

(1) Number of pages 56

(2) Date of repair - 9-87

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TAMIL NADU ARCHIVES

GOVERNMENT OF TAMIL NADU

Judicial

DEPARTMENT

G.O. No.
B.P. No.

384

Press.
Mis.

(B No. 33-38)

Dated

6-3-1874

198

Not to be folded or roughly handled.

Read the following papers:—

No. 33. From the Magistrates of Police for the Town of Madras, to the Hon. W. HUDLESTON, Chief Secretary to Government, Fort St. George, dated Madras, 10th October 1873, No. 165.*

We have the honour, with reference to G.O., No. 1348, dated 25th August 1873, to submit our report on the High Courts' Criminal Procedure Bill, No. 11 of 1873. We have confined our attention to such parts of the Bill as affect the Police Magistrates.

2. We attach a schedule* showing in italics such alterations as we consider should be made.

3. We think the powers of the Police Magistrates should be defined, as reference is made in the Code to the "Magistrate" and his powers (*e.g.*, Sections 110, 309, 314, 438 and others). We suggest that Police Magistrates might exercise the powers given by the Code to District or first-class Magistrates.

4. Section 63.—In Section 63 "District" should be held to mean the Presidency Town, not merely a local division of the town.

5. Chapter VII.—Chapter VII. introduces in the Presidency Towns a distinction between European and Native subjects. The tendency of modern legislation has been to gradually abolish such distinctions when practicable; but now, for the first time since the British established their regular Courts of Justice in the Presidency Towns, it is proposed to alter the practice, without, so far as we can see, any valid reason. Very grave inconvenience must result owing to the large number of European British subjects in these towns. A considerable portion of each day will be taken up in scrutinizing the pedigrees of defendants before the Courts can proceed to business. The Native Police Magistrates of Madras and Bombay will, in such cases, have no jurisdiction at all. We respectfully submit that this chapter should be omitted. Nothing, so far as we are aware, has ever occurred to render any such restrictions necessary. If this innovation be sanctioned, the High Court will again be required to try a large number of petty cases from which they were relieved when the jurisdiction of the Police Magistrates was extended by Madras Act VIII. of 1867. The extent of this relief will be seen when the calendars of the quarterly sessions of the High Court before the passing of the said Act are compared with the calendars subsequent to the introduction of that Act. Prior to 1867 nearly as many cases were tried in the High Court in one year as now are tried in *five* years. Of course if European British subjects are to have special privileges, not only will those cases in which they are solely concerned have to be committed, but also those in which they are charged in company with Natives.

6. Chapter VIII.—We would advise the inclusion of Chapter VIII. (*Offences of which information must be given to the Police and duty of the public*) substituting "Commissioner of Police" for "Magistrate" in Sections 89 and 90.

7. Chapter X.—Include Sections 111, 113, 119, 120, 121, 122, and 123.

The Acting Commissioner of Police is of opinion that Section 123 (*Police daily record of proceedings when making an investigation*) should be omitted, as not being

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required in places where the Police are so immediately subject to supervision by the Commissioner and his Deputies.

8. The Acting Inspector-General of Police wishes to incorporate Chapters IX. and X. (as referring solely to Police procedure) in a local Police Act to be passed by the local Legislature. He would also substitute "Commissioner of Police" for "Magistrate" in Section 110, leaving power to the Magistrates in Section 116 to refer cases to Police for inquiry.

With regard to the first proposal we doubt if it would not be better to secure uniformity in the three Presidency Towns so far as the portions of the Code to be applied.

Section 116 merely refers to an inquiry before the issue of process, but matters might be disclosed during the inquiry or trial of a case after issue of process, which would render it very desirable for the Magistrates to have the assistance of the Police in arriving at the truth, or preventing a failure of justice. This view did not occur at the time the Inspector-General was discussing the proposed Act. Unfortunately Colonel Dwyer has left Madras, so we are unable to refer to him again without delaying this report unduly.

9. Chapter XVI.—We think that the procedure laid down in this chapter (Trial of summary cases) might be made applicable to offences heard and determined by Police Magistrates. Such is the present practice, and it is found simple and effectual. If this suggestion be adopted then

10. Chapter XVII may be omitted.

11. Chapter XVIII.—It might be useful to enable Police Magistrates to exercise the powers given to a Bench of Magistrates in Section 225. This would enable them quickly to dispose of the numerous petty cases under the Police and Conservancy Acts, which would otherwise take up an amount of time and labour quite out of proportion to their importance.

12. Chapter XXX.—In Sections 115, 116, and 117 substitute "Commissioner of Police" for "Magistrate."

The Commissioner of Police now takes charge of all unclaimed property, or property with regard to which an offence may be suspected, though no specific charge is made. This practice may be continued.

13. Chapter XXXIV.—There appears to be a clerical error in the inclusion of this chapter "except Section 161." Section 161 is the only section required, and this part of the Bill should read "Chapter XXXIV. (Of the jurisdiction, powers, and assistance) Section four hundred and thirty-one," omitting the word "except."

14. Chapter XXXVI. (Of the discipline of the Police) would we think most decidedly be included for the guidance and protection of Magistrates, the Police, and Military, when called on to act in cases of riot. Only last year the Magistrates and Military Force were kept in readiness in anticipation of a disturbance during the Mohurram. We presume the omission of this chapter was an oversight.

15. Chapter XXXI.—Section 329 to be retained, as such a provision is useful when dealing with special Acts when no procedure may be laid down.

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Schedule.—Will require amendment so as to repeal such portions of Act XXI. of 1864, and (Madras) Act VIII. of 1867, as may conflict with this Act.

(Signed)	T. G. CLARKE,
(")	T. WELDON,
(")	R. P. CAMPBELL,
(")	P. STREENEEVASA ROW,
	Magistrates of Police.

A.

A Schedule showing how the Bill would stand with the alterations proposed by the Police Magistrates of Madras.

(NOTE.—The proposed alterations are entered in italics.)

A Bill to regulate the Procedure of the High Courts in the exercise of their Original Criminal Jurisdiction, and for other purposes.

PREAMBLE.

Chapter I., Section 1, Short title.

" 2, Repeal of enactments except paragraph 4.

" 3, Interpretation clause.

"Magistrate," includes also a Police Magistrate in the Presidency Towns, who shall exercise the powers of a District Magistrate.

Chapter VII., Section 40.—The following parts of the Code of Criminal Procedure shall apply to the Courts of the Police Magistrates and to the Police of the towns of Calcutta, Madras, and Bombay (that is to say)—

Section 2, except paragraph 4.

Section 3 (pending cases) and Section 4 (definitions.)

Chapter IV., Section 20, paragraphs 1, 2, 3, 4, and 5; and explanation; Sections 21 and 30.

Chapter VI.—(The place of inquiry and trial). Sections 63 to 70, both inclusive.

In Section 63 the "District" shall be held to mean the "Presidency Town," and not merely a local division of the town.

Chapter VII.—(Of criminal jurisdiction over European British subjects). Sections 71 to 75, 83, 84, 85, 87, and 88. (The whole of this Chapter VII. should be omitted.)

Chapter VIII.—(Offences of which information must be given to the Police, and duty of the public.) Sections 89 to 91, both inclusive, the words "Commissioner of Police" being substituted for "Magistrate" in Sections 89 and 90.

Chapter IX.—(Of arrest without warrant.)

X.—(Powers of the Police to investigate.)

Section 110.—The words "and in the towns of Calcutta, Madras, and Bombay, any Magistrate or the Commissioner of Police" being inserted after "Magistrate of the first or second class."

Section 111.

Section 113.

Section 114, the words "Commissioner of Police" being substituted for the word "Magistrate."

Sections 119, 120, and 121.

Section 124.—The words "or in the Presidency Towns of Calcutta, Madras, and Bombay, without the orders of a Magistrate, or a Commissioner of Police," being inserted in the first paragraph after the word "Magistrate."

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Section 126.—(Omit this Section 126.)

Sections 128 and 129.

Section 132.—The words "Commissioner of Police" being substituted for "Magistrate."

Chapter XI.—(Of complaints to a Magistrate). Except the second clause of Section 144.

.. XII.—(Of the summons.)

.. XIII.—(Of the warrant.)

.. XIV.—(Preliminary.)

.. XV.—(Of inquiry into cases triable by the Court of Session or High Court.)

.. XVI.—(Of the trial of summons cases by Magistrates.)

The procedure laid down in this Chapter XVI shall be applicable to all cases tried and finally disposed of by the Police Magistrates.

Chapter XVII.—(Of the trial of warrant cases by the Magistrates.) (Omit this Chapter XVII.)

Chapter XVIII, Section 225 (Summary trials.)

Chapter XXIII.—(Execution.) Sections 307, 308, 309, 311 to 318 and 322.

.. XXIV.—(Special rules of evidence in criminal cases.)

.. XXV.—(Evidence how taken.) Sections 331, 340, 342 to 345, 347, and 349.

.. XXVI.—(Of securing the attendance of witnesses.)

.. XXVII.—(Of search warrants). Except Section 385.

.. XXVIII.—(Bail). Except Sections 388 and 389; and last paragraph of Section 396.

.. XXX.—(Miscellaneous provisions). The words "Commissioner of Police" being substituted for "Magistrate" in Sections 415, 416, and 417.

Chapter XXXI.—(Lunatics.)

.. XXXII.—(Contempts of Courts).

.. XXXIII.—(Charge). Except Section 451.

.. XXXIV.—(Of the Judgment, &c.) (Except) Section 461. (Omit the word "except" as now in the draft Bill, and thus render only Section 461 and none other of this Chapter XXXIV. applicable to the Police Magistrates.)

Chapter XXXV.—(Prosecution in certain cases.)

.. XXXVI.—(Of the dispersion of unlawful assemblies).

.. XXXVII.—(Of security for keeping the peace.)

.. XXXVIII.—(Of security for good behaviour.)

.. XXXIX.—(Local nuisances.)

.. XL.—(Maintenance of wives and families.)

.. XLII., Section 539.

In the Schedule I. (of enactment repealed) add the following:—

Extent of repeal.

Act XXI. of 1861.—An Act for the extension of the Jurisdiction of the Magistrates of Police. } The whole Act.

Act VIII. of 1867, Madras.—Madras Police Act.

Section 3, which is already virtually repealed by Act X. of 1869, being an Act to abolish the Police Superannuation Fund.

Section 4.—From the words "and of Criminal Procedure which apply to a District or Deputy Superintendent of Police shall apply to Commissioner of Police, &c., &c." up to the end of section.

Section 9.—All except the proviso.

Sections 12, 14, 15, 16, 21, 60, 61, 62, 66, 69, 71, and 72.

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Referred to the Inspector-General of Police for his remarks, as the proposals of the Police Magistrates materially affect the constitution of the Presidency Town Police.

OOTACAMUND,
13th October 1873.

(Signed) W. HUDLESTON,
Chief Secretary.

No. 34. From Lieutenant-Colonel W. S. DREVER, Acting Inspector-General of Police, to the Hon. W. HUDLESTON, Chief Secretary to Government, Fort St. George, dated Ootacamund, 24th October 1873, C. No. 84.

With reference to your endorsement on the accompanying enclosures, marginally noted, I have the honour to submit the following observations.

2. I must in the first instance solicit attention to G.O. of the 2nd April 1872, No. 45, which I have now seen for the first time. From your letter, No. 45, of that date, published therein, I gather that the Bengal Government had suggested the propriety of extending such portions of the revised Criminal Procedure Code as might be applicable to the "High Courts and Police Magistrates' Courts in the Presidency Towns," and that, on a reference of this question to the Madras Town Magistrates, those gentlemen not only approved of the idea, but submitted a Schedule showing the sections they proposed "should be made applicable to the Police and Police Courts."

The Government seem to have overlooked this slight but important addition to the scheme, and to have signified their approval of the Magistrates' recommendations, which were equally accepted by the Hon. Mr. Hobhouse.

The Draft Bill introduced by that gentleman was drawn in accordance with the views of the Madras Town Magistrates, the Preamble specially mentioning the extension of the Criminal Procedure Code to the "Police of the Presidency Towns."

3. A subsequent reference of this Draft Bill, XI. of 1872, to the same officers, has now resulted in proposals by them for the further application of the Code to the Town Police, and consequent changes in existing law, which if adopted would create a revolution in the relative position of Police and Magistracy in Presidency Towns, as well as otherwise alter existing practice to an extent I venture to hope may now receive due consideration.

4. I do not think the extreme measures advocated by the Magistracy are in any way called for; the Magistrates in a Presidency Town must remain as hitherto exclusively judicial officers. The Commissioner at the headquarters of Government and of the Inspector-General of Police could no longer be held responsible for the efficiency of his force, were numerous popular Magistrates, some of whom are Natives, permitted to deal directly with the Police. Discipline could scarcely be maintained under such circumstances, and the gravest complications would necessarily follow.

5. The Commissioner occupies a position wholly differing from that of a Superintendent of Police up-country, and an equally marked distinction exists between a "Town" and a "District" Magistrate. This has been fully recognised by Government from time to time in their special Local Town Police Acts, wherein the Commissioner takes the place of the District Magistrate, so far as relates to the reports of crime, preliminary inquiries, or other matters of a judicial character. He is assisted by two Deputy Commissioners, so that the supervision and control are direct. I conceive it would be extremely injudicious in any way to neutralise his authority; and until it is shown that the existing system has failed, there does not appear any reason why it should

Deprecates any such extreme changes, points out the disadvantages thereof, and the differences between a "Commissioner of Police," and "a Superintendent," "a Town" and "a District Magistrate." Police and Magisterial Procedure being perfectly distinct, they should be separately dealt with.

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to altered solely because it has been deemed requisite to introduce certain changes into Town Magistrates' procedure. That of Police and Magistracy are now clearly enunciated, and one of the great advantages of the revised Criminal Procedure Code is that it has drawn the different lines as to render this demarcation absolute. There can consequently be no reason why there should be any conflict of opinion, or exceptional action taken in the present case.

6. Certain sections of the old Criminal Procedure Code which affected the Police were, by Act VIII. of 1867, of the Government of Madras, made applicable to the Town Police of Madras. Instead of these sections we now have another and more comprehensive arrangement, forming Chapters IX. and X. of the revised Code, which refer exclusively to Police procedure; and if the words "Commissioner of Police" be substituted for "Magistrate," as was done in 1867, we maintain existing practice, which is now thoroughly understood, and is the basis of the Departmental Town Police Code. By Clause 3, Section 2, of the revised Code of Criminal Procedure, all the sections of the old Code, which had been extended to the Town by Madras Act VIII. of 1867, are now in force. There is consequently no need for immediate legislation on this subject in connexion with this Bill.

7. No possible good can accrue from changes introduced into this Police procedure, by Imperial or General legislation. The plea for uniformity of action in the Presidency Towns advanced by the Madras Magistrates I cannot accept. No power can make it one, and it appears to me by far the wisest course, for the Local Governments to continue as hitherto, to introduce into their special Police Acts such portions of the Imperial Procedure Code as they deem suitable.

8. Sections which work well in Madras may be wholly inapplicable in Calcutta and Bombay, or vice versa, though the Imperial Legislature may have no cognizance thereof; in support of which I respectfully point out that Section 151 of the old Code, which was by Section 9 of VIII. of 1867 specially excluded from the town, comes into full force in its revised garb as Section 123, if the Draft Bill be adopted.

9. It will be requisite to amend Act VIII. of 1867, and to bring it into accord with more recent legislation, but that is a subject which need not be discussed here. It appears equally desirable to amend Magisterial procedure in the Town Courts of the Presidencies, but in doing so I conceive it is essential Police procedure should not be dealt with in the same Bill at the same time; any attempt to do so will necessitate changes of which it is impossible to foresee the whole extent. The present proposals of the Town Magistrates, however, serve to indicate the nature of some of those involved, if the two subjects are treated as one.

10. Referring to their Schedule A, as amended in italics, they propose at once to extend their own powers to those of a District Magistrate; it is, of course, essential to define their powers if they are to exercise such over the extended power asked for will necessarily supersede the special powers they hold under Section 14 of VIII. of 1867. But are these the consequential results of an endeavour to improve Magisterial procedure only?

11. By extending Chapter IV, Section 20, paragraphs 1, 2, 3, 4, and 5, to themselves, the Magistrates next propose to make certain parts of Chapter IV. (Of Magistracy and their powers) applicable to themselves, disapproved of for reasons explained. Magistrates apparently contemplate their own subdivision into classes—a system which could not possibly work in a Presidency Town. Instead of any Magistrate being able to take up any case, each case would have to go before a special grade of Magistrate.

12. By the extension of Sections 21 and 30, the Town Magistrates would absolutely supersede the Commissioner of Police and the Coroner, and obtain other powers of appeal, &c., fully detailed therein, any exercise of which by the Magistrates must involve a complete bouleversement of the present state of affairs.

13. I fully concur with the Magistrates in disapproving of Chapter VII. of the Criminal Procedure Code being extended to the town. It would be a retrograde step to make any distinction between Europeans and Natives in summary trials in which the Presidency Magistrates have exercised greater powers for years than are now given to Mofussil Magistrates by this chapter.

Disapproval of the proposed extension to Presidency Towns of Chapter VII. of the Criminal Procedure Code (Of jurisdiction over British subjects).

14. Chapter VIII. (*Offences in which information should be given to the Police, &c.*) in no way affects Magisterial procedure, and should be omitted in this Bill.

15. Chapter IX.—*Arrest without Warrant*; Chapter X.—*Powers of Police to investigate*.—Both these chapters (Section 104 only excepted) refer exclusively to Police, not Magisterial procedure; the words "Commissioner of Police" being substituted for "Magistrate," the chapters should be incorporated as far as required into the Local Town Police Acts, not in an Imperial Bill regulating magisterial proceedings.

Chapters IX. and X.—(Of arrest without warrant, and powers of Police to investigate.) These also refer to purely police matters, and should be omitted from this Bill.

16. Under Chapter X. it will be observed that in certain sections it is proposed to add the words "Magistrate or Commissioner of Police," while in others the latter only is substituted for "Magistrate." Such alternative procedure must be fatal to the working of any Town Police Force, and create confusion in the minds of public and police.

17. Chapter XI.—*Of Complaints to a Magistrate*, Section 146, "*Power to order Police to inquire into (summons) cases.*"—After full consideration I am of opinion that this section should not be extended to the Presidency Towns. It is open to great abuse, and would enable the

Magistracy to refer petty complaints to the Police for report, to an extent which must inevitably interfere with the performance of their more important duties. The correct course for a Magistrate in a Presidency Town is either to summon the persons complained against in a petty case, or to decline to issue such process; many of these cases are of a trivial character, and for the most part such as are dealt with by heads of villages in the mofussil. If the Police are to hold preliminary inquiries into such cases at the discretion of the Magistracy, the force must be largely increased; not only would additional expenditure be thus entailed, but corruption and partizanship must equally follow in the wake of such a measure. There can be no objection to conferring on Magistrates powers to refer grave or cognizable offences to the Police for inquiry, and if thought requisite a special section to this effect might be added to the Bill. But, as a matter of fact, where there is harmonious action between Commissioner and Magistracy in a Presidency Town, a Magistrate's wish or suggestion is at once attended to.

18. Chapter XII.—*Of the Summons*; Chapter XIII.—*Of the Warrant*.—Both these chapters apply to Magistracy and Police, and there can be no inconvenience by their partial extension to the Town Magistrates in the present Bill, as well as to the Police, in the Local Police Act, when amended.

Chapters XII. and XIII. (Of the summons and warrant) may be included in this Bill and in the Police Code when amended.

19. Chapters XIV. to XXVI. relate to Magistrates' procedure, and call for no remark from me.

Chapters XIV. to XXVI. relate to Magisterial procedure, and call for no remark.

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20. Chapter XXVII.—*Search Warrant*.—This chapter also applies to Police and Magistrate. Chapter XXVII.—(Of the Search Warrant)—note marginal note to paragraph 13. Chapter XXVII.—(Of the Search Warrant)—note marginal note to paragraph 13.

21. Chapter XXVIII.—*Bail*.—I am not content that under this chapter bail or recognizance taken by Police (Chapter X), and in regard to which default is made by non-appearance, are recoverable. It is very desirable there should be no misapprehension in this matter.

Chapter XXIX. Sections 415, 416, 417 (Procedure by Police on seizure of stolen property)—note marginal note to paragraph 15. 22. Chapter XXX., Sections 415, 416 and 417, refer to Police procedure only, and should be omitted.

23. The remaining chapters call for no remark, excepting Chapter XXXVI.—*Of the dispersion of unlawful assemblies*. I fully agree with the Magistrates in recommending the extension of these most useful sections to the town of Madras.

24. Referring to the Magistrates' desire to repeal certain sections of the Town Police Act VIII. of 1867, I cannot too strongly deprecate any such proposal at present. It will be observed that the Supreme Council had not contemplated the measure in regard to the local Police Acts in force in any of the Presidency Towns, nor can it, in my opinion, be even attempted by the Local Governments, until the extent of the present Draft Bill shall have been finally determined.

25. The Madras Town Police Act VIII. of 1867 is an embodiment of antecedent laws which had been in force for years. Like all other special laws it contains provisions of an exceptionally useful character. I respectfully submit there can be nothing but untold mischief and confusion from premature efforts at its amendment, more especially as Police and Magisterial procedure can now be separately dealt with so readily.

26. The subjoined statement gives a brief summary of the proposals I have here made, and which, if approved of, will leave Police procedure exactly in *stat. quo*, and the Supreme Legislature free to adopt such changes in that of the Criminal Courts as may to them seem fit:—

1. In the Preamble omit the words "and to the Police of the Presidency towns."
2. In Chapter VII., Section 40, omit the words "and to the Police of the towns of Calcutta, Madras, and Bombay."
3. Chapter IX.—Of arrest without warrant—omit the whole chapter.
4. Chapter X.—Powers of Police to Investigate—omit the whole chapter.
5. Chapter XI.—Of complaints to a Magistrate—omit Section 146.
6. Chapter XXX.—Miscellaneous—omit Sections 415, 416, and 417.

27. I have the honour to append a copy of the amended Schedule as proposed by the Town Magistrates, with remarks opposite each section or chapter (whether referring to Police or Magisterial procedure,) whereby I trust Government may more readily understand the bearings of a rather complicated subject. In this

Remarks on proposed Magisterial Schedule affecting both Police and Magistrates.

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schedule the first proposals by the Town Magistrates are in roman, their further suggestions in italics:—

(A.)

(B.)

A Schedule showing how the Bill would stand with the alterations proposed by the Police Magistrates of Madras. REMARKS BY INSPECTOR-GENERAL OF MADRAS POLICE.

Note.—The proposed alterations are entered in italics.

A Bill to regulate the procedure of the High Courts in the exercise of their Original Criminal Jurisdiction, and for other purposes.

PREAMBLE.

CHAPTER I.

Section 1.—Short title.

2.—Repeal of enactments.

Except paragraph 4.

Clerical error for "paragraph 2?"

Section 3.—Interpretation clause.

"Magistrate," includes also a Police Magistrate in the Presidency Towns, who shall exercise the powers of a District Magistrate.

No extension of Magistrate's power required if Police and Magisterial procedure be separately dealt with.

CHAPTER VII.

Section 40.—The following parts of the Code of Criminal Procedure shall apply to the Courts of the Police Magistrate and to the Police of the towns of Calcutta, Madras, and Bombay. (that is to say)—

Omit the words "and to the Police of the towns of Calcutta, Madras, and Bombay."

Section 2, except paragraph 4.

Omit.

Section 3 (*Pending Cases*), and Section 4 (*Definitions*).

CHAPTER IV.

Section 20, paragraphs 1, 2, 3, 4, and 5 and *Explanations*. Sections 21 and 30.

Omit.

CHAPTER VI.

(*The Place of Inquiry and Trial*.)

Sections 63 to 70, both inclusive.

In Section 63 the "District" shall be held to mean the "Presidency Town," and not merely a local division of the town.

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CHAPTER VII.

(Of Criminal Jurisdiction over European
British subjects.)

Omit the whole Chapter.

Sections 71 to 75, 83, 84, 85, 86, and 88.
(The whole of this Chapter VII. should
be omitted)

CHAPTER VIII.

(Offences of which information must be given
to the Police, and duty of the public.)

Omit.

Sections 89 to 91, both inclusive; the
words "Commissioner of Police" being sub-
stituted for "Magistrate" in Sections 89
and 90.

CHAPTER IX.

(Of Arrest without Warrant.)

Omit the whole Chapter.

CHAPTER X.

(Powers of the Police to Investigate.)

Section 110. The words "and in the
towns of Calcutta, Madras, and Bombay, any
Magistrate or the Commissioner of Police,"
being inserted after "Magistrate of the first
or second class."

Section 111.

Section 113.

Section 114. The words "Commissioner
of Police" being substituted for the word "Ma-
gistrate."

Omit the whole Chapter X.

Sections 119, 120, and 121.

Section 124. The words "or in the Presi-
dency towns of Calcutta, Madras, and Bombay,
without the orders of a Magistrate, or a Com-
missioner of Police," being inserted in the
first paragraph after the word "Magistrate."

(Section 126.)

Omit this Section 126.

Sections 128 and 129.

Section 132. The words "Commissioner
of Police" being substituted for "Magistrate."

CHAPTER XI.

(Complaints to a Magistrate.)

Except the second clause of Section 144.

Omit Section 146.

CHAPTER XII.

(Of the Summons.)

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CHAPTER XIII.

(Of the Warrant.)

Omit Sections 176 to 184 inclusive.

CHAPTER XIV.

(Preliminary.)

CHAPTER XV.

(Of Inquiry into Cases triable by the Court of
Session or High Court.)

CHAPTER XVI.

(Of the Trial of Summons Cases by Magis-
trates.)

The Procedure laid down in this Chapter
XVI. shall be applicable to all cases tried and
finally disposed of by the Police Magistrates.

CHAPTER XVII.

(Of the Trial of Warrant Cases by the Magis-
trate.)

Omit this Chapter XVII.

CHAPTER XVIII.

Section 225 (Summary Trials.)

CHAPTER XXIII.

(Execution.)

Sections 307, 308, 309, 311 to 318, and 322.

CHAPTER XXIV.

(Special Rules of Evidence in Criminal
Cases.)

CHAPTER XXV.

(Evidence how taken.)

Sections 331, 340, 342 to 345, 347 and
349.

CHAPTER XXVI.

(Of securing the Attendance of Witnesses.)

CHAPTER XXVII.

(Of Search Warrants.)

Except Section 385.

Omit Sections 379 to 387 inclusive.

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CHAPTER XXVII.

(Bail.)

Except Sections 388 and 389, and last paragraph of Section 388.

CHAPTER XXX.

(Miscellaneous Provisions.)

The words "Commissioner of Police" being substituted for "Magistrate" in Sections 415, 416, and 417.

Omit Sections 415, 416, and 417.

CHAPTER XXXI.

(Lunatics.)

CHAPTER XXXII.

(Contempts of Courts.)

CHAPTER XXXIII.

(Charges.)

Except Section 451.

CHAPTER XXXIV.

(Of the Judgment, &c.)

(Except) Section 461.

(Omit the word "except" as now in the Draft Bill, and thus render only Section 461 and none other of this Chapter XXXIV, applicable to the Police Magistrates.)

CHAPTER XXXV.

(Prosecution in certain Cases.)

CHAPTER XXXVI.

(Of the dispersion of Unlawful Assemblies.)

CHAPTER XXXVII.

(Of Security for keeping the Peace.)

CHAPTER XXXVIII.

(Of Security for Good Behaviour.)

CHAPTER XXXIX.

(Local Nuisance.)

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6th March 1874.*

CHAPTER XLI.

(Maintenance of Wives and Families.)

CHAPTER XLII.

Section 339.

In the Schedule I. (of Enactments repealed) add the following:—

Extent of repeal.

Act XXI. of 1864. An Act for the extension of the Jurisdiction of the Magistrates of Police. } The whole Act.

Act VIII. of 1867, Madras (Madras Police Act). Section 3, which is already virtually repealed by Act X. of 1869, being an Act to abolish the Superannuation Fund. } Omit.

Section 4, from the words "and if Criminal Procedure which apply to a District or Deputy Superintendent of Police shall apply to Commissioner of Police," &c., &c., up to the end of Section 9, all except the proviso Sections 13, 14, 15, 16, 21, 60, 61, 62, 66, 69, 71, and 72.

No. 35. From H. WIGRAM, Esq., Registrar of the High Court of Judicature at Madras, Appellate Side, to the Hon. W. HUDLESTON, Chief Secretary to Government, Fort St. George, dated Madras, 6th January 1874, No. 27.

In acknowledging the receipt of your letter to the Acting Chief Justice, dated 13th August 1873, No. 1264, Judicial Department, forwarding a Bill with annexure to "Regulate the Procedure of the High Courts in the exercise of their original Criminal jurisdiction and for other purposes," and requesting to be favoured with the remarks and opinion of the High Court on the Bill for transmission to the Government of India, I am directed to forward transcripts of the remarks recorded by Mr. Justice Holloway and Mr. Justice Kernan. The other Judges do not propose to offer any remarks on the Bill.

Remarks by Mr. Justice Holloway.

Section 6.—"Amend, alter or add to." If "add to" is considered not a species of alter "subtract from" should be added.

At the last sessions I directed the striking out of a whole string of counts in which there was manifestly no jurisdiction. The power of the Judge to direct the doing of all these things even where there is a Clerk of the Crown ought to be reserved to him. He ought not, however, to be told that he shall do them.

Section 5.—"In accordance with such notice." Will a diversity as to the time make the sitting not in accordance?

Section 2.—The charge is treated as a unity. There should be power to make the entry as to any portions of it.

Section 13.—The position of "shall" in this clause makes it optional with the Judge whether charges of offences punishable with death shall be tried by special jury. It should be,

Proceedings of the Madras Government, Judicial Department.
6th March 1874.

upon a charge of having committed an offense punishable with death, "shall," and upon any other charge if a judge so order "may."

Section 14. - 412: is the free of "2. 1. 1."

So (1) & (2), Case 2 — "Present" is I presume, for a relative to present, is assigned to a special class of present. Actual I suppose, present of future tense in the special case. The word is, however, rather an awkward one.

Section 23 - Why should any general rule be drawn from this section. The results of taking notes ought to be self-evident. There are infinite variations in judgments. The best of them in all important matters show not only what was said, but how it came to be said.

Section 24 - I will not describe the constitution of the Court: If the Judge sits in the
of the Court is to be determined as that of all other Federal Courts.

[illegible]

especially of XVII to Police Magistrates. A procedure as inherently erroneous is mischievous altogether and in all cases. First a trial to see whether you ought to try and then a trial—applied as it will be here—straight charges, it will be considerable.

The Act ought to provide for the summary trial of persons charged by jurors and others. In case of a conviction of a grave war crime, certain persons doubt whether there is any possibility of their being tried by a jury.

The public has a right to know what is going on in the Court which is the only place where the public can see the Court. There is no place in the Court where the public can see the Court.

Received of Mr. J. C. ...

It is suggested by Mr. Justice McRuer that the proposed procedure in Section 33, Chapter 2, by which the Judge is to forward the proposed writs, whether or not made, to the High Court. The Clerk of the Crown, not the Judge of the County Court, is directed to forward the prisoner with a copy of the Judge's order to the High Court, or other place in charge of the jail. Is it intended by Section 33 to empower the Court to direct the Crown to produce the prisoner, or might that situation be expressed by directing the Clerk of the Crown to produce the prisoner?

No. 10. From E. BARCLAY, Esq., Acting Government Solicitor, to the Hon. J. W. HUDLESTON, C.M. & Secretary to Government, Fort St. George, Madras, 10th December 1873, No. 677.

At the request of the Advocate-General, I have the honour to forward, herewith, in original, his observations on the proposed Bill to regulate the Original Criminal Procedure of the High Court.

Excerpt from a Memorandum by the Honorable the Adjutant General.

The Bill, it is said, is far from effecting the objects which it professes in the first instance to have in view. The intention (as I understood from His Honor the Lieutenant-Governor of the North-West Provinces) was to clear away the anomalies which, under the existing law, affects the criminal procedure and the jurisdiction of the High Courts, to assimilate their procedure to that of the other tribunals, except where a special procedure is required.

*Proceedings of the Madras Government, Judicial Department,
6th March 1874.*

dure was desirable, to do away with all references to English procedure, to define in a clear and intelligible manner the powers of the Courts in every instance, and to provide expressly that they should have no other powers than those conferred under the Act. The English writs, Certiorari, Mandamus, &c., still in vogue, were to be replaced by new provisions, enabling the Courts to exercise whatever powers were considered desirable, in the same way as Sections 81 and 82 did away with the writs of "Habeas corpus," "maniprise," &c., elsewhere than in the Presidency Towns. A practical illustration had, it will be remembered, been afforded, in the Wahabee trial at Calcutta, of the inconvenience to which the existence of ill-defined powers in the High Courts might give rise. On the other hand the doubts entertained by the Judges as to their competence to call for evidence with reference to the assassin of Lord Mayo, before confirming the sentence, appeared to show that the powers of the High Courts were, in some respects, inadequate or inadequately expressed. It was with a view to dealing with the subject in a thorough, comprehensive, and simple manner that the Committee determined, with the concurrence of the Chief Justices, not to include the High Courts along with the other criminal tribunals in the Code, but to have a separate enactment. The present Bill appears to be little more than a reenactment of existing provisions, and will do little towards simplifying the law as to the jurisdiction and powers of the Courts.

4. As to the details of the Bill the following observations suggest themselves—

Section 12.—There is, I think, no reason for sticking to the old number of twelve jurymen. Its propriety in England has been questioned, and in India there are strong reasons for diminishing it. The provisions of Section 236 of the Code allow of an uneven number, not less than three nor more than nine, to be sanctioned by the Local Government in any particular class of offences. If this were introduced in the High Courts, it would be highly popular with jurors, who now feel heavily the annoyance of being brought away from their duties in unnecessarily large numbers.

— If Section 12 of the Bill becomes law we shall have in India three sorts of juries—twelve jurors and unanimity in the Presidency Towns; twelve and a majority of nine with the concurrence of the Judge, when the High Courts sit in the Mofussil; and thirdly, juries from three to nine under the Code; this multiplicity seems unnecessary and undesirable.

Sections 13 to 20.—With a view to simplicity I should prefer to enact Chapter XXIX. of the Code with the necessary changes rather than to have Sections 13 to 20 of the Bill. The special jury seems to me a somewhat invidious arrangement; it throws discredit on the common jurors, and results in the majority of cases being tried by an inferior class of men. Moreover it works very inconveniently. At present even though there be no murder case at the sessions, and no case put down for a special jury, thirty-six special jurors are nevertheless obliged to attend the Court simply to go through the farce of being dismissed. The abolition of the special jury, would, I believe, be generally regarded as an improvement.

Section 35.—This section extends the Code, where it is not otherwise provided, to the constitution of juries for trials before the High Court, to trials, to sentences, and to the carrying into execution of such sentences. It may possibly be doubted whether those words cover such proceedings as those referred to in Sections 471 and 472; contempts of Court, Chapter XXXII.; the tender of pardon under Sections 348 and 349 when the Court is not acting as a Court of Revision; securing the attendance of witnesses, Chapter XXVI.; Bail, Chapter XXVIII.; securing documentary evidence, Section 365, or such provisions as those contained in Sections 65 to 68 as to the place of trial. There will be, of course, great hesitation in exercising any power not clearly conferred by the Act, and it might be well so to word the section as to exclude the possibility of doubt on the matter.

Section 40.—The provisions of Sections 51 and 52, and 56 and 57 should be made applicable to the Presidency Towns. There is no sort of necessity, so far as I am aware, for the continued existence of the old English writs, and the fact of their continuance merely produces indistinctness and

*Proceedings of the Madras Government, Judicial Department,
6th March 1874.*

confusion. A section should be introduced empowering the High Court to inquire into or, as it may appear, upon cases in which officers refuse to do their duty, or act without jurisdiction, or in which unauthorized persons usurp power to act, and this, I think, is all that is required.

Section 41 appears to me to be unnecessary. The powers proposed and the terms in which it is proposed to refer to the High Court, and the reference to the Court of the District, are inconvenient ways of prescribing the duties of the Advocate-General in India. It is necessary to arm the Advocate-General with any special powers on this subject, it would be better to say precisely what those powers are.

7th December 1873.

(Signed) H. S. CUNNINGHAM,
Advocate-General.

No. 37.

ORDER THEREON, 6th March 1874, No. 384.

The first and second of the foregoing letters contain, respectively, the joint report of the Magistrates of Police for the Town of Madras on Chapter VII. of "The High Courts' Criminal Procedure Bill," under which it is proposed to extend certain parts of the Code of Criminal Procedure to the Courts of the Police Magistrates and to the Police of the Presidency Towns, and the observations of the late Acting Inspector-General of Police on the provisions of that Chapter and on the further suggestions contained in the Madras Police Magistrates' joint report. With the third letter, the Registrar of the High Court forwards transcripts of the remarks recorded by Mr. Justice Holloway and Mr. Justice Keran on certain clauses of the Bill; and the last of the papers above recorded is an extract from a memorandum by the Honourable the Advocate-General on the subject of the proposed measure.

2. With reference to the papers relating exclusively to Chapter VII. of the Bill, it is observed that this Chapter embodies the recommendations made by the Madras Police Magistrates when submitting their report* on the proposal of the Bengal Government that the Code of Criminal Procedure should be applied to the Presidency Towns with such modifications and special provisions as their peculiar circumstances and history might render desirable. As, however, it has now been represented by the late Acting Inspector-General of Police that the adoption of these recommendations, so far as they refer to the Police of the Presidency Towns, as well as some of the further suggestions above referred to—and particularly the proposal that Police Magistrates should exercise the miscellaneous powers conferred on a Magistrate of a District by Section 30 of the Code—would materially affect the constitution of the Police of the Presidency Towns and otherwise involve violent and undesirable changes in the relations at present existing between the Magistracy and the Police in these towns, the Governor in Council, concurring entirely with Colonel Drever in the views expressed in his letter, earnestly deprecates the making of any alteration in the law, other than that which was originally intended by the Imperial Legislature, viz., to assimilate, as far as possible, the judicial procedure of Police Magistrates in the Presidency Towns with that prescribed for the Magistracy in the Mofussil, leaving untouched the procedure of the Police in these towns; and with this view, the Government

* Recorded in the Proceedings of Government, Legislative Department, 2nd April 1872, No. 45.

of India will be requested to alter the Bill by omitting from the Preamble and Section 40 the words referring to the Police of the Presidency Towns, and by expunging from the list of chapters and sections of the Code appended to that section the following chapters and sections having reference to the Police:—

*Proceedings of the Madras Government, Judicial Department,
6th March 1874.*

(1.) Chapter IX.—(Of arrest without warrant.)
(2.) Chapter X.—(Powers of the Police to investigate.)
(3.) Section 146 (Chapter XI.).
(4.) Sections 176 to 184 inclusive (Chapter XIII.).
(5.) Sections 379 to 387 inclusive (Chapter XXVII.).
(6.) Sections 415, 416, and 417 (Chapter XXX.).

3. With regard to that portion of Section 40 of the Bill which relates to the procedure of the Magistracy, the Madras Police Magistrates have submitted the following proposals:—

1st.—That, as references are made in the parts of the Code proposed to be applied to the Presidency Towns to "Magistrate," "Magistrate of the District," "Magistrate of a Division of a District," "Magistrate of the first class," &c., the powers of the Police Magistrates should be defined so as to admit of those parts being acted upon; and that, in order to meet this object, the Police Magistrates should be vested with the powers given by the Code to a District or first-class Magistrate—(see paragraph 3 of Police Magistrates' report.)

2nd.—That in applying Section 63 of the Code to the Presidency Towns that Section should be read as if, for the word "district" used therein, the words "Presidency Town" were substituted (paragraph 4);

3rd.—That Chapter VII. of the Code, relating to criminal jurisdiction over European British subjects, be omitted from the Bill (paragraph 5);

4th.—That the procedure laid down in Chapter XVI. (Trial of summons cases) should be made applicable to all cases heard and determined by Police Magistrates (paragraphs 9 and 10);

5th.—That every Magistrate of Police should be invested with the powers of summary trial, which, under Section 225 of the Code, may be conferred on a bench of Magistrates (paragraph 11); and

6th.—That Chapter XXXVI. of the Code relating to the dispersion of unlawful assemblies, and Section 539 relating to procedure in miscellaneous criminal cases and proceedings, should be added to the parts of the Code proposed to be extended to the Presidency Towns.

4. The Governor in Council approves the whole of these proposals, excepting the first, and resolves to recommend them to the Government of India for adoption.

5. With regard to the first of the above proposals, the Governor in Council concurs with Colonel Drever in the remark that no extension of the powers of the Police Magistrates would be required, if Police and Magisterial procedure were separately dealt with. His Excellency in Council is of opinion that all that is necessary for the practical working of the several chapters and sections of the Code which it is proposed to apply to the Presidency Towns, is the addition of a clause to Section 40 of the Bill to the effect that in those chapters and sections the expressions "Magistrate," "Magistrate of the District," "Magistrate of the first

class," "a competent Magistrate," "Magistrate having jurisdiction," &c., shall be deemed to mean a Magistrate of Police.

6. The adoption of the several amendments recommended in the preceding paragraphs will render necessary the repeal of—

(1.) Act XXI. of 1854, Sections 2 and 3; and

(2.) Act VIII. of 1857 (H.C. Act No. 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100).

Of the former Act, Sections 2 and 3 will be repealed by the extension of Chapters XXXIX. and XI. (Sections 141 and 142) of the Code to the Presidency Towns; and of the latter, Section 13 will be superseded by Section 308 (Chapter XXIII.) of the Code; Section 21 by Chapter XLII.; Section 61 by Sections 148, 149, and 157 (Chapters XI. and XII.); Section 69 by Section 167 (Chapter XXIII.); and Sections 71 and 72 by Chapter XXVIII. of the Code. These portions of the above-named two Acts should, therefore, be included in the Schedule of enactments to be repealed, annexed to the Bill.

7. In addition to the amendments above specified, the Governor in Council considers it necessary that the following alterations should be made in Section 40 of the Bill and in the list of chapters and sections of the Code appended to that Section, viz.:—

(1.) To insert, in Section 40, after the words "the following parts of the Code of Criminal Procedure shall apply to the Courts of the Police Magistrates of the towns of Calcutta, Madras, and Bombay," the words "so far as they admit of being so applied." The insertion of these words is requisite, as some of the Sections of the Code proposed to be extended to the Presidency Towns have reference to the Court of Session or High Court, as well as to the Court of a Magistrate, e.g., Sections 63, 173, 174, 330 and others.

(2.) To omit the following clauses of the Code from the list appended to Section 40, viz.:—

(i.) Section 175.—This Section is not necessary, as it relates to procedure when a warrant is issued by a Subordinate Magistrate, and the Police Magistrates are not Subordinate Magistrates.

(ii.) Section 301, as inserted in Clause of Section 302.—Section 301 is rendered unnecessary by, and indeed conflicts with, Section 7 of the Bill; and Clause 2 of Section 302 will interfere with the special arrangements made by this Government for prosecuting criminal cases before the High Court.

(iii.) The penultimate clause of Section 303; the last proviso in Section 323; the last sentence of Clause 2 of Section 302; Section 390; the penultimate paragraph of Section 393; Sections 419 and 420; and the last two clauses of Section 439.—These portions of the Code refer exclusively to Courts whose decisions are subject to appeal, to Courts of appeal, to appeals, and to reports to be made to District Magistrates, and should, therefore, be omitted.

(3.) To add, after the entry "Chapter XI. (of complaints to a Magistrate), except the 2nd Clause of Section 141 and the whole of Section 146," the following words, viz., "Section 143 shall be read as if, after the words 'such Magistrate' occurring at the end of the first clause, the words 'as may then be there' followed."—This amendment is necessary, as otherwise only the Magistrate who issued the

summons could hear the case.—It was suggested by the Police Magistrates in paragraph 10 of their joint letter recorded in Proceedings of Government, Legislative Department, 2nd April 1872, No. 45.

(1.) To add, after the entry "Chapter XII. (of the summons)," the following words, viz., "Except the words 'in duplicate' in Section 152, and the words 'by exhibiting one of the copies and delivering or tendering the other copy to him' in Section 154; and substituting the word 'it' for the words 'the copy' in Section 154."

—This alteration is needed, with reference to the representation made by the Police Magistrates in paragraphs 2 and 13 of their joint report recorded in the Proceedings of Government above quoted, to the effect that the provisions of Sections 152 and 154 of the Code, if carried out in their entirety, would, in the case of their Courts, entail the preparation of 34,000 copies of summonses annually, and would consequently involve additional expense; and that hitherto copies were only made when it became necessary to affix the paper to the house of the summonnee; in all other cases, the original summons being left with the person summoned.

8. A schedule showing how the Bill would stand if the several amendments herein suggested and supported were adopted, is appended to these Proceedings.

9. With reference to Mr. Justice Holloway's observation on Section 40 of the Bill, it will be seen, from paragraphs 9 and 10 of the Police Magistrates' joint report, and paragraphs 3 and 4 of these Proceedings, that Chapter XVII. of the Code (relating to procedure in the trial of warrant cases), to which he especially objects, is proposed to be omitted from the list of chapters and sections which are to be made applicable to the Courts of Police Magistrates; and that it is intended that the procedure laid down in Chapter XVI. (as to the trial of summons cases) shall apply to all cases tried and finally disposed of by these Courts.

10. The observations of Mr. Justice Holloway on certain other portions of the Bill, as well as those of Mr. Justice Kernan and of the Honourable the Advocate-General, do not call for any remark.

11. Ordered that a copy of these Proceedings be submitted for the consideration of the Government of India in the Legislative Department, with reference to Mr. Secretary Whitley Stokes' letter of the 26th July 1873, No. 377.

(Signed) D. F. CARMICHAEL,
Acting Chief Secretary.

SCHEDULE showing how the Bill would stand if the several amendments recommended by Government were adopted.

Preamble.—Whereas it is expedient to consolidate and amend the law relating to the Procedure of the High Courts in the exercise of their Original Criminal Jurisdiction, and to extend certain parts of the Code of Criminal Procedure to the Courts of the Police Magistrates in the Presidency Towns: It is hereby enacted as follows:—

CHAPTER VII.

Of Police Magistrates in the Presidency Towns.

Section 40.—The following parts of the Code of Criminal Procedure shall apply to the Courts of the Police Magistrates of the towns of Calcutta, Madras, and Bombay; so far as they admit of being so applied; and the expressions "Magistrate," "Magistrate of the District," "Magistrate

*Proceedings of the Madras Government, Judicial Department,
6th March 1874.*

of a Division of a District," "Magistrate of the first class," "a competent Magistrate," "Magistrate having jurisdiction," and any other expression occurring in the said parts of the Code, which is a Bill for a Magistrate of the first class, shall be construed as if they referred to a Magistrate of the first class.

Section 14.—(Of the Jurisdiction of Magistrates.)—Except the second clause of Section 14, and the whole of Section 14B. Section 14B shall be read as if, after the words "such Magistrate," occurring at the end of the first clause, the words "as may then be there" followed.

Chapter XII.—(Of the Summons.)—Except the words "in duplicate," in Section 152, and the words "by exhibiting one of the copies and delivering or tendering the other copy to him," in Section 154; and substituting the word "it" for the words "the copy" in Section 154.

Chapter XIII.—(Of the Warrant.)—Sections 159 to 174 inclusive.

XIV.—(Preliminary.)

XV.—(Of inquiry into Cases triable by the Court of Session or High Court.)—Except Section 201, and second clause of Section 202.

Chapter XVI.—(Of the trial of Summary Cases by Magistrates.)—The procedure laid down in this Chapter shall be applicable to all cases (whether summary cases or warrant cases) tried and disposed of by the Courts of the Police Magistrate.

Chapter XXIII.—(Execution.)—Sections 307, 308 (excepting the penultimate clause of Section 308), 309, 311, 314, and 322.

Chapter XXIV.—(Special Rules of Evidence in Criminal Cases.)—Except last proviso in Section 328.

Chapter XXV.—(Evidence here taken.)—Sections 331, 340, 342 to 345, 347, and 349.

Chapter XXVI.—(Of securing the Attendance of Witnesses.)—Except last sentence of Clause 2 of Section 362.

Chapter XXVII.—(Of Search Warrants.)—Except Sections 379 to 397 inclusive.

Chapter XXVIII.—(Bail.)—Except Sections 385, 389, and 390, and two last paragraphs of Section 398.

Chapter XXX.—(Miscellaneous provisions.)—Sections 415, 421, and 422.

XXXI.—(Lunatics.)

XXXII.—(Contempt of Court.)

XXXIII.—(Charge.)—Except Section 451.

XXXIV.—(Of the Judgment, Order, and Sentence.)—Section 461.

XXXV.—(Prosecution in certain cases.)

XXXVI.—(Of the dispersion of unlawful Assemblies.)

XXXVII.—(Of security for keeping the peace.)—Except the two last clauses of Section 459.

Chapter XXXVIII.—(Of security for good behaviour.)

XXXIX.—(Local Nuisances.)

XLI.—(Of the maintenance of wives and families.)

XLII.—(Miscellaneous.)—Section 500.

Section 40-A.—Every Magistrate of Police shall exercise the powers of summary trial which, under Section 225 of the said Code, are conferrable on a bench of Magistrates; and shall, in the exercise of such powers, be governed by the provisions of Sections 226, 227, and 229 of the said Code, so far as such provisions are applicable.

In Schedule A all the following enactments:—

Act XXI. of 1864, Sections 2 and 3.

Act VIII. of 1867 (Madras), Sections 16, 21, 61, 62, 63, 71, and 72.

*Proceedings of the Madras Government, Judicial Department,
6th March 1874.*

No. 33. To the Secretary to the Government of India, Legislative Department, dated Fort St. George, 6th March 1874, No. 385.

Referring to your letter of the 26th July last, No. 377, forwarding a copy of the "Bill to regulate the procedure of the High Courts in the exercise of their Original Criminal Jurisdiction and for other purposes," I am directed to submit the accompanying Proceedings of this Government, in which are recorded the reports of the Madras Town Police Magistrates and of the late Acting Inspector-General of Police in this Presidency on that part of the Bill which proposes to extend to the Police Magistrates and to the Police of the Presidency Towns such portions of the Code of Criminal Procedure as seem applicable, and the views of the Governor in Council on the subject.

2. The observations recorded on the Bill by two of the Judges of the High Court (Mr. Justice Holloway and Mr. Justice Kernan) and by the Advocate-General are also embodied in the Proceedings.

(Signed) D. F. CARMICHAEL,
Acting Chief Secretary.

Ed. T. O'Connor.

Ind. $\frac{1}{2}$ DEPARTMENT.

No. 2288-

From The Atty. Genl. of Ind.

Dated 24th Oct^r 1873.

FOR ORDERS.

I have gone through these papers with care - indeed I have worked into the thing personally with the Inspector General. I think that Government should earnestly protest against making the change in the Law anything but what was originally intended - namely to bring as much as may be the judicial procedure in Magistrate's Courts of Presidency Towns into accordance with the C. C. P.

I was party to the discussion which resulted in the draft of this Bill and the very question of assimilating the Police Courts was considered and unanimously rejected as neither feasible nor expedient in any Presidency Town - where the Magistrates are not.

Oct 25

RECEIVED

Oct 25 1873

not Covenanted and responsible District
Magistrates but mere Casuals of varied
Lords and Nationalities. They are most
properly kept in the place in which all
Magistrates in London even are. They are
mere sitting judicial Magistrates. We demand
that in the Presidency Towns the action of
Government must be directed on the Police
and that no meddling whatever should be
tolerated on the part of irresponsible East
Indian & Native Town-Magistrates. There
is but one Commissioned Officer on the Madras
Bench.

As men like Widdow & J. G. Clarke
this position is insecure and restrictive.
But I believe that important interests are
involved in maintaining the status quo.

The fact is that there is no real work
for 4 Magistrates in Madras and they want
to make it and use the Police to make the fact
fabrication. I have no doubt that could
Potter be appointed in the Hamlets attached
to Madras, there would be a great relief
to business.

I think that Colonel Dwyer's
admirable

74
admirable letter should be
acknowledged and may be
accepted as our stand point
in the matter

29/10 Wm J. D. S.

I have no doubt Mr. Dwyer
is right: and success
depends on Mr. Dwyer

His remarks at p. 5
of the Newspaper letter
are well worth
attention.

I presume the
specimen of the
High Ct. has
not yet been recd.

I pass the draft
but would observe
with reference to a part
of the 2^d Para of the Draft
which I have marked
that the Specification of
Chapter VIII in this place
seems hardly in correlation
with the succeeding remarks
and may tend somewhat
to weaken their force
For though it may be
desirable to omit in
Chapter VIII it is hardly
one of the provisions
which materially affect
the Constitution of the
Police and involve
Violence

CCP
R/12
CCP-10 R.7-11
CCP-11 R.11-12

Robert Hamilton
"Change & Co."

I want to suggest
the following readings
as well as some
of the further suggestions
already referred to - and
particularly the proposal
that Police Magistrates
should exercise before
committing any special
murder of Chapter III
which seems unnecessary
here.

This is only an
suggestion. I do not
mind the G. A. for
and and and

12/2 1911

Judicial Department

PROCEEDINGS of the MADRAS GOVERNMENT.

From the Magistrate of Police for the
 State of Madras — Date 10th October 1873 ✓
 From the Magistrate General of Police — Do 24th Dec 1873
 From the Registrar of the High Court — Do 1st January 1874
 Extract from a communication by the Honble the Advocate General — Do 7th Dec 1873.

Read the following letter

Order thereon, to amount 76 Rs 384

The first and second of the foregoing letters contain, respectively, the joint report of the Magistrates of Police for the State of Madras on Chapter VII of the "Criminal Procedure Bill," under which it is proposed to extend certain parts of the Code of Criminal Procedure to the Courts of the Police Magistrate and to the Police of the Presidency towns; and the observations of the Honble the Registrar General of Police on the provisions of that chapter & on the further suggestions contained in the Madras Police Magistrate's joint report. With the other letters the Registrar of the High Court forwards transcripts of the

MR
 12/2
 See also note on 2nd page of 1873

Cont. of 1187 12 Madras.

7.

Encl
Recd.

187. No.

1103.

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x. Generali de 1792
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S. 1792

See note
12/1 011

so far as they refer to the
Policy of the Presidency
Forum, as well as some of
the particular suggestions
referred to ^{& particularly a word} in the
Magistrate should be revised
the miscellaneous powers
conferred on a Magistrate
of a District by sections 30
of the Code, which
~~should be revised~~
~~the President, &c.~~
would materially affect
the Constitution of the
Policy of the Presidency
Forum & otherwise violent
changes in the relations
at present existing between
the Magistracy & the State
in these States, the Govern-
ment in Council, concerning
entirely with General
Dever in the views
expressed in his letter.

to earnestly deprecated the
making of any alteration
in the law, other than that
which was originally
intended by the Imperial
Legislature - namely, to
assimilate, as far as possi-
ble, the judicial procedure
of Police Magistrates in
the Presidency Towns,
with that prescribed
for the Magistrate in
the Mofussil, leaving
undisturbed the procedure
of the Police in these
Towns, and with this
view, the Government
of India will be re-
quested to alter the
Bill, striking from the
Preamble & Section 40
the words referring to the
Police of the Presidency
Towns, & by enjoining
from the list of chapters
and

and Sections of the Code
appended to the Execu-
tion the following
chapters & sections have
reference to the Police:-
(1) Chapter IX (of arrest
without warrant.)
(2) Chapter X (Powers of the
Police to investigate)
(3) Section 146 (Chapter XX)
(4) Sections 176 to 184 inclusive
(Chapter XXIII)
(5) Sections 376 to 387 inclusive
(Chapter XXVII)
(6) Sections 415, 416 & 417
(Chapter XXX)
4. With regard to that
portion of Section 40
of the Bill which re-
lates to the procedure
of the Magistracy &
the Madras Police
Magistrates have
submitted the following
proposals:-
(1st) That

(1st) That, as references
are made in the party
the Code proposed to be
applied to the Presidency
Towns to "Magistrates",
"Magistrate of the District",
"Magistrate of a Division",
of the District, Magistrate
of the 1st class, &c., &c.,
the powers of the Police
Magistrates should be
defined so as to admit
of their power being
referred upon, & that in
order to meet this object,
the Police Magistrates
should be vested with
the powers given by the
Code to a District
1st class Magistrate.
(The power of Police Magi-
strates is not.)

(2^d) That in ap-
plying section

section 63 of the Code³³
to the Presidency Towns
that section should be
read as if, for the word
"district" were therein,
the word "Presidency
Town" was substituted.
(Para 4)

(3^d) That Chapter VII
of the Code, relating to
Criminal jurisdiction
over European British
Subjects, be omitted
from the Bill. (Para 5)

(4th) That the procedure
laid down in Chapter
XVI (Trial of Summons
Cases) should be made
applicable to all cases
heard & determined by
Police Magistrates (Para 6)

(5th) That every Magi-
strate of Police should
be invested with the power
of summary trial which
under Section 225 of the

Code may be referred
to a Board of Magis-
trates (para 11); and
(6) that the articles
of the Code relating
to the disposition of as-
saulted assemblies, and
section 509 relating to
proceedings in minor
criminal cases
& proceedings should
be added to the parts
of the Code proposed
to be inserted in the
Penal Code.

The Governor in
Council approves the
whole of these proposals,
excepting the first,
and resolves to recom-
mend them to the Govt.
of India for adoption.

With regard to the
first of the above proposals,
the Governor in Council
consents



Consent of the Governor
in Council

Consents with the Governor
in the remark that no
extension of the powers
of the Police Magistrate
would be required, if
Police & Magistrate
proceedings were separately
dealt with. His Excellency
in Council is of opinion
that all that is necessary
for the practical working
of the several chapters
& sections of the Code
which it is proposed
to apply to the Presidency
Juries, is the addition
of a clause to section 40
of the Bill to the effect
that in these chapters
and sections the expressions
"Magistrate" "Magistrate
of the District" "Judge
of the 1st class" "Judge
of the 2nd or 3rd class"
"Magistrate having

jurisdiction, shall be
deemed to mean a High-
Court of India.

For the adoption of the
several amendments re-
commended in the pre-
ceding paragraphs
it will be necessary
to amend the

- (1) Sec. XXI of 1864, re. 20, 21
- (2) Sec. VII of 1867 (Madras)
- re. 10, 11, 12, 13, 14, 15, 16, 17, 18, 19

Of the former, sections
10 & 11 will be superseded
by the insertion of
Sections XXXIX & XL
(ss. 141 & 142) of the Code
to the Presidency Courts, &
of the latter, Section 16
will be superseded by
s. 308 (Chapter XXIV)
of the Code, Section 17
by Chapter XXI, Section
18 by ss. 148, 149 & 150 (Chap.
XXI & XII), Section 19
by s. 307 (Chapter XXIII),
and Sections 20 & 21 by Chapter
XXVIII

XXVIII of the Code & the
provisions of the above
named laws shall be
therefore to include
in the schedule of enact-
ments to be repealed,
annexed to the Bill.

8 In addition to the
amendments above spe-
cified, the Government
Council considers it
necessary that the follow-
ing alterations should
be made in Section 40
of the Bill & in the
list of chapters and
sections of the Code
appended to that section.

(1) To insert, in section 40,
after the words "the
following parts of the
Code of Criminal Pro-
ceedings shall apply to
the Courts of the Police
Magistrates of the Districts
of Calcutta, Madras,
and

(4) I received the following
correction of the original
from the Editor of the Soc.
Scientific &c. of the Brit.
Mus.

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(III) The penultimate
clause of S. 308; the last
proviso in S. 328; the last
provision of clause 2 of
S. 362; - S. 390; the penul-
timate paragraph of S. 398;
ss. 419 & 420; & the last
two clauses of S. 489.
 All these portions of
 the Code infer exclusion
 of the decisions.

(3) To add, after the entry
"chapter XI (of Complications
to a Superstition)", a new
the 2nd clause of S. 144
& the whole of section 146-
the following words, viz.

Section 148 shall be read
as it, after the words
"such papers to be secured"
at the end of the first
clause, the words "as
may then be found to be
so" - This amendment
is necessary, otherwise
only the Magistrate
who issued the summons
could hear the case;
& it was suggested
by the Police Magistrate
in para 10 of their joint
letter recorded in Pro-
ceedings of Government
Legislative Dept. 2^d
April 1872 p. 45.

(d) To add, after the
word "Chapter XV (of
the summons)" - the
following words, viz
"Except the words in-
cluded in s. 152,
and the words by exhi-
biting one of the copies
& delivering or tendering
to other copy to him"

sections which are the
in s. 152, and substituting
the word "it" for the word
the "copy" in section 152.
This alteration is made
with reference to the
representation made by
the Police Magistrates
in paras 2 & 10 of their
joint report recorded
in the Proceedings of
Government Magistrate
to the effect that the
provisions of ss. 152 &
154 of the Code, if carried
out in their entirety,
would, in the case of
their Courts, entail the
preparation of 34,000
copies of summonses
annually, & would
consequently involve
additional expense,
& that, hitherto copies
were only made when
it became necessary
to affix the paper to
the house of the sum-
-moner; in all other
cases

Cases, the original Com-
missioners of the Court
the Commission.
9. I should be showing
how the Bill would
stand if the General
Amendments to the
suggested and suggested
were adopted, is appen-
dix to these Proceedings.

10. With reference to
the Justice Hallway
observation on the Bill,
it will be seen
from paras 9 & 10 of the
Police Report that
report & paras 11 & 12 of
these Proceedings, that
Chapter XXII of the Code
(relating to procedure
in the trial of warrant
cases), to which the espe-
cially objects, is proposed
to be omitted from the
list of Chapters &
Sections

Sections which are the
made applicable to the
Courts of Police Magis-
trates; and that it is
intended that the pro-
cedure laid down in
Chapter XXII (as to the
trial of summons cases)
shall apply to all cases
tried & finally disposed
of by those Courts.

11. The observations of
Mr Justice Hallway
on certain other portions
of the Bill, as well
as those of Mr Justice
Herman & of the Honble
the Advocate General,
do not call for any
remark.

12. Ordered that a
copy of these Proceed-
ings be submitted
for the consideration
of the Government
of India in the

1873
with 26 June of 1873

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Legislative Department
with reference to the
Secretary of the Legislative
Department
letter of the 26th July
1873 No. 377.

JS

The Hon the Judges of the High Court.
- Inspector General of Police.
- Magistrate of the Town Police Court.
- do - Equine Police Court.
- Govt. Solicitor.

Schedule

Judicial DEPARTMENT.
No. 385-

To
The Secretary to the Government
of India,
Legislative DEPARTMENT.
Sir,

Referring to your
letter of the 26th July last,
No. 377, forwarding a copy
of the Bill to regulate the
procedure of the High Courts
in the exercise of their original
criminal jurisdiction and
for other purposes, I am
directed to submit the
accompanying Proceedings
of this Government, in which
are recorded the reports of
the Madras Town Police
Magistrate, and of the
late Mr. Inspector General
of

JS



6 March 76
 The Hon. the Judge of the Court
 The Hon. the General
 The Hon. the Lord of the Court
 The Hon. the Lord of the Court

Preamble. "Whereas it is expedient to consolidate and amend the law relating to the Procedure of the High Courts in the exercise of their original criminal jurisdiction, and to extend certain parts of the Code of Criminal Procedure to the Courts of the Police Magistrates in the Presidency towns; It is hereby enacted as follows:—

Section 40. The following parts of the Code of Criminal Procedure shall apply to the Courts of the Police Magistrates of the Towns of Calcutta, Madras and Bombay, so far as they admit of being so applied; and the expressions "Magistrate of the District," "Magistrate of a division of a District," "Magistrate of the Session," "~~Magistrate of the Court of Sessions~~" and "~~Magistrate of the Court of Sessions~~" shall be construed as referring to the Magistrate of the Town.

~~Section 151. (Hearings)~~
jurisdiction, occurring in the said part of the
Code, shall mean the Legislature of Illinois

Section 3 (Evidence) and of (Evidence)

Chapter IV (Of the trial of summary cases)

Section 13 (The courts) President
Governor and to the people and
the State

Chapter V (Of the trial of summary cases)

Except the 2^d clause of s. 14, and
the words of s. 146. Section 148 shall
be read as if, at the end of the
Magistrate occurring at the end
of the first clause, the words be
inserted there, as follows:

Chapter VI (Of the summary) Except the words
"in duplicate" in s. 152, and the words
"by exhibiting one of the copies and
delivering or tendering the other
copy to him" in s. 154; and
substituting the word "it" for
the words "the copy" in section 154.

Chapter VII (Of the warrant) sections 159 to
174 inclusive.

which is
applicable
to the trial
of the summary
cases
meaning by
the said

Chapter XII (Preliminary)

XXI. (Of summary cases triable
by the Court of Sessions
& the Court.) except s. 201 and
2^d clause of s. 202.

XXII. (Of the trial of summary cases by
Magistrates) The procedure laid
down in this Chapter shall be
applicable to all cases (whether
summary cases or warrant cases)
tried & disposed of by the Courts
of the Police Magistrates.

XXIII. (Execution) sections 307 & 308 (except
the penultimate clause of s. 308)
309, 311 to 318 & 322.

XXIV. (Special rules of evidence in
criminal cases) Except last proviso
in s. 328.

XXV. (Evidence how taken) sections 331,
340, 342 to 345, 347 & 349.

XXVI. (Of securing the attendance of witnesses)
except last sentence of clause 2 of
s. 362.

XXVII. (Of search Warrants) Except sections
379 to 387 inclusive.

Chapter XXVIII

Chapter 55 (Amended) (Sections 55, 56, 57, 58 and the last paragraph of 59.)

XXX. (Miscellaneous provisions) Sections 418, 421 & 422.

XXXI. (Licensing)

XXXII. (Construction of Court)

XXXIII. (Charges) Sec. 451.

XXXIV. (Of the maintenance of law & order) Section 451.

XXXV. (Of the execution of court orders)

XXXVI. (Of the execution of judgments & decrees)

XXXVII. (Of security for his land & the person) Except the last clause of 451.

XXXVIII. (Of security for good behavior)

XXXIX. (Local Ordinances)

XLI. (Of the maintenance of peace & families)

XLI. (Miscellaneous) 453.

Section 40 A. "Every Magistrate of Police shall

"shall exercise the powers of summary trial which, under section 225 of the said Code, are conferable on a Bench of Magistrates, and shall, in the exercise of such powers, be governed by the provisions of sections 226, 227 and 229 of the said Code, so far as such provisions are applicable."

In Schedule A - add the following enactments:-

Act XXI of 1864, sections 2 & 3.
Act VIII of 1867 (Madras), sections 16, 21, 61, 62, 69, 71 and 72.

Handwritten signature

Handwritten initials