M.R.O. 1—39,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial **DEPARTMENT.**

G.O. No. 1568 Press ~~Mis.~~

239-241

Dated 31 — 10 — ~~19~~ 1864

3/3

Not to be folded or roughly handled

Read the following papers :—

No. 239. From P. GRANT, Esq., Magistrate of Coimbatore; to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George, dated Coimbatore, 19th July 1864, No. 55.

The Joint Magistrate of Coimbatore, Mr. Sullivan, has brought to my notice a case in which the law as it now stands cannot be carried out, and seems to require modification. Under the provisions of Chapter X of the Criminal Procedure Code, any Magistrate is empowered to fine parties for certain offences, and, in default of payment, to confine them in the Civil Jail for one month, unless such fine be sooner paid.

2. There is but one Civil Jail in the low country portion of this District, and it might happen that a person might be fined, and in default of payment be ordered to be confined seven days in the Civil Jail, which is, for instance in the case of Caroor, the Joint Magistrate's head quarters, 83 miles distant. As the period of imprisonment runs from the date of sentence, the prisoner would, perhaps, reach the Jail just as it had expired, in which case he would have to be released; but it might, and probably would happen if the prisoner had been sentenced at Colligal, 100 miles distant from the Civil Jail, that the sentence would expire before the prisoner reached the Jail, in which case the Constable who held a warrant, directing him to make over the prisoner to the Jailer, would be unable to do so, without detaining him in illegal custody, and even then the prisoner would not have been confined in the Jail.

3. Under these circumstances, I beg to recommend that, for the purpose of Chapter X of the Criminal Procedure Code, all Subsidiary Jails be declared Civil Jails, so far at least as the confinement of Natives is concerned.

Referred for the opinion of the Advocate General on the suggestion made in the last paragraph of this letter.

FORT SAINT GEORGE,
31*st August* 1864.

(Signed) J. D. SIM,
Secretary to Government.

No. 240. From J. R. BOYSON, Esq., Government Solicitor, Madras; to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Madras, dated 21st October 1864, No. 565.

I have the honor to acknowledge the order of Government noted in the margin, requesting the Advocate General's opinion on the suggestion of the Magistrate of Coimbatore, for declaring Criminal Jails to be also Civil Jails for the purposes of Chapter X of the Criminal Procedure Code.

Dated 31st August 1864, and endorsed on letter from Magistrate of Coimbatore to Government of 19th July 1864, No. 55.

2. I have submitted the matter for the consideration of the Advocate General, and have also conferred with him on the subject; and,

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

Proceedings of the Madras Government, Judicial Department,

31st October 1864.

COPY—OPINION.

I do not think that the Government has any power to carry out the suggestion contained in the 3rd paragraph of the letter of the Magistrate of Coimbatore, nor do I think that the suggestion ought to be carried out, even if the power existed.

2. The object of the Legislature, in Chapter X of the Criminal Procedure Code, was to save parties committed for contempts of Court from the disgrace of being imprisoned in *Criminal* Jails.

3. If all the Criminal Jails were *really* partially converted into Civil Jails, with such provisions and distinctions as are ordinarily made between imprisoned debtors and persons awaiting criminal trial, or undergoing their sentences, there would then be such places of custody for persons committed for contempt of Court, as the Legislature contemplated when framing Chapter X of the Criminal Procedure Code.

4. But to *declare* Criminal Jails *Civil* Jails, merely for the special purposes of Chapter X of the Criminal Procedure Code, and to draw the proposed distinction between Europeans and Natives, would be to give the go-by to the intention of the Legislature, which framed Chapter X of the Criminal Procedure Code, by a merely nominal alteration of the existing Jails, the real character of which would remain precisely the same as at present.

5. No doubt the inconveniences which the Magistrate points out may occasionally arise in practice, though I think they may be avoided by a little judicious foresight.

6. Possibly the condition of this Presidency, with respect to the distance between our Civil Jails, may not have been known at Calcutta; possibly the Bengal Presidency may be so well supplied with Civil Jails, that the provisions of Chapter X of the Criminal Procedure Code may exactly suit the state of things there. But I think a note of all such difficulties as the present ought to be made, with a view to their being brought forward, considered, and provided against on any future general re-consideration of the Code.

7. As the Governor General has recently pointed out, piece-meal amendments of our Codes are to be deprecated, unless the necessity is paramount; whence the proper course appears to be, to note cases like the present for future reference.

(Signed) J. B. NORTON,
Advocate General.

MADRAS, 19*th October* 1864.

(True Copy.)

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

No. 241. ORDER THEREON, 31st October 1864, No. 1568.

Communicated to all Magistrates of Districts.

(True Extract.)

A. J. ARBUTHNOT,
Chief Secretary.

To the Magistrate of

Exd. J. Tulloch.

Proceedings of the Madras Govt.

Read the following letters—

From the Magistrate of Coimbatore — Letter 19 July '64. No. 55.

" the Govt. Solicitor — 21 Oct. — 566.

Order — 31 Oct/64 No 1568.

Communicated to all Magistrates of Districts.

The Magistrate of the several Districts