foregoing papers be communicated to all Magistrates of Districts.

2. The Governor in Council concurs in paragraphs 10 and 11 of the Advocate General's opinion.

(True Extract.)

Secretary to Government.

To the Magistrate of
,, Government Solicitor, for the information of the Advocate General.

Exd. T. Cartledge.

Judicial Department.

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PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letters—

From the Magistrate of South Arcot — Enter 18th Augt. 64 No. 44.

" the Govt. Solicitor — 3d Sept. — " 491.

Order — 8th September 1864 No. 1342.

Ordered that the foregoing papers be communicated to all Magistrates of Districts.

2. The Governor in Council concurs in paras 10 & 11 of the Advocate General's Opinion.

To the Magistrate of

" Govt. Solicitor for the information of the Advocate Genl.

Judicial 1864. Department

No. 1342

PROCEEDINGS of GOVERNMI

F. No. 1516/65

Dated 8 Septr/64

Passing orders regarding the Rights of the British Subjects & East Indians.

57 & 53.