

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 285

Press
Mis.

190-192

Dated 22.2.1865

19.

Not to be folded or roughly handled

Read the following papers :—

No. 190. From P. GRANT, Esq., Magistrate of Coimbatore, to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George; dated Metapolliem, 30th January 1865, No. 10.

With reference to the Order of Government, No. 10, dated 4th January 1865, I beg to forward copy of a letter addressed to me by Lieutenant Colonel Young, Joint Magistrate of Wellington. The chief point in it which requires the decision of Government is the answer to the question which forms the latter clause of paragraph 6; viz., Is a complainant in a breach of contract case, under Act XIII of 1858, required to pay any sum in excess of the Process Fee required by Act III of 1863? If not, and I do not see that he can be legally called on to pay these expenses, they will naturally fall on Government—a proceeding likely to entail a considerable expenditure of public money, but which I imagine was never contemplated, when Act XIII of 1859 was passed. Many planters enter into contracts with coolies in distant parts of the country, and pay their rail and road expenses to the estates. Under these circumstances, the coolies are liable to be dealt with under Section 492 of the Penal Code, for breach of contract, and Government, I conclude, would have to pay all expenses attending their arrest and transit to the Magistrate's Court. This point, however, should be finally decided for future guidance.

From Lieutenant Colonel F. YOUNG, Joint Magistrate of Wellington and Coonoor, to P. GRANT, Esq., District Magistrate, Coimbatore; dated Wellington, 11th January 1865, No. 12.

With reference to the Order of Government, No. 10, of the 4th instant, and which, as it at present stands, is likely to mislead Magistrates, from the fact of the order having been passed on an incomplete version of the case, I have the honor to offer the following statement, for submission to Government.

2. Last November, the late Mr. Newell preferred a complaint of breach of contract against six of his coolies, whom he had advanced money to—brought up by rail at a considerable expense—had contracted in writing to serve him for one year as laborers, but had only remained with him for a few days—and then, without any ill-treatment, had absconded. Doubtless they obtained service at higher wages on some other coffee estate, as they have not returned to Madras, their native place.

3. It is questionable as to whether the coolies, from the above act, did not render themselves liable to a charge of “cheating,” but which could only have been ascertained from after inquiry. The case, however, was clearly one of breach of contract, under Section 492, Indian Penal Code.

4. The late Mr. Newell, wishing if possible to *re-gain* their services, paid the Process Fee required by Act III of 1863, and the complaint was recorded as one under Act XIII of 1859: and I will here observe that the advantage thereby desirable would be that the Court (at the option of the complainant) might either require the defendant to perform the work, as agreed upon, return the advance received, or such portion as the Court deemed reasonable, or give security for the performance of the work; whereas under the Penal Code, punishment, and not performance, is the only alternative.

5. I acted as stated in paragraph 2 of the letter from the Commissioner of Police to the Chief Secretary to Government, and on the receipt of his reply, requiring process servers to be sent, provided with funds to meet the expenses of the transit and dieting of the defendants, I forwarded a copy to the late Mr. Newell, who, having already paid the Process Fee required by Act III of 1863, and having been put to a considerable expense in bringing up the coolies from

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22nd February 1865.*

Madras, did not wish to risk more money, and, under these circumstances, stated that he wished the coolies to be punished under the Penal Code, as an example to his other workmen; and, accordingly, when forwarding fresh warrants to the Commissioner of Police, I distinctly informed him "that Mr. Newell was averse to providing funds for the dieting and transit expenses of the defendants," as will be observed from the copy of my letter annexed.

6. Paragraph 3 of the Commissioner's letter must doubtless have led Government to suppose that the late Mr. Newell objected to pay the Process Fee, viz., one Rupee for each case, and upon this point the whole reference depends; namely, Is a complaint in a breach of contract case, under Act XIII of 1859, required to pay any sum in excess of the Process Fee required by Act III of 1863?

From Lieutenant Colonel F. YOUNG, Joint Magistrate of Wellington and Coonoor, to Lieutenant Colonel W. J. WILSON, Commissioner of Police, Madras; dated Wellington, 25th November 1864, No. 327.

Adverting to your letter, No. 600, of the 18th instant, I have the honor to inform you that Mr. Newell is averse to the expense attendant on providing funds for the subsistence and transit expenses of the defendants, and, instead of having them tried under Act XIII of 1859, wishes them to be tried under Section 417 or 492, Indian Penal Code. Under these circumstances, I beg to transmit fresh warrants, and request that you will return those forwarded with my letter, No. 319, of the 16th instant.

(True Copy).

(Signed) F. YOUNG,
*Joint Magistrate of
Wellington and Coonoor.*

(True Copy).

(Signed) P. GRANT,
Magistrate

Referred to the Advocate General, for his opinion.

FORT SAINT GEORGE,
14th February 1865.

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

No. 191. From J. R. BOYSON, Esq., Government Solicitor, Madras, to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George; dated Madras, 20th February 1865. No. 83.

I have the honor to acknowledge the order of Government, noted in the margin, (with its enclosure) requesting the Advocate General's opinion as to the liability

Dated 14th February 1865, and made on letter from Magistrate of Coimbatore to Government, of 30th January 1865, No. 10.

of a complainant in a case of breach of contract, under Act XIII of 1859, for

payment of any expense beyond the Process Fee required by Act III of 1863.

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

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

COPY—OPINION.

It seems to me quite clear that, under the Madras Act III of 1863, no more can be demanded than the one Rupee provided for in Section 2. All other charges incidental to bringing the defend-

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ant before the Magistrate must be borne by the Government, just as in the ordinary case of bringing up prisoners and witnesses under Criminal process, and just as they were borne when the Police executed the warrants under Act XIII of 1859.

2. But there is difference between criminal process, and process under Acts XIII of 1859 and Madras Act III of 1863;—that, the former, is issued in the administration of public justice, and is therefore fairly chargeable to the public purse; while the latter is simply to enable an individual to enforce his private civil contracts.

3. It could scarcely have been contemplated that the public should have to pay for the relief of the individual.

4. Section 2 of Act III of 1863 appears to contemplate a sort of sinking fund, which would, under ordinary circumstances, suffice to cover all the cost of process serving, as for instance when the defaulting contractor lives in the immediate neighbourhood of the complainant and the Magistrate.

5. When, however, he has run away to a distance, one Rupee is manifestly inadequate to pay for serving him.

6. I do not know how the Act works. If such cases as that under review are exceptional, probably there is no need of interference.

7. If, on the contrary, Government finds itself called on to pay considerably in excess of the sums collected under Section 2, it will remain to be considered whether recourse should not be had to further legislation in the matter.

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

(True Copy).

Signed J. R. BOYSON,
Government Solicitor.

18th February 1865.

No. 192. ORDER THEREON, 22nd February 1865, No. 285.

Communicated to the several Magistrates.

2. The Government will be prepared to consider the expediency of amending Act III of 1863, should it appear that the payments made by Government exceed the receipts under Section 2 of the Act. The several Magistrates will report on this point, with reference to the working of the Act during the year 1864.

(True Extract).

A. J. ARBUTHNOT,
Chief Secretary.

To the Magistrate of
" Government Solicitor.

Exd. J. H. Burns.

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4th January 1865.*

From L

WILSON, Commissioner of Police,
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 VIII of 1859, of persons charged with breach of contract at Kotah.

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 for the expense of the transit and dieting of the prisoners. At the same time, stated that the persons sent should be 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." Reason the complainant, Mr. Newill, wished to alter the charge, being averred which would be effected 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 November last, warrants, under the Contract Act of 1859, were sent here from Kurnool at one time.

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

Respectfully submitted,
FOR THE GOVERNMENT, Solicitor, for the opinion of the Advocate General.
(Signed) A. J. ARBUTHNOT,
Chief Secretary.

WILSON, Esq., Government Solicitor, Madras, to the
Honorable 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 VIII of 1859.

2. I submitted the matter for the consideration of the Advocate General, with whom I have also consulted.
3. I now forward the same for the consideration of the Government.

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 go-by to the Madras Legislative Act III of 1863.

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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 therefore, say whether a charge of cheating could be sustained.

7. It may, at least, be surmised that the charge originally preferred 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 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 purely false pretences, and that their sole object was 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 is allowed, the results will be that Wilson points out, and the Madras Government will be allowed, to Section I, probability be a mere device to avoid the law.

14th December 1864.

(For Copy)

ORDER THE

January 1865

The Governor in Council directs that the papers be communicated to the Magistrate of Coimbatore and the Magistrate of Wellington.

and to the Magistrate of Districts, Police.

REBUTILNOT,
Chief Secretary.

To the

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Judicial 1865. Sept 11
No. of 22-23 May 1865
From the Govt. Secy, Madras.
to the Chief Secy to Govt. Madras.
Dated 20th February
Recd 27th February
N^o 83.
18 enclosure: 8 papers 2/2
N^o 430
Forwards Copy Advocate General's
opinion relative to the liability
of a Complainant in a case of
breach of contract under Act
XIII of 1859. For payment of any
expense beyond the fees &c
required by Act III of 1863.

with an note

From the Magistrate of Coimbatore
to the Chief Secy to Govt. Madras.
No 285 of 22 Feb 1865
Communicated to the several
Magistrates.
The Government will be prepared to
consider the expediency of amending
Act II of 1863 should it appear that
the payments made by Govt. under
the provisions under Section II of the Act
the several Magistrates with
reference to this point with reference
to the working of the Act during
the year 1864.

To the Magistrate of } desps 27/2
Govt. Secretariat