

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 1678	Press ~~Mis.~~
Dated 23 . 10 . 1918	

295-296

19/15

Not to be folded or roughly handled

23rd October 1866.

No. 295. Read the following letter from J. D. ROBINSON, Esq., Magistrate and Justice of the Peace, North Arcot, to the Chief Secretary to Government, Fort Saint George ; dated Chittoor, 2nd October 1866, No. 53.

I have the honor to submit the enclosed papers, for the consideration of the Right Honorable the Governor in Council, and such orders as the circumstances I am about to relate appear to call for.

2. On my return, some three weeks ago, from a tour with the Honorable Mr. Ellis, through the more distressed parts of the District, I observed that the convicts were engaged on certain operations on the road running past Mr. Roberts' house, in executing which, the road-way was being considerably, and, as it appeared to me, unnecessarily, raised.

3. On meeting Dr. deFabeck, the Superintendent of the Jail, and before any one had spoken to me on the subject, I told him that the method of repair appeared to me objectionable. A week later, Mr. Roberts, who had been absent in Madras, requested my interference privately, giving me his reasons for not himself applying direct to Dr. deFabeck. I again spoke to the latter on the subject, and again to no purpose.

4. The following day, I received an application* from Mr. Roberts, requesting my official interference ; and being

* Marked A.

fully of opinion that the works in progress would, if completed, be a permanent eyesore and annoyance to him, I again wrote privately to Mr. deFabeck, telling him of my intention to issue an injunction on the following morning, and requesting him, therefore, to put an immediate stop to the work. My object in thus writing was simply to avoid the scandal of stopping the convicts while actually at work. To my private note, Dr. deFabeck wrote a reply, objecting to the course which I proposed to pursue, but saying that he had determined to suspend operations, pending a reference which he was about to make to the Inspector General of Jails.

5. On the following morning, the 19th September, I accordingly issued my injunction†, under Section 62, of the

† Marked B.

Code of Criminal Procedure, directing Dr. deFabeck to abstain from prosecuting these operations, and to remove the obstruction and other sources of annoyance complained of.

6. To this no further attention having been paid for two days, I wrote‡, on the 21st September, to Dr. deFabeck calling

‡ Marked C.

attention to my injunction which required, not only that the work should be stopped, but that the obstruction should be removed.

7. To this letter, I some days subsequently received a reply§, stating that Dr. deFabeck, considered he had done

§ 22nd September, Marked D.

all he was called on to do, and that my attempt to take the direction of the convict labor out of his hands had been reported by him to the Inspector General of Jails, for reference, if necessary, to Government.

8. I replied*, on the 26th September, that the terms of my injunction and letter were clear, and that, if the obstruction was not removed within 24 hours, I would hold him amenable for the same.

* Marked E.

9. To this Dr. deFabeck replied in a letter†, received the following day, protesting against my proposed action in the matter, and pointing out that he directed the work of the convicts only by virtue of his appointment as Superintendent of the Jail, and therefore, as a public servant.

† Marked F.

10. On the 28th September, I issued a summons‡ to Dr. deFabeck to appear before me on the 1st October, to answer to a charge of disobedience to an order lawfully promulgated by a public servant. He appeared, accordingly, and urged§, referring to Section 167 of the Code of Criminal Procedure, that he was not amenable to prosecution for contempt of my order, without special sanction of Government.

‡ Marked G.

11. His second objection to the legality of my order calls apparently for no comment. The objection he has urged under Section 167 is, I apprehend, valid. The Section in question had escaped my notice. I infinitely prefer, however, that the matter should go before Government in its present shape, than that I should be compelled myself to vindicate the legality and propriety (as I supposed,) of my order, by imposing a fine for contempt, under Section 188 of the Indian Penal Code. Had I done so, it would still have been incumbent on me, under Regulation II of 1820, to report the whole matter to Government, with copies of the record.

12. Going back to the origin of this—I regret to acknowledge—unseemly dispute between the Superintendent of the Jail and myself, I should mention that the road has been raised in front of Mr. Roberts' house, for a length of about 200 yards, to a height, as subsequently measured, varying from 1 to 2 feet clear above the established level of the road. The annoyance thus caused is that, by this species of embankment, Mr. Roberts' compound is thrown into a hollow, and the traffic along the road, instead of being partly concealed, as usual, by the low hedge of the compound, is raised above it, and will, if permitted to remain, be a permanent eyesore and annoyance.

13. Were any corresponding advantage to be derived to the public by this departure from the usual method of repair and former level of the road, the considerations of private taste and a pleasant prospect might fairly give way. In the present case, no such public gain is to my mind attained. In making a gently undulating road a dead level, or nearly so, the effect is, to my eye, a loss, and not a gain; and the necessity of carrying enormous quantities of material, for the construction of such a work, is, in my opinion, sheer waste of labor, which could be far more profitably employed on other roads and works of the State.

14. It was unfortunate that Mr. Roberts' objection was not made sooner, but this, as I have explained, was owing to his absence from Chittoor; and when I first

objected to the work, I had no idea it would be carried on to its present exaggerated height.

15. I trust I may be excused if I point out the deliberation with which I have acted throughout this matter. Throughout the correspondence, it will be observed that Dr. deFabeck has not given me one reason to justify the mode of conducting repair to which objection has been taken. He has, as it would appear, contented himself with a systematic, obstinate opposition to every private remonstrance, and to my orders as Magistrate of the District. In adopting Mr. Roberts' suggestions to issue an injunction, I felt there was no other course which held out a reasonable prospect of putting a stop to the annoyance complained of. I had no authority otherwise than as Magistrate over the acts of the Superintendent of the Jail; and repeated private remonstrances, urged in all courtesy, having failed, no other course appeared open to me, but that which was adopted.

16. One reason for the delay which I have purposely permitted in this matter was that Dr. deFabeck had stated that he had referred the question for the orders of the Inspector General of Jails. I could not, of course, admit Colonel Wilson's control over my act as Magistrate, but I was in hopes that his reply to Dr. deFabeck's reference might counsel a more considerate and decorous line of conduct towards myself. For this reason, I was not sorry to permit an interval of some 12 days to elapse between the issuing of my injunction and my final acting upon it. What reply, if any, Dr. deFabeck may have received, I am not aware.

17. I greatly regret to have been compelled to write at such length; my object has been to show the spirit in which I have acted throughout the matter.

18. I do not apply, under the Section of the Procedure Code before quoted, for permission to prosecute Dr. deFabeck for disobedience of my order. I greatly prefer leaving the matter in the hands of Government, for such decision and orders as they may think fit to pass. I have purposely abstained from touching on all matters extraneous to the subject of this reference, but I venture to express a hope that, in disposing of these papers, consideration may be had to my position, as being in charge of avenues, gardens, plantations, and other public undertakings within, and in the immediate neighbourhood of, Chittoor. These are all, in a great measure, dependent on convict labor, and I need scarcely observe that, if I am to meet with difficulty, such as that now reported, I could not, with any sense of respect to myself, or the official position I hold, venture to expose myself to a repetition of what has taken place in making further requisition for convict labor.

19. A copy of this letter has been furnished to Dr. deFabeck.

A.

From C. A. ROBERTS, Esq., Civil and Session Judge, Chittoor, to J. D. ROBINSON, Esq., Magistrate of North Arcot; dated Chittoor, 18th September 1866.

I have the honor to request your aid, as Magistrate, to prevent the construction of the road opposite to my house after the fashion in which the repairs now going on are conducted.

2. You have observed that the road is being heightened in front of my house from 1 to 2 feet, the result of which is that my compound is thrown into a hollow, and the road, as seen from my house, will, if completed, have all the appearance of a cause-way, and be a permanent dissight and annoyance.

3. I have pointed this out by letter to Mr. deFabeck, but he refuses to attend to my request, on the plea (1) that the frequent repair of the road will thus be avoided, the same being at pre-

sent, as he states, necessitated by the lodging of water during the rains; (2) that rapid traffic will soon reduce the apparent height; and (3) that great obstruction and loss of time would be involved by any alteration in the present system of repair.

4. With reference to these arguments, I would reply that it is the slope, and not the height of the road, which affects the lodging of water; that the obstruction to be caused by any change of plans need be but slight, if effort be made to avoid it; and that there will be more time and labor consumed in bringing earth, &c., to complete the present work than to repair the road at its former level.

5. As the oldest European resident of the station, you will be aware that the road has never hitherto been raised to such a height. You will also, I think, agree with me in the justice of my complaint, which, but for my late absence at Madras, would have been earlier. ~~and in such case~~ I would request you to be good enough to afford me the redress I have failed to procure of Mr. deFabeck's courtesy, by directing him, under Section 62 of the Criminal Procedure Code, to abstain from causing the repairs of the road in the manner above described, i. e., at any higher level than it was before.

B.

Order under Section 62, Criminal Procedure Code.

To

The Superintendent of the District Jail,
Chittoor.

Whereas the operations now being conducted by the convicts under your direction, in front of Mr. Roberts' compound, are injurious to the comfort, salubrity and amenity of that gentleman's residence, and whereas you have declined to suspend such work on his written remonstrance, and my official interference as Magistrate has on that been claimed, you are hereby directed to abstain from prosecuting these operations, and to remove the obstruction and other sources of annoyance complained of.

Dated the 19th day of September 1866.

(Signed) J. D. ROBINSON,
Magistrate.

C.

From J. D. ROBINSON, Esq., Magistrate of North Arcot, to W. F. DEFAECK, Esq., Superintendent of the District Jail, Chittoor; dated Chittoor, 21st September 1866, No. 44.

I have the honor to call your attention to an injunction issued from this Office two days ago, requiring you to remove certain obstructions therein described.

2. As I do not see that any action has been taken on this injunction, beyond the mere suspension of operations at the place indicated, I think it right to point out to you that my requisition issues under Section 62 of the Code of Criminal Procedure, which leaves you no alternative but to obey the direction of the law.

I accept the responsibility of my official acts in this matter, and am prepared to show, as the oldest European resident in the place, that this embankment (for it is nothing less) is not required in the interests of the general public, and is positively injurious to private vested rights.

3. I take this opportunity of intimating to you that, in the exercise of what I believe to be my functions as Magistrate, I shall, in future, interdict every convict operation which may in any way interfere with the customary land marks and levels of the roads and other public spaces within the town of Chittoor and its suburbs.

D.

From W. F. DEFAECK, Esq., Superintendent of the District Jail, Chittoor, to J. D. ROBINSON, Esq., Magistrate of North Arcot; dated Chittoor, 22nd September 1866, No. 109.

I have the honor to acknowledge the receipt of your letter, No. 44, of yesterday's date, received late last evening.

2. With reference to the Magisterial injunction you issued on the 19th instant, I believe I have done all that can rightly be expected of me by having, first, directed the works objected to, to be stopped, and, secondly, by bringing the subject with your order at once to the notice of the Inspector General of Jails, my immediate superior, to be submitted by that Officer for the orders of Government.

3. As you inform me in your letter under reply that it is your intention to interdict all convict operations which may appear to you to interfere with the customary land marks and levels of the roads, &c., in and about the station, and as I am far from desirous of coming into collision with the powers you consider yourself permitted to exercise as Magistrate, I have submitted your letter, with a copy of this, my reply, to Colonel Wilson, that the subject may be generally ~~ag'd~~ with; and that it may be directed whether the convict labor outside the Jail shall be employed under the orders of the Magistrate, the Superintendent of the Jail, or other Officer.

E.

From J. D. ROBINSON, Esq., Magistrate and Justice of the Peace, North Arcot, to W. F. DEFAECK, Esq., Superintendent of the District Jail, Chittoor; dated Chittoor, 26th September 1866, No. 46.

I have the honor to acknowledge receipt, yesterday, of your letter of the 22nd instant, No. 109.

2. In reply, I have only to observe that, whatever may be your own belief as to your having done all you can be expected to do in directing the temporary suspension of the work objected to, the terms of my injunction, and of my subsequent letter, are explicit, and distinctly require the removal of the obstruction complained of.

3. I can anticipate no other reply to the reference you have thought fit to make to the Inspector General of Jails than that he intimate to you that he has no jurisdiction in the matter.

4. Meanwhile, my obvious duty is to vindicate the authority which in all good faith I believe the law places in my hands, and, under this view, I am forced to the disagreeable necessity of warning you, finally, that, in the event of your not commencing to remove, within 24 hours from the receipt of this letter, the obstruction complained of, I shall issue my summons, under Regulation II of 1820, and hold you liable in person and property to the penalties which it provides for its execution.

5. With regard to the concluding paragraph of your letter under acknowledgment, I would observe that your further reference to the Inspector General of Jails does not bear on the real question at issue between us.

6. It is not, as you have apparently represented it to Colonel Wilson, a question as to whether you or I should direct convict operations. The point at issue between us is whether that labor shall be directed to the injury of private rights, and to the annoyance of those who have a claim, as residents, to have their comfort and convenience considered and respected, as regards the mode in which such convict operations are carried out. I intervene merely as the custodian and protector of such reasonable right and claims, and take my stand on that ground and on none other.

F.

From W. F. DEFAECK, Esq., Superintendent of the District Jail, Chittoor, to J. D. ROBINSON, Esq., Magistrate of North Arcot and Justice of the Peace; dated Chittoor, 26th September 1866, No. 113.

In my letter, No. 109, of the 22nd instant, I had the honor to inform you that your letter, No. 44, of the preceding day's date had been sent in original to the Inspector General of Jails, with a copy of my reply.

2. Lieutenant Colonel Wilson will doubtless fully comprehend from the perusal of your letter the position in which you have considered it right to place yourself with reference to the out-door work of convicts. For my own part, I distinctly stated that it was from the desire of avoiding a

collision with Magisterial powers, and on that ground only, that I suggested, I may say, your having the direction of the out-door labor of prisoners.

3. To prevent, however, the possibility of the purport of your letter being in any way misunderstood, I have this day forwarded to Colonel Wilson your letter (in original), which I now answer, with a copy of this reply.

4. In paragraph 4 of your letter, you inform me of your intention to vindicate the authority you believe the law places in your hands, should I fail to order the removal of the obstruction complained of being commenced within 24 hours from the time of the receipt of your letter, viz., 3 P. M.

5. I take this opportunity of again stating that I believe that, in adopting the course I have pursued in this matter, I have done all that can rightly be expected of me, and, therefore, await the receipt of other orders, before proceeding to direct either the removal or continuation of the repairs which form the ground of the complaint.

6. You must be aware that it is not competent for me, as a private individual, to direct the work of the convicts, and that I do so only by virtue of my appointment as Superintendent of the Jail; and, therefore, as a public servant.

7. You however threaten to hold me liable, both in person and property, should I delay carrying out your Magisterial order until the orders of the Inspector General of Jails, or the decision of Government (should that have been applied for), has reached me.

8. I, therefore, take the opportunity of recording my protest against your adopting any such action, and of expressing my extreme regret that the discussion of this subject should have assumed so painful a character.

G.
No. 2.

To

W. F. DEFABECK, Esq.,

Superintendent of the District Jail.

Whereas your attendance is necessary to answer to a charge of disobedience to an order lawfully promulgated by me as Magistrate of the District, you are hereby required to appear in person before the Magistrate and Justice of the Peace, at noon, on Monday the 1st Proximo. Herein fail not.

Dated 28th September 1866.

(Signed) J. D. ROBINSON,

Magistrate and Justice of the Peace.

H.

The Examination of WILLIAM FREDERICK DEFABECK, Esq., taken before me, JAMES DOUGLAS ROBINSON, Esq., one of Her Majesty's Justices of the Peace in and for the District of North Arcot, in the Presidency of Fort Saint George, the first day of October 1866.

Question.—On your refusal, either on my own verbal objection or Mr. Roberts' written remonstrance, to remove a certain obstruction then described, I was requested by Mr. Roberts, in a letter, dated the 18th September 1866, to issue an injunction, under Section 62, Criminal Procedure Code, requiring you to direct the discontinuance of the convict operations complained of. This injunction was issued on the 19th September 1866, and, as no action was taken thereon by you, a letter, dated 21st September 1866, was sent to you, warning you that, if you did not obey the direction of the law within 24

Answer.—The Magisterial injunction received on the 19th September 1866, based on Section 62, Criminal Procedure Code, was addressed to the Superintendent of the District Jail at Chittoor. The summons, issued from the office of the Magistrate of North Arcot and Justice of the Peace, was likewise addressed to me as Superintendent of the District Jail at Chittoor.

On receipt of the injunction, I, in the first instance, directed every operation in progress of the work complained of to be stopped, and communicated to my immediate superior, Inspector General of Jails, the circumstance of my having

hours, a summons would be served on you, and that you would be held liable to all the penalties which the law provides for its due observance. No attempt having still been made by you to obey the injunction, a summons was served on you on the 28th September 1866 (being ten days after the issue of the injunction), requiring you to attend this day at this Court, to show reason why, after having had from first to last twelve days to make your arrangements, you should not have obeyed the injunction, and why you should not be held liable to the consequences of a contempt of a lawful order passed under the Section quoted in the injunction. You have heard and understand my question, what have you to answer?

received the injunction, and forwarding the same (injunction) to Colonel Wilson.

I object, in the first place, to the injunction having been served on me, and, after stating, as I did in my official letter to the Magistrate, how far I felt myself permitted to act on the receipt of the injunction, that a summons should have been served against me for an offence committed against the Court. I object to the proceedings generally, believing them to be illegal, under Section 167, Criminal Procedure Code, which exempts a public servant from being charged with an offence punishable under the Indian Penal Code, such public servant not being removable from his office without the sanction of Government when accused as such public servant, except with the sanction of the local Govern-

ment, or of some Officer empowered by the local Government, or of some Court or other authority to which such public servant is subordinate, and whose power so to sanction or direct such prosecution the local Government shall not think fit to limit or reserve.

Another objection to the proceedings generally is made with reference to Section 188, Indian Penal Code, and, with reference to the same, the legal opinion upon that Section, as given in Mayne's Commentary, which is to this effect:—It will be observed that the Magistrate has only power to direct or forbid certain acts. He cannot create or decide rights which are exclusively for the decision of Civil Tribunals.

He is also limited to certain grounds of interference, viz., obstruction, annoyance, or injury to the public; and where these do not exist, or may not fairly be apprehended, he has no authority to interfere.

I am awaiting receipt of instructions from the Inspector General of Jails, to whom the official correspondence between the Magistrate and myself has been sent, with an appeal against my being threatened with a summons to defend myself against a charge of disobedience of orders.

I have nothing further to state in my defence, as I feel myself fully exempted from punishment, under Section 167, Criminal Procedure Code, which I have quoted above.

(Signed) W. F. DEFABECK,

Superintendent of District Jail.

No. 296. ORDER THEREON, 23rd October 1866, No. 1678.

With the foregoing letter, the Magistrate of North Arcot submits certain correspondence between himself, and the Superintendent of the Jail at Chittoor, regarding certain repairs to a road executed by convicts under the orders of the latter.

2. The Governor in Council directs that Dr. deFabeck, if he has not already done so, will, on receipt of these orders, put a stop to the work to which exception has been taken by the two principal Public Officers of the station, viz., the Civil and Session Judge and the Magistrate, and report his reasons for raising the road in the manner stated, and in disregard of the wishes of the Collector on the subject.

3. Adverting to the importance of placing the out-door employment of convicts under proper regulation, and to the necessity of giving to the Chief Executive Authority of the District a voice in the matter, the Governor in Council deems it expedient to direct that, at all stations where there is a Civil and Session Judge and a District Magistrate, these two Officers form themselves with the Jail Super-

*Proceedings of the Madras Government, Judicial Department,
23rd October 1866.*

intendent into a Committee for determining on what out-door work convicts may be employed with the greatest advantage to the public; and the Jail Superintendent shall be bound by such determination in employing and directing, under the Jail Rules, the labor of the convicts under his charge. Where there is only a District Magistrate, he and the Jail Superintendent should form the Committee, the former having a casting vote when there is a difference of opinion.

4. This arrangement, while in no way interfering with the superintendence of the Jails by the Officers of the Jail Department, will secure the experience of the Head of the District, and of the Chief Judicial Officer in it, in guiding the employment, and utilizing the labor, of the convicts to the best advantage.

(True Extract).

Secretary to Government.

To the Magistrate of North Arcot.

„ Inspector General of Jails.

„ Magistrate of

„ Civil and Session Judge of

H

54

What is the
rule as to the
employment
of convicts?

By the

Order should
be cancelled

See also

In the

In a letter from
the Magistrate of
North Arcot to the
Chief Secretary
to Government

2 October 1866 No 53

Copy of a circular
=ation taken
from the District
Supdy of the Jail
dated 1 October
1866.

In No 2207/66

No 2207.

Sud: sept. 62

Mr. Fabeck should be required to explain what were the public advantages of the work he has attempted to have executed by Council-labor, notwithstanding objections raised by the two principal public officers at the station - Mr. Fabeck should also report whether there were no other works on which the prisoners under his charge could have been employed with benefit to the State and the general public.

As the Mayor says Mr. J. Robinson acknowledges his error in attempting to operate against a public functionary by the aid of the two criminal codes, it seems unnecessary now to notice this with eccentric freak. Of Mr. Fabeck we properly denied the applicability to himself as Sup: of a Jail - But

as their correspondence clearly lays
bare a weak point of the system
to place matters of convicts under
the unaided control of John Dutton,
who may occasionally be gaining a reputation
with little experience or knowledge of
this country. I would suggest that
at all stations where there is a C. Sepin
Judge and a District Magistrate, these
two officers do form a committee with
the Jail Superintendent, in order to
determine on what work convicts may
be employed with the greatest advantage
in a public point of view.

Where there is only a District Magistrate,
he should still act ^{as} ~~for~~ ^{an} ~~for~~ another man
with the Jail Superintendent, and have a
casted vote should there be a difference
of opinion as to how convicts are to
be employed in out of jail work.

A measure of the kind with in no
degree interfere with the General

77
Superintendence of the Insular Jail
of Laith and may act in securing for
the Govt some small return for the
enormous expenditure now being in-
curred to promote the efficiency of our
Jail system.

11.10.66

W.D.

Estacumund 15 Oct/66 87
My dear Mr. Bentham. The day after
my arrival to Martins received
a letter from D. de Faber appealing
to certain proceedings of the
chancery etc. - In reply I told him
that the law must take its
course, but at the same
time advised him not to
press the matter over as this
he should turn out to be
right. Now we know that
things have gone so far

that Mr. Robinson has ad-
-vised for. Mr. De Fabrick
has also written begging me to
send up his version, but I
am postponing this until I see
whether the other papers are to
come to me - If not I will send
up Mr. De Fabrick's papers at
once - It is a silly affair and
I think might have easily been
avoided, but now that it has
gone so far it would be well

92
to ascertain whether Section 62
was applicable - it seems to me
to be very questionable - I think
some communication in my next
letter regarding the Chapter is
the C. C. P. which says down
the mode of procedure is
Cases of jurisdiction, and that
provides an appeal and a jury.
I was told that this Chapter is
not in force and that 62 is
the one acted on because of

is simple and no appeal is
supposed to die - In this I
cannot help thinking they
are mistaken - The Law
could hardly ground the
matter so peculiarly to the
place, if it were so -

Courtesy

J. M. D.

For Orders

Mr. Robinson's course of
issuing an injunction against
a fort officer, acting in his of-
ficial capacity seems to me to
have been most extraordinary -
He ought to have reported the
matter to fort in forming Dr. Dr.
Fateck, on whom would have rested
the responsibility of not stopping opera-
tions, pending final orders.
Now, I presume, Dr. Dr. must be
told to stop - if he has not already
done so - I repeat his reasons for raising
the road & regarding the colors
his her.

I think it some thing must be done to
keep safe in the hands as to the work
they can do take & that they should
first consult the Col as to roads & the
like
J. D. D.

27th
Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letter
from the Magistrate of North
Arcot.

(Cor. enter 2nd October 1866 No. 53)

Order thereon 23rd Oct. 1866 No. 1678.

With the foregoing letter,
the Magistrate of North Arcot
submits certain correspondence
between himself and the
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by convicts under the orders
of the latter.

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if he has not already done
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This arrangement while
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the Superintendence of the
Jails by the Officers of the
Jail Department will
secure the experience of
the Head of the District
and

and of the Chief Judicial
Officer in it, in guiding
the employment and
utilizing the labor of the
convicts to the best advantage.

R

22/10 189-7

To the Magistrate of H. A. A. A.
Inspector of Jail
May 10 of 189-7
Civil & Session Judge