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# TAMIL NADU ARCHIVES

GOVERNMENT OF TAMIL NADU

Judicial

DEPARTMENT

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

51 and 52

Press.  
Mis.

Dated

9. 1. 1877 198.

Of/M

## Bills—Legislative.

Read the following papers:—

No. 48. *From Major T. WELDON, Chief Magistrate, Madras, to the Chief Secretary to Government, dated 21st August 1876, No. 124.*

In accordance with G.O., dated 22nd July 1876, No. 1496 (Judicial), I have the honor to submit the following remarks on the Presidency Magistrates' Bill, No. V of 1876, with reference to the questions specially noted by the Secretary to Government of India in his letter, dated 27th June 1876, No. 425.

(a.) *Jurisdiction exercisable by two Justices.*—Probably no practical inconvenience will result from the omission of all reference to the jurisdiction exercisable by two Justices, as the statutes requiring two Justices to act usually provide that such jurisdiction may be exercised by any Stipendiary Magistrate, which term, I presume, will include Presidency Magistrates.

*over to make preliminary inquiries before granting process in doubtful cases.*—

The Presidency Magistrates of Madras have before earnestly pointed out the necessity for some provision entitling them to the assistance of the Police, and the injustice which may and has arisen from withholding it. They can only repeat what they have already said with the addition that daily experience confirms their views. It cannot be that it is unsafe to entrust a selected body of Judicial officers like the Presidency Magistrates with powers which are freely accorded to native Subordinate Magistrates all over the country.

(c.) and (d.) *Execution of warrants by others than Police Officers.*—I do not think that, with an efficient Police force always present, it ought to be necessary to employ any but members of the force in executing warrants of any description, but my colleague Mr. Sreenivas Row, a Magistrate of great judicial experience, is of opinion that it might sometimes prove useful to possess the power alluded to.

(e.) *Duty of the Public to give information of the commission of certain offences.*—It would be useless to retain Section 245 if the Magistrates are not empowered to act, or cause action to be taken. An informant may only be aware that a certain crime has apparently been committed. He is not bound to prosecute or procure evidence or do anything but communicate the information, and, beyond the knowledge that some crime has been committed, may know no more of the facts of the case than the Magistrate.

No. 49. *From T. WEIR, Esq., Acting Registrar of the High Court of Judicature at Madras, Appellate Side, to the Chief Secretary to Government, dated 26th October 1876, No. 2502.*

I am directed to acknowledge the receipt of your letter to the Chief Justice, dated 22nd July 1876, No. 1496-A, forwarding copy of the Presidency Magistrates' Bill V

of 1876, of the further report of the Select Committee thereon, and of a letter from the Government of India on the subject, and requesting an expression of opinion of the High Court on the Bill as it now stands, and on the questions arising on it as indicated in the accompanying document.

2. In reply, I am to forward copy of the Minutes recorded by Mr. Justice Innes and the Hon. Mr. Justice Kernan. The Chief Justice and the other Judges have not recorded their opinions.

ENCLOSURE No. 1.

Minute recorded by Mr. Justice Innes.

I would omit Section 31. It will lead to the extensive employment of the Police in quasi trials quite foreign to their proper duties, and will work more mischievously in the Presidency than it does in the Mofussil; where also it is often used by putting in train harassing inquiries than it does in the Mofussil; where also it is often used by the lower Magistrates to shift the responsibility of the necessary investigation from the Magistracy to the Police.

I would omit Section 152. Poisoning cases are not very numerous, and as the Chemical Examiner is on the spot there is no reason why he should not be examined at the trial, nor is there any reason why any other Medical officer in the Presidency should not appear personally. I would also omit Section 153. This would have the effect of leaving the report of the Chemical Examiner to be used if necessary under the ordinary law of evidence, as evidence corroborative of his evidence given personally.

I think the power given to Magistrates of issuing warrants to search warrants to other persons than Police officers is, on general grounds, much to be deprecated. The peculiar skill and experience required would be wanting in persons other than Police officers. I have had no experience in the Mofussil of the working of the section in the Criminal Procedure Code corresponding to Section 245. I should think that in a Presidency Town it would tend to overwhelm the Magistracy with concocted charges.

I have examined the Bill, and do not disapprove of it in other respects.

Minute recorded by Mr. Justice Kernan.

a. I am not aware of any inconvenience such as suggested.  
b. I would omit it. It would be dangerous to allow this sort of information to be acted on. It might lead to corruption and great abuses.  
c. I think not. Such a course could only be justified where Police officers could not be had. There are no Police all through the country.

d. No.  
e. I think should not be retained, or if to any extent retained, only as regards offences against the State.

In order to prove that the accused was aware of the commission of offence, the whole case against the party, who committed the principal offence, should be proved in the presence of the party charged with being aware of the offence. It would be unjust to make the record of conviction evidence. Then proof should be given that the accused was aware of the fact. What should be the evidence "that he was so aware," unless proof that he was present or that a confession was made to him. This proof would very seldom be had in reality. But, considering how the natives use the Penal Code for indirect purposes, I can well see that great abuse of this Section 245 might take place.

(True Copies.)

(Signed) T. WEIR,  
Acting Registrar, Appellate Side.

No. 50.

Presidency Magistrates' Bill.

I should much regret the addition of this large addition to our Criminal Law as unnecessary and otherwise undesirable. The re-enactment of the provisions of the Code of Criminal Procedure and the High Court Procedure Act (itself in my opinion a very superfluous enactment) with a large number of small variations is calculated to give rise to much needless trouble and many mistakes. There should be one Criminal Procedure Code for the country, and tribunals, which, like the High Court or Presidency Magistrates, are invested with exceptional powers, should be dealt with in short enactments specifying as simply as possible the particulars in which their powers differ from those of the ordinary Courts.

2. It would be a matter of great regret to add 246 sections to that already bulky Chapter of our Law which deals with the constitution and procedure of the Criminal Courts. Nor are the Presidency Magistrates at all of an importance to call for special legislation on such a scale. I lamented their omission from the Code of Criminal Procedure, and I cannot see now why that requisite might not be attained by investing the Presidency Magistrates with summary powers under Chapter XVIII of the Code and by providing in two or three sections for any deviations from the ordinary law which might be thought necessary or expedient in the Presidency Towns. The main desideratum so far as I have had experience of these proceedings is to bring them more promptly and immediately under the supervision and control of the High Courts.

MADRAS,

(Signed.)

H. S. CUNNINGHAM,

Advocate-General.

4th December 1876.

To the Chief Secretary to Government, Fort St. George.

No. 51.

ORDER THEREON, 9th January 1877, No. 51.

Ordered that the foregoing papers be forwarded for submission to the Government of India in the Legislative Department, with reference to their Secretary's letter, dated 27th June 1876, No. 425, forwarding for an expression of opinion copy of the Presidency Magistrates' Bill as further revised by the Select Committee.

2. The attention of this Government was more particularly drawn to eight points in connexion with the Bill, which are hereunder considered:—

a. This Government do not think that any inconvenience is likely to be caused by the proposed omission in Section 8 of all reference to jurisdiction to be exercised by two Justices of the Peace. It is apprehended that the powers formerly exercised by two Justices related to conservancy and the levying of assessments on houses and lands to defray expenses incident thereto. Such matters, however, are now provided for by Municipal laws; and it is believed that, wherever the Statutes require two Justices to act, they usually provide that such jurisdiction may be exercised by a Stipendiary Magistrate, which term would of course include a Presidency Magistrate.

b. The Government do not approve of Section 31 of the Bill, which proposes to give Presidency Magistrates power to direct previous inquiry into the facts of a complaint, by means of an officer subordinate to themselves, or by a local Police Officer. A strong opinion against such interference with the functions of the Commissioner of

Police has already been conveyed to the Government of India in the correspondence noted in the margin. This Government observed, with regard to the proposal that the Presidency Magistrates should exercise the miscellaneous powers conferred on a District Magistrate by Section 30 of the Code of Criminal Procedure, that the exercise of such powers would materially affect the constitution of the Police in 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; and they deprecated 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 the Presidency Magistrates with that prescribed for the Magistrates in the Mofussil, leaving untouched the procedure of the Police in the Presidency Towns. To this opinion the Government adhere.

c. and d. As to whether a Presidency Magistrate issuing warrants for the apprehension of a person, or to make a search, may direct them to any person other than a Police officer, the Government observe that by their Proceedings, dated 1st February 1875, No. 217, they resolved that all criminal processes should as a rule be served and executed by the regular Police; their reason being that they did not wish a rival body of process-servers to spring up and come into existence alongside of the Police, without that protection against oppression and extortion, and those guarantees for discipline, order, and punctuality which the regularly-organized constabulary is calculated to ensure. The same reasons apply with equal force in the Presidency Towns as well. The subject will be fully reported upon, on receipt of the replies of the several authorities whom the Government have consulted, as to the working of the present system and on the alternative suggestion of the Government of India.

e. The Government do not see any objection to Section 2, which requires persons aware of certain offences to give information to the nearest Police officer or Presidency Magistrate; but they observe that any question of the Magistrate possessed of such information setting the Police in motion comes within the scope of the objection entertained to any interference on the part of the Magistrates with the functions of the Police in the Presidency Towns; the policy advocated by this Government being to confine the Presidency Magistrates to functions exclusively judicial.

3. The Government note that the Select Committee have considerably modified the provisions of the Bill in respect to the powers of punishment to be vested in the Presidency Magistrates. The Bill originally contemplated these officers being vested with the powers of a District Magistrate, viz., power to award a maximum imprisonment of two years, and a maximum fine of 1,000 Rupees; and Section 89 of the Bill as it then stood proposed an appeal to the High Court only in cases in which the sentence involved imprisonment exceeding one year or a fine exceeding 500 Rupees. The Bill as now amended by the Select Committee reduces the powers to be vested in Presidency Magistrates to those which they may now summarily exercise at Madras under Madras Act No. 367, Section 13. Thus, Section 115 of the Bill as revised enacts that no Presidency Magistrate shall impose a fine exceeding 200 Rupees, or imprisonment exceeding six months, unless he has recorded the evidence of the witnesses; and

Section 167 enacts that any person convicted on a trial held by a Presidency Magistrate may appeal to the High Court if the Magistrate has sentenced him to imprisonment for a term exceeding six months, or to a fine exceeding 200 Rupees. For the purposes of appeal, Section 115 requires the Magistrate to record the evidence in all such cases as is usually done in regular trials. This change of law meets the recommendation recently submitted by this Government on a representation from the Chamber of Commerce.

4. Subject to the foregoing remarks, the Government approve generally of the revised Bill, which was published in the *Fort St. George Gazette* under date 11th July 1876.

5. With reference to paragraph 2 of Mr. Secretary Stokes' letter under reply, it is observed that the Hon. Mr. Justice Innes and the Hon. Mr. Justice Kerpan have recorded minutes on the Bill, but that the Chief Justice and the other Judges have not recorded their views on its provisions.

(True Extract.)

W. HUDLESTON,  
Chief Secretary.

To the Honorary Secretary of the High Court, Madras.

" Magistrate of the Town Police Court.  
" " of the Egmore Police Court.  
" Advocate-General.  
" Commissioner of Police.

JUDICIAL DEPARTMENT.

Bills—Legislative.

No. 52.

FROM

THE CHIEF SECRETARY TO THE GOVERNMENT OF  
FORT ST. GEORGE,

TO

THE SECRETARY TO THE GOVERNMENT OF INDIA,  
LEGISLATIVE DEPARTMENT.

SIR,

I am directed by the Governor in Council, in reply to your letter, dated 27th June 1876, No. 425, to forward the accompanying copy of the Proceedings of this Government of this date, and of the papers recorded therein, containing an expression of opinion on the provisions of the Presidency Magistrates' Bill as further revised by the Select Committee.

I have the honor to be,

Sir,

Your most obedient servant,

FORT ST. GEORGE.  
9th January 1877.

Chief Secretary.

Ed. J. W. Wright.

1877.

LEGISLATIVE DEPARTMENT

From: The Chief Secretary to Government,  
Fort St. George.

To: The Secy to the Govt. of India,  
Legislative Department.

Date: 25th January 1877.

Form: 1.

Rank:

No. 52.

Enclosure.

*NOTE*—Legislative—The enclosed contains the  
opinion of the provisions of the proposed  
Magistrates' Bill as further revised by the Select  
Committee, forwarded.

Presiding Magistrate's Bill  
Committee memorandum  
No. 52. 22 July 1877  
The Chief Secretary to Government  
Fort St. George  
When will the Bill be published  
in the Gazette  
W. J.  
2.11.76

No. 124.

Imortelle pour. 6  
Madame de Siquier. 50.

4  
 1000  
 The High Magazine  
 Madras.

Madras.  
The Gentle Association  
of the Sons of the  
Gentle Association.  
Madras.

In accordance with an order  
dated 27<sup>th</sup> July 1896 (D. 1896. 11000) I have the honor to submit the following  
copy of the report on the "Scientific Progress"  
made by the 10<sup>th</sup> V. of 1896, with reference  
to the question specially noted by the  
Secretary to the Council of the Society in his  
letter dated 27<sup>th</sup> June 1896 (D. 1896. 1000).

[illegible]

*Swindell*  
*Excellence by*  
*Two Sisters*

FROM CIRCULATION  
WITH REMARKS.

be received by any Magistrate,  
Magistrate, which term I presume  
will include Resident Magistrates.

(B.) The Resident Magistrate of  
Madras have before them, within  
and the necessity for some provision  
settling them to the assistance of the  
Police; and the injustice which may  
and has arisen from withholding it.  
They can only repeat what they have  
already said with the addition that  
they experience, and have seen  
It cannot be that it is unsafe  
without a selected body of stationary  
officers like the Resident Magistrate  
with powers which are really needed  
to native subordinate magistrates are  
over the country.

(C.) I don't think that with  
(D.) an efficient Police Force  
always present it ought to be necessary  
to supply any but members of the  
Police in receiving warrants of any  
description.

Power to make  
preliminary  
inquiries before  
granting warrants  
in cases of police.

Execution of  
warrants by  
other than  
Police Officers.

description - but my colleague Mr  
Securus Rind a Magistrate of great  
judicial experience, is of opinion  
that it might sometimes prove useful  
to possess the power allude it to.

Duty of the Public  
to give information  
of the commission of certain  
offences.

(E.) It would be useless to  
retain Section 245 if the Magistrate  
are not empowered to act or cause  
action to be taken. An informant  
may only be aware that a certain  
crime has apparently been committed.  
He is not bound to prosecute or  
produce evidence or do anything  
but communicate the information,  
and, beyond the knowledge that  
some crime has been committed,  
may know no more of the facts  
of the case than the Magistrate.

I have the honor to be  
Sir,  
Yours Most Obedt Servt  
Weldons  
Chief Magistrate.

N<sup>o</sup> 2502.

From

T. Weir Esquire,

Acting Registrar of the  
High Court of Judicature

To

at Madras

The Honorable W. Huddleston,

Chief Secretary to Government,

Honorable Sir,

I am directed to acknowledge  
the receipt of your letter to the Chief  
Justice, dated 25th July 1876, N<sup>o</sup> 1496, &  
forwarding copy of the Presidency Magistrate  
Bill V of 1876, of the further report of the  
Select Committee thereon, and of a letter  
from the Government of India on the  
subject and requesting an expression  
of opinion of the High Court on the  
Bill as it now stands and on the questions  
arising on it as indicated in the letter  
from the Government of India.

In reply I am to forward

Received 18/7/76  
of Mr. Weir Esquire  
the High Court of Judicature  
at Madras  
No. 134  
Dated 21st August 1876  
D. B. S. J.  
Official records on the  
Presidency Magistrate  
Bill No. V of 1876

Copy of the Minutes recorded by the  
Honorable Mr Justice Jones and the  
Honorable Mr Justice Kerran. The Chief  
Justice and the other Judges have each  
recorded their opinions.

I have the honor to be,  
High Court of Judicature, Madras, Honorable Sir,  
26 October 1876 Your most obedient servant,

P  
Ode

Acting Registrar  
A. J. C. 1876

Minute recorded by Mr Justice James:- I would omit Section 31. It will lead to the extensive employment of the Police in quasi-trials quite foreign to their proper duties and will work more mischievously in the Presidencies by putting in train harassing inquiries than it does in the Mofussil; where also it is often used by the lower Magistrates to shift the responsibility of the necessary investigation from the Magistracy to the Police.

I would omit Section 152. Poisoning Cases are not very numerous and as the Chemical Examiner is on the spot there is no reason why he should not be examined at the trial. Nor is there any reason why any other medical officer in the Presiding should not appear personally. I would also omit Section 153. This would have the effect of leaving the reports of the Chemical Examiner to be used if any way under the ordinary law of evidence, as evidence.

Justified 1876 Defam.  
(with apology)

11/11/76  
The Hon. Mr. Justice James  
High Court of Judicature  
at Madras

10/11/76  
The Hon. Mr. Justice James  
to Government

10/11/76  
The Hon. Mr. Justice James  
to Government

(11/11/76)  
The Hon. Mr. Justice James  
to Government

The Hon. Mr. Justice James  
to Government

The Hon. Mr. Justice James  
to Government

The Hon. Mr. Justice James  
to Government

The Hon. Mr. Justice James  
to Government

corroboration of his evidence given personally.

I think the power given to Magis.

instead of issuing warrants or search warrants to other persons than Police Officers is, on general grounds, much to be deprecated.

The peculiar responsibility and the peculiar skill and experience required would be wanting in persons other than Police Officers. He is had no experience in the details of the working of the sections in the Criminal Procedure Code corresponding to Section 210. I should think that in a Presidency town it would tend to overwhelm the magistracy with connected charges.

I have examined the Bill and do not disapprove of it in other respects.

Minute recorded by Mr. Justice Hanan.

a. I am not aware of any inconveniences such as suggested.

b. I would omit it. It would be dangerous to allow this sort of information to be acted on. It might lead to corruption and great abuses.

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c. I think not. Such a course could only be justified where Police Officers could not be had. There are Police all through the country.

d. No.

e. I think should not be retained, or if to any extent retained, only as regards offences against the State.

In order to prove that the accused was aware of the commission of the offence, the whole case against the party, who committed the principal offence, should be proved in the presence of the party charged with being aware of the offence. It would be unjust to make the record of conviction evidence then proof should be given that the accused was aware of the facts. — What should be the evidence "that he was so aware" unless proof that he was present or that a confession was made to him. This proof would very seldom be had in reality. But considering

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12  
From the nature of the Bill (as you  
indirectly purposed, I can well see that  
great abuse of this Section 245 might  
take place.

(True (Spirits)

Edw

Selling Registrar,  
S. J. S. S.

## Presidency Magistrate's Bill.

I should much regret the addition of this  
large addition to our Criminal Law is unne-  
cessary and otherwise unnecessary. The amend-  
ment of the provisions of the Code of Criminal  
Procedure and the High Court Procedure, set-  
tled in my opinion in very satisfactory enactments  
with a large number of small variations, is  
calculated to give rise to much needless trou-  
ble and many mistakes. There should be  
one Criminal Procedure Code for the country,  
and tribunals which, like the High Courts or Pres-  
idency Magistrates, are invested with exception-  
al powers, should be dealt with in short enact-  
ments specifying as simply as possible the  
particulars in which their powers differ  
from those of the ordinary Courts.

It would be a matter of great regret to  
add 245 sections to that already bulky chap-  
ter of our Law which deals with the consti-  
tution and procedure of the Criminal Courts.  
Nor are the Presidency Magistrates at all of  
an importance to call for special legislation  
on such a scale. I lamented their omission

18  
from the Code of Criminal Procedure, and I cannot see now why all that is requisite might not be attained by investing the Presidency Magistrates with Summary powers under the XXIII of the Code and by providing in two or three sections for any deviations from the ordinary law which might be thought necessary or expedient in the Presidency Towns. The main consideration is far as I have had experience of these proceedings is to bring them more promptly and immediately under the supervision and control of the High Courts.

H. Cunningham

Muziris 4<sup>th</sup> December, 1876.

Presidency Magistrates Bill, T of 1876

This Bill, recently numbered III of 1876, has been further amended and re-arranged by the Select Committee, and is now numbered V of 1876.

2. In the letter now before Govt, the Govt of India ask for our expression of opinion on the Bill as now revised, and in particular invite attention to the following questions arising on the Bill; -

a. - Whether the mission in section 8 of all references to jurisdictions exercisable by two justices of the Peace is likely to cause any practical inconvenience?

2. Whether the Presidency Register  
should be improved to that previously  
for the purpose of maintaining the truth in  
conduct. (Action?)

c. Whether a Presidency Magistrate should, under any circumstances, be allowed to issue a Warrant for the apprehension of an accused, to other than a Police Officer (Sec. 34)?

Q. Whether a Presidency Magistrate should, under any circumstances, be allowed to direct a Search Warrant to any other than a Police Officer? (Section 161).

2. Whether Section 245, regarding persons aware of the undermentioned offences to give information to the nearest Presidency Magistrate, should be retained?

I. Waging, or attempting to wage, war, or abetting the waging of war, against the Queen - Sec: 121, Ind: Penal Code.

II. Conspiracy to commit the above offences - 121A - do -

III. Collecting arms, ammunition &c, with the intention of waging war against the Queen - 122 - do -

IV. Concealing, with intent to facilitate it, or design to wage war against the Queen - 123 - do -

V. Assaulting the Gov: Genl, the Gov: Genl's Govt, or a Member of Council, with intent to compel or restrain the exercise of any lawful power - 124 - do -

VI. Attempt, by words &c, to excite disaffection against the Government - 124A - do -

VII. Waging war against any British power in alliance with the Queen - 125 - do -

VIII. Committing depredation on the territory of any power at peace with the Queen - 126 - do -

IX. Aiding escape, or receiving, or harboring a State prisoner or prisoner of war - 129 - do -

X. Murder - 302 - do -

XI. Do committed by person under sentence of transportation for life - 303 - do -

Sec: 304, Ind: Penal Code.

XII. Culpable homicide, not amounting to murder

XIII. Theft, after preparation made for causing death or hurt, in order to the committing of the theft.

XIV. Robbery.

XV. Attempt to commit Robbery.

XVI. Voluntarily causing hurt in committing, or attempting, robbery.

XVII. Dacoity.

XVIII. Dacoity, with murder.

XIX. Robbery, or dacoity, with attempt to cause death or grievous hurt.

XX. Attempt to commit robbery or dacoity, when armed with deadly weapon.

XXI. Making preparation to commit dacoity.

XXII. Assembling for purpose of committing dacoity.

XXIII. Mischief by fire, or explosive substance, with intent to cause damage amounting to 100 Rs.

XXIV. Do. Do. with intent to destroy houses &c.

XXV. House Trespass, in order to commit an offence punishable with death.

XXVI. Do. Do., in order to commit offence punishable with transportation for life.

XXVII. Lurking House trespass, or House-breaking by night.

XXVIII. Do. Do., in order to commit an offence punishable with imprisonment.

XXIX. Lurking House trespass, or House breaking by night, after making preparation to cause hurt. ... Sec: 452, Ind: Penal Code.

XXX. Grievous Hurt caused in Lurking House trespass, or House breaking by night. ... 453. do.

XXXI. All persons <sup>concerned</sup> in the above (usually) punishable for death or grievous hurt caused by one of the number. ... 454. do.

Q.I. Whether a Presidency Magistrate having information of any such offences should, or should not, have power to act the Police in person?

3. As to a - Jurisdiction exercisable by two Justices of the Peace.

Section 8 of the Bill (N<sup>o</sup> 376) as it formerly stood, besides making a Presidency Magistrate a Justice of the Peace for the Presidency town, went on to provide that "he shall exercise all powers and jurisdictions which, by virtue of any law for the time being in force, may be exercised by two Justices of the Peace." Section 8 of the Bill as it now stands (N<sup>o</sup> 376) omits this clause as to possession of powers exercisable by two Justices of the Peace. It is not clear what really are the powers exercisable by two Justices of the Peace, and what powers & jurisdictions were included like conferred on a Presidency Magistrate by the provision which

I am not aware that any inconvenience will arise from this omission but it may be as well to <sup>refer</sup> this question to Mr. J. H. D. or

And

Act XXXVIII of 1835.  
I of 1837.  
XXXII of 1838.  
XXIV of 1840.  
XXII of 1841.  
XI of 1845.  
IX of 1849.

It is not clear what really are the powers exercisable by two Justices of the Peace, and what powers & jurisdictions were included like conferred on a Presidency Magistrate by the provision which

the Select Committee now propose to cut out. By sec 158 of 33 Geo. III, cap. 52, which provided for the government of British territories in India, it was enacted that any two Justices of the Peace in Calcutta, Madras, and Bombay might appoint scavengers for cleaning <sup>and</sup> repairing the streets in the town, & in order to defray the expenses thereof, might <sup>make</sup> assessments on houses & lands to be collected by persons appointed by them, and, if necessary, might cause the levy of such assessments by warrants under their hands & seal for the distress & sale of the goods & chattels of defaulters. These powers were modified by various enactments of the Govt of India; but the provision of the English Statute was repealed by Act XXV of 1858, and was virtually superseded by Acts XIV of 1856 and XXV of 1858 providing for the municipal administration of the Presidency towns & the levying of municipal rates, and latterly (as far as Madras is concerned) by the Madras Municipal Act II of 1865. If the powers exercisable by two Justices of the Peace relate only to the levying of the town & levying of rates to defray the expenses, the clause cut out by the Select Committee would seem unnecessary, as such matters are provided for by Municipal laws.

4. Sec: 31 of the Bill proposes to curtail the Magistrate's power, when they direct the truth of a complaint, to suspend a proceedings & direct a previous enquiry, or investigation, by means of an officer subordinate to themselves, or of a local Police Officer. A strong opinion exists against such interference with the functions of the Com<sup>r</sup> of Police in the Presidency towns has already been conveyed to the Gov<sup>t</sup> of India - para 2, G.O. 6<sup>th</sup> March/74, No 384 - and paras 4 to 17 of letter from Col Brown, Act<sup>d</sup> Insp<sup>t</sup> Genl of Police, 24 Oct<sup>r</sup> 1873, No 84, and in the above G.O. The Gov<sup>t</sup> observe that the proposed Bill Police Magistrates should exercise the miscellaneous powers conferred on a Magistrate of these District by sec 30 of the Code, would materially affect the constitution of the Police in the Presidency towns, and otherwise involve violent and undesirable changes in the relations at present existing between the Magistracy & the Police in these towns, the Gov<sup>t</sup> in Council concerning entirely with Col Brown in the view expressed in his letter; earnestly dissuades the making of any alteration in the law, other than ~~establishing~~ that which was originally intended by the Imperial Legislature, viz<sup>t</sup> to assimilate, as far as possible, the judicial

\* one of which is to order the Police to investigate and fence.

I would repeat the objections, already offered. All  
Yrs. P. L.

procedure of Police Magistrates in the Presidency towns with that prescribed for the Magistrate in the Mofussil, leaving untouched the procedure of the Police in these towns; and with this view, the Gov<sup>t</sup> 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 & sections of the Code appended to that section the following chapters & sections having reference to the Police; -

- Chapter IX (of arrest with and without warrant)
- § (Powers of the Police to investigate)
- II, sec 146.
- XII, sections 176 to 184.
- XXVI, sections 379 to 387.
- XXX, sections 415, 416 & 417.

- \* Identical with the question raised in former of Magistrate to direct an enquiry, if he directs the truth of a complaint.
- + Execution of warrants by Police.
- + Search by Police Officers.
- § Procedure of Police in case of seizure of stolen property.

5. C. and A. As to whether a Presidency Magistrate, ~~may~~ issuing warrants for the apprehension of persons, or to make a search, may direct them to any person other than a Police Officer. it is to be noted that by G.O. 16 Feb/75, No 217, Gov<sup>t</sup> have resolved that all criminal processes should as a rule be served & executed by the regular police, & for that purpose have applied to the Gov<sup>t</sup> of India for an allotment from the Imperial revenues to pay the extra Police to be employed

in such service. The reason was that Govt  
 did not wish a rival body of magistrates  
 spring up & come into existence alongside  
 the Police, without that protection of such  
 oppression and extortion, and those German  
 laws for discipline, order, & punctuality which  
 the regular organizing Constabulary is intended  
 to enforce. It is submitted that the same  
 reasons will apply in the Presidency towns also.

6. As to giving of information of offences  
 (particularly in para 2 of this memo)  
 to the nearest Magistrate, & as to the persons  
 who possessed of such information setting  
 the Police in motion, the questions involved  
 it is submitted, come within the scope of the  
 objection entertained against any interfe-  
 rence on the part of the Magistrates with  
 the functions of the Police in the Presidency  
 towns; the policy being to confine the Ma-  
 gistrates to functions exclusively judicial.

7. It may be noticed that the Select Comtee  
 have ~~not~~ considerably modified the pro-  
 vision in respect to the powers of imprisonment  
 to be vested in the Presidency Magistrates. The  
 former Bill contemplated their being vested with  
 the powers of a District Magistrate, viz, power  
 to imprison up to two years & fine up to 1000 Rs.  
 and section 39 of that Bill proposed an appeal  
 to the High Court in cases only in which the sentence

Mr. Sean hardly  
 imagine a case in  
 the Presidency towns  
 when persons other  
 than the Police  
 are to be kept in  
 custody.

Yes. Mr.

involved imprisonment exceeding one year  
 or a fine exceeding 200 Rs. The Bill as now  
 amended by the Select Committee reduces  
 their powers to those <sup>at present summarily</sup> exercised by the  
 Magistrates at Madras under  
 Sec 13, Madras Act No 9 of 1857. Sec 115 of the new Bill enacts that a Presi-  
 dency Magistrate shall impose a fine ex-  
 ceeding 200 Rs, or imprisonment exceeding  
 six months, unless he has recorded the evidence  
 of the witnesses; and section 167 enacts that  
 any person convicted in a trial held by a  
 Presidency Magistrate may appeal to the  
 High Court if the Magistrate has sentenced  
 him to imprisonment for a term exceeding 6  
 months, or to a fine exceeding 200 Rs. In the  
 absence of appeal, section 115 requires the Ma-  
 gistrate to record the evidence in all such cases as  
 is usually done in regular trials. This meets the  
 recent recommendation of this Govt as a  
 representation from the Chamber of Com-  
 merce.

Magistrates at Madras under  
 Sec 13, Madras Act No 9 of 1857.

Agree with the Select  
 Committee on the  
 subject of the  
 Bill.

I think, after receiving the  
 remarks of High Court, &  
 improving no further objection  
 he raised himself may appear  
 generally - of the revised  
 Bill. Mr. B.

To Govt of India, 22 June 1876  
 No 1257.

Memorandum  
 for the Bill.

Agree with the  
 but certain  
 a few special  
 amendments  
 M

Adms request for  
 LK

The first point (a) to which special attention is drawn must depend on legal opinion.

On the 2<sup>d</sup> point (b), I would remark that the strongest objections apply to the employment of the Police of the Presidency in connection with the great mass of more or less personal litigation - not connected with felony (to use an obsolete term in India) - before Town Magistrates. The cause of the waste of public time resulting

a large increase of the  
force; (2<sup>nd</sup>) because it  
is highly inexpedient  
to have the official Police  
mixed up with these  
matters; (3<sup>rd</sup>) because  
of the demoralizing effect  
on the Police; and (4<sup>th</sup>) because  
it would lead to much  
correspondence and  
possibly contention. It  
is the duty of the parties  
to prove the truth of their  
complaints.

All grave crimes are  
practically taken before  
the Magistrate by the  
Police, and sufficiently  
occupies their time. The  
only relaxation which  
could be otherwise  
than

most objectionable would  
be that in the cases of  
grave non-bailable offences  
when the Magistrate  
might <sup>be allowed</sup> call on the Police  
to inquire into special  
points in the case which  
is before him. But  
practically any observation  
of the Magistrate secures  
the fullest attention  
to any matter required  
for the elucidation of  
a case, and relaxation  
is neither necessary nor  
expedient.

On the points (C) & (H),  
I would observe that  
no warrant - either  
to arrest the person  
or search a house - ~~and~~  
be directed to any person  
except

a Except an official or  
trained & responsible  
Police Officers. Even  
in England this is the  
Law - for obvious reasons  
and there cannot be  
the slightest necessity  
for relaxation in our  
Presidency towns for the  
Magistrates' Courts are  
fully supplied with  
Police Officers. Nothing  
can be more objectionable  
than using a more or  
less irresponsible and  
uninstructed and  
possibly interested person  
to execute these important  
functions. It is not fair  
to the public and it would  
lead in the country <sup>specially</sup>

- Especially in respect  
to search warrants -  
to misarrange of justice  
if not scandal.

On point (E) I would  
observe that this obligation  
in aid of justice is  
a part of what may be  
called the common  
and ~~invariable~~ <sup>customary</sup>  
law of the country. And  
we should not forget this  
useful cooperation is  
amongst an alien people  
with whom we mix but  
little in a detective  
relation. The provision  
of the Bill should stand  
and the Magistrates  
might be empowered  
to

a to communicate with  
for the Commissioner of Police.

It is of great importance  
that Magistrates, especially  
Native Town Magistrates,  
should not be empowered  
to use the Police except  
through their Superior  
Officers. The limited body  
of Police detached to  
serve at a Court is far  
too small - and sometimes  
manage to place themselves  
in too close relations  
with the Magistrates.  
for it to be safe to  
allow the Magistrates  
to select the men whom  
Confidential and  
detective

detective inquiry  
can be entrusted. -  
The Police should only  
be used under the  
direction of their own  
Experienced Officers.

19/7 Robinson

proceedings

Read the following papers;

From the Chief Magistrate, Madras, 21 Aug/76, N.º 124.

From the Registrar High Court, Madras, 26 Oct/76, N: 2572.

From the Associate Genl. 4<sup>th</sup> December 1876.

Minuted by the Gentle for W. Robinson, K.C.S.D., 19 July 176.

Order 9<sup>th</sup> Jan. 1771; No 51

Ordered that the fore-  
going papers be forwarded for  
submission to the Govt of India  
in the Legislative Dept, with re-  
ference to their Secretary's letter  
dated 27 June /76, No 425, forwarding  
for an expression of opinion copy  
of the Presidency Magistrates  
Bill as further revised by the  
Committee.

2. The attention of this Govt. was more particularly drawn to eight points in connection with the Bill, which are hereunder considered a. This Govt. do not think

9/1/77

Alameda

by the Hon. Sir M. Robinson, Bart.

Ind. 19 July 1871.

1. *Adiantum*  
 2. *Asplenium*  
 3. *Polypodium*  
 4. *Marattia*  
 5. *Isotriaena*  
 6. *Phacelis*  
 7. *Adiantum*  
 8. *Asplenium*  
 9. *Polypodium*  
 10. *Marattia*  
 11. *Isotriaena*  
 12. *Phacelis*

that any inconvenience is likely  
to be caused by the proposed mis-  
sion in section 3 of all reference  
to jurisdiction exercisable by the  
Justices of the Peace. It is ob-  
served that the powers formerly  
exercisable by two Justices related  
to conspiracy and the levying  
of assessments on houses & lands  
to defray expenses incidental thereto.  
Such matters however are now  
provided for by municipal laws,  
and it is believed that wherever  
the Statutes require two Justices  
to act, they usually provide that  
such jurisdiction may be exercised  
by a Magistrate, which term would of course in-  
clude a Presidency Magistrate.

7. The Govt does not approve  
of section 31 of the Bill, which pro-  
poses to give Presidency Magistrates  
power to direct previous enquiry  
into the truth of a complaint,  
by means of an officer subordinate

from the Asst. Insp. Genl. of Police, Madras,  
24 Oct/73, N. 54, paras 12 and 17.  
P. L. 5 March/74, N. 554, para 2.

to themselves, or by a local Police  
officer. A strong opinion against  
such interference with the functions  
of the Com. of Police has already been  
conveyed to the Govt of India in  
the correspondence noted in the  
margin. This fact observed, with  
regard to the proposal that the  
Presidency Magistrates should ex-  
ercise the miscellaneous powers  
conferred on a District Magis-  
trate by section 30 of the Code of  
Criminal Procedure, that the  
exercise of such powers would  
materially affect the consti-  
tution of the Police in the Presidency  
towns, and otherwise involve vio-  
lent and undesirable changes  
in the relations at present exist-  
ing between the Magistracy and  
the Police in these towns, and they  
deprecate the making of any  
alteration in the law, other than  
that which was originally intended  
by the Imperial legislature, viz. to



the objection entertained against  
any interference on the part  
of the Magistrates with the func-  
tions of the Police in the Presi-  
dency towns; the policy advocated  
by this Govt being to confine  
the Presidency Magistrates to  
functions exclusively judicial.

3. The Govt note that the  
Select Committee have considerably  
modified the provisions of the  
Bill in respect to the powers of  
punishment to be vested in  
the Presidency Magistrates. The  
Bill originally contemplated new  
officers being vested with the power  
of a District Magistrate, with power  
to award a maximum impris-  
onment of two years and a  
maximum fine of 1000 Rs. and  
section 8 of the Bill as it then stood  
provided an appeal to the High  
Court in cases only in which the  
sentence involved imprisonment  
exceeding one year or a fine exceeding

500 Rs. The Bill as now amended  
by the Select Committee reduces  
the powers to be vested in Presidency  
Magistrates to those which they  
may now summarily exercise  
at Madras under Madras Act  
VIII of 1867, section 13. Thus, section  
11 of the Bill as revised enacts  
that no Presidency Magistrate shall  
impose a fine exceeding 200 Rs, or  
imprisonment exceeding six  
months, unless he has recorded  
the evidence of the witnesses;  
and section 16 enacts that any  
person convicted on a trial held  
by a Presidency Magistrate  
may appeal to the High Court  
if the Magistrate has sentenced  
him to imprisonment for a  
term exceeding six months, or  
to a fine exceeding 200 Rs. For  
the purposes of appeal, section 11  
requires the Magistrate to record  
the evidence in all such cases  
as is usually done in regular

in the trials. This change of plans meets  
to the recommendation recently  
submitted by this Govt on  
a representation from the  
Admiral Chamber of Commerce.

July 4. Subject to the foregoing  
remarks, the Govt approve gene-  
rally of the revised Bill, which  
was published in the Fort St.  
George Gazette under date 11<sup>th</sup>  
in July 1876.

As to the reference to para 2  
of Mr Secretary Stokes' letter un-  
der reply, it is observed that the  
Honble Mr Justice James and  
the Honble Mr Justice Kernan  
have recorded minutes on the  
Bill, but that the Chief Justice  
and the other judges have not re-  
corded their views on its provisions.

LB

The Hon. Mr. Justice James, 6  
The Hon. Mr. Justice Kernan, 3  
Advocate Genl. 3  
Comr of Police. 3

Despatch 11/177

Despatch 11/177  
5000  
11/177

Rs 52. Ind. Dept. 12

The Secretary to the  
Govt of India,  
Legislative Dept.

Sir,  
I am directed by the Govt  
in Council, in reply to your  
letter dated 27 June, 76, No 425,  
to forward the accompanying  
copy of the Proceedings of this  
Govt of this date, & of the papers  
recorded therein, containing an  
expression of opinion on the pro-  
visions of the Presidency Magis-  
trates Bill as further revised  
by the Select Committee.

Fort Saint George  
9<sup>th</sup> Jan. 177

311110

LB

526

