M.R.O. 14—5,450—22-10-25.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue **DEPARTMENT.**

G.O. No. 3007 Press ~~Mis.~~

327. 328

Dated 17 — 12 — 1867.

Not to be folded or roughly handled

307

Proceedings of the Madras Government, Revenue Department,
17th December 1867.

No. 327. Read the following Proceedings of the Madras Government in the Judicial Department:—

Passing orders on letter from Magistrate of South Arcot, submitting correspondence on the subject of a difference of opinion between himself and his Acting Head Assistant in the case of a fraudulent misappropriation of public money by a Village Magistrate. (Here enter 11th December 1867, No. 2,043.)

No. 328. ORDER THEREON, 17th December 1867, No. 3,007.

Miscellaneous.

Communicated to the Revenue Board.

(True Extract.)

(Signed) F. BRANDT,
Under Secretary to Government.

To the Board of Revenue, with Proceedings Judicial Department, No. 2,043.

Exd. S. T. Augustin.

ceedings of the Madras Government, Judicial Department,
11th December 1867.

151. Read the following letter from C. W. READE, Esq., Magistrate of South Arcot, to the Chief Secretary to Government, Fort Saint George; dated Cuddalore, 28th November 1867, No. 66.

In reply to the Government Proceedings, under date 26th November 1867, 1920, I have the honor to forward copy of the correspondence that has passed een my Head Assistant and myself, on the subject under notice. These papers st of my formal decision in appeal against the Head Assistant's order, and of officer's letter, objecting to my view of the question of jurisdiction.

2. I further beg to send to Government copy of my letter, referring the tion to the High Court, and of the Proceedings of the Judges thereon, de- ng to give any opinion and leaving me to act on my own judgment, h I accordingly did.

REVENUE CASE No. 8 OF 1867.

Decision.

The Acting Head Assistant Collector finds Goonapala Nynar guilty of the offence specified in charge, namely, that he fraudulently misappropriated public money, to the amount of es 5-8-0, at Kalakolatoor, on or about the 13th March 1867, and directs that the said apala Nynar pay the sum of Rupees 11 to Government, and that he be dismissed from the of Village Magistrate and Monigar's Goomastah of Kalakolatoor.

TINDEVANAM, (Signed) A. L. LISTER,,
h August 1867. *Actg. Head Asst. Collector.*

APPEAL CASE, No. 10 OF 1277.

ellant, Goonapala Nynar, Kalakolatoor village, in indevanum Taluq— *versus* Decision, No. 8 of 1867, of the Head Assistant Collector.

Decision.

The Magistrate is of opinion that the provisions of Regulation IX of 1822 do not apply to case, and, consequently, the Proceedings and conviction recorded under that enactment are, is belief, irregular, if not illegal. From the preamble and whole context of Regulation IX of 2, the offence of a Village Magistrate, such as is charged in this case, is only adjudicable under Criminal Law, and not under the said Revenue Regulation; but so long a time has now psed since the case arose, and there being no authoritative opinion on the question of jurisdic- n, the Magistrate does not think proper to interfere with the present decision, in view to the diction of heavier punishment under the Penal Code. The Magistrate quite approves of the missal of the Village Magistrate (appellant) which is a necessary consequence of the convic- n of an offence of this kind, whether Revenue or Magisterially treated.

The appeal is dismissed.

CUDDALORE, (Signed) C. W. READE,
nd November 1867. *Magistrate.*

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om A. L. LISTER, Esq., Acting Head Assistant Collector, South Arcot, to the Collector of South Arcot; dated Cuddalore, 7th November 1867, No. 235.

I have the honor to acknowledge the receipt of your decision in Appeal Case No. 10 of 1277, which you express an opinion that my proceedings in Revenue Case No. 8 of 1867 are irregu- r, if not illegal.

2. A Village Magistrate is, I contend, a Village Officer within the meaning of the 3rd lause, Section 2, Regulation IX of 1822, even if he be not a head inhabitant, which I think he

is; and receiving pound fines and converting them to his own use constitutes the offence described in the 3rd class of offences specified in the 2nd Clause of the same Section.

3. With these views, I am unable to see how a case of this description can *only* be dealt with under the Criminal Law, and as you say that no authoritative opinion on the question of jurisdiction has been given, I have the honor to ask you to submit the question to the Board.

4. I shall be very sorry to be wrong, for charges of this description are constantly made against Village Magistrates, and if your opinion is correct, I shall have no other course than to receive them on to my Criminal File, and put respectable honorable men upon their trial, merely to acquit them in nine cases out of ten. I might refer the case to the Police for preliminary inquiry, but the disgrace would be just the same, while by disposing of these cases in my revenue capacity, I can arrive at the truth without causing any annoyance, or at all events any disgrace, to innocent persons; and if the case turns out to be a flagrant one, I can at any moment take up the case as a Magistrate, and inflict a proper punishment.

5. I would observe that every offence under Regulation IX of 1822 can also be punished under the Penal Code, and unless this particular case, or this particular class of person, viz., Village Magistrate, can be taken out of the offences or persons described in Regulation IX of 1822, this Regulation will become a dead letter if your view is correct.

6. If a man by accepting a village office is thereby to increase the measure of his responsibility to Criminal Law, I fear the offices will become very unpopular, and difficulty will be experienced, as is the case in Ganjam, in finding men to take dangerous posts, in some instances without any remuneration.

7. I observe that your decision is signed "Magistrate," and commences with the words "the Magistrate." I presume this is a clerical error for "Collector"; if not, I would venture to remind you that, in your capacity as a Magistrate, you are not empowered by law to hear appeals from my decision.

From C. W. READE, Esq., Magistrate of South Arcot, to the Registrar of the High Court, Madras; dated Pondicherry, 11th October 1867, No. 484.

I have the honor to solicit the opinion of the Honorable the Judges of the High Court on the following point.

2. A village Magistrate misappropriates money collected by him under Act III of 1857, known as the Pound or Cattle Trespass Act. Can such Village Magistrate be tried for such offence under the provisions of Regulation IX of 1822, or is he amenable to trial only under Section 409 of the Penal Code?

3. From the preamble and whole context of Regulation IX of 1822, my opinion is that the offence of a Village Officer, as above indicated, is only adjudicable under the Criminal Law, and is not cognizable under the said Revenue Regulation.

4. The necessity for this reference has arisen by an appeal which has been made to me against a sentence passed by my Head Assistant, in which a Village Magistrate has been punished by him, under Clause 2, Section 3, Regulation IX of 1822, for misappropriating cattle pound money, and which sentence I propose to quash as illegal.

Proceedings of the High Court of Judicature at Madras, 30th October 1867.

Read letter dated the 11th instant, No. 484, from the Magistrate of South Arcot, soliciting instructions as to whether a Village Magistrate who has misappropriated the money collected by him under the Cattle Trespass Act can be tried under Regulation IX of 1822, or under Section 409 of the Penal Code.

The High Court decline giving their opinion in this case, which should be disposed of by the Magistrate on his own judgment.

(True Extract).

(Signed) J. H. NELSON,
Actg. Registrar, Appellate Side.

Proceedings of the Madras Government, Judicial Department,
11*th December* 1867.

No. 152. ORDER THEREON, 11th December 1867, No. 2043.

In the opinion of Government, fines levied under Act III of 1857 cannot, with reference to the provisions contained in Section 12 of the Act, be regarded as revenue.

2. Regulation IX of 1822 provides for cognizance of cases of malversation in revenue affairs only, and is inapplicable to the investigation of charges of misappropriation of money realized for purposes connected with the execution of an Act relating to cattle trespasses.

(True Extract).

Chief Secretary.

To the Magistrate of South Arcot.
,, Magistrate of
,, Revenue Department.

Exd. J. H. Burns.

Revenue 1867 Dept
Proceedings of Govt. on Deer

No. 3398.

Proceedings of the
Ind. Dispatch.

Dated 11th. Dec.
Rec'd 14th. " 1867.

No. 2043.

Passing orders on
Letter from Magistrate of
Sunderbunds submitting
Correspondence on the subject
of a difference of opinion
between himself and his
Head Asst. in case of a
fraudulent misappropri-
ation of public money by
a Village Magistrate.

With Order
No 3007. 17th Dec

No. 327-328

No. 3007.

Committed to the
Revenue Board.

17th. Decr.

To Sd. Board of Revenue Bengal Dispatch No. 2043 Dated 11th Dec.