M.R.O. 1—23,000—15-10-25.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 1169 Press Mis.

6-11

Dated 2 . 8 - 19 1866

12/13

Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department,
2nd August 1866.

Read again letter from the Magistrate of Coimbatore, dated 5th, and recorded in Proceedings of Government, dated 13th June 1866, No. 930.

Read also the following papers :—

No. 8. From P. GRANT, Esq., Magistrate of Coimbatore, to the Acting Chief Secretary to Government, Fort Saint George; dated 20th June 1866, No. 53.

With reference to the Proceedings of Government, Judicial Department, and their Order thereon, dated 13th June 1866, No. 930, I beg to forward, by request of the Joint Magistrate of Wellington, the marginally noted papers, and also his orginal covering letters to my address.

1 Copy of a letter from the Joint Magistrate of Wellington and Coonoor, dated 16th June 1866, No. 119, to the Session Judge of Ootacamund.
1 Do. of order of the Session Judge of Ootacamund.
1 Do. of a letter from the Joint Magistrate of Wellington and Coonoor, dated the 18th June 1866, No. 120, to the Session Judge of Ootacamund.
1. Do. of order of the Session Judge of Ootacamund.
1 Do. of do. do. do. dated 19th June 1866.

2. In the latter part of paragraph 2 of the Joint Magistrate's letter to the Judge of Ootacamund, dated 18th June, allusion is made to a letter, dated 9th June, to my address. When I wrote to Government on the 5th June, I was under the impression, the Jailer having "by order" of the Judge refused to admit Layett into the Jail at Ootacamund, that he had been retained by the Police at Wellington; but on receipt of the Joint Magistrate's letter of the 9th June, as I heard nothing further of Layett, I concluded that the Judge had, on further consideration, directed that he should be admitted for safe custody into the Jail. Subsequently, however, I learnt, quite by accident, that Layett had been released by the Police, and was living at large in Coonoor. Soon afterwards, on receipt of the High Court's orders to commit Layett to Madras, the Joint Magistrate issued a warrant for his re-apprehension, and committed him as directed.

From Captain C. J. RICHARDS, Justice of the Peace, and Joint Magistrate of Wellington and Coonoor, to the District Magistrate of Coimbatore; dated Wellington, 18th June 1866, No. 121.

I have the honor to forward, for your perusal, the accompanying orders, and request, if you coincide with my view of the case, they may be forwarded to Government.

1. All the documents relative to Preliminary Inquiry Justice of the Peace Case No. 2 of 1866, on the file of the Joint Magistrate of Wellington, were forwarded to Government, and by them to the Session Judge of Ootacamund, for his explanation.

2. From the above fact, I opine the matter is in the hands of Government, and to them, and them only, am I bound to give any explanation.

3. The Session Judge of Ootacamund has written me two orders on the subject, and demands my reasons for my procedure, thereby placing me in the false position of having two masters to answer to in "*Preliminary Inquiry Justice of the Peace Case.*"

4. My reading of the Code of Criminal Procedure and Act XIII of 1865 tells me that to the High Court and its order, and to it alone, in a case as above, am I subservient.

5. I have forwarded all information to the Session Judge, but beg to appeal against the legitimacy of his ordering me so to do.

Order

Before furnishing the explanation called for in Government Orders of the 13th June, received this day, the Joint Magistrate of Wellington is directed to submit by return post the following :—

(1). The copy of the remarks passed by the Magistrate or Judge, on the aforesaid warrant (May 28th), issued by him as Justice of the Peace. As Joint Magistrate questions the right

of these Officers, he will state whether, besides the present occasion of which he complains, if such remarks have ever passed before on any warrant issued by him or from his Office.

(2). On what date he despatched to this Court a copy of the preliminary proceedings under which he committed the prisoner to take his trial at the High Court.

(3). Whether the prisoner has been actually in custody of the Police, as per his order, 2nd June 1866, and his order of the 6th June, without any interruption on the part of the Joint Magistrate, and if he is so still.

(4). Agreeably to the instructions of Government, the prisoner will now be admitted into the Jail, the Joint Magistrate having first intimated the exact hour and date of so despatching him, and how long it is probable he will have to remain before the case is sent on to the High Court for trial.

The above all referring to prisoner John Layett.

OOTACAMUND,
15th June 1866.

(Signed) J. W. CHERRY,
Session Judge.

From Captain C. J. RICHARDS, Joint Magistrate of Wellington and Coonoor, to the Session Judge of Ootacamund; dated Wellington, 16th June 1866, No. 119.

With reference to your Order, dated June 15th, the copy of the Records called for is herewith forwarded, viz:—

1st. The Warrant issued by the Joint Magistrate in Preliminary Inquiry Justice of the Peace Case No. 2 of 1866.

2nd. The Session Court order on the above Warrant.

3rd. The second Warrant.

2. No order or remarks by the Session Judge have been made on any previous case committed by the Joint Magistrate of Wellington to the High Court.

3. The preliminary proceedings on the case in question have never been forwarded to the Session Judge, the Clerk of the Crown being the person to whom they should, and have been, sent, according to Section 28 of Act XIII of 1865.

4. The prisoner was received by the Police, according to my order, on the 2nd June 1866, and remained there till the 6th, when, from want of room, he was forwarded to Ootacamund Jail, with a duplicate warrant, and refused, by order of the Jailer, as per copy sent.

5. Having, on the 11th, received instructions from the Clerk of the Crown, that the prisoner was to be tried before the High Court, he was, on the 13th, forwarded to the Madras Penitentiary.

Order.

(1.) In the papers sent by the Joint Magistrate, dated 16th June, the Judge is unable to find the *remarks* passed by the Judge or Magistrate on the Justice of the Peace Case in question. The Joint Magistrate is, therefore, called upon to state *distinctly* to what he referred in his complaint to Government, dated 4th June, when he "questioned the right, &c.;" as to those remarks, there is the *order* of the Court marked C, but nothing else.

(2.) The Joint Magistrate has also failed to state whether there was "any interruption" on his part in regard to the *custody* of John Layett, especially as it is now observed by the endorsement of the Inspector of Police, dated the 8th June, the prisoner was actually "RELEASED"—by whose order?

(3.) Does the Joint Magistrate *deny* that such release was by his order, or without his knowledge, consent, or protest? From the 8th June to the 13th, the day the prisoner was despatched to the Madras Penitentiary, in *whose custody* was the prisoner? He was not in the European Prison. The Police had let him go, and yet he stood committed to the High Court for a criminal offence!! The above requires full explanation.

(4.) The Joint Magistrate will further state whether it is usual, or the *duty* of his office, to send to the Court at Ootacamund a copy of the preliminary, or any proceedings, in all cases disposed of as *Justice of the Peace*, and, if so, *why* it was not done in this case?

(5.) It is necessary that Government should have *immediately* accurate information on each of the above points, and also be shown what was the objection on the part of the Joint Magistrate, in the *first* instance, to send the prisoner direct to Madras, as he has now done. Madras obviously contains the "Criminal Jail," the "nearest" to the Court, to which the prisoner has been committed, and Ootacamund is just in the *opposite* direction.

OOTACAMUND,
17th June 1866.

(Signed) J. W. CHERRY,
Judge.

From Captain C. J. RICHARDS, Justice of the Peace, and Joint Magistrate of Wellington and Coonoor, to the Session Judge of Ootacamund; dated Wellington, 18th June 1866, No. 120.

In reply to Order of the Session Judge, dated 17th June, I beg to observe that I considered all the questions which appeared in your order to me dated 15th were answered. I now have the honor to forward my explanation, according to the paragraphs of your recent order.

1. I never made any complaint to Government against the Session Judge and Officer in charge of Ootacamund Jail. I merely questioned the right of that Officer to write, or order to be written, anything across my warrant as Justice of the Peace, when the warrant was upon a crime only cognizable by the High Court; and on the same grounds I question the right of the Session Judge to send me the order, dated 30th May, and marked C.

2. I do not think it is the Joint Magistrate's duty to keep persons in custody, but to order them to be confined in the proper places as laid down in the Code of Criminal Procedure, or the Acts applicable to the case in point. An interruption did take place in prisoner John Layett's confinement. I issued no order directing the release of John Layett; but after the return of the prisoner and duplicate warrant from Ootacamund, I refused to order the Police to retain him in the Wellington Station House. The fact and reasons for such refusal were forwarded by me to Mr. Grant, the Magistrate of the District, on the 9th June.

3. Should the Joint Magistrate intend to commit a prisoner to the High Court, it is neither usual nor his duty to send the proceedings of the preliminary inquiry by Justice of the Peace to the Session Judge. All Justice of the Peace Cases disposed of by the Joint Magistrate are, of course, forwarded to the Session Judge as the Appellate authority.

4. My objection to send prisoner John Layett, "in the first instance, direct to Madras" was that such a procedure would have been directly contrary to Act XIII of 1865, as well as ignoring a letter on the subject received in this office from the Clerk of the Crown, dated 7th May 1866. The prisoner John Layett was forwarded to Madras, in accordance with instructions received from the Clerk of the Crown on the 11th June.

From Captain C. J. RICHARDS, Justice of the Peace, and Joint Magistrate of Wellington and Coonoor, to the District Magistrate, Coimbatore; dated Wellington, 20th June 1866, No. 122.

I have the honor to forward a copy of an order just received from the Session Judge, and request it may accompany the orders by the said Session Judge, forwarded by me on the 18th instant, for your perusal.

Order.

1. It now appears from the Joint Magistrate's reply, dated 18th June, that he "never made any complaint to Government against the Session Judge," in respect to any remarks upon his Justice of the Peace Case, simply because no such remarks ever existed; the Joint Magistrate's statement upon this point was, therefore, without the slightest foundation.

2. The Joint Magistrate only objects to the *reasons* given by the Officer in charge of the European Prison for refusing to receive a Prisoner, who might have been as well sent to the Lawrence Asylum, had the Joint Magistrate wished to locate him there instead. It has been hitherto as *unusual and unnecessary* to send a supposed criminal to the former Institution as to the latter.

3. In conclusion, the Session Judge observes that the Prisoner in question was actually, while under commitment to the High Court by the Joint Magistrate, set at liberty for five days, in consequence of the Joint Magistrate refusing to "order the Police to retain him (in custody) at the Wellington Station House"—a fact that the Session Judge thinks it his duty to notice, and it will doubtless be remarked upon elsewhere.

OOTACAMUND,
19th June 1866.

(Signed) J. W. CHERRY,
Judge.

No. 9. From J. W. CHERRY, Esq., Session Judge, in charge of European Prison, Ootacamund, to the Acting Chief Secretary to Government, Fort Saint George; dated Ootacamund, 25th June 1866, No. 172.

In acknowledging the Order of Government, of the 13th June 1866, No. 930, calling upon me to submit full explanation of my reasons for declining to receive the Prisoner John Layett into the European Prison, I have the honor to submit the following:—

1. The admission of prisoners pending trial into this Prison is altogether unprecedented.

2. The rules of the European Prison generally, and especially the one quoted in the margin, are directly opposed to the admission of this class of prisoners, and are incapable of being applied to such prisoners.

Rule 83.—"All prisoners on arrival shall be considered to be on probation, and shall be liable to the discipline of the separate system, for such period as the Officer in charge may direct, but in no case for less than three months."
Vide Rules 78, 79, 80, and 90.
Rule 78.—Prisoners on admission will be examined by the Surgeon, and searched by the Head Warder, in presence of the Keeper of the Jail, who will then compare the prisoner with the descriptive Roll received, measure and weigh the prisoner, and enter his name, crime, sentence and description in the book kept for the purpose. Any clothing or property found on the prisoner will be taken from him by the Keeper, and an entry of the same made in the Property Book, for the orders of the Officer in charge. The prisoner will be supplied with prison clothing, and will be removed to his Cell, and his attention be called to the copy of the Prison Rules if he can read—if not, they will be read to him by the Keeper.
Rule 80.—Prisoners will not be allowed to retain any article of their own when admitted into prison. Any thing regularly in their possession, which they may bring with them, will be taken from them and put by against the prisoner's release.
Rule 90.—The ordinary diet is not in any case to be departed from, except on medical grounds.

3. The admission of this class of prisoners would seriously interfere with the internal economy of the Prison, which is by no means adapted either for the reception, or for the treatment, of such prisoners. The Prison Rules which are peculiar to its class, viz., for carrying out penal sentences, would in no case admit of application to prisoners pending trial, who are, at this stage of proceedings, by no means justly amenable to the severe discipline necessary to enforce these rules; added to which such prisoners would be denied the privileges granted to them in virtue of 4 George IV, C. 64, Section 10—"a prisoner for trial or for examination shall be permitted to wear his own clothing, unless such clothing be deemed insufficient or improper." Again, by the same enactment, C. 64, Section 37—"he shall not be compelled to work or labor; but at his own request, or with his own consent, may be supplied with any work not severe, or may, at his own expense, procure any employment, materials, and tools, which the Governor may deem safe and proper." Again, Section 10 of the above—"he shall be permitted to maintain himself, and to procure for himself, and to receive at proper hours, a reasonable quantity of cooked provisions, and malt liquor, not exceeding one pint in any one day of twenty-four hours." These prisoners are further permitted by the same enactment to see their friends on certain days, and between certain hours, without any order, and are further permitted to see their legal advisers on any day, at any reasonable hour, and in private if required.

Many of these privileges, it may be remarked, are enjoyed by prisoners of this class confined in the Madras Penitentiary.

4. To admit prisoners of the kind under consideration would render it a matter of the greatest difficulty for the Keeper of the Prison to know how far he would be justified in relaxing the rules of the prison to meet their case, without involving an amount of correspondence between the Keeper and myself, which would be attended with much inconvenience, and which, it appears to me, ought, if possible, to be avoided.

5. For these reasons, I deemed it inexpedient to admit the prisoner J. Layett into the European prison.

6. I am aware that cases of the kind under consideration are of rare occurrence, but this fact by no means lessens the difficulty in reference to the existing rules already alluded to.

7. Should it be determined upon that prisoners of this class are in future to be admitted into the European Prison, it will be necessary to introduce, without delay, a Code of Rules for their treatment during confinement.

8. I now feel it incumbent upon me to say a few words respecting the steps taken by the Joint Magistrate of Wellington in this case, and first as to the interpretation by the Magistrate of Section 30 of Act XIII of 1865. In regard to the Section, Mr. Grant considers "I have acted in a manner utterly illegal;" and the course laid down, he says, is "so simple, that he feels at a loss to conceive on "what grounds the Session Judge has acted as he has done in the present case." I beg leave to differ with him upon this point. The words of the Section in question are, "pending the directions of the High Court as to the place of trial, every "such British subject as is referred to in the 28th Section of this Act shall (if not "out on bail) be committed by the Justice of the Peace or Magistrate, for immediate "custody, to the nearest Criminal Jail in which he can be *most conveniently* confined. If "the trial shall be directed to take place in the usual place of sitting of the Court, the "Justice of the Peace or Magistrate shall bind over the person charged to appear at "such usual place of sitting, or shall *commit him to the Jail at such place.* If the High "Court shall direct that the person charged be tried elsewhere than in its usual place "of sitting, the Justice of the Peace or Magistrate shall bind him over to appear and "take his trial in the place directed, or (as the case may be) shall, if necessary, cause "him to be removed to the Criminal Jail of, or nearest to, the place at which such "person is directed to be tried; and the Officer in charge of such Criminal Jail shall "keep such person in safe custody until discharged in due course of law." Here distinct reference is made to the *place of sitting* of the Court at which the prisoner is to be tried, which in this case is manifestly at Madras, since the High Court invariably sit at that place and there only. In the next place, I would draw attention to the fact that the Section quoted provides that the prisoner is to be sent to the nearest Criminal Jail where he can be *most conveniently* confined. It will doubtless be conceded that the Officer in charge of the Jail is the person most competent to decide whether or not a prisoner can be "*conveniently*" confined therein, and I submit that I have shown that the prisoner in question could not be confined in the European Prison at Ootacamund.

9. It may further be urged that the making use of Criminal Jails as mere lock-up is contrary to practice; the experience of the present keeper of the European Prison as an old Police Inspector proves the truth of this, in the case of the Penitentiary of Madras, where all attempts at converting or making use of the Jail as a lock-up is objected to by the Commissioner of Police, and the practice discountenanced as far as possible.

10. When, in accordance with the Order of Government, the Officer in charge expressed his readiness to admit the prisoner Layett, he was informed that he had been already sent to the Penitentiary at Madras. Why, may it not reasonably be asked, was the prisoner not sent there in the first place, as was done in the case of Bunyan, committed for trial at the last Sessions at Madras by the Joint Magistrate of Wellington, as was also done in the case of Alexander Bain from Coorg at a previous Sessions, and again by Major R. Campbell in the case of Wallis, who, it may be observed, was detained for intermediate custody at the Police Station previous to his transmission to the Penitentiary?

11. If the European Prison is to be turned into a "Tannah," a lock-up for prisoners pending trial, it may, with equal reason, be used as a place of confinement for European Civil Debtors, for whom the only accommodation, and that very bad, at present, is in the *Native* Jail.

12. I wish particularly to call the attention of Government to the total want of foundation for the statement of the Joint Magistrate, with reference to remarks passed in a Justice of the Peace Case. He has subsequently stated that he made no complaint on this head; then, what meaning, I would ask, is to be attached to the words used by him, "I question the right of "any Magistrate or Judge, except those "belonging to the High Court, to pass any remark in a Justice of the Peace Case." If this does not clearly, and most unmistakably, imply that remarks had been passed in a Justice of the Peace Case, what other inference can be drawn?

Vide the letter from Captain C. J. Richards to the Chief Secretary to Government, dated 4th June 1866, No. 106, as per Government Proceedings, 13th June 1866.

13. Further, Captain Richards, from his own admissions, appears to have allowed the prisoner to have been at liberty for 5 *days** *after* he had committed him for trial to the High Court—a circumstance that, as it was duly brought by him, as he says, to the notice of the Magistrate, I conclude, he, Mr. Grant, has duly reported to Government.

* From 8th to 13th June 1866.

14. With reference to the Keeper writing across the warrant of the Joint Magistrate, at which he takes objection, I would merely observe that the Keeper did no more than the Police did on the same document, when the prisoner was declined by them, and what is, moreover, usually done, when a reference to the Judge is not practicable at the time, and whose position as Officer in charge of Prisoners and Convicts is so anomalous. The impropriety of a judicial Officer having to perform these "incongruous" duties has been so often before pointed out by me to Government when Judge of Salem, that I need here only allude to this instance as an illustration of what I have before urged.

No. 10. From P. GRANT, Esq., Magistrate of Coimbatore, to the Acting Chief Secretary to Government, Fort Saint George; dated Coimbatore, 5th July 1866, No. 61.

As directed in Mr. Under Secretary Grose's Official Memorandum, dated 4th Instant, No. 217, I have the honor to forward, herewith, the Wellington Cantonment Joint Magistrate's letter of the 9th ultimo, referred to in paragraph 2 of my letter to Government under date the 29th idem, No. 53.

From Captain C. J. RICHARDS, Justice of the Peace, and Joint Magistrate of Wellington and Coonoor, to the Collector and Magistrate of Coimbatore; dated Wellington, 9th June 1866, No. 109.

Reverting to my letter of the 4th June, in consequence of a letter from the Inspector of Police at Wellington pointing out that the station at that place was not the receptacle for prisoners after the Magistrate's decree, coupled with which is the fact that there is accommodation in the aforesaid station-house for not more than six prisoners, in which are three at present, and two more hourly expected from Paulghaut, thereby only leaving room for one casualty in this large District, I, on the 6th, issued a duplicate warrant directing John Layett to be confined in the Ootacamund Jail, to which he was taken and returned "by order" of the Jailer. I refused to issue another order on the subject of the above prisoner, and directed the Police to take him back again to Ooty, saying "I had issued my warrant, and would not change it."

2. I trust I have not done wrong in the procedure, and that you, as Magistrate of the District and my superior officer, will bear me out in my decision.

No. 11. ORDER THEREON, 2nd August 1866, No. 1169.

The Government cannot consider that Mr. Cherry's conduct in this matter was correct, and they deem his explanation unsatisfactory.

2. His reference to the provisions of the Statute of George IV is entirely beside the mark, and he has misapprehended the intention of Act XIII of 1865, which expressly contemplates the exercise of jurisdiction by the High Courts "*at places other than the Presidency towns*," and for this purpose provides that, pending the decision as to the place where a prisoner shall be tried by those Courts, he "shall be committed for intermediate custody to the nearest Criminal Jail in which he can be most conveniently confined."

3. The Government consider that the Joint Magistrate of Wellington acted in exact conformity with this provision in forwarding the prisoner Layett to the Ootacamund Jail; and Mr. Cherry ought to be aware that no set of Jail rules can over-ride the provisions of an Act of the Legislature.

4. Even had the case been otherwise than it was, the Government are of opinion that, under the peculiar circumstances, Mr. Cherry would have exercised a wise discretion in providing temporarily for the safe keeping of the prisoner in the Jail under his charge. The Police are not the proper custodians of a committed prisoner, and Mr. Cherry must have been aware that there was no proper place of confinement for the prisoner other than the European Jail.

5. The Government regret to be again obliged to remark on the objectionable manner adopted by Mr. Cherry in the conduct of official business. There was nothing whatever in the call on him for explanation to render necessary the communications on which he immediately entered with the Joint Magistrate, and which

the right of that Officer to write

are marked both with an imperiousness and a levity which the Government desire to see banished from the correspondence of persons in public employment.

6. The Magistrate of Coimbatore will point out to the Joint Magistrate that he was not justified in allowing the prisoner to go at large, even though the Officer in charge of the Jail failed in his duty.

7. The questions of the charge of the Ootacamund Jail, and the provision of additional means for confining prisoners on the Hills, will be separately considered.

(True Extract).

Chief Secretary.

To the Session Judge of Ootacamund.
„ Magistrate of Coimbatore.
„ Inspector General of Jails.

Exd. J. H. Buras.

Wellington
Joint Magts Office
18th June 1866.

120

From

Captain C. J. Peeland
Justice of the Peace and Joint
Magistrate of Wellington

To

J. W. Cherry Esquire
Sessions Judge of Coimbatore

Sir,

In reply to Order of the Sessions
Judge dated 15th June. Beg to
observe that I considered all the points
which appeared in your Order to me
dated 15th ultimo answered. I now have
the honor to forward my explanation
according to the paragraphs of your
recent Order.

1- Never made any complaint to
Government against the Sessions
Judge and Officers in charge of
Coimbatore Jail. Never questioned
the right of that Officer to make

Or Order to be written anything
across my warrant as Justice of
the Peace, when the warrant was
upon a Crime only Cognizable by the
High Court, and on the same grounds
I question the right of the Sessions Judge
to send me the Order dated 30th May
and marked C.

3. I do not think it is the Joint
Magistrates duty to keep persons
in Custody but to order them to be
confined in the proper places as laid
down in the Code of Criminal Procedure
or the acts applicable to the Case
in point. An interruption did take
place in Prisoner John Laycock's
Confinement. I issued an Order
directing the release of John Laycock
but after the return of the Prisoner
and duplicate warrant I was

Cotemanded

Cotemanded. I refused to order the
Police to retain them in the Wellington
Station House the fact and reasons for
such refusal were forwarded by me
to Mr Grant the Magistrate of the District
over the 9th June

4. Should the Joint Magistrate
intend to Commit a Prisoner to the
High Court it is neither usual nor
his duty to send the proceedings
of the Preliminary Inquiry by Justice
of the Peace to the Sessions Judge
All Justice of the Peace Cases disposed
of by the Joint Magistrate are of Course
forwarded to the Sessions Judge as the
Appellate authority

5. My objection to send Prisoners
John Laycock in the first instance
direct to Headquarters was that such
a proceeding would have been contrary
Contrary to Act XIII of 1865 as well

as enclosing a letter on the subject
received in this Office from the Clerk
of the Crown dated 7 Jany 1866 - The
prisoner John Lagette was forwarded
to Madras in accordance with the
instructions received from the Clerk
of the Crown on the 11th June -

I have &c
Signed C J Hamilton Captain
Justice of the Peace and Joint
Magistrate of Bellary & Cooum

True Copy

Archibald Richards Captain
Justice of the Peace and Joint
Magistrate of Bellary and
Cooum -

and a

Order

1. It now appears from the Joint Magistrate's
Report dated 18 June that he "never made
any Complaint to Govt against the
Sessions Judge" in respect to any
Remarks upon the Justice of the Peace
case - simply because no such Remarks
ever Existed; the Jt Magistrate states
merit upon this point was respectfully
without the slightest foundation -

2. The Jt Magte only objects to the 16th Para
Europeans Prisoner for refusing to receive
a Prisoner who might have been as
well sent to the Laurence Asylum
had the Jt Magistrate wished to
locate him there instead. Jt Magte
instructed as unusual & unnecessary to
send a disposed Criminal to the
former Institution as to the latter

3. In Conclusion the Sessions Judge
states that the Prisoner no Question

was actually while under Committment
to the High Court by the Jt Magistrate
at liberty for 5 days in Consequence
of the Joint Magistrate Refusing to
order the Police to Retain him in
Custody at the Wellington Station
House a fact that the Serious Judge
was at his duty to notice, did it
will doubtless be Remarked
upon elsewhere

Sgd J.W. Cleverly
Judge

Delivered
June 19/66

True Copy

Charles Richards Captain
Jnd Magistrate Leeward Islands

Order

1/ In the Paper the Judge the Magistrate
delivered at 10 hours, the Judge was unable to find
the Remarks he passed by the Chief Justice
on the Conduct of the Police Case in question
but the Joint Magistrate is therefore called upon to
state distinctly to what he referred in the
Complaint to Court dated 4 June, when he
questioned the right of the three remaining Members
in the order of the Court mentioned Clerk without
oath

2/ The Joint Magistrate has also failed to state
what Remarks were any exceptions on his part
in regard to the Conduct of John Lagoto
especially as it is now observed by the Judge
Report of the Chief Justice dated the 8th June
the Prisoner was actually released by
order

3/ Does the Joint Magistrate clearly that such
release was by his order, or without his
knowledge, Consent, or protest? From the Letter
to the 18th the day the Prisoner was despatched
to the Leeward Penitentiary, in which Complaint
was the Prisoner? He was not in the
European Prison the Police had Letham
and they had Committed to the High Court
for a Criminal Offence!! the above requires
full explanation

4/ As I will further state whether it

letter from the Keep of Newgate dated 8th August
Read again

Ord. 3. Clerk of the Crown

Ord. 4. Ld. Mayor

Circular to Sheriffs

Ord. 5. Chief Constables

Ord. 6. Governor

Charge of Prisoners

Ord. 7. Governor

Ord. 8. Surgeon

Ord. 9. Chaplain

Orders 2nd August 1866 & 1169

Ord. 10. Clerk of the Crown

Ord. 11. Clerks contracting

the Register

consent and

Ord. 12. Governor

his explanation

satisfactory

his expenses & the

provisions of the Statute

of Geo. IV. c. 57 and duly

visits the Prisoners and

WDH

[illegible] of his office to send to the Clerk of the Crown at Old Bailey, a copy of the Preliminary or any Proceedings in all cases disposed of in virtue of the Peace, and of Oyer, unless it were not done in other cases.

It is necessary that a Returnable should have immediately & accurate information in each of the above points, and also to know whether the objections on the part of the Grand Inquest to the finish Sessions and the Prisoners sheet to Newgate, to be have been done - Newgate obviously contains the Criminal Clerk the nearest to the Court to which the Prisoners have been committed, and Old Bailey to that in the opposite direction.

Old Bailey Signed. W. H. Cleaver Sheriff
June 17/1868.

(Circular)

Captain
Keeper of the Peace and
Chief Magistrate of
Old Bailey Sessions

the Sheriff would have
& exercised a discretion
in providing temporarily
for the safekeeping of the
prisoner in the Gaol under
his charge. The Police
Act vests the superintendence
for committed prisoners
and the Sheriff &
Gaoler have no power
to discharge prisoners
but the Justices of the Peace
for the District of Moreton
& Darling Downs sitting
at the Police Office
in Brisbane

[This note should be
omit. N. transferred to the opening
of the Magistrates Powers]

The Act expressly
again obliged & made
it the objectionable duty
of the Sheriff
adopted by the Chairman
the contrary opinion
Executive
Darling Downs in the
Gaoler in Limestone
& Ipswich
Gaol
Commissioners

to keep
& Clarence River
& to receive
& detain
& to immediately

to keep & detain prisoners committed for immediate custody of the nearest Criminal Gaol in which they can be most conveniently confined."

The Act provides that the Justices shall by Warrant commit the prisoner to the Nearest Gaol & that the Sheriff & Gaoler shall receive & detain such prisoner under the further circumstance

entered with the first Magistrate which ~~and he indicates a desire~~ marked by the initials
~~to shift the blame from~~ an impression that
~~himself to another officer~~ a desire to shift
~~and the indications~~ overbearing from himself
~~from the~~ communications ~~Executive~~ has marked from
~~Executive~~ ~~is keeping~~ the correspondence
~~of useful~~ communications of Justice in putting
as to the ~~Officers~~ of other parts. employment.

Mr. Magistrate of Coimbatore
will point out to the first
Magistrate that he cannot be
justified in allowing the
prisoners to go at large
from the Officer in charge
of the Jail entitled in his duty.

~~11 July 66~~ [illegible]

The question of the
charge of the Central Jail
and the provision of adequate
accommodation for confining
prisoners on the Hills
will be separately considered.

[illegible]
11 July 66.

The Indian Judges of Bombay
Right of Circuit } dissent
Disposal of Civil }

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Mr Cherry was simply deemed to Assistant
Judge, in contravention of a specific provision
in an Act of the Indian Legislature which
had been brought to notice by the
Commissioner Magistrate, he had appointed
to receive into the Jail at Coimbatore, an
European Prisoner committed for trial
before the High Court.

In reality, Mr Cherry attempts to justify
his proceedings by violations from an
Act of Parliament of the reign of Queen
Ann 4th, - from certain Jail rules, & from
the Indian Act 13 of 1865.

I have duly considered these and Mr.
Cherry's observations as to what may be
necessary, if the admission to the Jail,
of European Prisoners under commitment,
must become the rule. but I am sorry
myself unable to see that any part
of his reasoning serves to relieve him
from the blame which clearly attaches
to the unasked for and ill judged
step of which his Magistrate, Captain
Richards, has most justly complained.

It must have been obvious to
Mr Cherry, a Civil Assistant Judge, that
no set of local jail regulations could
nullify or any wise affect an
enactment of the Legislature, which
legalised, in plain terms, a simple

specific measure ~~touching~~ the custody pending trial, of an European prisoner.

The Act of Parliament which has been taken up, in no way affects the matter under notice, which is only why Mr Cherry set aside the law that had been pointed out to him.

In regard to the manner in which Mr Cherry appears to have read Act 13 of 1835, it can only be said that he has utterly misunderstood the Act & has wholly perverted the course of procedure wh. it lays down for observance.

But apart from the serious indiscretion exhibited by Mr Cherry in refusing to receive the Prisoner into Jail, he is, I consider, much to be blamed for entering into the correspondence with Captain Richards wh. accompanies Mr Grant's letter of the 20 ultimo.

There was nothing in the order of Govt. wh. Mr Cherry now cites to render it necessary that he should issue orders to Captain Richards of the nature of those now sent up in copy.

Possibly, Captain R— may have been most culpable in allowing the Prisoner in question to be at large after Mr Cherry's refusal to bring him under restraint, [tho' I do not see what he could otherwise do, if he feel sure of his man not going off.] Still, that has nothing to do with Mr Cherry's own previous act, and, writing as an old Judicial Officer, I feel bound to remark that the style in wh. Mr Cherry, as Sessions Judge, has addressed Captain R as Magistrate [in orders wh. he had no business to issue] is objectionably dictatorial & imperious.

It seems to me also worthy of notice that parts of the corres.s from Mr Cherry wh. Mr Grant has sent up ~~[illegible]~~, are marked by a degree of flippancy & offhandedness that ill consists with his position as Judge of a Sessions Court.

As respects the incompatibility of his position in charge of the Ootacamund Jail, there is some reason. But, in reality, as C & S. J of Sooly, he has so very little to do that it is an act of charity almost on the part of Govt. to supply him with a Jail charge as occupation.

It ought, however, no doubt to be under charge of the Military Cantt. Magistrate & arrangements may be at once be made for so arranging.

Major Ross Campbell

4 July 66

W.D.

The conduct of Mr Cherry in refusing to receive an individual arrested at the warrant of the Committing Magistrate was most injudicious and blameable. The Prisoner ought to have been received in conformity with the terms of the law and secured. It was open to Mr Cherry whatever inconvenience to bring under the notice of Govt. the expediency of providing additional accommodation for cases of the

1128

had in connection with the jail enclosure.
The style of language adopted by Mr Cherry in his
communication is unbecoming a judicial officer &
and I think that he ought to be censured either
by Government or by the High Court if that
is the proper course. Indications of an unseemly
levity on the part of Mr Cherry have been brought before
the attention of the Prisoner and, however unbecoming
the act it will be hardly left to do here further.
He might have been placed by Mr Oliver
in a place of security until he could be sent
to Madras. He ought to have been confined
in the native hospital, house of no better place
could be found and it remains with Govt. to
provide a suitable place for the temporary
accomodation of Europeans Prisoners hereafter.

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1128

Proc. No. 124 - 125

13/6/66