

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	647	Press
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Dated	4 - 5 - 19	1984

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Not to be folded or roughly handled

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*Proceedings of the Madras Government, Judicial Department,
4th May 1864.*

No. 39. Read the following letter from T. WILKINS, Esq., Deputy Registrar of the High Court of Judicature at Madras, Appellate Side; to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George, dated Madras, 19th April 1864, No. 31.

I am directed to forward, with reference to the orders of Government, dated the 16th August 1862, a tabular Statement containing the rulings of the High Court, both in its Original and Appellate jurisdiction, on the Codes of Civil and Criminal Procedure, and the Indian Penal Code, during the year 1863.

Proceedings of the Madras Government, Judicial Department,
4th May 1864.

CODE OF CIVIL PROCEDURE.

Section.	Nature of the question.	Opinion of the Lower Court.	Ruling of the High Court.
2	In a foreclosure suit in which A was plaintiff and B, C, and D were defendants, was A estopped by a previous verdict on the point in issue in an ejectment suit in which C and D were plaintiffs and A was defendant?		A was estopped.
5	What constitutes such a residing and carrying on of business within the local limits of the ordinary original Civil jurisdiction of the Court as to render the Government, or a Collector, or other officer of Government subject to such jurisdiction?	In suits brought against the Government, "eo nomine," under the Code of Civil Procedure, the local Government must be considered as the party sued. The jurisdiction to entertain suits against the Government under Section 5 of Act VIII of 1859, exists only where the cause of action arose. Under clause 12 of the Letters Patent constituting the High Court of Madras, the Government must be considered as carrying on business at the place where its members exercise all the functions of Government. The words "carrying on business" in that Clause imply a personal and regular attendance to business within the local limits. A suit will not lie in the High Court against the Collector of Madras residing and carrying on business at Sydapet in respect of matters arising in Chingleput, though his Deputy Collector carried on business within the local limits, and the orders and proceedings in reference to the matters in question were in his name of office as Collector of Madras.	
12		An action for property situated within the jurisdiction of two Courts, should properly be tried by the Court within whose jurisdiction the principal part of the property in dispute is situated.	
57	Can substituted service be deemed effectual without an order of Court first obtained for substituted service?		It cannot be effectual without a previous order.

Proceedings of the Madras Government, Judicial Department,
4th May 1864.

CODE OF CIVIL PROCEDURE.—(Continued.)

Section.	Nature of the question.	Opinion of the Lower Court.	Ruling of the High Court.
73	At the hearing of a suit on final disposal, it appearing that a person interested in the subject matter was not a party to the suit, and another person appearing in person and claiming to be made a party, was the hearing to be adjourned?		All persons having a right or claiming a right, should be parties to the suit. Hearing adjourned.
97	A suing on a joint and several Promissory Note executed by B, C, and D, of whom D had not been served with a summons to appear, but B and C had though they failed to appear, can A amend his Plaint by striking out the names of C and D in order to take a judgment <i>ex parte</i> against B?		The Plaint cannot be amended by striking out the names of C and D, but A may withdraw from the suit as regards C and D with liberty to bring fresh suits against them, and can take a judgment in this suit against B.
97 187	Has the Court power to award costs to the defendant when the plaintiff withdraws from the suit not having asked leave to do so with liberty to bring another suit for the same matter?		The Court has not the power.
284 et seq	Whether a District Moonsiff, to whom a suit was referred for decision from the file of another Moonsiff, can execute the decree, the property to be proceeded against being in the other Moonsiff's jurisdiction?		The application for execution must be made to the Court which passed the decree, but the decree and execution carried out under Section 284 et seq. of the Code.
378			The successor of a Judge is not competent to grant a review which had been expressly declined by his predecessor.
XI. XXIII 1861	(1.) Whether a suit of the following description is cognizable by the Court of Small Causes under Section 3, Act XLII of 1860? The defendant originally possessed a Coodeekaneachee right in certain land, the perty of a Pagoda which he alleges he mortgaged to plaintiff giving him at the same time possession of the said land. The defendant subsequently sued the plaintiff for the restoration of his right and for possession of the said land, and the plaintiff having pleaded in that suit that the defendant had sold to him outright his Coodeekaneachee right in the land, the Moonsiff decreed in favor of the Defendant's possession of the said land. The	That as there is a title to produce to be determined, the Small Cause Court had no jurisdiction, and that it is cognizable it is barred of the original decree passed in the Moonsiff's Court in a suit to which the plaintiff and defendant were parties, and which seems to provide that all claims of this nature shall be determined in the Court executing the decree.	That Section 11, Act XXIII of 1861 applies to this case: the claim of the plaintiff arose entirely out of the execution of the original decree passed in the Moonsiff's Court in a suit to which the plaintiff and defendant were parties, and must therefore, under Section 11 of Act XXIII of 1861, be determined by an order of the Moonsiff's Court in that suit, and not by a separate suit.

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CODE OF CIVIL PROCEDURE.—(Continued.)

Section.	Nature of the question.	Opinion of the lower Court.	Ruling of the High Court.
	Appellate Court reversed the District Moonsiff's decision and the High Court in Special Appeal confirmed the Appeal decree, and plaintiff obtained possession of the land. He therefore sues for the estimated value of the produce of the land in question from the period the defendant exercised the Coodeekaneachee right in the land under the Moonsiff's decree, until the land was put in plaintiff's possession under the Special Appeal decree. (2.) Whether, if cognizable, it is not barred from adjudication in the Small Cause Court by Section 11, Act XXIII of 1861?		
CODE OF CRIMINAL PROCEDURE.			
62 63 Ch. XXI XXII 409 412 and 414 183 184 and 249	Whether any appeal lies against orders passed under Sections 62 and 63, and Chapters XXI and XXII of the Code of Criminal Procedure?	Such orders not being of the nature of convictions on trials for criminal offences, no appeal lies from the same.	
210	Whether a Session Judge, after having instructed a Magistrate to tender a pardon to any of the accused, because he doubted that there was sufficient evidence for a conviction without the evidence of parties privy to the offence and the Magistrate considered the evidence sufficient, should leave the matter in the hands of the Magistrate, or require him to comply with his instructions?	That the Session Judge should take no part in preparing the case against the prisoner, as the distinction of the functions of a prosecutor and of a Judge cannot be too scrupulously observed.	An attachment cannot properly be issued until upon a warrant issued, the party cannot be found, and the Magistrate is satisfied that the party absconds or conceals himself for the purpose of avoiding the service of the warrant. It is clearly competent to a Session Judge if he thinks proper to require the Magistrate to comply with the instructions issued to him under this Section.
228			A witness who, when in a difficulty as regards contradictions in his evidence, pretends fainting, and thereby intentionally delays the proceedings of the Court, does cause an interruption to the Judge within the meaning of this Section.

*Proceedings of the Madras Government, Judicial Department,
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CODE OF CRIMINAL PROCEDURE.—(Continued.)

Section.	Nature of the question.	Opinion of the Lower Court.	Ruling of the High Court.
257	Whether a Magistrate trying an offence punishable by such seq. Magistrate has power to question the accused?	That once a formal charge has been read, and the accused pleaded, no Court but the Session Court, as permitted in Section 373 Criminal Procedure Code, may put any question to the accused person. Chapter XII, a Criminal Procedure Code in which Section 202 occurs, specially refers to preliminary inquiries in which a charge according to Section 227 is not prepared till a committal has been ordered. Chapter XIV, Section 249, Criminal Procedure Code, allows a Magistrate under Section 202 to examine a defendant previous to the preparation of the charge, but not after the defendant has pleaded.	The power of putting questions to an accused person is given by the Code of Criminal Procedure to a Magistrate conducting a preliminary inquiry into a case triable before the Court of Session (Section 202), as well as to the Court of Session upon the trial (Section 373). It is a power also possessed by the Magistrate under Chapter XIV on the trial of cases punishable with imprisonment for a period exceeding six months, and to be exercised before the preparation of the charge (Section 250); but it is not conferred upon a Magistrate trying a case punishable with imprisonment for a period not exceeding six months, under Chapter XV.
270			A Subordinate Magistrate is not competent to award amends to an accused person in dismissing a charge of theft as frivolous and vexatious.
276	In charges of criminal trespass on landed property under Sections 441 and 447 of the Indian Penal Code, where the defendants may plead possession, is it competent to Subordinate Magistrates to dispose of such cases, or should they refer them to a Magistrate exercising full powers under Section 276 of the Code of Criminal Procedure?	That Magistrates exercising full powers are alone authorized to deal with cases involving questions of possession of land, &c.	That with reference to the Schedule appended to the Code, cases of criminal trespass under Section 447 of the Penal Code are triable by any Magistrate.
295	When more than one person living in the same village, and apprehended together in the same place and time, and under the same circumstances are brought before a Magistrate as having no ostensible means of livelihood and the evidence against each is the same, should the persons so brought up be tried in as many cases as there are persons, or should they be tried in one case together?	That there should be as many cases as there are persons.	Separate proceedings should be instituted against each person, unless there were such a connection between the parties as might indicate the necessity of a contrary course.

*Proceedings of the Madras Government, Judicial Department,
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CODE OF CRIMINAL PROCEDURE.—(Continued.)

Section.	Nature of the question.	Opinion of the Lower Court.	Ruling of the High Court.
336			This Section does not require a double set of Assessors to be summoned for each case about to be tried at the Sessions, but the Court of Session is to cause the Magistrate to summon as many persons as seem to be needed, or not less than double the number required for one case.
356	Whether the Magistrate of the District is competent to receive as evidence, the examination of an accused person given before the Subordinate Magistrate in cases referred for the orders of such Magistrate?		Unless expressly excluded every thing said or done by any person is, if relevant to the issue, evidence against him. There is no Section excluding an admission, and by taking anew the evidence of which the admission forms a part, the Magistrate does in fact proceed in all respects as if no proceeding had been held in any other Court. The meaning of Section 356 of the Code of Criminal Procedure is that the Magistrate is not to decide the case without a regular trial before himself.
356	Whether a Session Court can return to the Magistrate a case cognizable by the latter?	That it cannot be returned but should be disposed of by the Session Court, the error of committing such case being pointed out to the Magistrate.	There is nothing in the Code of Criminal Procedure which authorizes a Session Judge to return a case to the Magistrate.
356	Whether a Session Judge may return to the Principal Sudder Ameen for trial any case which he may have wrongly committed to the Court of Session?		If a case is committed to the Session Court on insufficient grounds, the Session Judge should proceed to dispose of it, pointing out the error which had been committed.
356	Whether a Subordinate Magistrate, in the case of offences committed by old offenders for which two years' imprisonment may appear a sufficient punishment, is to refer the case for the orders of a Magistrate exercising full powers, or to commit the same for trial before such Magistrate?		The power of a Subordinate Magistrate is limited to referring the case for the orders of such Magistrate, who is to proceed in all respects as if no proceedings had been held in any other Court. An old offender, however, is only to be forwarded to a Magistrate with full powers, where the Subordinate Magistrate considers that he might with propriety be tried and punished by such Magistrate.

*Proceedings of the Madras Government, Judicial Department,
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CODE OF CRIMINAL PROCEDURE.—(Continued.)

Section.	Nature of the question.	Opinion of the Lower Court.	Ruling of the High Court.
356	Whether it is competent to a Magistrate with full power to commence his proceedings by entering the charge and calling upon the defendant to plead to it; and in the event of his pleading "guilty," whether the Magistrate can convict him, on his own confession, as a Court of Session is authorized to do, by Section 362, of the Code of Criminal Procedure?	An officer exercising the full power of a Magistrate should proceed in the same way as a Session Judge, in putting on their trial prisoners duly committed to him.	No "charge" should be prepared by a Subordinate Magistrate in cases referred by him under Section 356 of the said Code for the orders of a Magistrate exercising full powers, as it is expressly provided in that Section that the Magistrate to whom the case is referred shall proceed in all respects as if no proceedings had been held in any other Court.
401			The High Court in its discretion may exercise its jurisdiction of revision under this Section and call for the record of the proceedings of the Lower Court upon the petition of a party affected by the proceeding.
428	Whether a Magistrate, having passed a judgment in appeal, can reverse the same, on a review of judgment?	That any Magistrate may receive petition for review of judgment, and proceed to review it on the same terms that the Civil Courts are permitted to do so: but in such cases the Magistrate can only mitigate, not enhance his sentence, the accused being allowed the benefit of any error in judgment, or proceeding on the part of the Magistrate.	A Magistrate having passed a judgment in appeal cannot reverse the same on a review of judgment.
434			The fact that the evidence is probably insufficient to convict is not, in the absence of appeal, a ground for quashing or altering a sentence, but there must be some clear misapplication of the law.
440			In cases where the Judge's notes form the only record of the evidence, the parties should be allowed copies of such notes, on paying the authorized charge for making the same.

Proceedings of the Madras Government, Judicial Department,
4th May 1864.

INDIAN PENAL CODE.

Section.	Nature of the question.	Opinion of the Lower Court.	Ruling of the High Court.
75			To warrant the increased punishment provided for in this Section, the previous conviction should be made a separate head of charge on the trial for the subsequent offence; and where this is the case the party charged should in the first instance be arraigned only upon the charge for the subsequent offence; and after conviction, or a plea of guilty, he should be asked whether he had been previously convicted as alleged, and if he denies that he has, then, (if there be a jury) the jury should be charged to decide, and evidence given of the previous conviction. Should, however, the party charged in the course of the trial for the subsequent offence examine witnesses to his good character, evidence of the alleged previous conviction may be given in answer before his conviction for the subsequent offence.
177	Whether a person on being questioned by a Police Constable regarding the manner of his daughter's death falsely stated that she had died of cholera, whereas she had committed suicide, he was legally bound to furnish information on the subject within the meaning of this Section?	That the man was not legally bound to furnish information on the subject, and therefore cannot be punished for his falsehood; and that if a party interrogated is not legally bound to give an answer to a Constable, he is not punishable by law if he gives a false one.	That the man was not legally bound to furnish the information demanded by the Constable.
237 et seq.			The being in possession and of uttering a medal which has been issued by the authority of some Government, and was passed as a coin of its own value and denomination, is no offence; but an attempt to pass a mere medal as real coin is an offence of attempting to pass a counterfeit as a coin.

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4th May 1864.

INDIAN PENAL CODE.—(Continued.)

Section.	Nature of the question.	Opinion of the Lower Court.	Ruling of the High Court.
490	Whether the conviction of a servant under this Section for leaving his service without notice is legal, the servant appearing to have been engaged as an ordinary servant at so much a month, and his master being in camp a few miles from the principal station?		The prisoner not having been charged with the offence of breaking a contract to serve on a journey, and it not appearing that there was any such journey, the conviction is illegal.
490			This Section does not apply to a servant hired by the month and under a continuing implied contract to serve until the engagement is terminated by a month's notice.

HIGH COURT OF JUDICATURE,
MADRAS,
19th April 1864.

(Signed) T. WILKINS,
Deputy Registrar, Appellate Side.

No. 40. To the Secretary to the Government of India, Home Department, dated Fort Saint George, 1th May 1864, No. 647.

With reference to your letter, dated 22nd July 1862, No. 3694, I am directed to forward for the consideration of the Government of India, a tabular Statement containing the rulings of the High Court, both in its Original and Appellate jurisdiction, on the Codes of Civil and Criminal Procedure, and the Indian Penal Code, during the year 1863.

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

Exd. J. Tulloch.

deposited with the clerk to Simla,
List

Judicial Department

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N^o 647.

The Secretary to the Govt of India,
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Fort St. George }
4th May 1864 }

20th July 1864
J. M. M.

Recd 10 May

London 18th Sept 1844

W. B. 47.

To the Secretary of the

of the

St. James's Palace
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London 4 May 1844

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