M.R.O. 1—50,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial **DEPARTMENT.**

G.O. No. 810	Press Mis.
264-265	
Dated 23. 5.	19 1886

3/3

Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department,
23rd May 1866.

No. 264. Read the following letter from the Senior Magistrate of Police, Madras, to the Chief Secretary to Government, Fort Saint George; dated Madras, 16th May 1866, No. 11.

I have the honor to request the opinion of the Acting Advocate General may (with the permission of the Right Honorable the Governor in Council) be taken upon th ovisions of Act XIII of 1859, commonly called the "Breach of Contract Act."

2. I am inclined to ask this opinion at the hands of the Government, deeming it, as I do, highly desirable that the practice of the Magistrates in the different Courts should be as much in harmony as possible; whereas a difference of opinion and procedure exists with regard to Act XIII of 1859, some of the Magistrates holding that "Manufacturers" and "Tradesmen" are the only persons intended to be protected by the Act in question, while others conceive that contracts entered into by private individuals came within the scope of it.

3. Perhaps it will simplify the case if I give illustrations;—for instance, Messrs. Simpson & Company, Coach Builders, enter into a contract with an Ironsmith for the performance of certain specified work within a given period, and advance a hundred Rupees upon the contract; the Smith utterly fails in the conditions of his agreement.

4. In this case any Magistrate of the town would grant a summons; but take the following:—Mr. A. (a private individual) employs a Goldsmith to make him a necklace for his child; two sovereigns are given (which, when melted, are to form the gold of the necklace), and five Rupees is advanced as part of the hire for making it; the Goldsmith has contracted to finish the necklace within a given time, when he is to receive the balance of his hire, but he also fails in his contract.

5. This case some of the Magistrates would not entertain; A being neither a "Manufacturer" nor "Tradesman."

6. For my own part having read Mr. LeGeyt's speech before the Legislative Council, when asking leave to bring in the Bill which subsequently passed into Act XIII of 1859, in which that gentleman entered fully into his reasons for proposing that enactment, and believing the words "and others" contained in the preamble intended to meet those views, and not to limit the protection solely to "Manufacturers" and "Tradesmen," I never have myself hesitated to grant summons to private individuals who have entered into a contract for the performance of work upon a small scale, when the contracting parties have dishonestly failed in their engagement; but, as some of the Magistrates differ from me, I think it better to ask permission to submit the matter for the opinion of the Advocate General.

No. 265. ORDER THEREON, 23rd May 1866, No. 810.

The Governor in Council is not prepared to refer the question raised in the foregoing letter to the Advocate General. Officers of the Magistracy must decide all cases that come before them to the best of their judgment. It is not the province of the Executive Government to expound the Law.

(True Extract).

Chief Secretary.

To the Senior Magistrate of Police, Madras.
" Magistrate of Police, 1st District.
" Do. do. 2nd do.

Exd. J. H. Burns.

G. O. No. 227 / 31.7.65 / 90. 109 / 14.8.65 / 289 / 29.2.64 / 83.84 / 10.3.64

23d May 1866 No. 810.

The G. in C is not prepared to refer the questions raised in the foregoing letter to the Advocate General. Officers of the Magistracy must decide all cases that come before them to the best of their judgment. It is not the province of the Executive Govt. to expound the Law.

N.

To the Senior Magt. Madras } despd 29/5

Magistrate of Police [illegible]