

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 1346

Press
~~Mis.~~

203-209.

Dated 20. 9. 1865

19

7/8

Not to be folded or roughly handled

1K

*Proceedings of the Madras Government, Judicial Department,
20th September 1865.*

Read the following papers:—

No. 203. From Captain A. F. F. BLOOMFIELD, Acting Cantonment Magistrate, Trichinopoly, to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George; dated Trichinopoly, 17th June 1865, No. 1.

With reference to Proceedings of the High Court of Judicature, under date 15th June 1865, copy of which is attached, I have the honor to request sanction for entertainment of the Head Clerk, as mentioned in paragraph 44 of Act XI of 1865, and of such other establishment as is deemed fit for the Small Cause Court lately established in this Cantonment.

Proceedings of the High Court of Judicature at Madras, 15th June 1865.

Read letter, dated the 7th instant, from the Judge of the Court of Small Causes of Cannanore, requesting to be furnished with a Seal for the use of his Court, and with information as to what establishment has been sanctioned for carrying on the duties of the Court, and whether by the introduction of the new Cantonment Act, European Officers of the Army are amenable to the jurisdiction of his Court for actions of debt amounting to Rupees 200.

The High Court have already sanctioned the purchase of a Seal for each Cantonment Court of Small Causes, and a copy of the Rules of Practice observed in the regular Small Cause Courts has also been forwarded to each Judge of a Cantonment Court, for guidance, so far as they may be found applicable.

2. If they require any additional establishment for Judicial work, the Cantonment Magistrates should address Government direct.

3. As to the question raised in the last paragraph of this letter, the Court are not at present prepared to give any opinion. If the point should arise hereafter in a suit, it may be referred to the High Court, under Section 22, Act XI of 1865. The Judge's letter seems to refer to Section 103 of the Mutiny Act, in which 400 Rupees is the sum limited, not 200 Rupees.

(True Extract).

(Signed) P. P. HUTCHINS,

Registrar, Appellate Side.

*To the Judge of the Court of Small Causes of Trichinopoly,
with reference to his letter, dated 9th June 1865.*

(True Copy).

(Signed) A. F. F. BLOOMFIELD, Captain,
*Acting Cantonment Magistrate, and Judge
of the Court of Small Causes of Trichinopoly.*

No. 204. From Captain A. D. CLAY, Judge of the Court of Small Causes, Cannanore, to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George; dated Cannanore, 20th June 1865, No. 197.

I have the honor, with reference to Section 17 of Act XI of 1865, wherein it is provided that "every person invested with the powers of a Judge of a Court of Small Causes, under the 15th Section, shall receive such remuneration as the Governor General in Council shall from time to time determine", to request you will inform me whether I am entitled to any additional remuneration for performing the duties of the Judge of a Court of Small Causes.

2. As no establishment of any kind has been as yet authorized by Government to carry on the duties of the Small Cause Court, and as my present establishment* is even now very much overworked (as will be seen by reference to marginal note), by the number of Magisterial cases, I request that Government may be moved to sanction an increase to the strength of my present establishment, to enable me to carry on the duties of the Small Cause Court.

	Rs.
* 1 Head Clerk.	35
1 Clerk.	20
1 Do.	15
1 Dufterbund.	7

In 1864.	No.
Criminal Cases	463
Civil do.	955
Justice of the Peace.	19
Branch of Contract.	29
Total..	1466

No. 205. From E. G. R. FANE, Esq., Collector of Madras, to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George; dated Saidapet, 29th June 1865, No. 108.

I have the honor to forward herewith an application from Captain Clementson, Joint Magistrate of Saint Thomas' Mount, representing the inadequacy of the establishment allowed him to perform the various duties of his office, and beg to recommend that the additional hands asked for by him, namely one Head Writer, on Rupees 50, and a Peon, on 6 Rupees, may be sanctioned, in consideration of the extra work now required of him in his capacity of Judge of a Court of Small Causes.

From Captain C. D. CLEMENTSON, Cantonment Magistrate, Saint Thomas' Mount, to E. G. R. FANE, Esq., Magistrate of the Madras District, Sydapet; dated Saint Thomas' Mount, 24th June 1865, No. 40.

I have the honor to request that you will be good enough to bring to the notice of Government the inadequacy of the establishment at present sanctioned for the performance of the increased duties entailed upon me, by the formation of a Court of Small Causes at this station.

2. Sections 37, 40, 41, and 42 of the Rules of Practice for Courts of Small Causes contemplate the existence of a Head Clerk, and define his duties.

3. I have no person at present available for these duties. The time of my present writers is fully taken up in the criminal work of the office, which is greatly increased since the repeal of Act VII of 1832. For trials under that Act, it was not necessary to send Calendars or copies of evidences to the Session Judge. Now for every offence a Calendar must be sent, and in all cases where Europeans are witnesses, copies of their evidence, and in committal cases, copies of the evidence of Native witnesses, also, must be sent; the High Court having forbidden the originals to leave the office. This has more than quadrupled the writing to be done.

4. The 1st and 2nd writers are sufficient with occasional help from the 3rd to perform all the Criminal work, but it would be impossible for any of the present staff to perform properly also the duties of Head Civil Clerk, as defined in the Sections above quoted.

5. I, therefore, beg that you will obtain permission for me to entertain a Head Clerk, on such salary as may be deemed adequate by His Excellency the Governor in Council.

Present Establishment.	Proposed Establishment.
2 Writers, 35 and 20.. 55	Criminal. ns.
2 Peons, at 6..... 12	1 Writer 35, 1 at 20.. 55
Total.. 67	Civil.
Drawn from the Military Department.	1 Head Writer..... 50
1 Writer at 15..... 15	1 Writer..... 15
1 Dufterbund at 7... 7	Miscellaneous.
1 Sweeper at 5..... 5	1 Dufterbund or Head Peon, 7..... 7
Total... 27	3 Peons, at 6..... 18
Drawn from the Civil Department.	1 Sweeper, at 5..... 5
Total of Establishment.	Total.. 150

6. My present Establishment is as per margin, and was sanctioned by Order of Government, under date 18th July 1862, No. 1136. I would beg to propose that it stand as annexed. I have mentioned Rupees 50 as the minimum salary, taking into consideration the custody of money and the furnishing of security, as required by Section 48 of Rules of Practice, Court of Small Causes. The increase will be 1 Writer at 50, 1 Peon at 6--total 56.

No. 206. From Lieutenant Colonel F. YOUNG, Judge of the Court of Small Causes, Wellington, to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George; dated Wellington, 30th June 1865, No. 201.

Under instructions from the High Court, and finding that an extra establishment is essential for the performance of the duties of the Small Cause Court (my English writer as Cantonment Joint Magistrate having quite as much work as he is capable of performing efficiently in keeping up the Magisterial records), I have the honor to recommend that I be allowed a Head Clerk of the Small Cause Court, on a salary of Rupees 35 per mensem. This, I think, is as little as could well be given, the appointment being a responsible one, and the clerk having to give security in the amount of Rupees 250.

2. Should Government sanction this establishment for the Wellington Small Cause Court, I propose appointing T. K. Ramasami Pillai, Head Clerk. He passed the required examination—vide Register published in Supplement to *Fort Saint George Gazette* of the 1st July 1864—his No. 341,—and he has been for the last year employed in my office without any salary, learning his duties as a Magistrate's clerk.

No. 207. From Major G. N. JOHNSTONE, Cantonment Magistrate, Bellary, to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George; dated Bellary, 10th July 1865, No. 222.

With reference to the Proceedings of Government, Judicial Department, dated 5th May 1865, No. 1690, appointing me Judge of the Cantonment Court of Small Causes, Bellary, I have the honor to request you will do me the favor to inform me whether any establishment for the working of the Cantonment Small Cause Court has been sanctioned by Government, and if so to what extent.

2. Should no order have been passed on the subject, may I request the sanction of Government for my submitting a Statement showing what establishment I consider necessary for the working of the Small Cause Court at this station.

3. The present establishment allowed for my office is totally inadequate to the performance of the additional work imposed, owing to this being constituted a Small Cause Court and Deputy Registrar's Office.

4. In reply to a reference made by me to the High Court, requesting information as to an establishment for the Small Cause Court, I received instructions to make application direct to Government.

No. 208. From J. R. BOYSON, Esq., Government Solicitor, Madras, to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George; dated Madras, 12th August 1865, No. 456.

I have the honor to acknowledge the Proceedings of Government noted in the margin (with its enclosures), requesting the Advocate General's opinion as to the amenability of European Officers of the

Army to the jurisdiction of the Cantonment Courts of Small Causes for actions of debt amounting to Rupees 200.

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

3. I now forward a copy of his Opinion.

Dated 2nd August 1865, No. 1052, Judicial Department.

Proceedings of the Madras Government, Judicial Department,
20th September 1865.

COPY—OPINION.

I think that Military Courts of Request, under the Mutiny Act for the time being, have still, within Cantonment limits, exclusive jurisdiction over the cases within their cognizance, notwithstanding a Court of Small Causes may have been constituted, under the provisions of Madras Act No. IV of 1865, within such Cantonment.

2. Section 8 of Madras Act No. IV of 1865 is precisely the same as Section 8 of Act No. XXII of 1864. The wording of those Sections undoubtedly bars the effect of Act III of 1859, of Act XI of 1841, and of all other Acts which the Legislature had power to affect, within the limits of a Cantonment, so soon as a Small Cause Court has been appointed in that Cantonment.

3. But neither the Local Legislature of Madras, nor the Supreme Legislature has any authority or power to repeal, or in any way affect, the Mutiny Act for the time being. This is expressly provided by 24 and 25 Vic. C. 67—the Indian Councils Act, Section 28.

4. It cannot be, therefore, that either Legislature intended to affect the Mutiny Act; and if any such intention did exist, legislation in that respect would be wholly inoperative.

5. The opinion of the Government of India on Section 49 of Act IX of 1850 is express on this point:—"The Indian Legislature could not alter the Law" (the English Mutiny Act) "nor has it any power to legislate in respect to them" (Officers and others amenable to the English Mutiny Act).

6. I think, therefore, that the words of Section 8 of Madras Act IV of 1865 must be taken to refer to only such Acts as it had power to affect. To give it any other interpretation would be to impute an illegality to the Legislature, which must be presumed to have had the Mutiny Act in mind, when passing this Act.

7. My attention has been called to an Opinion of the High Court with which I have been favored. That ruling being upon Act XLII of 1860, the words of which are different from those of Madras Act No. IV of 1865, can be no authority on the point now in question. I have no doubt of the correctness of the decision; but I may observe that had the Court's attention been directed to the fact that the Indian Legislature *cannot* "repeal, or in any way affect," the Mutiny Acts, it would not have had even the doubt under which it appears to have labored.

8. I would take this opportunity of mentioning that it appears to me that this Government has not the power, under the Cantonments Act, to appoint any Courts of Small Causes, and it occurs to me that the operation of such Courts had better be suspended, until the defect in the Act can be remedied.

9. Sections 6 and 7 provide that Courts of Small Causes shall be constituted under, and in accordance with, the Provisions of Act XLII of 1860. The Madras Act received the assent of His Excellency the Governor in Council on the 24th March 1865, but it did not receive the assent of His Excellency the Governor General till April 12th, 1865. But on the 15th March 1865, Act XI of 1865 received the assent of the Governor General. This Act repeals Act XLII of 1860, so that at the date of Madras Act No. IV of 1865 receiving the assent of the Governor of Madras, Act XLII of 1860 had ceased to exist. Yet it is under the provisions of that Act that Courts of Small Causes are to be constituted within Cantonments.

10. It is true that Section 2 of Act XI of 1865 provides that any Small Cause Court (constituted under XLII of 1860) *in existence when Act XI of 1865 came into operation* shall be considered as constituted under that Act. But the Madras Cantonment Small Cause Courts were not, and could not have been, in existence when Act XI of 1865 received the assent of the Governor General, and are therefore not within the proviso of Section 2.

11. These Courts then, I fear, are entirely without legal jurisdiction.

12. A short Act substituting Act XI of 1865 for XLII of 1860 in Madras Act No. IV of 1865 will, I think, be necessary to put matters right.

10th August 1865.

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

(True Copy).

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

Proceedings of the Madras Government, Judicial Department,

20th September 1865.

No. 249.

ORDER THEREON, 20th September 1865, No. 1346.

Adverting to the foregoing Opinion of the Advocate General, from which it appears to be questionable whether the Courts of Small Causes established under the provisions of Madras Act IV of 1865 have any legal jurisdiction, the Governor in Council resolves to direct that the operations of the Courts in question be suspended, pending the passing of an Act of the nature of that suggested in the last paragraph of Mr. Norton's Opinion. In the new enactment, provision will be made for legalizing all acts which may have been done by the Courts in question, previous to their operations being suspended in pursuance of these orders. Such suits as are pending in these Courts can, of course, be withdrawn, and instituted either in the Court of the District Moonsiff, or in a Military Court of Requests, according as the defendants may be subject to the jurisdiction of the one Court or the other.

2. The establishments at present assigned to the Cantonment Magistrates at St. Thomas' Mount, Bellary, Cannanore, and Wellington, are those fixed in the Pro-

ST. THOMAS' MOUNT, BELLARY, AND CANNANORE.		RS.
Establishment of Officer exercising jurisdiction under Regulation VII, 1832.	2 Writers at 35 and 20	55
	2 Peons at 6	12
	Rupees... ..	67
Establishment of Officer exercising jurisdiction as Joint Magistrate under Act IV, 1847.	1 Writer.	15
	1 Duffarband.	7
	1 Mussaljee and Sweeper... ..	5
	Rupees... ..	27
	Total.. ..	94

WELLINGTON.

	RS.
2 Writers at 35 and 20	55
2 Peons at 7	14
1 Mussaljee and Sweeper.. .. .	5
Rupees.. ..	74

ceedings of Government, under date the 18th July 1862, the particulars of which are shewn in the margin. In each case, a part of the establishment has been hitherto paid from the Military Department, and a part from the Civil Department. The office being now exclusively a Civil one, the charges hitherto provided for in the Military Department must, in future, be provided for in the Civil Department; and as the duties must be very much the same in the several Cantonments to which Act IV of 1865 applies,

the Governor in Council resolves to assign the following establishment to each Cantonment Magistrate.

	RS.
One Head Clerk... ..	50
One 2nd "	35
One 3rd "	20
One Duffadar	8
Two Peons, at Rupees 7 each	14
One Mussaljee and Sweeper.	5
Total... ..	132

3. The Head Clerk on Rupees 50 is not to be employed, until the functions of a Court of Small Causes shall have been again entrusted to the several Cantonment Magistrates.

(True Extract).

Acting Secretary to Government,

To the Magistrate of Bellary.
" " of Coimbatore.
" " of Malabar.
" " of Madras District.
" " of Trichinopoly.
" Military Department.
" Legislative Department.
" Accountant General.

Ed. J. H. Burns.

Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Order thereon \$346 of 20 Sep 1955

Adverting to the foregoing opinion of the Advocate General from which it appears to be questionable whether the Courts of Small Causes

Should not soon representation be tabulated
to amount of the folk of India &
How God in view of the mission of

being a mixed Military
-Civil Court of Requests
are no longer necessary

Jp

I would not move in this
matter, not because I must prefer
the justice of a Military Court of
Requests to that of a civil superior
or single staff officer, but because
the expense of officers & soldiers men
generally value highly the privilege
of having their money disputes settled
in a Court of the forces & not in a
Court of the Government. I have
no great faith in our civil justice
Courts - they are wholly lay out
control and put the Government
in a position to sue in other
Courts against whose proceedings
appeals do lie, I apprehend that
a deal of wrong is done in the
S. Cause Court at present
unremedied. W.D.

MD

Such suits as are
pending in these
Courts are of course
to be withdrawn
with intent either in
the Court of the District
Magistrate or in the
Military Court of
Requests according
to the Dept. ruling.
In suits in the civil
- division of the Court of the

re-established under the provisions
of Madras Act IV of 1865
have any legal jurisdiction,
the Governor in Council resolves
to direct that the operations
of the Courts in question
be suspended pending the
passing of an Act of the
nature of that suggested in
the last paragraph of Mr.
Stott's opinion. In the
new enactments provision
will be made for legalizing
all acts which may have
been done by the Courts in
question previous to their
operations being suspended
in pursuance of these orders.

2. The establishments
at present assigned to the
Cantonment Magistrates
at St Thomas' Mount,
Bellary, Cannanore and
Wellington are those fixed
in

St Thomas' Mount, Bellary &
Cannanore.

Establishment of	2 Writers at 35 + 20 - Rs 55.
Officer exercising	2 Pons at 6 - " 12
jurisdiction under	
Regulation VII, 1832.	<u>Rs 67</u>

Establishment of	1 Writer - 15
Officer exercising	1 Deputy und - 7
jurisdiction as Court	
Magistrate under	1 Mafsaljee and
Act IV, 1847.	Sweeper - 5
	<u>Rs 27</u>
	<u>Total Rs 94</u>

Wellington

2 Writers at 35 and 20 - Rs 55.
2 Pons at 7 - " 14
1 Mafsaljee and Sweeper - 5
<u>Rs 74</u>

in the Proceedings of Govern-
ment under date the
18th July 1862, the par-
ticulars of which are
shown in the margin. In
each case a part of the
establishment has been
hitherto paid from the
Military Department
and a part from the Civil
Department. The office being
now exclusively a Civil one
the charges hitherto provided
for in the Military Department
must in future be provided
for in the Civil Department,
and as the duties must be
very much the same in
the several Cantonments
to which Act IV of 1865
applies, the Governor
in Council resolves to
assign the following
establishments

Establishment to each
Cantonment Magistrate

One Head Clerk — Rs 50
One 2nd — — — 35
One 3rd — — — 20
One Duffadar — " 8
Two Peons at Rs 7 each " 14
One Muzpalje & Sweeper " 5
Rs 132

The Head Clerk on Rs 50
is not to be employed
until the functions of
a Court of Small Causes
shall have been again
entrusted to the several
Cantonment Magistrates.

g/h

To the Magistrates of ⁵Trichinopoly,
Malabar, Madras District,
Coimbatore & Bellary — 25
desd 23/ Military Department 11
" Accountant General 3
" Legislative Department 3
" Registrar High Courts —
disd 20/65

Pro. of the
Internal 1865. Department.

No. 1340

PROCEEDINGS OF GOVERNMENT.

of the 2491-2499.
308/86-529-695-862.

Dated 20th September 1865.

*number
of
cases
seen*

Pro. No. 157-153

1877/62

Pro. No. 152-155

1875/65

34-35

12-8-65

197-98

2030205

What should be for Carter.
must be Magistrate.