M.R.O. 1—29,000—15-12-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial **DEPARTMENT.**

G.O. No. 1540 Press Mis.

205-207.

Dated 28.10.1865 19

3/4

Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department, 28th October 1865.

Read the following papers :—

No. 205. From the Inspector General of Police, to the Chief Secretary to Government, Fort Saint George; dated Kotagherry, 6th October 1865, No. 1963.

An individual named Iyasawmy Moodelly contracted to build Police huts at certain stations in the Madras District, and received 510 Rupees advance.

2. He failed to fulfil the contract, and was charged before the Acting Joint Magistrate, with request that he might be ordered to refund 253 Rupees advanced on the contract for the huts at Tirukulli Kundrum, under Act XIII of 1859.

3. The Court found that the contract had been broken, but dismissed the claim, on the ground that the defendant is neither an Artificer, workman, or laborer. The defendant is a rich well-to-do Ryot.

4. I applied to Colonel Orr to ascertain whether any precedent could be found in the records of his Department, but find that none exists.

5. I should be obliged, if the Government see fit, could the Law be declared with a view to the guidance of Police Officers.

Diary of 12th September 1865, *Chingleput.*

Visited Tirukullikundrum Station.

Inspected Arms, Ammunition, &c.

Remarks.

Attended the Joint Magistrate's Court this day (13th). The complaint made against the Contractor for breach of contract was inquired into; and the Joint Magistrate, referring to Act XIII of 1859, considering that he has no jurisdiction to punish or enforce the contract, dismissed the case, and ordered it to be remedied by a Civil suit. I beg to know what I am to do in the case. The Contractor promises to go on with the works—but this promise I am sure will be as false as his former ones—and says that he will put on the roof on the same walls which the Engineer has pronounced useless and ordered to be pulled down. Consequently I think it advisable to file a suit against the man in Civil Court at once for damages; and enforcing to the very words of the Contract will serve the man rightly; and at the same time the amounts due to him for the work he has done in Tirooporoor Division should be stopped until this affair is settled.

2. I herewith return the Contract Deed, and an Extract of the Joint Magistrate's decision in the case.

(Signed) A. MOONESAWMY,
Inspector of Police,
F. Division, 2nd Range.

Extract from the decision of the Acting Joint Magistrate of Madras District.

Complainant.	*Defendant.*
Moonesawmy Moodelly, Police Inspector.	V. Iyasawmy Moodelly.

Breach of Contract.

By the Contract it appears that Rupees 510 were advanced for five Station-houses and 26 huts in the Tirooporoor and Tirukullikundrum Divisions. The buildings were to be completed within four months from the 19th May 1864. They have not been completed, and complainant now requests that defendant be ordered to refund him Rupees 253, which he states was the sum advanced for the huts in the Tirukullikundrum Division. By rights the contract having been broken, the whole sum advanced is liable to be ordered to be refunded. The Court, however, doubts that it has jurisdiction to enforce this refund, as defendant is neither an Artificer, workman, or laborer. It appears to the Court that the remedy for the breach of this contract is by Civil suit. Under these circumstances, the complaint must be dismissed—Section 272, Criminal Procedure Code.

(Signed) A. McC. WEBSTER,
Acting Joint Magistrate.

CHINGLEPUT, 13*th September* 1865.

(True Extract).
(Signed) A. McC. WEBSTER,
Acting Joint Magistrate.

Proceedings of the Madras Government, Judicial Department,

28th October 1865.

Referred to the Government Solicitor, for the opinion of the Advocate General.

FORT SAINT GEORGE,
12th October 1865.

(Signed) W. HUDLESTON,
Acting Secretary to Government.

No. 206. From the Government Solicitor, Madras, to the Acting Secretary to Government, Fort Saint George; dated Madras, 19th October 1865, No. 618.

I have the honor to acknowledge the Order of Government, noted in the margin (with enclosures), relative to breach on the part of V. Iyasawmy Moodelly in the fulfilment of his contract to build certain huts in the Madras District, and the law applicable to the recovery of the advance made to him on account of such contract.

Dated 12th October 1865, and made on letter from Inspector General of Mofussil Police to Government of 6th idem, No. 1963.

2. I submitted the papers for the consideration of the Advocate General; and,

3. I now forward a copy of his opinion, and return the order and enclosures above noted.

COPY—OPINION.

I am quite at a loss to understand what is meant by the concluding paragraph of the letter of the Superintendent of Police, referred to me.

2. The Law *is* declared already by the Legislature. *I* cannot declare the Law. I can only state what in my opinion it is: that opinion may be right or wrong. The only authorities to "declare" the Law are the legal tribunals, whose construction of the Legislative enactments is final and conclusive. If the correctness of the Acting Joint Magistrate's decision is not acquiesced in, the only way of ascertaining whether he has rightly declared the Law is by appeal to the superior legal tribunals.

3. If I am asked, whether, in my judgment, the Acting Joint Magistrate has rightly interpreted Act XIII of 1859, I answer that he has.

4. If what it is sought to know is this: whether the money advanced can be recovered under the contract, I must see the contract before expressing any decided opinion, and know what the alleged breach of contract is.

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

17th October 1865.

(True Copy).

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

No. 207. ORDER THEREON, 28th October 1865, No. 1540.

The Advocate General's opinion recorded above will be communicated to the Inspector General of Police.

(True Extract).

Acting Secretary to Government.

To the Inspector General of Police.

Exd. J. H. Burns.

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Judicial

Proceedings of the Madras Govt.

Read the following letters —

From the Inspector General of Police — Inster 6 Oct. 65 No. 1963.

" the Govt. Solicitor — 19 do. — 618.

Order — 28 October 1865 No. 1540

The Advocate Genl's. Opinion recorded above will be communicated to the Inspector Genl. of Police.

The Inspector Genl. of Police. despd 1/11/65

Transfer

Judicial 186 . Department.

No. 1570

PROCEEDINGS OF GOVERNMENT.

Dated 28th October 1855

255 to 257