M.R.O. 14—13,000—27-9-24

MADRAS RECORD OFFICE.

Government of Madras.

Revenue **DEPARTMENT.**

G.O. No. 1629 Press ~~Mis.~~

257.258

Dated 15-7-1865.

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department, 15th July 1865.

No. 257. Read the following Proceedings of the Madras Government in the Judicial Department :—

Directing that, in future, when Sub or Talook Magistrates are appointed, the Magistrate of the District will submit to Government the name of the Officer so appointed, for investment of powers which he is to exercise; and that every Officer appointed as Assistant or Head Assistant Magistrate will, in the order of appointment, be specially invested with powers under the Code of Criminal Procedure.

(Here enter 12th July 1865, No. 970.)

No 258. ORDER THEREON, 15th July 1865, No. 1,629.

Miscellaneous.

Communicated to the Board of Revenue.

(True Extract.)

(Signed) J. GROSE,
Acting Under Secretary to Government.

To the Board of Revenue, with Proceedings Judicial Department, No. 970.

Exd. S. T. Augustin.

Proceedings of the Madras Government, Judicial Department,
12th July 1865.

Read the following papers:—

No. 66. From A. P. HOWELL, Esq., Under Secretary to the Government of India, to H. BIRDWOOD, Esq., Secretary to the Government of Bombay; dated Fort William, 28th February 1865, No. 1929.

Home Department.
Judicial.

I am directed to acknowledge the receipt of your letter, No. 3853, dated the 20th December, and, in reply, to forward, for the information of the Government of Bombay, the accompanying copy of the Opinion of the Advocate General at Calcutta on the course to be adopted in vesting Subordinate Magistrates with powers, under Sections 22 and 23 of the Criminal Procedure Code.

No. 1930.

Copy of the above correspondence forwarded to the Government of Fort Saint George.

(Signed) A. P. HOWELL,
Under Secy. to the Govt. of India.

From T. H. COWIE, Esq., Advocate General, Calcutta, to A. COLVIN, Esq., Under Secretary to the Government of India; dated the 21st February 1865.

I have now the honor to submit my opinion on the point, raised by the letter of 20th December last, from the Bombay Government, as to the course to be adopted in vesting Subordinate Magistrates with powers, under Sections 22 and 23 of the Criminal Procedure Code.

2. In the first place, I have to state that the Notification by the Government of Madras, under date the 29th November 1861, was, in my opinion, wholly inoperative, on the ground that it was issued before the Code came into operation. It was not until the 1st January 1862 that the Local Governments became vested with the powers conferred by Section 23 of the Code, and consequently such powers could not be exercised before that date. It is to be observed, however, that it by no means follows that the Joint, Assistant, and other Subordinate Magistrates of the Madras Presidency have been acting illegally in passing sentences under the 22nd Section of the Code. For I presume that, in every instance of an Assistant Magistrate being appointed, the order of appointment did, before the passing of the Code, and does now, specify what are the powers which such Officer is to exercise; and I suppose the case is the same as regards the appointment of many, if not all, Subordinate Magistrates. And as regards Joint Magistrates, I apprehend that they have always held and exercised the full powers of a Magistrate.

3. If this is so, what is the operation of Section 22 of the Code? It does not (as I understand it), in speaking of "the powers of a Magistrate," and "any of the powers of a Magistrate," refer exclusively to such powers as may be conferred by the Local Government under Section 23; and, on the other hand, Section 23 refers (though not exclusively) to the case of a person who is neither a Magistrate nor a Subordinate Magistrate of either class. And I think the same Section, in speaking of the "powers of a Magistrate or of a Subordinate Magistrate," must be understood as using the word "powers," as referring to something existing independent of the Act, and in the same broad and general sense in which the same word is undoubtedly used in the 22nd Section. So that, even in the absence of any Notification or order of the Local Government under Section 23, an Officer (under whatever title) authorized to exercise all, or less than all, of the powers of a Magistrate would be competent to pass sentence under the provisions of the 22nd Section.

4. I have gone into this collateral point at some length, as the language of the Madras Notification leads me to doubt whether the Sections in question of the Code have been clearly understood.

5. I am of opinion that such a general Notification as that issued by the Madras Government would, if now issued, be operative, under the 23rd Section of the Code, as regards all persons holding any of the offices specified in the Notification *at the time of its issue*; and that, whether the appointment to office had been made by the Local Government, or by the Collector, or Magistrate of a district. As regards either class of Officers, the Notification would apply to an existing body of persons, and would so ascertain them that it would not be necessary to name each separately. The powers would be conferred on each Officer *personally*, though his name is not expressed. But this is a very different thing from an attempt by the Local Government to attach the powers in question to the office. The 23rd Section does not seem to warrant any thing of the kind in its use of the words "any person" and "such person;" on the contrary those words seem to point to something exceptional and occasional, and to the exercise of the power being guided by the particular circumstances of the case. No doubt the Madras Notification is framed in very reasonable terms; but, so far as concerns the principle involved, it does not differ from a Notification conferring ex-Officio on all Officers, exercising or to exercise any of the powers of a Magistrate, the full powers of a Magistrate of a district for the purposes of the Act, and in this way the distinctions comtemplated in the 22nd Section might be rendered nugatory.

6. The language of the 1st paragraph of the letter from the Government of Bombay appears to me somewhat ambiguous; but I understand the "District Officers," therein referred to, to mean Officers who receive their appointment not directly from the Local Government but from the principal Officer of the District. If, as the law stands, irrespective of the Code (I have not the Bombay Regulations), such principal Officer can vest in the Officer appointed any of the powers of a Magistrate, the order of appointment should specify what those powers are,—probably they would be those of a Subordinate Magistrate of the 2nd Class. The Officer so appointed could then sentence, to the extent of one month's imprisonment and Rupees 50 fine, without any order from the Local Government. But where no such power can be conferred by the appointing Officer, the appointee cannot legally exercise Judicial powers under the Code, except by the express authority of the Local Government, given to such appointee personally under Section 23. There would be no legal objection to issuing general Notifications, yearly or half-yearly, applying to the Officers for the time being; but such a course would, I suppose, hardly remedy the difficulty, or, if at all, only in a very awkard and impracticable way.

7. I return the enclosure received with your letter.

Referred to the Advocate General for his opinion.

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

FORT SAINT GEORGE,
12th April 1865.

No. 67. From J. R. BOYSON, Esq., Government Solicitor, Madras, to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George; dated Madras, 27th April 1865, No. 207.

I have the honor to acknowledge the Order of Government noted in the margin (with its enclosures), relative to the course to be adopted for vesting Subordinate Magistrates with powers, under Sections 22 and 23 of the Criminal Procedure Code.

Dated 12th April 1865, and endorsed on copy letter from Under Secretary to Government of India, to Secretary to the Government of Bombay, dated 28th February 1865, No. 1929.

2. I submitted the papers for the consideration of the Advocate General, with whom I have also conferred; and,

3. I now forward a copy of his Opinion, and return the order and enclosures above noted.

Proceedings of the Madras Government, Judicial Department,
12th July 1865.

COPY OPINION.

The Notification of the 29th November 1861 appears to me to be totally inoperative, 1st because it was an act done before the Criminal Procedure Code, which alone could have authorized it, came into operation; secondly, because I do not think that any such *general* Notification is contemplated by Section 23 of the Act.

2. I agree with the Advocate General of Calcutta in thinking that the acts of the Magistracy since the Criminal Procedure Code came into operation are not illegal, because it appears to me that the persons who are severally appointed Magistrates, and Subordinate Magistrates of the first and second class, have *ipso facto* and *ex vi terminorum* power to act up to the jurisdiction committed to them, respectively, by Section 22.

3. Section 23 appears to me to be purely *personal*, and to be intended mainly to provide for those occasional circumstances which may, from time to time, render it necessary or expedient to invest persons *not* Magistrates with Magisterial power; although I think the words of the Section are also wide enough to cover such arrangements as the Government may think fit to make with reference to the existing Magistracy.

4. Where an Act points to individual persons, I think that their powers should, in each case, be specially conferred. I observe that this is done, by reference to the Fort Saint George Gazette. I do not recommend any fresh general Notification, such as is pointed to in Mr. Bowie's Opinion, paragraph 5; but think that the appointment of each Magistrate should specially define his powers, and with reference to the other reference connected with this case, I think such appointment, when it relates to a Subordinate Magistrate, should confer the power of commitment, under Section 38, whenever it is intended that such Subordinate Magistrate should exercise such powers.

(Signed) J. B. NORTON,
Advocate General

25th April 1865.

(True Copy).
(Signed) J. R. BOYSON,
Government Solicitor.

No. 68. ORDER THEREON, 12th July 1865, No. 970.

Under the opinion given by the Advocate General, the Goverror in Council resolves to direct that, in future, on the occasion of every appointment to the office of Taluq Magistrate, or Sub-Magistrate, the Magistrate of the District will submit to Government the name of the officer so appointed, in order that the powers which he is to exercise under the Code of Criminal Procedure may be specially conferred on him by Government. No officer should be permitted to exercise any of the powers of a Magistrate, until they shall have been duly conferred on him by a Notification in the Official Gazette.

2. In future, every officer appointed as Assistant Magistrate, or Head Assistant Magistrate, whether permanently or temporarily, will, in the order of appointment, be specially invested with the powers which he is to exercise under the Code of Criminal Procedure.

(True Extract).
A. J. Arbuthnot
Actg. Chief Secretary to Govt.

To the Magistrate of
" Government Solicitor.
" Revenue Department.

Communicated to the Bd of Revenue

Encl. J. H. Burns.

To the Bd of Revenue. Recorded Rec. J. 6th Aug. 970 dated 15th July
15th July 65
Recorded

Pen = 1865 Despatch
Pen. of Govt. for July
No. 1890
Proceedings of the
Madras Govt. in
the Jud. Dept.

Dated 12th July.
Received 13th " 1865.
No. 1629 - 10th July No. 970.

From Actg Govt. of
Madras, 66 No. 118

Directing that in
future when Sub or Sa-
-dook Magtes are appoint-
-ed, the Magte of the Distt will
submit to Govt the names
of the officers to be appointed
for investment of powers
which he is to exercise;
and that every officer
appointed as Asstt or
2d Asstt Magte will, in
the order of appt, be spe-
-cially invested with pow-
-ers under the Code of Crim-
-nal Procedure - Without

Nos. 257 & 258.