M.R.O. 1—50,000—16-10-28.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 971-972 Press ~~Mis.~~

69-72

Dated 12-7 1865 ~~19~~ .

5/6

Not to be folded or roughly handled

Read the following papers:—

No. 69. From A. M. RITCHIE, Esq., Registrar High Court, Madras, Original Side, to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George; dated Madras, 3rd July 1865.

I am directed by the Honorable the Chief Justice to acknowledge your letter, dated the 30th June, and, in reply, to enclose a copy of the charge, together with the Justice's Register of the preliminary inquiry in the case of John Bake sent from Coimbatore. The charge, depositions, recognizances, and other documents must remain on record in the High Court; but if it be desired copies of these may be furnished.

2. In the other cases from Trichinopoly, I am desired to state that since the despatch of the letter of the 24th June, an entry has been made under Section 8 of Act XIII of 1865, by the Honorable Sir Adam Bittleston, declaring the charges unsustainable in the High Court, the effect of which is to supersede all proceedings in those cases.

No. 70. From J. R. BOYSON, Esq., Government Solicitor, Madras, to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George; dated Madras, 7th July 1865, No. 393.

I have the honor to acknowledge the Proceedings of Government noted in the margin, relative to the issue and form of Commissions, under the provisions of Section 28 of Act XIII of 1865.

Dated 30th June 1865, No. 928A, Judicial Department.

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

3. I now forward a copy of his Opinion.

COPY—OPINION.

Before sending up a Draft Commission, I beg respectfully to submit for the consideration of His Excellency the Governor in Council certain considerations which may render questionable the expediency of issuing a Commission in the cases now before the Council; and indeed of issuing any Commission at present, except under very special and exceptional circumstances.

2. With respect to the two cases from Trichinopoly (stated to be three in the Registrar's letter of 22nd June 1865), it appears to me quite clear that the issue of a Commission would be quite useless. The Instruments of charge transmitted by the Magistrate to the High Court charge the prisoners with having had in their possession Regimental Necessaries served out to the soldiers as such, contrary to the Section 85 of Chapter III of the Mutiny Act.

3. The accused have been already *committed* to take their trial before the High Court, which appears to me to be an irregularity. Section 28 of Act XIII of 1865 contemplates the simple transmission of the record of the preliminary inquiry to the High Court; on receipt of which the High Court is to ascertain from the Government its pleasure as to the issue of a Commission.

4. I think there would be a difficulty in issuing a Commission *after* the accused have already been *committed* to take their trial before the High Court; though the Registrar's letter of the 22nd June is framed upon Section 28 of the Act.

5. But I find that in each of these cases, Mr. Justice Bittleston, under Section 8 of the Act, has made the following endorsement:—

"It appears to me that this charge is clearly unsustainable in the High Court; the forfeiture "imposed by the 85th Section of the Mutiny Act being recoverable only upon summary convic- "tion before Justices of the Peace, under the 90th Section of the said Act.

A. BITTLESTON."

30th June 1865.

6. The effect of this endorsement under Section 8 is that of a *Nolle prosequi*. Were a Commission to be issued, a similar endorsement would be made under the provision of Section 29, and it is manifest that no further proceedings would be taken.

7. To send a Judge of the High Court to Trichinopoly, simply to declare that the only charges preferred before him are unsustainable, would be, it is submitted, manifestly futile. The facts were not before His Excellency in Council, when the issue of a Commission was determined on.

8. In the case from Coimbatore, one Bake is charged, under Section 353 of the Indian Penal Code, with assaulting a Native Policeman in discharge of his duty. He is further charged with assaulting two European Constables, under Section 47 of Act XXIV of 1859. As to these two last charges, I conceive that there must be a *Nolle prosequi*, as the Section of Act under which they are charged provides for conviction before a Magistrate. There is nothing of any peculiar importance in the case; the accused is not yet committed, as in this case the Magistrate appears to have followed the directions contained in Section 28 of Act XIII of 1865. It occurs to me that it would be far more convenient that the prisoner and witnesses should be sent down by rail to Madras for the August Sessions, than that a High Court Judge should proceed to Coimbatore under a Commission.

9. I doubt whether there would be any saving in point of expense; and I am quite sure that the convenience of the public would be better consulted by the former than the latter course. No provision is made in the Act for the payment of the cost of a Commission; but I presume that the travelling charges, &c., of the Judge, his Clerk, and the Clerk of the Crown, if he accompanies the Judge, must be borne by the public; and as I believe that there is an understanding that a Barrister Judge only shall be appointed by Commission, his withdrawal from his ordinary daily avocations in Madras cannot but be attended with considerable disarrangement of business and delay, and expense to suitors. It is true that by the definition an officer up-country may be appointed Clerk of the Crown for the nonce; but I doubt if he would be of much assistance to the Judge, who it is to be remarked is unacquainted with the Vernacular, and new to the Criminal Procedure Code, under which, by Section 32 of Act XIII of 1865, he is to try the case.

10. I think it is very doubtful whether a sufficient Jury Pannel could be found at Coimbatore to try a British subject. A reference to Section 35 of Act XIII of 1865 will show what difficulties would arise in the formation of a jury. In Trichinopoly soldiers might be found to eke out the required numbers; but there are no European Regimental Officers, Commissioned or Non-Commissioned, within ten miles of Coimbatore. Section 36 provides that if a jury cannot be procured, the trial shall take place at the ordinary place at which the High Court sits. It appears, therefore, highly probable that even were a Commission issued, the trial after all must take place at Madras.

11. But beyond the questions arising out of these particular cases, it appears to me to be worthy of grave consideration whether any Commission ought to issue in this Presidency except under very special circumstances.

12. In Bengal no doubt there are populous cities, in which the issue of a Commission may be a great public convenience, and be of importance, to teach, and by way of example: and I can conceive cases arising even in this Presidency, in which a Commission might be found the most expedient method of dealing with the investigation. If for instance, such a case as that of Dr. Daubeny were now to occur on the Neilgherries, the presence of a High Court Judge at Ootacamund to dispose of the trial might be the cheapest, the speediest, and altogether the most satisfactory course of proceeding.

13. But I doubt whether any good result or effect will be produced by ordering the High Court Judges about the country, to try cases of no particular moment or aggravation. *Nec Deus intersit, nisi dignus judice nodus*, is an apothegm as true in administrative affairs as in criticism; and the result of familiarity is proverbial.

14. If, indeed, it be thought desirable that the High Court Judges should be sent on Commission, in order to teach the various Courts how business is best conducted, it occurs to

me that an opportunity should be waited for when there is some very heavy Calendar at this or that Session Court, and that a Commission should then issue for the trial of the *whole* of the cases at that Session.

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

5th July 1865.

(True Copy).

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

No. 71. ORDER THEREON, 12th July 1865, No. 971.
Ordered that the following letter be despatched.
(Signed) W. HUDLESTON,
Acting Secretary to Government.

No. 72. To the Honorable Sir C. H. SCOTLAND, Knight, Chief Justice of the High Court of Judicature, Madras; dated Fort Saint George, 12th July 1865, No. 972.

In acknowledging the receipt of Mr. Ritchie's letter of the 3rd instant, I am directed to inform you that it is not the intention of the Governor in Council to issue a Commission, under the provisions of Act XIII of 1865, for the trial of the case therein referred to.

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

Exd. J. H. Burns.

Judicial Depart.

Proceedings of the Madras Government
Read the following papers

From the Regr of the High Court/Orig. Side Letter 3rd July 65.
— Government Solicitor — 7 — — No 393.
Order thereon 12th July 1865 No 971.

Letter sent to
following letter to
Respondent

No 972.

dep/p 12/7

I. The Hon'ble the Chief
Justice of the High Court
Madras Sir

In addition to my
receipt of the Petition
letter of the 3rd inst.
I am directed to inform
you that it is not
in the power of the Govt
in Council to issue
a Commission under
the provisions of Act XII
of 1865 for the trial
of the case therein
referred to.

I have &c.

Fort St George
12th July 1865

Sd/- Chas Trevelyan
Secy to Govt

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Proceedings of God

Dated 12th July 1865

Circ. No. 246-249
30. 6. 1865

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