M.R.O. 1—23,000—18-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial **DEPARTMENT.**

G.O. No.	1837	Press Mis.
208-29		
Dated	21-11-	19-~~28~~

11/12

Not to be folded or roughly handled

No. 208. Read the following letter from Lieutenant Colonel W. J. WILSON, Inspector General of Jails, to the Chief Secretary to Government, Fort Saint George; dated Ootacamund, 10th November 1866, No. 101.

With reference to the second paragraph of the Order of Government noted in the margin, I have the honor to report that, having called upon Dr. deFabeck to furnish the explanation therein required, he has requested that his original correspondence with me may be submitted to Government, and I, herewith, forward the same, accordingly.

Judicial Department, 23rd October 1866, No. 1678.

2. On Sunday, the 23rd September, while passing through Madras, on my way to Trichinopoly, I received Dr. deFabeck's first letter on the subject, dated 19th September, reporting that he had been served with an Injunction, directing him to abstain from proceeding with certain repairs then in progress on the public road, and requesting me to lay the matter before Government. I replied to the effect, that, as Mr. Robinson had taken cognizance of the matter in his Magisterial capacity, I could not interfere, but I took the opportunity to say that, even should the decision be in his, Dr. deFabeck's, favor, I did not think it would be expedient to proceed with the work under the circumstances, unless, in the opinion of the Engineer, such should be necessary for the good of the public. In adopting this course, I did not anticipate that the Proceedings before the Magistrate would simply consist in calling Dr. deFabeck to account for disobeying the injunction, but I took it for granted that the party objecting to the work, as well as the Superintendent of the Jail, would be heard upon the merits, and that the Injunction would then either be made absolute or dissolved, as the Magistrate might consider proper: I am aware that this mode of procedure is not specifically enjoined in Section 62 of the Code, but it is that which is in force in most Courts, and the principles of justice would seem to require that, when an Injunction has been granted at the instance of a private individual, as in this case, the matter at issue should be disposed on the merits.

3. When I received intimation that the Injunction had been granted, under Section 62, on the application of Mr. Roberts, I took much the same view as that expressed by Dr. deFabeck in the 6th paragraph of his examination before Mr. Robinson, but it was not for me to take exception to the jurisdiction of the Magistrate, and I thought it advisable to allow matters to take their course, more especially as I had communicated my opinion to Dr. deFabeck as above stated. Whatever may be said as to the conduct of the Superintendent in disregarding the wishes of the Judge and Magistrate, I submit that he has some reason to feel aggrieved at the nature of the Proceedings taken against him, inasmuch as the original complainant was not required to appear in support of his case, while Dr. deFabeck was compelled to attend the Magistrate's Court as a defendant, and threatened with pains and penalties which it now appears the Magistrate had no jurisdiction to inflict.

4. Had the existence of this unfortunate dispute been made known to me before it became the subject of Judicial inquiry, it could not have proceeded to such an unpleasant length.

5. I received Dr. deFabeck's letter of the 5th October, No. 119, on my return to this place, on the 11th idem, and should then have addressed Government on the

subject, had it not been that the tenor of the 16th paragraph of Mr. Robinson's letter to the Chief Secretary, No. 53, led me to believe that I should be called upon for explanation.

From Assistant Surgeon W. F. DEFABECK, Superintendent of the District Jail, Chittoor, to Lieutenant Colonel W. J. WILSON, Inspector General of Jails; dated Chittoor, 10th September 1866, No. 105.

I have the honor to bring the following circumstances to your notice, and for submission (as soon as may be possible) to Government, for approval.

2. For some weeks past, the main road through the Civil station has been undergoing repair, by Convict labor, under my orders. One part of the road has been raised to decrease an abrupt descent, and to prevent the lodging of water during the rains along the road beyond this "dip."

3. Yesterday morning, I received intimation, for the first time, from Mr. Roberts (by private note), that he objected to the manner in which the road repairs were being carried out, and requesting me to make certain alterations. I enclose a copy of Mr. Roberts' note, and of my reply. The repairs have been more than a month in progress; during this time Mr. Roberts has been (with three days' exception) resident in Chittoor, and half of the road is just finished and ready for traffic.

Late last evening, Mr. Robinson, as Magistrate, addressed me privately, and I forward a copy of Mr. Robinson's note and of my answer.

4. Mr. Roberts claims the interference of the Magistrate, as he considers "his comfort and convenience, and the amenities and salubrity of his residence are gravely affected by the work."

5. I should very much regret that the undertaking should cause Mr. Roberts any inconvenience or discomfort, or diminish in any way the salubrity of his residence.

I do not, however, understand how such an effect can, in the slightest degree, result, and, as a Medical man, do not consider that the favorable conditions of the residence are in any degree impaired. On the other hand, I believe it to be the general opinion that the convenience of every resident has been studied, and that the complaint made is, at least, greatly exaggerated.

6. The ground on either side of the road is very low and swampy (paddy land in part on one side) bordering on a large tank, and the level of the road sinks considerably, owing to the constant and considerable traffic, necessitating frequent repair.

7. The work has been entirely stopped, as, under Magisterial Injunction*, I could not proceed with it. I have, therefore, brought the subject to your notice, for submission to Government, for appeal, that the opinion of a competent Engineer may be obtained, as I am called on to remove "obstructions."

* Under Section 62, Criminal Procedure Code, served 19th September 1866.

I.

CHITTOOR, 18*th September* 1866.

MY DEAR DOCTOR,

I shall be much obliged by your giving orders to lessen the height to which they are now making the road in front of my house. On my return from Madras yesterday, I found it piled up two feet above the former level towards my west gate, and though they are now beating it down, it still remains upwards of a foot higher than it was before, and throws my compound into a hollow to that extent, besides being a great dissight, looking at it from the house, from which, if completed as at present making, it would look like a causeway.

2. It will be an annoyance to me, as an occupant of the house to have the road made in this manner, and, as there is no compensating benefit that I can see in having the road higher than it was before, I hope you will meet my wishes by preventing its being made after this fashion.

2.

3. It is not too late to stop it, as the materials already collected can readily be consumed partly on the line commenced, and on the road still further west, and the change will save both time and labor.

Yours sincerely,
(Signed) C. A. ROBERTS.

II.

18*th September* 1866.

MY DEAR ROBERTS,

I am sorry to hear you disapprove of the manner in which the repair of the road opposite your house is being carried out.

2. There was such a rapid descent in the road just beyond the bridge, that it appeared to me of advantage to make this less abrupt, and prevent the frequent repair of the road between your gates, necessitated by the lodging of water during the rains.

3. The effect now produced by the elevation of the road will be removed when the part nearest your hedge is raised, and the whole road finished.

4. The constant traffic along this line will materially decrease the apparent height, rendered more obvious by the thinness of your hedge.

5. The work (which has been so well done) has also proceeded so far that to take up and remove the material for the repair of the other half of the road and elsewhere, as you propose, would cause the greatest obstruction, much loss of time, and make the repair less perfect, by leaving matters but little better than they were before.

Yours sincerely,
(Signed) W. F. DEFABECK.

III.

Tuesday.

DEAR DEFABECK,

I am sorry you should have decided to push the "embankment" question to the issue, by not suspending the work until all sides could be heard. Now, Roberts has claimed my support, as Magistrate, on the ground that his comfort and convenience, and the amenities and salubrity of his residence, are gravely affected by the work.

2. Believing that there is a real grievance, and that I have jurisdiction, I am reluctantly compelled to issue against you, at as early an hour as I can get it served, a Magisterial Injunction, under Section 62 of Criminal Procedure Code, which requires that you suspend operations until the whole matter can be disposed of as the law directs. I have, therefore, thought it well to write to you before hand, in order that you may be able to make other disposal for your Convict labor.

Yours truly,
(Signed) J. D. ROBINSON.

IV.

MY DEAR ROBINSON,

As you have written to inform me of your intention to issue an Injunction, with reference to the repairs being carried out opposite Roberts' house, I have determined upon putting a stop to the work until you may be pleased to remove your Injunction.

2. I am surprised that, as a Government servant, you should have considered it necessary to take the step you propose against another servant of Government, in such a case, when the opportunity was afforded you of addressing me officially in this matter.

3. While leaving the road as it is, I purpose referring the matter officially, through the Inspector General of Jails, with a view to a professional opinion being passed.

4. I think the view you and Roberts have taken is certainly very extreme, and would request you to make any further correspondence you may think necessary official.

Yours sincerely,
(Signed) W. F. DEFABECK.

From Lieutenant Colonel W. J. WILSON, Inspector General of Jails, to Assistant Surgeon W. F. DEFABECK, Superintendent of the District Jail, Chittoor; dated Madras, 24th September 1866, No. 1.

With reference to your letter of the 19th instant, No. 105, I have the honor to state that the matter in question is not one which calls for any intervention on my part, at present, whatever it may do hereafter.

2. Mr. Robinson having issued an Injunction in his capacity of Magistrate, it will be for him to dispose of the case according to Law, and I will thank you to let me know the result. Any appeal from the decision would lie, not to Government, but to the Judge, who, in this case, would doubtless cause the transfer thereof to another Court; but should the decision be against you, I would not carry the case to an appeal. Even supposing that the Magistrate should decide that the work complained of does not amount to a nuisance, I do not think it would be expedient to proceed with it under the circumstances, unless the Engineer Officer should be of opinion that the public good requires it.

From Assistant Surgeon W. F. DEFABECK, Superintendent of the District Jail, Chittoor, to Lieutenant Colonel W. J. WILSON, Inspector General of Jails; dated Chittoor, 20th September 1866, No. 106.

With reference to my letter, No. 105, of yesterday's date, I have the honor to enclose the Magisterial Injunction served upon me yesterday.

2. As I am not aware that Mr. Robinson is correct in taking this step in such a case, and, if correct, that he is possibly not in law as regards the Section of the Code under which he has thought proper to take action, I have the honor to request you will be good enough to submit the subject, with the Injunction, for the orders of Government.

3. With reference to the remark made by Mr. Robinson, in the Injunction, that I declined to suspend the work complained of on a written remonstrance, I beg to state that the private note sent me by Mr. Roberts (and of which I enclosed a copy with my letter of yesterday) was the only communication received by me on the subject of the complaint; and I feel somewhat annoyed that Mr. Robinson should have considered it necessary to adopt measures of so arbitrary a character, on the representation of but one member of our community.

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 works 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 this 19th day of September 1866.

(Seal.) (Signed) J. D. ROBINSON,
Magistrate.

From Assistant Surgeon W. F. DEFABECK, Superintendent of the District Jail, Chittoor, to Lieutenant Colonel W. J. WILSON, Inspector General of Jails; dated Chittoor, 22nd September 1866, No. 110.

I have the honor to enclose a letter addressed to me by Mr. Robinson, bearing on the subject I brought to your notice in my letters, Nos. 105 and 106, of the 19th and 20th instant, respectively, with copy of my reply.

2. Pending the receipt of your instructions, I sent no reply to Mr. Robinson's "order." Having previously directed the work of repair complained of to be stopped, and having, without delay, submitted the entire correspondence for your perusal and orders, I felt I had done all I could rightly be called on to do.

3. As Mr. Robinson, in the last part of his letter, No. 44, states it to be his intention "to "interdict every Convict operation which may interfere with the customary land marks and "levels of the roads and other public spaces within the town of Chittoor and its suburbs," I beg to solicit your special attention to this subject, that, should you deem it necessary, you will submit the matter for the orders of Government, with a view to its being determined whether the Convict labor outside the Jail shall hereafter be employed under the orders of the Magistrate, the Superintendent of the Jail, or other Officer, that a collision similar to that which has just occurred may be, as much as possible, if not altogether, prevented.

From J. D. ROBINSON, Esq., Magistrate of North Arcot, to Assistant Surgeon W. F. DEFABECK, 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. 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.

2. 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.

From Assistant Surgeon W. F. DEFABECK, 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, and a copy of this my reply, to Colonel Wilson, that the subject may be generally dealt with, and that it may be decided whether the Convict labor outside the Jail shall be employed under the orders of the Magistrate, the Superintendent of the Jail, or other Officer.

From Assistant Surgeon W. F. DEFABECK, Superintendent of the District Jail, Chittoor, to Lieutenant Colonel W. J. WILSON, Inspector General of Jails; dated Chittoor, 26th September 1866, No. 114.

I have the honor to enclose a letter (in original) received this day from Mr. Robinson, Justice of the Peace, and a copy of my reply.

2. With reference to paragraph 4 of Mr. Robinson's letter, I have the honor to state that my remark regarding the direction of the out-door work of Convicts had reference solely to the possibility of Mr. Robinson's opinion with regard to the occasional renewal of the road levels, &c., being opposed to my own, and that, as a consequence, a difficulty, such as that which has just

occurred, and is now under discussion, might arise, which would bring me into an undesirable position with respect to Magisterial authority.

3. I cannot but express my opinion that the repairs, to which Mr. Robinson has so strongly and authoritatively objected, cannot properly be characterized as "obstructions," and create the effect Mr. Robinson has attributed to them. If such repairs be objected to, similar operations may at any time be interdicted. If, in fact, I am to be expected to carry out repairs without the exercise of my own judgment, the direction of the Convict labor outside the Jail may be considered under the control of the Magistrate.

From J. D. ROBINSON, Esq., Magistrate and Justice of the Peace, North Arcot, to Assistant Surgeon W. F. DEFABECK, Superintendent of the 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 which 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.

From Assistant Surgeon W. F. DEFABECK, 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 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 my 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 I, 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 Convicts, and that I do so only by virtue of my appointment as Superintendent of the Jail, and, therefore, as a public servant. 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. I, therefore, take this 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.

From Assistant Surgeon W. F. DEFABECK, Superintendent of the District Jail, Chittoor, to Lieutenant Colonel W. J. WILSON, Inspector General of Jails; dated Chittoor, 27th September 1866, No. 115.

I had the honor to submit, for your perusal, yesterday, further correspondence between the Magistrate of Chittoor and myself, with reference to the misunderstanding which has occurred between us in the matter of the repair of a road carried out under my orders, until operations were stopped by the intervention of Mr. Robinson's Magisterial Injunction.

2. I have pointed out to Mr. Robinson that the work under discussion has been carried out under my orders as a public servant; and as I believe this Officer to be exceeding his powers as Magistrate, &c., &c., in proceeding as he has done in threatening me with a Summons (I believe to be quite illegal, according to Section 167 of the Code of Criminal Procedure), and in holding me liable, both in person and property,* to certain penalties, should I fail to carry out his order, I have no other course left me than to appeal to you, as my immediate superior, and to Government (as no appeal lies to a Session Court), for the protection the law provides for such cases in the Section of the Code above quoted.

* Mr. Robinson's letter, No. 46, of the 26th instant.

3. With regard to the difficulty still remaining, as to whether the repairs of the road in question are to be carried out or not, I would very respectfully suggest that the opinion of a disinterested Officer may be called for to decide on the merits of the case.

4. I have, from the first, been desirous that nothing shall be done that can rightly be regarded as obstructive to public comfort, or injurious and annoying to individual interests.

5. I regret very extremely that there should have been any misunderstanding between Mr. Robinson and myself, and still more that the discussion of this subject should have assumed so annoying a character.

From Assistant Surgeon W. F. DEFABECK, Superintendent of the District Jail, Chittoor, to Lieutenant Colonel W. J. WILSON, Inspector General of Jails; dated Chittoor, 5th October 1866, No. 119.

I have the honor to acknowledge the receipt of your letter, No. 1, dated from Madras, September 24th, 1866, and, as requested, to submit the result of Mr. Robinson's action against me for your information.

2. The correspondence which has taken place between Mr. Robinson, as Magistrate, and myself, has been duly submitted for your information and orders.

3. On the receipt of the Summons (forwarded in original), served on me on the 28th ultimo, I considered it right, although the Summons was illegal under Section 167, Criminal Procedure Code, to attend the Magistrate's Court and

Enclosure 1.

to make my defence. I did so truly to save myself the further annoyance and the degradation of being arrested on a warrant, judging, from the energy and determination previously evinced in this matter, that Mr. Robinson would not stop short of taking even this (another arbitrary) step.

4. The Magistrate having read out the charge, I objected, in my defence, to the proceedings generally for two special reasons—1st, Illegality; 2nd, no jurisdiction. I was able to show that this was not a case in which the Magistrate could interfere, whether against a public servant or a private individual. I have the honor to enclose a copy of the Proceedings. Enclosure 4.

5. No "Finding" was recorded, as the Magistrate considered it right to address his remarks upon the trial to Government. A copy of Mr. Robinson's letter to the Chief Secretary to Government having been sent to me yesterday, I beg permission now to anticipate any reference that might be made to me for remark upon Mr. Robinson's statement. I would state, particularly, that these Legal Proceedings were voluntarily, deliberately, and (I shall be able to show) advisedly also, undertaken against me by the Magistrate, without any provocation on my part, and that it was left to me either to appear at the Court to make a defence, or to exhibit an utter disregard to the Summons, this being illegal, which the nature of Mr. Robinson's proceedings were in every way calculated to provoke. I accepted the former alternative. Enclosure 3.

6. During the interview which I had with Mr. Robinson after his return to Chittoor, the remarks made with reference to the repairs of roads were of a very general character, and nothing that could be characterized as an earnest objection was urged in regard to this special case. On a subsequent occasion, however, Mr. Robinson made a point of addressing himself to me with special reference to the repairs of the road under discussion, and he did so in the presence of three other gentlemen now in the station. Mr. Robinson will recollect that, not only did I express my own opinion, but of all those present, he was the only one to raise an objection to the work, while the others present spoke of it in very favorable terms.

7. In paragraph 15 of Mr. Robinson's letter, however, this Officer observes that I did not give one reason to justify the nature of the repairs. In my reply to Mr. Roberts' private note of the 18th September 1866 (of which I sent you a copy with my letter, No. 115), I stated my reasons very distinctly for undertaking the work.

8. Mr. Roberts was absent about three days in Madras, the work had been commenced several weeks previously, and was nearly finished when Mr. Roberts' note was received. The objections, as stated in Mr. Robinson's Injunction (sent to you on the 20th September 1866), appeared to me both extraordinary and untenable—the nature of the repairs being objected to on the ground that they affected the comfort, salubrity, and amenities of Mr. Roberts' residence.

9. Mr. Robinson stigmatizes my conduct as a systematic opposition to every private remonstrance and order. These epithets cannot, I think, rightly be applied to the part I have taken, and I beg permission to refer to my entire correspondence, as laid before you, and trust that I have not failed to exhibit (as I hoped to do) throughout a becoming sense of subordination to your superior authority and a due regard to Mr. Robinson's position and my own self-respect. Mr. Robinson and I differed widely in opinion, and I considered it of little use volunteering any argument. I, therefore, preferred bringing the subject forward, with the recommendation that the matter might be disposed of by more competent Judges.

10. Before any official communication from Mr. Robinson had reached me, I not only stopped all operations, but at once submitted the correspondence for your consideration and orders, previously informing Mr. Robinson of the course I determined upon, as appearing to me in every way the most correct. As there was a difference of opinion between us, I suggested that the professional opinion of an Engineer might be called for to decide the point. I expressed myself to Mr. Robinson as surprised at his taking legal proceedings, as he proposed doing, against a public servant in the discharge of his duty.

11. It was in vain that I protested: the Magistrate issued his Injunction next morning. I informed you, at once, of the fact of his having done so, enclosing the document with my letter, No. 116, of the 26th September. In accordance with the terms of your letter, dated from Madras, September 24th, 1866, I left it "for him to dispose of the case, according to law," and consulted the Engineer on his return to Chittoor. I regret that the absence of this Officer from the station on duty for a fortnight prevented my consulting him until the 29th September, 10 days after the Injunction was issued.

12. Mr. Robinson's letter of the 21st September 1866 reached me late on the evening of that day. I replied on the day following. The 23rd being a Sunday and the 24th a Holiday, no business was transacted till the 25th; but for this, my reply would have been in Mr. Robinson's hands earlier. I stated in my letter that, having submitted the matter for the consideration of my immediate superior, and stopped all further progress of the operations objected to, I had, in my opinion, done all that could rightly be expected of me, and with reference to the last paragraph of Mr. Robinson's letter, No. 44, of the 21st September, I likewise expressed myself desirous of avoiding any collision with Magisterial authority.

13. When Mr. Robinson threatened to issue his Summons, and to hold me liable, both in person and property, for disobedience of orders, I very distinctly pointed out that the Convict labor was directed by me only by virtue of my appointment as Superintendent of the Jail, and, therefore, as a public servant. In my private note to Mr. Robinson, of the 18th September (a copy of which I forwarded to you), I also drew his attention to this point It is a matter of surprise to me, therefore, that Mr. Robinson should have failed to notice the Section (No. 167) of the Code of Criminal Procedure which so plainly and so totally exempts a public servant from being charged with an offence as such public servant, without special authority.

14. To the circumstance of this oversight the arbitrary nature of all Mr. Robinson's proceedings must be attributed. Had I not been prepared to urge this objection in my defence, a fine would certainly (I write advisedly) have been imposed. Having obtained a copy of the Code quoted and of the Indian Penal Code, I discovered that it was in my power to claim exemption.

15. Mr. Robinson states in paragraph 11 of his letter that my 2nd objection (no jurisdiction) to the Summons being issued calls apparently for no comment. With reference to this subject (one in which the public are chiefly interested), I have the pleasure in being able, not only to state, on the authority of the Engineer, that the nature of the repairs objected to are an improvement to the road, but that, with the exception of the Judge and the Magistrate, the European residents of the station (not to mention the favorable comments passed upon the work by many of the native population) consider that the public convenience will be promoted by the undertaking.

16. I am indebted to the Engineer for the enclosed plan exhibiting longitudinal and transverse sections of the road under repair. The change made in the inclination of the road by the repairs conducted under my orders is distinguished in each case by coloring in yellow, between red and black lines. It will be seen from this plan that the incline is being reduced at one point from 1 foot in 23 feet of the road (considered by Mr. Robinson a gentle undulation—paragraph 13 of his letter) to 1 foot in 33 feet, and at another point from 1 foot in 38 to 1 in 54. No attempts have been made to change the rapid slope into a dead level; to effect this an elevation of more than 9 feet by measurement would have been required. The new gradient will, I believe, be generally considered more suitable than the old for conveyances of all kinds. The rain water being less rapidly carried over this more gradual slope, the "material" will be less rapidly washed away, and the necessity for repair (which is now frequent) will thus be materially diminished.

17. With reference to paragraph 12 of Mr. Robinson's letter, I beg to disclaim having taken part in any "dispute" characterized by him as "unseemly," nor have I been witness to any controversy that could rightly be so emphatically spoken of.

18. There are at present upwards of 300 Convicts available for out-door labor, a larger number than can at any time be necessary for carrying out ordinary repairs of roads, avenues, &c. So much convict labor being available, I was of opinion that it could with advantage be utilized (while still extramural) in improving, as well as repairing, roads, &c. More than this it has not been my desire to do.

19. Certainly, Mr. Robinson cannot justly complain of my failing to afford him every possible assistance in regard to the distribution of Convict labor. In justice to myself, I may say that, not only has every requisition made upon me been readily and promptly attended to, but unsolicited aid has been both proffered and accepted. The work of repair, &c., which has been so severely criticised by Mr. Robinson was in no respect under his direction.

20. The Magistrate having thought fit in his letter, No. 44, of the 21st September (of which a copy was sent to you) to intimate to me his intention to interdict every Convict operation which might in any way interfere with the customary land-marks and levels of the roads, &c., and as I anticipated that some difference of opinion between Mr. Robinson and myself might again occur, I submitted this matter also, with correspondence, for your consideration and orders, and suggested, I may say, the Convict labor outside the Jail being placed entirely under the Magistrate's control, that all misunderstanding between this Officer and myself might thus, for the future, be avoided.

21. In paragraph 15 of his letter, Mr. Robinson alludes to the deliberation with which he has acted. His action was not, however, deliberate only, but arbitrary; and I believe it to be unprecedented. Mr. Roberts could not properly solicit Magisterial support, with respect to a matter he believed to affect his own personal comfort and convenience, in such a case. Whereas he has not only been the complainant, but, as stated by Mr. Robinson,* he suggested the issuing of an Injunction, thus becoming the legal adviser also. The case might have been subsequently referred to him, also, as Judge of the Appellate Court. A very powerful influence was thus brought to bear upon me.

* Paragraph 15 of his letter.

22. Before the correspondence between Mr. Robinson and myself became official, Mr. Robinson, though determined to take the law into his own hands, disclaimed anything intentionally offensive.

23. As a result of the arbitrary action taken against me, I feel that I have been placed most inconsiderately and unjustly in an extremely humiliating position. Without authority, I have been prosecuted, and called on to defend myself, as a prisoner in a Criminal Court, against a charge punishable by the Indian Penal Code with fine and imprisonment—penalties which the Magistrate in his letter, No. 40, of the 20th September (forwarded to you the same day), threatened to enforce.

24. Believing it to be degrading to the position of an Officer and a gentleman to be placed in such a position, I beg to express myself aggrieved by the vexatious character of the proceedings taken against me, while engaged in the performance of what I believed to be my duty.

I submit the subject, with every respect, for such notice as the Right Honorable the Governor in Council may consider it deserving of, and such redress as may be deemed due.

No. 2.

Seal.

To W. F. DEFABECK, Esq.,

Superintendent of the District Jail, Chittoor.

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.

Seal of the Magistrate of North Arcot. O. S.

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 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 10 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?

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 place, directed every operation in progress of the work complained of to be stopped, and communicated to my immediate superior, the Inspector General of Jails, the circumstance of my having 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 removed from his office without the sanction of Government, when accused as such public servant, except with the sanction of the Local Government, 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, District Jail.

(True Copy.)

(Signed) J. D. ROBINSON,
Magistrate and Justice of the Peace.

From J. D. ROBINSON, Esq., Magistrate and Justice of the Peace, 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 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.

* Marked A.

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

† Marked B.

6. To this no further attention having been paid for two days, I wrote‡, on the 21st September, to Dr. deFabeck, calling attention to my Injunction, which required, not only that the work should be stopped, but that the obstruction should be removed.

‡ Marked C.

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

§ Marked D.

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.

† Marked H.

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.

To W. F. deFabeck, Esq., Superintendent of the Jail, for information.

From Assistant Surgeon W. F. DEFABECK, Superintendent of the District Jail, Chittoor, to Lieutenant Colonel W. J. WILSON, Inspector General of Jails; dated Chittoor, 6th November 1866, No. 143.

I have the honor to acknowledge the receipt of your letter, No. 787, of the 27th ultimo, forwarding a copy of the Proceedings of Government, Judicial Department, No. 295, of the 23rd ultimo.

2. My reasons for raising the road referred to in the manner stated, though disapproved of, to my regret, by the Collector, having been fully represented in my correspondence (and especially in my letter to your address, No. 119, of the 5th ultimo), wherein also I repeatedly and strongly protested against the nature and manner of Mr. Robinson's dealing with the case, I have the honor to request you will be good enough to forward the correspondence, in its entirety, with the plan submitted with my letter above alluded to, for the orders of the Right Honorable the Governor in Council.

No. 209. ORDER THEREON, 21st November 1866, No. 1837.

The Governor in Council is constrained to express his disapproval of the measures adopted by Mr. Robinson, who ought to have communicated officially with Dr. deFabeck on the subject, or have referred the question for the orders of Government. There was nothing whatever in the case to justify such a measure as the institution of legal proceedings, Dr. deFabeck being an Officer of the Government, acting, as he evidently considered, for the public good, and within the scope of his authority.

2. As regards the raised portion of the road in question opposite to Mr. Roberts' house, the Superintending Engineer will visit the locality, and decide what should be done.

(True Extract).

Chief Secretary.

To the Inspector General of Jails, with the Survey.
„ Magistrate of North Arcot.
„ Public Works Department.

Exd. J. H. Burns.

Judicial.

No. 2434

From The Inspector General of Jails.
Dt. 10th Novr. 1866.

For Orders.

This is a strict business - but I consider that the Instructions in Para.

The Petitioner's proceeding in causing the injunction seems to me improper and unnecessary. The Engineer should have contented himself with pointing out to Dr. deFabeck the work he was doing [illegible]

Pressing the District Magistrate under

Sec. 467 C.P.C. [illegible]

[illegible]

[illegible]

[illegible]

23 Oct Case S.D. No 1678.

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

See the notes I formerly wrote on this matter, I passed over the legal part of the question, because the Magistrate, Mr. Robinson, had himself — by voluntarily withdrawing the

... should be done.

(Tr...

To the Inspector General of Jails, wit...
,, Magistrate of North Arcot.
,, Public Works Department.

Exd. J. H. Burns.

injunction — admitted his error in issuing it. It seems to me that under these circ^s. the Govt. are not called on to notice that part of Mr. Robinson's pros: — but I think it may fairly enough be intimated to him, that before determining to use the legal means he — rightly or wrongly — considered himself to possess as Magistrate, he ought to have addressed Dr. De Fabeck officially about stopping the "Embankment" work. — The private note wh. is among the papers sent up by Col: Wilson beginning "Dear De Fabeck" was the first hint the Doctor received of the thunder & lightning with which he was about to be crushed. — As respects the piece of road work wh. has caused this storm in the teapot, I can only say that, judging from the plan now submitted, Dr. De F was doing just what a very nasty slope appears to require — but the plan is like the picture of the Queen's marriage in wh. the painter forgot to represent the Queen. I do not find in the plan Mr. Roberts' house — nor its site even indicated —

W.D.A.

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Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letter from the Inspector General of Jails.

Here enter 10th Nov 1866 No. 101.

Order thereon No. 1837 dy 21 Nov 1866.

The Governor in Council observes that Mr Robinson himself admits the nullity of the proceedings which he adopted as Magistrate under the Criminal Procedure Code. But even had they been ~~legal~~ valid the Governor in Council would ~~still have been~~ is constrained to express his

WDK JP.

his disapproval of the measures adopted by Mr Robinson who ought to have communicated officially with Dr De Tabeck on the subject, or ~~and, if necessary, he could~~ have referred the question for the orders of Government. There was nothing whatever in the case to justify such a measure as the institution of legal proceedings, Dr De Tabeck being an officer of the Government acting as he evidently considered for the public good and within the scope of his authority.

2. As regards the raised portion of the road in question opposite

opposite to Mr Roberts House, the Superintending Engineer will visit the locality and decide what should be done

JB

The Insp G of Jails – with the Survey
Magte of North Arcot
P W. Department } disp 26/11

Judicial 1865. Department.

No. 1837.

PROCEEDINGS OF GOVERNMENT.

Dated. 21 December 1865

No. 2608

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