

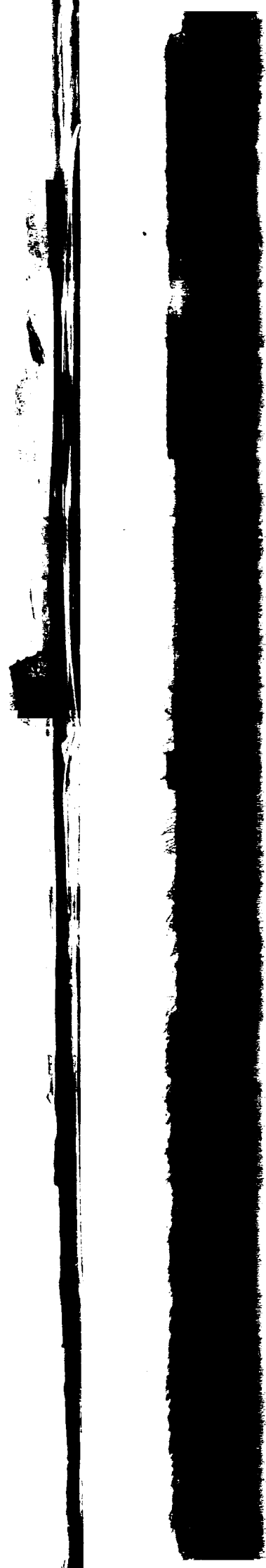
MADRAS RECORD OFFICE.

Government of Madras.

Admin DEPART MT.

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CRIMINAL PROCEDURE CODE—(Continued.)

Section.	Nature of Question.	Opinion of Lower Court.	Ruling of the High Court.
429	By of ed in Column VII of the Calen- dar, be in the hand-writing of the Magistrate?	The w to be cop should be in the hand-writ- ing of the officer conduct- ing the case.	ent of the evi- it forms a neces- sary part of the reasons for passing the sentence or final order, should be in the hand- writing of the presiding judicial officer.
	reference High Court for the amendment of the pro- ceedings of a Magistrate which appear to be irreg- ular?		This Section distinguishes be- tween pro... and sentences... law. In either case the Session Judge may call for the record, but re- ference to the High Court should only be made where the sen- tence is contrary to law.
435	If a charge of "theft by a servant" is dismissed by a Magistrate, can the prosecutor prosecute for the same offence?		In a case where the Magis- trate has no final jurisdic- tion, discharge on a preliminary enquiry is not an acquittal and does not prevent a prosecution in a tribunal competent to dispose of such offence.
	criminal case a prisoner... them on unstamped paper?		which a... by Sec- tion 230 to... of final... may be on... paper and must be authenticated by the presiding judicial officer. No unauthenticated copy of other re- cords can be furnished except on stamped paper, but un- authenticated copies for private use may be allowed on unstamp- ed paper.

CIVIL PROCEDURE CODE.

Nature of Question.	Ruling of the High Court.
Can a plaint which has once been re- gistered be rejected as barred by limitation?	Yes. It would be contrary to the plain of the Procedure Code to hold that the mere ministerial act of registration de- prives the Court of the power designedly given of itself taking notice of the limitation.

To the Secretary to the Government of India
dated Fort Saint George, 21st March 1865, No. 439.

With reference to your letter of the 22nd July 1862, No. 3694, I am directed
to forward, for the consideration of the Government of India, a Tabular Statement

JUDICIAL DEPARTMENT.

No. 439.

FROM

A. J. ARBUTHNOT, Esq.,
Chief Secretary to the Government of Fort Saint George,

TO

THE SECRETARY TO THE GOVERNMENT OF INDIA,
HOME DEPARTMENT.

SIR,

With reference to your letter of the 22nd July 1862, No. 3694, I am directed^d to forward, for the consideration of the Government of India, a Tabular Statement showing the constructions of the Madras High Court upon the principal questions which arose in the past year upon the Indian Penal Code, and the Codes of Civil and Criminal Procedure.

I have the honor to be,

Sir,

Your most obedient Servant,

FORT SAINT GEORGE,
21st March 1865.

Chief Secretary.

From P. P. HUTCHINS, Esq., Acting Registrar of the High Court of Judicature at Madras ; to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George, dated Madras, 17th March 1865, No. 26.

Adverting to the Proceedings of Government, dated 16th August and 21st October 1862, Nos. 1337 and 1733, I am directed by the High Court to forward, for the purpose of being submitted to the Government of India, a Tabular Statement showing the constructions of the Court upon the principal questions which arose in the past year upon the Penal and Procedure Codes.

P. S.—The rulings have been circulated to the Lower Courts.

CRIMINAL PROCEDURE CODE—(Continued.)

Section.	Nature of Question.	Opinion of Lower Court.	Ruling of the High Court.
242	Can a prisoner tried on several distinct heads of charge be punished on more than one ?		Where the accused are on one single continuous transaction, the object of adding supplemental counts to the principal head of the charge is not the accumulation of punishment, but to provide against the event of the evidence failing to establish the principal charge.
250	In case of the non-appearance of the complainant when a case of alleged theft is called on before a Magistrate, should the prisoner be discharged ?	This Section directs that the charge should be prepared after the evidence of the prosecution has been taken. In the present case no charge can be made.	In serious cases the crime must be fully investigated, and if the presence of the party primarily injured is necessary, the case must be adjourned.
270	Can a Sub-Magistrate award amends for a frivolous complaint if the offence charged be punishable with more than 6 months' imprisonment? Can he do so in a preliminary enquiry in a case not cognizable by him?	This Section applies only to cases treated of in the Chapter of which it forms a part, and the Sub-Magistrate has therefore no power to award amends.	When the act charged is punishable with more than six months' imprisonment or beyond the final jurisdiction of a Sub-Magistrate the award of amends is illegal.
271	Can a Magistrate permit the withdrawal of a complaint alleging insult and intent to provoke a breach of the peace ?	This section applies only to the offences described in Chapter XV in which it occurs.	The opinion of the Lower Court is correct. The Magistrate has no power to permit the withdrawal of a complaint in this case.
278	Can the Magistrate of the District interfere in a case committed by a Sub-Magistrate to the Sessions Court and order a prisoner's release ?	The Magistrate has general powers of supervision over the Sub-Magistracy, and is competent to quash proceedings which he considers harsh or unnecessary.	The interference of the Magistrate is in effect a reversal of the Sub-Magistrate's decision. When a prisoner is committed he can only be delivered in due course of law.
288	Is a Magistrate competent, when passing a sentence of imprisonment in default of security for good behaviour, to direct that the imprisonment shall be rigorous ?		The order in default of giving security must follow the words of the Code of Procedure. Having so entered the order the Magistrate has no further concern in the matter.
331	Can the Sessions Judge issue an order to the Collector to remove the names of certain Assessors from the list ?		The preparation of the list of Assessors rests with the Collector, and it is for him alone to determine whether a general exception should be made of a particular person or of a particular class, other than those specified in the Criminal Procedure Code. If unqualified persons are on the list the remedy at the time of trial lies with the Session Judge.

CRIMINAL PROCEDURE CODE—(Continued.)

Section.	Nature of Question.	Opinion of Lower Court.	Ruling of the High Court.
429	Should the summary of evidence, which is copied in Column VII of the Calendar in the hand-writing of the Magistrate?	The whole of the matter to be copied in Column VII should be in the hand-writing of the officer conducting the case.	The statement of the evidence, so far as it forms a necessary part of the reasons for passing the sentence or final order, should be in the hand-writing of the presiding judicial officer.
434	Should reference be made to the High Court for the amendment of the proceedings of a Magistrate appear to be irregular ?		This Section distinguishes between proceedings irregular and sentences contrary to law. In either case the Session Judge may call for the record, but reference to the High Court should only be made where the sentence is contrary to law.
435	If a charge of "theft by a servant" is dismissed by a Magistrate, can the servant be again prosecuted for the same offence ?		In a case where the Sub-Magistrate has no final jurisdiction on a preliminary enquiry is not an acquittal and does not, therefore, prevent a prosecution "de novo" before a tribunal competent to dispose of such offence.
440	May authenticated copies of sentences and records in criminal cases be given to a prisoner applying for them on unstamped paper?		Copies of depositions which a Magistrate is required by Section 230 to furnish, and copies of final sentences or orders, may be on unstamped paper and must be authenticated by the presiding judicial officer. No authenticated copy of other records can be furnished except on stamped paper, but unauthenticated copies for private use may be allowed on unstamped paper.

CIVIL PROCEDURE CODE.

Section.	Nature of the Question.	Ruling of the High Court.
32	Can a plaint which has once been registered be rejected as barred by the law of limitation ?	Yes. It would be contrary to the plain intent of the Procedure Code to hold that the mere ministerial act of registration deprives the Court of the power designedly given of itself taking notice of the Act of limitation.

desp.

Judicial Department.

No. 4.

The Secretary to the Government
of India.

Home Department.

Sir,

With reference to your
letter of the 22nd July
'62 No. 3604, I am directed
to forward for the
consideration of the
Govt. of India
a tabular state-
ment showing the
constructions of the
Madras High
Court upon the prin-
cipal questions which
arose in the past year
upon the ^{supra} ~~trial~~ and
^{the} ~~Procedure~~ Codes.
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Proceedings -

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