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TAMIL NADU ARCHIVES

GOVERNMENT OF TAMIL NADU

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Medical - DEPARTMENT

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*Proceedings of the Madras Government, Legislative Department,
2nd April 1872.*

Read the following papers:—

No. 1. From the Deputy Registrar of the High Court of Judicature at Madras, to the Officiating Chief Secretary to Government, Fort St. George, dated Madras, 24th February 1872, No. 345.

I am directed to acknowledge the receipt of Mr. Chief-Secretary Ellis' letter to the Chief Justice, dated 10th February 1872, forwarding a copy of the Proceedings of Government in the Legislative Department of the same date, and requesting the opinion of the High Court on the question of making the revised Code of Criminal Procedure applicable to the Presidency towns. In reply, I am to state that the High Court consider that the procedure of the Courts of the Magistrates of Police of the Presidency towns should be codified, and that the extension of the amended Code of Criminal Procedure, with the modifications and special provisions which local laws and peculiar circumstances require, is expedient.

2. The Court is further of opinion that the procedure of the High Court in the exercise of its original criminal jurisdiction, as well as the procedure of the Magistrates in preliminary inquiries, may also be regulated by the Code with some modifications. The provisions of Act XXIV, of 1866 may be referred to.

3. The Court think that the English rule concerning the unanimity of the Jury, whatever may be its merits or recommendations elsewhere, should not be retained.

4. The above is the opinion of all the Members of the Court other than Mr. Justice Holloway, who declines giving any opinion.

No. 2. From the Police Magistrates for the Town of Madras, to the Officiating Chief Secretary to Government, Fort St. George, dated Madras, 2nd March 1872, No. 10.

In accordance with G. O., No. 19, dated 10th February 1872, we have the honour to submit our opinion on the subject of the suggestion made by the Bengal Government that the revised Code of Criminal Procedure should be made applicable to the Presidency town with such modifications and special provisions as their peculiar circumstances and history may render desirable.

2. We consider that there are many provisions of that Code which may with great advantage be so made applicable; but there are also several sections which it would be impossible to carry out in their integrity without an enormously increased charge to the State.

3. There are two Police Courts for this Presidency town. Each Court disposes daily of about 40 cases, besides 30 preliminary applications for process; about 60 witnesses and complainants are daily examined. Upwards of 37,000 processes are issued annually in addition to formal convictions, orders, &c.

4. The Police Courts have been in existence, in some form or other, upwards of 50 years. Their procedure, however antiquated, is exceedingly simple, and is, in fact, the procedure with which every European British subject—and we may say every British subject within our jurisdiction—is familiar. It is the procedure still in force in the Police Courts of England, and—we think we are justified in saying—one that has hitherto given satisfaction to all classes.

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5. We would strongly deprecate any interference with the present mode of summary trial, and especially with the manner in which evidence is recorded in summary cases. It would be an intolerable hardship on the people of a busy trading town, such as Madras, if they were to be compelled to hang about the Courts whilst their cases dragged through the slow length of a trial conducted, as in the Mofussil, with the prospect of a further expenditure of time and money attending an appeal. Every endeavour is made to avoid putting parties and their witnesses to the inconvenience of attending the Courts more than one day, the Magistrates frequently sitting till a very late hour to obviate the necessity of frequent adjournments. If the manner of recording the evidence and taking the plea of the accused be altered, one heavy case, or a case in which professional gentlemen are employed, would derange the whole list of cases for several days. The procedure laid down in Chapter II., Part II., and Chapter III., Part III., may perhaps be without difficulty followed in the Mofussil, where a Magistrate rarely has more than two or three cases of any kind to dispose of in a day; but in this Presidency town double the present number of Magistrates and their Clerks would not be able to keep the work from falling hopelessly into arrears. Subsequent to the receipt of the Government Order the experiment was tried at the Royapettah Police Court of taking and recording complaints in the manner prescribed by Section 94 of the Bill, and it was found that it would occupy one Magistrate even beyond the usual office hours taking complaints alone. It must be remembered that, unlike the Judges of Small Cause Courts, Police Magistrates have no Chief Clerk to sign processes, hear undefended cases, and carry on the miscellaneous duties (other than purely judicial) and correspondence of the Court. Every single process and proceeding of any kind must be signed by the Magistrates themselves, on whom also devolve many extra-judicial duties, such as attesting Powers of Attorney, Declarations of Pensioners, Apprentices' Indentures, Printing Press Declarations, attesting Recruits for different Regiments, the Medical Service, Ordnance Artificer Corps, Lascars, &c., attending Marine Courts of Inquiry, &c.

The enormous mass of papers which would accumulate would soon necessitate the building of increased accommodation for its reception.

All grave cases are, as a rule, before being brought to the Police Courts, inquired into by the Commissioner of Police or his Deputies, who act as Justices of the Peace and prepare such cases for final disposal by the Magistrates or High Court, as the case may be.

6. Up to the present time no appeal has been allowed from the judgment of Police Magistrates; their proceedings are closely watched both by the public, the Press, and professional gentlemen who are constantly employed in Police cases. We submit that to allow appeals in the Presidency towns would be to add to the uncertainty of justice; would flood the High Court with increased work of a petty nature in hearing appeals, examining calendars, &c.; and would paralyze the action of the Police Courts. Probably two days in the week would be the utmost time that could be given to public sittings; the rest of the week would be occupied by the Magistrates and their Clerks in preparing written judgments, calendars, and miscellaneous returns. Already do our Courts furnish monthly statistics embracing some 600 columns, each column two feet long, besides the annual statement

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submitted to the High Court. Notwithstanding all precautions the Small Cause and Police Courts are infested by unscrupulous touters whose business it is to foster litigation, and who live on the fears, hopes, and petty malice of ignorant people. It would open out to these people a fresh field of practice in exciting delusive hopes of the chance of a successful appeal.

7. Madras Act VIII. of 1867, which extended the jurisdiction of the Police Magistrates, has worked admirably. It has relieved the High Court of the trial annually of some hundreds of minor cases which would otherwise have occupied the valuable time of Judges, Counsel, and Jurors. So strongly do we feel the evil of hampering the Police Courts with all the restrictions which may perhaps be found desirable for the guidance and control of Subordinate Magistrates in the Mofussil, that we would strongly urge in preference that our jurisdiction should be limited, as before, to the trial of cases for which a punishment not exceeding six months' imprisonment and a fine not exceeding 200 Rupees may be thought sufficient, or provision might be made for the trial before two Magistrates of cases in which a more severe punishment is desirable. At the same time we respectfully submit that no grounds exist for withdrawing from the Police Magistrates the confidence hitherto reposed in them. Any party aggrieved can have the judgment of a Police Magistrate reviewed by the High Court on a writ of Certiorari, which can be easily obtained. We beg to suggest that power should be given to the Police Magistrates, if they think fit, on the application of either party, to state a case for the opinion of the High Court upon any question of law. This power they now have in cases under the Municipal Act.

8. The most convenient mode of introducing the Code of Criminal Procedure with such modifications as may be necessary in the case of Presidency towns would, we think, be to follow the precedent afforded in the case of applying the new Civil Procedure Code to the Courts of Small Causes, that is, to add the letters (P. T.) in a parenthesis to such sections, or portions of sections, of the Code of Criminal Procedure as may be thought suitable to Presidency Police Courts and the Police of Presidency towns. This may be done by adding a section to the preliminary portion as follows:—

"15-A. The sections, or parts of sections, having the letters (P. T.) affixed to them in a parenthesis may be extended, so far as they apply or are applicable, to the Police Courts and the Police of the Presidency towns of Calcutta, Madras, and Bombay. The other sections, or parts of sections, do not extend to such Courts or such Police."

By Act XXI. of 1864 and (Madras) Act VIII. of 1867, 104 sections have already been made applicable to the Presidency towns.

9. We suggest that a short chapter might be introduced having reference to the Police Courts, similar to Chapter XXIV. of the present Code, referring to Subordinate Judges and Principal Sadr Aminas.

10. Appendix A. shows the sections which we propose should be made applicable to the Police and Police Courts of the Presidency towns. In Section 97, after the words "such Magistrate" (which as the section stands implies that only the Magistrate who issued the summons is to hear the case), we would suggest adding the words "as may then be there."

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11. At present Magistrates of Police of the Presidency towns have a very wide discretion as to accepting bail for parties accused. Frequently all the ends of justice are amply met by accepting bail for the attendance of accused persons even in some cases which are entered in the Schedule of the Code of Criminal Procedure as not bailable. Great hardship might arise from following a very hard-and-fast rule.

12. By Section 220, in default of payment by sureties of the amount of a forfeited bond the sum due may be levied by attachment and sale of their property, in default of such levy then the sureties are liable to be imprisoned; but no provision appears to be made (Section 219) for imprisonment of the *principal* in case of default.

13. By Section 108 copies of all summonses are required. In the case of our Courts that provision will entail the preparation of 34,000 additional processes annually. Hitherto copies were only made out when it became necessary to affix the paper to the house of the summoned; in all other cases, the original summons was left with the person summoned.

14. We regret the delay which, owing to press of work in our Courts, has occurred in submitting this report.

APPENDIX.

Sections of the Code of Criminal Procedure proposed to be made applicable to the Presidency Police Courts.

Preliminary Chapter.—The whole.

Section 10 to provide that in Presidency towns, Session Court includes High Court. A section (15-A.) to be added denoting what portions of the Code are to apply to Police Courts, as follows, or to the same effect:—

15-A. The sections, or parts of sections, having the letters (P. T.) affixed to them in a parenthesis may be extended (so far as they apply, or are applicable) to the Police Courts and the Police of the Presidency towns of Calcutta, Madras, and Bombay. The other sections, or parts of sections, do not extend to such Courts or such Police.

PART I., Chapter I.—Sections 17, 18, 22.

Chapter II.—Sections 24, 30, 31, 32, 33, 34, 35, 37, 38.

Chapter III.—Sections 41, 42, 43, 44, 48, 49, 50, 51, 52, 53.

Chapter IV.—The whole chapter.

PART II.—The whole, except Section 91.

Amendments.—In Section 65, add after the word "Magistrate" "and in Presidency towns any Magistrate or the Commissioner of Police." In Section 71 add "In Presidency towns." "Commissioner of Police" is to be substituted for the "Magistrate."

Section 82.—In first paragraph, after the word "Magistrate" add "or, in Presidency towns, without the order of a Magistrate or the Commissioner of Police."

Sections 84 and 90.—In Presidency towns, substitute "Commissioner of Police" for "Magistrate of the district."

Chapter II.—The whole chapter, except last paragraph of Section 94.

In Section 97, after words "such Magistrate" add "as may then be there."

Chapter III.—The whole chapter.

Chapter IV.—Do.

Chapter V.—Do.

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PART III., Chapter I.—The whole.

Chapter II.—The whole.

Chapter III.—The whole, so far as applies to committable cases.

PART V.—Sections 266, 267, 268, 269, 271, 272, 273, 274, 275, 276, 277, 278, 282.

PART VI., Chapter I.—The whole.

Chapter II.—Sections 288, 297.

Chapter III.—Sections 300, 301, 302, 304, 306.

Chapter IV.—The whole.

Chapter V.—The whole, except Section 333.

PART VII., Chapter I.—The whole, except Sections 340, 341.

Chapter III.—The whole, except Section 389.

PART VIII., Chapter I.—The whole.

Chapter II.—The whole.

PART IX., Chapter I.—The whole.

Chapter II.—Sections 411, 412.

Chapter III.—The whole.

PART X., Chapter I.—The whole.

Chapter II.—The whole.

Chapter III.—The whole.

Chapter V.—The whole.

PART XI.—Section 473, and any sections hereafter added which may be applicable to Presidency towns.

No. 3. To the Officiating Secretary to the Council of the Governor-General for Making Laws and Regulations, dated Fort St. George, 2nd April 1872, No. 45.

I am directed to acknowledge the receipt of your letter of the 4th January last, No. 2, forwarding copy of a communication from the Bengal Government suggesting that the opportunity afforded by the revision of the Code of Criminal Procedure should be taken to settle, on modern principles, the Criminal Procedure of the High Courts in their original jurisdiction and of the Courts of the Magistrates of Police in the Presidency towns; by making the revised Code applicable to these towns, with such modifications and special provisions as their peculiar circumstances and history may render desirable.

2. In reply, I am to submit copies of the letters noted in the margin, containing respectively the views of the Honourable the Chief Justice and Judges of the Madras High Court (excepting Mr. Justice Holloway) and of the three Magistrates of Police in the Presidency Town, on the subject.

3. The Madras Government fully approve the suggestions and recommendations made by the High Court and the Magistrates of Police; and I am accordingly desired to commend them to the consideration of the Council of His Excellency the Governor-General for making Laws and Regulations.

(Signed) W. HUDLESTON,
Officiating Chief Secretary.

Exd. F. R. Bantleman.