M.R. O. 1—38,000—16-10-39.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial **DEPARTMENT.**

G.O. No. 1572 Press / ~~Mis.~~

244-246
Dated 31-10- 19 1864

3/3

Not to be folded or roughly handled

Read the following papers:—

No. 244. From G. A. BALLARD, Esq., Magistrate of Malabar; to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George, dated Sultan's Battery, 21st September 1864, No. 128.

Samuel Soobaya, the holder of the accompanying Savings' Bank book, was some months ago tried for criminal breach of trust, and sentenced to one year's rigorous imprisonment, and to pay a fine of 800 Rupees.

2. A portion* of the fine was recovered by distraint of his property. As I consider that Soobaya's deposits in the Savings' Bank should also be carried to the credit of Government, I have the honor to request your instructions as to whether the amount, which, with interest, amounts to Rupees 22-5-10, can be paid on a receipt to be granted in my Magisterial capacity, or what other course should be pursued.

* Rupees 143-4-0.

Referred for the opinion of the Advocate General.

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

3rd October 1864.

No. 245. From J. R. BOYSON, Esq., Government Solicitor, Madras; to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Madras, dated 22nd October 1864, No. 567.

I have the honor to acknowledge the order of Government noted in the margin (with its enclosure), relative to the proposed application of a sum of money standing at credit of a convict's account with the Government Savings' Bank, in further reduction of a fine inflicted upon him by way of punishment for criminal breach of trust.

Dated 3rd October 1864 and endorsed on letter from Magistrate of Malabar to Government of 21st September 1864, No. 128.

2. I have submitted them 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 enclosure above noted.

COPY—OPINION.

I think that there exists no legal process by which the money, standing to the credit of Samuel Soobaya in the Government Savings' Bank, can be made available for the payment of the fine imposed upon him for criminal breach of trust under the Indian Penal Code.

2. The only machinery provided by the Legislature for the levy of such fines is that of Section 61 of the Criminal Procedure Code. The warrant issuable under that Section reaches only to moveable property within the jurisdiction of the Magistrate of the District in which the Court that tried the offender is situated.

3. In the present case, the money is in Madras. I believe there are no local branches of the Central institution.

4. Section 64 of the Indian Penal Code appears to contemplate provision (by further imprisonment) for cases in which it is not probable that the whole fine inflicted will be forthcoming; but there is nothing in either the one Code or the other which makes a fine inflicted in one District leviable in another. Indeed, the Criminal Procedure Code (as pointed out above) expressly limits the levy to the District in which the warrant issues.

Proceedings of the Madras Government, Judicial Department,
31st October 1864.

5. Much difficulty was formerly experienced in England in regard to levying fines and penalties. 3 Geo. 4, C. 46, S. 2 provided a general course for the payment of penalties, for the recovery of which there was no express statutary direction; and it was only so lately as 11 and 12 Vic., C. 43 that a provision was made for levying by distress within the jurisdiction of other Justices than the one who granted the warrant.

6. If it should be thought advisable to introduce similar machinery into India, for levying fines beyond the jurisdiction of the District in which the offender is tried, an addition might be made to Section 61 of the Criminal Procedure Code, when that Act next comes under review by the Legislature.

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

(True Copy.)

(Signed) J. R. BOYSON,
Government Solicitor

No. 246. ORDER THEREON, 31st October 1864, No. 1572.
Communicated to all Magistrates of Districts.

(True Extract.)

A. J. ARBUTHNOT,
Chief Secretary.

To the Magistrate of
„ Magistrate of Malabar, with Bank book returned

Exd. J. Tulloch.

Proceedings of the Madras Govt.
Read the following letters—
From the Magistrate of
Malabar — Recd 21st Sept. '64 No. 128.
the Govt. Solicitor — 22nd Oct. — 867
Order— 31st Oct. No. 1572
Communicated to all Magistrates of Districts.

To the Magistrate of
the Journal Book
Magistrate of Malabar—
with Bank Book returned.