M.R.O. 1—39,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 1410 Press / Mis.

193-195
Dated 27-9-1864

3/4

Not to be folded or roughly handled

Read the following papers :—

No. 193. From G. A. BALLARD, Esq., Magistrate of Malabar ; to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George, dated Calicut, 5th September 1864, No. 122.

As some dubiety exists, I have the honor to request authoritative expression of opinion on the following points :—

1*st*.—Does Madras Act III of 1863 put it out of a Magistrate's power to order the Police to assist in executing a warrant issued under Act XIII of 1859, if the batta peon charged with the execution according to law is unable to effect it ?

2*nd*.—Does Act III of 1863 render Section 82 of the Criminal Procedure Code a dead letter as regards warrants issued under Act XIII of 1859, or affect any of the Sections of Chapter V of the Criminal Procedure Code, except such part of Section 77 as directs that "a warrant shall ordinarily be directed to a Police Officer."

3*rd*.—Does Act III of 1863 prevent the application of the provisions of Chapter VII of the Criminal Procedure Code in the case of warrants issued under Act XIII of 1859.

2. I make this reference, because the Acting Joint Magistrate would answer all these questions in the affirmative ; whereas I would answer them in the negative, believing that Act III of 1863 was only intended to provide, and only does provide, that the Police shall not be required originally to execute warrants under Act XIII of 1859 ; but does *not* prevent their being required to give ordinary assistance in the execution of the law, where a Magistrate may consider it necessary or desirable for them to do so, or bar their action in cases of escape.

Referred for the opinion of the Advocate General.

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

FORT SAINT GEORGE,
15*th September* 1864.

No. 194. From J. R. BOYSON, Esq., Government Solicitor, Madras ; to J. D. SIM, Esq., Secretary to Government, Madras, dated 21st September 1864, No. 518.

I have the honor to acknowledge receipt of the Order of Government noted in the margin, relative to the operation of the Madras Act III of 1863, as regards certain provisions of the Criminal Procedure Code, and Act XIII of 1859.

Dated 15th September 1864, and endorsed on letter from Magistrate of Malabar to Government of 5th idem, No. 122.

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.

Proceedings of the Madras Government, Judicial Department,
27th September 1864.

COPY—OPINION.

Act III of 1863 (Madras) was passed solely with the object of sparing the Police the "excessive labor" of "serving process" under Act XIII of 1859, such "process" being either the summons or warrant issued, in the first instance by the Magistrate, for the purpose of bringing the party charged before the Court.

2. It certainly was never intended to deprive the Magistracy of the assistance of the Police, in the event of the service primarily issued, under Madras Act III of 1863, proving ineffectual, and I am of opinion that it does not.

3. To apply myself now to the three questions put by the Magistrate *seriatim.*

4. *Q.* 1.—The expression "unable to effect it" is somewhat vague. Inability might proceed from negligence or other cause on the part of the "Peon." In such event I do not think that the Police could fairly be called in. But if the inability arises from resistance on the part of the accused, rescue, or the like, I think the assistance of the Police may be called in.

5. *Q.* 2.—I agree entirely with the view of the Magistrate.

6. *Q.* 3.—Chapter VII applies to arrests under the Criminal Procedure Code. It may be open to question whether the arrest contemplated by the Magistrate's third question can be said to be an arrest made under the Code. But I am satisfied that in the event of any party ordered to be arrested, under Madras Act III of 1863, resisting, or being rescued from arrest, the persons so resisting or rescuing would be guilty respectively of an offence against the 224th or 225th Sections of the Indian Penal Code, and that it would be the duty of the Police, under the Schedule of the Criminal Procedure Code, to assist in the safe capture of such offenders even without warrant or order from the Magistrate.

7. I presume that the questions of the Magistrate are put with reference to some case which either has arisen or is about to arise, and are not mere abstract or speculative questions framed for the settlement of a difference of opinion between himself and the Acting Joint Magistrate. It never, I submit, can be intended that if two gentlemen of a legal turn of mind choose most recent Acts for their own edification or amusement they are entitled to have their "dubieties" removed by a reference to the Law Officers of Government. The more subtle the disputants, the more numerous and perplexing the questions.

19th September 1864.

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

(True Copy.)

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

No. 195. ORDER THEREON, 27th September 1864, No. 1410.

Ordered that the Advocate General's Opinion be communicated to all Magistrates of Districts.

2. Mr. Ballard's attention is directed to the concluding paragraph.

(True Extract.)

J. D. SIM,
Secretary to Government.

To the Magistrate of

Exd. J. Tulloch.

Judicial.

Proceedings of the Madras Govt.

Read the following letters—

From the Magistrate of Malabar — Dated 5th Sept. 64 No. 122.

" the Govt. Solicitor — 21st do — " 518.

Order — 27 September 1864 No 1410

Ordered that the Advocate Generals Opinion be communicated to all Magistrates of Districts.

2. Mr. Ballard's attention is directed to the concluding paragraph.

JH

The Magistrate of — 96 dispatches

Judicial 1864. Department.

No. 1410

PROCEEDINGS of GOVERNMENT

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Dated 27th September 1864