

MADRAS RECORD OFFICE.

Government of Madras.

Insical DEPARTMENT.

G.O. No.	769	Press
		~~Mis.~~
Dated	19. 5. 19	1866

Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department,
19th May 1866.

No. 200. Read the following letter from the Magistrate of the Godavery District, to the Chief Secretary to Government, Fort Saint George; dated Cocanada, 24th April 1866, No. 104.

I have the honor to forward copy of a letter* from the Acting Joint Magistrate in this District, and to request that you will refer, for the opinion of the Advocate

*Dated 21st April 1866, No. 18.

General, the question stated in the last paragraph of Mr. Webster's letter.

2. At first Mr. Webster merely put the question for my opinion, giving no particulars of the case as it arose before himself.

3. Feeling unable to solve the question referred to me, and thinking with Mr. Webster that no provision was made for such cases in Chapter XX of the Criminal Procedure Code, I have sent it for the opinion of the Advocate General.

From E. F. WEBSTER, Esq., Acting Joint Magistrate, to the Magistrate, Godavery District; dated Nursapore, 21st April 1866, No. 18.

Referring to your letter, No. 97, dated the 19th instant, I have the honor to state the case upon which the doubts arose, which I expressed to you in my letter, No. 17, dated 17th instant.

2. On the 16th of February last, I issued an order, under Section 308 of the Code of Criminal Procedure, to one Betireddi Vencatareddi and others, resident in Kavitam, in the Nursapore Taluq, calling on them to remove an obstruction to a thoroughfare, within ten days, or to shew cause before me why such order should not be enforced.

3. On the 26th of February, the persons on whom the order was served applied to me for an order for a Jury to be appointed, to try whether the order issued was reasonable and proper.

4. On the 27th of March, the Jurors were appointed, and directed to decide and report within 15 days.

5. No report was received from them within the time fixed in the order for their appointment, and their functions having therefore ceased, the question arose what was the next step to be taken.

6. In Section 310 of the Code of Criminal Procedure, it is laid down that, "if no decision be made by the Jury, the Order of the Magistrate shall be carried into effect as *hereinafter* provided."

7. The following Section simply treats of instances in which the order issued under Section 308 is disobeyed, or when the person to whom it is issued fails to shew cause against it, or to petition for a Jury.

8. Section 312 refers only to cases in which the Jury have decided and reported.

9. And Section 313 lays down the Procedure to be followed when the person to whom the order is issued under Section 308 appears before the Magistrate, and appeals against the same. In short, there is apparently no form of procedure laid down in the Code; which would enable me to deal with the case I have stated above, and I suggest, therefore, the advisability of referring the following question for the opinion of the Advocate General :—

10. If a Jury appointed by the Magistrate, under Section 310 of the Code of Criminal Procedure, fail to decide and report within the time fixed in the order for their appointment, has the Magistrate any, and if so, what, power to carry into effect the order upon the reasonableness and propriety of which the Jury were appointed to decide?

*Proceedings of the Madras Government, Judicial Department,
19th May 1866.*

No. 201.

ORDER THEREON, 19th May 1866, No. 769.

The Governor in Council is not prepared to refer the question put in Mr. Webster's letter to the Advocate General. Officers of the Magistracy must decide all cases that come before them to the best of their judgment, leaving it to the parties to appeal, if dissatisfied. It is not the province of the Executive Government to expound the Law.

(True Extract).

Chief Secretary.

To the Magistrate of the Godavery District.

Ed. J. H. Burns.

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N. the Law.

To the Magistrate of Godavery. Dec 23/6