M.R.O. 1—89,000—16-10-23.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	1531	Press / ~~Mis.~~
173-175 Dated	24-10- 19 1864	

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Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department,
24th October 1864.

Read the following papers:—

No. 173. From D. F. CARMICHAEL, Esq., Magistrate of the District of Vizagapatam; to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George, dated Vizagapatam, 20th September 1864, No. 277.

In acknowledging G. O., Judicial, No. 1337 of 8th September, instant, circulating to all Magistrates of Districts copy of the opinion of the Advocate General on certain queries propounded by the Acting Joint Magistrate of Malabar, regarding the provisions of Section 105, Cap. 155, 53 George III, I have the honor to invite attention to a very full opinion of the late Officiating Advocate General at Calcutta on the same subject, which, with the subsidiary correspondence, was communicated to the Magistracy by the late Foujdaree Udalut, under the order of Government so far back as 1853, Extract Minutes of Consultation 17th May 1853. It will be found at page 211 of Mr. Hatley Frere's Circular letters and extracts; but it may also be found in every Magistrate's office, for all Justices of the Peace have walked by its light for the last 10 years in the Mofussil.

2. It appears desirable that the Advocate General's attention should be drawn to Mr. Prinsep's opinion, on account of the conflict between that gentleman's views and his own on two important points, viz., the committing the defendant to safe custody pending the return to the warrant against his property, and the acceptance of bail pending the same return.

The Advocate General.

I think he (the Justice of the Peace) may commit the accused to safe custody * * * 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.

Mr. Prinsep, (paragraph 2.)

I am of opinion that the Magistrate has no authority, after conviction passed, to detain the defendant or require bail for his appearance, till it be ascertained whether there be property within the District on which the fine can be levied. He can only take bail under Section 105 in such cases as are therein specified.

3. There are very minute directions in Mr. Prinsep's Memorandum on several points on which the Advocate General was not consulted in the present reference, especially on the propriety of selling *personalty* (if any) first, and of the mode of selling real property, with other particulars.

4. Should the Government think proper to consult the Advocate General again, and should his opinion on the points raised on paragraph 2, or on any portion of Mr. Prinsep's Memorandum, diverge from Mr. Prinsep's opinion, it is hoped that legislation may be resorted to, to clear up doubts, as the consequences to a Magistrate, trying European British subjects in his capacity of a Justice of the Peace, will often be very serious, if an erroneous procedure has been adopted.

Referred to the Advocate General, through the Government Solicitor, with copy of the opinion referred to by the Magistrate of Vizagapatam.

FORT SAINT GEORGE,
5th October 1864.

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

Proceedings of the Madras Government, Judicial Department,
24th October 1864.

No. 174. From J. R. BOYSON, Esq., Government Solicitor, Madras; to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Madras, dated 14th October 1864, No. 551.

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

Dated 5th October 1864, and made on letter from Magistrate of Vizagapatam to Government of 20th September 1864, No. 277.

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

3. I now forward a copy of his observations and further Opinion, and return the Order and enclosures above noted.

COPY—OPINION.

I regret that paragraph 2 of my Opinion of the 30th of August 1864 should have been published for general information. I had scarcely despatched it before I saw reason to question its soundness; and wrote accordingly, requesting that it might not be circulated before I saw it again, and, if necessary, that a telegram should be despatched to the Magistrate of Malabar, informing him that, in my opinion, there was no power under the Act of detaining the offender pending the return of the warrant.

2. I was informed that my letter had reached in time to stop the circulation of my opinion, which I presume must have got out of the office by some oversight.

3. What I have above stated extends also, in my opinion, to the power of taking bail *after conviction*.

4. I have now had the advantage of perusing Mr. Prinsep's opinion, with which I concur.

5. I think that *before* conviction, and in event of circumstances necessitating one or more adjournments, the Magistrate would be justified in allowing the accused to go at large upon sufficient surety, instead of committing him at once to prison for safe custody. Mr. Prinsep's opinion refers only to the power of taking bail *after* conviction; and the conclusion of Section 105 of 53, George III, certainly seems to exclude all power of taking bail, except in cases where the offender is committed for trial by the Supreme Court. This does not, however, refer to the action of the Magistrate *before* conviction or commitment.

10*th October* 1864.

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

(True Copy.)

(Signed) J. R. BOYSON,
Government Solicitor.

No. 175. ORDER THEREON, 24th October 1864, No. 1531.

Ordered that the foregoing papers be communicated to all Magistrates of Districts, with reference to Proceedings 8th ultimo, No. 1337.

(True Extracts.)

A. J. ARBUTHNOT,
Chief Secretary.

To the Magistrate of

Ed. J. Tulloch.

Proceedings of the Madras Govt.

Read the following letters—

From the Magistrate of Vizagapatam — Inter 20th Sept. 64 No. 277
to the Govt. Solicitor — 14th Oct. — 551.

Order — 24th October 1864 No. 1531.

Ordered that the foregoing papers be communicated to all Magistrates of Districts with reference to Proc. 8th Ult. No. 1,337.

The Magistrate of
the several Districts