M.R.O. 1—59,000—16-10-22.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial **DEPARTMENT.**

G.O. No.	146	Press Mis-
237-238. Dated	26-1-	19-1865

Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department,
26th January 1865.

No. 237. Read the following letter from J. D. MAYNE, Esq., Clerk of the Crown, to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George; dated Madras, 20th January 1865.

I have the honor to advise you, for the information of the Honorable the Governor in Council, that a Commission of the Peace was, on the 17th instant, issued on behalf of Captain William Larkins Pascal, Master Attendant at Vizagapatam, and Captain Robert William Meppen, Master Attendant at Bimlipatam, to be Justices of the Peace, in accordance with the application made by the Government to me, under date the 5th instant.

No. 238. ORDER THEREON, 26th January 1865, No. 146.

Communicated to the Magistrate of Vizagapatam, in reference to Proceedings of Government of the 5th instant, No. 15.

(True Extract).

Chief Secretary.

To the Magistrate of Vizagapatam.
" Superintendent of Marine.

Exd. J. H. Burns.

No. 21. Read the following letter from D. F. CARMICHAEL, Esq., Collector of Vizagapatam, to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George; dated Vizagapatam, 3rd November 1864, No. 639.

On receipt of the Order of Government, Marine, No. 211, of 14th ultimo, communicated with the Session Judge, in reference to the remark made by the Government that, "with the Judge and Magistrate both in the Commission of the 'Peace, it might not be necessary to empower the Master Attendant of Vizaga-'patam to exercise jurisdiction under the Boat Rules;" for I remembered to have heard the Judge say, incidentally, that the functions of Judge were incompatible with those of a Justice of the Peace.

2. It will be seen, from the Session Judge's reply, that he is of opinion that that is so. He suggests that the Government should declare that all the powers under the Boat Rules may be exercised by a 1st Class Subordinate Magistrate, chiefly, on the ground that parties sentenced under these rules by a Justice of the Peace would practically be without appeal, a writ of *certiorari* being their sole remedy.

3. For my part, I strongly urge the propriety of giving the jurisdiction to a Master Attendant, wherever he is deemed qualified. The offences are such as occur for most part under his eyes, such as demand instant remedy, and such as a seafaring man can best determine,—to wit, over-crowding and over-loading of boats, landing and shipping beyond certain limits, refusing to ply without satisfactory reason. The punishments are slight, except in cases where life is endangered, or where the boatmen in smuggling resist lawful search; in these, six months' imprisonment can be awarded.

4. There is no Justice of the Peace at Bimlipatam, and I am the only one (excluding the Judge) here. I am absent four months of the year; and I beg to add that, when I am present, I shall be very glad to be free from exercising control over the boats, *first*; because I have plenty to do besides, and, *secondly*, because the Master Attendant, being always on the beach, and having experience as a sailor, can do the work so much better.

5. I trust, therefore, that the Government will be pleased to create the Masters Attendant of Vizagapatam and Bimlipatam Justices of the Peace, to exercise jurisdiction under the Boat Rules. Their names in full are, respectively,

Captain William Larkins Pascal.

Captain Robert William Meppen.

From C. COLLETT, Esq., Session Judge of Vizagapatam, to D. F. CARMICHAEL, Esq., Collector of Vizagapatam; dated Vizagapatam, 2nd November 1864, No. 65.

In reply to your letter,* dated 27th ultimo, No. 619, I have the honor to state that I lately had occasion to express an opinion that the Criminal Procedure Code no where contemplates a Session Judge acting as a Justice of the Peace. I formed this opinion on the terms and arrangements of the Sections in Chapter II, and on the fact that an appeal lies, in certain cases (those commonly occurring up country), from a Justice of the Peace to the Court of Session.

* Enclosures 4. Herewith returned.

2. It might, of course, be a very serious matter to suitors if the business arrangements of the Civil Court, which are always made from one to two months beforehand, were liable to be displaced by the Civil Judge having to sit as a Justice of the Peace from time to time.

3. Cases, under Act I of 1859, as pointed out by the Advocate General, must be tried by a Magistrate. As to the Port Boat Rules of 1847, there seems to me to be a remedy, which i would be both easy and desirable to introduce. These rules were issued under Act IX of 1846, and the Government might, by acting in accordance therewith, issue a new rule that all the powers given by the rules of 1847 to a Justice of the Peace may, in future, be also exercised by a Magistrate with full powers, or a Sub-Magistrate of the 1st Class. The punishments, to which parties are by these rules liable, are all within the ordinary jurisdiction of a Sub-Magistrate of the 1st Class.

4. This change seems desirable as (1) the parties to be dealt with will almost always be Natives, and (2) these persons, if sentenced by a Justice of the Peace, will practically be without appeal, and there is no reason why sentences under these rules should not be subject to the ordinary rules as to appeal. In some cases the sentence may be six months' rigorous imprisonment.

5. I may note that the draftsman of the rules does not seem to have thought of there being any distinction between a Justice of the Peace and a Magistrate. In two places, as Rule VI and again in Rule XV, he has used the word "Magistrate," evidently as if exactly synonymous to "Justice of the Peace."

ORDER THEREON, 5th January 1865, No. 15.

Under the circumstances stated by the Collector of Vizagapatam, the Governor in Council resolves to appoint the Master Attendant at Vizagapatam, Captain William Larkins Pascal, and the Master Attendant at Bimlipatam, Captain Robert William Meppen, to be Justices of the Peace, for the town of Madras and the Presidency of Fort Saint George, and the several Provinces and places subordinate thereto.

2. Cases that may arise, not cognizable by these Officers, must be dealt with by the Magistrate in the usual course.

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

To the Clerk of the Crown, dated Fort Saint George, 5th January 1865, No. 16.

His Excellency the Governor in Council having duly nominated and appointed Captain William Larkins Pascal, Master Attendant at Vizagapatam, and Captain Robert William Meppen, Master Attendant at Bimlipatam, to be Justices of the Peace, within and for the Presidency of Fort Saint George, and the several Provinces and places thereto subordinate, I am directed to request that, with the sanction of the Honorable the Judges of the High Court, Commissions of the Peace, on their behalf, may be issued in conformity with the provisions of Act VI of 1845.

2. Captains Pascal and Meppen will qualify before the Civil Court of Vizagapatam.

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

Exd. J. H. Burns.

№ 146 26 January 1865.

Communicated to the Magistrate of Vizagapatam, in reference to Proceedings of Govt. of the 5th Instant, № 15.

To the Magistrate of Vizagapatam. 3 despatches.