

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	1791	Press ~~Mis.~~
Dated	7-11-1918	46

Not to be folded or roughly handled*P*
20-30

*Proceedings of the Madras Government, Judicial Department,
7th November 1867.*

Read the following papers :—

No. 98. From J. FRASER, Esq., Magistrate of the Godavery District, to the Chief Secretary to Government, Fort Saint George; dated Cocanada, 1st October 1867, No. 240.

With reference to the Proceedings of Government, dated 10th ultimo, No. 1474, I beg to inform you that I have been frequently applied to by the Agents of ships in the roadstead here to record before me "protests" against unnecessary detention by Captains of ships at this port, and against unreasonable refusal on their part to load the vessels with cargo at fair rates of freight, and for such like causes.

2. I have also sometimes had applications made to me by widows, asking me to take from them affidavits of their widowhood, in order that they might be enabled to draw their pensions. The other day, the widow of a Non-Commissioned Officer of the Sappers and Miners, formerly at Dowlaisheram, requested me to allow an affidavit to be taken from her by the Sub-Magistrate of Toony, to the effect that she is a widow.

3. I, therefore, beg to know whether, by the recent orders of Government quoted above, I am prevented from taking affidavits and declarations in such cases as those referred to. If I am, it will, I believe, entail considerable inconvenience on future applicants.

Referred to the Acting Advocate General for his opinion.

FORT SAINT GEORGE,
22nd October 1867.

(Signed) A. J. ARBUTHNOT,
Chief Secretary.

No. 99. From the Government Solicitor, Madras, to the Chief Secretary to Government, Fort Saint George; dated Madras, 30th October 1867, No. 694.

I have the honor to acknowledge the Order of Government noted in the margin,

Dated 22nd October 1867, and made on letter from Magistrate of the Godavery District to Government of the 1st idem, No. 240.

with its enclosure, requesting the Acting Advocate General's opinion as to the power of Magistrates to record protests by Captains of ships, and to take extra-judicial oaths on affidavits, &c., required to be made by widows and others.

2. I have submitted the matter for the consideration of the Acting Advocate General; and,

3. I now forward a copy of his opinion, and return the Order and enclosure above noted.

OPINION.

I am of opinion that the Order of Government, 10th September 1867, No. 1474, does not apply to either of the cases referred to in Mr. Fraser's letter. Ship protests are documents well known in Mercantile Law, and are merely formal statements of facts made for the purpose of being used as corroborative evidence in the event of subsequent dispute. They are not on oath. The practice is to make them before a Notary Public, or, in places where no such functionary resides, before a Magistrate or Government Official. As to declarations for the purpose of drawing pensions, the Magistrate is probably inaccurate in describing them as affidavits—a term which involves the idea

*Proceedings of the Madras Government, Judicial Department,
7th November 1867.*

of an oath. They are probably mere statements on honor. If the rules of any Government pension require a statement either on oath or on honor, I think the Magistrate is the most proper person to authenticate such statement.

29th October 1867.

(Signed) J. D. MAYNE,
Acting Advocate General.

(True copy).

(Signed) H. J. BROCKMAN,
Government Solicitor.

No. 100. ORDER THEREON, 7th November 1867, No. 1791.

Ordered that the foregoing opinion of the Acting Advocate General be communicated to the Magistrate of the Godavery District, and also to the several Magistrates in the Provinces and in the Town of Madras.

(True Extract).

Chief Secretary.

To the Magistrate of the Godavery District.

„ Magistrate of
„ Government Solicitor.

Exd. J. H. Burns.

Jud. DEPARTMENT.

No. 2140 -

From

The Magistrate, Godavery District.

Dated 1st October 1867.

FOR ORDERS.

*I will be in fact to refer to the
Advocate General as suggested
by the Chief Secretary -*

*I don't think the Magistrate
should record such "Protests"
as those mentioned in a file
from of Mr. Chas. letter - will
be to receive them with the
affidavits - but it will be*

very in convenient if he be not
allowed to draw forth a fresh
affidavit as then attended to
in the second place. This could
scarcely have been intended

J.P.

The Calcutta-advocate's remarks are no
doubt, as law, correct enough. but I do not
think they are repeated, so far as the circumstances
of this Presidency are concerned. If our magistrates
are held to be bound to take affidavits from persons
before them, & make formal declarations before them,
such inconvenience will arise in the Police & other
departments - and I think it will be necessary
to provide some other authority in whose presence
they may be made. In England the Magistrate
of the Parish is resorted to in numerous cases & for
him we here have our Magistrates.
As however Mr. Fraser, the Magistrate of Calcutta

has deemed it desirable to raise the two
questions I fear we must ask the off.
adv. General to enlighten us
R. W.D.H.

14
note: Should not a reference
be made to the antecedents
General as to the cases
in which affidavits may
be made before a magistrate
in further of the Peace?

by A

Read letters 11th 2110 and 2357
 7th November 1867 D^o 17/91.

Ordered that the foregoing
 opinion of the Advocate
 General be communicated
 to the Magistrate of the
 Godavari District, and
 also to the several magis-
 trates in the provinces and
 in the town of Madras.

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W. H. J. H.

[Signature]

2- The Magistrate of the
 Godavari District. } despatched 14/11
 - - - Magistrate of the District of at the Presidency }
 - - - Government Solicitor - despatched 13/11