

# MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.

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Dated

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Not to be folded or roughly handled

Read the following papers:—

No. 13. From Lieutenant Colonel W. J. WILSON, Commissioner of Police, to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George; dated Madras, 6th December 1864, No. 119.

I have the honor to report that, on the 18th ultimo, I received six warrants from the Joint Magistrate of Wellington, for the apprehension, under the provisions of Act XIII of 1859, of certain persons charged with breach of contract at Kota-gherry.

2. In reply, I referred the Magistrate to Act III of 1863, passed by the Madras Government, and requested that persons might be sent here to execute the warrants, duly provided with funds to meet the expense of the transit and dieting of the prisoners; and I, at the same time, stated that the persons so sent should receive every assistance in my power.

3. On the 26th idem, the Magistrate forwarded a fresh set of warrants against the same persons, drawn up under the Penal Code, for "cheating" and for "breach of contract," assigning as a reason that the complainant, Mr. Newill, wished to alter the charge, being averse to the expense which would be incurred by proceeding under Act XIII of 1859.

4. Should a similar course be pursued by other Magistrates, the provisions of Act III of 1863 will be rendered nugatory, and the Police considerably embarrassed by the number of warrants they may be called upon to execute. For example, in the month of July last, no fewer than 55 warrants, under the Contract Act of 1859, were sent here from Kurnool at one time.

5. Under these circumstances, I have deemed it expedient to submit the matter for the consideration of Government.

Referred to the Government Solicitor, for the opinion of the Advocate General.  
FORT SAINT GEORGE, (Signed) A. J. ARBUTHNOT,  
12th December 1864 Chief Secretary.

No. 14. From J. R. BOYSON, Esq., Government Solicitor, Madras, to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George; dated 16th December 1864, No. 641.

I have the honor to acknowledge the Order of Government, noted in the margin, relative to proceedings evidently taken for the purpose of avoiding the expense of proceeding under Act XIII of 1859.

Order of Government made on letter from Commissioner of Police to Government, of 6th instant, No. 119.

2. I submitted the matter for the consideration of the Advocate General, with whom I have also conferred; and,

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

COPY—OPINION.

I think the Joint Magistrate of Wellington is not justified in the course he has pursued.

2. The Legislature of Madras has passed an Act, expressly to relieve the Police from the labor of serving process, under Act XIII of 1859.

3. The object of the course taken by the Joint Magistrate in this case is transparent; and, indeed, it is avowed to be to give the go-by to the Madras Legislative Act III of 1863.

*Proceedings of the Madras Government, Judicial Department,  
4th January 1865.*

4. It is stated that Mr. Newill, the complainant, wished to alter the charge after he had ascertained that serving process on a charge of breach of contract would be attended with some expense. But even this is not done; for the old charge of contract breach remains, while the charge of cheating, is merely tacked on; so that when the parties accused are brought up under the charge of cheating, without expense by the Police, the charge of breach of contract may be proceeded with. The least to have been expected would have been the entire withdrawal of the charge of breach of contract.

5. But it is not because the complainant varies his charge that the Magistrate is to do so likewise. It is his duty to decide whether the charge preferred can be sustained, in the shape in which it is brought before him; and if not, and the accusation properly falls under some other head of law, to bring it under that head.

6. The facts of the present case are not before me, and I cannot, therefore, say whether a charge of cheating could be sustained.

7. It may, at least, be surmised that the charge originally preferred, and recognised by the Magistrate, is the true one, and the only one which the facts can support, especially when the object of the additional charge is openly avowed.

8. I am of opinion that the Magistrate ought not to have sanctioned the change of charge, the object of which was to enable the plaintiff to avoid expense cast upon him by the law, and to throw upon the Police labors, from which the Legislature had expressly exempted them.

9. It appears to me that, in all probability, there is no ground, in the present instance, for a charge of cheating. To substantiate that, it must be proved that at the time when the accused entered into the contract, they had the full intention to obtain advances by purely false pretences, and that their promise was a mere blind to induce the complainant to part with his cash. In all probability the only evidence of this is the actual breach of the contract, which as Mr. Mayne most forcibly observes, in his comment on Section 417 of the Indian Penal Code, is not even *prima facie* evidence of any original fraudulent intention.

10. The law providing for breach of contract avoids all this. It assumes that the contract was entered into in good faith, and provides a remedy for cases in which there is a breach of contract, not legally justifiable, and, in the view of law, therefore fraudulent.

11. If the course adopted by the Joint Magistrate in the present case were to be allowed, the results would be such as Colonel Wilson points out, and the Madras Act III of 1863, Section 1, would in all probability be a mere dead letter.

14th December 1864.

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

(True Copy.)

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

No. 15. ORDER THEREON, 4th January 1865, No. 10.

The Governor in Council directs that the foregoing papers be communicated to the Magistrate of Coimbatore, for his information, and for the guidance of the Joint Magistrate of Wellington.

2. Copies of these Proceedings will be furnished to all Magistrates of Districts, and to the Commissioner of Police.

(True Extract).

Chief Secretary.

To the Magistrate of  
,, Commissioner of Police,  
Ed. J. H. Burns,

Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letters—

From the Commissioner  
of Police — Inter 6<sup>th</sup> Decem. 64 No. 119  
" the Advocate General  
Solicitor — 16<sup>th</sup> do. — 641.

Order — 4<sup>th</sup> January 1865 No. 10.

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Police.

The Magistrates of the  
several Districts  
" Commissioner of Police.  
Ed. J. H. Burns.

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1864. Department.

No. 10

PROCEEDINGS of GOVERNMENT

St. John 272.

Dated 4<sup>th</sup> June 1864.

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