M.R.O. 1—50,000—16-10-12.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 1133 Press Mis.

12-1-22

Dated 16 — 8 — 1922

15/16

Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department,
16th August 1865.

Read again Proceedings 15th June 1865, No. 856, and 29th June 1865, No. 919.

Read also the following papers:—

No. 120. From P. P. HUTCHINS, Esq., Registrar of the High Court of Judicature at Madras, to W. HUDLESTON, Esq., Acting Secretary to Government, dated Madras, 7th July 1865, No. 50.

I am directed to acknowledge the receipt on the 4th instant, of your letter of the 29th ultimo, forwarding a copy of Mr. Busteed's note of the High Court's judgment in the Criminal Appeal of Head Constable Durga Prasád.

2. From the extreme brevity of this note it does not correctly represent the judgment, which was of some length and contained a full discussion of the evidence. It is incorrect in the form given to the observation as to the Joint Magistrate being unprepared to perjure himself. The Counsel argued that from their own conduct the Joint Magistrate and the Inspector had disentitled themselves to belief. The answer of the Court was that there was no ground whatever for the imputation of perjury on the Magistrate, for the obvious reason that no man would falsely admit himself guilty of the misconduct with which the Magistrate charged himself in this case.

3. The Court also said that they would consider as to the propriety of bringing the matter to the notice of the Government, not that they would so bring it. It is quite true, however, that it appeared to the Court that the Head Constable had been led into crime in a great measure by the grave irregularity of which the Joint Magistrate stated himself to have been guilty.

No. 121. From R. DAVIDSON, Esq., Acting Session Judge, Bellary, to F. BRANDT, Esq., Acting Under Secretary to Government, Judicial Department, Fort Saint George; dated Bellary, 19th July 1865, No. 45:—

*Original document A. 1, page 207.
Enclosure 1.
Register of preliminary enquiry, page 208.
Do. do.
Original warrant, D. page 32.
Enclosure 4.

With reference to your Official Memorandum, dated the 29th ultimo, No. 275 and its enclosure, I have the honor to forward translation and copies of the Records in Session Cases Nos. 14 and 62 of 1865, and request you will be good enough to return, when no longer required, the papers noted in the margin* which have been submitted in original.

No. 122. ORDER THEREON, 16th August 1865, No. 1133.

The Governor in Council has had under his consideration the papers above recorded, together with the records of two trials submitted by the Session Judge of Bellary with his letter of the 19th ultimo, with reference to the complaint preferred by the Inspector General of Police against Captain Johnston, Cantonment Magistrate of Bellary, in connection with the matter which formed the subject of the two trials in question.

2. It appears that on the 9th December last, Captain Johnston employed a body of policemen to arrest some persons who, it was supposed, would be found in the evening gambling in or near an arrack vender shop. The arrest was effected

and a searching examination made of every part of the shop, the declared object of the search being, as it is said, to discover a document which purported to empower the vender to allow gambling on his premises. Next day, the 10th December, the circumstances connected with the arrest and search came under formal enquiry in the Court of the Joint Magistrate, Captain Johnston, and a deposition was then made by a Police Head Constable, named Doorgaprasad, who had headed the Police party charged with the duty of arrest, to the effect that the arrest and search had been made under the "*Warrant" of the Magistrate, Captain Johnston being the Magistrate referred to.*

3. Captain Johnston's signature was affixed to the deposition given by Doorgaprasad.

4. The hypothesis started in respect of the document searched for, as above stated, in the arrack vender's house, and there discovered, was that it was a forged or fictitious document. On the supposition that it would be established as such, if some of the persons apprehended would turn approvers, Captain Johnston availed himself of the power he possesses under Section 209 of the Code of Criminal Procedure, to offer a free pardon to two of them, and by this means secured evidence on which Gooroomoorty Naidoo was committed by Captain Johnston for trial by the Session Court, charged with the offence to which Section 476 of the Indian Penal Code relates. This offence is a kin to forgery. The punishment awardable on conviction of it would be seven years rigorous imprisonment and fine.

5. The result of the trial was Gooroomoorty Naidoo's acquittal and discharge. During its progress, the statements made by an Inspector of Police, Mr. Drew, and several of his Constables and Peons, among whom was Doorgaprasad, as well as the Police records which they produced, went to shew that both the search and arrest before mentioned, were made on the strength of Captain Johnston's Warrant, dated the 9th December.

6. These statements, however, having been contradicted by the evidence of other witnesses in the case, Captain Johnston was cited by the Session Judge, and, when examined on oath, deposed that no warrant was issued by him on the 9th December, but that he did affix his signature to one prepared next day and antedated it to the 9th, in order to cover the action of the Police, who had arrested the gamblers and searched the arrack seller's house without any written warrant and merely on a verbal order which he (Captain Johnston) had given. Having given this deposition, Captain Johnston had a personal communication with Mr. Drew, the Police Inspector, whom he is shown to have persuaded to go before the Session Court and withdraw the deposition he had there made as to the warrant having been issued on the 9th December. Against this individual, under these circumstances, no criminal proceedings appear to have been taken for the false evidence of which he was undoubtedly guilty. The case, however, was different as regards the Peon Doorgaprasad, who held to his statement that the warrant was issued on the 9th. He, on being indicted for giving false evidence as to the date of the warrant being the 9th December, was convicted, mainly on Captain Johnston and Mr. Inspector drew's testimony, and sentenced to three months rigorous imprisonment, which he has undergone. It was under these circumstances that the Inspector General of Madras Police addressed to the Government, his letter of the 5th June last.

Proceedings of the Madras Government, Judicial Department,
16*th August* 1865.

7. The Governor in Council is of opinion that Captain Johnston has shown himself utterly unfit to be entrusted with the responsible office of Cantonment Magistrate. The reason given by Captain Johnston, when questioned by Doorgaprasad's Council, as to why he had allowed the Statement made before him by Doorgaprasad that the warrant had been issued on the 9th to remain unchallenged, was to the effect that he fancied that by the word "Warrant" Doorgaprasad meant his (Captain Johnston's) verbal order of the 9th December. The Government cannot attach the slightest weight to this explanation. It is most improbable that any Officer of the slightest experience in the Police or Magistracy would use the word Warrant in the sense of a verbal order, and the Governor in Council cannot believe that when recording the evidence of the Constable Doorgaprasad, whom the Inspector General describes as one of the most efficient men in the force, Captain Johnston can really have supposed that when he said "Warrant," Doorgaprasad meant to advert to any verbal instructions he might have received.

8. The Governor in Council is constrained to remark that the whole of Captain Johnston's proceedings in the matter, exhibit a most arbitrary mode of conducting his duties. Gambling, as he, a Magistrate, ought to have known, is not an offence punishable under the Indian Penal Code, or any other law in force in the districts, and no rule which he may have chosen to frame without the knowledge or consent of his superiors, could justify his interfering with men who were not doing anything which by law they are prohibited from doing. He has saved himself, however, from the legal consequences of his unauthorized measure by carrying it out, as he says, on a verbal order, and then, when he found that it required some written support, by preparing and antedating a Warrant, in which (to add to the irregularity), no single name appears. This was another illegality, and a grave one. A blank Warrant placed in the hands of Policemen is a most dangerous document, and one which might be perverted to the worst purposes.

9. The antedating of the Warrant is, however, the Act immediately calling for notice by the Government. His Excellency in Council is of opinion that an Officer who has lowered himself before numerous subordinates of his own and another department, and committed an act of official deception of this grossly improper kind, has shown himself to be unfit for the Magisterial bench. Sitting as a Magistrate, he can never be regarded and treated with the respect which is due to an European Officer of the Government. His Excellency in Council resolves accordingly to remove Captain Johnston from his appointment and to replace him under the orders of His Excellency the Commander-in-Chief. These proceedings will be communicated to the Military Department with reference to the orders passed by the Government of India in that Department under date the 2nd March and 1st August 1864.

(True Extract).

Chief Secretary.

To the Military Department.
" Inspector General of Police.
" Magistrate of Bellary.
" Session Judge of Bellary, (with 4 enclosures, returned.)

the two trials in question

Captain Johnston's case. No 1570/65

During the trial in the Resident Court at Bellary, of one Yooroomooly Naidoo, the Respondent Mr Davidson, found it necessary to clear up a hazy discrepancy in the Evidence, by citing to the Court as witness, Captain Johnston, Cantonment Paint Inspector.

The circumstances which led to the discrepancy arose, are stated in paras 3 & 4 of the Resident's Court proceedings, 10 May 65, annexed to the record of the trial of Yooroomooly Naidoo. -

Captain Johnston's account had employed a body of the Police stationed at Bellary, to arrest some persons who, it was supposed, were likely to be found punishing wine, or in an attack made on the night of the 9th December 1864.

Pages 34 & 36 of Enclosure 2. No 1570.

The arrest was effected and a searching examination made of every part of the shop, the declared object of the search being, as above said, to discover a document which purported to empower the vendor to allow gambling on his premises. Next day, the 10th Dec., the circumstances connected with the arrest & search came under formal enquiry in the Court of the Police Magistrate, Captain Johnston, and a deposition was made by one Robin Pen named Doospaprasad, who had headed the police party charged with the duty of arrest, - to the effect that the arrest & search had been made under the "warrant" of the magistrate, - Captain Johnston being the magistrate referred to.

(Thursday, 9 Dec. 1852.)

At the close of Doospaprasad's deposition, I observe the signature of Captain Johnston, before whom it was recorded judicially.

The hypothesis started in respect of the document searched for, as above stated, in the attack under-house, and there discovered, was that it was a forged & fictitious document.

On this supposition that it owned its

established as such, if some of the persons apprehended owned their character, Captain Johnston availed himself of the power he possesses under Section 209, Code Criminal Procedure, to offer a free pardon to two of them, & by their means secured evidence on which [illegible] was committed by Captain Johnston, to trial by the Supreme Court, charged with the offence dwelt with Section 476 Indian Penal Code viz. The offence, should be seen, is akin to forgery. The punishment awardable on conviction of it would be similarly rigorous imprisonment and fine.

The result of the trial was [illegible] acquittal & discharge.

During its progress, however, the statements made by an [illegible] John Mc. Drew, and several of his co-debtors of Messrs. [illegible] as well as the Police Records of the [illegible] produced, went to show that both the search & arrest before mentioned were made on the strength of the warrant of Captain Johnston's warrant dated the 9th Dec. 3. and such had been the conviction produced on the mind of the Supreme Judge by the testimony recorded.

(among those was Doospaprasad)

when, however, Captain Johnston appeared in the Sup: Court on the citation of the Insp: under the discrepancy directed to be cleared up & was examined on oath, he deposed that no warrant was issued by him on the 9th inst., but that he did affix his signature some days prepared next day and ante dated it to the 9th in order to cover the action of the Police who had arrested the Tumbles and searched his premises without any written warrant and merely on a verbal order of his (Captain Johnston) had given.

Having given this deposition, Captain J. had a personal conv: with Mr. Drew, whom he is known to have previously wished to be before the S. Court, and withdrew the deposition he had made as to the warrant having been issued on the 9th inst. Still against this individual under these circs, no criminal proc: appear to have been taken for the false evidence deliberately & deliberately given.

The case, however, bears different as regards the person Doorga Parsad. Stabled this statement that the warrant was issued on the 9th.

[The

Mr. Robinson Inspector,

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Mr, on being indicted for giving false evidence as to the date of the warrant being the 9th inst. was convicted, mainly on Captain Johnston and Mr. Inspector Drew's testimony, & sentenced to three months rigorous imprisonment, which he has undergone.

Under these circumstances this, that Mr. Robinson, Supt: of the Police has dismissed to the Bar of this Court. C

I have carefully considered these voluminous papers and am of opinion that the complaint preferred by Mr Robinson against Captain Johnston, is most fully supported by the judicial enquiry held at Bellary in the September.

In the absence of the discrepancy which created a necessity for Captain Johnston's appearance as a Wit: on the 10th inst on the 10 January last, I had a month after the ante dating

I am constrained to believe that Captain Johnston would not have been hired on the date of the warrant, for on the 10th of the previous month, Captain Johnston had allowed Doorgapersad to depose, and had not challenged his statement that it had been spent on the 9th.—

When questioned by the Prisoner Doorgapersad's Counsel as to why he let the statement pass without comment or action, Captain Johnston answered, that he fancied by the word "warrant." Doorgapersad meant his (Captain J.'s) verbal order of the 9th.—

He could not believe that no officer or even slight magisterial experience would believe the meaning of the term "warrant" with the words that accompany it used in reference to verbal instructions.—

"Warrant" is from time immemorial down to the present day, a term of art, as understood, for a magisterial process; and [illegible] taking down in writing the evidence of a constable of the District of Doorgapersad, I found difficulty believing that Captain J— could really have supposed that when he said "warrant" Doorgapersad meant to admit to any verbal instructions he might have received. His attempt at explanation on Captain J's part seems to me, to say the least, disingenuous.

The whole of Captain J's proceedings in this matter exhibit a most arbitrary mode of conducting his duties. Something, as he ought to have known, is not an act considered penal by the Indian Code he is sworn to be guided by; and to local rule he may have chosen to frame without the knowledge or consent of his superiors, cannot justify his interfering with men who were not doing any thing which by law they are prohibited from doing. He saved himself, however, from the legal consequences of his unauthorized measure by carrying it out as he says, on

verbal order, and then, when he found that he required some written authority, by dexterously preparing and taking a warrant in which no single name appear. Then, thirdly, in another act of dispatch, and he should have drawn that valuable warrant, placed within back of pens, was a most dangerous document. One should suppose perfectly well the words of purposes.

The order taking of this warrant, viz, however, this admirable calling for review by God. It is my opinion that an officer who has lowered himself before numerous native subordinates of his own & another department, & committed an act of official duplicity of this kind, has shown unfitness for the magisterial bench. He can never again ascend it, and when there, he regarded & treated with the respect which is due to a European officer of the Government

and then for an any opinion, he should be removed from office against by WDK

I have gone over the papers and I cannot arrive at any other conclusion than that stated above by Mr Phillips

WDK

PROCEEDINGS of the MADRAS GOVERNMENT.

Read again Pros: 15th June 1865 No. 856 &
29th " " " " 919

Read also the following letters.

From the High Court dt 7th July 65 No. 50.

From Sessions Judge of Bellary. dt 19th " " 115.

Order thereon. 16th Augt 1865. No. 1133.

The Governor in Council has had under his consideration the papers above recited together with the records of two trials submitted by the Sessions Judge of Bellary with his letter of the 19th ultimo, with reference to the complaint preferred by the Inspector General of Police against Captain Johnston, Cantonment Magistrate of Bellary in connection with the matter which formed the subject of the two trials in question.

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named Doorgaprasad, who had headed the police party charged with the duty of arrest, - to the effect that the arrest and search had been made under the "Warrant of the Magistrate, - Captain Johnston being the Magistrate referred to.

3. Captain Johnston's signature was affixed to the deposition given by Doorgaprasad.

4. The hypothesis started in respect of the document searched for, as above stated, in the arrack vender's house, and there discovered, was that it was a forged or fictitious document. On the supposition that it could be established as such, if some of the persons apprehended would turn approvers, Captain

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was Doorgaprasad, as well as the Police records which they produced, went to shew that both the search and arrest before mentioned, were made on the strength of Capt. Johnston's Warrant dated the 9th Dec.

6. These statements however, having been contradicted by the evidence of other witnesses in the case, Capt. Johnston was cited by the Session Judge and when examined on oath deposed that no Warrant was issued by him on the 9th Dec., but that he did affix his signature to one prepared next day and antedated it to the 9th, in order to cover the action of the Police, who had arrested the gamblers and searched the arrack seller's house without any

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issued on the 9th He, on being indicted for giving false evidence as to the date of the Warrant being the 9th Decr, was convicted, mainly on Capt. Johnston and Mr. Inspector Drew's testimony, and sentenced to three months rigorous imprisonment, which he has undergone.— It was under these circumstances that the Inspector General of Madras Police addressed to the Govt. his letter of the 5th June last.

7. The Governor in Council is of opinion that Captain Johnston has shown himself utterly unfit to be entrusted with the responsible office of Cantonment Magistrate. The reason given by Capt. Johnston which questioned by Doorgaprasad's Counsel as

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Govt. H. E. in Council resolves accordingly to remove Capt. Johnston from his appointment and to replace him under the orders of H.E. the Commander-in-Chief, who will be furnished with a copy of these Proceedings and of the papers referred to in it through the Military Dept.

Mark pros. will be communicated to the Military Dept with a copy of the order passed by the Govr. & Council

Mily Dept. with Extracts &c. copy &c.

Insp. Genl. of Police - 3

Magte. of Bellary. 3

Sessions Judge of Bellary. 3

with Proceedings

From Jany 1.

Jud 186. Department.

No. 1133

PROCEEDINGS OF GOVERNMENT.

Sept 18/74 Encl

Dated 16 Aug 1865.

Case of Captain Stanton, Convenant Magte of Kellamy

120 - 122.