

MADRAS RECORD OFFICE.

Government of Madras.

General DEPARTMENT.

G.O. No. 1723	Press ~~Mis~~
Dated 30. 10. 1867	

275-238

15/16

Not to be folded or roughly handled

1723

*Proceedings of the Madras Government, Judicial Department,
30th October 1867.*

Read the following papers:—

No. 275. From T. A. N. CHASE, Esq., Magistrate of Kurnool, to the Chief Secretary to Government, Fort Saint, George; dated Nundial, 19th August 1867, No. 67.

I have the honor to lay the following case before Government, with the view of obtaining the opinion of the Advocate General on the point regarding which a doubt exists.

2. Dr. Andrews, the Superintendent of the Jail, asked me if the Warrant* issued to him by Mr. Gompertz, of the Revenue Survey, to confine two villagers of Chintalayapally for fourteen days, was legal or not.

* Copy forwarded.

3. I wrote to Mr. Beaumont, Deputy Superintendent of Revenue Survey, and asked under what authority his Assistant, Mr. Gompertz, acted. Mr. Beaumont (copy of whose letter I enclose) quotes Section 4 of Act XXVIII of 1860, and though he is aware (since I brought it to his notice) that Act II of 1839 was repealed by Act XVII of 1862, considers that the definition of Act II of 1839 (repealed) still holds good as far as Section 4 of Act XXVIII of 1860 is concerned.

4. I cannot agree with him, and consider that, Act II of 1839 being repealed, the whole of the last clause of Section 4 of Act XXVIII of 1860, commencing "and with a like alternative," &c., is also repealed, and that, consequently, if the Officers of the Revenue Survey fine ryots under that Section, they must levy their fine, as a Magistrate would do, under Section 61 of the Criminal Procedure Code, and that they have at present no power of imprisonment at all.

5. I think (but this is beside the subject) that Mr. Gompertz has acted with unnecessary severity, for the village of Chintalayapally is more than 70 miles from Kurnool, and to send two persons, in charge of his peon (as he verbally told me) that distance, in default of paying a fine of 3 Rupees, besides fourteen days imprisonment in the Jail at Kurnool, when the Sub-Jail at Coilgoontla was close at hand, and simply because he wanted (as he again verbally told me) to make an example, inclines me to believe that Mr. Gompertz' temper is such as to unfit him to have any Magisterial powers of imprisonment conferred upon him.

To the Keeper of the Civil Jail at Kurnool.

Whereas Madi Santivadu and Madiga Shingarazala of Chintalayapally, in the Coilgoontla Taluq, have been fined three (3) Rupees each for non-attendance for survey purposes when duly called on under Section 4 Act XXVIII of 1860, with an alternative of 14 days' imprisonment, and whereas the said sum has not been paid, and the said Madi Santivadu and Madiga Shingarazala have been ordered to be imprisoned for 14 days, you are hereby required to receive the said Madi Santivadu and Madiga Shingarazala into your custody, and carry the aforesaid order into execution according to law; should the fine be at any time paid, the prisoners to be at once released.

CAMP VENTURIA,
5th August 1867.

(Signed) H. GOMPERTZ,
First Asst., Revenue Survey.

4. But Act II of 1839 is cancelled

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Proceedings of the Madras Government, Judicial Department,
30th October 1867.

From W. BEAUMONT, Esq., Deputy Superintendent, No. 2, Revenue Survey, to the Magistrate of Kurnool; dated Kurnool, 16th August 1867, No. 289-88.

With reference to your letter, No. 128, of 14th instant, I have the honor to state that Mr. Gompertz committed the two villagers of Chintalayapally, in the Coilgoontla Taluq, to Jail, under the powers vested in him by Government in the *Fort Saint George Gazette* of 23rd December 1864, page 1036.

2. With all due deference it seems to me that Act XXVIII of 1860 is in no way affected by the repeal of Act II of 1839, which was repealed by Act XVII of 1862, and that Act II of 1839 is referred to in Act XXVIII merely to define the mode of procedure in cases of individuals being committed to Jail in default of payment of fines inflicted on them.

3. Mr. Gompertz, I fancy, in his warrant sent with the prisoners, should have mentioned in it "simple imprisonment."

Before disposing of the legal question raised in the foregoing letter, the Government desire to afford Mr. Gompertz an opportunity of offering any explanation he may have to make with reference to committing two ryots, who were fined under Act XXVIII of 1860, to be imprisoned for fourteen days in the Zillah Jail, at a distance of 70 miles, when the Sub-Jail at Coilgoontla was close at hand. Colonel Priestley will be requested to call upon Mr. Gompertz to submit to him any explanation he may have to offer, and will forward the same, with his remarks to Government.

FORT SAINT GEORGE,

2nd September 1867.

To the Superintendent, Revenue Survey.

(Signed) F. BRANDT,
Under Secy. to Govt.

No. 276. From Lieutenant Colonel F. J. B. PRIESTLEY, Superintendent, Revenue Survey, to the Acting Chief Secretary to Government, Fort Saint George; dated Chepauk, 3rd September 1867, No. 1712-46.

I have the honor to acknowledge the receipt of a letter and enclosures, from the Magistrate of Kurnool to your address, with docket, directing me to call upon Mr. Gompertz, Assistant Superintendent, Revenue Survey, for an explanation of his having committed two ryots to the Kurnool Jail, and have addressed Mr. Beaumont, the Deputy Superintendent, Revenue Survey, accordingly.

2. I beg to submit, with reference to the legal question on which Mr. Chase proposes to obtain the opinion of the Advocate General, that it can hardly be termed a doubtful point, having already been disposed of in the Order of Government, dated 1st February 1864, No. 173.

Proceedings of Government, Revenue Department.

Read the following letters:—

From R. E. MASTER, Esq., Officiating Director of Revenue Settlement, to the Secretary to Government, Revenue Department, Fort Saint George; dated Madras, 8th December 1863, Nos. 1502-83.

I have the honor to forward an original letter with enclosures (to be returned) from the Deputy Director of Revenue Settlement, Trichinopoly, and to request that the opinion of the Government Law Officers may be obtained on the question raised by the Magistrate of Tinnevely.

4th December 1863, No. 122.

Proceedings of the Madras Government, Judicial Department
30th October 1867.

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2. It appears that the Assistant Director of Revenue Settlement in Tinnevely imposed fines on certain ryots, and in default of payment sentenced them to imprisonment under Section 4, Act XXVIII of 1860. Mr. Silver considers that as Act II of 1839, which is quoted at the end of the Section abovenamed, has been repealed by Act XVII of 1862, imprisonment can no longer be awarded under that Section, and is of opinion that the sentence should have been passed under Section 67 of the Indian Penal Code.

3. I do not myself see how the repeal of Act II of 1839 can affect Section 4, Act XXVIII of 1860. The former enactment is quoted merely to define the mode in which the fine is to be commuted. The authority for awarding the imprisonment is derived, not from it, but from Section 4, Act XXVIII of 1860. As far as I am able to judge, Section 67 of the Penal Code is applicable only to fines imposed under the provisions of that Code by a Magistrate or Criminal Court. In the present instance, the fines are imposed by an Officer who is not a Magistrate, under the authority of a special law. As, however, the question has been raised, it is desirable that it should be authoritatively settled.

4. Even should it be decided that I am correct in supposing that, notwithstanding the repeal of Act II of 1839, imprisonment may still be awarded under Section 4, Act XXVIII of 1860, in commutation of a fine imposed under the same Section, it will nevertheless I think be advisable, in the contemplated amendment of the Act, so far to modify Section 4 as to avoid in it any allusion to the repealed Act II of 1839.

From CLEMENT DALE, Esq., Government Pleader, Madras, to the Secretary to Government, Revenue Department, Fort Saint George; dated Madras, 31st December 1863, No. 171.

I have the honor to acknowledge the receipt of the Proceedings of Government under the date and number noted in the margin.

2. In Dwaris' Treatise on Statutes, it is stated "relative words in an Act of Parliament (words of reference in a subsequent Statute) will make a thing pass as well as if it had been particularly expressed in the Act itself: *verba illata inesse videntur*. Clauses of reference, incorporating provisions of former Statutes take effect as fully as if they had been repeated and re-enacted in the body of the latter Act with relation thereto." I cannot find there has been any decision arising in a case where, as in the matter referred to me, the former Statute containing the words referred to has been repealed, probably because a doubt as to the effect of such repeal upon the subsequent Statute has not been raised. I am of opinion, notwithstanding the repeal of Act No. II of 1839, that, under Section 4 of Act No. XXVIII of 1860, the same powers now exist, as though the words of Act No. II of 1839 referred to had been repeated and re-enacted in Act No. XXVIII of 1860.

3. I do not think, however, that in any proceedings Act No. II of 1839 should be named. I am of opinion that the proper mode would be to refer to Act No. XXVIII of 1860.

4. I return the original papers forwarded to me.

Order, 1st February 1864, No. 173.

Communicated to the Acting Director of Revenue Settlement, with reference to his letter of 8th December last, No. 1502-83. Copies of the correspondence will also be sent to the Revenue Board.

(True Extract).

(Signed) C. G. MASTER,

Dy. Secy. to Govt.

No. 277. From Lieutenant Colonel F. J. B. PRIESTLEY, Superintendent, Revenue Survey, to the Chief Secretary to Government, Fort Saint George; dated Kurnool, 30th September 1867, No. 1865-52.

In submitting, as directed in your Memorandum of the 2nd instant, the accompanying original letter from Mr. Gompertz, First Assistant Superintendent, Revenue

4. But Act II of 1839 is cancelled

Proceedings of the Madras Government, Judicial Department,
30th October 1867.

Survey, explaining the circumstances under which he committed two ryots to the Kurnool Jail, I have the honor to state that the apparently disproportionate alternative of 14 days' imprisonment in default of payment of the fine inflicted (Rupees 3) had attracted my attention, and, on the 20th of August last, I had remarked on it in a Memorandum* to the Deputy Superintendent under whom Mr. Gompertz is employed. Mr. Gompertz, in his reply, has convinced me that he acted from no caprice, but with due deliberation and consideration of the circumstances of the case.

* No. 168
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2. In neglecting to make himself acquainted with the rules regarding the class of Jail in which imprisonment according to duration ought to be carried out, Mr. Gompertz appears to blame, and I shall take steps to prevent similar occurrences arising from ignorance of the rules and regulations on the part of Survey Officers; but with the opinion expressed by the Magistrate of Kurnool on his fitness for being entrusted with powers under Act XXVIII of 1860, and of which Mr. Gompertz, I think with reason, complains, I beg, with all deference, to state that I do not concur. On reference to the record of cases taken cognizance of by this Officer since first invested with authority under it (a period of 3 years), I find that, except in the two cases now under consideration, he has never inflicted a heavier fine than two Rupees, and to that extent in two instances only. I trust I may be permitted to say that the powers under this Act have been hitherto exercised with temper and judgment by the Survey Officers, to whom they have been entrusted, and very frequently under circumstances of annoyance and obstruction unknown to, and therefore unappreciated by, Officers of other Departments.

From H. GOMPERTZ, Esq., First Assistant Superintendent, Revenue Survey, to W. DEAMONT, Esq., Deputy Superintendent, Revenue Survey; dated Camp Coilgoontla, 9th September 1867.

I have the honor to acknowledge the receipt of your docket, No. 45, dated 6th instant, with its enclosures, one of them being a docket from the Superintendent, Revenue Survey, calling on me, as desired by Government, to explain why I sent two men to the Jail at Kurnool, instead of having them confined in the Coilgoontla Sub-Jail, which was nearer.

2. The call for this explanation is based on the last paragraph of a letter from Mr. Chase, the Collector of this District, in which he says that I "verbally informed" him of certain facts. I have the honor to inform you that the verbal information to which he alludes was given him in a private conversation at the band-stand, and though I am prepared to stand to anything I state, publicly or privately, I am not a little surprised that Mr. Chase should have made use of that conversation, and that, having used it, he has not (doubtless from forgetfulness) given it entire.

3. It is perfectly true that I told Mr. Chase that the two men were sent to Kurnool in charge of one of my peons, and I am not aware that any other mode of sending them was open to me. It is also true that I told him I thought an example necessary, but he seems to have forgotten the rest of the conversation, which was in substance as follows.

4. Mr. Chase asked me why I had sent two men into Kurnool, instead of confining them in the Sub-Jail, as they were only to be imprisoned for 14 days, and there was an order that the Sub-Jails should be used for terms under a month. I replied that I was not aware of any such order, but, as there was one, I should, of course, carry it out in future; that I thought 7 days was the limit of the confinement in Sub-Jails, and I was glad that I had not been better informed sooner, as the particular case under notice was a very aggravated one, and I thought an example necessary, which would be far more effectually given by confinement in Kurnool than

Proceedings of the Madras Government, Judicial Department,
30th October 1867.

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by confinement in a Taluq Sub-Jail, which was not (and with good reason) nearly so much dreaded. After this, the conversation dropped.

5. Though I think I have stated enough to exonerate myself from any charge of indiscretion, it would perhaps be well to detail the circumstances of this case: they are as follows.

6. I received a report from the Deputy Surveyor in Chintalayapally (backed by bukeers from the village authorities) stating that none of the ryots of that village would attend for survey purposes, and that most of them would not even attend at the village Chavady to sign the notice which has to be served; and upon this report I summoned the ryots whose names were sent in by the village authorities. Before my peon returned, I received a second report to the same effect, with the addition that some few ryots had come to the Chavady, and demanded that the Ameen should read the Act empowering him to demand their assistance. A day or two after this, my peon returned, stating that he had served the summons, but that the men named in it had gone, and all refused to attend; he also brought a bukeer to this effect from the Reddi. The peon added that some of the men summoned had used foul and abusive language, but as the Reddi said nothing of this, I do not lay very much stress on it.

7. On receiving this report I proceeded to the village myself, and after a careful inquiry, imposed fines on certain ryots; the two sent to Kurnool were amongst the number, and I still venture to think that, had I had any discretion in the matter, that discretion would have been wisely exercised in carrying out my sentence in such a way that it would have the greatest effect in deterring others from the commission of similar offences.

8. In conclusion, I beg to be allowed to point out with the greatest respect that an appeal lies from my decision to the Superintendent, Revenue Survey, and to the Board of Revenue, but not to the Collector, of whom I am entirely independent. I cannot but think that the Collector has no power either to question my decisions, or to call on me for my authority (though, of course, as a matter of courtesy, any information he might want would always be at once afforded); but I should have taken no notice of this had he not thought fit to make certain injurious reflections on the manner in which I had exercised the powers Government have thought proper to entrust me with. The remarks of which I complain were made too without proper inquiry, and I trust that the explanation now given may convince Government that they were quite undeserved.

No. 278. ORDER THEREON, 30th October 1867, No. 1723.

In the first of the foregoing letters, the Magistrate of Kurnool requested that the opinion of the Advocate General might be obtained as to the legality of certain proceedings taken by Mr. Gompertz, a First Assistant Superintendent of the Revenue Survey, in a case disposed of by him under the provisions of Act XXVIII of 1860, in which he sentenced two villagers of Chintalayapally to be imprisoned, in default of paying a fine of 3 Rupees. Mr. Chase argued that, Act II of 1839 having been repealed, the whole of the last Clause of Section 4 of Act XXVIII of 1860 is also repealed, and that, if the Officers of the Revenue Survey fine ryots under that Section, they must levy such fines under Section 61 of the Code of Criminal Procedure. The Magistrate also pointed out that Mr. Gompertz had treated the villagers in question with unnecessary severity in sending them to the District Jail at Kurnool, a distance of upwards of 70 miles from their village, while there was a Subsidiary Jail at Coilgoontla close at hand, in which they could have been confined.

2. The Superintendent of Revenue Survey, having been directed to call upon Mr. Gompertz for explanation, has submitted a letter from Mr. Gompertz, in which he states that he was not aware that persons sentenced to more than 7 days' imprisonment could be imprisoned in a Subsidiary Jail, and defends the sentences passed by him on the ground that they were requisite as an example. Colonel Priestley

4. But Act II of 1839 is cancelled

Proceedings of the Madras Government, Judicial Department,
30th October 1867.

states that the apparently disproportionate alternative of fourteen days' imprisonment in default of payment of the fine inflicted had attracted his attention; that he remarked upon it; and that Mr. Gompertz, in his reply, has convinced him that he acted with due deliberation and consideration of the circumstances of the case. He considers Mr. Gompertz to blame in not having made himself acquainted with the rules regarding the class of Jail in which imprisonment for short periods should be carried out, and reports that he has taken steps to prevent similar occurrences arising from ignorance of rules and regulations by Survey Officers. Colonel Priestley adds that the powers under Act XXVIII of 1860 have been hitherto exercised with temper and judgment by the Officers of his Department, and frequently under circumstances of annoyance and obstruction unknown to Officers of other Departments.

3. The Governor in Council does not consider it necessary to refer to the Advocate General the legal point raised by the Magistrate of Kurnool. The question of the legality of the proceedings of Survey Officers under Section 4 of Act XXVIII of 1860 was raised in 1864, and the opinion of the Government Pleader was obtained thereon, and communicated to the Director of Revenue Settlement, and to the Board of Revenue. A copy of the Proceedings* of Government on the subject will now be furnished to the several Magistrates in the provinces.

* Dated 1st February 1864, No. 173.

4. The Governor in Council accepts Mr. Gompertz's explanation of the course taken by him in sending the two villagers to the District Jail, instead of the Subsidiary Jail. It appears that this was done by Mr. Gompertz in ignorance of the rules in force, and, as the error has been pointed out, the Government feel sure that it will not be repeated by any Officer of the Survey Department.

5. Mr. Gompertz, however, committed a further error in sending the villagers to Jail, without, in the first instance, enforcing the payment of the fine by the issue of a warrant of distress and sale of such property as might have been found.

6. From the report originally submitted by the Magistrate, the Government had reason to apprehend that these errors had not been due entirely to ignorance. As, however, adverted to Mr. Gompertz's explanation, it is possible that the Magistrate may in some degree have misunderstood what passed between himself and Mr. Gompertz, the Government accept the statement of the latter gentleman; but, under all the circumstances, they think it desirable that the Superintendent should take an early opportunity of transferring Mr. Gompertz to another District.

(True Extract).

R. S. ELLIS,
Chief Secretary.

To the Superintendent, Revenue Survey.
" Magistrate of
" Revenue Department.

W. J. H. Burns.

Jud. DEPARTMENT.

No. 1854-1899 & 2133.

From the Magistrate of Kurnool
To the Superintendent, Revenue Survey
Dated 19th Aug. 1867.

FOR ORDERS.

*The legal question has been settled
by Mr. Dales' opinion -*

*Mr. Gompertz was no doubt
wrong in sending them all the
way to Kurnool instead of im-
prisoning them in the nearest
Subsidiary Jail - but this was
done in ignorance and the
error has been pointed out & been*

*sent for the Magistrate's warrant,
to levy the amount of such fine
by distress and sale of any goods
and chattels of the offender which
may be found within the juris-
diction of the Magistrate, and
if no such property may be
so found - then imprisonment.*

4. But Act 11 of 1839 is cancelled

states that the
in default of p
remarked upon
acted with due
He considers
the rules regar
becarried out,
from ignorance
that the power
and judgment
of annoyance
3. The (Advocate Gen
of the legality
of 1860 was ra
ed thereon, an

* Dated 1st

4. The (taken by him i
ary Jail. It a
in force, and,
not be repeate
5. Mr. G
to Jail, withou
of a warrant of
6. From
had reason to
As, however,
Magistrate ma
and Mr. Gomp
but, under all
should take an

it is not likely to be repeated -

He was also I think, as noticed
in the Deputy Secretary's Memo in
error in sending a man off to
one to Jail and not ~~just~~ as
far as their papers disclose,
proceeding against their property.

This should be pointed out to him.

His explanation in other respects
seems to me satisfactory and
from what Col Priestley says I
can see no reason for his draw-
ing his powers under Act
XXVIII-1860-SIV - It must

(True Extract).

R. S. ELLIS,
Chief Secretary.

To the Superintendent, Revenue Survey.
" Magistrate of
" Revenue Department.

W. J. H. Burns.

He can be used that as Col F
remains, by its an of the obli.
- to be and contraventions
in their settlements making
and proof of obstruction and
delay the operations of the
settlement officers.

9-10-67

J.P.

next - for the Magistrate's warrant,
to levy the amount of such fees
of distress and sale of any goods
and chattels of the offender which
may be found within the juris-
-diction of the Magistrate, and
if no such property may be
so found - then to imprison.

4. But Act II of 1839 is cancelled

No 1854 Subd. 1867

From papers lately in circulation, the
Govt are aware that Mr. Sompert's
legal knowledge is such that he has
been admitted to practice at the bar
of one of our Civil Revenue Courts, and
occupation he has been prohibited
from continuing to follow, unless he
chooses to resign the public service.

An act then, such as Mr. Chase
has brought to notice, ought, I consider,
to be more seriously noticed when committed
by Mr. Sompert, than if an ordinary
Clerk had been guilty of it.
Mr. Sompert, however, that he is much
more than full well that in sending
two native cultivators out of their
village, 70 miles to Kurnool, with the
return trip before them and no right
to receive food & water from the Govt.

all cases of fines - x x x it shall
be lawful in case of non-pay-
ment - x x x for the Magistrate, to warrant
to levy the amount of such fine
by distress and sale of any goods
and chattels of the offender which
may be found within the juris-
diction of the Magistrate, and
if no such property may be
so found - then to imprison.

4. But Act II of 1839 is cancelled

R. S. ELLIS,
Chief Secretary

To the Superintendent, Revenue Survey.
" Magistrate of
" Revenue Department.

Ed. J. H. Burns.

attempt to prevent other Ryots from
suffering by similar treatment.
I find nothing unusual in the facts of
the case as described in Mr. Panchetty's
letter before quoted. If ryots had been
famous at all times willing to come to the
Saurashtra tents, act XXVIII of 1860 would
not have been passed. Doubtless, as
Sir J. P. Russell has noted, Ryots are
often obstinate & difficult to get together,
but on the other hand much of their
determination to meet officers of these
Special departments arises from the
rough & unkind manner in which they
are treated by persons not trained up
in the Government service. -

In this view, I am inclined to pass
over Mr. Panchetty's most-unfeeling
and wholly illegal act. To deprive
him for a period, or indeed, of his
magisterial powers would simply be
to diminish the efficiency of the impor-
tant department of which he is a

(True Extract).

R. S. ELLIOT
Chief

To the Superintendent, Revenue Survey.
" Magistrate of
" Revenue Department.

Ed. J. H. Burns.

working member. Still, the act of a
 magistrate who takes over a bail at-
 least and puts two men, 70 miles off,
 to a more dreaded (only recently we might
 have said a more deadly) bail cannot
 in any opinion be properly noticed by
 a mere censure - I would therefore
 direct Mr. [unclear] to be suspended
 from his office in Colonel Purley's
 department for a period of six
 months -
 given by W.D.

I agree with Mr. Phillips
 N.

(True Extract).

R. S.

To the Superintendent, Revenue Survey.
 „ Magistrate of
 „ Revenue Department.

Ed. J. H. Burns.

Act 11 of 1839 provides that in
 all cases of fines, &c. it shall
 be lawful in case of non-pay-
 ment, for the Magistrate, by warrant,
 to levy the amount of such fine
 by distress and sale of any goods
 and chattels of the offender which
 may be found within the juris-
 -diction of the Magistrate, and
 if no such property may be
 so found - then to imprison.

4. But Act 11 of 1839 is cancelled

There appears to be no occasion to refer the point for the Advocate General's opinion.

Mr. Chase is clearly right.

2. Section IV. of Act XXVIII of 1860 empowers Collectors, and Revenue Settlement Officers to fine to the extent of Rs. 50 any person whose attendance is necessary for certain purposes, and who refuses or fails to attend: the fine is "to be levied by warrant under the hand of the Officer imposing it, in the same manner as a fine imposed by a Magistrate for a misdemeanour, and with a like alternative of imprisonment in default, as defined in Act II of 1839."

3. Act II of 1839 provides that "in all cases of fines, &c. it shall be lawful in case of non-payment, &c. for the Magistrate, by warrant, to levy the amount of such fine by distress and sale of any goods and chattels of the offender which may be found within the jurisdiction of the Magistrate, and if no such property may be so found" then imprisonment.

4. But Act II of 1839 is cancelled

(True Extract).

To the Superintendent, Revenue Survey.
" Magistrate of
" Revenue Department.

Wm. J. H. Burns.

in toto by schedule of Act XVII of 1962, which was enacted because the Criminal Procedure Code had come into operation.

5. I think it is clear then that the latter part of section IV of XXV of 1860 from "in the same manner" - and fines - are not in force - and that under that ~~Act~~ Act Mr Comptz could only inflict "a fine not exceeding Rs 50, to be levied by a magistrate under his hand" - as provided in the Code of Criminal Procedure -

6. at all events, supposing that act II of 1839 had been in force, Mr. Gompertz's warrant was illegal, for there is nothing to show that he had issued a distress warrant & ascertained that the offenders had no property in his jurisdiction - and without this he could not, under II of 1839 - send them to prison.

7. The annuities displayed in sending
the prisoners 30 miles, for the
days imprisonment will be
small meet with notice —

$$b = \frac{289}{88}$$

Perimeter Survey Office

3. *Harmonob*
16th August 1867.

From

W. Beaumont Esq.

Deputy Superintendent

No. 2 Revenue Survey

J. A. C. Chase Esq.

Magistrate of
Tunrold

Sir,
 With reference to your letter
 number 128 of 14th Instant I have
 the honor to state that Mr. Gomerby
 committed the two Villagers of Chinat
 Talga pally in the Kailkumla Taluq the
 to Jail under the powers vested in
 him by Government in the Fort St.
 Saint George Gazette of 23rd December
 1864 Page 1036.

Sic in Orig. -

1864 Page 1030.
2 With all due deference it seems to me that Act XXVIII of 1860 is in no way affected by the repeal of Act II of 1839 which was repealed by Act XVII of 1862, and, that Act II of 1839 is referred to in Act XXVIII merely to define the mode of procedure in cases of individuals being committed to jail in default of payment. 7
J. J. J. J.

Sie in wenig

Leuco

...being inflicted on them.
...Mr. Gompertz & family in
his warrant sent with the prisoners
should have mentioned in it
Scribble imprisoned

...I have &c.
(Signed) W. Beaumont
...Superintendent
Revenue Survey

(True copy)
...
Magistrate

[Faint, mostly illegible handwritten text in the lower left section of the page.]

Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letter &

From Magistrate of Munnor (Recd. dated 19 Augt. 1864 No 67)
From Superintendent Revenue Survey (3 Sept. 1864 No 1412)
From do (30 Sept. 1864 No 1865-2)

ORDER THEREON 30 Oct. 1864 No 1723.

In the first of the foregoing
letters the Magistrate of Munnor
requested that the opinion of the
Advocate General might be ob-
-tained as to the legality of cer-
-tain proceedings taken by
Mr. Gompertz - a Joint Spt.
Supt. of the Revenue Survey, in
a case disposed of by him under
the provisions of Act XXVIII
of 1860, in which he sentenced
two villagers of Chindalaya patti
to be imprisoned in default of
paying a fine of 3 Rs. Mr. Chase
argued that Act II of 1839 having
been repealed, the whole of the
last clause of Section 14 of Act XXVIII
of

W.D.M.
be seen last page

of 1860 is also repealed, and that if the officers of the Revenue Survey find pyots under that station, they must levy such fines under Sec. 61 of the Code of Criminal Procedure. The Magistrate also pointed out that Mr Gompertz had treated the villages in question with unnecessary severity in sending them to the District Jail at Munnool - a distance of upwards of 70 miles from their village & forced to, while there was a subsidiary jail at Poill Muntla close at hand in which they could have been confined.

2. The Supt of Revenue Survey having been directed to call upon Mr Gompertz for explanation, has submitted a letter from Mr Gompertz in which he states that he was unaware that persons sentenced to more than 7 days imprisonment could be imprisoned in a subsidiary jail, and defends the sentences passed by him on the ground that they were requisite as an example. Colonel Penderly states that the apparently disproportionate alternative of fourteen days

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days imprisonment in default of payment of the fine inflicted, had attracted his attention; that he remarked upon it, and that Mr Gompertz, in his reply has convinced him that he acted with due deliberation and consideration of the circumstances of the case. He considers Mr Gompertz to blame in not having made himself acquainted with the rules regarding the class of prisoners to which imprisonment for short periods should be confined, and reports that he has taken steps to prevent similar occurrences arising from ignorance of Rules & Regulations by Survey Officers. Col Penderly adds that the provisions under Act XXVIII of 1860 have been strictly observed with temper & judgment by the officers of his Dept and frequently under circumstances of annoyance & obstruction unknown to officers of other Depts.

3. The Governor in Council does not consider it necessary to refer to the Advocate General the legal point raised by the Magistrate of Munnool. The

Question

question of the legality of the
proceedings of Survey Officers under
Section 4 of Act XXVIII of 1860 was
raised in 1864 and the opinion
of the Govt. Pleader was obtained
thereon & communicated to the
Director of Revenue Settlement
& to the Board of Revenue. A copy
of the proceedings of Govt. on the
subject will now be furnished
to the several Magistrates in the
provinces.

4. The Governor in Council
accepts Mr. Gompertz's explanation
of the cause taken by him
in sending the two villagers to
the District Jail instead of the
Subjidiary Jail. It appears that
this was done by Mr. Gompertz
in ignorance of the rules in force
and as the error has been pointed
out, the Govt. feel sure that it
will not be repeated by any
officer of the Survey Dept.

5. Mr. Gompertz, however, com-
mits a further error in sending
the villagers to Jail, without, in
the first instance, inducing the
payment of the fine by the
issue of a warrant of distress
and

dated 1st Feb 1864, No 173.

I think an addition may
be made here &
said so.

[From this report originally
submitted by the
Magistrate, the Government
had reason to believe that
these errors had not been
noticed by ignorance that
they were intentional. As,
however, admitting Mr.
Gompertz's explanation,
it is possible that Mr.
Magli may in some
degree have
misunderstood what
he said concerning himself
& Mr. Gompertz, the Govt.
accept this statement of
the latter gentleman: but

and sale of such property as
might have been found, and
under all the circumstances,
the Govt. think it desirable that
the Supt. should take an early
opportunity of transferring Mr.
Gompertz to another District.

or made for imperfect
report

Supt. Rev. Survey - Dis 2/11 -
Magistrate of - Dis 2/11 -
Revenue Dept. - Dis 2/11 -

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(12)

1723

John B.
1867 Department

No. 1723

PROCEEDINGS OF GOVERNMENT.

Dated 30 October 1867