[illegible]

Local & Munl. (1898) Department.

MISCELLANEOUS.

G.O., No. 1466. P

DATED 21-11-98

Prosecution of Mr. Curtis. [Despatch Abstract.]

Transferring ~~with remarks,~~ to the Judicial Dept., with remarks, letter from the President, Municipal Commission, requesting the Government to direct the Crown Prosecutor to prefer an appeal to the High Court from the decision of the Presidency Magistrate on the Complaint against Mr. Curtis of having infringed the Plague Regulations.

Cd: 21-11-98

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

C.No. 2488 A P/98

Muse

order No. 1466. P. — dt 8/21-XI-98

The President's letter read above will be transferred to the Judicial Department with the remarks that in view of the ambiguity caused by the use of the word "released" in s. 22 of the City of Madras Plague Regulation prior to its revision under G.O. no. 1314 P dt 12th October 1898, an appeal to the Hy. Court is inadvisable, and that the legal dictum of the magistrate as to the knowledge to be possessed by the accused to ensure a conviction formed the ground on which the magistrate directed an acquittal.

2. The Plague Commissioner is requested to examine the Regulations as they now stand, and see if there are any more loopholes for avoiding compliance with them.

/ By order /

21/11/98

LHO (para. 10 daily).
The J.-D. with a copy of G.O. no. 1314 P dt 12-10-98.
Plague Commr. Proc

I doubt whether the first hon. Sir should be transferred to Ped, with a Sep. n.o. not calling attention to Hon note in [illegible]

Please H 1

19.11.98

But please see the fifth line of Hon minute on page 2 of Mr Hamnicks note, from which it appears that the Hon intends that the papers should be transferred with (Ltm) any order embodying the remarks there made. and there is no objection to this course —

M
19/11

4.0.12.6.98 1348] x Reg 21 Ltd

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PLAGUE.

No._____ Camp _____

Dated _____ 189 .

OFFICE NOTE.

Reference.—

From

M. HAMMICK, ESQ., I.C.S.,

PLAGUE COMMISSIONER,

Madras,

To

THE SECRETARY TO GOVERNMENT,

LOCAL AND MUNICIPAL DEPARTMENT.

A letter from Col Moore is submitted recommending an appeal from the judgment of the Sundry Magr. in Mr. Curtis' case.

I am inclined myself to doubt the correctness of the Solicitor's opinion - They say that as the Epidemic Act lays down that any one disobeying a Regn made under the Act shall be deemed to have committed an offence under 188 I.P.C. therefore the condition attached to S 188 viz: that no person shall know the order, does not apply to a breach of the Regulation - This may be and is probably true - but it is not what the Magistrate found - What he found was that owing to the wording of Reg 22 [since amended G.O. 12 Oct. 98. 1348] & Reg 21 the

The Magte. seems to me to have been wrong, but I agree that it is inadvisable to appeal. The H.C. might agree with the Magte. that a man cannot be "released" without first being "detained" and under Reg 21 Mr. C. was not liable to detention.

The Magte. was clearly wrong as to the "knowledge" required prior to conviction under the Epi. D. Act for an offence under Sec 188 I.P.C.

Col. Moore's letter should I think be transferred to

meaning of the Regulations was doubtful and that accordingly therefore Mr. Curtis cannot be convicted: If the meaning of the two Regulations 21. & 22 was not clear, I presume Mr. Curtis is to be found to get the benefit of the doubt - But If on the other hand the meaning of the Regulations was clear, Mr. Curtis could not have pleaded ignorance as a defence.

The Municipal Solicitor seems to me to have missed the point which the Magistrate intended to make - Tho' he intended to say very briefly this, that unless the Regulations were perfectly clear Mr. Curtis had the right, under 188 P. Code to plead he did not know of the order - The Magistrate appears to me to have been wrong - but only in this viz that he brought in the terms of § 188 Pen Code to justify his finding. Granted that the Regulations were ambiguous Mr. Curtis had a perfect right to plead, that he did not understand the order - & that therefore he could not be punished for disobeying it - But this plea is not a plea that he did not know of the order, as Dewar referred to in § 188 Pen Code - & the Magistrate "Judicial" which alone can issue orders directing or declining to appeal.

So far as L.T.M. is affected it will be well if the order stated that in view of the ambiguity caused by the use of the word "released" in Reg. 22 prior to its revision, an appeal to the H.C. is unadvisable and that the legal dictum of the Magte. as to the knowledge to be possessed by the accused to ensure a conviction, was not the ground on which he directed an acquittal.

A.A.
18.11.98.

Will the Reg. please direct the Office to send up files such as this complete. I had to telephone for the Gazette & the Regulations as they were not put up.
My copies of the Plague Regs. were of no use as they have not been posted up, & Reg 22 is not in either of them. I am returning them to the Office.

A.A 18-11-98.

appears to me to have been quite wrong in referring to the Penal Code § 188. to justify his action - Had the Magistrate found that the Regulations were clear in their meaning, he would not have been justified in acquitting Mr. Curtis on the ground that he was ignorant of the order, but as he found that the order was ambiguous, I consider his finding was correct enough, though his reasoning was wrong -

As to whether the Regulations were ambiguous or not, the point taken is tenable enough -

Reg 22 was amended on 6 October 98 1314 - [the amended Regs was made after Capt Smith's case] runs that "Every person who is detained shall be released - Mr. Curtis argues "I cannot be released as I was not detained - "Release" necessitates previous detention - I was expressly exempted from detention [Reg 21] therefore a Regulation directing release cannot possibly affect me"

Obviously it is legal quibble which has been removed in the

will the P.C. please look through the Regns as they now stand & see if there are any more loopholes for avoiding compliance with them.

AA 18.11.98

amended Regulation which does not use the word "release" it also does not say that a person not detained shall be bound to attend at a place provided & obtain a pass port -.

On to which it seems so doubtful whether the High Court in interpreting a criminal Regulation will not give Mr. Curtis the benefit of the doubt that an appeal on this point is not advisable -

As to second point - viz the question of "knowledge" I consider the Govt Solicitor have misread the real meaning of the Magistrate & I doubt if it is worth while appealing in this case. If in any case the Magistrate actually writes that with a plain unambiguous order this necessary to prove knowledge on the part of the Depts, then an appeal shd be made -

15 XI 98

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CHIEF SECRETARIAT
16 NOV. 1898
MADRAS

Forwarded to Govt. n.o

I am inclined to agree with the P.C. that no appeal need be made.

At the same time the Magistrate's view does not seem sound. Reg. 21 exempts inoculated persons from detention when travelling. Reg. 22 (see G.O. 24. Ag) directs that every person x x who is not detained under x x Reg. 12 or 15 shall be released with a pass-port. This "release" does not imply actual detention, but only liability to detention; the contrary contention as the P.C. says is a quibble.

Here are all the elements of an offence, & the ambiguity I think was only in the Magistrate's mind.

H.T.
15 - 11 98

The Magistrate seems to have been under the impression that it would have been for the prosecution to prove that Mr. Curtis knew of the order. Section 106 of the Evidence Act dispenses of that view.

The ground on which the Magistrate grounds is that the orders are ambiguous. This seems like the fact but the remedy for this is not to try to remedy the ambiguity by an appeal but to issue fresh orders which are not ambiguous. I certainly think Govt. will not appeal -

16/11/98
No 2516 dt 16-11-1898.
To Legislative Dept (Leg).

H.M. 17.11.98

Sent 17/11

(Proceedings of Magistrate on the Complaint of Mr. Curtis of having infringed the City of Madras Plague Regulations)

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E. & L. Dept.
500—13-11-98.

NOTE FOR THE Secretary

Col. Moore's ~~D.O.~~ letter No 784 dy 2.11.98 is ~~Contained~~ filed with in G.O. no 1402 dy 4.11.98 which has been putup with the ~~covering~~ letter from the Govt of India regarding the prosecution of Mr. Curtis. The papers have gone in circulation yesterday

VR
30/11/98

W/30.11.98

G. No: 973

Madras

30th November 18

My dear Tremenheere,

Your D.O.No.121 dated 29th November 1898.

Curtis never applied for exemption although he was told at the Station that he had only to ask for it from either the President or Health Officer - Vide enclosure A to my No. 784 dated 2nd November 1898 to your address.

Put up
please
30/11/98

Yours sincerely,
W. Cullloon

H. Tremenheere Esq.
Secretary to Govt.
L & M Dept.

Proceedings, Municipal Corporation, Madras, 1898, Vol. 1, Part 2, p. 1.

Local & Municipal

D. O. No. 1210

GOVERNMENT OF MADRAS

FORT ST. GEORGE,

Despd 29-11

29 - 11 - 1898

Dear Moor,

Did Curtis at any time apply for exemption from personal attendance for inspection under the Passport Rules?

I merely want to make certain of the point.

Yours &c.

(Sd) H Tremenheere.

1st Dec. 1898

My dear Tremenheere

The Curtis does not state in either of his letters (E. F.) that he was not aboard at employer. So the statement holds good that he was.

It must have been in his evidence.

Even if he had not been he was to well versed in all the Regulations that

Magistrate's Court,

F.C.2.

Remanded by Magistrate on the Complaint against Curtis of having infringed the City of Madras Police

In the Presidency Magistrate's Court,
Egmore, Madras.

Local & Munl. (1898) Department.

CURRENT No. 2488 A P

From The President, Municipal Commissioner Madras.

Order

No. 854 G.

Dated 14-11-98

Received } 15-11-98
Registered }

Enclosures 2.

Spare copies.

SUBJECT.

~~Inviting~~ ~~Drawing~~ ~~the attention~~ of Govt to ~~the fatal effects of the decision in the case against~~ Cumbis and ~~suggesting~~ Requesting the Govt to direct the Crown Prosecutor to ~~file an appeal~~ the High Court ~~from~~ in appeal against the decision of the ~~Chief~~ Presidency Magistrate on the Complaint against Cumbis of having infringed the C.C. of Madras Municipality

BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

In the Presidency Magistrate's Court,

[25]
500- 20-10-98.

LOCAL AND MUNICIPAL DEPARTMENT.

PROCEEDINGS OF THE MADRAS GOVERNMENT.

READ the following paper:—

From the President, Municipal Commission, Madras, G.No.854 dated 14th November 1898:-

In forwarding the accompanying copy of the Judgment by the Presidency Magistrate in the case against Mr.Curtis together with the remarks of Messrs. Barclay Orr & David upon that Judgment, I have the honor to draw the attention of Government to the fatal effects of such a decision.

If it is to stand it will be impossible for me to carry out any of the Regulations passed by Government as every one will plead want of knowledge-and probably with more justification than in the case under review, as Mr.Curtis admitted that he had seen the Regulations.

Unless the Judgment is reversed it will be wanton waste of money to continue the establishemnt at Perambore.

I would ask therefore that Govt. direct the Crown Prosecutor to move the High Court in appeal and that at the earliest possible moement, so as to minimize the fatal effects of such an astounding pronouncement.

Although I have put the Public grounds upon which I consider that a revision is imperative I must point out the baneful effect it must have upon the prestige of the Municipal Executive-One of the Local papers has already animadverted on the prosecution in the following terms:-"that the municipal executive have as ever before shown a feverish haste in rushing into court with prosecutions with-out adequate consideration."(The Standard of 12th instant.)

That the Judgment must be reversed I am perfectly certain, but no reversal will remove the evil effets resulting from it.

My report of the circumstances which led to Mr.Curtis' prosecution was forwarded under my letter G.No.784 dated 2nd November

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rder No.1466-P Misc. dated 21st November 1898.

he President's letter read above will be transferred to the Judi-
epartment with the remarks that

Enclosures.

Thavere
(Sd.) G.Moore Mr. Cn.
Prest. M. Commissioner.

In the Presidency Magistrate's Court,

Egmore, Madras.

(Application.No.11207)

Before W.E.Clarke Esquire., Ag.Chief Presidency Magistrate.

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Calendar No.29983 of 1898.

Complainant.

The Municipal Commissioners for the City of Madras by A.M. Vaiyapuri Mudalir, Overseer, 6th Division S.W.

Accused.

Mr.G.S.Curtis.

Charge.

That he on or about the 14th October 189 infringe the provisions of Regulation No of the Regulations under the Epidemic Di Act 1897 for the City of Madras publis the Fort St.George Gazette Part I-A dat September 1898 page 260 and punishable Section 188 of the Indian Penal code i he left the Perambur Railway station o about the 14th October 1898 without bei leased with a pssport binding him to pr himself daily for inspection for a peri 10 days before the officer named in the port.

Order.

1. This is a prosecution instituted by the Madras Municipa against Mr.Curtis for disobeying regulation 22 by refusing a passport.

2. Mr.Curtis admits his refusal, but pleads that as he is t of an inoculation certificate under Regulation 21 he is ex from the necessity of accepting a passport.

3. It is true no doubt that Regulation 22 seems at first support the case for the prosecution, for it enacts that e arriving from a plague infected place, who is not detained the Regulation 12, shall be released with a Passport, there it to be inferred that in as much as accused is not a pe -ed under Regulation 12 ~~of~~ he is subject to the provision lation 22. If therefore regulation 22 was the only Regu

...e to the state of circumstances connected with the present case, ...ould have held without hesitation that the offence alleged had been ...ed; there is, however, regulation 21 to be considered in connection ... this matter, and there is nothing in the wording of regulation 21 ...indicate that its provisions are to be disregarded or are abrogated ...he provisions of section 22. This is somewhat remarkable I think, ...e both regulations appear in the same Gazette though I understand ...ulation 21 was framed some days prior to the regulation 22. It is a ... relating to the interpretation of statutes that when one has been ...ed previous to another, which affects the former the provisions of ... latter shall not be considered to repeal or change those of the ...er unless this is expressly provided for by the latter; and I appre... the same rule must be observed in construing regulations which ... the force of law. I cannot therefore, it seems to me, construe ...ation 22 without reference to 21, the operation of which will be ...fect nullified if regard is to be had only to the terms of Regula... 22: that this is obvious, will be at once proved by reference to the ... of regulation 21 which enacts that no inoculated person shall ...tained while travelling.

... then no inoculated person is to be detained whilst travelling under regulation 22, the fact that such person is to be detained whilst travelling under Reg. 22 seems inconsistent with and subversive of the terms ... former regulation and makes of it a dead letter. I am unable to ...e that such was the intention of the legislature or at any rate ...h belief is erroneous it certainly seems doubtful whether such was ...tention, regard being had to the fact that if this were so, one ...ion has cancelled the other without any indication showing that ...s a portion of its object. As I have already observed it can ... assumed by inference that such was the intention to be imported ...gulation 22. But inferences and assumptions are not admissible in ... cases and therefore I can draw none.

... much moreover as disobeying regulation 22 has been made an ... punishable under S.188 I.P.Code, I conceive I am bound to re... his prosecution to establish all the essentials which are necessary ... an offence of that nature; amongst these are, first, the necessity ...lear and unambiguous order has been promulgated and next a ...e in the alleged delinquent of that order.

...ems to me the prosecution had failed to establish that regulation ... terms clearly and without ambiguity directs inoculated passen... ...ccept passports, such direction, even placing the case for the ...n at its best, can only be gathered inferentially and then only by doing violence to the terms of regulation 21 and in effect superseding it altogether. I hesitate to come to so sweeping a conclusion ...e more expressly as G.O. exhibit I, filed by accused proves that Govt. desired to ameliorate and not augment the inconveniences which attaching to the compliance with plague resolutions in the case of inoculated persons. I therefore think I am compelled to say it may be regulation 22 was meant to apply to inoculated persons but that intention is not clearly expressed by its terms and is rendered doubtful by the effect that such intention (if it existed) would have on regulation 21. Accused is entitled to the benefit of this doubt; and since in my opinion it exists it prevents the prosecution further from establishing the second essential to its success to this action, namely, that accused knew the effect of regulation 22, for if its terms are doubtful he can have no knowledge of its true meaning.

7. For the foregoing reasons I have come to the conclusion that this prosecution fails and accused is entitled to be and he is directed to be acquitted.

(Sd) W. E. Clarke

Ag. Chief Presidency Magistrate

(True Copy.)

(SD) F. Kelly

Chief Clerk

Presidency Magistrate's Court

Egmore, Madras, 14th November 98

Copy applied for on 10-11-98

Delivered on 14-11-98

No. of words 960

Copying fee Rs 2-12-0 (which please remit at early convenience)

To the Health Officer, Madras Municipality in compliance with his letter No. 738 d/10-11-98

(True Copy)

Sd. G. Moore

President, Munl. Comm.

Barclay, Orr & David.

Madras.

High Court

Madras 10 th November 1898

To the President Municipal Commission, Madras.

Sir,

Vyapuri Moodelly

Vs

Curtis.

Judgment in this case was delivered this morning acquitting Mr. Curtis.

The Magistrate based his decision on two grounds, the first being that the passport system cannot be intended to apply to persons holding inoculation certificates as regulation No.22 which provides for the passports system being introduced into the City of Madras speaks of persons being "released" with passports.

The word "released" the Magistrate holds must necessarily imply a previous detention and as under regulation 21 persons holding inoculation certificates are exempt from detention while travelling, such persons cannot be released and therefore cannot be contemplated by the regulation.

It was argued on behalf of the accused by his attorney that the word " released" necessarily involved a right to detain and we pointed out to the Magistrate that the reason why the accused's attorney differentiated between a right to retain and the fact of a detention was that the wording of the first part of regulation 22 clearly shows that the word " released" is intended to apply to persons who are not detained. The Magistrate however, does not appear to have grasped this point. The second ground for the Magistrate's decision and one whihh seems to us of great importance was that in his opinion it is necessary in order to obtain a conviction under the Epidemic Diseases Act that the prosecution should establish not merely that the accused had disobeyed a regulation but that he has done so knowingly within the meaning of Section 188 of the Indian Penal Code and that as Mr. Curtis had shown that having read the Govt. of India order in which that Govt, expressed the opinion that it might now be ~~exempted~~ agreed generally that inoculated persons might be exempted from segregation detention and observation and having read the note of the Madras Govt. that with reference to the

ove order they had already passed a regulation Mr Curtis was justi-
ed in supposing that the Local Govt. intended regulation 21 to exempt
oculated persons as suggested by the Govt. of India and he could not
said to have acted knowingly so as to bring him within Section 188.
the Magistrate went on to say that the provisions of Section 188 had
caped the attention of both the prosecution and the defence we point-
out to him that so far as the prosecution were concerned the provi-
on in Section 188 that an accused person must act knowingly in order
establish an offence had not been referred to as the Epidemic Diseas~~es~~
s Act provides that a breach of the regulation shall be deemed to be
offence under the section and it was herefore immaterial whether
e accused acted knowingly or not.

In our opinion the Magistrate is wrong on both grounds. We refer-
d to the second ground of the Magistrate's decision being an important
e as if the Magistrate is correct it will be necessary in every prose-
tion under the regulations to establish that the accused was aware of
e provisions of the regulations which he is charged with disobeying
d this we imagine would very seldom be possible unless copies of the
t and regulations are shown to him before calling upon him to conform
their provisions.

In our opinion it is desirable that a ruling of the High Court ~~sh~~-
ould be obtained and for this purpose we would advise that Govt. should
asked to direct the Public Prosecutor to present an appeal.

The Magistrate delivered an oral Judgment as his written Judgment
incomplete and will not be ready until Monday next. We arranged
h Sanitary Inspector, Jesudasan that he should apply for a copy of
written Judgment.

We withdrew the case against the peon as instructed.

Yours &c.

(Sd) Barclay Orr and David.

(True Copy.)

(Sd) G. Moore,

President, Municipal Commission.

[L. & M. 200—17-8-97.]

1,000—4-10-98.

NOTE FOR THE Plague Cmsr.

Mr Curtis' Case seems similar to that of Capt Smith, in which the Solicitor of the Municipality reported that under the regulation as it then stood, no prosecution could stand. Thereupon the Reg was amended by substituting the words "shall be bound to appear at a place provided for the purpose and obtain a passport" for the words "shall be released with a passport". This amendment was published in the Gazette of the 18th Oct, while Mr Curtis committed the alleged offence on the 14th Oct. It is not clear why the Govt sanctioned the prosecution of Mr Curtis under the old rule while he declined to prosecute Capt Smith. ~~The~~ A similar case cannot occur, as the Reg ~~has now been~~ altered by Govt. No 1423 dy 8-11-98, a proof copy of which is submitted herewith.

2. The Regulations are sometimes drafted in great hurry and cannot meet all technical objections. It would be desirable if the ~~drafts~~ the existing Regulations & the drafts of future ones are examined by the Govt Solicitors.

Long title × What I meant was that ~~—~~ quoted in the same in the Regulation title.

+ Mr Curtis Case