M.R.O. 1—30,000—16-10-52.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial **DEPARTMENT.**

G.O. No. 399 Press ~~Mis.~~

71-72

Dated 14.3.1863 19~ .

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Not to be folded or roughly handled

under the opinion of the Advocate General of October 1861, above referred to, the [illegible]sed by these prisoners as well as others in the House of Correction, after the passing of [illegible]nce of imprisonment with labor upon them, is to be counted as part of their original sen[illegible] Penal Servitude, that Officer was asked in October last, whether there would be any leg[illegible]otion or difficulty in transferring them from the Ootacamund Jail to the Calcutta House of Correction to undergo the sentence of imprisonment with labor, after the expiry of the term of their sentence of Penal Servitude. The Advocate General has submitted in reply an opinion, a copy of which is also herewith forwarded, and I am directed to request that the petitioners may be informed of the purport of it.

6. The second petition of the prisoner J. W. Burke, contains a reiteration of a plea which must have been allowed all due weight by the Judges who presided at his trial, viz., his long imprisonment before trial, no further orders appear therefore to be necessary in regard to it.

7. As the prisoner Frederick Fowles is under sentence of Penal Servitude for six years passed upon him in February 1861 in the terms quoted on the margin* he could not have been sentenced to the common Jail or to any other specified Jail, nor to simple imprisonment, as presumed by the Inspector General of Jails in Madras.

* "Let him undergo Penal Servitude for and during the "term of six years to be accounted from the thirteenth "day of February one thousand eight hundred and "sixty-one."

8. No petitions from the prisoners James Burke and Thomas Nolan have been received with your letters under acknowledgment, and their representations, as embodied in the Inspector General's report, are of such a nature as to call for no orders from Government. A subsequent petition from the Convict Nolan was received, with your separate letter, No. 1,563, dated the 22nd September last, and disposed of in Officiating Junior Secretary Mr. Bayley's No. 5,720 of the 24th December last.

9. With reference to the two opinions of the Advocate General which accompany this letter, I am instructed to request that all the prisoners in the Ootacamund Jail, who are under additional sentence of imprisonment with labor for prison-breaking at Calcutta, as shown in the Rolls forwarded from this office and from the office of the Sheriff of Calcutta in February and March 1862, may be sent back to this Presidency to undergo that sentence on the expiry of their respective sentences of Penal Servitude.

10. As some of the prisoners who had broke Jail were not re-apprehended till some time afterwards, and as some others were probably sentenced to Penal Servitude whilst undergoing sentences of imprisonment, the Lieutenant-Governor desires to know whether your Government has been put in possession of information as to the dates on which the sentences of Penal Servitude are actually to expire in the cases of those prisoners.

From S. WAUCHOPE, Esq., C. B., Commissioner of Police, Calcutta; to the Secretary to the Government of Bengal, Judicial Department, Fort William, dated the 26th September 1861, No. 864.

I have the honor to forward, for submission to the Honorable the Lieutenant-Governor of Bengal, a petition in original, from John Davis and five other prisoners in the Calcutta House of Correction, sentenced to Penal Servitude for various terms, but at present undergoing the sentence of six months' imprisonment with hard labor, subsequently passed on them by the Supreme Court for breaking prison.

2. The prisoners had frequently urged on me the prayer embodied in their Memorial, but as it involves a point of Law, I did not feel myself competent to pass a decision, and it is with my sanction that the present representation has been drawn up, which I beg to submit for His Honor's orders.

To J. P. GRANT, Esq., Lieutenant-Governor of Bengal, dated Calcutta, the 24th September 1861.

We the undermentioned men most respectfully beg to forward this our most humble petition and most respectfully hope that it will meet with the kind consideration of the Government of Bengal.

No. 71. Read the following letter from EDWARD H. LUSHINGTON, Esq., Secretary to the Government of Bengal; to the Chief Secretary to the Government of Fort Saint George, dated Fort William, the 12th February 1863, No. 1,112.

Judicial—Jails.

I am directed by the Lieutenant-Governor of Bengal to acknowledge the receipt of your two letters noted on the margin,* forwarding with the first a copy of a report from the Inspector General of Jails in your Presidency on the European Prison at Ootacamund, together with petitions from seven of the prisoners who were removed to it from Calcutta last year, and with the second a petition from another of those Prisoners.

* No. 1,401, dated 28th August last, with 9 enclosures.
„ 1,443, „ 4th Sept. „ „ 1 enclosure.

2. The circumstances connected with the subject matter of all the petitions except one, are those. Under an order passed by the Government of India in April 1856, all European and American Prisoners, sentenced by the late Supreme Court at Calcutta to Penal Servitude, were, up to March 1861, confined and put to labor in that part of the Calcutta Jail called the House of Correction, as in a place of intermediate custody pending the erection of a new Jail for that class of Convicts. In March 1861 many of these prisoners, with others sentenced to imprisonment with labor, broke into a serious riot in the House of Correction in consequence of which they were all removed to the other part of the same prison called the great Jail. The prisoners, marginally† named, who are now in the Ootacamund Jail, were, with some others, tried for prison-breaking, convicted and sentenced to additional terms of imprisonment with labor, to commence after the expiration of their former sentences of Penal Servitude, but were soon after removed by the Sheriff of Calcutta back to the House of Correction, and it is of this last removal that the petitioners complain.

† Henry Watson.
Frank Williams.
Lewis Harding.
Walter Douglas.
John Davis.
Charles Alfred Sandes.
Joseph Wilkinson.
James Foard or Ford.
John Pendergast.
William Watson.
Henry Martindell.
Thomas William Burke.
Frederick Fowles.
Thomas Nolan.
John Smith.

3. In September 1861, six‡ of these prisoners submitted a petition, through the Commissioner of Police at Calcutta, urging that as they had been made to undergo their sentences of imprisonment with labor before the expiration of their sentences of Penal Servitude, they were entitled to be released as soon as their sentences of imprisonment with labor expired, and before the termination of the remainder of their terms of Penal Servitude. The petition was referred to the Advocate General, who in October 1861, gave it as his opinion, that the irregularity represented by the prisoners did not entitle them to release, they having been, at the time they broke Jail, and at the time they were tried for that offence, subject to imprisonment and hard labor while in intermediate custody, and the punishment which they had undergone since their last conviction being that which was warranted by their former conviction and to which they were still liable. In accordance with this opinion the Commissioner of Police was instructed in November 1861 to explain to the prisoners that the irregularity brought by them to notice did not entitle them to release.

‡ John Davis.
James Foard or Ford.
Thomas William Burke.
Joseph Wilkinson.
Charles Alfred Sandes.
Henry Martindell.

4. As the prisoners Frank Williams, John Pendergast, Thomas William Burke and Frederick Fowles urge in their present petitions the same irregularity, as annulling their sentence and entitling them to release, I am directed to forward herewith a copy of the petition and correspondence referred to in the preceding paragraph, and to request that the same order that was passed in November 1861 may now be again communicated to the petitioners.

5. The prisoners Henry Martindell, Lewis Harding, John Davis and James Foard or Ford enquire in their petitions whether they will again have to undergo the sentence of imprisonment with labor, which they say they have already undergone in the House of Correction. As

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14th March 1863.

The reasons of our humbly petitioning the Government of India, is that we are undergoing the sentence of Penal Servitude from 4 to 6 years, when we were subsequently tried for escaping from prison and was sentenced to six months' additional imprisonment with hard labor, this last sentence to commence from the date of the former sentence of Penal Servitude expires. We most humbly beg to state that we have been compelled to put up our last sentence of six months' additional imprisonment first, which sentence expires on the 4th, 5th, 6th and 11th October 1861, and our former sentence is yet unexpired.

We most humbly beg to state that we are perfectly unable to say whether this legal flaw entitles us to the benefit of our freedom, or if it nulls the former sentence of Penal Servitude, these questions we are not in a position fit to answer, and unable to pass an opinion on the matter, but most humbly beg leave it to the superior and powerful judgment of the kind and just Government of India, who, we most humbly trust, will grant us the benefit of such a flaw, if any benefit can be derived from it.

Besides the legal flaw which we have mentioned, we beg to state, that there are others yet of a more serious nature existing in one of our cases, a prisoner by the name of Thomas William Burke was tried twice for the same crime and on the same charge, on two separate dates, before two Judges separately, after having been found guilty on the same charge on the first day of his trial he was sentenced to six months' imprisonment, after he left the prisoners for the space of half an hour, was recalled into Court, placed into the box, and his sentence revised by the Judge from six months' imprisonment to six months' imprisonment with hard labor, this last sentence to take effect after his former sentence expires that of Penal Servitude, this sentence to be in addition to the former one.

Such is the nature of our petition, which we most humbly beg to lay before the Government of Bengal, who is at all times ready to grant justice and redress to those who [illegible] themselves in any way greived.

We most humbly beg to conclude this our humble petition, with a hope if any benefit can be derived from such legal flaws as we have taken the liberty to bring forward, that it may be granted to us.

May we further respectfully beg the favor of an answer regarding the conclusion the Government of Bengal may have come to.

(Signed) JOHN DAVIS.
(„) JAMES FOARD.
(„) THOS. WILLIAM BURKE.
(„) JOS. WILKINSON, &c.

From J. MONRO, Esq., Officiating Under Secretary to the Government of Bengal; to the Solicitor to Government, dated Fort William, the 9th October 1861, No. 349A.

Judicial—Jails.

I am directed to forward to you the accompanying copy of a letter No. 864, dated the 26th ultimo, from the Commissioner of Police, Calcutta, giving cover to a petition from certain European prisoners in the Calcutta House of Correction.

2nd. The petitioners while undergoing their sentences of Penal Servitude broke Jail and were severally sentenced to six months' imprisonment with labor to commence after the expiration of their former sentence of Penal Servitude. Owing to some irregularity they have been made to undergo their sentence of imprisonment before the expiration of their term of Penal Servitude; on account of which they submit they are entitled to release as soon as their sentence of imprisonment expires, and before the termination of the remainder of their term of Penal Servitude. On this point I am desired to request that you will obtain and submit the opinion of the Advocate General.

From F. C. SANDES, Esq., Solicitor to Government; to J. MONRO, Esq., Officiating Under Secretary to the Government of Bengal, dated Fort William, the 31st October 1861, No. 593.

I have the honor to acknowledge the receipt of your letter No. 349A, dated 9th instant, and in reply beg to forward herewith, for the information of the Honorable the Lieutenant-Governor of Bengal, a copy of the Officiating Advocate General's opinion on the petition presented by certain European prisoners in the House of Correction to be released from the sentence of Servitude imposed upon them.

OPINION.

I am of opinion that the irregularity which, it is stated, has occurred with a regard to the carrying out of the sentences against the prisoners, does not entitle them to be released. The sentence passed by the Supreme Court on the charge of prison-breaking were perfectly regular in form. At the time they broke out of prison, and at the time when they were tried for that offence, the prisoners were all subject to imprisonment and hard labor while in intermediate custody, until they could be conveniently removed to carry out their term of Penal Servitude under Act XXIV of 1855. The punishment which they have undergone since their last conviction was therefore that which was warranted by their former conviction, and which they are still liable. I am not aware that any arrangements have as yet been made for the removal, under Section VI of the Act above referred to, of prisoners sentenced to Penal Servitude. But even of this has been so, and if these particular prisoners have not been removed by reason of their being detained in the House of Correction to undergo their respective sentences for prison-breaking, that irregularity would not entitle them to claim their release. The Section is not imperative as to the time at which Penal Servitude Convicts are to be removed.

The proceeding in the case of Burke has been entirely misconceived by the petitioners. It was perfectly competent for either of the Judges to correct or alter the sentence at any time during the Sessions at which the prisoner was tried.

(Signed) J. H. COWIE,
Officiating Advocate General.

The 29th October 1861.

From J. MONRO, Esq., Officiating Under Secretary to the Government of Bengal; to the Commissioner of Police, Calcutta, dated Fort William, the 14th November 1861, No. 369A.

Judicial—Jails.

I am directed to acknowledge the receipt of your letter No. 864, dated the 26th September last, and in reply to observe that the petition therewith forwarded, from John Davis and five other prisoners cannot be entertained.

2nd. You will explain to the prisoners that the irregularity which they state has occurred with regard to the carrying out of the sentences against them does not entitle them to be released; and that they have entirely misconceived the proceeding in the case of one of them (the prisoner Burke) as it is perfectly competent for the Judges of Her Majesty's Supreme Court to correct or alter the sentence at any time during the Sessions at which the prisoner was tried.

OPINION.

I am of opinion that it will be the legal and proper course to remove these prisoners from the Ootacamund Jail to the Calcutta Jail on the expiration of their respective terms of Penal Servitude. The removal of the prisoners to the Ootacamund or any other Jail than that of Calcutta (which is the proper prison for offenders sentenced by the Supreme Court) has been lawfully effected under Act XXIV of 1855, by reason of their having been sentenced to Penal Servitude. But the Act does not apply to the further sentence of imprisonment with hard labour. The power of removal under Section 8 of the Act only applies to sentences of imprisonment for a term exceeding

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one year. The Calcutta Jail or House of Correction is the only prison in which these prisoners can legally undergo the further sentence of six months' imprisonment.

(Signed) J. H. COWIE.

31st December 1862.

(True Copy.)

(Signed) F. C. SANDES,
Solicitor to Government.

(True Copy.)

(Signed) J. H. CASHMAN,
Offg. Registrar, Bengal Secretariat.

No. 72. ORDER THEREON, 14th March 1863, No. 399.

Communicated to the Inspector General of Jails and to the Sub-Judge of Ootacamund.

2. The Sub-Judge will communicate to the prisoners named in paragraphs 4 to 8 the substance of the replies to their petitions, as given by the Government of Bengal.

3. Mr. Nesbitt's attention will be drawn to paragraph 9. He will state, for communication to the Government of Bengal, whether the papers furnished with the Convicts afford the information referred to in paragraph 10.

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

Exd. T. McMootry.

No 399. The 14th March 1863.

Communicates to the Sub Judge of Salem Directions that he cause to be communicated to the Prisoners named, the substance of the replies to their petitions as given by the Govt. of Bengal.

Judicial 1863 Department

No 399

Proceedings of the Madras Government

dated 14th March 1863—

Directing the Sub Judge of Cuddapah to communicate to the Prisoners named, the substance of the replies to their petitions as given by the Govt of Bengal.

No 2121

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9. He will state, for communication to the Govt of Bengal, whether the papers furnished with the Convicts afford the information referred to in para 10.

The Inspector Genl of Jails
Sub Jail, Octacamund
dated 18

Rec'd 28th August 1862 — 279 & 280
— 4th Letter — Octr 1863.
— 22d Do — — 222 — 223
— 19th Jan 1863 — 89 — 90

Judicial 1863 Depart

From
The Secretary to the Govt of Bengal — No 112.

Dated Rec'd 5th Feby 1863 — No 457
Enclos

Four convicts
Seven Stones on the Children
submitted by eight Convicts
who were removed to the Alipore
Convict Prison from Calcutta
last year.

71—72.

William Alder