

MADRAS RECORD OFFICE.

Government of Madras.

Indial DEPARTMENT.

G.O. No.	1008	Press ~~Mis.~~
Dated	22-6-1918	7/8

Not to be folded or roughly handled

*Proceedings of the Madras Government, Judicial Department,
24th June 1867.*

No. 227. Read the following letter from the Acting Magistrate of Nellore, to the Chief Secretary to Government, Fort Saint George; dated Nellore, 23rd May 1867, No. 21.

I have the honor to forward copies of a correspondence which has passed between the Inspector General of Police and myself, regarding the question whether or not Heads of Villages, as the Law now stands, have the power of search. The question is a very important one, and I would suggest that it should be referred to the Advocate General, for the expression of his opinion. The power of search was conferred on Heads of Villages by Clause 1, Section XI, Regulation XI of 1816. This Section was repealed by Act XXIV of 1859, but expressly revived by Act XVII of 1862, which again repealed several Sections of Act XXIV of 1859, and "*so much of the Schedule as repeals Clause 1, Section XI, Regulation XI of 1816.*" It is true that, further on, in the same Act, under Regulation XI of 1816, it is stated that the whole of Regulation XI of 1816 is repealed, except Sections VIII, IX, X, XII, XIII, XIV, and XLVII; but—

1st.—It seems strange that the same enactment should in one place expressly revive a particular clause, and then *repeal it again.*

2nd.—Section XII of Regulation XI of 1816 was formerly repealed by Act III of 1857 (Cattle Trespass Act), and there was no necessity to revive it, nor does Act XVII of 1862 state that it is *revived.* On this account, I am driven to the conclusion that Section XII in this place is simply a misprint for Section XI, Clause 1, written thus probably in the draft of the Act—XI-1, which in printing was converted into XII.

2. I think it is a matter of the utmost importance that the power of search conferred on Heads of Villages should be reserved, and not lost by an evident misprint in the Act XVII of 1862.

From the Acting Magistrate of Nellore, to the Inspector General of Police, Madras; dated Nellore, 3rd May 1867, No. 71.

In your Circular Memorandum, No. 275, dated 20th April 1867, published in page 145 of the Police Weekly Circular, you lay it down that—

"A Head of a Village is not a person authorized to enter a house or make or cause a search to be made without a Warrant."

2. With all due deference to your opinion, I would submit that this is an error. The power of search was conferred on Heads of Villages by Clause 1, Section XI, Regulation XI of 1816. This Section was repealed by Act XXIV of 1859 (Police Act); but by Act XVII of 1862 (Repealing Act) several sections of Act XXIV of 1859 were again repealed, and, *so much of the Schedule as repeals Clause 1, Section XI of Regulation XI of 1816.* Further on, in the Schedule of Act XVII of 1862, there is an evident misprint; for, under Regulation XI of 1816, it is stated that the whole Regulation is repealed, except Sections VIII, IX, X, XII, XIII, XIV, and XLVII; but Section XII was formerly repealed, by Act III of 1857 (Cattle Trespass Act), and as I have shown, Act XVII of 1862, in another place, expressly re-enacts Clause 1 Section XI of Regulation XI of 1816; therefore, it is clear that, among the saved sections, instead of XII, we should read XI, Clause 1, or XI-1, which by a typographical error has been converted into XII.

3. I trust, therefore, you will correct the Statement in your Circular, for I think it is most important that Heads of Villages should retain their power of search, which enables them to act promptly, without the necessity of having to communicate with the Station-house in the first place.

From the Inspector General of Police, to the Acting Magistrate of Nellore; dated Madras, 20th May 1867, No. 846.

With reference to your letter, dated 3rd instant, I beg to observe that the whole of Section XI of Regulation XI of 1816 is repealed by Act XVII of 1862. I can see no ground for the surmise that a misprint has occurred.

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2. The mention of the 1st Clause of the above repealed section, when dealing with Act XXIV, of 1859, is, I believe, a matter of technical convenience.

3. However, I do not mean to read the Law as respects these magisterial functionaries. The clause alluded to by you had special reference to Section 107, Code of Criminal Procedure, and others, as I do not think the presence of a Head of the Village would justify a Constable in acting without order and warrant.

No. 223.

ORDER THEREON, 24th June 1867, No. 1008.

The foregoing correspondence relates to an objection raised by the Acting Magistrate of Nellore to a Circular Memorandum published by the Inspector General of Mofussil Police, in which it is laid down, for the instruction of the Police, "that a Head of a Village is not a person authorized to enter a house or make or cause a search to be made without a Warrant."

2. The Acting Magistrate brings to notice that there is an evident misprint in Act XVII of 1862, inasmuch as the Section of Regulation XI of 1816, to which the correspondence refers, namely Clause first, Section XI, is, in a previous part of Act XVII of 1862 (repealing Act XXIV of 1859) retained, while in the latter portion of the Act, that repealing portions of Act XI of 1816, Clause first, Section XI is repealed.

3. The Governor in Council concurs in the view taken of the question by the Acting Magistrate of Nellore, which is further supported by the fact that Section XII, Regulation XI of 1816—which, unless a misprint is supposed, has been retained in Act XVII of 1862—had already been repealed by Act III of 1857, while Clause first, Section XI, Regulation XI of 1816, is saved in that portion of the general Repealing Act which disposes of portions of Act XXIV of 1859, without in that place any saving of Section XII, Regulation XI of 1816.

4. The Governor in Council directs, therefore, that the Inspector General of Police be requested to withdraw the Circular, No. 275, dated 20th April 1867, until an authoritative ruling on the point shall have been enunciated by a proper tribunal, or until an answer has been received to a reference which the Government propose to make to the Government of India in the Legislative Department, as to the necessity of correcting what appears to be an error in the printing of Act XVII of 1862.

(True Extract).

Acting Chief Secretary.

To the Magistrate of Nellore.

„ Inspector General of Police.

„ Legislative Department.

Erd. J. H. Burns.

h^o 1184

Agnes Nellore. 23 May 1867.

The letter from Mr. of Magistrate, Mr. Boswell, shows clearly enough being which, that he has taken a correct view of the appearance of the "XII" section of Regn. XI of 1816 in the third column of the Schedule of the repealing act of 17 of 1862. This act became law on the 1st May 1862, on which date Section XII Regn. XI of 1816 was not in force, as, about five years previously it had been repealed by Act III of 1857 which was enacted on the 31st day of that year. Consequently, the inference is unavoidable, that Section "XII" is, as Mr. Boswell argues, a misprint for Section "XI". Mr. B's assumption is greatly strengthened by the fact that in the third column of the

Repealing Act when noticing Act XXIV
of 1859, the previously repealed Section
XI Regu XI of 1816 is revived which
is not the case as respects Section
XII of that Regu. - Neither was any
such revival necessary, as the latter
Section & the provisions made by it for
cattle strays, were repealed by Act
III of 1857 "the Cattle Stray Act"
which ^{legislates afresh and} embodies all previous rules
relating to cattle strays & stragglers,
in one enactment. —

It occurs to me ~~as~~ doubtful whether
the Court's judgment Police should be
held at liberty to announce in
the Police Circular what is really
are constructions of the law, tho'
he has observed on this count to Mr
Boswell, that he does not "mean
to read (? construe) the law". — The

case submitted { Mr Boswell is a
doubtful one & I am satisfied that
the police will ^{probably} operate of many but
will be affected by the ^{probable} declaration made
by Mr ~~Robinson~~ Robinson to Mr Boswell by
properly ^{representing} his exception. I would
therefore Mr Robinson to withdraw
his decision, No. 275, 20 April 1867, until
an authoritative ruling on the point
may have been pronounced by the proper
tribunal, or until we know from
the Legislative Council Sup: Govt whether
or not they deem it advisable to
correct what seems to me a mistake
and with a view to which an opinion
in the matter. I think they should
now be addressed. —

13 June. —

W.D.H.

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Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letter from the
Acting Magistrate of Nellore.
Dated 23 May 1867. No 21.

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2. The Acting Magistrate brings to notice that there is an evident misprint in Act XVII of 1862, inasmuch as the Section of Regulation XI of 1816, to which the correspondence refers, namely, ^{Clause first,} Section XI, ~~Act~~ is, in a previous part of Act XVII of 1862 (repealing Act XXIV of 1859) ^{retained} ~~saved~~, while in the latter portion of the Act, that repealing portion of Act XI of 1816 ^{Clause first} ~~Sec XI~~ ~~Act~~, it is repealed.

3. The Governor in Council concurs in the view taken of the question by the Acting Magistrate of Melrose, which is further supported by the fact that Sec XII ~~Regulation~~ XI of 1816, which, unless a misprint is supposed, has been retained in Act XVII

of 1862, had already been repealed by Act ^{Clause first,} III of 1857, while, Section XI ~~Act~~ ^{Regulation} XI of 1816, is saved in that portion of the general repealing Act which disposes of portions of Act XXIV of 1859, without in that place any saving of Section XII ~~Regulation~~ XI of 1816.

4. The Governor in Council directs therefore that the Inspector General of Police be requested to withdraw the Circular No 275, dated 20th April 1867 until an authoritative ruling on the point ^{that} ~~may~~ have been pronounced by a proper tribunal, or until an answer has been received to a reference which

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as to the necessity of
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to be an error in the
printing of Act XVII of
1852.

by

W. L. D.

Sept 27/60 { To the Magte of Melbore.
— Supr Genl of Police
— Legislative Department

*Quarterly statement
of the Philippine
Department*

*Base No. 1
227-228*

227-228

General 1867. Department.

No. 1000.

PROCEEDINGS OF GOVERNMENT.

Dated 24 June 1867.

20 June