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[Despatch Abstract.]

CODE OF CRIMINAL PROCEDURE.

Directing that a letter be despatched to the Government of India communicating the views of this Government with the opinions of various officers and bodies consulted on the revision of the----.

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.

FURTHER PAPERS

G.O.	No.	Department.	Date.	G.O.	No.
	3186		1896—R	1285—	6
	3811		1896	1-8-9	
	Cus 2324/98				
				1914-15	4. 12

Govt. of {1895} Madras.

JUDICIAL.

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G.O., &c., Nos. 2091, 2092,
9th October 1895.

OCTOBER.

Code of Criminal Procedure.

Directing that a letter be despatched to the Government of India communicating the views of this Government, with the opinions of the various officers and bodies consulted on the revision of the —.

Nos. 2091, 2092, Judicial, 9th October 1895.

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

Read—the following papers :—

From the Sessions Judge, Cuddapah, to the Chief Secretary to Government, dated 8th December 1894, No. 18.

With reference to G.O., No. 2795, Judicial, dated 17th November 1894, I have the honour to suggest that the alteration in section 239, Criminal Procedure Code, recommended by the Hon'ble Mr. Justice Knox, is most necessary.

2. In the Sessions Court of North Arcot there were two instances of inconvenience caused by the present law. The trial of two persons for perjury committed in the course of one transaction at the December sessions of 1893 lasted till after Christmas. At the September sessions three persons were tried for perjury committed in the course of one transaction and the law necessitated the formal repetition of almost identically the same evidence and other proceedings three times over. In 1894 at the October sessions of the Cuddapah Court four persons were tried for perjury committed in the course of the same transaction. The interruption to the business of the courts caused by these tedious proceedings may in some instances become very serious.

(Signed) W. H. WELSH,
Sessions Judge.

From the Acting Sessions Judge, Salem, to the Chief Secretary to Government, dated 9th January 1895, No. 10.

With reference to G.O., No. 2795, Judicial Department, dated 17th November 1894, I have the honour to submit the following suggestions.

2. *Section* 236, *Criminal Procedure Code.*—The absence of any express provisions in the code to correspond with the form in Schedule V, No. XXVIII (ii), clause (4), has caused much confusion and several notable miscarriages of justice in various parts of India. The fact is that the body of the code does not recognize any "alternative" charge of perjury in the sense contemplated in the specimen charge given in the schedule. The Bombay and Calcutta High Courts have accordingly held that when there is a conviction on two contradictory statements on oath the conviction proceeds really on *one* offence, viz., in making contradictory statements, and that there has been no conviction in the legally "alternative" sense at all. As a logical sequence of this construction of the body of the code, it has been repeatedly held in Bombay and Calcutta that there can be no conviction on contradictory statements on oath unless such statements fall under the same section of the Penal Code. Thus it has been held that if a witness tells the police one story and flatly contradicts this story in court, he can be convicted of perjury only when it is shown affirmatively that either one statement or the other was false. This is always difficult and frequently impossible; and it follows that a vast mass of perjury of this kind escapes punishment. This is the more regrettable as prosecutions for perjury apart from "alternative" perjury are made so difficult by all the "safeguards" imposed by the code that very few people care to undergo the trouble and expense of undertaking them.

3. I propose, therefore, that the code should in express terms allow a condition for contradictory statements on oath, no matter what section of the law the specific statements may fall under.

4. *Section* 303.—I think a judge should be empowered by law to question the jury briefly as to the grounds on which they base their verdict. As the law stands at present, it often happens that a verdict is based on some absurd mistake of law or fact, or some absurd superstition, without any one being at the time aware of the fact. Take the case of an acquittal in case based on circumstantial evidence. The jury may have most carefully and honestly considered the evidence and rejected it as untrue or inconclusive. On the other hand, the acquittal may be based on the well-known dislike of many natives, especially of the uneducated kind, to convict of circumstantial evidence. It is obvious that if the value of this verdict came under consideration in the High Court it would be of immense advantage to the Judges to know that it was at least not tainted by such ignorant superstitions. I could easily give similar instances. I cannot see why a jury should be exempted from the simple duty of giving a brief reason for their verdict, to be elicited by the judge. Formerly a judge was allowed to do this; but of late years the High Courts have disallowed the practice.

(Signed) T. M. HORSFALL,
Acting Sessions Judge.

From the District Magistrate, Bellary, to the Chief Secretary to Government, dated 14th January 1895, Magl. Index No. 6.

In observance to G.O., No. 2795, dated 17th November 1894, I have the honour to submit the following suggestions for the revision of the Criminal Procedure Code; they are put forward on account of difficulties that have arisen or doubts that have been felt in actual administration.

2. (*a*) *Section* 143.—The order of a Sub-Magistrate prohibiting a public nuisance should be made appealable by an addition to section 406.

(*b*) *Sections* 161, 162.—The Calcutta ruling of 1889 (XVI, 610) that accused has a right to call for and cross-examine upon the investigating police officer's note book, even though the police officer has not refreshed his memory by it, perhaps went beyond the intention of the legislature; the need of caution is shown by Allahabad XVI, 207.

It is also not clear what is meant by the prohibition "shall not be used against accused." The Allahabad High Court held the note book might be used to contradict a defence witness by the police officer refreshing his memory from it as to a previous contradictory statement (XV, 25); but it is doubtful whether the same use could be made of it to corroborate a prosecution witness under Evidence Act, section 157.

(*c*) *Section* 240.—It is doubtful whether the word "charges" here includes a complaint where the charge has not yet been framed. If not, such complaints (remaining over after conviction in a similar complaint) cannot be withdrawn in an ordinary Sub-Magistrate's Court where there is no Public Prosecutor (*cf.* 248 and 492). Yet the word "charge" is used in its broader sense in section 443.

(*d*) *Section* 350.—There are certain very lengthy Sessions cases (I may instance the Mahant of Tirupati's case and the late Tanjore forgery, the latter of which lasted three months) where the death or illness of the Sessions Judge would cause serious public inconvenience in the present state of the law, by which a new trial would be necessitated. A provision should be introduced, similar to that which enables one magistrate to continue a case begun by another, permitting a Sessions Judge, on sanction by the High Court in each individual case, to hear a case which has been begun by his predecessor.

(*e*) *Section* 488.—The word "adultery" should not have the limited meaning given to it by the Penal Code—see the immoral consequences pointed out by Mr. Justice Best in 1894, Madras XVII, 260.

(*f*) *Section* 560.—An immediate order of imprisonment should be legal for default of payment of compensation. It is now otherwise: see Indian Law Report, Calcutta, XXI, 985.

(Signed) H. TREMENHEERE,
District Magistrate.

From the Government Pleader, Madras, to the Chief Secretary to Government, dated Madras, 17th January 1895, No. 26.

With reference to the Proceedings of Government, No. 2795, Judicial, dated 17th November 1894, I have the honour to submit the following—

Remarks.

1. It appears to me that some provision ought to be made to enable the High Court to issue a warrant for the arrest of an accused person in cases where that Court is exercising its powers under section 439.

2. At present, if the High Court considers there has been a miscarriage of justice owing to an improper acquittal when a magistrate has taken an erroneous view of the law, it can only issue a notice to the accused. If the accused chooses to abscond, the High Court has no means of enforcing his attendance. Such a case has actually occurred quite recently.

3. Now in cases where Government appeals against an acquittal under section 417, there is an express provision—Section 427, which enables the High Court to issue a warrant directing the arrest of the accused, but the power is limited to appeals by Government against acquittals and cannot be exercised in those cases where the High Court acts of its own motion. This is undoubtedly a defect and requires to be remedied.

4. Section 426 seems to require alteration. An Appellate Court may, pending an appeal by a convicted person, order that the sentence be suspended or that he be released on bail.

5. If the sentence is ultimately confirmed the time during which he has been released on bail is excluded, but if the sentence has merely been suspended such time is not excluded.

6. The consequence is that in many cases the accused does not undergo his sentence at all, or only a small portion of it. I will give an illustration.

7. An accused person is sentenced to rigorous imprisonment for six months. He either appeals or puts in a revision petition to the High Court and at the same time asks for a suspension of sentence. The High Court admits the appeal or revision petition and suspends the sentence. The accused's vakil, when the case is ready for hearing, succeeds in getting an adjournment from time to time till his client has served out his sentence in simple imprisonment instead of rigorous. Such cases have occurred more than once in this Presidency.

8. Another instance in which the provisions of the code are abused is in reference to section 526-A.

9. Under the provisions of this section if an accused person signifies to the magistrate that he is desirous of applying to the High Court for a transfer of the case to some other magistrate, the magistrate is bound to stay proceedings for a reasonable time to allow of an application being made to the High Court.

10. When an accused person wants to delay the trial and is unable to get any more adjournments out of the magistrate, he asks for a stay of proceedings under section 526-A. The Court is bound to accede to his request. Having got an adjournment he takes no steps whatever to get a transfer. If the magistrate betrays any impatience and threatens, after what he considers a reasonable time, to proceed with the case, he is at once informed that an application has been put in to the High Court, but has not yet come on for hearing. The unfortunate magistrate has no means of

ascertaining whether this is a fact or not, and, as he is afraid to proceed lest the High Court should consider his action hasty, the trial is delayed for months. The effect of the delay is almost invariably to prejudice the case for the prosecution very seriously.

(Signed) E. B. POWELL,
Government Pleader.

From the Commissioner of Police, Madras, to the Chief Secretary to Government, dated 19th January 1895, No. 10.

With reference to G.O., No. 2795, dated 17th November 1894, I have the honour to report that the amendments proposed appear to me to be, so far as they affect the working of the police, necessary and desirable.

2. I venture to suggest the consideration of the following subjects, which are not included in the proposed amendments:—

Section 337.—The offence of house-breaking by night is not triable exclusively by the Court of Session or High Court, so a pardon cannot be tendered to an accomplice in such an offence. It is occasionally very desirable that, in order to break up a troublesome gang, one of the offenders should be admitted as an approver. The difficulty is sometimes got over by irregular and improper methods. I would insert between the words "High Court" and "the District Magistrate" the words "or any offence which the magistrate holding the preliminary enquiry considers to be one proper to be committed for trial by the Court of Session or High Court."

Schedule II.—Offences under section 409, Indian Penal Code, should be made cognisable by the police, subject, of course, to the restrictions imposed by section 197, Criminal Procedure Code. All other kinds of criminal breach of trust are cognisable by the police and there appears to be no sufficient reason for putting difficulties in the way of prompt and speedy action by the police in cases where a cash-keeper or clerk in the public service or a postal peon has embezzled money.

3. I would also suggest that the question of making the offence of cheating under sections 417, 419, 420 and 468, Indian Penal Code, cognisable by police, be carefully considered. Some cases of cheating are of such a nature that they may safely be left to be patiently endured by the person cheated, but there are many cases in which the public interests require that the offenders should be prosecuted. Experience proves that persons cheated are often willing to complain to the police when they are not prepared to undergo the trouble of making a complaint before a magistrate. It is, of course, open to the police on receiving a complaint of cheating to lay information before a magistrate and obtain his order to investigate, but the circumstances are often such that justice would be greatly assisted by giving the police power to arrest without warrant.

(Signed) H. W. H. COX, Col.,
Commissioner of Police.

From the District Judge, Gódávari, to the Chief Secretary to Government, dated Rajahmundry, 21st January 1895, No. 102.

I have the honour to reply to G.O., No. 2795, Judicial, dated 17th November 1894, regarding the Criminal Code.

2. The proposed new section 9-A has been drawn to suit provinces where the Judge, the District Magistrate and several Joint Magistrates all reside in one station. In this Presidency the Session Courts of Berhampur, Rajahmundry, Chingleput and Tellicherry are not at the head-quarters of a District Magistrate and when the Sessions Court is at the head-quarters of a District Magistrate the Joint Magistrate is usually far away. Instead of "head-quarters" I would say "the Sessions Court station" and instead of "Joint Magistrate" I would say "First-class Magistrate."

3. I support the suggestion made by Mr. Justice Knox about section 239. I remember that in a civil appeal at Masulipatam I sanctioned the prosecution of six witnesses, who had united to give false evidence about a registration. The Joint

Magistrate of Kistna had to hold six separate trials. Six times he plodded through the weary story, six times recording the evidence of the same long array of witnesses for the prosecution and for the defence. Men are not machines and there are limits to the endurance of magistrates. I was heartily glad that the Joint Magistrate disposed of the six cases himself and did not commit them to the Sessions.

4. The truth is that the Evidence Act and the Codes are based on common sense and sweep away many time-honoured fragments of English procedure, but lawyers are conservative and, despite the legislature, the English procedure is again restored. There is no reason to suppose that several prisoners charged together with giving false evidence would not have a fair trial and it usually happens that such false evidence is given by a group of witnesses in pursuance of a previously arranged plan. The rule that requires such witnesses to be tried separately for perjury is unnecessary and it undoubtedly throws useless labour on the courts.

5. I beg permission to offer suggestions about section 288. That section enables a judge in his discretion to treat as evidence the record of the enquiry of the committing magistrate, but the High Court of Madras has much lessened the utility of this section by insisting that a deposition must be proved, that is to say, that some one who was present before the magistrate at the enquiry must be called as a witness at the Sessions to prove that the deposition was given. The signature and certificate of the magistrate at the foot of the deposition is not sufficient. A witness must be called who heard the deposition given. This rule tells very hardly against accused persons at the Sessions. They may detect in the evidence of the prosecution witnesses deviations from the story told by these witnesses before the magistrate and they may bring these discrepancies to the notice of the judge who has the magistrate's record before him, and these differences may cast the utmost discredit upon the prosecution evidence, but the judge is not permitted to take these deviations into consideration and may not refer to the magistrate's record, unless the accused person has had the unusual foresight to provide himself with a witness, who can be called at the Sessions trial to "prove the depositions." I brought this matter to the notice of the High Court when I was Sessions Judge of Kistna, but no notice was taken of my remarks, and therefore I beg to bring the matter prominently to notice now. It seems to me a ludicrous travesty of justice. In the prisoner's statement filed under section 287 the magistrate's signature is sufficient. In medical depositions read under section 509 the magistrate's signature is sufficient. But for the rest of the magistrate's record, which falls under section 288, the High Court says that the magistrate's signature is not sufficient and that a witness must be called to prove the depositions. I beg to suggest that to this section be added the words: "The signature of the magistrate shall be sufficient to prove the deposition."

(Signed) G. T. MACKENZIE,
Acting District Judge.

From the District Magistrate of South Canara, to the Chief Secretary to Government, dated Mangalore, 22nd January 1895, No. 31.

With reference to order, No. 2795, Judicial, dated 17th November 1894, I have the honour to offer the following suggestion on the revision of the Criminal Procedure Code.

2. The Madras High Court has, in Criminal Revision Case, No. 719 of 1883, reported at page 916 of Weir's Criminal Rulings, 3rd Edition, held that the dismissal of a complaint for a non-cognizable offence under section 203 for failure to pay process fees is illegal. Section 31 of the Court Fees Act, No. VII of 1870, contemplates the levy of fees for serving processes in non-cognizable cases. If the Government considers that the ruling of the High Court is in accordance with the provisions of the Criminal Procedure Code, I beg to suggest that the necessary amendment may be made.

(Signed) W. H. WELSH,
District Magistrate.

From the Chief Presidency Magistrate, Madras, to the Chief Secretary to Government, dated 23rd January 1895, No. 18.

As directed by G.O., No. 2795, dated 17th November 1894, I have the honour to submit the following suggestions for the amendment of the Criminal Procedure Code :—

1. Act V of 1889 alters the reading of sections 174, 175 and 176 in their application to Madras City, which alterations will, I presume, now be incorporated in the code. Under the new section 176 (1), a Presidency Magistrate shall hold an inquiry when any person dies in prison. This was not done by the Coroner before his office was abolished nor is it done at the central or other jails in the mofussil. When a prisoner's death is certified by the medical officer to have occurred from ordinary and natural causes, I do not see the use of a magisterial inquiry. When the death occurs while in police custody or under any of the circumstances mentioned in section 174 (1), clauses (*a*), (*b*) or (*c*), in prison, a magisterial inquiry may be advisable and more or less necessary, but when an ordinary and natural death occurs in a prison such an inquiry serves no useful purpose. In ordinary times the extra work thus imposed on Presidency Magistrates is not great, but in times of epidemics of cholera or other diseases it becomes heavy and the magistrates not only run a needless risk of infection themselves, but also of spreading the infection among others. I would therefore suggest that section 176 (1) should be so amended as not to require a magisterial inquiry in cases of a death from natural causes in prison; this I think could be most easily done by adding a proviso such as—"Provided that no inquiry into the cause of death of a person who dies in prison need be held except in the cases mentioned in section 174 (1), clauses (*a*), (*b*) and (*c*)."

2. The following offences should, I think, be cognizable by the police, and the third column of Schedule II should, in respect to them, be altered from "shall not arrest without warrant" to "may arrest without warrant." Dishonest misappropriation under sections 403, 404, 405, Indian Penal Code; criminal breach of trust by a public servant, section 409, Indian Penal Code; cheating, sections 417, 418, 419, 420, Indian Penal Code; and forgery, sections 465, 468, 471. It frequently happens that offenders under these sections abscond and efforts are made to stop them by telegraphing to police officers in distant places to arrest them. This cannot be done legally without the warrant, and the criminal escapes. The police of Madras City have applied to me for a warrant when they have received telegrams of this sort, but there is no provision of law under which I could issue such a warrant. If the offences I have enumerated were made cognizable by the police, there would be no difficulty in the matter.

3. The wording of section 488 might be much clearer than it is. What is intended by "living in adultery"? If a wife commits adultery and the husband turns her out of his house, is she entitled to an allowance provided she afterwards lives a chaste life? Again, a wife in whose favour an order has been made commits a single act of adultery; is she entitled to continue to draw the allowance? If these two questions should be answered in the negative, I think the expression "is living in adultery" should be altered to "has been guilty of adultery" wherever it occurs in this section in reference to the wife. What is meant by "living separately by mutual consent"? In a large number of cases where an allowance is ordered the parties are so living. The husband says, "I will not have her in my house, she is always quarrelling"; and the wife says, "I cannot live with him because he habitually treats me with cruelty." Surely in such a case the wife would be entitled to an allowance. I am unable to see the object of the words "if they are living separately by mutual consent" in clauses 2 and 3 of the proviso to this section, and would suggest that they be omitted. The provision that a wife is not entitled to an allowance if "without sufficient reason she refuses to live with her husband" is quite sufficient protection to the husband.

(Signed) O. R. JONES,
Chief Presidency Magistrate.

From the Acting District Magistrate, Tinnevelly, to the Chief Secretary to Government, dated Tinnevelly, 27th January 1895, No. 71.

In reply to G.O., No. 2795, dated 17th November 1894, I have the honour to enclose, in original, the remarks of the following officer, regarding the revision of the Code of Criminal Procedure :—

(1) Head Assistant Magistrate.
(2) General Duty Deputy Magistrate.
(3) Head-Quarters Deputy Magistrate.
(4) Treasury Deputy Collector and Magistrate.
(5) The Public Prosecutor, Tinnevelly.

2. The Joint Magistrate states that he has no remarks to offer.

3. I regret that, having only lately returned from furlough to a new district, I have not found time to study the proposed amendments, with sufficient care to enable me to submit any useful suggestions.

(Signed) A. W. B. HIGGENS,
Ag. District Magistrate.

Enclosures.

From the Head Assistant Magistrate, Tinnevelly, to the District Magistrate, Tinnevelly, dated Tinnevelly, 8th January 1895, Dis. No. 1.

I have the honour to reply to your No. 1573, dated 20th December 1894, on G.O., No. 2795, dated 17th November 1884.

2. Most of the amendments suggested in Appendix II would be improvements on the existing law. I do not see, however, any sufficient reason for interfering with the whipping sections.

3. The question raised in paragraph 21 of Appendix II points to an important omission in the present Code. Two cases require to be considered, one where the death of a surety becomes known to the Magistrate before any breach of bond by the person for whom security was given, and the other where the death of the surety becomes known only after the bond has been broken and it is desired to realize the penalty. In the first case the Magistrate should at once call for further security following a procedure similar to that laid down in section 126. The second case presents more difficulty. To meet this difficulty it should be expressly provided that the death of a surety will not free his property from liability in the event of a breach of bond by the person for whom security was given. If the property left by the deceased surety was found insufficient, no such steps should be taken against the representative of the deceased surety as might have been taken against the latter if alive. If the penalty cannot be realized in full out of the property, the remaining portion should be remitted and no further proceedings taken.

(Signed) J. H. MUNRO,
Head Assistant Magistrate.

From the Acting Deputy Magistrate on General Duties, Tinnevelly, to the District Magistrate, Tinnevelly, dated Tinnevelly, 29th December 1894, No. 728.

In reply to your endorsement No. 1573, dated 20th December 1894, on G.O., No. 2795 (Judicial), dated 17th November 1894, I have the honour to offer the following remarks on the proposed general revision of the Code of Criminal Procedure, Act X of 1892.

2. The Code after it came into force has been subjected to so many amendments that a revised edition of the Code containing all the amendments is extremely desirable.

3. As regards the various amendments now proposed, I beg to offer my remarks against each section as noted below :—

Section 9.—I think an amendment of the Legislature is necessary. The law lays down to whom appeals and other applications connected with the same shall ordinarily be presented and a pure administrative order to meet emergent cases of applications for bail is not desirable. The law itself may be amended so as to meet cases of this kind. I think that the District Magistrate alone should be empowered by law to hear such emergent applications. The Senior Joint Magistrate present at head-quarters happens in most cases to be a Sub-Divisional Magistrate, and in the case of an application for bail against his own sentence there will be a difficulty as to whom an application for bail should be presented when there is no Sessions Judge and when the District Magistrate is absent on tour. But the District Magistrate has very little original criminal work to do and applications for bail from the sentence of his Divisional Magistrates may be presented to him. Absence of the District Magistrate on tour cannot be a good ground for investing the Senior Joint Magistrate with such powers. Applications may well be presented to the District Magistrate in camp as similar applications are now presented to Sub-Divisional Magistrates while in camp.

4. *Section* 45.—I do not think an amendment is called for. In all cases of suspicious and even accidental deaths the village headman takes possession of the dead-body and retains it till the arrival of the police on the spot. I have not come across a single instance in which there was an attempt to burn or bury the dead-body against the orders of the village headman.

5. *Section* 57.—I think that the amendment proposed by the Government of Bombay may be adopted. It saves the trouble of serving summonses through the British Resident of the Native States.

6. *Section* 107.—An amendment is quite necessary for it not unfrequently happens that the leading men who are interested in the case and who are chiefly responsible for riots or who are suspected to be likely to do wrongful acts that may occasion breaches of the peace, reside outside the local jurisdiction of the Magistrate and as such are not now amenable to this section of the law.

7. *Section* 110.—The section as it is at present provides for taking security for good behaviour from men who are known to be habitually committing thefts or receiving stolen property. These offences grow rife solely on the support given to the delinquents by harbourers and protectors of them or disposes of stolen property, and I think that the law should be extended so as to bring these harbourers and disposers also within the view of this section.

8. *Section* 145.—The interpretation of the word "tangible" in the section admits of grave doubts and the rulings of the High Courts on the subject are not also quite clear. I beg to suggest that in the proposed revision this doubt may be cleared.

9. *Sections* 156 *and* 159.—It is in practice that in cases where the police under section 157 dispense with local investigation of a cognizable offence, the Magistrate either *suo motu* or at the request of the parties concerned orders the police to hold a local investigation. Evidently there is no provision of law authorizing such a procedure. But as no inconvenience is felt by such orders, the Magistrates may be legally authorized to make such orders which simply tend to detection of crime and promotion of justice.

10. *Section* 239.—Whenever a number of persons are accused of offences under sections 193, &c., Indian Penal Code, much time is lost, but no corresponding resultant good derived by a separate enquiry or trial against each accused. If offences had been committed by a number of persons in one transaction, I see no reason why they should not be tried jointly. If the nature of the false statement be different with the different persons accused, the differences may be distinctly entered as separate counts in the charge framed under chapter XIX of the Code.

11. *Section* 437.—I think an order of discharge passed by a Subordinate Magistrate should not be set aside by a superior court unless there is a fresh evidence which the Magistrate has failed to record. But however where there has been a failure of justice owing to erroneous view of law or irrational conclusions from facts proved the superior court should have the power to direct a retrial on the same evidence.

12. *Section* 487 seems to require no amendment in my opinion. When a Magistrate strikes off a case as false on the strength of a police report, I do not think that his mind will be quite free from this predetermined falsity of the case when he himself begins to try the complainant for an offence under section 182, Indian Penal Code. As it is not likely that the accused will have an impartial trial if the proposal is carried out, I am of opinion that the so-called administrative inconveniences should not be considered.

13. *Section* 514.—Whenever a surety bond is executed under section 106, Criminal Procedure Code, it is in practice here to call on the village munsif of the surety's village to sign the bond as an attesting witness in support of the solvency of the surety. When a surety dies within the period mentioned in the bond, the village munsif should be bound by law to inform the Magistrate of the occurrence so that he may call on the person bound over to furnish fresh surety at once.

14. *Section* 552.—I think it desirable that the provision should be extended to all mufussal courts.

(Signed) T. A. SHUNMUGASUNDRAM PILLAI,
Acting Deputy Magistrate.

From the Public Prosecutor, Tinnevelly, to the District Magistrate, Tinnevelly, dated 22nd January 1895, No. 16.

With reference to your endorsement, No. 1573, dated 20th December, 1894, on G.O., No. 2795, dated 17th November 1894, I have the honour to make the following remarks relating to the revision of the Code of Criminal Procedure :—

Sections 107, 109 *and* 110.—Provisions as to the taking of security for good behaviour may be extended to people who get Thooppukooli (*i.e.*) a fee for discovering or pretending to discover stolen cattle and to restore them to the rightful owner.

Sections 144 *and* 145.—The order to be passed under section 144 directing a person to do or abstain from doing a certain act in emergent cases may be made *ex parte* and it is allowed to remain in force for not more than two months, but after the expiration of this period a fresh order may be passed by the same Magistrate under the same circumstances, so that it is possible for a District Magistrate, Sub-Divisional Magistrate or other Magistrate empowered in that behalf to restrain the doing of a certain act (which may be perfectly legal) for an indefinite length of time by repetitions of the same order, and I do not however think that the Legislature could ever have intended to legalize such a procedure, but there is nothing either in this section or any other section of the Code to render it illegal or irregular. The provision in the section making the order passed under it liable to be rescinded or modified by the same Magistrate, his superior or successor no doubt impliedly allows the person aggrieved by it to appear before the Magistrate and show cause against it and thus have it cancelled. But there is nothing in the section which makes it however obligatory upon a Magistrate to hear the aggrieved party when he so comes in to show cause or to render illegal his action in declining to hear him. The several rulings go to show that the orders passed under this section are not judicial proceedings and they cannot be set aside by the High Court on revision. Hence there is necessity for some provision to make the Magistrate hear the opposite party at least after the *ex parte* order. In the event of there being disputes likely to lead to a breach of the peace there exists the same necessity for protecting a person in the exercise of his legal right to do a certain act such as to preach Kothba and recite imamut in a mosque even though it may have no reference to immoveable property as there is in maintaining one in possession of "tangible immoveable property" and the enjoyment of certain incorporeal rights attached thereto of which he may be shown to be in actual possession. The paramount necessity for preserving the peace and preventing imminent danger to life and property may demand no doubt the restraint for a while of the exercise of the lawful rights of a person, but I would beg to suggest that when once an order so restraining him is passed *ex parte*, a judicial enquiry may be held by the Magistrate as to his right to do the act restrained and such an order as may be indicated by the result of such enquiry may be passed. This order may be allowed to remain in force till duly set aside by decree of a competent court. The necessary amendments in this section will have to be made.

Sections 157, 169 *and* 170.—Under the present law the station-house officer after sending in the first occurrence report need put in either a charge sheet or a report referring the case as false, and he is not bound to inform the Magistrate of the several items of evidence which he may collect from time to time in the case although the actual practice in some cases has been to send up supplemental memorandums containing the substance of the information received by him from the witnesses. It is good for the ends of justice to be able to compare the later statements of witnesses made at the trial with those made by them to the investigating officer. It is necessary to have an amendment requiring the police to send up as soon as possible to the Magistrate supplemental memorandums containing the abstract of the information which they may get in the course of the investigation.

Sections 209, 210 *and* 218.—Cases are sometimes committed to the Sessions Court in the absence of *primâ facie* evidence or grounds in support of the charges to be tried by that court, but there may at the same time exist sufficient evidence to support some minor charges to be tried upon the same facts by the committing Magistrate. It would be good in such cases to have a provision in the Code under which the Sessions Court could return the record of the case to the committing Magistrates with directions to try themselves such minor charges. The ends of justice would then be satisfied and the time of the Sessions Court would not at the same time be wasted.

Sections 209, 226, 271 *and* 494.—In some cases the committing Magistrates frame erroneous, imperfect or no charges. The real charge against the accused committed to the Sessions is the one framed and read at the Sessions Court before the commencement of the trial. If however the Public Prosecutor withdraws from the prosecution even before the reading of the charge at the Sessions Court the ruling at I.L.R., 12 Mad., 35, requires the Sessions Court to record an order of acquittal and not of discharge. If there should be an acquittal, accused cannot be tried again upon the same matter even if fresh evidence be forthcoming and it is necessary in the ends of justice to have criminal proceedings revived against him if further evidence be available. Hence there is necessity for an amendment directing Sessions Court to record only an order of discharge in such cases.

Sections 253, 436 *and* 437.—It would be advisable to provide an appeal in all cases of discharge under section 253, whether or not fresh or further evidence be forthcoming.

Sections 258 *and* 417.—Some of the Second and Third Class Magistrates who may want to let off an accused person and wish to be sure at the same time to have his order left undisturbed by the superior courts frame a charge against him even when none ought to be framed and call for a few witnesses from the accused, and after hearing them record an order of acquittal even when the defence evidence is manifestly false or unreliable. The Divisional or District Magistrate or the Sessions Court could not interfere with such acquittals unless by moving the Local Government to make an appeal to the High Court. The orders of acquittal of this description may be so numerous that it may not be worth while constantly to trouble Government with requests to make appeals against them. To avoid this difficulty power may be given to the District Magistrate to entertain appeals from all orders of acquittal passed by the said Second and Third Class Magistrates as well on questions of fact as of Law and section 417 may be so amended as to confine appeals to the High Court by the Local Government against orders of acquittal to those passed by the First Class and District Magistrates and Sessions Judges and the High Court on its Original Side.

Public Prosecutor.

From the Head-Quarter Deputy Magistrate, Tinnevelly, to the District Magistrate of Tinnevelly, dated Camp Ponnakudi, 23rd January 1895.

With reference to your endorsement, No. 1573, dated 20th December 1894, on G.O., No. 2795, Judicial, dated 17th November 1894, I have the honour to submit the following remarks:—

2. (i) The amendments proposed to be made in sections 57, 107, 156 and 159 seem to be necessary.

(ii) The exemption proposed to be made in favour of railway servants seems to be necessary also in the case of servants of the Postal, Telegraph and Medical departments. Though, in practice, such servants are not bound over by the police, it is still necessary that the Code should be brought in accordance with the usage and departmental orders.

(iii) *Section* 437.—So far as I am aware, it is only when *further evidence* is forthcoming that further enquiry is ordered in the case of discharges. Sometimes persons are discharged owing to gross misappreciation of evidence recorded and not for omitting to record all available evidence. As the law is now construed here, the revising authorities find it difficult to order retrial unless some more evidence is likely to be produced. I consider that, even if no additional evidence were forthcoming, the superior courts should in the ends of justice be empowered by law to order additional proceedings to be taken and the trial to be completed.

(iv) *Section* 552.—The provision may be extended by empowering First-class Magistrates but not the Magistrates of the second and third class who are likely to misuse the power.

3. I have above given my opinion in regard to some of the amendments already noted by several authorities for consideration. I shall add below a few remarks in regard to certain other amendments which have appeared to me to be necessary—

(i) *Section* 340.—"Pleader" includes any Mukhtar or other person permitted with permission of the court to act in a criminal proceeding. Some Sub-Magistrates allow men of questionable character not only to defend the accused, but also to conduct the prosecution. Though it would sometimes be hard to disallow, as a rule, unqualified men from appearing for the defence of the accused, the law might prevent their employment on behalf of complainants and minimize the existing evils.

(ii *Sections* 497 *and* 498.—In cases of persons remanded to custody, the aggrieved parties could get redress either in the High Court or Court of Session, but applications to the High Court would be rare and to the Session Court would not generally end in a prompt disposal. Subordinate Magistrates are practically uncontrolled in the matter of remanding persons. Though section 167 insists upon the submission of copies of orders of remand by Magistrates other than District and Divisional Magistrates, and though copies of remand orders under section 344 of the Code of Criminal Procedure are being received from Sub-Magistrates, neither the District Magistrates nor the Sub-divisional Magistrate could interfere, even when they are convinced that the remanding to custody is uncalled for in the circumstances of the case. The absence of any legal authority empowering the District Magistrate to interfere in such cases has a bad effect. The power of reversing the proceedings of the Sub-Magistrates in the matter should, I think, be extended to the District Magistrate.

(Signed) T. V. NARASIMHULU,
Deputy Magistrate.

From the Treasury Deputy Collector and Magistrate, Tinnevelly, to the District Magistrate, Tinnevelly, dated Tinnevelly, 23rd January 1895, Dis. No. 72-Acc.

Referring to your endorsement, No. 1573, dated 12th December 1894, on G.O., No. 2795, dated 17th November last, and reminder, dated 21st instant, thereto, I have the honour to report as follows.

Before I proceed to offer the few suggestions that have occurred to me for the amendment of the Criminal Procedure Code, I wish to express my opinion in regard to the several proposals already made and embodied in the Government Order above quoted.

2. *Section* 9.—I do not think that any legislative alteration is required. Administrative arrangements can be made. The District Magistrate could be appointed to officiate as Sessions Judge in addition to his own duties for the purpose of hearing urgent applications for admission to bail.

3. *Section* 10.—I do not see the necessity for the appointment of Additional or Joint District Magistrates since the District Magistrate is always within the district at a reasonable distance from the district head-quarters, and during his temporary absence from the district either on leave or other duty, the Sub Collector is called into district head-quarters and remains in charge.

4. *Section* 45.—In all cases of suspicious and accidental deaths the village headmen wait for the arrival of the police before orders are given for the cremation or burial of dead bodies, and a legal provision does not seem to be necessary.

5. *Section* 57.—I consider that the proposed amendment would be an improvement on the existing law and obviate the delays consequent on the despatch of the necessary processes through the British Residents in Native States.

6. *Section* 107.—I am of opinion that it will be advantageous to invest Magistrates with power to take action under this section against a person, although he is not personally within his jurisdiction. I am aware that there have been instances in which riots have taken place within the jurisdiction of a Magistrate at the instigation of men residing outside of it, and for want of a provision of the kind proposed no action has been taken against them.

7. *Section* 110.—I am strongly of opinion that security should be taken from protectors and harbourers of thieves or disposers of stolen property as the habitual offenders commit crimes more on the support given by these persons than on their own mischievous and thieving propensities.

8. *Section* 145.—The expression "tangible immovable property" requires clear explanation in order to remove all doubts about it.

9. *Sections* 156 *and* 159 —Magistrates constantly order the police to investigate cognizable offences, and no inconvenience or failure of justice has resulted. The existing practice may continue.

13. *Section* 239.—Much time is no doubt now wasted in trying separately persons accused of perjury in a case and no corresponding advantage is gained. It would be well if several persons are tried jointly with different counts if necessary.

20. *Section* 487.—It is very undesirable that a Magistrate who orders a prosecution under section 182, Indian Penal Code, on a report by the police that information given to them was false, should himself try the case to suit even administrative convenience since he cannot remove the impression of falsity of the information from his mind.

21. *Section* 514.—No doubt a procedure should be prescribed in the event of surety dying. It would be sufficient if the property of the deceased surety to the available extent could be attached for the realization of the penalty of the bond broken.

Section 552.—The extension of the provision to the mofussil courts is very desirable in the ends of justice.

The following are the suggestions that have occurred to me on a consideration of the subject :—

Section 15.—The tenure of office of Bench Magistrates should be restricted to three years. They can of course be re-appointed.

Section 161.—Police reduce into writing the statements made by witnesses examined by them. These written statements are never read over to the witnesses, nor are they acknowledged to be correct. Sanction is often applied for and granted for prosecution under section 193, Indian Penal Code, on the score of statements given before the police being in contradiction with those given before Magistrates. Witnesses often complain that the police recorded their statements as best suited to their purpose and did not read the statements over to them. I consider it is not fair to accord sanction on the statements recorded by the police. Either sanction should not be given in such cases or the police should be directed to read over the statements and get the necessary acknowledgment as to their correctness.

Section 413.—I think there should be appeal in all cases when the sentence is one of imprisonment only, even though the period may not exceed one month, since the loss of personal liberty is not an easy matter to be trifled with and the parties should have all remedies towards guarding the same. It does not matter in cases of petty fines only as the loss is a pecuniary one.

Section 497.—It is laid down that a person accused of an offence should not be released on bail if there appear reasonable grounds for believing that he has been guilty of the offence of which he is accused. Generally the evidence of the complainant and of his witnesses is first taken and thus affords reasonable grounds for believing that the accused was guilty. The examination of the accused and of his witnesses exposes the falsity of the prosecution evidence. In the interim the accused is remanded into custody and kept in jail. It sometime so happens that after remanding the accused to jail, the Magistrate ultimately fines him. The complainant, who is in some cases guided by mischievous motives, has the satisfaction of having secured the confinement of the accused in jail, though for a short time. To guard against such effects I would suggest the accused being let at large unless the interests of the prosecution or the safety of the person of the accused require his detention under custody.

I was not aware that a report was called for from me until I received the reminder yesterday and I had no time to go deeply into the matter.

(Signed) C. SUBRAMANIA AIYER,
Dy. Collector and Magistrate.

From the District Magistrate of Coimbatore, to the Chief Secretary to Government, dated Coimbatore, 27th January 1895, No. 97.

With reference to G.O., No. 2795, Judicial, dated 17th November 1894, I have the honour to forward the following remarks.

2. *Section* 9.—I believe that a District Magistrate has in this Presidency been gazetted to officiate as Sessions Judge in addition to his own duties, and I think that, if this is done, no inconvenience could possibly arise. It would be unnecessary in most cases for the officer so gazetted to be confined to the head-quarters of the district.

3. *Section* 10.—In this Presidency I do not think the necessity for Joint District Magistrates will arise.

4. *Section* 45.—A provision empowering the headman of a village to prevent the cremation or burial of a body might in some cases prove useful, but I think the power would very rarely be used.

5. *Section* 57.—The proposed amendment is likely to be useful.

6. *Section* 68.—The Code lays down that every summons shall be served by a Police officer, or by an officer of the court issuing it. This provision might be made a little more elastic so as to enable summonses in forest cases to be served by officers of the Forest department, and so on. I mention forest cases especially because where a summons has to be served upon a member of a jungle tribe in the heart of the forest, it is great waste of time for the Police to be employed in serving it. The forest subordinates are on the spot and can with much less difficulty find the man. Probably also a summons to a salt cooly or possibly a liquor dealer could in many cases be served much more easily by a Salt or Abkári officer than by the Police.

7. *Section* 193.—I am not aware of any inconvenience being felt in this Presidency.

8. *Section* 195.—The power given in this section to superior courts to revoke a sanction granted by a subordinate court now leads to at least four separate proceedings in almost all sanction cases. Sanction is applied for and obtained, an appeal is filed against the order granting sanction; if this is confirmed the case is tried, and if there is a conviction there is another appeal. In fact on the same facts there are often two separate appeals. The tendency therefore instead of granting sanction is to take proceedings under section 476 of the Code or by complaint by the court itself.

9. *Section* 197.—There is a conflict between the law as laid down in the Code and the orders of certain departments, *e.g.*, the Police orders and the Board's Standing Orders, in the matter of the prosecution of public servants for acts committed by them in their official capacity. I think the law might be extended to cover the case of prosecutions of certain classes of public servants other than Judges and public servants not removable from office without the sanction of Government. All classes of public servants not removable from office without the sanction of Heads of Departments might be added. Nothing could be easier than by complaints against, say, the whole establishment of some forest range to get the whole of them summoned to a court, and to plunder the forests of the range during their absence. I know of one case in which the whole of the subordinates in a range were simultaneously summoned to attend a court many miles away, and I know of at least one case in which a Range officer has been maliciously prosecuted.

10. *Section* 204.—Section 202 permits the postponement of the issue of process, but only when the Magistrate has reason to suspect the truth of a complaint. It is suggested by the Head Assistant Magistrate, Mr. Batten, that cases often occur in which there is no reason for suspecting the truth of a complaint, but a police investigation is desirable for obtaining more evidence, or for other reasons. He accordingly suggests the addition to section 204 of a clause empowering the Magistrate to direct such an investigation. Such a clause would, I think, be useful, but it would be advisable that it should require reasons for ordering such an investigation to be recorded.

11. *Section* 239.—The proposed amendment would be very useful. But I demur to the suggestion that the present state of the law deters Magistrates from sanctioning prosecutions. If the number of sanction shows a tendency to decrease, it is, I think, attributable to the reasons given in paragraph 8 *supra*.

12. *Section* 349.—I would suggest the addition of a clause forbidding Sub-Magistrates from convicting and sentencing some of the accused, and sending up others in the same case for enhanced punishment. It is an anomaly that, say, three out of five accused persons should be liable to be convicted and sentenced by a Subordinate Magistrate, while the other two who are sent up for enhanced punishment may be acquitted owing to the Divisional Magistrate taking a different view of the facts.

13. *Section* 391.—The Code does not appear to require alteration. Except in the case of whipping inflicted upon juveniles, it seems inadvisable that a man whose sentence of imprisonment is less than fifteen days should be whipped.

14. *Section* 392.—It would in my opinion be better for the Local Government to decide the manner in which whipping is to be executed than to leave the question to the decision of a Sub-Magistrate.

15. *Section* 403.—I would suggest the addition of a clause clearly laying down that a second prosecution can be instituted in the case of a continuing offence. Otherwise a man who obstructs a road, for instance, may do so with impunity after once being convicted until a notice under section 143 has been served and he has been prosecuted under section 291 of the Penal Code.

16. *Sections* 425 *and* 442.—The amendments proposed seem necessary.

17. *Section* 437.—It is most advisable that the local courts should be able to exercise the powers conferred upon them by this section whether additional evidence is forthcoming or not. If a re-opening of the case can only be ordered when fresh evidence is forthcoming, the High Courts are sure to be deluged with applications for revision.

18. *Section* 439.—The High Court of Madras last year upset a conviction in revision without calling for the records of the case and without giving notice to the Public Prosecutor or the complainant. It subsequently claimed that power to do this is conferred upon it by this section. This power, if it exists, would be a most dangerous one, as the High Court might be led away by some unscrupulous person and might pass entirely unjustifiable order. It therefore appears to be necessary that the Code should distinctly declare that this power can only be exercised after the records have been called for and perused.

19. *Section* 487.—I would recommend the amendment of this section so that by consent of parties a Judge or Magistrate might try an offence committed in contempt of his own authority. My reason for this suggestion is that in some cases parties would prefer to be tried in their own district or near their own homes to having to go to a distance.

20. *Section* 514.—When a surety dies, it seems only just that his estate should be relieved from responsibility, and in that case it would appear advisable to call upon the person for whom the deceased stood as security to provide another surety.

21. *Section* 552.—If this section is made applicable to the mofussil, orders passed under it should be appealable.

22. *Section* 555.—The section lays down that no Judge or Magistrate shall hear an appeal from any judgment or order passed by himself. I do not see why he should not if the parties are desirous that he should do so, and I think in some cases they might wish it. In the same way I do not see why a Judge or Magistrate should not "try, or commit for trial, a case to or in which he is a party," if there is no objection raised by either of the parties to the case.

(Signed) H. BRADLEY,
District Magistrate.

From the Sessions Judge, Coimbatore, dated Coimbatore, 28th January 1895, No. 60.

ABSTRACT.—Stating that he has no remarks to make on the amendments suggested in the Code of Criminal Procedure, Act X of 1882.

From the Collector and District Magistrate of Nellore, dated Nellore, 29th January 1895, No. 112-Mag.

ABSTRACT.—Stating that he has no remarks to offer on G.O., No. 2795, dated 27th November 1894.

From the Acting Collector and District Magistrate, Kistna District, to the Chief Secretary to Government, dated 29th January 1895, D. No. 16—Tour.

Adverting to G.O., No. 2795, dated 17th November last, Judicial, I have the honour to submit the following remarks for consideration at the time of the contemplated recasting of the present Criminal Procedure Code (X of 1882).

Section 1.—The jurisdiction of heads of villages has been specially excluded from the operation of the Criminal Procedure Code. It not unseldom happens that heads of villages pass illegal sentences. Under the present law the only method of quashing such sentences is by reference to the High Court, and it is questionable whether even that court can interfere. I would recommend that District Magistrates be given revisional powers over all criminal proceedings of village headmen.

2. *Section* 252, Clause II., section 20 of the Court Fees Act VII of 1870, prescribes the levy of process fees in all non-cognizable cases. By section 252 of the Criminal Procedure Code, a Magistrate is bound to summon all the persons likely to be acquainted with the facts in warrant cases. It has been ruled that a warrant case cannot be dismissed for non-payment of process fees. But some warrant cases are non-cognizable, and when the complainant in such non-cognizable warrant cases refuses to pay process fees, there is no clear provision of law showing how the case is to be dealt with.

3. *Section* 560.—It has been recently ruled by the Calcutta High Court that, when compensation has been awarded to an accused under section 560, some effort must be made to recover the amount thereof from the complainant before an alternative sentence of imprisonment in default is awarded. If the Calcutta High Court have rightly interpreted the law I recommend that it be altered. The effect of the ruling is to increase the work of the courts, waste time and give the complainant an opportunity of evading payment altogether.

4. *Section* 480.—A summary method of punishing witnesses who disobey summonses is much needed. At present such default can only be dealt with by prosecution before another court, and it is notorious that Magistrates either from excess of work, disinclination to burden a brother official with more work, or ill-advised lenience, seldom resort to prosecution. I recommend that section 174, Indian Penal Code, be included in the list of contempts that may be dealt with under section 480, Criminal Procedure Code.

5. Legal provision is necessary to provide for the disposal of cases under the following circumstances:—

(*a*) when in a non-compoundable warrant case the complainant's attendance cannot be procured;

(*b*) when in a warrant case the accused cannot, after all efforts have been exhausted, be arrested.

In either case dismissal, discharge, conviction and acquittal are equally illegal in the present state of the law, and no other mode of disposal of a case exists.

(Signed) J. N. ATKINSON,
Acting Collector and District Magistrate.

From the Inspector-General of Prisons, to the Chief Secretary to Government, dated Ootacamund, 30th January 1895, No. 547.

I have the honour to submit the following reply to G.O. No. 2795, Judicial, 17th November 1894, regarding suggested amendments in the Codes of Civil and Criminal Procedure.

* * * * *

B.—CRIMINAL PROCEDURE CODE.

Section 367.—In the proviso at the end of the section the words "the Court of Session" should be omitted. The Government is aware of the grave inconvenience which arises through the omission of the Hon'ble the Judges of the High Court to record either a judgment or the heads of their charge to the jury, in original criminal trials. When prisoners, who have on the verdict of a jury been sentenced to death by the High Court on its original side, petition His Excellency the Governor in Council or the Governor-General in Council for mercy, there is no authorized record whatever of the charge delivered by the Hon'ble Judge who tried the case. The same difficulty arises when prisoners have been sentenced to lesser sentences. A record of the charge of the presiding Judge should, it is submitted, be secured by law.

Section 369.—The words "other than a High Court" should be omitted. An instance of the effect of the present state of the law will be found in the marginally-noted [*] orders. In the case there in question a prisoner who had been sentenced by the High Court at one sessions to transportation for ten years, was at the next sessions brought up and sentenced to six months' rigorous imprisonment instead, no warrant having meantime been issued.

[*] G.O., No. 34, Judicial, 10th January 1894. Endorsement, No. 346, Judicial, dated 21st February 1894, and this office No. C. 555, dated 6th March 1894.

Section 381.—A provision of law enabling the District Magistrate or senior Sub-divisional Magistrate present at head-quarters to issue a warrant under this section in the event of the death, removal, incapacity, or absence of the Sessions Judge appears to be needed, with reference to the remarks of the Government of India under section 9 in appendix (ii) to Home Department letter No. 11—Judicial—1148, 22nd October 1894.

Section 391.—Questions relating to this section were considered in G.Os., No. 243, 5th February 1891, and No. 2309, 14th December 1892. No amendment appears to be called for.

Section 392.—In line 2 of this section after the words "not less than," the words "three-eighths of an inch and not more than" should be inserted. The effect of the present law is to permit the use of a "light rattan" of any thickness, provided it is "not *less* than half an inch in diameter." The object is to prevent the use of thin cutting canes. The question as to what is or is not a "light rattan" is a mere matter of opinion, and practically there is no definite limit to the size of the rattan used, provided it is half an inch broad. A thick rattan, though less painful, is more dangerous than a thin one. It produces bruising of the deeper tissues which is more likely to set up serious mischief than external laceration. Some limit on the thickness of the cane appears to be desirable.

Section 397.—With reference to the Advocate-General's opinion and the High Court's ruling in Criminal Revision Case No. 556 of 1891, recorded in G.O., No. 938, 18th May 1892, it may be considered whether any amendment of the law is called for. It does not appear to me that "concurrent sentences" serve any useful purpose, and the ruling which has got rid of them appears to be beneficial.

E

Section 426.—With reference to the Advocate-General's opinion recorded in G.O., No. 962, Judicial, 4th April 1883, it seems desirable that words should be added to this section providing that no period during which a sentence is suspended (though the convict is not released on bail) shall form part of any sentence of rigorous imprisonment. As the law at present stands, an appellant may escape a material portion of the punishment awarded him through his sentence being suspended.

Sections 435 *and* 439.—A proviso should be added to these sections directing that the High Court shall not exercise its powers of revision under these sections on the motion of any private party, unless it is shown that the lower revising authority having jurisdiction has first been unsuccessfully applied to. The practice of moving the High Court to revise proceedings of subordinate courts, without any attempt having been first made to obtain the assistance of the intermediate local tribunal having jurisdiction, is notorious.

Sections 425 *and* 442.—The recommendations of the Jail Committee of 1888 (chapter XXIX, paragraph 6 of their report) do not appear to be worthy of entire adoption. All orders of an appellate or revising court, other than those reversing a conviction, should be certified, as at present, to the court of first instance, by which court *a fresh warrant* should be prepared and issued to the officer in charge of the jail whenever a sentence is modified. Orders reversing a conviction should be sent direct by the appellate or revising court to the officer in charge of the jail if the accused is in confinement.

(Signed) A. G. CARDEW,
Inspector-General of Prisons.

From the Acting District Judge of Trichinopoly, to the Chief Secretary to Government, dated 30th January 1895, No. 208.

With reference to the order of Government conveyed in G.O., No. 2795, Judicial, dated 17th November last, inviting proposals for the amendments of the Codes of Criminal and Civil Procedure, I have the honour to submit that I regret I have not had time to go into the subject thoroughly, but that I offer a few suggestions.

I. (*a*) There are certain sections of the Indian Penal Code which are almost entirely used for purposes of extortion and annoyance. In cases which approach the border line between civil and criminal jurisdiction, I consider that people should be forced to have recourse to civil courts in the first instance, and that rules should be framed for that purpose. I would be inclined to suggest that a general rule should be laid down that the civil courts should be applied to first, and that if the civil court thought in any particular case that the state of matters revealed was such that not only the party aggrieved should be compensated, but that, in addition, the wrong-doer should be punished for the wrong to the commonwealth, the civil court should grant a certificate, on which the criminal court should take cognizance of the wrong as an offence.

The sections which I particularly refer to are defamation, adultery, enticing a married woman, criminal trespass, and mischief.

(*b*) I have had an experience of over 14 years and find that there is a strong tendency, notwithstanding the efforts of the higher magistracy to check it, to get civil cases tried in criminal courts, by trumping up charges of assault, wilful damage, &c.

(*c*) The principle of putting some check on the institution of charges of the border nature is recognized already by insisting on the consent of the aggrieved husband for a prosecution in certain offences relating to marriage. My view is that the consent of a civil court is a better check than the consent of the party aggrieved.

(*d*) In certain districts, an allegation of a threat to commit murder was the favourite dodge. This was done to oust the jurisdiction of the second-class Magistrates. I am inclined to say that all second-class Magistrates should be allowed to try the whole section of criminal intimidation, instead of only half, as at present.

(*e*) There is a habit among Sub-Magistrates of convicting a man of two different offences on the same facts, and thus sentencing him to six months (*i.e.*, their full limit of powers) on each offence. Though discouraged by the High Court, it has been ruled that this practice is not illegal, *e.g.*, house-breaking and theft. It should be clearly laid down that only one sentence can be passed for one transaction.

(*f*) A clause should be added to the section about maintenance, empowering criminal courts to pass orders in terms of any razinamah, in the same manner that civil courts do.

(*g*) There is at present no means of punishing a witness who remains within ear-shot, after having been told to leave the court. Summary power should be granted to deal with such cases.

II. (*a*) It is very often, especially in appeals, of great importance to know whether certain evidence was objected to or not before the lower court. As the practice at present stands, if it is any one's business to note such an objection, it is the business of the court. Lower-class pleaders take advantage of this. They raise all sorts of frivolous objections. If the court denudes the objection of its verbiage and makes a note showing the foolishness of the objection clearly, the pleader charges the court with misrepresenting him and an unseemly dispute may follow, which may influence jurors or assessors, if any, or indeed a weak judge. Many men who will freely talk nonsense, hesitate to write it and affix their names thereto.

I would therefore suggest that the court shall not be bound to take a note of any objection which it over-rules, unless the pleader presents his objections in writing. The paper so presented should then become part of the record, with the Judge's written order rejecting or admitting the evidence with brief reasons. The present state of matters practically places the court at the mercy of unscrupulous pleaders, and compels the court to write down any nonsense the pleader chooses to say. I do not feel this difficulty much myself owing to the accident that I happen to be a Barrister; but in framing the Code, it must be remembered that Sub-magistrates, and possibly to some extent junior District Munsifs, are apt to get nervous if they are bullied by an Advocate or a Vakil of the High Court imported from Madras for a case of some local importance.

* * * * *

(Signed) R. D. BROADFOOT,
Ag. District Judge.

From the District Magistrate of Nilgiris, dated 31st January 1895, Ref. on G. No. 1139.

Abstract.— Stating that he has no remarks to offer regarding the proposed amendment of Criminal Procedure Code.

From the Acting District Magistrate, Madura, to the Chief Secretary to Government, dated 30th January 1895, No. 70.

In reply to G.O., No. 2795, Judicial, dated 17th November 1894, I have the honour to submit the following remarks and suggestions in regard to the revision of the Code of Criminal Procedure. I have no remarks to offer on the Civil Procedure Code.

2. *Section* 4.—The definition of complaint is such that in all cases the Magistrate receiving information from persons other than Police officers has to examine the complainant under section 200. This is found inconvenient in the case of Forest officers and Excise officers reporting cases of offences to Magistrates, and it would not

be difficult to amend the Code to avoid this inconvenience. Section 191 (*c*) may perhaps be held to authorize a second-class Magistrate to take cognizance of such cases without examination of the reporting officers, and section 50 of the Madras Abkári Act I of 1886 has been apparently taken to obviate the necessity of examination in cases reported by Abkári officers, but numbers of petty breaches of Forest Laws have to be charged before third-class Magistrates and in such cases an examination of the complainant has always to be made The easiest way of amending the Code would perhaps be by altering section 191 (*b*) so as to include a report by any public servant in his public capacity. This would include reports of offences against Municipal Laws in which cases there is at present rarely, if ever, any examination of the complainant before issue of process.

3. The proposed amendment to section 7 may be adopted without any disadvantage.

4. The proposed amendment to section 9 requires verbal alterations to suit the circumstances of this Presidency. In two districts there are Sessions Courts which are not at the head-quarters of District Magistrates (Rajahmundry and Tellicherry), and there are districts (*e.g.*, Anantapur, Bellary and Kurnool, where there are no officers here styled "Joint" Magistrates. If the amendment is required, and it may be necessary at times (*e.g.*, the sudden illness of the Judge at Rajahmundry recently), it should run as below after the words "sessions division": "the first-class Magistrate of the highest rank present at the head-quarters of the Sessions Court," for the phrase "Magistrate of the highest rank if section 129 of the Code." It is true that this might result in the court being temporarily in the hands of a newly-appointed Assistant or Deputy Magistrate, but it would only be for a very short time and for a particular purpose. If this is considered a grave objection, however, a proviso fixing a certain number of years' standing as a first-class Magistrate, say five, could be made, and if no one fulfilled the conditions, of course things would be as they are under the present Law. Probably, it will be best to leave it to Local Governments to make administrative arrangements under the present Code as suggested by the Government of India in 1890.

One of my Divisional-officers, the Deputy Magistrate of Madura Division, would, however, go further and so amend the law that it would fall to the District Magistrate to take up of course all the duties of an incapacitated Sessions Judge, and to the senior Sub-divisional Magistrate those of an incapacitated District Magistrate. These provisions are, I think, unnecessary. Section 11 sufficiently provides for the case of an officer temporarily holding the District Magistrate's post.

Section 10.—The proposed amendment to section 10, though unobjectionable, is not required in this Presidency.

5. *Section* 45.—The proposed amendment is useful. Village heads do as a matter of fact prevent the burning of corpses when they consider it necessary, but it is desirable that the power should be given.

6. *Section* 57.—The proposed amendment is desirable, but in the fourth clause I would substitute "fail" for "neglect" to meet the case of inability to find the necessary sureties. If this word is thought to be too wide, the clause might run "neglect or refuse to execute such bond as aforesaid (with or without sureties as the case may be) or, if sureties are required, fail to produce such sureties."

7. *Section* 59.—This section authorizes the arrest and delivery to the police by private persons of offenders committing non-bailable and cognizable offences. The common practice in villages at a distance from police stations is for the persons who arrest theives and other offenders in their villages to make them over to the village magistrate (head of the village) who forwards them in custody to the police. Neither the Code nor Regulation XI of 1816 gives power to heads of villages to receive offenders so brought, but the practice is useful as making it easier to bring offenders to justice. If thought necessary, it might be expressly legalized.

8. *Section* 106—speaks of persons convicted of "rioting, assault, or other breach of peace." It would perhaps be more scientific and should not be difficult to detail the sections of the Penal Code which those words are intended to cover (for an analogous list—*vide* section 345).

9. *Section* 107.—The Allahabad High Court, Indian Law Reports 6, Allahabad 26, points out a possible inconvenience which might arise from the grant of the powers proposed, and in most cases the difficultly pointed out by the Government might be met by an application to the Magistrate of the district wherein the suspect resides; his jurisdiction is not restricted to offences likely to be committed in his own district. If the power to take proceedings is given to the Magistrate who has jurisdiction over the place of the anticipated breach of the peace, it should be taken from the Magistrate who has jurisdiction over the residence of the suspect.

10. *Section* 110.—The proposed amendment is desirable.

11. *Section* 145—is not much used in this Presidency so far as my experience goes, and the bulk of disputes to which it is asked by parties to be applied is clearly within the meaning of the section as it now stands. I am unable to suggest a comprehensive definition which would be more satisfactory than the present form of words.

12. *Sections* 156 *and* 159.—The proposed alteration is desirable for the reasons given. It is also desirable to give a Magistrate power on receiving a complaint of a cognizable offence to refer it to the Police for investigation. At present, he can only do so if he distrusts the complaint (section 202). It happens at times that a complaint is laid to the Police and to the Magistrate simultaneously and if the Magistrate is not permitted to order a Police investigation, a double enquiry may proceed resulting in waste of time and perhaps in miscarriage of justice. At present, if complaint of a cognizable offence is made to a Magistrate, he either refers it to the Police (which I think is illegal) or he ascertains from the Police whether an investigation is in progress and, if so, stays his own enquiry pending receipt of the charge sheet. It would be simpler to direct a Police investigation at once. The power need not be given to third-class Magistrate (they have no power to act under section 202).

13. *Section* 193.—The proposed amendment is desirable.

14. *Section* 195, *Third clause.*—The words so referred to seem to be unnecessary. If the offence disclosed by the facts is not referred to in the section, its trial does not require sanction and there is nothing to prevent the court from framing a charge of it. If it is referred to in the section, it would be covered by the words "any other offence" without further reference to the section. As they stand, the words might be taken to prohibit a court on the trial of a case in which sanction had been given from trying a charge which did not require sanction and which, but for this provision, it could have tried. There seems to be no good reason for this.

15. *Section* 239.—The proposed amendment is desirable.

16. *Section* 247.—As at present worded, this section compels a Magistrate to either acquit the accused or adjourn the case if the complainant does not appear. It may and does happen that after the complainant and all his witnesses have been heard and nothing remains to be done but to hear perhaps a part of the defence, *e.g.*, one defence witness whose attendance could not at first be procured and to pass judgment, the complainant is absent at the adjourned hearing. The interests of justice do not demand his presence; he may not think it necessary to cross-examine the defence witnesses and argue his case before judgment; he may have done all he can to prove his case and it may be very inconvenient for him to attend the court, and yet if he does not appear, the Magistrate is bound to acquit the accused and is forbidden to proceed with the case. I am not putting an imaginary case; there have been such cases within my own knowledge. I cannot see that harm would be done to any one if a proviso were added to the section to the following effect:—

> "Provided that if the Magistrate, for reasons to be recorded by him in writing, considers the presence of the complainant unnecessary for the disposal of the case, he may proceed with the trial in his absence."

17. *Section* 342.—It should, I think, be made clear that it is not necessary to examine an accused person if the Magistrate or Judge does not propose to call on him for a defence. The words ("if any") in sections 210 and 253 and ("if he thinks fit") in section 245 indicate that an examination of the accused at the close of the prosecution evidence is not compulsory, but section 342 renders it compulsory, unless the

words "and before he is called on for his defence" can be read to mean "if he is to be called on for a defence and before he is so called on." There seems to be no good reason for compelling the questioning of an accused if the prosecution is unable to make out any case against him.

18. *Section* 345.—In the second clause "section 338 of the Indian Penal Code" add "and the offence of criminal intimidation when punishable under section 506 of the same Code with imprisonment for seven years," and at the end add "or who has been intimidated as the case may be". Threats of death and arson are often lightly made and a threat of grievous hurt will ordinarily be a less serious offence than the causing of grievous hurt (a compoundable offence). The threatened men within my experience would be often willing to compound these offences if they could legally do so, when they find, as they generally do, that the threateners did not mean quite all they said. As cases of such offences are triable only by first-class Magistrates, it would be safe to allow compounding by permission of the court.

19. *Section* 345.—The last clause forbids the compounding of any offence not mentioned in the section. Offence is defined in section 4 (*p*) and covers forest offences within the meaning of Act V of 1882 (Madras). Section 55 of this latter Act gives Forest officers power to accept money as "compensation for the offence," *i.e.*, to compound the offence. The local Act seems here to be in conflict with the Code, and section 5 of the Code saves only regulations as to "manner and place" of trial.

20. *Section* 392.—Alteration is unnecessary, I think.

21. *Section* 417.—I have formed no opinion.

Sections 425 *and* 442.—The suggested alterations would do no harm, copies of the orders being sent to the court.

22. *Section* 437.—The section should be made clear, but whether it is desirable to alter it, if that be necessary, so as to allow rehearing on the same evidence, I am not so sure. There is a good deal to be said on both sides of the question. On the one hand, a revising officer may find occasionally a really perverse misapprehension of the evidence, and on the other, it is not advisable to subject an accused person to a double trial, merely because of a difference of opinion as to the weight to be attached to certain statements. Perhaps, the power might be reserved to the High Court to order rehearing on the same evidence. But in any case, an appeal by Government might be allowed against orders of discharge as suggested by the Bombay Government.

23. *Section* 487.—There is some administrative inconvenience no doubt, though in the case put the Magistrate's orders would not seem necessary as the Police officers could prosecute for false information given to one of themselves. The inconvenience is not however so great as to warrant the departure from principle which would be necessary to effect the amendment suggested.

24. *Section* 514.—If a surety dies, another should be called for, unless, in the opinion of the Magistrate issuing the order, no further action is necessary, and the same penalty should attach to the non-production of the second surety as attach to the failure to produce sureties in the first instance.

25. *Section* 526-A—goes too far in compelling a court to adjourn on a simple intimation that an application is going to be made to the High Court. It was represented to me not long ago that pleaders take advantage of this section to compel adjournments when the Magistrate refuses them, even when there is no real intention of applying to the High Court. On an application for adjournment being refused, or if it is known that it is likely to be refused, an application under section 526-A is presented to the court and the Magistrate is bound to give an adjournment. Then, at the next hearing, it is explained that the party found it undesirable to go to the High Court, and meanwhile the object of the adjournment—corruption of witnesses, vexation to the opposite party, or whatever it may be—has been obtained. I instructed Subordinate Magistrates to refuse applications under this section unless they had satisfactory reason to suppose that the party was really going to the High Court, as, for example, the fact that he had applied to local authorities for a transfer and been unsuccessful, had engaged Counsel in Madras, or the like; but I doubt if there can be any legal ground of refusal as the section stands.

I would amend the section by substituting for the words "notifies" "to" the word "satisfies," and for the words "his intention", the words "that he intends."

If this be thought to give the courts too much latitude, the section might be altered by adding a proviso. Provided that the court may refuse to exercise such powers, if, for reasons to be recorded in writing, it considers that such notification is made for the purpose of vexation or delay, or for defeating the ends of justice.

26. *Section* 528.—It has been suggested to me that this section should be extended to village heads to allow of the transfer of cases from one village to another. Under the present Police rules, the Police when complained to of petty thefts refer the complainants to the Village Magistrate. This may mean that the complainant is compelled to present his case in a court in which he cannot get a fair trial, or the accused is tried by a Magistrate hostile to him, and the superior courts have no power to withdraw the case. It would thus seem that some alteration is required, but at the same time it is clear that to permit transfers of cases from village to village would be to strike at the root of the village system, and the number of cases of injustice and the amount of injury done thereby to complainants or accused, persons are not, I think, shown to be great. I have no statistics of applications for transfer, but as Sub-Divisional Magistrate, I have received such applications, though not often. I would not recommend the amendment unless the Government has before it stronger evidence of its necessity than I have.

27. *Section* 552.—Since the addition to the Code of section 560, section 552 is not so much required, because the former section covers cases in which arrests are made in consequence of information given to Police officers. But section 560 does not cover cases in which the Police report after investigation (section 173) is to the effect that the case is false and the Magistrate strikes off the case without bringing the accused to trial. If the powers given by section 552 to Presidency Magistrates is to be given to Mofussil Magistrates, it will have to be given to all, for to restrict it to first-class Magistrates would be to deprive the large majority of arrested persons of the benefit of it. In Presidency towns, all Magistrates are men who are entrusted with summary powers and who can hear all classes of cases, but Mofussil 2nd and 3rd class Magistrates are not always men of the same stamp, and cannot always be trusted to exercise their powers with discretion. It will therefore be necessary if section 552 is extended as proposed, to give the same rights of appeal against the orders of 2nd and 3rd class Magistrates as are given by section 560.

28. The only officer of those consulted by me who has replied to my reference is the Deputy Magistrate of Madura division. I send his report in original.

(Signed) L. C. MILLER,
Ag. District Magistrate.

Enclosure.

From the Deputy Magistrate of Madura Division, to the District Magistrate, Madura, dated Madura, 18th January 1895, Dis. No. 48-Mgl.—Genl.

With reference to your R. on C. No. 2677, dated 12th December 1894, I have the honour to append my views as regards each of the sections of the Code of Criminal Procedure referred to in the G.O., No. 2795, Judicial, dated 17th November 1894.

Section 7, *Clause* 4.—I think it most desirable that the local Government should be empowered to alter the limits of the Sessions divisions without the necessity of obtaining the previous sanction of the Governor-General in Council, as such power will help the administrative convenience whenever an Additional or an Assistant Sessions Judge may have to be appointed in one district.

Section 9.—It occurs to me that a provision may with advantage be added to this section empowering the District Magistrate or his *locum tenens* to perform the duties of the Sessions Judge, who is either sick or is in transit or otherwise disabled to attend to his duties. Similarly a provision may be added to section 11 so that the duties of a District Magistrate may, in his absence or illness, devolve upon the Joint Magistrate or other Senior Sub-Divisional Magistrate.

Section 10.—There are no Commissioners in this Presidency, and I am therefore unable to say anything as regards this section. This section will do well as it is for this Presidency.

Section 45.—The absence of such provision as is brought to notice by the Punjab Government has not prevented the heads of villages from stopping cremation in case of suspicious death in all the districts in which I have served.

Section 57.—The provision suggested by the Government of Bombay will no doubt be found very useful in districts adjoining Native States.

Section 107.—In my humble opinion, the provision recommended by the Bengal Government seems unnecessary, because the District Magistrate, Sub-Divisional Magistrate or Magistrate of the first class within whose jurisdiction the man personally resides, can be applied to for binding over the man for keeping the peace under section 107, or for good behaviour under sections 109 and 110.

Section 110.—I speak subject to correction. I think the phrase "receiver of stolen property" in this section includes protectors and harborers of thieves or disposers of stolen property.

Section 145.—If the phrase "tangible immovable property" require a definition, I fear the list of expressions which call for definitions will be very long. In the Act III of 1889, Madras (The Town Nuisance Act), the word "gambling," which is an offence under the Act, has not been defined. I should not wonder if people playing at cards for amusement on the pials of their houses are charged by the Police with the offence of gambling and punished by the Magistracy.

Sections 156 *and* 159.—The provision contemplated, that is, of empowering a Magistrate within whose jurisdiction a cognizable offence was committed, and the Police thought it unnecessary to investigate, to direct the Police to investigate it if he sees reason therefor is very necessary. This is, of course, in practice in all the districts I have served. If the contemplated provision is made, it will be in conformity with the practice. In the Thoddapparnaikanur Zemindari, a man was suspected to have been murdered at the instance of the zemindar himself and thrown into a well, so as to make it appear as if he fell into the well, and was drowned. The police, who had to deal with the case in the first instance, held an inquest and sent up a report as if the case was one of accidental drowning and allowed the corpse to be cremated by the zemindar's men. The matter would have ended there and encouraged murderers had it not been for the practice referred to above.

Section 170.—I think not only the railway servants, but also the servants of the Postal and Telegraph departments and all public officials should be shown this indulgence. The Police officer need not bind them to appear on a day to be fixed by him. The Magistrate may summon them on the day he is certain to take up the case, and preference should always be given to these officials being first examined in cases where they have to be examined together with other witnesses.

Section 188.—I think the suggestion of the Government of India to amend section 188 of the Code so as to render all servants of the Crown, whether subjects of Her Majesty or not, punishable by courts in British India for offences committed outside British India, is good and will be an improvement upon the present section.

Section 193.—In cases where there are Additional or Joint Sessions Judges, a provision may be made for one of them taking over and doing the duties of the other when he falls ill or is in transit, &c. If both of them be not available, the District Magistrate should be in charge of their work until he is relieved by a successor appointed by Government.

Section 289.—It is most desirable that there should be some provision for the joinder of charges under the sections noted in the margin, so that they may all be disposed of as one case. The accused cannot be prejudiced by such joinder. As a rule, the evidence in such cases is the same and none of the accused can possibly be prejudiced thereby.

Sections 193, 194, 195, 203 or 211 of the Indian Penal Code.

Section 391.—I think that in all cases of whipping, imprisonment must be given so as to allow the accused to appeal if he chooses before the whipping is carried out. In the case of juveniles, a provision should be made so that they may be kept apart from hardened criminals. The idea that whipping should be given, except in the case of juveniles only, to those upon whom the punishment of imprisonment had no deterrent effect is no doubt very reasonable; but, in my humble opinion, whipping in the first instance will have a better deterrent effect.

Section 392.—I think it better to leave it to the court to inflict the school-discipline punishment in the way it deems proper. If it be made a hard and fast rule to inflict the school discipline punishment in a particular way and on a particular part of the body, it will fetter the discretion of the court and may, perhaps, oblige the court to send a juvenile to jail in cases where execution of such punishment is cruel or inhuman; as, for instance, if it is laid down that the stripes should be administered on the palms of the boys, and if the palms are found to be diseased and full of chilblains or sores, the court cannot but send the boy to the jail.

Section 417.—I beg respectfully to submit that I am for leaving the Code as it is. There cannot be many instances such as are brought to notice by the Advocate-General of Bengal.

Sections 425 *and* 442.—Although I could see nothing to prevent the High Court from sending its order direct to the jail, yet an explicit provision in the Code to that effect will set the question at rest.

Section 437.—I think it well to leave the section as it is. The words "further enquiry" may be construed to apply to old evidence as well as fresh evidence.

Section 475-A.—I think the suggestions that there should be provision conferring on the Governor-General in Council the power to give a general direction under this section is reasonable.

Section 487.—Whatever may be the administrative inconvenience, any Magistrate that orders the prosecution under section 182 of the Indian Penal Code whether from a report from the Police officer or otherwise should not, I think, be permitted to try the case himself; for he must have seen the papers and formed some opinion before he sanctions the prosecution. This will to some extent prejudice the accused. The Madras High Court has held in Revision Case No. 381 of 1882 that in a case where false information was given to the Police, that Taluk Magistrate was not the official superior of the Police Station House Officer which impliedly means that sanction should be granted by the official superior of the Police Station House Officer.

Section 514.—The bail bond should abate with the death of the man who executed the bond.

Section 552.—I think the provision suggested is very reasonable. If the Magistrate of the Presidency Town should be given such power, the Magistrates in the Mofussil also should have such powers.

Section 528 *and Section I, Clause* 2 (*c*).—There is a grievance which I respectfully beg to press upon your attention so that you may take it up if you fall in with my view. The so-called Village Magistrates in the Madras Presidency have been excluded from the pale of the Criminal Procedure Code, and this is as it should be. But, here and there we find Village Magistrates who are vindictive and heads of factions in the village who will go any length to put the persons of the opposite faction to shame. Sometimes, it so happens that complaints for abusive language, &c., against respectable persons in the village, males or females, are presented to the Village Magistrates. The head of the faction brings his influence to bear upon the Village Magistrate, or the Village Magistrate himself is vindictive and tries the case under Regulation XI of 1816 and punishes the accused either by confinement or by putting them in stocks as he chooses. The accused, to whom the Village Magistrate is unfriendly, go to the Divisional Magistrate for the transfer of the case to some other Village Magistrate, but he is powerless as under section 528 he cannot transfer. For the purpose of the transfer of such cases, the village heads should, I think, be acknowledged under the Code in this section (528) alone.

(Signed) **T. PATTABHIRAM,**
Deputy Magistrate.

From the Acting District Magistrate of Tanjore, to the Chief Secretary to Government, dated Tanjore, 1st February 1895, No. 105-Mag.

I have the honour to reply to G.O., No. 2795, Judicial, of 17th November 1894, referring for remarks the proposals on the amendment of Act X of 1882.

The suggested amendments set forth in appendix II of the order are generally acceptable.

Section 33, *Criminal Procedure Code, and Sections* 64 *and* 65, *Indian Penal Code*—

Reference.—Madras High Court's Proceedings, dated 18th May 1881, No. 994. The law is not clear and the ruling quoted being under the Code of 1872 is confusing. Take the simple case of a conviction under section 510, Indian Penal Code. Penalty—Simple imprisonment of 24 hours or fine of Rs. 10 or both; a fine of 10 rupees is imposed and cannot be levied.

Query.—Can 24 hours' or only 6 hours' imprisonment be imposed in default of payment?

I have found different interpretations in different districts, and from Chingleput submitted a reference to the High Court, but am ignorant of the result. It is clear that Rs. 10 is in the eye of the law equivalent to 24 hours' imprisonment, but I am not sure that the law allows the commutation.

Section 45.—With regard to this, the Head Assistant Magistrate questions the advisability of giving more powers of the sort to village headman; but as matter of fact this class of officer interferes already for his own purposes to prevent cremation or burial, and he may as well do so legally for the public good.

Section 88.—Doubts have been entertained with regard to interference with the property of a joint family. There have been rulings—I.L.R. IX Cal. 861, and of the Madras High Court, dated 11th January 1894—on the point; it would be as well to have individual liability specified clearly in the Act.

Section 89.—If it is correct as held in G.O., No. 454, Judicial, dated 11th March 1890, that the court must have the sanction of Government to the sale of property at Government's disposal, it would be as well that the section should so run.

Section 110.—The proposal to include protectors and harborers of thieves or disposers of stolen property is acceptable.

Section 167.— Confer C.R.C. No. 289 of 1887, Madras High Court. If the Legislature intends the total term for detention under this section to be 15 days, the law will be made clear by adding the words "in all" after 15 days in the first sentence of the second paragraph.

Section 195.—The rulings under this are many and mistakes are being constantly committed in procedure, while the interpretations of the High Courts are not always favorable to speedy justice. It would be as well if the section were recast to provide definitely for cases that have arisen.

Section 239.—Whether the trial of persons combining to give false evidence in the same subject-matter should be joint or separate, ought to be in the discretion of the trying court. It is an utter waste of time, but now occurs frequently, to hold separate trials of persons who have sworn to precisely the same false matter.

Chapter XXVIII.—Provision has to be made for the execution of a sentence of forfeiture of property under section 62, Indian Penal Code. Recent proceedings in this district have disclosed difficulties arising from the want of directions. It seems advisable also to provide as to whether or not a sentence of forfeiture shall abate by death.

Section 437.—I agree with the opinion of the Bombay High Court that fresh evidence is unnecessary towards ordering further enquiry.

Sections 443 *and* 454.—In my opinion the prohibition of section 443 is absolute. But the Madras High Court has in my knowledge supported a trial of an European British subject by a Native Magistrate because the former expressed his willingness to be tried. I believe that section 454 contemplates only cases where the nationality of the accused is not distinctly obvious. In the particular case that I refer to, it is probable that it was distinctly to the advantage of the European to be tried by the tribunal to which he submitted himself. Such instances are likely to occur, and for that and other reasons there should be no room for doubt in the matter.

Section 514.—The suretyship should end with the death of the surety. It is for the police to keep themselves informed of such matters and take the necessary steps.

(Signed) J. THOMSON,
Acting District Magistrate.

From the Acting District Magistrate of Ganjám, to the Chief Secretary to Government, dated Chatrapur, 31st January 1895, R.C. No. 1420, Mag.

As directed in G.O., No. 2795, Judicial, dated 17th November 1894, I have the honour to offer the following remarks on the proposals to amend the Criminal Procedure Code.

2. The suggestion of Mr. Knox referred to in paragraph 13 of the letter of Government of India merits the support of all concerned in the Administration of Justice. The existing law on the subject is, I feel sure, one of the reasons why so large an amount of perjury goes unpunished. Trials for perjury are often intricate and difficult ones, and when each man has to be tried separately it is a serious matter to sanction a prosecution. As a matter of principle it might be desirable that only those persons should be tried together who had given false evidence as to the same facts or as to facts materially connected. Otherwise a witness who had given false evidence in cross-examination as to credit might be tried along with a man who had perjured himself as to the facts material to the case.

3. *Section* 18.—I believe the last ruling of the Madras High Court is in accordance with the view taken by the Government of India. The matter is however a very important one as perverse and even corrupt discharges are not uncommon. The law should be amended so as to make it clear that the superior court has power to order further enquiry where there has been a misappreciation of the evidence.

4. I enclose herewith copy of the remarks offered by the Senior Assistant Magistrate and Head-quarters Deputy Magistrate, the only Sub-divisional Magistrates whose replies have been received. I think the suggestion of the former that the defendant in a maintenance case should be examined on oath merits consideration. I am not sure that the law as it stands prevents this being done, but it would be well to prescribe the procedure. I can see no reason why the defendant should not be bound to make his statement on oath. In this connection I would suggest that the power of dealing with maintenance cases should be given to 2nd-Class Magistrates. In some districts in this Presidency their disposal occupies an unduly large portion of the time of the Sub-divisional Magistrate, who has, as a rule, generally far more important work to attend to. The cases are almost always petty and a native Sub-Magistrate is more likely to be able to appreciate the merits of a domestic quarrel than an European Divisional officer. I think such cases might be disposed of by 2nd-Class Magistrates, an appeal being allowed to the Divisional Magistrates.

5. I have no books in camp with me by which I can verify the statement in paragraph 2 of the Head-quarters Deputy Magistrate's letter, but if he is correct in his statement as to Bombay High Court ruling, I agree that the Magistrate should have power to order the police to investigate a non-cognizable case, even though this power should be rarely exercised.

6. In conclusion I must apologize for the cursory nature of my comments as I am travelling in the Maliahs and have no books of reference with me; and I cannot delay the report to obtain them.

(Signed) C. J. WEIR,
Ag. District Magistrate.

Enclosures.

From the Acting Head-quarters Deputy Magistrate, Ganjám, to the District Magistrate Ganjám, dated Chatrapur, 14th January 1895, Ref. C. No. 188-H. Mag.

With reference to your endorsement C. No. 1420-Mag. of 1894, dated 10th December last, to G.O., No. 2795, dated 17th November 1894, I have the honour to submit the following suggestions.

2. In section 155 it is stated that no Police officer shall investigate a non-cognizable case without the orders of a Magistrate of the 1st or 2nd class, &c. But no power is given to the Magistrates in question to refer a non-cognizable case to the police. I was under the impression that the Magistrate's power to refer might reasonably be inferred from the same section; but the Bombay High Court have decided to the contrary—*vide* I.L.R. 12 Bombay 161. It cannot be argued, I think, that section 202 confers the power on the Magistrates in question; because the power given by that section is limited to cases in which the Magistrate sees reason to distrust the truth of the complaint, I consider it necessary that there should be a provision enabling the Magistrate referred to in section 155 to refer a non-cognizable case to the police for investigation.

Similarly, there is no provision under which a Magistrate can refer to the police for investigation a cognizable case preferred before him direct by the party concerned; and I consider that the omission should be supplied, as it is not only desirable, but also necessary in many cases that a Magistrate should have power to refer a cognizable case to the police for investigation.

3. In Madras High Court's Ruling at page 880 of Weir's Law of Offences and Criminal Procedure, it is stated that cases of failure to deposit process fees should be dismissed for default under section 247, Criminal Procedure Code. It does not seem to me that section 247 is an appropriate one in such cases, because it deals with the non-appearance of complainant, and the High Court's Ruling in question was apparently based on the fact that there is no other section in the Code more appropriate than section 247. Again, section 247 relates to summons cases and the corresponding section which relates to warrant cases is section 259; but cases of offences which cannot be compounded cannot be dismissed under that section. I think that there should be a separate provision for dismissal of cases for default of payment of process fees.

(Signed) D. SRINIVASA RAO,
Ag. Head-quarters Dy. Magistrate.

From the Acting Senior Assistant Magistrate, Ganjám, to the District Magistrate, Ganjám, dated Berhampore, 16th January 1895.

With reference to your foot-note C. No. 1420-Mag. of 1894, dated 10th December 1894, to G.O., No. 2795, Judicial, dated 17th November 1894, I have the honour to offer the following suggestions and comments.

2. *Chapter XXXVI—Sections* 488–490.—In my opinion this is the most defective portion of the Act. It will be noted that the Chapter first provides that a man is to maintain his wife under order of a Magistrate, "on proof of his neglect or refusal." The next paragraph provides procedure in case of disobedience. Sections 489 and 490 may be left out of consideration as not affecting the original question. It is moreover provided that "if a man offers to maintain his wife and she refuses to live with him, the Magistrate may consider the grounds of such refusal." It often happens that the man will, in court, agree to maintain his wife while she refuses to live with him, not being able perhaps to prove habitual cruelty and yet having experienced such treatment on one or two occasions as to render her fearful of, at the least, injury. The result is that the man evades the law by a hollow promise and the woman is not allowed maintenance until she subjects herself to actual and habitual cruelty. This is a suggestion in the substantive law. As to the adjective part of the law, it will be observed that no procedure is laid down. The section merely says that evidence shall be taken as in summons cases. But it is evident that a maintenance case differs from criminal cases in important points and requires a distinct procedure. The man is not an accused person but a defendant in a *quasi* civil suit. Under these circumstances, there is no reason why his statement should not be taken on oath; otherwise the woman, plaintiff, has a most unfair advantage. But the Code expressly states that "no oath shall be administered to the accused," and no provision is made for persons in the position of a maintenance-defendant. I therefore propose that a distinct procedure be laid down and it be expressly stated that the accused be examined on oath.

3. *Section* 517.—Provision is made only in cases where the property has been the subject or object of an offence. It may, and often does, happen that an accused person is acquitted on the ground that he was acting under a mistaken, but *bonâ fide* claim of right. No criminal offence has been committed, but under the Code the property can only be restored to the person from whose possession it was taken. This requires consideration.

4 *Section* 545.—It may happen that a criminal charge is brought and enquired into and in the end found to be of a civil nature. It is hard on the accused to be put to great expense and inconvenience for the sake of an ignorant complainant, and yet the circumstances may not be such as to warrant an order of compensation under section 560, Criminal Procedure Code. In such cases batta might be paid to accused, the court having discretion. The extra expense could be met by a very small increase in the fee paid under Act VII of 1870. The best way to realise this is to put oneself in the place of an innocent accused.

5. *Section* 248.—It may be doubted whether a corresponding section regarding warrant cases might not with restrictions be introduced.

6. *Section* 345.—Section 430 might be added, it being a matter of evidence as to whether or no more persons than the complainant are affected by the diminution.

7. I advance the two last suggestions with great diffidence. I do not think they are much required. As to the suggestions contained in the proceedings, I have few remarks to offer since they have probably been elaborately discussed.

Section 239.—Mr. Knox's suggestion presents the difficulty of combining together by an arbitrary definition a number of offences which are *ipso facto* separate. It would seem that his suggestion can only be carried into effect if the whole trial can be proved to be a concocted scheme in which each witness plays his part, just as in a murder case one may hold the arms while a second despatches the victim.

Section 391.—The following clause would save all difficulty:—

"Provided that when the imprisonment awarded is less than 15 days, the whipping shall take place on the last day of the said imprisonment," but it is likely that the cases will be extremely rare.

Section 392.—It does not much matter, but it would be as well to know what the Code really means by school discipline.

Section 514.—I venture to suggest that in the case of a surety dying, his heir should be bound, under pains and penalties, to report the death, and the person on whose behalf the surety has bound himself may then be called upon to furnish other security. In cases where security for a long period has been taken, the sureties might be required to appear before the nearest Magistrate at stated intervals, their convenience being studied as far as possible. The objection to these courses is that sureties will naturally object to render themselves liable to expense or inconvenience other than appears in the original bond. The position no doubt presents a serious difficulty.

8. I know nothing about the Civil Procedure Code and can offer no opinions.

(Signed) P. S. P. RICE,
Ag. Senior Asst. Magistrate.

From the Acting District Magistrate, Vizagapatam, to the Chief Secretary to Government, dated 5th February 1895, Dis. No. 132.

Referring to G.O., No. 2795, dated the 17th November 1894, I have the honour to forward herewith some proposals for the amendment of the Code of Criminal Procedure suggested by me and the marginally-noted Divisional officers.

1. Principal Assistant Magistrate.
2. Huzur Deputy Magistrate.

2. I strongly recommend the amendment proposed in paragraph 7 on page 5 of Appendix II.

(Signed) F. D'A. O. WOLFE-MURRAY,
Acting District Magistrate.

Amendments on Criminal Procedure Code.

Section 40.—In G.O., No. 1765, dated 20th September 1892, the Government ruled that a Magistrate invested with powers under this Code who has been permanently transferred to an office of a different nature in which he ceases to exercise the powers conferred upon him in his former office should be invested with powers under this Code when again appointed as a Magistrate, and that, if the transfer is only temporary, no such investiture is necessary. It seems desirable that the section should be in conformity with the above ruling of the Government.

Section 44.—It seems desirable that this section should include sections 317 and 318 of the Indian Penal Code as they are also offences against human life.

Section 45.—As murder is a more heinous offence than robbery, its omission in section 45, clause *b*, is unaccountable.

Section 71.—The Madras High Court held in Indian Law Report 5 Madras 199, that it is good service when the summons is tendered and refused. Section 71 therefore should exclude such cases also and should be amended. After "obtained" insert "and if the summons is not tendered and refused."

Section 102.—This section provides for the free ingress of the searching officer in accordance with the procedure prescribed in section 48, but it does not provide for egress as well, as in section 49. The result is rather anomolous. A provision for the liberation of the individual searching should be added to it.

Section 195.—In Indian Law Report 2 Bombay 34, *Regina* v. *Balaji Sitaram*, it was held that if it is intended to charge a person with perjury on two contradictory statements, the sanction of the court before which each of the statements was made should be obtained. The Madras High Court is silent on the point. The section does not seem to contemplate that two sanctions are required in such cases. If the legislature intends that two sanctions are required the section requires amendment.

Section 247.—The Subordinate Magistrates often proceed under this section even in cases where the summons is not actually served on the complainant. They look only to the *issue* and *not service* of the summons. It should therefore be explicitly mentioned in the section that the summons should be proved to have been served on the complainant. The section may be amended as follows:—

"*The Magistrate shall after due proof of the service of the Summons on the Complainants, &c.*"

Section 248.—Can non-compoundable offences, though they be summons cases, be allowed to be withdrawn under this section? I think they are not. Several Sub-Magistrates are misusing the discretion vested in them under this section. The section requires the following amendment:—

After the close of the section add—

"Provided that the offence is not non-compoundable."

Section 423, *Clause b*-1.—The words "*Subordinate to such Appellate Court*" are misleading. The following example shows that the above wording is defective:—

A is convicted under section 420, Indian Penal Code, by a 2nd-class Magistrate. An appeal is preferred to the Divisional Magistrate, who reverses the conviction on the ground of want of jurisdiction to the 2nd-Class Subordinate Magistrate and orders that the case should be retried by himself, there being no 1st-Class Magistrate subordinate to him. If the above wording is followed the Divisional Magistrate cannot himself retry the case.

Under section 528, Criminal Procedure Code, a Sub-Divisional Magistrate may withdraw the very same case from the Subordinate Magistrate's Court and try it himself. Under section 428, Criminal Procedure Code, an Appellate Court can take additional evidence if it thinks it necessary to do so. If sections 528 and 428 are read together with section 423, Clause B-1, the Appellate Court has evidently power to retry the case itself which seems to be undesirable. The section therefore needs some amendment.

Section 437.—This section does not say anything about giving notice to the accused previous to passing an order for further inquiry. The Calcutta High Court was of opinion that a notice should invariably be given though failure to issue a notice does not render the proceedings illegal. If it is intended that a notice to the accused should be invariably given the fact requires to be distinctly stated.

Section 438.—From the proceedings of the Madras High Court, dated 27th October 1880, No. 2149, it would appear that a District Magistrate should only refer to the High Court such cases in which he considers the orders of a Subordinate Court to be illegal and that important questions requiring authoritative declaration of law should not be submitted to the High Court under this section except through the intervention of Government. I think District Magistrates may be empowered to refer such matters also to the High Court direct.

Section 488.—A Magistrate cannot enter into any question regarding the lawful guardianship of a child when dealing with an application for maintenance. I think the Magistrates may be empowered to decide such questions.

(Signed) F. D'A. O. WOLFE-MURRAY,
Acting Magistrate.

From the Inspector-General of Police, to the Chief Secretary to Government, dated Madras, 8th February 1895, No. 716.

I have the honour, with reference to G.O., No. 2795, dated 17th November 1894, to make the following remarks on the proposed amendment of the Code of Criminal Procedure. I regret the delay in replying to the reference and also regret that I have not had time to give as much attention to the matter as I could have wished. The paper was brought to my notice some days after I took charge and I have not had time to obtain a report on the subject from all District officers as I should have wished and my own time has been so fully taken up with other matters that I have not given this question the consideration it deserves.

2. Taking first the amendments referred to in the appendix to the Government of India letter, read in the Government Order, I am of opinion as to section 45 that village headmen might well be given the power referred to, to prohibit the cremation or burial of the bodies of persons suspected to have been murdered until the arrival of the police on the spot. In this connection the Superintendent of Tanjore suggests that it would be well to make it binding on the lawful guardian when there is one, or near relative of a deceased person to give notice in cases of death, if the deceased has met with a sudden, unnatural or suspicious death. It might be difficult to define the person on whom the responsibility should lie, but it is no doubt often the case that the relatives of persons made away with, suppress information regarding the deaths, a fact due sometimes to their having joined in the committal of the crime, and more often to a dislike of any scandal or trouble to which their giving information might give rise.

3. As regards section 57 some amendment of the kind referred to is desirable. I know of one case within my own experience where the power proposed to be granted would have been useful.

4. *Section* 107.—The proposed amendment is advisable, and as far as I remember it will merely make the law the same as it was under the old Code of 1872.

5. *Section* 110.—I see no objection to the proposed amendment of this section. It is a most difficult section to work, and is administered in very different ways in different districts. The interpretations put upon the words "repute," and "habitual" (sections 55, 109, 110 and 117) are very various. It is probably impossible to define the terms used, without either so narrowing or enlarging the power granted in these sections as to make them either powerless for good or dangerous to society. The Superintendent of Salem, however, makes one suggestion that habitual cheating might be included in the sections as a reason for demanding security. He points out that cheating is a crime which is very common in the country and carried on on a large scale. Certainly in some cases it might be well to have the power of arresting habitual offenders of this character. In the cases known as the "Salem Treding Chamber" and the "Victoria Technical Institute" frauds, the perpetrators might have been stopped in their careers at an early date than was possible, had the police had

the power to attack them under chapter VIII of the Code. The powers granted under sections 109 and 110 have, however, hitherto been used sparingly in this Presidency and I do not think it is a matter of importance to add to them at present. The expression in section 109 "ostensible means of subsistence" might, I think, be altered into "ostensible and sufficient means of subsistence."

6. *Section* 145.—It is certainly advisable that the expression "tangible immoveable property" should be defined, and it should not be difficult to enumerate the different kinds of property referred to as was done in the former Code of 1872.

7. *Sections* 156—159.—There is no objection to giving Magistrates power to order the police to investigate a cognizable offence, where the police have dispensed with such investigation. But I think it should be ordered that in such cases the Magistrate should first be made to satisfy himself that the case is one which should properly be investigated by the police and should record his reasons for making a reference to the police. Every year the number of false cases tends to increase, and unless the Magistrates are watched with the greatest care, they drift back into the practice of referring as many cases as possible to the police to save themselves the trouble of investigating them. As it is in section 202 a Magistrate, when a complaint is made to him, is bound before he refers it to the police to state his reasons for distrusting the truth of the complaint, and if he is given the power to send cases back to the polic which the police have disposed of under section 157 (*a*) and (*b*), he should be bound to state why he considers the disposal by the police was wrong.

8. There is a small amendment to section 157, the necessity for which is pointed out by Mr. Agar. The station-house officer on receipt of a complaint of a grave crime very often does not wait in the station but proceeds at once to the spot; he cannot therefore send, as he is required to do, a report to the Magistrate. What he does is to leave the station-house writer to write the report and send it. It would be well to substitute "cause to be sent" for the word "send" in the first paragraph of the section.

9. There is a further point, viz., that section 158 makes it doubtful whether an Inspector of Police can order a station-house officer to take up an enquiry dropped under clause (*a*) or (*b*) of section 157 or take it up himself. There is a ruling that no other police officer can undertake an enquiry once dropped under section 157, except under the orders of a Magistrate. This is not as it should be and an Inspector should be empowered either to investigate a complaint, the investigation of which may have been dispensed with by a station-house officer or to order its investigation by a subordinate officer.

10. The other sections referred to by the Government of India do not touch upon the powers of police under the Code, and I do not therefore refer to them.

11. Besides the above sections of the Code, I venture to make the following suggestions as to points on which, perhaps, some amendment of the Code is advisable.

12. *Section* 123.—The Superintendent at Salem points out that it may be dangerous to allow the "officer in charge of the jail" to accept security from a person imprisoned in default of giving security under section 106. It does not seem quite clear from the Code whether the officer in charge of the jail could accept sureties, if sureties had been ordered to be produced. Clearly in view of section 122 he should not have this power which should only be exercised by the Magistrate who enquired into the case, and who has the means of judging of the fitness of the surety offered.

13. *Section* 165 *and Section* 103.—In practice in this Presidency one of the persons who witnesses a search is always summoned to attend the court to give evidence as to the *bonâ fide* nature of it, and thus the provision of section 103 is neglected. I think it advisable that, wherever possible, one of the witnesses to a search should be present in court, and as one is almost always the village head; it is no hardship to bind him over to appear. The village head regards it as his duty. It would be well to amend the Code so as to enable a police officer conducting a search to bind over any of the witnesses to it to appear before the Magistrate who enquires into the case.

14. *Section* 167.—The total number of days that an accused can be detained under the section is 15, and in some cases, no doubt, the poriod is not sufficient. It

is in intricate cases sometimes much against the interest of justice that the police should have to publish the information they have by producing their witnesses before a Magistrate, in order to get a further reward and it would be an advantage if the period of detention under this section could be lengthened. Mr. Agar suggests that District and Divisional Magistrates might be allowed to extend the period to thirty days, and if this could be done, I think it would be well to do it. Probably most Superintendents could recall cases where the investigation of cases would have been more successful, had more time been allowed for the investigation, and I think in England a longer period than fifteen days is allowed to the police to work out cases. Indeed I believe a justice can grant any number of remands for eight days at a time.

15. *Section* 202.—Mr. Mullaly reports that in Salem district some inconvenience has been felt from the absence of any restriction in this section as to the Police officer to whom a Magistrate may refer a complaint. There is nothing to prevent a Magistrate requiring a Police officer beyond the local limits of his jurisdiction to enquire and report upon a case committed within his jurisdiction. This should not be the case and it would be well to add the words "within his jurisdiction" after the words "Police officer" in that section.

16. *Section* 437.—This section has, I imagine, puzzled almost every District Magistrate, and there are different and divergent High Court rulings interpreting it. It would be well if it was made clear what "further enquiry" exactly means. Can a further enquiry be ordered to be undertaken only where there is fresh evidence forthcoming which was not available at the first hearing? If so, it should be clearly stated so.

17. *Section* 495.—The third clause of this section gives considerable trouble to Police officers, and as it is sometimes impossible to obey it to the letter, I am afraid it is sometimes ignored. It must often happen that all the efficient officers in a division have had some part in an investigation and some one of them must conduct the prosecution before the Magistrate's Court. The section seems to have been drafted under the idea that one officer investigates each case and that no difficulty can arise in finding one Police officer in any station unconnected with each case as it is put up before the Magistrate. Such an idea is, of course, incorrect. In almost all cases two or more of the police have something to do with the investigation and in heavy cases, it is often very difficult to find a local officer able to prosecute, who has had no part in the previous enquiry. If we are certain to have two prosecutors appointed in every district, probably the present difficulty will be to a great extent removed, but, if that cannot be done, I consider some relaxation of this severe restriction should be made. It is so easy for the police to ignore the provision of the section that I fear this is often done. It would be sufficient if a Magistrate were given the power to prevent any Police officer prosecuting a case before him for any special reason. The Magistrate has access to the police diaries and could judge in each case whether it was improper to allow the constable who appeared to conduct the case.

18. *Section* 523.—Mr. Fawcett thinks some amendment of this section is advisable. The section apparently makes it obligatory on the police to deliver property on which a Magistrate has passed orders to the owner. The Superintendent points out that in Malabar such property consists often of logs of wood each weighing a ton or more, or of cattle which have strayed sometimes many miles from their owner. What is wanted in the section is some more definite direction as to the action of police in such matters. The police should be allowed to hand over property which cannot be moved without great difficulty to local residents of good character for custody, and it should not be obligatory on the police to hand back property to the owner unless the property is portable or the owner is near at hand.

19. I have the honor, lastly, to refer Government to its Order, No. 2761, dated 14th November 1894. The matter raised by Colonel Porteous referred to in that order might be brought to the notice of the Government of India.

20. There are of course other sections of the Code as to which many officers consider amendment desirable, but they concern subjects, such as confessions, which have been much discussed before. I do not think that anything I can say on these vexed questions would throw any new light on them, and I have not therefore touched on them.

(Signed) M. HAMMICK,
Inspector-General of Police.

Re-proposed amendment of the Codes of Civil and Criminal Procedure.

Opinion.

I have the honour to submit the following remarks on the proposed amendments of the two Codes of Procedure, and take the opportunity of pointing out that the time allowed for consideration was very short.

Criminal Procedure Code.

Section 7.—I agree in thinking that the proposed amendment is most desirable.

Section 45.—The power of preventing the cremation or burial of the bodies of persons who are suspected to have been murdered until due enquiry as to the cause of death is necessary, but the greatest care must be taken to prevent injury to the feelings and characters of innocent relatives by the hasty and ill-advised exercise, or even the wilful misuse, from personal motives, of the power conferred. I doubt if such a power can be safely entrusted to village headmen.

Section 57.—I think that the proposed amendment is advisable.

Section 107.—For the reasons given in the Full Bench decision in In the matter of the petition of Jai Prakash Lal (I.L.R., 6 All., 26), I think that the proposed amendment should not be made.

Section 145.—I venture to think that the expression "tangible immoveable property" is clear enough; but as doubts have been expressed as to its meaning, amendment may be necessary to remove those doubts.

Section 391.—Even in the case of incorrigible offenders, whipping as an additional punishment ought not to be inflicted where the sentence of imprisonment is less than fifteen days. I think that the section should clearly confine the power of adding a sentence of whipping to a substantial sentence of imprisonment alone.

Section 392.—The meaning of the phrase "in the way of school discipline" is clear enough, and its use marks out clearly the difference in the mode and extent of the whipping to be administered in the case of juveniles and adults respectively.

Section 417.—A miscarriage of justice due to the misdirection of a jury by a Judge presiding at a criminal trial on the Original Side of the High Court should be set right whether the parties injured be prisoners or the public. Where a jury has been misled by the Judge on a material question of law, their verdict is valueless whether they convict or acquit. Against a conviction so obtained, a remedy is provided. The public requires protection quite as much as does the accused. Against an acquittal due to the jury being misled as to the law by the presiding Judge, there should be an appeal on behalf of the public. If the alleged error in law is established, and the verdict is due to such error, it should be set aside.

Sections 425 *and* 442.—These sections do not specifically prohibit a High Court sitting as a Court of Appeal, reference or revision from issuing a warrant, or sending a copy of its order direct to the Superintendent of a Jail in which the prisoner is confined, but that procedure is not laid down, and what is prescribed seems to preclude its adoption. At any rate the matter is left in doubt. The prisoner should have the benefit of the order as soon as it is possible to carry it out. The information to the Lower Court is necessary, but not emergent. I think that these sections should be so amended as to empower the High Court to issue direct to the officers in charge of jails orders reducing or reversing sentences.

Section 437.—The decision in Queen-Empress *v.* Anus Khan (I.L.R., 8 Mad., 336) has been practically overruled by the decision of the Full Bench of the Madras High Court in Queen-Empress *v.* Balasinnatambi (I.L.R, 14 Mad., 335).

I do not think that section 437 includes proceedings under sections 254 to 258 of the Code. It refers specifically to two classes of cases, viz., those in which the complaint has been dismissed under section 203, and those in which the accused person has been discharged. Sections 254 to 258 deal with cases of full enquiry and *acquittal*. The difference between dismissal of complaints or discharge of accused persons on the one hand, and *acquittal* after charge framed, plea recorded and complete enquiry on the other hand, seems to me to be obvious.

* * * * *

Madras,
7th February 1895.

(Signed) J. H. SPRING BRANSON,
Advocate-General.

From F. A. NICHOLSON, Esq., Collector and District Magistrate of Anantapur, to the Chief Secretary to Government, dated 8th February 1895, R. C. No. 1140.

Abstract.—Stating that he has no remarks to offer on the proposed amendment of Civil and Criminal Procedure Codes.

From the Acting District Magistrate of Trichinopoly, to the Chief Secretary to Government, dated 10th February 1895, Dis. No. 112-M.

With reference to G.O., No. 2795, Judicial, dated 17th November 1894, I have the honour to submit the following remarks on the proposals of the Government of India to amend the Code of Criminal Procedure.

2. Amendments suggested in the Government of India letter embodied in the above-quoted Government order.

I concur generally with the proposed amendments with the following exceptions:—

Section 9.—There is no necessity for the proposed addition. When necessary, Government could appoint the District Magistrate or any other Magistrate to officiate. The inconveniences anticipated will arise but very rarely, now that all districts are well supplied with railways and telegraph.

Section 391.—I cannot agree with the Government of India that "except in the case of certain boys where a moderate whipping might be beneficially substituted for imprisonment, whipping should only be inflicted as an additional punishment in order to furnish a further deterrent in the case of incorrigible offenders for whom imprisonment has been already found inefficacious." I think it should always be open to impose a sentence of whipping instead of imprisonment even in the case of first offences committed by adults. Often it may be well not to disgrace a man convicted of a first offence by sending him to jail, or it may not be well to lessen the unknown terrors of jail life by familiarising him with it. In such cases, whipping may be more efficacious, less harmful to the accused, and cheaper to Government.

I would add to section 391, paragraph 1, the following proviso:—

"Provided that, when the sentence of imprisonment does not exceed fifteen days, the sentence of whipping may take effect on the expiration of the sentence of imprisonment, unless an appeal has been preferred, in which case it should take effect immediately after judgment of the Appellate Court is pronounced, in the event of the sentence of whipping being confirmed."

Section 392.—I agree with the Government of Bengal in their view of the proposed amendment.

Section 437.—I agree with the Government of India in their view as to how the section should be interpreted.

Section 552.—It is unnecessary to extend the provisions of this section to the Mofussil Courts. Section 560 amply meets the requirements.

3. A few other suggestions occur to me as deserving of attention.

Section 42 (*c*).—After affray, add "or, in quenching fire".

Section 45.—After "occupier of land" add "or house or building".

Sections 83, 84 *and* 387.—The same provisions as to endorsing arrest warrants should be made applicable to distress warrants also. The object of distress is often frustrated by requiring the distress warrant to be sent through the District Magistrate.

Chapter XI. Section 144.—The heading of the chapter shows that orders passed thereunder can only have reference to "urgent" cases of nuisance.

Paragraph 3 shows that in "emergent" cases, orders may be passed "*ex parte*," thus implying that orders can be passed in cases which are not "emergent," provided they are not passed "*ex parte*." But there is little, if any, difference of meaning between "urgent" and "emergent," and therefore the word "urgent" in the heading should be omitted. Apart from the technical reason for omitting the word "urgent," I think it should be omitted on grounds of policy. There may be occasions where it is desirable that Magistrates should have power to pass orders under this chapter even in cases which are not "urgent." For instance, there may be two factions in a town, each from time to time and at no fixed intervals trying to have processions, &c., which are likely to annoy others. The Magistrate may know that an objectionable procession likely to end in a breach of the peace may take place ten or fifteen or twenty days hence—he cannot say when. It may be difficult to say that the word "urgent" can be applied to such a case, and yet it is desirable that he should have power to issue orders. I therefore propose to omit "urgent." The public nuisances of chapter X are of a totally different kind, and hence that chapter would not apply to the kind of nuisances just spoken of.

Section 146.—Add "or until he considers that there is no further likelihood of a breach of the peace".

Section 165, *Clause* 2.—After "conduct" add "or superintend".

Section 195.—The different rulings—some more or less conflicting or ambiguous—of the various High Courts on this section should be carefully considered to see if this does not require elucidation.

Section 337, *line* 2.—After "High Court" add "or Magistrate of the 1st class."

Section 345.—Kidnapping under section 366, Indian Penal Code, may be made compoundable with the permission of the Court. These charges are often the result of family quarrels.

Section 488, *Clause* 5.—After "adultery" add "or who has committed adultery."

Section 517.—This section requires to be made clear with reference to decisions more or less conflicting of the various High Courts as to what is meant by "regarding" and "which appears to have been committed."

Section 522.—Omit "attended by criminal force" and for "by such force" read "by means of, or in consequence of, such offence."

(Signed) J. ANDREW,
Ag. District Magistrate.

From the Collector and District Magistrate, North Arcot, to the Chief Secretary to Government, dated Chittoor, 11th February 1895, Dis. No. 140-Magl.

In reply to G.O., No. 2795, Judicial, dated 17th November 1894, I beg to offer the following suggestions for the amendment of certain sections of the Code of Criminal Procedure.

2. *Section* 124.—An appeal lies from an order to give security for good behaviour, but not from an order to give security for keeping the peace. A District or Presidency Magistrate has power to release persons imprisoned for failing to give security and a District Magistrate has power to cancel any bond for keeping the peace, but neither has power to reduce the amount of the security. The necessity for exercising such a power may easily arise, *e.g.*, when a surety dies or is discharged under section 126 and

the person for whom such surety was bound is unable to procure a substitute on the same terms. I therefore beg to suggest the addition of the following provision at the end of the first paragraph to section 124 :—Whenever he is of opinion that the amount of a bond for keeping the peace executed under this chapter by any such person is excessive, he may pass an order reducing the amount" and the addition of the following provision at the end of the second paragraph :—Whenever he is of opinion that the amount of a bond for keeping the peace executed under this chapter by any such person is excessive, he shall make an immediate report of the case for the orders of the Court of Session or High Court, as the case may be, and such Court may, if it thinks fit, pass an order reducing the amount."

3. In this connection I beg to remark that at present the authority of the High Court to reverse or alter in revision a non-appealable order appears to rest solely upon precedent—a state of thing which it is one of the main subjects of a code to prevent as far as possible.

4. *Section* 164.—It has been held that the words "any Magistrate" must be restricted to any person exercising magisterial powers within the place where the statement or confession is recorded. It is obviously desirable, however, that dying declarations should be recordable by the nearest Magistrate. The section might be amended by the addition of the following explanation :—

"The words "any Magistrate" mean ordinarily "any Magistrate exercising any of the powers of a Magistrate within the place where the statement or confession is recorded;" but they include any other Magistrate, when the statement or confession is a dying declaration.

5. *Section* 170.—When a Sub-Magistrate is absent for a few days on casual leave or as a witness before the Sessions Court or otherwise, accused persons forwarded under section 170 have to be produced before the Sub-Divisional Magistrate, simply in order that they may be remanded to custody till the return of the Sub-Magistrate. Much inconvenience is thereby caused if the Sub-Divisional Magistrate happens to be at a great distance. Occasionally too it happens that the constables in charge of the accused persons are not aware of the Sub-Divisional Magistrate's intended movements, and they arrive at a camp just after his departure. To prevent such inconvenience it might be provided that when the Magistrate to whom the accused would ordinarily be forwarded under section 170 is absent from the area within which his jurisdiction lies, the accused may be forwarded to the nearest Magistrate, whether such Magistrate has jurisdiction to try the case or commit it for trial or not.

Section 195.—The term "Court" in clauses (*b*) and (*c*) has been held to include all persons, except arbitrators, legally authorised to take evidence. I would suggest the addition of an explanation to that effect.

6. *Section* 200.—An order under section 476, Criminal Procedure Code, is a complaint (*vide* I.L.R., 7 Mad. (189 Weir, page 1074). Apparently it is not intended that the Magistrate to whom a case is sent under section 476 should examine the officer presiding in the Court with reference to the provisions of section 200. I would therefore suggest the addition of a proviso to section 200 to the effect that "when the complaint is made by a Court under section 476, nothing herein contained shall be deemed to require a Magistrate to examine the complainant."

7. *Section* 345.—I would suggest that the offence of kidnapping under section 363, Indian Penal Code, should be compoundable with the permission of the Court, when the accused is one of the parents of the kidnapped minor or person. In a case under the above section which before the Head Assistant Magistrate last year, he had to sentence the accused to imprisonment, though after the prosecution had closed, the complainant, his wife, wished to compound the offence. The parties were Lubbays. The accused was not protected by the exception to section 361, but it appeared that under the circumstances of the case the law was in error in requiring the Magistrate to widen the breach between a husband and wife who desired to be reconciled.

8. *Section* 497.—Offences under the following sections of the Indian Penal Code, though punishable with imprisonment *or* fine, are non-bailable :—

Sections 241, 254, 304 (clause 2), 315, 356, 379, 406, 411, 414, 462 and 505.

It is unreasonable to refuse to admit to bail a person who appears to have committed an offence, which under the circumstances of the case would call for a sentence of fine rather than of imprisonment. As a typical instance, I would mention the case of a person, who commits what is known as a technical theft. I would, therefore, suggest the addition at the end of the first paragraph of the section of the following words "unless that offence be one for which a sentence of fine without imprisonment can be legally passed."

9. With reference to the amendments suggested in the Government of India's letter, I have only the following remarks to make :—

Section 126.—There is no procedure prescribed, not only in the event of a surety dying, but also in the event of a surety's insolvency or imprisonment or of his being found, after acceptance, to be an unfit person on any other ground. The procedure laid down in section 126 requires to be extended to such cases. Section 126 and section 123 also overlook the fact that before the Magistrate can accept the fresh surety that may be offered, he must satisfy himself as to the adequacy, character and identity of the new surety or sureties. He will probably telegraph to the Tahsildar of the taluk in which the proposed surety resides for an immediate report and the Tahsildar will probably proceed to the proposed sureties' village and examine the village officers. Thus two or three days are likely to elapse before the Magistrate will feel justified in accepting a new surety. The Magistrate should, therefore, be authorised to direct the person ordered to give security to be detained in prison pending his acceptance of the surety offered.

From the Acting Principal Assistant Magistrate, Ganjám, to the District Magistrate, Ganjám, dated Camp Gumma, 22nd January 1895, Suppl. No. 2.

With reference to your foot-note, C. No. 1420–Eng., dated 10th December, to G.O., No. 2795, Judicial, dated 17th November 1894, I have the honour to make the following suggestions with regard to the Criminal Procedure Code :—

Section 202.—This section does not apply to third-class Magistrates. There is no reason why a third-class Magistrate should not be entrusted with the power of referring a suspicious case to the police or other person for local investigation, or of making a preliminary enquiry himself.

Now he must either dismiss such a case under section 203, Criminal Procedure Code, or issue process for the attendance of the accused.

Section 252.—Under the rules framed by the Madras High Court under section 20 of the Court Fees Act VII of 1870 fees are levied for serving and executing processes issued by the criminal courts in non-cognizable warrant cases, but under section 252 a Magistrate is bound to ascertain the names of prosecution witnesses from the complainant or otherwise and summon them, and it has been held in Criminal Revision Case 719 of 1883 of the Madras High Court that a complainant in a warrant case is not bound to produce his witnesses and that the dismissal of a non-cognizable warrant case for failure to pay process fees is illegal. Thus it does not appear that process fees can be collected in these cases.

Section 488.—Among certain castes it is a common practice for wives to file complaints under section 488, Criminal Procedure Code, when the husband marries a second wife or when they have some dispute, and they often compromise these cases. It would be for the convenience of the parties if such complaints could be referred to the village Magistrate for report, in the same way as criminal cases can be referred under section 202, Criminal Procedure Code.

In clause 2 of this section the words "from the date of the complaint" should be substituted for "from the date of the order." There is no reason why the husband or father should not support his wife or child during the interval between the filing of the complaint and the final order passed. Besides no provision is made in this section for awarding to the complainant, who is generally very poor, the expenses incurred in the trial.

Section 413.—As first-class Magistrates are empowered to impose certain sentences from which no appeal lies, I think that second-class Magistrates may be allowed to impose fines not exceeding Rs. 20 in summons cases or in both summons and warrant cases without appeal.

Appeals have been made in cases where the fine has not exceeded Rs. 5 and the time of Appellate Courts should not be wasted in this way. Benches of Honorary Magistrates should decide cases which they are empowered to hear themselves without the help of the Sub-Magistrate. It is presumed that the object of having Benches is to relieve the paid Sub-Magistrates of some of their work, but the present system only increases it.

(Signed) J. G. D. PARTRIDGE,
Ag. Principal Assistant Magistrate.

R. C. No. 1420-Magl.

Copy forwarded to the Chief Secretary in continuation of my letter No. 1420-Magl., dated 2nd February 1895.

I would support Mr. Partridge's suggestion that third-class Magistrate be allowed to refer, under section 202 of the Code, complaints for investigations. The law as it at present stands often causes inconvenience, and I do not know any reason why third-class Magistrates should abuse the section more than second-class Magistrates.

Mr. Partridge then proceeds to point out an inconsistency between the Criminal Procedure Code and the Court Fees Act or rather the rules framed thereunder. If any alteration, however, is to be made here, it is not in the Code. With regard to the remarks regarding section 488, Criminal Procedure Code, there is, I believe, nothing in the Code as it stands to prevent a reference to the village Magistrate for enquiry and report. It is, I know, very often done. The other suggestions do not commend themselves to me.

CHATRAPUR,
5th February 1895.
(Signed) C. J. WEIR,
District Magistrate.

From the Acting District Magistrate of Malabar, to the Chief Secretary to Government, dated Calicut, 7th February 1895, No. 157-Magl.

Referring to G.O., No. 2795, Judicial, dated 17th November 1894, I have the honour to submit the following remarks in connection with the proposed amendment of the Criminal Procedure Code.

2. The Joint Magistrate has no suggestions to make.

3. The Head Assistant Magistrate (Mr. Murphy) suggests that section 106 should be amended so as to allow Appellate Courts, when upholding convictions of rioting, assault, or other breach of the peace, passed by second and third class Magistrates to require the person or persons convicted to execute a bond for keeping the peace. The suggestion is deserving of consideration.

4. I support the Punjab Government's proposal to amend section 10. When the Collector of Malabar goes to the Laccadives it is necessary that the Sub-Collector, who is put in charge of the office, should be invested with all the powers of a District Magistrate.

Section 195.—The Madras High Court has ruled that on an application for sanction to prosecute under Criminal Procedure Code 195, it is not competent to the court to go beyond the record in determining whther or not sanction should be granted (Indian Law Report, VI., Madras, 29). I would suggest that a court should be allowed to take evidence, if necessary, before it decides whether to sanction a prosecution or not.

Chapter XXII.—The wording of sections 263 and 264 requires to be altered. It is impossible for a Magistrate or Bench of Magistrates to say at the commencement of a trial, whether an appealable sentence will be passed or not. The Government may appeal against an order of acquittal, consequently in a case in which the accused is acquitted a judgment should strictly speaking be written (*vide* section 264). I am of opinion that in all summary trials the Magistrate should take notes of the evidence, and that these notes should form part of the record. In the absence of notes of evidence, it is impossible for a court of revision to say whether the Magistrate's finding is correct or not.

Section 437.—I think a court of revision should be allowed to set aside an improper order of discharge under section 253, even if no additional evidence is forthcoming.

(Signed) H. MOBERLY,
Ag. District Magistrate.

From E. BARCLAY, Esq., Government Solicitor, Madras, to the Chief Secretary to Government, dated Madras, 12th February 1895, No. 80.

With reference to my endorsement, No. 70, dated 9th instant, relating to G.O., No. 2795, Judicial, of the 17th November 1894, I have the honour to forward herewith copy of memorandum, dated 11th instant, I have received from the Advocate-General on the subject and of its enclosure.

ENCLOSURE.

[*Re* amendment of the Codes of Civil and Criminal Procedure.]

* * * * *

2. I take this opportunity of pointing out that there is no express provision in the Code of Criminal Procedure for the execution of a sentence of forfeiture under section 62 of the Indian Penal Code. It is most desirable that the procedure should be clearly laid down.

MADRAS,
11th February 1895.
(Signed) J. H. SPRING-BRANSON,
Advocate-General.

From the Government Solicitor, Madras, to the Chief Secretary to Government, dated Madras, 12th February 1895, No. 77.

With reference to the Order of Government, No. 2795, Judicial, dated 17th November 1894, I beg to inform you that the Attorneys Association of Madras, on receipt of the order, held a meeting and appointed a committee to consider what amendments are necessary to the Codes of Criminal and Civil Procedure and that I was appointed a member of such committee. The committee sent in to the Association its report on such amendments and, yesterday, the Association met to consider and pass such report. The report will be forwarded to Government in a few days. Under the above circumstances I have not thought it necessary to make any separate remarks as to amending the Codes.

(Signed) E. BARCLAY,
Government Solicitor.

From H. W. FOSTER, Esq., Registrar of the High Court of Judicature, Appellate Side, to the Chief Secretary to Government, dated Madras, 14th February 1895, No. 424.

With reference to G.O., No. 2795, Judicial, dated 17th November 1894, communicating, for remarks, letter from the Government of India inviting proposals for the amendment of the Codes of Criminal and Civil Procedure, I am directed to forward a transcript of the minutes recorded by the Hon'ble the Chief Justice and the Judges.

* * * * *

ENCLOSURE.

Minutes.

THE CHIEF JUSTICE.—I regret that I am unable to spare any time for the consideration of these important proposals. At the present moment, there are only four Judges and the work of the High Court occupies all my time.

MR. JUSTICE PARKER.—This Government Order was only received by me on 1st February, the day on which the Government desires to receive the remarks of the High Court upon the proposed amendments. I observe that the Government Order was received in the High Court on 1st December with five spare copies. It is to be regretted that those copies were not circulated to the Judges. With the time now left to me, it is impossible to make more than a few cursory remarks and I cannot pretend to discuss the different amendments in the manner their importance deserves.

As to sections 9 and 10, I do not think any legislative alteration is necessary as far as Madras is concerned.

Nor do I think the suggested amendment to section 45 is necessary. A village munsif would now interfere to prevent cremation or burial if he suspected foul play. If legislation be required at all it should make the interference obligatory.

I see no objection to the proposed amendments in sections 57, 156 and 159 and 475-A.

I doubt the advisability of the proposed alteration to section 107.

It would be advisable to amend section 145 so as to include any disputes concerning rights relating to tangible immovable property. Disputes concerning easements as well as concerning rights to collect rents often lead to breaches of the peace.

I am doubtful as to the advisability of adopting the suggestions of Mr. Justice Knox as to section 239. No doubt, separate trials in such cases take up a good deal of time, but on the other hand, confusion is imported into cases when separate though similar offences are tried together. The difficulty will be aggravated in those parts of India where such offences are tried by jury, but this happily is not the case in Madras.

The amendment suggested as to section 417 is probably that on which the Government of India is most anxious to receive the opinion of the High Courts. I would desire to point out that it would be impossible to allow a local Government a right of appeal against an acquittal at the High Court Sessions without at the same time allowing the prisoner a right of appeal against a conviction. As I read sections 25 and 26 of the Letters Patent, it is open to the Judge at Sessions to reserve any point or points of law for the opinion of the full court whether such points are raised by the Crown Prosecutor or by the accused, the full court thus occupying the same position as the court for the consideration of Crown cases reserved in England. The only distinction arises when the point of law has not been reserved by the Judge at Sessions but is raised on the certificate of the Advocate-General after the conclusion of the trial. Section 26 appears to presuppose the existence of a *sentence* liable to alteration on the determination of the point of law, but it is obviously incorrect to speak of the proposed enlargement of the provisions of the Letters Patent as "giving to the Crown the same *rights* as are at present available to persons convicted." The prisoner convicted has no *right* to the certificate of the Advocate-General; he can only obtain it by satisfying the law officers of the Crown that there is good reason for thinking that he has been wrongly convicted in consequence of an error in law, which is a very different thing to allowing Government to obtain the certificate of their own legal adviser that there is a point of law which deserves further consideration. This might practically be construed into a right of appeal in consequence of any alleged misdirection and would be an advantage which would not be possessed by the prisoner.

The proposal is also open to objection on the ground that it tends to disturb the finality of the decision of the highest court of criminal jurisdiction. It is, of course, true that Judges are human and are liable to err, but there have also been cases in England in which the correctness of rulings at Assizes have been questioned. A solitary miscarriage of justice, however regrettable, does not seem to me sufficient reason for an alteration in the law which might have the effect of diminishing the authority of the highest court in the country as well as putting an accused person in an unfair position.

I see no objection to amending section 437 so as to make it clear there may be "further enquiry" when no additional evidence is forthcoming, but as far as Madras is concerned, the doubt has been set at rest by the Full Bench decision reported in I.L.R. XIV Mad. 334.

I regret that, for the reasons above stated, the time at my disposal does not permit me to consider the other amendments suggested in the Government Order.

MR. JUSTICE SHEPHARD.—These papers having reached me only on the 4th February, I am unable to make any suggestions or observations. Having read the memorandum of Parker, J., I may say that I am disposed to agree with what he says about criminal cases tried by the High Courts and the alteration of the law proposed by the Advocate-General of Bengal.

MR. JUSTICE BEST.—It is to be regretted that, owing to the late date at which these papers are circulated, it is not possible to do more than notice briefly some of the amendments suggested in Appendix II of Mr. Secretary Hewett's letter.

Section 45.—The addition to section 45 of a clause empowering village headmen to prevent the cremation or burial of the bodies of persons suspected to have been murdered is, I think, desirable.

Section 145.—The decision of the Calcutta High Court in I.L.R. XI Cal. 413 has been followed by this court in I.L.R. XII Mad. 88. See also I.L.R. XV Cal. 527. In I.L.R. XV All. 395, it has been held that standing crops are "tangible immovable property" within the meaning of the section, on the ground that the words "tangible immovable property" in section 145 of the present code comprehensively express "any land or any houses, water, fisheries, crops or other produce of land" which were the words used in the corresponding section 330 of the code of 1872. On the other hand, it has been held by the Calcutta High Court in I.L.R. XII Cal. 539 that a dispute concerning a right of fishery cannot be dealt with under that section. It is very desirable that Magistrates should have power to deal with all such disputes which are likely to result in a breach of the peace, and possibly the best course will be to revert to the clearer wording of section 530 of the code of 1872.

Section 170.—The proposed amendment of section 170 appears desirable on public grounds.

Section 239.—I concur with Mr. Justice Parker in doubting the expediency of the suggested addition to section 239.

Section 417.—I also agree with Mr. Justice Parker in his observations on the proposed amendment of section 417 so as to give to Government a right of appeal in cases of acquittal by the High Courts.

Section 437.—The ruling in I.L.R. VIII Mad. 336 has been superseded by the Full Bench ruling in I.L.R. XIV Mad. 334, and in I.L.R. XV Cal. 608, a majority of six out of seven Judges of the Calcutta High Court adopted the view taken by the Bombay High Court in I.L.R. X Bom. 131. The Allahabad High Court has ruled similarly in Queen-Empress *v.* Chotu, I.L.R IX All. 52. Consequently it cannot be said now that the Courts are at variance as to the meaning of section 437.

Section 282.—I would take this opportunity of suggesting an amendment of section 282, so as to give the presiding Judge a discretion to proceed with a trial notwithstanding the death or unavoidable absence of a juryman. Such an event is more likely to occur in a protracted trial and it seems to be an unnecessary waste of time to direct that the trial shall commence afresh in every such case. In this country the verdict of a *majority* can be accepted and it seems to me that if provision is made that in case of difference of opinion the absentee shall be treated as concurring with the *minority*, no principle will be violated. I remember a protracted case in Canara where one of the jurymen died the day after the trial terminated. If I remember aright the jury were unanimous in their verdict. Had the death occurred the day before it did, the whole trial would have had to be commenced anew under the law as it now stands. Whereas under the alteration suggested by me, the verdict would be treated as that of a majority of 4 to 1 and accepted under section 306 or referred to the High Court under section 307 as might seem necessary to the Judge.

MR. JUSTICE SUBRAMANYA AIYAR.—As these papers connot be detained much longer, I am unable to offer any remarks. I desire, however, to say that I entirely agree with Parker, J., in what he says about the proposed alteration of the law in respect of criminal cases tried by the High Court.

(True Copy.)

(Signed) H. W. FOSTER,
Registrar, Appellate Side.

From the Inspector-General of Police, to the Chief Secretary to Government, dated Madras, 18th February 1895, No. 867.

In continuation of my letter, dated 8th February 1895, No. 716, regarding proposed amendments in the Code of Criminal Procedure, I have the honour to say that there is a further point which I think should be cleared up in the amended Code.

2. Under section 161 a police officer may orally examine any person when making an investigation and reduce the statement made to writing. Under section 162 such statement cannot be used against an accused. Under section 172 every police officer keeps a diary when making an investigation, and under the same section neither the accused nor his agents can call for such diaries.

But although the diary is thus privileged, the oral statements taken under section 161 are not apparently so privileged (Calcutta High Court Law Report, volume XX, page 642).

3. A police officer's diary consists, of course, almost entirely of copies of the statements made under section 161, and if these are not privileged in a criminal court, it is of little use allowing a privilege to the use of the diary. Either the accused should be allowed access to neither of the documents or he should be allowed to see both. It is useless to allow the police to keep the diary confidential and then to compel them to produce the note-book in which the statements made to them are recorded when the note-book is virtually the original of the diary.

4. So far not much harm has resulted from the ruling which has removed the protection formerly thought to be afforded to the police in the matter of statements made to them in an investigation, because the magistrates as a rule still regard the police note-book as privileged and do not require its production in courts.

5. For myself, I think it is of great importance that the privilege extended to the diary should be extended to the statements taken under section 161 also.

6. No value whatever should be given to statements made to the police as against an accused. He must be judged by the evidence given in court and by nothing else. But, on the other hand, it is of the utmost importance that no check should be placed on the freedom with which communications to the police are made, and the moment that it is generally known that at the wish of the accused statements made to the police may be published in court, persons will hesitate to communicate information to them. We wish to secure the utmost freedom in the communication of intelligence to the police, and also to make sure that nothing said to the police shall affect the accused unless it can stand the test of cross-examination in court. This seems best secured by prohibiting the production of statements made to the police in any court, just as now it is not permitted to the accused to call for the diaries.

7. I regret that I did not notice this point in my letter referred to above, but when I wrote that letter I had not sufficiently considered it.

(Signed) M. HAMMICK,
Inspector-General of Police.

From the Acting District Magistrate, Cuddapah, to the Chief Secretary to Government, dated Cuddapah, 18th February 1895, No. 161-Magl.

With reference to G.O., No. 2795, of the 17th November last, I have the honour to forward copy of letter from the Deputy Magistrate, Jammalamadugu, containing his remarks on the amendment of the Criminal Procedure Code, and to state that I have no remarks to offer.

(Signed) J. HEWETSON,
Ag. District Magistrate.

ENCLOSURE.

From the Acting Deputy Magistrate, Jammalamadugu, to the District Magistrate, Cuddapah, dated Camp Proddatur, 3rd February 1895.

With reference to your endorsement, Reference on Current No. 1310-Magl., dated 7th December 1894, on G.O., No. 2795, dated 17th November 1894, calling for suggestions on the amendment of the Code of Criminal Procedure, I have the honour to submit my suggestions as follows :—

Section 45.—As soon as a sudden or accidental death is reported to the village magistrate, he sends a report of the same to the police station and, on the arrival of the police officer, he convenes a panchayat to ascertain the cause of death. When it is ascertained that the death was due to accident, &c., he orders the cremation or burial of the dead body. When, however, there is a suspicion of foul play the body is sent to the nearest medical officer. The power of detaining dead bodies for the purpose of examination is now practically exercised by the village magistrate. He may, in my opinion, be formally invested with that power.

Section 57.—The addition proposed to this section is desirable, especially in the cases of persons residing in Native States and committing offences of the kind mentioned in paragraph 5, but who refuse to give their names and whose attendance cannot be enforced at present.

Section 107.—In this section the words " any person is likely to commit . . . . . . within the local limits of such magistrates " do, I think, include persons residing beyond the limits of the magistrate's jurisdiction.

In the latter part of the same section, jurisdiction has been given to the magistrate over persons within his limits and likely to commit breach of peace beyond such limits. To avoid difference of opinion, however, the first part of the section may be made clearer.

Section 110.—It is, I think, necessary that security should be taken from protectors and harbourers of thieves or disposers of stolen property as it is by such encouragement that thefts, &c., increase.

Section 145.—The words " tangible immovable property " not being defined may be extended to certain rights not contemplated by the legislature. It is therefore advisable to define them.

Sections 156 *and* 159.—In cognizable cases where the police have dispensed with investigation, the magistrates do order the police to make further investigation, though there is no provision laid down. This re-investigation discloses facts for passing orders and saves much time and labour. This power of ordering re-investigation may be formally given in the Code.

Section 170.—The exemption proposed to be made in favour of railway servants may, I think, be extended to telegraph, postal and medical servants.

Section 239.—A clause defining the word " transaction " is very necessary so as to render more than one person giving false information or false evidence or fabricating it liable for joint trial.

Section 391.—In the case of a juvenile when the sentence is only one of whipping it is executed immediately, but on appeals the conviction may be reversed without any corresponding good to the poor innocent boy who has been already whipped. I would therefore suggest that when whipping is ordered to be inflicted the accused may be asked if he intends to appeal. If he intends to do so a copy of the judgment may be given him at once and the fact reported to the appellate court and the boy released on bail till the appeal time, or if appeal is presented, pending the decision of the appeal. Immediately after the appeal time or after the decision confirming the sentence, he may be brought again and the punishment executed.

Section 437.—When it appears from the record that a complaint has been dismissed under section 203 on insufficient grounds, as, for instance, where the examination of the complainant was not such as to show that the complaint was groundless, an order may, I think, be made for further inquiry : where, however, an accused person has been discharged an appeal should, I think, be presented on behalf of the Government, as in the case of an acquittal, the grounds of appeal being fully stated in it.

Section 487.—A magistrate who has sanctioned the prosecution of a person under section 182 of the Indian Penal Code should not, in my opinion, be empowered to try the case himself simply for the sake of administrative convenience, because the interests of justice will suffer. A magistrate who has accorded sanction has already formed an opinion on the case and is not the proper person for deciding it.

Section 514.—In the case referred to the deceased surety shall, I think, be considered as discharged and the person bound over called upon to produce another surety. If he fails to produce another, he may be proceeded against in the same manner as in the case of the surety who applied for discharge.

2. There are certain other sections with reference to which I have offered no suggestions thinking that mine may be unnecessary. They relate to matters not coming within the province of first, second and third class magistrates.

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(Signed) K. GANAPAYYA,
Ag. Deputy Magistrate.

From the Acting District Judge, Chingleput, to the Chief Secretary to Government, dated Chingleput, 20th February 1895, No. 283.

In reference to G.O. No. 2795, of the 17th November 1894, on the subject of the revision of the Codes of Civil and Criminal Procedure, I have the honour to state that I regret my answer has not been sent by the 1st February 1895. It was only about that date, however, that I noticed a reply to the Government Order was pending from this office.

2. I find the permanent Judge, Mr. Russell, has referred the paper to the vakils here, and the Public Prosecutor informs me that their answer will shortly be sent.

He says that as the subject is not now going to be considered by the Legislative assembly at Calcutta this session, there was some delay in making a reply. I observe, however, that the Government of India wish for the replies before the end of this month.

* * * * *

4. The few remarks that I have to make upon the suggested amendments given in appendix II of the Government Order under reply are as follow:—

In regard to the difficulty of dealing with emergent applications to admit to bail when the Sessions Judge is incapacitated from performing his duties or when his office is vacant, if any reason for a change exists under those circumstances, I think the change should also cover the case of the Sessions Judge being absent from his district during vacation. As far too as this presidency is concerned, if section 9A were adopted, it would be sufficient to permit the District Magistrate, whether at head-quarters or not, to dispose of such applications. I think such an amendment would fulfil a want that now and then would arise.

Section 437.—The Madras High Court have now taken a contrary view to the one reported in 8 M. 336—*vide* I.L.R., 14 Mad., 334.

Section 195.—Doubt has sometimes arisen as to whether 1st-class Divisional Magistrates are subordinate to the District Magistrate or Sessions Judge. I think that for the purpose of this section appeals from their sanctions to prosecute should lie to the District Magistrate and from him to the High Court. This would leave the Sessions Judge in a better position to dispose of appeals from convictions.

Section 321.—The Collector of the district is the officer who really prepares the list of jurors and assessors. I should suggest that the Sessions Judge's name be omitted as having to prepare the list with the Collector, that such list be sent to the Sessions Judge for him to enter in such other names as he may think fit, and that the list so revised by the Judge be the one that shall be published and to which objections shall be taken. It would, I think, also be simpler to have the law that the Collector should, in September of each year, forward his list for the following year to the Judge, so that the list should be finally revised before the beginning of the year.

5. I have confined myself in my answers to points that have occurred to me personally. To discuss numerous points on which my opinion would not be as valuable as that of other officers who are being consulted would, I think, be out of place on my part.

(Signed) C. H. MOUNSEY,
Ag. District Judge.

From J. SHORT, Esq., Honorary Secretary, Attorneys' Association, Madras, to the Chief Secretary to Government, dated Madras, 26th February 1895.

With reference to G.O., No. 2795, dated 17th November 1894, I now have the honour to forward the remarks and suggestions of the Association as to amendments in the Criminal and Civil Procedure Codes, and regret the delay in not sending in same earlier.

As to the Criminal Procedure Code it does not seem clear whether the Government propose to make any other alterations than those set forth in Appendix II of the letter from the Officiating Secretary to the Government of India of the 22nd October 1894, No. 11, Judicial—1148, and the Association have therefore made only a few suggestions and amendments with reference to such Code in respect of matters of ordinary practice which prevent difficulties.

* * * * *

Enclosure.

Criminal Procedure Code—Suggestions and Amendments.—That the definition of "Pleader" (*u*) of section 4 of the Criminal Procedure should be amended. At present the definition runs thus: "Pleader" used with reference to any proceeding in any Court means a Pleader authorised under any law for the time being in force to practise in such Court and includes (1) an Advocate, a Vakil, and an Attorney of a High Court so authorised, and (2) any Mukhtar, or other person appointed, with the permission of the Court, to act in such proceeding.

It is suggested that clause (2) should be expunged altogether, as it cannot for a moment be said that in any district in any part of India, or at least in the Presidency of Madras there is a scarcity of certificated Pleaders. There is no necessity for the existence of the class of Practitioners called *private vakils* which is the class of people comprised in clause (2).

Criminal Procedure Code—Suggestions and Amendments—Warrant Cases.—On the trial of summons cases the Magistrate has got the power, when the complainant does not appear, to acquit the accused (section 247), on the other hand in warrant cases he has no power even to discharge the accused (unless the offence is compoundable) although the complainant does not choose to appear and prosecute the case.

It is suggested that the words "and the offence may be lawfully compounded" should be omitted from section 259, so that the Magistrate may have the power to discharge the accused when the proceedings have been instituted upon complaint, and the complainant on the day of hearing does not appear.

Examining an Accused.—It is suggested that an accused should have the privilege of having himself sworn and examined as his own witness if he so chooses.

Compensation.—It is suggested that the Magistrate should have power to award compensation even in warrant cases if he finds that the complaint was frivolous or vexatious.

Tender of Pardon.—It is suggested that the words "other than a Presidency Magistrate" in paragraph 4 to section 337 should be omitted and section 362 repealed. A Presidency Magistrate, it is submitted, should be treated on the same footing as a Magistrate in the mofussil.

Sections 370 and 410, it is suggested, should also be repealed. In the case of a First-class Magistrate an appeal lies in cases where he passes a sentence exceeding one month, or fine exceeding Rs. 50. The same procedure should apply to a Presidency Magistrate.

Jury System.—The jury system in the mofussil is not so far advanced as to assume that their verdict is correct. It is desirable that appeals should be even on a matter of fact when the trial was by jury (section 417).

Right of Accused.—A case was recently reported in the local papers in which a Vakil (Mr. Vencata Subbiar) applied to the Commissioner of Police to interview the prisoner which application was dismissed. The Vakil moved the High Court in the matter, but without success. It is suggested that an addition be made to section 340, so that an accused may of right be represented by a professional man even before the accused is put up for trial before a Criminal Court.

Revisional Powers.—The local High Court has held that it has no power to revise a sentence (unless for the purpose of enhancing or reducing the same) and go into the merits of the case. It is suggested that sections 435 and 439 should be so amended as to leave no doubt in the matter.

Section 170.—We would suggest that the operation of this section might, with advantage, be withdrawn from many other classes of witnesses besides railway servants, and that the mere issue of summonses under section 72 should generally be held sufficient.

Section 417.—It seems to us that the result of an acquittal on the Original Side of the High Court should not be in any way interfered with, at any rate without ample notice to the public.

Section 437.—We are inclined to think that so far as the Mofussil is concerned an appeal should be given against an order of discharge.

Section 514.—The procedure in the event referred to might, we think, consist of—

(1) Notice to the representatives of the deceased surety to show cause why he should not pay the amount of the bond out of the property of the deceased.

(2) On default of cause shown warrant to issue against the property left by the surety.

The sections, in respect of which difficulties are constantly arising, are sections 161, 162 and 172 as to right of an accused to call for police diaries which contain a statement or statements taken under section 161 and section 292 as to the prosecutor's right to reply. Under the former sections it seems desirable, in the interests of the accused, that the diaries should be available for the inspection of the accused without their necessarily being adduced in evidence (see I.L.R., XX Cal., p. 642) and that as to section 292 the decisions in

I.L.R., XI Mad., 339,
" XIV Cal., 245,
" 10 Cal., 140,
" 14 Bom., 436,
" XIV Alla., 212,

should be modified, so that the mere production of documents, or a statement as to calling defence witnesses without production of such witnesses should not give the prosecutor the right of reply.

From D. COWIE, Esq., Acting Registrar of the High Court of Judicature, Appellate Side, Madras, to the Chief Secretary to Government, dated Madras, 27th February 1895, No. 537.

In continuation of my letter, dated the 14th instant, No. 424, I am directed to suggest the desirability of amending section 517 of the Criminal Procedure Code so as to give power expressly to a Court to pass orders in the case of all property that may have been before it in connection with a case tried. The terms of the section, as it now stands, limit the exercise of the power to property in respect of which an offence has been committed or which has been used for the commission of an offence.

From B. MACLEOD, Esq., B.A., Barrister-at-Law, Acting District Judge, Tinnevelly, to the Chief Secretary to Government, dated Tinnevelly, 28th February 1895, No. 97.

I have the honour to submit, herewith, a letter, dated 27th February 1895, from M.R.Ry. V. Ranga Chariar Avargal, a Pleader of this Court and Secretary to the Bar Library, suggesting certain amendments to the Civil and Criminal Procedure Codes, and I request, if it should please the Government, the suggestions may be transmitted to the India Government in the Legislative Department.

Enclosures.

From M.R.Ry. V. RANGA CHARIAR Avargal, Secretary to the Tinnevelly Law Library, to the District Judge, Tinnevelly, dated Tinnevelly, 27th February 1895.

In regard to the proposed general revision of the Civil and Criminal Procedure Codes, I beg to submit herewith a few important suggestions which the members of the Bar in meetings duly convened have considered it desirable to offer, and, on behalf of the Bar, I beg to request that you will be so good as to place them before the Government.

2. The members of the Bar regret very much that they have not been able to submit their views earlier.

Amendments Suggested.

Criminal Procedure Code, Act X of 1882.

Section 497.—Provision should be made in this section to the effect that, when bail is refused, the reasons for such refusal should be recorded in writing and that a copy of the order should be given to the accused or his agent *at once*, free of cost, if the accused apply for it.

Section 167.—The detention of the accused in the custody of the Police for more than 24 hours is under any circumstances not desirable. Provision should, therefore, be made in the section making illegal the detention of the accused in the Police custody for more than 24 hours.

Section 45.—The suggestion made in paragraph 4, page 4 of the printed memorandum regarding the giving of power to village headmen to prevent the cremation or burial of the bodies of persons suspected to have been murdered, is extremely dangerous at least in the Presidency of Madras. It is submitted that the present law on the subject needs no alteration or amendment.

Section 239.—It is submitted that the suggestion made by Mr. G. E. Knox (now Mr. Justice Knox of the Allahabad High Court) in regard to the joint trial of prisoners for offences under sections 193 to 195, 203 and 211, Indian Penal Code (*vide* paragraph 13, page 6 of the memorandum), cannot safely be accepted. The Bar humbly protest in emphatic terms against the adoption of the suggestion.

Section 193.—The Bar, while adopting the suggestion made in paragraph 12, page 6 of the printed memorandum, think it highly desirable to authorise, on the office of Sessions Judge becoming temporarily vacant, not only the additional Sessions Judges, but also Joint and Assistant Sessions Judges, to temporarily exercise the powers and perform the duties of the Sessions Judge.

It is very necessary that provision should be made for suspending the execution of the sentence of whipping (where whipping is the only punishment awarded), until the appeal time expires, or until the disposal of the appeal, if an appeal has been made.

From the Sessions Judge, Kurnool, to the Chief Secretary to Government, dated Kurnool, 25th February 1895, No. 1.

With reference to G.O., No. 2795, Judicial, dated 17th November 1894, I beg to report as follows:—

1. I consider that all the amendments suggested in paragraphs 1 to 22 of Appendix II are deserving of adoption.

2. With regard to trial by jury, I would restrict it rigidly to offences under Chapter XVII of the Penal Code, and I would empower the court to withdraw any particular case from a jury and try it with assessors, on representation by either party that the jury is likely to be influenced by corruption or intimidation, or by sympathy or antipathy arising from race, caste, creed, trade, social class or political party. The court ought, indeed, to be bound to exercise this power if it considers that the representation is made on reasonable grounds.

3. I beg to suggest the following further amendments which have occurred to me in the course of a long judicial experience in many districts. They have been printed for facility of perusal, and two copies are herewith enclosed.

(Signed) W. M. THORBURN,
Sessions Judge.

From R. S. BENSON, Esq., M.A., LL.B., Barrister-at-Law, Acting District and Sessions Judge, South Malabar, to the Chief Secretary to Government, dated Calicut, 13th March 1895, No. 507.

With reference to G.O., No. 2795, Judicial, dated 17th November 1894, I have the honour to submit, in original, the report of M.R.Ry. T. V. Anantan Nair Avergal, District Munsif of Kutnad, and the notes of M.R.Ry. P. P. Karunakara Menon, First-grade Pleader, Calicut.

Enclosure.

From M.R.Ry. T. V. ANANTAN NAIR Avergal, B.A., B.L., District Munsif of Kutnad, South Malabar, to the District Judge of South Malabar, dated Ponnáni, 27th January 1895, No. 40.

With reference to G.O., No. 2795, Judicial, dated 17th November 1894, on the letter from the Government of India, No. II, Judicial 1148, dated the 22nd October 1894, inviting proposals for the amendment of the Codes of Criminal and Civil Procedure and referred to me for remarks, I have the honour to submit the following observations.

2. The Code of Criminal Procedure, Act X of 1882, and the Code of Civil Procedure, Act XIV of 1882, have now been in operation for more than twelve years, subject to special amendments and local modifications effected from time to time to meet the requirements of proved necessity. There can hardly be two opinions as regards the desirability of revising them in the light of the experience gained of their working, so as to remove the defects and to supply the omissions in them which practice has brought to light during the last twelve years.

The leading branches of Indian Substantive Law have, within the last twenty years, been rendered into Statutory enactments of considerable juristic excellence, and it is therefore right and proper that the law of procedure, which is the handmaid of Substantive law, should, *pari passu* with the progress of the latter, be so codified as to be in accordance with its general spirit and policy. The procedure law of a country affects the people more immediately than the substantive law, and its effect upon the weal or woe of the subject population is far greater than that of substantive law. However excellent the body of substantive laws may be, unless the adjective law, through the instrumentality of which the benefit of substantive laws is to be brought home to the people, is well conceived and well fashioned, the measure of happiness enjoyed by the public must always fall short of the beneficent intention of those substantive laws. To bring the great body of adjective laws into harmony with the system of substantive laws in accordance with the altered circumstances of society is a legislative function of the highest public utility; and to an attempt in this direction the general objection in principle to frequency of legislative changes is hardly applicable, regard being had to the well-known maxim of law *Salus populi Suprema est lex.* It is impossible to over-estimate the importance of having a clear, compact, and methodical code of procedure law suited to the provisions, and in keeping with the policy, of the body of substantive laws. Having regard to these considerations, the proposed amendment of the two great codes of Indian adjective law, viz., the Codes of Civil and Criminal Procedure, is, in my humble opinion, not only desirable, but also highly expedient. With these prefatory remarks I shall proceed to consider as briefly as possible the defects and omissions in the codes aforesaid, and in so doing I propose to take up, in the first instance, the Code of Civil Procedure, Act XIV of 1882, because it is with the practical working of that code that my experience, first as a High Court Vakil and latterly as a District Munsif, has been more intimately concerned.

* * * * *

64. As regards the proposed amendment of the Code of Criminal Procedure, I shall, in making my observation on it, deal first with the amendments suggested in Appendix II of the letter from the Government of India, dated 22nd October 1894, No. II, Judicial, 1148.

65. The amendment suggested in paragraph 1 of the appendix appears to be a desirable one, in view of the administrative inconvenience pointed out in it, but the amendments mentioned in paragraphs 2 and 3 do not appear to be necessary, seeing that local Governments already possess ample powers under Chapter II of the Code to remedy, by suitable administrative arrangements, inconveniences of the kind alluded to.

66. The amendment of section 45 suggested in paragraph 4 of the appendix is, in my humble opinion, highly inexpedient. The power to prevent the cremation or burial of a corpse is a dangerous power, to be exercised in a very delicate matter, and it will be a grave public calamity to confer such a power on such low-paid and comparatively irresponsible persons as village headmen generally are. Nothing is more sacred to the Hindus than the dead body of a member of their household, and any unjustifiable interference with their right to dispose of it in accordance with religious requirements is at once an outrage upon their feelings and a grave injury to their honour. Cases have been known of improper treatment of dead bodies having given rise to sanguinary riots. It will be unjust and impolitic to leave such a delicate and serious matter to the tender mercy of village headmen; a low body of public servants, in nine cases out of ten, without education, refinement, and legal training. Besides, it is a notorious fact that in many parts of the Indian mofussil factions reign supreme in villages, and in many cases the village headman will be found to be the leader of one of such factions. Having regard to this fact, and to the low character of the education, training, and position of such village headmen, it is in the highest degree undesirable to leave such a powerful engine of oppression in their hands. In the Madras Presidency village headmen are authorized under section 174 of the Code to hold inquests in cases of suspicious death, but it is a well-known fact that in the absence of the Police, they are useless to meet any sudden and grave emergency. The Police officer holding an investigation under section 174 has power, in suspicious cases of death, to forward the dead body for *post-mortem* examination, and as he is bound to proceed to the place where the dead body is, directly he gets information of the death, there cannot, in the great majority of cases, be much real necessity for the village headman to act in anticipation. In the rare cases, in which the Police officer being at a distance, there may be a possibility of the dead body being disposed of before he arrives at the place, the fear of incurring the serious punishment prescribed by section 201 of the Penal Code may well be relied upon as a sufficient deterrent to prevent the relatives from disposing of the dead body on their own responsibility. If they are persons who have no regard for the criminal law, they will be in a position to achieve their illegal object even if the village headman has authority to prevent the disposal of the dead body; but if they are law-fearing persons, the dread of incurring the punishment prescribed by the Penal Code will make them wait till the Police officer arrives. In any case it does not appear to be necessary to arm the village headmen with this highly responsible function. That it is inexpedient to do so has already been shown. While on this section I may observe that the liability cast by this section as amended by Act X of 1894 upon the "owner on occupier" of a land is a very serious one, and that if the section is construed in strict accordance with its wide terms, the result will be a grave peril to the liberty of innocent subjects. The owner of a land may be an "absentee" landlord, living hundreds of miles away from the locality, and yet he is bound under the section to furnish information of the occurrences mentioned in clauses (*a*) to (*f*). In the case of the occupier of land and the resident agent of the owner there is justification for the liability cast upon them, but when such liability has been cast upon them, it is not clear why the non-resident "owner" should be likewise held liable (*vide* 4 Cal., 623; 20 Cal., 316). Then again though the section enacts in inflexible terms the liability to give information as aforesaid, it does not provide any protection to the persons fixed with the liability against the consequences of giving such information. It is possible that their information respecting the occurrence may be erroneous, or unfounded, and that the party aggrieved by their communication of that information to the authorities may take legal proceedings against them. In such a case it is very desirable that the law should afford them due protection, as their communication is the outcome of legal compulsion. The general principles of law relating to privileged communications do not appear to afford sufficient protection in such a case. As the section now stands, such persons are placed on the horns of a difficult dilemma. If, doubting the correctness of the information, they omit to communicate it, they render themselves obnoxious to the provisions of this section. If, on the other hand, they communicate the information and it afterwards turns out to be unfounded, they are exposed to the pains and penalties which the party aggrieved by their communication may see fit to invoke against them. For the foregoing reasons it is desirable, in my humble opinion, to exonerate "absentee landlords" from the liability enacted by this section and to provide sufficient legal protection to those who are obliged to give information under this section.

67. The amendment of section 57 proposed in paragraph 5 of the appendix does not appear to be a necessary one, having regard to the large power which the section already confers upon the Police. The procedure laid down in the section is sufficient to carry out the object aimed at by it, and it does not appear to be expedient to enact a different procedure in the cases of foreigners. It is, for obvious reasons, not desirable that a low-paid Police officer whose geographical knowledge is, as a rule, not more extensive than the horizon of his own range, should have a higher summary power to interfere with the liberty of a foreigner than is already vested in him by the section. The discretionary power conferred upon a Police officer by this section is already too much and too wide, and the policy of adding to it in the direction proposed appears to be of questionable expediency.

68. As regards the amendment of section 107 suggested in paragraph 6 of the appendix it is not clear that a Magistrate is not entitled under the terms of that section as it now stands to take proceedings against a person not personally within his jurisdiction. The section appears to embrace two cases, viz. (1) the case of a person residing *without* the jurisdiction attempting to commit a breach of the peace *within* the jurisdiction, and (2) the case of a person residing *within* the jurisdiction attempting to commit a breach of the peace *without* the jurisdiction. That the section is fairly capable of this construction is clear from the judgment of the Honourable Mr. Justice Wilson in the case reported in I.L.R., 12 Cal., 133. If this is a correct view of the section, there is, of course, no necessity to amend it; but if, having regard to the rule that the preventive jurisdiction of a Magistrate is ordinarily a local jurisdiction, and in view of the rulings in I.L.R., 6 All., 26, 11 Cal , 737, and 12 Cal., 133, it is considered that the section is not properly open to this wide construction, an amendment of it is necessary to provide for the case of a person outside the jurisdiction attempting a breach of the peace *inside* the jurisdiction of the Magistrate; but if an amendment in the shape of an additional provision is to be made, a strict conformity to the principle of jurisdiction aforesaid requires, as pointed out in the decision of the Honourable Mr. Justice Prinsep in I.L.R., 11 Cal., 737, that the power to take proceedings under this section should be vested in the Magistrate within whose jurisdiction the person in question is resident. Otherwise, the practical working of the new provision will give rise to all the hardship and inconvenience pointed out in the decision in I.L.R., 12 Cal., 133.

69. The amendment proposed to section 110 in paragraph 7 of the appendix is a useful one, and there appears to be no valid objection to it. In this connection I respectfully beg to suggest that persons of notoriously bad livelihood and dangerous characters may also, with much benefit to society, be brought within the purview of this salutary section. The only possible objection to this is that the terms "bad livelihood" and "dangerous character" being terms of indefinite import, there is a risk of the power being abused, but this is not a tenable objection, seeing that the power is to be exercised by the Magistrate who is the responsible guardian of public safety.

70. The term "tangible immoveable property" in section 145 has given rise to a conflict of decisions. The term "tangible" appears to have been used to exclude from the scope of the section incorporeal rights, such as easements, fisheries, &c., but the word "concerning" used in connection with the term "tangible immoveable property" is calculated to give an unduly wide operation to the section. As pointed out by the Honourable Mr. Justice Field, in the decision reported in I.L.R., 11 Cal , 413, it is undesirable to confer upon the inferior criminal courts in India the power of deciding vexed questions of possession relating to incorporeal rights of the above description, and it will be well to restrict the scope of the section as much as is consistent with the maintenance of public safety. The substitution of the words "in respect of" for the words "concerning" and the limiting of the term "tangible immoveable property" to land, houses and water, will, to a certain extent, achieve this object.

71. The power proposed to be conferred upon Magistrates of ordering the police to investigate a cognizable offence when the officer in charge of the police station has, in the exercise of his discretion, dispensed with a local investigation, is a useful power and is desirable in the interests of justice. The discretion conferred upon the police officer by section 157 is a very wide and dangerous one, and, to prevent a failure of justice consequent upon a possible abuse of it, it is necessary that the Magistrate should have the power of ordering the police to investigate in the circumstances mentioned above.

72. The suggestion set out in paragraph 10 of the appendix as regards the proposed exemption of railway servants when they are complainants or witnesses, from the liability to execute bonds for their appearance before the Magistrate on the date fixed by the police officer, appears to be a desirable one so far as it concerns railway servants who are witnesses. The case of a complainant stands on a different footing and is governed by different considerations. In the case of a railway servant who is a complainant, it is a question whether the exigency of departmental

convenience can be allowed to over-ride the requirements of public justice; but in the case of witnesses the same objection does not apply. When a concession is made in favour of railway servants, the same concession will have to be made in favour of Government servants, and it appears to be necessary and expedient that such a concession, limited to the case of witnesses, should be made in favour of Government servants as well.

73. Administrative convenience requires that section 193 should be amended by the insertion of an express provision that on the office of a Sessions Judge becoming temporarily vacant the additional Sessions Judge (if there be any in the district) shall temporarily exercise the powers and perform the duties of such Sessions Judge.

74. Section 391 presents considerable difficulties. Under it a sentence of imprisonment awarded in addition to whipping requires to be a sentence of imprisonment for at least fifteen days. This appears to be a needlessly restrictive provision. Then again, the section provides that in case an appeal is made within that time, the whipping shall be inflicted only after the sentence is confirmed by the Appellate Court. It is possible to imagine cases in which the sentence of imprisonment awarded expires before the disposal of the appeal. In such cases, after the prisoner is discharged from jail on the expiry of his sentence, he will have to be again retaken into custody, after the disposal of the appeal, for the purpose of undergoing the sentence of whipping; but the Code does not provide for the mode in which this is to be effected. The section is thus defective in practice, but the proper way to remove this defect does not appear to be to restrict the sentence of whipping, which is a very efficacious remedy in the case of certain offenders and certain classes of crimes. The abolition of cat-o'-nine-tails as the instrument of correction and the extremely indulgent reduction in the severity of whipping, effected by the Code of 1882 has already had an influence the very opposite of salutary, upon the "roughs" of society, who are the fit subjects of such punishment and in my humble opinion a further interference with whipping as a mode of punishment is neither desirable nor consistent with the requirements of public peace and safety in the present circumstance of India. The difficulties in the working of the section pointed out above can be obviated by conferring upon the court a discretion as in section 390 to execute the sentence of whipping at such time as it considers proper.

75. It does not appear to be necessary to frame any specific rule as regards the meaning of the expression "in the way of school discipline" used in section 392. The expression aforesaid is too well known to require an explanation, and the construction of it may safely and with advantage be left to the discretion of the Courts.

76. As regards the scope of section 437, it has been held by the Calcutta and Madras High Courts in the Full Bench decisions reported in I.L.R., 15 Cal., 608, and 14 Mad., 334, that a Court of Sessions or District Magistrate has, in a case of discharge by a subordinate Magistrate, power under section 437 to order a "further inquiry" on rehearing upon the same materials which were before the Subordinate Magistrate, where no additional evidence is forthcoming. The decisions in I.L.R., 10 Cal., 1027, and 8 Mad., 336, which lay down that no such power exists except in cases where fresh evidence is available must now be considered as over-ruled by the Full Bench decisions aforesaid. The Bombay High Court has all along maintained this view, taken in the Full Bench decisions aforesaid, and it is thus clear that the High Courts of Calcutta, Madras and Bombay are now unanimous in holding that such a power exists on the wording of the section itself. That such a power should, in the interests of public policy, exist in the superior courts mentioned in the section is highly desirable. Having regard to the standard of legal education and training which now characterizes the subordinate Magistracy in the mofussil, it is in the highest degree expedient that, to prevent a miscarriage of justice, the superior courts aforesaid should have power to revise a subordinate Magistrate's order of discharge based upon a perverse finding or a finding manifestly wrong and at variance with the recorded evidence, or contrary to the plain principles of law. The whole tenor of the provisions of Chapter XXXII is inconsistent with an intention to give finality to an order of discharge, and this being so, it is evident that section 437 was meant to include within its revisional scope the case of an improper order of discharge. Now that three High Courts in India have unanimously put this construction upon the section, it seems scarcely necessary to amend it; but if an amendment is considered necessary, it will be well to replace the words "further enquiry," by the words "fresh inquiry," which will remove all uncertainty.

77. It does not seem to be desirable that a Magistrate who, on the report of the police orders a prosecution under section 182 of the Penal Code, should have the power to try the case himself. The Magistrate in such a case has the appearance of having prejudged the matter (*vide* I.L.R., 1 Mad. 308), and he is, in fact, the authority that initiates the prosecution. That the wholly inconsistent functions of prosecutor and judge should not be united in one and the same authority is a juristic principle of universal application, and no amount of administrative inconvenience can justify a departure from such a fundamental principle of reason and justice. In my humble opinion, therefore, it is not expedient to amend section 487 in the direction pointed out in paragraph 20 of the appendix.

78 Having regard to the object and reason of a surety-bond executed under section 106 of the Code, it seems desirable that it should be made summarily enforcible under Chapter XLII even after the death of the surety. This can be effected by giving to a surety-bond an extension of legal scope in such a way as to embrace the surety's legal representatives in possession of his assets. If the surety bond is so drawn up as to include to the surety his heirs and legal representatives, then, according to the principle that a man for juridical purposes lives his legal representatives, his legal representatives who are in possession of his assets, can be proceeded against in execution to the extent of those assets, just in the same way as he could have been proceeded against had he been living. In such a case, his legal representatives would come within the purview of the words "any person bound by such bond" and the moveable property of the deceased surety as well as such property of the legal representative who is in possession of the deceased's assets sufficient to meet the liability would be liable to attachment. Of course in fixing a personal liability upon the legal representatives the court will have to decide the question of derivation of assets, but such a decision is by no means more important and more difficult than many of the disputed questions of title and possession relating to property which criminal courts have to decide under the Code. There appears to be no reasonable objection to conferring upon criminal courts the power of deciding the questions aforesaid, and, if it is conferred, there can be no difficulty, in the case of a surety bond drawn up in proper legal language, in enforcing it against the legal representatives of the surety after his death.

79. In my humble opinion it is not desirable that the discretionary power now vested in a Presidency Magistrate of awarding compensation in cases of improper causing of arrest in a Presidency town should be extended to all mofussil courts. From the very nature of this power, it is one to be exercised with much caution and not a little discrimination and sound judgment, and it is questionable whether the generality of inferior criminal courts in the mofussil can be safely trusted to make a proper use of this power. The power of awarding compensation in cases of vexatious and frivolous complaints appears to be a sufficient power in the case of such criminal courts in the mofussil. For the rest there is the remedy of the Civil Law open to a party who is aggrieved by the improper arrest, and a resort to the civil court in such a case is a remedy better calculated to serve the ends of justice.

80. It appears to be desirable, in view of the general progress in knowledge and civilization, which the leading communities in India have now attained after a century of enlightened and liberal administration by the British Government, that the system of trial by jury which has already become an established institution in the country, and which is eminently suited to the tradition and instincts of the Hindu race should be extended in such a way as to make it a real blessing to the people. As the law now stands, it is left to the Local Governments to determine the classes of offences for which, and the localities in which, trial by jury is to be held (section 269). The discretion as regards the selection of localities is one which from its nature must, under present circumstances, be left more or less to the Local Governments, but it is a point worth considering whether, as regards the enumeration of the classes of offences triable by jury, it will not be better and more in accordance with the recognized principles of legislation to make it the subject of an express provision in the Code itself. The classes of offences fit to be tried by jury may be laid down by the legislature, and it may be left to the Local Governments to select from them such classes of offences as they consider desirable to be made the subject of trial by jury in particular places within their jurisdiction. Offences relating to religion, marriage, defamation, trade or property marks, public decency or morals, miscarriage, injury to unborn children, exposure of infants and concealment of birth, appear to be some among the classes of offences which may properly be made the subject of trial by jury. If trial by jury is extended in the manner aforesaid, it will be necessary as a safeguard against miscarriage of justice to provide for greater care and deliberation in the preparation of the jury list than is now enacted by section 321. To ensure the selection of proper men to serve as jurors in a particular district, it is necessary that Government officers having an intimate knowledge of the different parts of the district should be associated in the preparation of the jury list or at all events, that they should be consulted by the Sessions Judge and the Collector when they prepare the jury list. Under section 321, the Local Governments have power to provide for this, and it will be a desirable improvement if a rule is enacted making it obligatory, in the preparation of jury lists for a district to call for a report from the Revenue Divisional officers and the District Munsifs in that district. So far as the Madras Presidency is concerned, many of the advanced districts of it are now ripe for an extension of the jury system, and, subject to suitable limitations and safeguards, the extension of it in such districts will be attended with considerable public convenience and benefit.

81. These are all the observations which I have to make in regard to the points noted in the appendix above mentioned, but before concluding I beg permission to submit a few suggestions as regards certain other provisions of the Code which seem to require amendment. The most important of them is section 476, which lays down the conditions and circumstances under which a court is empowered to send for trial by a Magistrate a case of offence committed before it or brought under its notice in the course of a judicial proceeding. On this section read in conjunction with section 195 it has been held by the Madras High Court in I.L.R., 6 Mad., 29, and 15 Mad., 224, that the court can take action under this section only if, on the record of the suit itself as distinguished from the preliminary enquiry subsequently made, there is *primâ facie* evidence of the commission of an offence. This conclusion has been dissented from by the

Calcutta High Court in the decision reported in I.L.R., 19 Cal., 345, which holds that it is enough if a *primâ facie* case is made out by the result of the preliminary enquiry made after the termination of the proceedings in the suit. It is clear that the restricted view of the scope of this section laid down in the Madras decisions quoted above is calculated to interfere, to a material extent, with the salutary operation of the section. Under those decisions a Court has no authority to start a prosecution where a suitor, for example, files a forged document in a suit, and, when the forgery is about to be detected, omits to give evidence regarding it and allows it to remain unproved on the record. The ruling in I.L.R., 15 Mad., 224, expressly lays down that in such a case the court cannot sanction the prosecution of the party who filed the forged document, because the document was not "given in evidence"; and the decision in I.L.R., 6 Mad., 29, says that in such a case the court is not warranted in holding a preliminary enquiry for the purpose of deciding whether a *primâ facie* case of forgery is made out. The result is that in such a case the ingenious litigant is enabled by means of a little stratagem to escape the just punishment due to him for filing a forged deed in a Court of justice with a view to make it the basis of a claim. This is an eminently unsatisfactory state of things and requires to be provided against. To meet a case like this, it appears to be desirable in view of the ruling aforesaid in I.L R., 15 Mad., 224, to replace the expression "given in evidence in such proceeding," used in clause (*e*) of section 195 by the words "filed in court in the course of such proceeding." Moreover, it appears to be necessary, having regard to the ruling in I.L.R., 6 Mad., 29, and the ruling to the contrary effect in I.L.R. 19 Cal., 345, to amend the wording of the section in such a way as to leave no room for doubt that the preliminary inquiry mentioned in it is meant for the purpose of meeting a case where evidence as regards the commission of the offence has not been taken in the original proceeding. Such an amendment of the section appears to be highly desirable in the interests of efficient administration of justice.

82. The power, impliedly conferred upon a Police officer under section 46, of causing the death of a person who forcibly resists arrest in cases punishable with transportation for life, appears to be an unduly wide power, and it is a question deserving of consideration whether, in the interests of humanity, this power should not be restricted to cases where the resisting accused is charged with a capital offence. This appears to be the law of Scotland and the Select Committee that reported upon the Bill which preceded the present Code seems to have been originally in favour of the adoption of this more lenient view. In any case, having regard to the highly responsible nature of this power, it appears to be better to enumerate the classes of offences expressly, than to leave them in general terms. Section 100 of the Penal Code affords a useful analogy on this point.

83. According to section 94, an officer in charge of a police station has power, by means of a written order addressed to a person in possession of any document, to cause its production before him. It is not clear whether a public authority or a Court of justice can be so summoned to produce documents. In the case of postal and telegraph authorities, section 95 lays down that the requisition to produce documents should be made through a Court or Magistrate. It appears to be desirable that in the case of Courts of justice and superior public functionaries, the same procedure should be adopted, to avoid the unseemly spectacle of a low-paid and subordinate police officer issuing a written order addressed to such superior authorities.

84. *Section* 129.—The power of dispersing an unlawful assembly by military force is an extreme power which requires for its proper exercise considerable discretion and sound judgment, and it is desirable, to restrict that power, to Magistrates of the first class. As the section now stands the Magistrate of the highest rank who is present may exercise that power, but he may be a Magistrate of any class.

85. *Section* 147.—This section appears to contemplate cases of disputes regarding easements, but it is questionable whether the words "concerning the right to do or prevent the doing of anything in or upon any tangible immoveable property" are sufficient to cover all cases of easements which have the character of *jura in re aliena*.

86. Sections 154 to 176 which constitute Chapter XIV of the Code give, in cognizable cases, unlimited power to the officer in charge of a police station to interfere with the legal rights of third parties in the interests of public law. Having regard to the fact that such an officer is generally a person of indifferent education and low pay, it appears to be a fit matter for consideration whether his exercise of such power may not, in some cases at least, be rendered subject to the control of the local Magistrate having jurisdiction. The power of sending a dead body for *post-mortem* examination in a case of suspicious death is, especially, a power which requires the sound judgment of a responsible Magistrate. The placing of such a moderate but salutary check upon police action will tend to greater public convenience, and will remove, to a great extent, the general outcry against police oppression and tyranny.

87. *Section* 202.—Under this section, it is only when a Magistrate sees reason to distrust the truth of a complaint that he has power to direct a local investigation. Even where a Magistrate does not distrust the truth of a complaint, there may be cases in which a local investigation by an officer deputed for the purpose is desirable to clear up matters in contest, such as situation, boundaries, &c., of lands. The section confers no power on Magistrates to

order local investigation in such cases. This is felt to be a grave inconvenience by the subordinate magistracy in the mofussil. The removal of this defect appears to be desirable in the interests of judicial administration. Then again, the section authorizes a Magistrate in cases falling within its purview to depute *any person* to make the local investigation. Seeing that the person so deputed is to ascertain the merits of the complaint, and his report is to form a basis of the Magistrate's finding (section 203), it is desirable that such a person should be a responsible public servant, either a subordinate of the Magistrate or a police officer. The power of deputing "*any person*" to exercise such a quasi-judicial function requires to be taken away, and the analogy of section 148 furnishes a sufficient warrant for this.

88. *Section* 249.—The power conferred by this new section has an appearance of unique character about it, and seeing that the effect of it is to keep a charge hanging over the head of an accused undetermined, it appears to be desirable to confine this power to a District Magistrate or a Magistrate of the first class empowered by the local Government. As the section now stands, any Magistrate, with the previous sanction of the District Magistrate, may exercise this power. In my humble opinion this latter provision requires to be done away with in the interests of public policy.

89. *Section* 260.—Having regard to the provision of section 263 that, in cases tried summarily under Chapter XXII, no evidence need be recorded where no appeal lies, it is worth consideration whether the scope of this section, which lays down the classes of offences summarily triable cannot be considerably restricted, consistently with the requirements of sound policy. At all events, it appears to be desirable to exclude "attempts" to commit the offences specified from the category of offences summarily triable. The offence of "attempting to commit an offence" is an offence which requires a respectable knowledge of the theory and practice of law in the Magistrate trying it, and very often it involves the determination of abstruse and supra-subtle points of legal philosophy. The highly scientific character of Mr. Mayne's commentary on section 511 of the Penal Code, and the extremely vexed nature of the rulings laid down in the decided cases on that section are sufficient to prove the truth of this remark. It does not appear to be expedient that offences which involve such wire-drawn legal distinctions and technicalities should be tried without the usual safe-guard of legal formalities and publicity.

90. *Section* 421.—The words in this section "no appeal presented under section 419 shall be dismissed unless the appellant or his pleader has had a reasonable opportunity of being heard in support of the same," have been the subject of an exhaustive exposition in the dissentient judgment of Mr. Justice Mahmood in the Full Bench decision reported in I.L.R., 13 All., 171. It is held in that judgment that, in the case of an appellant who is in jail, and is unable to engage a pleader, the Appellate Court is bound to hear him in person before his appeal can be dismissed, and that, for this purpose, the Appellate Court should have him brought up before it. The language of this section is fairly susceptible of this construction put upon it by the learned Judge, but it is doubtful if this was the intention of the legislature. The removal of this doubt by a verbal amendment appears to be desirable.

91. *Section* 425.—It appears to be expedient to enact a provision rendering it obligatory that in every case decided in appeal the Appellate Court should certify its judgment or order to the Court appealed from. In the absence of such a provision, inferior criminal courts cannot have the benefit of seeing the judgments of their Appellate Courts and of profiting by the observations made and determination of important questions embodied in them.

92. *Section* 431.—The absence of a provision in the Code analogous to this section, relating to complaints in the court of first instance is a matter worth notice. There are cases in which a complaint has regard to injury to a person's legal estate, and in such cases the Code is silent as to what the effect of the complainant's death is on the complaint which is pending.

93. *Section* 497.—This section appears to require a slight amendment. As it now stands, if there is a *prima facie* case, bail must be refused even in the case of a petty theft which is adequately punishable with fine. This arises from the fact that the general nature of the offence, and not the gravity of the offence in the particular case, is made the criterion of eligibility for bail. To meet a case like the above, it is desirable to amend the section in such a way as to leave a discretion to the court, founded upon the nature of the offence in the particular case.

94. *Section* 517.—This section empowers a criminal court to pass orders, among others, for the disposal of property regarding which *any offence appears to have been committed*. The absence of any provision in regard to property produced before the court, in regard to which *no offence appears to have been committed* is a matter for observation. Very often it happens in theft-cases that the police produce property alleged to have been stolen by the accused and recovered from him. The accused may plead in such cases that the property was not recovered from his possession and that he has nothing to do with it, and the finding of the Magistrate may be that the theft is not proved and that the property produced was not recovered from the accused. In such a case

the question arises how the property is to be disposed of. It cannot be delivered to the complainant consistently with the finding of the Magistrate, nor can it be delivered to the accused who disclaims all title to it. The enactment of a provision for such cases appears to be desirable.

95. *Section* 555.—The expression "personally interested" in the section appears to require amplification in view of the rulings laid down in the decided cases which have construed its scope (*vide* the decisions reported in I.L.R., 20 Cal., 857; 14 Bom., 572). Whether the term "personally interested" is used in this section in the sense of private and pecuniary interest or whether it includes professional interest of a personal character, or personal interest arising from the discharge of public functions is a vexed question which has not been solved beyond controversy. Reason and principle point to the advisability of adopting the more extensive construction (*vide* I.L.R., 10 Cal., 194). In this connection it is a matter for observation that the Code of Civil Procedure does not contain a provision analogous to this section (555). The rule of prohibition contained in this section being a rule of public policy and one of the fundamental axioms of Judicial Administration, an express provision embodying it deserves a place in the Code of Procedure Law, both criminal and civil. The want of such an express provision in the Code of Civil Procedure leads to considerable inconvenience in practice, and it appears to be therefore desirable to enact a section analogous to section 555 of the Criminal Procedure Code, in Chapter XLIX of the Code of Civil Procedure.

96. The last section in regard to which I have to submit a few observations is section 560 which has been enacted by the amending Act IV of 1891, in repeal of section 250 of the Code of 1882. This section provides for the awarding of compensation to the accused in cases of frivolous or vexatious accusations. Under section 250 of the Code of 1882, award of compensation was legal only in summons cases, but the new provision embodied in section 560 makes the same legal in any case "instituted by complaint or upon information given to a police officer or to a Magistrate." Whether this extension of the scope of the section so as to embrace all classes of criminal charges is quite in accordance with the requirements of public policy and consonant to the general scheme of the Code may well be doubted, but taking the section as it stands, it appears to be highly desirable to expressly exclude from its operation cases instituted before a magistrate on complaint by a court acting under section 476 of the Code (*vide* I.L.R., 1 Bom., 175); otherwise, this section is likely to prove extremely prejudicial to the cause of public justice. Nothing is clearer than the principle that public tribunals, who in the exercise of their statutory functions, invoke the criminal law against a person, in the interests of public welfare, stand on a different footing from ordinary complainants. The result of placing them on a par with ordinary complainants for the purpose of this section will be to render section 476 a dead letter; and the injurious consequences of such a state of things upon public interests need no demonstration. The arguments against the application of the section to such a case are so clear and so cogent that it is hardly possible to think that the legislature meant to apply this section to such a case. In any case, having regard to the very wide and comprehensive language of the section, it will be well to remove all doubt on the point by an express provision. Another matter worth notice regarding this section is the extremely light nature of the penalty prescribed in default of payment of compensation as ordered. So long as the award of compensation was restricted to summons cases (section 250) there was sufficient reason for making the penalty comparatively light; but now that the section has been extended to all criminal accusations, of whatever degree of seriousness, there appears to be little reason for retaining the same penalty without a corresponding increase in the degree of its severity. The punishment provided in default of payment of the compensation awarded is simple imprisonment for a term not exceeding thirty days. This is found to be, in practice, quite an inadequate punishment. Generally, those that indulge in the luxury of frivolous and vexatious complaints are persons of no means. They bring such complaints either as tools in the hands of powerful patrons, or as a means of gratifying revenge. If all that they have to suffer as the penalty for their delinquency is simple imprisonment for a month, many of them will gladly court such a penalty. Veritable paupers, unable through destitution, to keep body and soul together will readily allow themselves to be made tools of by powerful individuals who want to bring their neighbours to disgrace, when they know that the price of their service will be a comfortable lodging in jail at the public expense. Simple imprisonment will be to them a real boon, as it will enable them to find their daily bread without work. Leniency of punishment in the case of such offenders will be a premium upon lawlessness. A punishment of imprisonment, the consequence of which is, to the person punished, better than liberty is no punishment in reality. Having regard to these considerations, and in view of the enlarged scope of the section, it appears to be extremely desirable to increase the severity of the penalty prescribed by this section. If a sufficiently high maximum of compensation is fixed, magistrates will be able to adequately punish all cases falling under the section by awarding compensation according to the degree of seriousness of particular cases. In any case, it is of supreme importance, having regard to the gravity of the matter involved, that the punishment prescribed for non-payment of compensation shall be *rigorous* imprisonment. An amendment of the section in this direction will be a measure of unquestionable public good.

(Signed) V. ANANTAN NAIR,
District Munsif.

From the Pleader, Munjacuppam, Cuddalore district, to the Chief Secretary to Government.

I learn that the present Code of Criminal Procedure, Act X of 1882, is to be revised by the Government of India and a copy of the proposed enactment has been forwarded by the same to the Madras Government for its observations and report. I beg to submit the following provision to be introduced in the said Code as a sub-section under section 366 and trust His Excellency the Governor in Council will forward the same with their favourable recommendation to His Excellency the Viceroy in Council. The sub-section will run as follows:—

"In all cases where a criminal court convicts the accused of any offence the court at the time of passing the sentence shall simultaneously hand over to the accused copy of the written jugdment, and unless and until the court has provided itself with a copy of the written judgment ready for delivery to the accused it shall not pronounce the judgment."

This sub-section would give the accused the very first opportunity to present his appeal or revision and apply for bail after the sentence was pronounced and before it is enforced against him in cases where the Appellate Court is located very near the Lower Court.

In the absence of this provision the consequences are that the accused before they could surmount the difficulties and delays in obtaining copies and present his appeal or revision and obtain bail, they are invariably subjected to all the irreparable disgrace which after all is found by the Appellate Court not to be his due in cases of reversals and their liberties are restrained, their persons disfigured and an additional burden is thrown on them, viz., the expenses for the purification ceremony.

This sub-section avoids all the above said injuries to the accused; therefore I beg to request the proposed sub-section may be recommended and orders on the application may be communicated to me.

(Signed) M. C. NAMASIVAYEN PILLAI,
Pleader, Munjacuppam.

From the Collector and District Magistrate of Salem, to the Chief Secretary to Government, dated Salem, 20th March 1895, No. 530-M.

With reference to G.O., No. 2795, Judicial, dated 17th November 1894, I have the honour to submit the following remarks in the matter of amendment of the Code of Criminal Procedure.

Section 10.—In regard to the point brought forward under this section, I would call attention to the procedure taken in this Presidency in the famine of 1876–78, when what were in fact Joint District Magistrates were appointed in some districts.

Section 45.—In this section a provision should be added empowering village headman to prevent the cremation or burial of the bodies of persons suspected to have been murdered but whose relations desire to conceal the real facts of the case and thus to defeat the ends of justice. Cases have several times occurred in this district in which this has been deliberately done. It has been done often with the connivance of the village heads who might also be made responsible.

Section 57.—I approve of the suggestion to add to this section the provision of sub-sections 3 and 4 in respect of arrest of persons who are residents of Native States, but see no special reasons to confine the section to cases where the offence is punishable with imprisonment for any term exceeding one month.

Section 110.—I think it very necessary that security for good behaviour should be permitted to be taken from the protectors and harbourers of thieves or habitual disposers or receivers of stolen property. These persons render theft possible and profitable and constantly foster crime. There are in this district persons who maintain gangs of Koravers whom they send out to steal but who cannot now be got at without much difficulty.

Section 239.—I agree in the observation that insisting upon a separate enquiry and trial in each case leads to the neglect of more important work and to no resultant good. In this connection I would invite attention to the present state of the law as expounded by the High Courts in regard to convictions for perjury in the alternative.

Section 326.—This section needs revision. The issue of summonses to assessors should be from the District Court under any circumstances. Provision should be made to enable the signing of such summonses to be delegated to a subordinate of the Court or Magistrate if the present system continues in the same way as witnesses' summonses are signed.

Section 437.—I would uphold the contention of the Bombay Government in regard to the construction which should be put on the words "further enquiry" in this section. It is true that the later decisions of the High Court following the Calcutta High Court put much that construction on the section, but I think the very mischievous and unnecessary construction of the Madras High Court should be made impossible in future.

Section 552.—The provision of this section may be extended to the mofussal.

2. On the further points mentioned I have no remarks to make.

(Signed) G. STOKES,
Collector and District Magistrate.

From the District Judge of North Malabar, dated 23rd March 1895, No. 121.

Abstract.—Stating that he has no remarks to offer with reference to circular No. 614.

From the Acting District Judge, South Canara, to the Chief Secretary to Government, dated Mangalore, 26th March 1895, No. 343.

Abstract.—Stating that he has no remarks to offer on the proposals to amend the Codes of Criminal and Civil Procedure.

From the Acting Collector and District Magistrate of Kurnool, to the Chief Secretary to Government, dated Kurnool, 27th March 1895, Extra No. A.

With reference to G.O., No. 2795, dated 17th November 1894, I have the honour to offer the following remarks in regard to the revision of the Code of Criminal Procedure.

2. *Paragraph* 4 *of appendix II.*—There were several cases * in this district last year in which the relatives who were suspected of having committed murder had the corpses burnt so as to prevent detection. The amendment appears to be desirable.

* The Bugganapalle case, Nandyal taluk.
The Turunical case, Pattikonda taluk.
The Mundlum case, Nandikotkur taluk.

3. *Paragraph* 5.—The amendment would be useful, especially in border districts.

4. *Paragraph* 6.—According to the decision of the Allahabad High Court in I.L.R., 6 All., 26, followed in I.L.R., 11 Cal., 737, and 12 Cal., 133, a Magistrate has no power to take proceedings, under section 107, C.P.C., against a person not personally within his jurisdiction, and there has also been a recent ruling in I.L.R., 16 All., 9, to the effect that proceedings under section 110 of C.P.C. cannot be transferred to any court outside the district within which such proceedings have been instituted. In other provinces, Deputy Magistrates apparently have jurisdiction throughout the district to which they are attached, but in this Presidency their jurisdiction is limited to their respective sub-divisions. Occasions may arise when it may be necessary to transfer cases under section 110 from one Sub-Divisional Magistrate to another.

5. *Paragraph* 18.—The rulings of the Madras and Calcutta High Courts herein quoted have been modified in I.L.R., 14 Mad., 334, and 15 Cal., 608, respectively, following I.L.R., 10 Bom., 131, and 9 All., 52. It is desirable that distinct provision be made in section 437 to the effect (1) that additional evidence is not necessary for ordering further inquiry, and (2) that further inquiry can be made by such Magistrate as the Sessions Judge or District Magistrate may direct and not necessarily by the same Magistrate who had originally disposed of the case as laid down in 8 Mad., 336.

6. At present a sentence of acquittal can only be set aside by an appeal to the High Court by Government. The High Court have authority to interfere under their powers of revision, but they do not ordinarily do so as an appeal can be made under section 417. It often happens that an acquittal by a Subordinate Magistrate is wrong, but the case is not of sufficient importance to trouble Government with and to lodge a formal appeal by means of the Government Pleader. The simplest course would be for the Sessions Judge or District Magistrate to bring such cases to the notice of the High Court for revision. With regard to cases acquitted by the Sessions Court, however, the proper course is for Government to file an appeal under section 417.

7. Difficulty is often experienced owing to the restriction imposed by the amendment of section 495 by Act III of 1886 in regard to the conduct of the prosecution by the police. This may be desirable in a head-quarter town where there are many officers available for the duty, but in outlying stations it often happens that the only officer competent to prosecute the case is the one who has investigated it. It is therefore desirable that this restriction should be removed.

(Signed) C. M. MULLALY,
Acting Collector and District Magistrate.

From the District Judge, Nellore, to the Chief Secretary to Government, dated 30th March 1895, No. 246.

With reference to your circular No. 614, dated the 19th instant, calling for my remarks on the proposals to amend the Codes of Criminal and Civil Procedure as required in G.O., No. 2795, dated the 17th November last, I have the honour to inform you that as District Magistrate of North Arcot I have already said all I have to say regarding the proposed amendment of the Criminal Procedure Code.

* * * * *

(Signed) G. F. T. POWER,
District Judge.

From the Acting District Magistrate of Chingleput, to the Chief Secretary to Government, dated Saidapet, 7th April 1895, No. 1060.

I have the honour to reply to G.O., No. 2795, Judicial, of the 17th November 1894. I regret that there has been delay in so doing owing to changes in this office. As the time for reporting has already passed, I will merely most briefly record such suggestions (with a remark of my own here and there) made by the Divisional officers as I think should be submitted to Government. The few suggestions I had to make myself, I made as District Judge of this district.

2. Amendments suggested to the Criminal Procedure Code—

Section 4, *clause* (*n*).—In defining "Pleader" strike out clause (2) so as to exclude private vakils.

Section 9.—Amendment unnecessary.

Section 10.—Amendment to enable appointment of Additional or Joint District Magistrates desirable.

Section 42.—A wife should be exempted from liability in not assisting the police to arrest her husband. (I do not think this necessary.)

Section 106.—Appellate Courts should also be able to call for security to keep the peace.

Section 110.—Suggested that the term "habitual offender" be defined. I think it should not be defined but left to each Magistrate to decide in each case.

Chapter X.—Alter the heading so as to avoid references to "'*Public*' nuisances." The Acting Joint Magistrate (Mr. Brodie) in regard to chapter X objects to a jury being appointed at all, as it is a mere farce. I would certainly not allow a jury, if the alleged offender has attempted to show cause against any order. He further suggests that a Magistrate may but should not be bound to take evidence, if he is acting under section 133, and that in section 137 the words "the facts are such that no order under section 133 can be passed" should be substituted for "the order is not reasonable or proper," and in section 138 that the function of the jury should be defined to decide upon evidence whether the facts are such that no order under section 133 can be passed. He would also make even after the finding of the jurors the Magistrate's order final, subject to appeal only in the case he differs from the majority of the jury. I do not agree with the Joint Magistrate here. His suggestion would make having a jury at all a useless proceeding. I do not remember ever seeing a jury acting under this chapter, and I would suggest that in all nuisance cases a 1st-Class Magistrate himself should decide upon evidence, subject to appeal to the Sessions Judge.

Section 145.—It is suggested that no evidence should be taken and that if both parties claim possession, the property should be attached. I should allow evidence to be taken to prevent the possible dispossession by a wrong doer enabling him to get an order to be left in peaceable possession of the property.

Section 156.—I do not agree with the suggestion that no Magistrate should be permitted to refer non-cognizable cases to the police. He certainly, if he distrusts the truth of such cases, might be allowed to do so.

Section 164.—The Deputy Magistrate, Tiruvallur division, thinks that the conditions obtaining regarding the confessions of an accused should be embodied in the code. I agree with him.

Section 213.—The words "may make an order" to be altered to "shall make an order." Reading this section with section 210, I think the alteration should be made.

Section 239.—In addition to the alteration proposed in para. 13, appendix II of the Government Order, add the words "or one of abetment of any such offence" after section 211.

Sections 244 *and* 245.—Magistrates should be empowered to acquit accused at any stage of a summons case.

Section 256.—The permission to allow an accused to re-call and cross-examine all witnesses after the charge is made should be withdrawn. I should give the Magistrate discretion to refuse to re-call such witnesses for reasons to be recorded, as sometimes the right is used to unnecessarily delay trials.

Section 261.—I modify a proposition of the Deputy Magistrate of Tiruvallur and propose that a bench of Magistrates may try summarily cases of cruelty to animals; opening, keeping, &c., a common gaming house and gaming in a common gaming house.

Section 345.—Offences under the first and last clause of section 430, Indian Penal Code, to be made compoundable.

Section 350.—All or certainly 1st-Class Magistrates to be given the power to deal with cases part-heard by another Magistrate, without being compelled on demand of accused to re-summon and re-examine witnesses.

Section 392.—The Local Government should be authorized to prescribe the mode of punishing juveniles by whipping.

Section 422.—That permission be made for complainants to receive notice of appeals. I am doubtful of the wisdom of this. I think it would only put them to much needless expense, convicting Magistrates receive notice.

Section 437.—Suggestions are made to enable a re-trial when fresh evidence is not forthcoming. The High Court has ruled that this can be done, but as formerly it ruled otherwise, perhaps it would be well to make the alteration.

Sections 497 *and* 498.—Proposition is made that the Magistrate to whom 2nd and 3rd-Class Magistrates are subordinate should specially be able to dispose of appeals upon their adjudication on the subject of bail.

Section 552.—The Joint Magistrate suggests the extension of this section to all Mofussil Courts with an appeal in the case of any order by 2nd and 3rd Class Magistrates as in section 560.

(Signed) C. H. MOUNSEY,
Ag. District Magistrate.

From the District Magistrate of South Canara, to the Chief Secretary to Government, dated Kasaragod, 20th April 1895, No. 31/95-Magl.

I have the honour, in continuation of this office Disposal No. 31, dated 22nd January last, respectfully to suggest for the consideration of Government the addition of the following clause to section 523, Criminal Procedure Code, when Act X of 1882 undergoes amendment:—

> "If the property is counterfeit coin, or stamps or implements for the fabrication of the same, or libellous and other matters referred to in section 521 *supra*, the Magistrate may cause the same to be destroyed."

2. The papers from which this point arose are herewith submitted. I do not find any provision in the Criminal Procedure Code authorizing a Magistrate to pass such an order in a case where no offence has been committed.

(Signed) W. H. WELSH,
District Magistrate.

From the Inspector-General of Police, to the Chief Secretary to Government, dated 17th May 1895, No. 2980.

With reference to the recent suggestion for the amendment of the Criminal Procedure Code, I have the honour to make a further suggestion, if not too late. It is that offences under section 223 of the Indian Penal Code should be made triable by 1st-Class Magistrates only. This involves an amendment of schedule II, Code of Criminal Procedure, section 223.

2. Colonel Porteous suggested that whenever possible cases in which constables are accused of negligently allowing the escape of persons under their custody should be tried by 1st-Class Magistrates. I agreed with his opinion and have made suggestions in that view. District Magistrates have, in one or two cases, perfectly rightly objected to taking a course which practically overrides the provisions of the Criminal Procedure Code. At the same time I believe that most District Magistrates would agree that it would be better were the trial of this class of cases given exclusively to a higher Magistrate than one of the 2nd class. The point is *not* the amount of punishment which is awarded, for as often as not the Magistrate awards a severe punishment than is really necessary. What however experience points to is that the question of criminal negligence is one which, as a rule, a 2nd-Class Magistrate is not very competent to decide. The evidence in these cases generally goes to show that some special circumstances existed which enabled the escape to be effected and it is, as a rule, *very* difficult to decide whether those circumstances were such as to negative a charge of negligence against the guard at the time. I have not looked through previous records to find cases in which there has been a miscarriage of justice, but I remember one case when I was District Magistrate in South Arcot where a Subordinate Magistrate disposed of a case under the section in an extraordinary manner. It is, however, because *negligence* is a specially difficult subject to deal with in law that I make the suggestion. The cases under the section are very much more important than the facts as a rule suggest. For there is always almost the suspicion that the guard in the case in question was actuated by corrupt motives. In consideration of this it has been a rule in the department that all Police found guilty under this section 223, Indian Penal Code, must, except in very special circumstances, be dismissed. It is therefore very important that such cases should be tried by the highest intelligence available, and it is for this reason that I venture to suggest that the cases may be made triable by nobody below a 1st-Class Magistrate. The cases are not very frequent and to make them triable by 1st-Class Magistrates exclusively will not add appreciably to their work.

(Signed) M. HAMMICK,
Inspector-General of Police.

From the Acting District Magistrate, Malabar, to the Chief Secretary to Government, dated Calicut, 29th May 1895, No. 898-Magl.

As the Government of India is considering the question of revising the existing Code of Criminal Procedure, I have the honour to invite attention to the following defects in chapter XVIII which has just come to my notice.

2. Chapter XVIII relates to the enquiry into cases triable by the Court of Session or High Court. Section 210 lays down that when the prosecution evidence has been taken and the accused has been examined for the purpose of enabling him to explain any circumstances appearing in evidence against him, the Magistrate *shall*, if he finds that there are sufficient grounds for committing the accused for trial, frame a charge. The Magistrate must then according to section 211 require the accused to give in a list of the persons whom he wishes to be summoned to give evidence on his trial.

Section 212 empowers the Magistrate to summon and examine any witness named in the list. Section 213 to which I invite special attention says: "When the accused on being required to give in a list under section 211 has declined to do so, or when he has given in such list and the witnesses (if any) whom the Magistrate desires to examine have been summoned and examined under section 212, the Magistrate *may* make an order committing the accused for trial."

The word "may" is misleading, for it implies that the Magistrate may decline to commit; but this he manifestly cannot do, as he would then be trying a case triable only by the Court of Session or by the High Court. For "may" it would be better to read "shall."

3. Section 212 should also, in my opinion, be amended. In England, a person committed for trial is allowed to reserve his defence and his witnesses are not examined till the trial. In this country a defence is often concocted and section 212 is apparently intended to meet such a case. But would it not be better to allow a Magistrate to summon and examine the witnesses named by the accused only when he has reason to suppose that false defence will be set up? I would suggest that the following proviso be added to section 212:—

"Provided that before the Magistrate summons and examines any such witness he shall record his reasons for so doing and shall grant a copy of his reasons to the accused free of cost."

4. I regret that when writing my letter, dated 7th February 1895, No. 157-Genl. Magl., I did not notice the above defects.

(Signed) H. MOBERLY,
Acting District Magistrate.

From the Inspector-General of Prisons, to the Chief Secretary to Government, dated Ootacamund, 2nd July 1895, No. 3818.

Section 73 of the Indian Penal Code provides that whenever any person is convicted of an offence for which he might be sentenced to rigorous imprisonment, the sentencing Court may direct that certain portions of the imprisonment awarded shall be *solitary*. No definition or description of solitary confinement as contemplated by the Indian Penal Code is known to exist, but rule 950 of the Jail Code directs that such imprisonment shall be undergone by the prisoner "in a separate cell as far as possible excluded from sight or hearing of what is going on outside." This is carried out by prisoners being placed in a cell with a batten door, lighted by a ventilator in the back wall, placed too high for the prisoner to be able to see out. The batten door contains a peep-hole, covered by a wooden flap, through which the officer on guard outside can observe the prisoner within. Under section 29 of the Prisons Act, 1894, every solitary sell must be furnished with a bell or other means of communication.

2. The law has thus provided for the imposition of certain periods of solitary confinement as an integral part of sentences, and the Criminal Procedure Code does not appear to contain any provision, analogous to sections 394 and 395, directing the course to be followed, if a sentence of solitary confinement cannot be carried out. Under rule 957 of the Jail Code, no prisoner can be placed in solitary confinement unless the Medical officer of the jail first examines him and certifies that he is fit to undergo the confinement. If the Medical officer declines to give this certificate, or if he recommends the removal of a prisoner from a cell under rule 951, the Superintendent of a jail is unable to carry out the sentence of a Court.

3. On the 9th February 1895, convict No. 2964, Nama, of the Rajahmundry Central Jail, attempted to commit suicide in one of the solitary cells where he was undergoing a judicial sentence of solitary confinement. Copies of the reports Nos. 185-J and 196-J, dated 9th and 12th February 1895, of the late Superintendent of the Jail, are enclosed. It will be seen that Mr. Tyrrell was of opinion that the convict only pretended to commit suicide. On the prisoner's discharge from hospital he was, in the ordinary course, placed before the Medical officer to be passed for the next instalment of solitary confinement, but was passed "unfit." At the end of a fortnight he was again put up for examination and the Medical officer then recorded that he was "permanently unfit" to undergo the solitary confinement to which he was sentenced. The prisoner will thus escape the punishment awarded by the Court.

4. The occurrence of this case appears to suggest the necessity of some provision being inserted in the Criminal Procedure Code by which a superintendent may be enabled to report to a convicting Court the fact that a sentence of solitary confinement cannot be executed, and by which the Court may be empowered to substitute some other sentence for it. Until this is done, a convict by exhibiting "suicidal tendencies," *e.g.*, by tying a rope round his neck and making preparations as though to hang himself, may, with the utmost security, escape from undergoing solitary confinement. In the case of convict No. 2964 of the Rajahmundry Central Jail, the preparations were probably carried rather farther than was intended, and the prisoner nearly hung himself by misadventure. But he has achieved the desired object of getting into hospital and escaping solitary confinement. The remarks of Surgeon-Major Marsden, No. 43, dated 15th May 1895, regarding his action in the case, are submitted.

(Signed) A. G. CARDEW,
Inspector-General of Prisons.

From the Head-quarter Deputy Magistrate of Kurnool, to the District Magistrate of Kurnool, dated 26th July 1895, Dis. No. 71-Mag.

I have the honour to bring to your notice that no addition seems to have been made to Schedule II of the Criminal Procedure Code (X of 1882) with reference to sections 263-A and 477-A, Indian Penal Code, added by Act III of 1895 (India).

(Signed) T. GOPALASAMI IYER,
Head-Qr. Dy. Magistrate.

Ref. on C. No. 843-Mag. of 1895.

Copy submitted to the Chief Secretary to Government, Judicial Department, for orders.

2. I am not aware of any enactment amending Schedule II of Criminal Procedure Code with reference to the two new sections of the Indian Penal Code referred to by the Deputy Magistrate.

KURNOOL,
13th August 1895.

(Signed) C. M. MULLALY,
District Magistrate.

Order—No. 2091, Judicial, dated 9th October 1895.

The following letter will be despatched to the Government of India.

(True Extract.)

G. S. FORBES,
for *Chief Secretary*.

Letter—to the Secretary to the Government of India, Home Department, dated Ootacamund, 9th October 1895 No. 2092, Judicial.

In reply to your letter of the 22nd October last, No. 11-Judicial—1148, inviting proposals for the amendment of the Civil and Criminal Procedure Codes, I am directed to communicate to you the views of this Government with the opinions of the various officers and bodies consulted on the revision of the Code of Criminal Procedure. Proposals regarding the amendment of the Code of Civil Procedure will shortly be transmitted to you in a separate communication.

2. The various suggestions made in the papers enclosed will receive in due course the consideration of the Government of India. The only sections of the Code on which His Excellency the Governor in Council thinks it necessary to make any special recommendations are the following :—

(1) *Section* 9.—The amendment suggested by the Allahabad High Court in 1890 is appropriate, but as in this Presidency the Sessions Court is not always at the head-quarters of the District Magistrate, and as the Joint Magistrate is always at an out-station, His Excellency in Council would suggest that the words "the Sessions Court station" and "the Sub-divisional Magistrate within the limits of whose local jurisdiction the Sessions Court station is situated, being a Magistrate of the first class" be substituted for the words "head-quarters" and "Senior Joint Magistrate", respectively, in the proposed section 9-A.

(2) *Section* 10.—His Excellency in Council is in favour of the amendment suggested by the Punjab Government. While it is generally undesirable and impolitic to divide the supreme magisterial authority in a district, there is no objection to have in reserve power to relieve the District Magistrate by the appointment of an additional District Magistrate in the manner proposed to provide for very exceptional circumstances, such as the occurrence of famine, frontier disturbances or the like.

(3) *Section* 15.—(i) The tenure of office of Bench Magistrates may, with advantage, be restricted to a definite period of (say) three years. It is sometimes advisable to have the power of changing the *personnel* of Benches without having recourse to the provisions of section 41 of the code.

(ii) The attention of the Government of India is invited to the ruling in I.L.R., 20 Cal., 870, in which, following other previous rulings of the court, it is held that a member of a Bench of Magistrates may not give judgment and pass sentence unless he has sat on the Bench during the whole of the hearing of the case. The ruling has recently been followed by the Madras High Court; and instances of the great inconvenience which is produced by this state of the law have been brought to the notice of Government. In one mufassal town, for example, in which about 5,000 cases come annually before the court, it is seldom possible to secure the attendance of the same Honorary Magistrates on two consecutive Benches. His Excellency the Governor in Council is inclined to consider that the interests of justice will not suffer by a provision to the effect that any part-heard case postponed to a future sitting of the Bench may, subject to the provisos of section 350 of the Code, be proceeded with if any member of the Bench has been present at the previous hearing.

(4) *Section* 21.—His Excellency the Governor in Council considers that the opportunity should be taken of examining carefully the question whether the Presidency Magistrates should not, in relation to the Chief Presidency Magistrate, be placed in much the same position as regards the supervision and control of their work which the magistrates of a district hold to the District Magistrate. It is true that this would introduce a material alteration in the position of the Presidency Magistrates, since the Chief Presidency Magistrate is at present virtually no more than *primus inter pares*. But there are many considerations which seem to call for a change in the existing procedure. In the opinion of His Excellency in Council, it would be a measure of useful reform if the Chief Presidency Magistrate were invested at least with the powers conferred on a District Magistrate by sections 192, 435, 436, 437 and 438 of the code.

(5) *Section* 40.—It is not clear, as the law at present stands, whether re-investiture of magisterial powers is necessary where an officer appointed as a magistrate under the code who has been transferred *temporarily* to another office reverts to his original appointment or to an appointment of a like nature. It would be an administrative convenience if this doubt were set at rest by the insertion of a provision to the effect that whenever any person who has been invested with any powers under the code is transferred *temporarily* to another office under the same Local Government, he shall, unless the Local Government otherwise directs, continue on his return to his former or an equivalent or higher office to exercise the same powers as he previously exercised.

(6) *Section* 42.—It has been suggested that the words "or in quenching fire" should be inserted after the word "affray" in clause (*c*) of this section, and the Government supports the suggestion; the obligation being limited to cases where the fire threatens or endangers human life or property in a town or public place. It is observed that a similar provision in the Bill which became Act X of 1882 was omitted by the Select Committee which reported on the Bill, on the ground that "it did not properly belong to a Code of Criminal Procedure." This objection is not, however, altogether clear, seeing that the code in Chapters X and XI recognises the duty of the police and the magistracy to interfere in cases of public nuisance or where the lives or property of the public are in imminent danger.

(7) *Section* 45.—(i) Persons accused of *murder* should, it is considered, be included in clause (*b*) of this section.

(ii) This Government agrees in the suggestion of the Government of the Punjab, that village headmen should be legally empowered to prevent the cremation or burial of dead bodies in cases of sudden, unnatural or suspicious deaths, until the arrival of the police or magistrate. As it is, in the absence of a legal provision, heads of villages do, as a matter of fact, generally interfere in the manner indicated; and it is desirable that the practice should be legalized.

(8) *Section* 57.—The revision of this section in the manner suggested by the Government of India meets with the approval of His Excellency in Council.

(9) *Section* 68.—It seems to be desirable to amend this section so as to provide for the service of summons, not only by the police or the officer of the court issuing it, but also by any public servant whom the Local Government may by rule authorize to do so. For instance, in the case of forest offences, such a provision would greatly facilitate service and save delay where the process has to be served in out-of-the-way places. The object in view could be effected by the addition, at the end of the second clause of the section, of words to include public servants, the selection and designation of such being subject to rules made by the Local Government in this behalf.

(10) *Section* 88.—His Excellency in Council would suggest that a clause be added to the effect that when the attached property of a proclaimed person becomes "at the disposal of Government," it should not, except in the two cases specified in the section, be sold without the orders of the Local Government.

(11) *Section* 106.—This Government considers that the section should be amended so as to empower Appellate Courts, when upholding a conviction passed by second or third class magistrates in a case of rioting, assault, or other breach of the peace, to require the person convicted to execute a bond for keeping the peace.

(12) *Section* 107.—The Government does not consider that a sufficient case has been made out for the amendment of this section in the manner indicated in paragraph 6 of Appendix II to Home Department letter, dated 22nd October 1894, No. 11-Judicial—1148. No practical inconvenience has been experienced in this Presidency from the absence of the provision suggested.

(13) *Section* 110.—A provision should be inserted for the taking of security for good behaviour from habitual protectors or harbourers of thieves and habitual aiders in the concealment or disposal of stolen property.

(14) *Section* 123.—The section as it stands seems to allow the officer in charge of the jail in which the person ordered to give security is detained to accept sureties and release the prisoner without any reference to the court which made the order requiring security. In view of section 122, it should be distinctly provided that, in cases where sureties are required, the jail officer should not accept such sureties unless and until they shall have been first approved by the court concerned. The object may be effected by the insertion at the end of paragraph 1 of the section of words to the following effect:—

> "Provided that in the last case, the sureties, if the security bond is with sureties, shall have been approved by the court or magistrate which or who made the order requiring the security."

(15) *Section* 124.—A provision would seem to be required authorizing a District or Presidency Magistrate to reduce the amount of security once fixed. There are many cases in which it may be desirable to have the power to do this.

(16) *Section* 126.—(i) The code is silent as to the procedure to be followed in the event of a surety dying, or in the event of his insolvency or imprisonment, or of his being found after acceptance to be an unfit person on any other ground. This defect may, it is suggested, be remedied by extending to all such cases the procedure laid down in section 126 in the case of a surety voluntarily applying for the cancellation of the bond executed by him.

(ii) His Excellency in Council would also insert a provision empowering the court to direct the detention in prison of the person ordered to give security, until the surety offered has been approved and accepted; otherwise, pending inquiry as to the sufficiency of the surety, the harm sought to be prevented may be committed.

(17) *Section* 127.—In the correspondence with the Government of India ending with the letter from this Government, No. 1710-I., dated 15th August 1895, the question has been fully discussed of taking power enabling the police to deal effectively with processions, especially in the matter of the removal of banners, insignia, costumes and similar things, the display of which is likely to cause a breach of the peace. His Excellency the Governor in Council would recommend that a clause should be added to section 127 of the Criminal Procedure Code providing for the matter.

(18) *Section* 143.—An appeal should, it is considered, be allowed to the Sub-divisional or District Magistrate against the order of a magistrate of the second or third class prohibiting the repetition or continuance of a public nuisance under the section.

With reference to this and cognate sections I am to state that a Session Court recently held that a notice addressed generally to the villagers of a certain village to discontinue a public nuisance was insufficient notice so as to render any particular villager liable to prosecution for disobedience of the order; the definition of "person" in section 11 of the Penal Code not covering the inhabitants of a village. On this point an appeal has been taken to the High Court, and the result will be reported in due course; but if there is likely to be any doubt on the question, it should be removed by an appropriate addition to the code.

(19) *Section* 144.—A proviso should be added specifically declaring that a person affected by an order issued under this section may come in subsequently and show cause why it should be rescinded or modified if the circumstances admit of it. In this connection attention is invited to the remarks of the High Court at Calcutta in the case reported in I.L.R., 5 Cal., 132.

(20) *Section* 145.—His Excellency in Council agrees with the opinion of the Hon'ble the Judges of the High Court in favour of amending the section so as to include clearly disputes concerning rights relating to tangible immovable property, as well as easements and rights to collect rents, since breaches of the peace frequently arise in respect of such matters. This might be sufficiently done by reverting to the wording of the code of 1872, "land or the boundaries of any land or concerning any house, water, fisheries, crops or other produce of land." If this suggestion is adopted the language of section 147 should also be modified.

(21) *Section* 150.—The section as it stands at present does not seem to impose any obligation on the police to communicate information of the actual commission of an offence. The defect should be supplied by an appropriate addition either to this section or in Chapter XIV.

(22) *Sections* 156 *and* 159.—His Excellency in Council agrees that, as suggested by the Government of India, the magistracy should be specifically empowered to order the police to investigate a cognizable offence which under section 157 they have thrown out.

(23) *Section* 164.—(i) In the case reported in I.L.R., 1 Cal., 207, the Judges of the Calcutta High Court have held that the words "any magistrate" occurring in this section must be restricted to any person exercising magisterial powers within the place where the statement or confession is recorded. As it is desirable that every facility should be given for recording dying declarations, and that any magistrate should be authorized to take them, His Excellency in Council would add to the section the following explanation:—

> "The words 'any magistrate' mean ordinarily 'any magistrate not being a police officer exercising any of the powers of a magistrate within the place where the statement or confession is recorded,' but they include any other magistrate (including a Presidency Magistrate) when the statement or confession is a dying declaration."

(ii) In order that magistrates recording confessions might, in doing so, have their attention directed to the requirements of the law, this Government in 1887 issued departmental instructions to the effect that every magistrate when recording a confession or statement under this section should (*a*) first record in writing his reasons for believing that the accused is going to make the statement voluntarily, (*b*) explain to the accused that he is under no obligation to answer any question at all, and (*c*) warn him that it is not intended to make him an approver and that anything he says may be used against him. The following precautions were also prescribed at the same time at the instance of the High Court: (*a*) that, if the magistrate doubts whether the accused is going to speak voluntarily, he should remand him to a sub jail before recording the statement; and (*b*) that such confession or statement should not be recorded nor the warning above mentioned given in the presence of any police officer who arrested or produced the accused.

These instructions have proved useful in impressing upon magistrates the need of care and of a strict compliance with the requirements of the law in this very important matter. They are brought to the notice of the Government of India in view of its being considered whether in some form they may not with advantage be embodied in the code.

(24) *Section* 167.—The Inspector-General of Police considers that fifteen days—the total period of remand permissible under this section—is not sufficient in all cases and suggests that District and Divisional Magistrates should be empowered to extend this period to thirty days in all. His Excellency in Council is inclined to support this proposal.

(25) *Section* 170.—In Judicial Department letter, No. 794, dated 2nd April 1894, the Madras Government supported a proposal to amend this section with the object of exempting certain railway servants from its operation, by withdrawing the obligation that such persons shall execute bonds to attend at the Magistrate's Court on the date fixed by the police officer for the appearance of the accused, it being left to the magistrate to summon them in accordance with the provisions of section 72.

His Excellency in Council thinks that this concession may unobjectionably be extended to such public servants of the postal, telegraph, medical and other public departments as the Local Government may, from time to time, by notification designate. It is not necessary that all classes of servants of these departments should be included in the exemption, but in the interests of the public it is undesirable that such officials as postmasters, telegraph masters, medical officers in sole charge of dispensaries, and others in like case should be called away from their duties except in accordance with a summons fixing the date for their attendance.

(26) *Section* 172.—The Calcutta High Court has held (I.L.R., XX Cal., 642) that statements made under section 161 are not privileged, merely because they are incorporated in the diary referred to in section 172. It is represented that this ruling places an unnecessary impediment in the way of the obtaining of information by the police, as such information is likely to be withheld if it is generally known that, at the instance of the accused, statements made to the police are liable to production in court. The law has already recognized the need of treating such information exceptionally in that (section 162) it declares that statements other than dying declarations made to the police are not to be signed by the informants so that they may not be deterred from speaking their mind freely to the investigating officer. The law also forbids the use of such statements against the accused. Moreover the diary referred to in section 172 consists almost entirely of copies of statements recorded under section 161 and, if the latter are not privileged, it is of little use allowing privilege to the former. In these circumstances, His Excellency in Council would suggest that the privilege allowed to police diaries should be extended to statements, other than dying declarations, made to and recorded by the police under section 161.

(27) *Section* 176 *as amended by Act V of* 1889.—The Chief Presidency Magistrate suggests that sub-section (1) of this section should be amended by the addition of the following proviso, dispensing with a magisterial enquiry in cases of death from natural causes in prison:—

> "Provided that no enquiry into the cause of death of a person who dies in prison need be held except in the cases mentioned in section 174 (1), clauses (*a*), (*b*) and (*c*)."

It is said that a magisterial enquiry is quite unnecessary in such cases, seeing that the prisoner's death is certified by the medical officer in charge of the jail to have occurred from natural causes, that the work imposed becomes heavy in times of epidemic, and that the magistrates are exposed in such times to a needless risk to themselves of infection and of spreading it among others.

The obligation to hold an inquest on every prisoner who dies in jail in the Presidency town appears to have been taken from section 9 of the Coroner's Act, IV of 1871, which, however, excepted from the obligation "cases in which the death has been caused by cholera or other epidemic disease." If this exception were re-introduced into the present law, the argument advanced, so far as it relates to the danger incurred in seasons of epidemic and to the heaviness of work, would be met. His Excellency in Council would not extend the exemption to all cases of death from natural causes in prison as proposed by the Chief Presidency Magistrate. It is very desirable that in the case of deaths occurring in jail the obligation of holding an independent investigation should be maintained for the satisfaction of the deceased's friends and relatives, as well as of the general public.

(28) *Sections* 188 *and* 193.—There appears to be no objection to the amendment of these sections in the manner indicated in paragraphs 11 and 12 of appendix II to the Home Department letter under reply.

(29) *Section* 195.—(i) The expression "so referred to" in paragraph 3 of the section may be omitted as it may possibly be held to prohibit a court on the trial of a case in which sanction has been given from trying a charge which does not require sanction, and which, but for this provision, it could have tried.

(ii) In the case of perjury in the alternative—one deposition being before one court and the other before another court—it should not be necessary to require the sanction of both the courts, as the Bombay High Court appears to have held in I.L.R., II. Bom., 34, and X. Bom., 190. The law should be made clear on the point.

(iii) There have been contradictory rulings as to the meaning of the term "court" in this section, especially as regards the point whether sub-registrars are "courts" when exercising certain powers. The attention of the Government of India is invited to the decision in I.L.R., 15 Mad., 138.

(30) *Section* 200.—A proviso may be added to this section to the effect that "when the complaint is made by a court under section 476, nothing herein contained shall be deemed to require a magistrate to examine the complainant."

(31) *Section* 202.—(i) The section in its present form seems to empower a magistrate to require a police officer *beyond the local limits of his jurisdiction* to enquire and report upon a case committed within his jurisdiction. As it is undesirable that such an extensive power of reference should be vested in the magistracy, it is proposed that the words "within his jurisdiction" be inserted between the words "police officer" and "or by such other person", so as to restrict the scope of the section.

(ii) It is considered that the power of reference conferred by the section should also be extended to cognizable cases in which the magistrate is not prepared to declare that he distrusts the truth of the complaint. Under the present law, if a complainant in a cognizable case presents his complaint direct to the magistrate, and not to the police, the magistrate, unless he can say that he sees reason to distrust the truth of the complaint, appears to have no power to call in the aid of the police to investigate and report upon the prosecution case. It may be often convenient in the interests of justice that the magistrate should have this power; and the Government would accordingly recommend that the section be modified accordingly.

(32) *Section* 203.—A provision seems required to make it clear that the magistrate should record his reasons for the dismissal of a complaint under this section.

(33) *Section* 236.—In 1885, in I.L.R., X. Bom., 124, it was held that, where one of the alternative charges fell under one section of the Penal Code (*e.g.*, section 182, False information) and the other under another section (*e.g.*, section 193, Perjury), these two were distinct charges and therefore, unless one or the other charge was positively proved to be false, a conviction thereon could not be sustained, simply on the ground that the two statements on oath, one under each charge, were contradictory and one must therefore be false and the other true. The form appearing in schedule V, No. XXVIII (ii), clause (4), on the other hand, seems to contemplate alternative charges of perjury only under the same section (section 193, I.P.C). To prevent miscarriages of justice and to aid in the suppression of perjury, it seems desirable that the law should provide for the trial in the alternative of contradictory false statements, no matter under what section of the law the specific statements may fall.

(34) *Section* 239.—His Excellency in Council supports the amendment suggested by Mr. Justice Knox of the Allahabad High Court with regard to the trial of two or more persons at one time who are accused of perjury and certain cognate offences committed in the course of the same enquiry or trial. The Government does not believe that the accused would be really prejudiced by the course proposed.

(35) *Sections* 244 *and* 245.—It seems desirable that magistrates should be empowered to acquit the accused at any stage of a summons case after hearing the complainant and the prosecution witnesses (if any), without being under the necessity of hearing all the defence witnesses. The law as it at present stands does not seem to allow of this.

(36) *Section* 263.—It is suggested that it should be made obligatory on Magistrates and Benches acting under this chapter to record shortly the substance of the evidence in all summary trials. It is often impossible for the courts to say at the beginning of the trial whether an appealable sentence will be passed or not. The existence of such a record would also serve as a useful check on the proceedings of summary courts, and be available for the completion of the record required by section

263 where it is found defective, without in the event of an appeal the appellate court's being compelled to order a new trial, as has occasionally happened. There would be little or no additional burden imposed by this requirement upon the court, since ordinarily every officer presiding at the trial of even a summary case is in the habit for his own guidance of making a short memorandum of the evidence as the case proceeds.

(37) *Section* 282.—The Government would recommend a suggestion made by Mr. Justice Best that a discretion should be entrusted to the presiding judge to proceed with the trial, notwithstanding the death or unavoidable absence of a juryman. Such an event is very likely to occur in a protracted trial, and it would be a great and unnecessary waste of time to begin the trial *de novo* in every such case. If in these circumstances a difference of opinion should exist at the close of the trial among the remaining jurors, the absentee might be reckoned as concurring with the minority.

(38) *Section* 288.—(i) Under section 205 a magistrate may dispense with the personal attendance of the accused, even in warrant cases, if he sees fit to issue a summons in the first instance. If, during the progress of the trial before the magistrate, it turns out that the case is one to be committed to the sessions, the evidence taken in the pleader's presence should, it is considered, be equally available under section 288. It is therefore suggested that after the words "in the presence of the accused" in this section should be inserted the words "or of his pleader if his personal attendance has been dispensed with under section 205."

(ii) It seems also advisable to add to the section an explanation to the effect that the deposition of a witness taken before a committing magistrate shall be held to be sufficiently proved by the certificate under the magistrate's hand that it was duly taken in the presence of the accused, or of his pleader if his personal attendance has been dispensed with under section 205.

(39) *Section* 337.—(i) The words "other than a Presidency Magistrate" occurring in the last paragraph of the section should be omitted. This Government sees no ground for excepting Presidency Magistrates from the obligation imposed on other Magistrates of recording their reasons for tendering a pardon.

(ii) Attention is invited to the amendments suggested to this section by the Commissioner of Police, Madras, and the District Magistrate of Trichinopoly.

(40) *Section* 345.—(i) It is recommended that the offence of criminal intimidation should be removed from the table in the first paragraph of the section and inserted in the second paragraph, so as to make it compoundable only with the permission of the court. Criminal intimidation is generally practised on the weak; and in view of the lack of character which has made them the object of the crime, they should have the support of the court in compounding with the offender.

(ii) This Government would also suggest that the offence of kidnapping under section 363 of the Indian Penal Code should be made compoundable with the permission of the court when the accused is one of the parents or legal guardians of the kidnapped minor or person.

(41) *Section* 350.—His Excellency in Council is in favour of enacting a provision, similar to that contained in this section, permitting a Sessions Judge, on the sanction of the High Court in each case, to continue a trial which has been begun by another Judge. Such a provision would avoid the great public inconvenience which might otherwise be occasioned in very protracted sessions cases by the death or illness of the Sessions Judge.

(42) *Section* 352.—It is recommended that the words "or near" may be inserted after the words "remain in" in paragraph 2, so that the court may have control over witnesses who remain within ear-shot.

(43) *Section* 367.—It is suggested that a clause be added to the section to the effect that, when a shorthand writer is appointed to a court, the judge may *dictate* his judgment or charge. Shorthand writers are now employed in all the Sessions Courts in this Presidency.

(44) *Section* 381.—With reference to the remarks in paragraph 2 of appendix II to the Government of India letter under reply, a provision may be inserted enabling the District Magistrate or the senior Sub-Divisional Magistrate present at head-quarters to issue a warrant under this section (after the High Court's order of confirmation is received) in the event of the death, removal, incapacity or absence of the Sessions Judge.

(45) *Section* 387.—The provisions contained in sections 83 and 84 as to endorsing arrest warrants may with advantage be made applicable to distress warrants issued under this section, so as to facilitate the distraint and sale of moveable property found beyond the local limits of the jurisdiction of the sentencing court. The object of distress is sometimes frustrated by requiring that the warrant should be sent through the District Magistrate.

(46) *Section* 391.—The intention of the section is that a sentence of whipping shall not be added to one of imprisonment, unless the term of imprisonment is at least fifteen days. The drafting should make this clear. This Government is not in favour of any other alteration of the section.

(47) *Section* 392.—His Excellency in Council, agreeing with the Government of Bengal, would leave to the discretion of the court as at present the interpretation of the expression "in the way of school discipline."

(48) Chapter XXVIII of the Code contains no provision for the execution of a sentence of forfeiture of property passed under section 62 of the Indian Penal Code. It is suggested that the omission be supplied by the addition of a section to this chapter somewhat similar to section 88 of the Criminal Procedure Code. The Code also does not provide for the revision of a sentence where solitary imprisonment has been awarded as part of the punishment, and it is found impracticable, owing to the health or temperament of the prisoner, to carry it out. It is recommended that a provision analogous to section 395 may be enacted.

(49) *Section* 411.—This section should be repealed. So long as the Code does not provide (*vide* remarks *supra* on section 21) for the same adequate supervision over their work which is exercised in the case of mufassal magistrates, an appeal should be allowed in all cases where a Presidency Magistrate passes a sentence of imprisonment exceeding one month or of fine exceeding 50 rupees. Further, in the opinion of this Government, provision should be made allowing the High Court to exercise all the powers over Presidency Magistrates which a District Court now exercises over 1st-class Magistrates within its jurisdiction.

(50) *Section* 417.—His Excellency in Council, concurring with the Judges of the High Court, is not in favour of the suggested amendment of this section so as to confer on the Crown the right of appealing against an order of acquittal passed by the High Court in the exercise of its original criminal jurisdiction. Miscarriages of justice must no doubt occasionally occur, but in this Presidency they are not of such frequency as to justify this Government in supporting a proposal which would materially lower the dignity of the High Court—the supreme judicial tribunal in the country. The finality of the High Court's decision is generally acquiesced in by the people and is a valuable element in the administration. In the opinion of His Excellency the Governor in Council it would be a public misfortune to disturb the confidence which this finality inspires, except on the clearest proof of commensurate advantage in the remedy provided by the measures suggested. As to this, His Excellency in Council believes that on the contrary the remedy proposed is likely to be more prejudicial than favourable to the cause of justice.

(51) *Section* 423.—Where a Sub-divisional Magistrate reverses a conviction on appeal on the ground of want of jurisdiction in the convicting court and there exists no court subordinate to him competent to retry the case and the case is not of sufficient importance to require its being committed to the Court of Session, he should be empowered to refer it to the District Magistrate, who can then either dispose of it himself or transfer it to a competent court for disposal.

(52) *Sections* 425 *and* 442.—These sections require revision so as to provide distinctly that, where a sentence of imprisonment is reversed or reduced, the High Court should either issue a warrant or send a copy of its order direct to the officer in charge of the jail in which the prisoner is confined, so that he may have the benefit of the order as soon as possible; a copy of the judgment or order of the appellate court being sent as at present to the court by which the sentence appealed against or revised was passed.

(53) *Section* 426.—Under the present law, if a sentence of rigorous imprisonment has merely been suspended by an appellate court pending the decision of an appeal by a convicted person, the period of such suspension is not excluded in computing the term of such imprisonment and, in consequence, the accused may undergo simple, instead of rigorous, imprisonment during a considerable portion of his term of prison life. There is, however, no more real hardship in excluding the period of simple imprisonment in such cases than in not reckoning in a sentence of imprisonment the time spent in jail before trial. It is therefore suggested that the section should be amended so as to provide that no period during which a sentence is suspended shall form part of any sentence of rigorous imprisonment.

(54) *Section* 437.—(i) The variance which existed in 1885 between the High Courts as to the meaning of the expression "further enquiry" occurring in this section no longer exists. All the High Courts are now agreed that there may be further enquiry even in cases where no additional evidence is forthcoming, but to remove all possibility of misapprehension the words "fresh enquiry" may be substituted for the words "further enquiry" in the section.

(ii) A proviso should, it is considered, be added to the section to the effect that, in the case of a discharge under sections 209 and 253, notice should be given to the accused before the case is re-opened.

(55) *Section* 439.—(i) It is desirable that a provision should be inserted, similar to that contained in section 427, enabling the High Court to issue a warrant for the arrest of an accused person in cases where that court is exercising its powers under this section. Under the Code the High Court has no power to order the arrest of the accused in such cases, but can only issue a notice to him and, if he absconds, it has no means of enforcing his attendance.

(ii) Attention is invited to this Government's letter of the 3rd October 1894, No. 2388, and the Home Department reply thereto, having reference to a proposal to amend this section so that the powers therein conferred may be exercised only after the records have been called for and perused.

(56) *Section* 443.—The word "charge" should be replaced by the expression "offence alleged to have been committed." In the Code "charge" is a technical word.

(57) *Section* 475*A*.—His Excellency in Council is in favour of the amendment suggested by the Chief Commissioner of Assam.

(58) *Section* 480.—It is recommended that section 174, Indian Penal Code, may be added to the list of contempts liable to be dealt with under the section, so that a witness who disobeys a summons may be punished summarily. The inclusion of the section will, it is believed, have a salutary effect in lessening the delays that are unfortunately so frequent in criminal trials owing to the non-attendance of parties and witnesses on frivolous excuses. The right of appeal which section 486 allows against an order under section 480 seems to be a sufficient safeguard against the abuse of the power which the proposed extension of the section will confer.

(59) *Section* 487.—This Government is opposed to the amendment suggested by the Government of Bengal on the ground that its adoption would probably lead to more trouble and delay than arise under the existing law. Even if the section were altered as proposed an application would in almost every case be made to the High Court for a transfer to another court and generally with success.

(60) *Section* 488.—(i) The expressions "or if they are living separately by mutual consent" and "or that they are living separately by mutual consent," occurring in clauses 1 and 2 of the proviso to the section may be omitted, seeing that in a large number of cases where an allowance is ordered, the parties are so living, and the provision that a wife is not entitled to an allowance "if without sufficient reason she refuses to live with her husband" affords quite sufficient protection to the husband.

(ii) It should be provided that any allowance that may be ordered under this section should be made payable from *the date of the complaint* and not from the *date of the order* as at present. Such a provision is equitable and will tend to discourage attempts on the part of defendants to delay the proceedings.

(iii) In the case reported in I.L.R., XVI Cal., 781, the Calcutta High Court has held that the proceedings under this section being of the nature of civil proceedings, the person sought to be charged is a competent witness on his own behalf. As there seems to be some doubt as to whether the defendant under section 488 may be examined on oath, it is desirable that an explanation should be added to the section embodying the decision of the Calcutta High Court.

(iv) Provision should also be made empowering the court to pass an order in terms of a compromise or razinamah.

(v) The question has been raised whether the court should not have power to make *interim* orders in regard to the lawful guardianship of the children of the parties when dealing with an application for maintenance. The attention of the Government of India is invited to the suggestion.

(vi) A clause should also be inserted on the lines of the last clause of section 148 allowing the court to make an order as to the costs incurred in the trial.

(61) *Section* 495.—The third paragraph of this section, added by Act X of 1886, is a source of great inconvenience in the trial of police cases in magistrates' courts in this presidency, where financial considerations forbid, at any rate for the present or in the near future, the employment of prosecuting vakils or court head constables or inspectors to conduct prosecutions in the numerous subordinate courts that exist, and the very large majority of which are situated in places other than district or even sub-divisional head-quarters. It not seldom happens that all the competent police officers in the police division concerned have at some stage taken part in the investigation, and it is then often very difficult, if not impracticable, having in view the importance of the case, to depute a capable officer unconnected with it to conduct the prosecution before the magistrate. If a police officer has taken the slightest part in the preliminary investigation the objection allowed by the section is sure to be raised. The Government is well aware of the grounds on which the law has been enacted in its present form; but the inconveniences and difficulties in giving effect to it are so great that His Excellency in Council considers that in the public interests it may be modified, at any rate to the extent of withdrawing the prohibition if the appearance of the police officer as prosecutor has the previous sanction of the court, the sanction to be accorded if the court is of opinion that the accused will not be materially prejudiced thereby.

(62) *Section* 498.—It is recommended that the powers conferred by this section of admitting to or reducing bail may be extended to District and Sub-divisional Magistrates. Copies of all remand orders are now received by these magistrates in the exercise of their powers of superintendence and they have therefore opportunities of interfering where bail has been improperly refused or an excessive amount required, of which they may avail themselves, without the trouble of referring the matter to the High Court or the Court of Session. Greater supervision will thus be exercised over this important matter in respect of which a great deal of hardship may be caused to the people by ignorant or designing sub-magistrates.

(63) *Section* 514.—With regard to the procedure to be adopted in the circumstances referred to in paragraph 21 of appendix II to the Home Department letter under reply it is suggested that, if a breach of the bond involving forfeiture occurs *before* the death of the surety and if it is desired that the bond should be enforced, a notice should be issued to the representatives of the deceased requiring them to show cause why they should not pay the amount of the bond out of his property and, in

default of good cause shown or payment of the amount, a warrant should be issued against the property, if any, left by the deceased. If, on the other hand, the breach entailing forfeiture occurs *after* the surety's death, the liability against his property should continue only until his heir reports his death and a fresh surety is obtained.

(64) *Section* 517.—The Government adopts the suggestion of the High Court that this section should be amended so as to empower a court to pass orders for the disposal of *all* property which may have been before it in connection with a case tried, and *not* merely for the disposal of property in respect of which an offence has been committed or which has been used for the commission of an offence as the section now provides.

(65) *Section* 523.—It is recommended that a clause be added specifically empowering the magistracy to order the destruction of (*a*) counterfeit coins, notes or stamps and implements for counterfeiting the same, (*b*) obscene books, pamphlets and other articles referred to in section 292, Indian Penal Code, and (*c*) food or drink in a noxious state or in a state unfit for food or drink.

(66) *Section* 526*A*.—As anticipated by Sir Griffith Evans in his speech in the Legislative Council on the Bill which became Act III of 1884, this section is greatly abused for the purpose of delay in view of gaining over the prosecution witnesses, or otherwise obstructing justice. To a considerable extent the evil is due to the inadvertence of the magistracy to the fact that the section does not oblige them to give an adjournment until the prosecution evidence is closed. This misapprehension is widespread. Ordinarily the taking of the prosecution evidence need not and should not be stopped because of an application under the section. To make this quite clear it seems advisable to add to the section an explanation to the following effect:—

> *Explanation.*—The court, notwithstanding any application made or proposed to be made under section 526, may, and, as a rule, shall, examine all the witnesses named for the prosecution, without waiting for the result of such application.

The Government would also be inclined to add a proviso to the effect that the court may refuse to exercise such powers, if, for reasons to be recorded in writing, it considers that such notification is made for the purpose of vexation or delay or for defeating the ends of justice.

(67) *Section* 552.—It seems to be now unnecessary to extend the provisions of this section to mufassal courts as proposed by the Government of Bengal in 1886, seeing that section 560 which was added to the Code in 1891 contains sufficient provision for compensation in such cases.

(68) *Schedule II*.—It is suggested that offences under sections 403, 404, 409, 417, 418, 419, 420, 465, 468 and 471, Indian Penal Code, may be made cognizable by the police. Schedule II requires amendment also with reference to sections 263A and 477A, Indian Penal Code, enacted by Act III of 1895 (India).

G. S. FORBES,
for *Chief Secretary*.

Notes and orders in re trial by jury —

Keep with G.O. Judl 2092 / 9-10-95

CONFIDENTIAL.

[G./25]
300—5-10-95

DEPARTMENT.

C. No.

FOR ORDERS.

Resubmitted to H. M.'s for
perusal of H.E. the Governor's a

D
25 · x · 95

"Perhaps the matter might be
discussed in Council?

D
25 · x

JG
25/10/95.

I think this will be best
WL
28/10/95

JG
30/10/95

Jury trials

(8)

FOR ORDERS.

~~H. E. THE GOVERNOR.~~

THE HON'BLE MR. H. W. BLISS, C.I.E.

THE HON'BLE MR. J. GROSE.

31 x 15

The ~~draft letter~~ matter has been discussed in Council and it has been decided that nothing is to be done. The draft is accordingly to be cancelled

19/11/95.

N

Lodged

C 25/10

R 28/10

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interference.

23 Oct

H.E.

I don't see ~~that~~ it can do any harm to write to the S. of S. in the terms of the draft, on the contrary good — As to the rarity of H.C. trials of Europeans in which ~~there~~ has been a failure of justice, my impression is ~~the~~ the other way from that of H.E. — In all my service, I cannot remember a case of a European convicted for murder of a native. It has not been the business of my life to take note of such cases, so I may be wrong — only an exhaustive search can show whether I am right or wrong — on the other hand, relying again on my memory, which will certainly not include all the acquittals which have occurred, I can cite the following acquittals:—

The Sensational case — In this it is ~~[illegible]~~ true that the C.J. summed up for an acquittal — but, to my mind this only makes the case more shocking.

The Horsecasm case.

The Bangalore case in which an old woman was killed in a riot in which the soldiers of a British Cavalry Regt. were concerned.

A case at ~~the~~ the moment in which a European Police Insp. or Hd. Constable killed someone.

Very probably my hon. colleague will be able to add other cases

HB

14/10/95

C 14/10 | 15 | C 22/10

R 18/10 | 10 | R 25/10

I remember one more ~~case~~

Jud Dept.

Now that the letter to India has gone containing the proposals of this Govt. ~~[illegible]~~ in the matter of the revision of the Code of Crim. Pro., the question remains as to the terms in which the G. of India shd. be addressed respecting the trial of Europeans in the H. Court by juries. It was decided by the Hon. Mess. Bliss & Grose to do so in a separate confidential letter.

H.E. however is disinc to move at all, as the tria in this Pcy. have been so few in which the Govt. cd. assert with assurance that the action of the jury was scandalous. He wd. apparent leave the matter in the han of the Govt. of India & of the Northern local Govts. where ~~these~~ trials of Europeans are more common.

If no representation

to be made, cadit quaestio.

If a representation is to
be made, the H. ms differ as
the proposed remedy. But
the draft might
iven in general terms,
the Effect that some
remedy appears to be
equired, & then suggesting in
the alternative either of
the specifics recommended as
eserving the consideration of
the Govt of India

11/10

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but it occurred so long ago that I forget names dates &c. There has been enough to excite our attention & cause a fear of failure of justice here as in the North. I think we might address India in the terms of the draft

J.G.

15/10/95

I am still strongly of opinion that we should be well advised to leave this alone. If the Govt. of India care to face the outcry wh. would be raised by the withdrawal from Europeans of the privilege of being tried by a jury – let them – but do not let them quote us as justifying such a procedure. If we sent the proposed letter – they undoubtedly would bring us in to support them – but I cannot consent to being a party to raking up once more the bitter feelings roused by the Ilbert Bill – the recollection of wh. has by no means yet died out.

I do not deny that some recent trials have been what may be called a crying scandal – but India does not stand in need of any action of ours to be reminded of them. Our stock cases – at all events the two most recent ones – are not strong enough in my opinion to justify us in taking the action proposed. In the Gul'akul case the jury followed the C.J. In the Hoseason case the jury followed the course – wh. I believe has not seldom been adopted in similar cases all over the world – viz: a refusal to convict in the absence of absolute proof of death. I earnestly deprecate any ×

Confidential

Judicial Department

Cancelled in Council of

19th Nov 189

O R D E R, dated

The following letter will be despatched to the ~~Secr~~ Govt. of India

L E T T E R

TO

The Secretary to the Govt. of India
Home Department

SIR,

With reference to my letter dated 9 Octr 95, No. 2092 on the revision of the Code of Criminal Procedure, I am directed to explain that Govt. did not think it necessary to express at the present time any furth opinion on the subject of jury trials having regard to the intimation conve in the correspondence forwarded with Hewett's letter, dated 17th June 1895 No. 919 that the whole subject has be recently under the consideration of the Secretary of State who has given instructions for the insertion in the C of certain amended provisions which may

attai

tain the object in view. But on the ubject of the trial of European ritish subjects by juries in the igh Court this Govt. would take the pportunity of asking His Excellency he Governor General in Council to ake into consideration whether some emedy cannot be ~~desired~~ devised to void the scandal that occasionally ttends the result of the verdict, specially in murder cases. Among he remedies suggested one is to mpower the Govt. to appeal against n acquittal to a a Full Bench of he Court, another is to authorize he High Court on motion of the ~~A.G.~~ Advocate General o substitute, in any case in which t may be deemed proper to take such precaution, for trial by a jury rial by a Bench of not less than three udges. Whether either of these emedies or any other remedy is the ost appropriate in the ~~cases~~ circumstances, this Govt. will leave to the ecision of the Govt. of India; but hat something should be done to bviate the scandals that arise this ovt. has no doubt and it commends the mat atter to the earnest consideration f H.E. the Governor-General in Council.

837

In connection with a refer from the H.C. about the preservation of judgments in ~~XXXX~~ Courts a curious point has occurred to me. In the Civil Courts the judge need not write the judgment with his own hand, but in Crim. Courts he must (S. 367 Crim. P.C.) – now, we are supplying District & Session Courts with shorthand writers, whom it is most desirable that the judges should make the most use of that they can. They should therefore be at liberty to dictate their judgments & to then have them written out fair & sign them. Provision for this should be suggested in the contemplated amendments of the Crim. P.C.

29/11/94

Office

This to be sent up when replies come about amending Crim. P.C.

30/11

Note ~~#~~ P

Note of Hon. Mr Bliss dated 29/11/94 on amendt. of Sect. 367 C.P.C. – to enable judge to dictate judgt. to short hand writer

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~~Revenue~~ Judicial Department.

No.

From

Dated 18

FOR ORDERS.

Herewith is submitted in a bound volume a note embodying suggestions for the amendment of the Crim. Procedure Code.

The volume is very unwieldy and awkward, but it had been prepared in that form before I took charge of the work. I regret there is no time to submit the notes in print.

Where a suggestion has been scored through in red or blue chalk*, it ~~is~~ may be passed over or at any rate need not be attentively considered. I have generally however added a small marginal note to explain the reason of this.

With the Note I circulate only the important G.Os referred

* Red & blue chalks have been used indifferently as they happened to be handy. There is no significance in the use of one as distinguished from the other, in the Notes.

E.J.L.

to; but not the many vols. of law reports & other authorities consulted ~~[illegible]~~ in the progress of the work. Except in the discussion of important points the legal references have not been quoted in the note. But I think every point has been carefully verified, & the authorities consulted on it up to the very latest date to see whether any, & if so, what, difficulties have arisen.

G.K. 29/7/

The pencil page references given opposite the names of officers consulted are to the print of opinions marked A: This print gave opinions both on the Criminal & on the Civil Procedure Code; but I have since had the two separated, and the print (Proof) ~~with~~ the Crim. Pro. as it will go to the Govt. of India is marked B

G.K.

Revision of the Crim. P.C.

FOR ORDERS

Hon. Mr. Bliss

Secy

NOTE FOR THE ~~CHIEF~~ Enrol SECRETARY.

May this be passed on, please, to the Officer on Special Duty for consideration in connection with the proposals for the revision of the Cr. P. C.

J.T.
5/7/95

Yes
D
6.7.95

Subd.

J.T.
6/7/95

Tirumalai Iyengar

Please note the draft

Subd. 9/7/95 J.F. 6/7

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followed we can

a sentence of solitary confinement or a punishment

To come under the heading "Miscellaneous" in para 60 of ~~in~~ the Third

Mr Cardew brings to notice a case in which a convict sentenced to 26 weeks solitary confinement by a judicial tribunal escaped from undergoing the full term of that punishment by exhibiting suicidal tendencies (e.g. by tying a rope round his neck and making preparations as though to hang himself) and points out that the present law is defective inasmuch as there is no provision in the code, analogous to sections 394 & 395, laying down the procedure to be followed in cases where a sentence of solitary confinement or a portion th cannot be carried out on account of the unfitness of the prisoner (~~[illegible]~~) to undergo the sentence (Vide ~~sections~~ Rules 951 & 957 of the Jail Code). He therefore suggests that a provision be inserted in the Code empowering Supts of jails to bring to the notice of the convicting Court the fact of their inability to execute a sentence of solitary confinement in any case and the Court thereupon to revise the original order and substitute some other sentence for it

9/7/95

Re execution of a sentence of solitary confinement

Note

Office

Note that this be sent up with the reply to the recent G.O.

22/11

Seen

The Act seems clear enough

29/7/95

I.L.R. Madras Series November 1894.

21/11/94

Submitted to H.M. for perusal of the judgments at pages 397, 402 & 404. The judgment at p. 402 reads as if the High Court held that a Divisional Magistrate's territorial jurisdiction is confined to his Sub division, but the accuracy of this view is doubtful. The last sentence of sec. 12 C.C.P. implies that the jurisdiction of all Mags. extends throughout the district unless it has been expressly limited by the Local Govt. or the Dt. Mag. & it is very doubtful if any such express limitation has ever been ~~[illegible]~~ imposed. The proper view of the law seems to be that taken in the ruling reported at p. 699 of the Third Edition of Weir.

It seems advisable to bring the matter to the notice of the G. of I. when submitting the report regarding the amendment of the C.C.P. which has recently been called for. The intention of the law should be made quite clear, one way or the other.

2. It will be seen from G.O. of 18 Aug. 1894, No. 334, Marine, that the Boat Rules which the High Court ~~[illegible]~~ pronounced, in its decision reported on p. 397, to be *ultra vires* have been removed by Govt.

23/11

Nov

Orders

[G./24]
100—29-9-84.

Papers to be read in Proceedings:— DEPARTMENT.

Again G.O., dated 18 , No.
Again G.O., dated 18 , No.
Current No. of 18 , dated from

Current No. of 18 , dated from

Press Please insert the appended 2nd ~~proviso~~ para under 2(3) Section 15 in the proof of the Crim Proced. Code revn & insert "(i) after the words "Section 15"

28/9/

N.B.
Send up at least two gallery proofs of the whole draft letter (i.e. [illegible])

25/9

Please send 3 proofs

Sent to Press direct from Ooty on Friday the 20th instant
H.W.
20/9/91

(ii) The attention of the Govt. of India is invited to the ruling in I.L.R. 20 Cal. 870 in which, following other previous rulings of the Court, it is held that a member of a Bench of Magtes. may not give judgt. & pass sentence ~~in~~ ~~a case~~ unless he has been a member of the Bench during the whole of the hearing of the case. That ruling has been followed by the Madras High Court; and instances ~~of which~~ of the great inconvenience which is produced by this state of the law have been brought to the notice of govt.. In one mofussal locality, for example, in which about 5000 cases ~~a year~~ come annually before the Court, it is seldom possible to secure the attendance of the same honorary magtes. on two consecutive Benches. ~~On the whole~~ H.E. the G. in C. is inclined to consider that the interests of justice will not suffer ~~if~~ by a provision to the effect that any part heard case ~~postponed~~ postponed to a future sitting of the Bench may be proceeded with if any member of the Bench has been present at the previous hearing, subject to the is most

[G./24.]
500—23-7-95.

Judicial DEPARTMENT.

Papers to be read in proceedings :—

B

Again G.O., dated 189 , No.

Again G.O., dated 189 , No.

Current No. of 189 , dated , from

" " " 189 , " , "

" " " 189 , " , "

To The Secy. to the S. of S.
H. D.

ORDER. Sir,

In ~~response~~ reply ~~reference~~ to ~~Mr.~~ your ~~Hewett's~~ letter of the 22nd October last No. 11 Jud./1148 inviting proposals for the amendment of the Civil and Criminal Procedure Codes, I am directed to communicate to you the views ~~opinions~~ of this Government, with ~~and~~ the opinions of the various officers and bodies consulted ~~by it, as to to the lines upon which~~ on the ~~proposed~~ revision of the Code of Criminal Procedure. ~~Should latte, And to say that~~ Proposals ~~the suggestions received for~~ regarding the Amendment of the Code of Civil Procedure ~~are now under the Consideration of H. E. the Governor in Council~~

~~Ordered~~
P.S.
The following letter will be despd. to the S. of S.

I have run over this portion quickly without the notes & made alterations. Please get galley proof sharp & I will then revise it with the notes

31/8

~~And his views on that~~
~~subject~~ will shortly be ~~conveyed~~ transmitted
to you ~~hereafter~~ ~~later on~~ in a separate communication.

2. The Sections of the Code of Criminal Procedure
on which ~~in the opinion of~~ this
Government ~~call for revision~~ considers it necessary to offer opinion are the following —
~~are dealt with below~~:—

(1) Sec. 9. The amendment
suggested by the Allahabad
High Court in 1890 ~~seems~~ is
desirable, but as in this Presidency the
Sessions Court is not
always at the head-
Quarters of the District
Magistrate, and as the
~~are no~~ Joint-Magistrate
~~in the Presidency~~ is at an outstation, H. E.
in Council would suggest
that the words "the Sessions
Court Station" and "the
nearest 1st class Magistrate
of the highest rank", be
substituted for the
words "headquarters"
and "Senior Joint-Magistrate",
respectively, in the pro-
posed Section.

(2) Sec 10. H. E. in Council
is in favour of the
amendment suggested
by

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is not inc

[G. / 24.]
500—23-7-95.

2

DEPARTMENT.

Papers to be read in proceedings :—

Again G.O., dated 189 , No.
Again G.O., dated 189 , No.
Current No. of 189 , dated , from
" " " 189 , " ,
" " " 189 , " ,

ORDER.

by the Punjab Government.
Though it ~~may perhaps be~~ is generally
undesirable & impolitic to divide the
Supreme magisterial
authority in a district,
there ~~seems desirable~~ is no objection to
have in reserve power
to relieve the district Magis-
trate by the appointment
of an additional district
Magistrate in the manner
proposed to provide for
very Exceptional circumstances,
such as famine, frontier
disturbances or the like.

(3). Sec. 15 - ~~This Government~~
~~would restrict~~ the tenure
of office of Bench Magis-
trates should be restricted to a definite period,
of (say) ~~for~~ 5 years. It ~~has~~ is
~~often~~

sometimes advisable
~~often been considered~~
~~desirable~~ to have a
change in the personnel
of benches, ~~but it has
not in all cases been found
expedient to have~~ without having recourse
to the provisions of
Sec. 41 of the Code ~~to attain
the object~~.

(4) **Sec 21** - ~~Under~~ In the opinion of H.E. the Gov in C ~~the~~ present
~~law the work of~~ the Presidency
Magistrates sh^d be ~~is not subject~~
~~to~~ ~~much the same~~ ~~kind of efficient supervision
and control, and the
Government considers
that this defect can be~~ should
~~remedied by~~ investing
the Chief Presidency
Magistrate with all
the powers over other Presidency
Magistrates which a
District Magistrate
now has over his subordinate
Magistrates. It is true
that this would introduce
a material alteration
in the position of the
Presidency Magistrates
~~who have hitherto regarded~~ since
the Chief Presidency
Magistrate

in relation to the Chief P. Mag.
be placed in much the same
position in respect of the supervision
& control of their work as
the mag^s of a dist. hold to
the Dist. Mag.

[G./24.]
500—23-7-95.

3.

DEPARTMENT.

Papers to be read in proceedings:—

Again G.O., dated 189 , No.
Again G.O., dated 189 , No.
Current No. of 189 , dated , from
,, ,, ,, 189 , ,, , ,,
,, ,, ,, 189 , ,, , ,,

ORDER.

as matters now stand, virtually no more than
Magistrate ~~merely as~~
primus inter pares, but
the interests of justice
~~seems~~ seem to call for a
change in the existing
~~procedure~~ procedure
and, in the opinion of
H. E. in Council, it would
be a measure of useful
reform if the Chief
Presidency Magistrate is
invested at least with
the powers conferred on
a District Magistrate
by Secs. 192, 435, 436, 437, &
438 of the Code.

(5) **Sec. 40** - It is not clear
whether under the law as
at present stands
re-investiture of Magisterial
powers

powers, is necessary in a case, where an officer appointed as a Magistrate under the Code, who had been transferred temporarily to another office reverts to his original appointment or an appointment of a like nature. It would be a matter of great administrative convenience, if this doubt is set at rest by the insertion of a provision to the following effect in the Code:-

"Whenever any person "who has been invested "with any powers under the "Code, is transferred temporarily to another office "under the same local "Government, he shall, "unless the Local Government otherwise directs, "continue on his return "to his former or an equivalent or higher office "to exercise the same powers

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[G./24.]
500—23-7-95.

4

DEPARTMENT.

Papers to be read in proceedings :—

Again G.O., dated 189 , No.

Again G.O., dated 189 , No.

Current No. of 189 , dated , from

" " , 189 , " , "

" " , 189 , " , "

ORDER.

"powers as he previously "exercised."

(6). Sec. 42. ~~This Government~~ It has been ~~supports~~ the suggest~~ion~~ed ~~of the District Magistrate of Trichinopoly~~, that the words "or in quenching fire", should be inserted after the word "affray" in clause (C) of this section, and the Govt supports the suggestion. It would, however, limit the obligation ~~thereby imposed~~, to cases where the fire threatens, or endangers human life or property in a town or public place. It is observed that a similar provision in the Bill which became Act X of 1882, was omitted by the Select Committee which reported on the Bill, on the ground that "it did not ~~belong~~ properly belong to a code of Criminal Procedure". H. E. in Council is unable to agree with the Select Committee's objection, as the Code, in Chapters X & XI, recognises the duty of the Police and Magistracy, to interfere in cases of public nuisance, or where the lives or property of the public, are in imminent danger.

(7.) Sec. 45 – (i) Murder ~~being~~ ~~a serious offence~~ should it be considered be included in clause (b) of this section. The reason ~~for~~ of its omission is not apparent. ~~It~~ (ii) ~~it considered essential that~~ Village headmen should be legally empowered to prevent the cremation or burial of dead bodies, in cases of sudden, unnatural or suspicious deaths, until the arrival

S. P.

5

[G. / 24.]
500—23-7-95.

DEPARTMENT.

Papers to be read in proceedings :—

Again G.O., dated 189 , No.

Again G.O., dated 189 , No.

Current No. of 189 , dated , from

" " , 189 , " , "

" " , 189 , " , "

ORDER.

arrival of the Police or Magistrate ~~on the spot~~, and this is proposed to be effected by enacting a provision, somewhat similar to that contained in Sec. 11 of Bombay Act VIII of 1867. The provisions of Section 174 of the C.P.C. and of Madras Regn. XI of 1816, are not sufficiently comprehensive, the former being merely of a permissive character, and the latter, restricted only to cases where the village head might receive "information of the discovery of the body of a person supposed to have been murdered".

murdered. Further, the Madras Regn. contains no provision as to the transmission of the dead body for post-mortem Examination, or the prevention of cremation or burial until the Police officer or a Magistrate arrives on the spot. ~~Even~~ Still in the absence of a legal provision, heads of villages do as a ~~rule~~ matter of fact generally interfere in the manner ~~and stop~~ the ~~cremation~~ indicated or burial, but it is manifestly desirable that the practice should be legalized.

(iii) A proposal has been made to the effect that it should be ~~made~~ compulsory on the lawful guardian where there is one, or the near relative of a deceased person, to give information in cases ~~of death of the deceased has~~ ~~not natural~~ of sudden, unnatural or suspicious ~~death~~ death. This Govt. is of opinion that the point ~~It may perhaps be not be easy to enforce the obligation,~~ is deserving of consideration ~~if it were imposed, in all cases but none the less it~~ should exist in the Code and this Govt. ~~would propose that information in such cases~~ considers that it would be sufficient if information in such cases is given to the Head of the village

(8) Sec. 57. The ~~proposed~~ revision of this Section in the manner suggested by the Govt. of India meets with the approval of ~~this Government~~ H.E.in

(9). Sec. 68. It seems to be desirable to amend this Section so as to provide for the Service of Summons not only by the Police ~~and~~ or by the officer of the Court issuing it, but also

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180

[G./24.]
500—23-7-95.

6.

DEPARTMENT.

Papers to be read in proceedings :—

Again G.O., dated 189 , No.
Again G.O., dated 189 , No.
Current No. of 189 , dated , from
" " " 189 , " , "
" " " 189 , " , "

ORDER.

~~but also~~ by any Public Servant whom the L.G. may by rule authorized to do so ~~by the rule of~~ prescribed ~~which the Local Government may prescribe in this behalf.~~ For instance in the case of forest offences ~~may be provided by provision~~ sub

Such a provision would greatly facilitate the Service ~~of Summons~~ and save ~~considerable~~ delay ~~waste of time~~ for the ~~Police and officers of the Court, in cases~~ where the process has ~~summons have~~ to be served in out-of-the-way places. The object in view could be effected by the addition at the end of the second clause of the Section, of words to include Public Servants

Public servants, ~~or officers of the Public Departments of the State~~, the Selection and designation of such being subject to rules ~~made~~ which made by the Local Government in this behalf.

(9). Sec. 89 – H. E. in Council would suggest that a clause ~~should~~ be added ~~to this Section~~ to the effect, that when the attached property of a proclaimed person becomes "at the disposal of Government", it should not be sold, except in the two cases specified in the Section, without the orders of the Local Government.

(10). Sec. 106, (i) This Government would amend the Section so as to allow Appellate Courts, when upholding convictions in cases of rioting, assault, or other breach of the peace, ~~passed~~ by second or third class Magistrates to require

Papers to be read in proceedings:—

Again G.O., dated 189 , No.
Again G.O., dated 189 , No.
Current No. of 189 , dated , from
" " " 189 , " , "
" " " 189 , " , "

(ii) H. E. in C. is also in favour of enacting a provision empowering subordinate Magistrates, on the conviction of an offence ~~specified~~ referred to in this section, to ~~refer to 2nd~~ more first-class Magistrates having jurisdiction to take proceedings against the prisoner ~~or prisoners~~ in view to security being taken from him ~~or them~~.

ORDER.

to require the person or persons convicted to execute a bond for keeping the peace.

(11) Sec. 107 – There seems to be no necessity to amend this Section in the manner contemplated in para 6 of Appendix II to Home Department letter dated 22nd October 1894 No. 11 Judicial 1148. No practical inconvenience has been experienced ~~from the operation of the Section~~ in this Presidency, from the operation of the Section as it stands ~~at present~~, and the difficulty pointed out by the Bengal Government

absence of the provision suggested

Government, can in most cases be ~~successfully met~~ overcome by an application to the Magistrate of the District, wherein the Suspect resides, as the Jurisdiction of such Magistrates is not restricted to offences likely to be committed in his own District.

[G.
5.
300—21-5-05.]

8.

DEPARTMENT.

C. No.

FOR ORDERS.

(12). Sec 110. ~~H. E. in council~~ is ~~in favour of amending~~ the ~~Section so as to provide~~ A provision ~~for~~ the taking of security for good behaviour ~~being taken~~ ~~being~~ from ~~the~~ habitual protectors or harbourers of ~~them~~ thieves, and habitual aiders in the Concealment or disposal of Stolen property. x should be inserted

(13.) Sec 123. The Section as it now stands seems to allow the officer in charge of the Jail in which the person ordered to give Security is detained, to accept sureties and release the prisoner, without any reference to the Magistrate or court, who or which made the order requiring Security.

In view of Sec. 122, ~~the Govt.~~ it should be ~~would~~ distinctly provided that, in cases where sureties are required, the jail officer shd not accept such sureties ~~should not be accepted by the jail Officer,~~ unless & until they shall have been first approved by the Magistrate or court concerned. This object may be effected ~~can perhaps be best~~ attained by the insertion at the end of paragraph ~~para~~ 1 of the Section of some such words ~~to the following effect:~~ as these:—

"provided that in the case—"case, the sureties, if the "security bond is with sureties, "shall have been approved by "the court or magistrate, which "or who made the order requiring "the security."

(14) Sec. 124. (i) ~~There is no legal~~ A provision shd be inserted empowering a District ~~Magistrate~~ or Presidency Magistrate to reduce the amount of security once fixed. There are many cases in which it may be desirable to have power to do this. ~~and it seems desirable that this omission should be supplied~~ ~~provision should be made to this end~~

(15.) Sec. 126 – The code is silent ~~and~~ as to the procedure to be followed in the event of

FOR ORDERS.

HON'BLE MEMBER.

9

[G. / B. 500—21-5-95]

DEPARTMENT.

C. No.

FOR ORDERS.

in the event of a surety dying, or in the event of his insolvency or imprisonment, or of his being found after acceptance to be an unfit person on any other ground. ~~The Government of Madras would suggest that~~ This defect may it is suggested ~~should~~ be remedied by extending to all such cases the procedure laid down in section 126 in the case of a surety voluntarily applying for the cancellation of the bond executed by him.

(ii) H. E. in Council would also insert a provision empowering the Magistrate or court, as the case may be, to direct the detention in prison of the person ordered to give security pending the acceptance of the surety offered. This provision seems to be necessary to enable the Magistrate or the Court concerned to satisfy himself or itself, after due enquiry, as to the adequacy, character and identity of the surety or sureties offered.

(16.) Sec. 143 – ~~This Government would provide for~~ An appeal sht. it is considered be allowed against the order of a Subordinate Magistrate prohibiting a public nuisance under the Section.

(17.) Sec. 144 – A proviso should be added ~~to the Section~~ enabling a person affected by an order issued ~~there~~ under the preceding to come in and show cause why it should not rescinded or modified if the circumstances admit of it. In this connection attention is invited to the remarks of the Hon. Judges in the case reported in I. L. R. 5 Cal. 132.

FOR ORDERS.

HON'BLE MEMBER.

[G. / 25.]
500—21-5-95

agrees with the opinion of the Hon'ble Judges of the H. C. ~~[illegible]~~

DEPARTMENT.

C. No.

FOR ORDERS.

(18) Sec. 145 – H. E. in Council ~~is~~ is in favour of amending the Section so as to include clearly all disputes concerning rights relating to tangible immovable property, as well as easements and rights to collect rents, since breaches of the peace frequently arise in respect thereof. The best way of effecting this would probably be by reverting to the wording of the Code of 1872, "land or the boundaries of any land or concerning any house, water, fisheries, crops or other produce of land." If this suggestion is adopted, the language of Section 147

Should also be made more clear.

(19.) Sec. 150.- The section as it stands at present does not seem to impose any obligation on the Police to communicate information of the actual commission of an offence. ~~It is essential that~~ the omission ~~should~~ may be supplied. ~~And H. E. in Council therefore proposes that a~~ by the insertion ~~distinct legal provision imposing this obligation should be inserted in Chapter XIV of the Code.~~

FOR ORDERS.

HON'BLE MEMBER.

(20.) Secs. 156 and 159.- H.E. in C. agrees that as ~~The amendment~~ suggested by the Government of India ~~that~~ the Magistracy should be specifically empowered to order the Police to investigate a cognizable offence, which under Section 157, they ~~have~~ ~~had~~ have thrown out, is ~~seems suitable and should be embodied in the Code.~~

(21) Section 164.(1) In the case reported in I. L. R. 1 Cal., 207, the Judges of the Calcutta High Court have

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11

[G./25.]
500—21-5-95.

DEPARTMENT.

C. No.

FOR ORDERS.

have held that the words "Any Magistrate," occurring in this Section must be restricted to any person exercising Magisterial powers within the place where the Statement or Confession is recorded. As it is desirable that Every facility shd be given for recording Dying declarations ~~should be made recordable~~ & that any ~~be~~ ~~the nearest~~ Magistrate, shd be authorized to take them, H. E. in Council would add the following Explanation to the Section:—

"The words "Any Magistrate" "mean ordinarily "any "magistrate not being a "Police officer exercising "any of the powers of a "Magistrate within the plac "place where the Statement "or Confession is recorded," "but they include any other "Magistrate (including a "Presidency Magistrate) "when the Statement or Confession "is a dying declaration".

(ii) In ~~view of the necessity~~ order that ~~proper~~ Magtes' recording ~~of~~ Confessions this Government in 1887 issued ~~in 1887~~ departmental ~~con~~ instructions ~~to the~~ Magistracy to the effect that ~~no~~ every Magistrate ~~shall~~ in recording a Confession or Statement under this Section ~~until he has~~ should (a) ~~at~~ first ~~(a)~~ record ~~ed~~ in writing his reasons for believing that the accused is going to make the statement voluntarily; (b) ~~at~~ explain ~~ed~~ to the accused ~~m~~ that he is under no obligation to answer any Question at all; & (c) warn ~~ed~~ him that it is not intended to make him an approver and that anything he says ~~will~~ may be used against him. The following precautions were also published

FOR ORDERS.

HON'BLE MEMBER.

~~2ht~~ ~~like every precaution~~ Might ~~have~~ in doing so have their attention directed to the requirements of the law

[G. / 25.]
500—21-5-95.

12.

DEPARTMENT.

C. No.

FOR ORDERS.

published at the same time at the instance of the High Court:-

(a) that, if the Magistrate doubts whether the accused is going to speak voluntarily, he should remand him to a sub jail before recording the statement;

(b) that such Confession or Statement should not be recorded nor the warning, above mentioned given in the presence of the Police Officers who ~~have~~ arrested and produced the accused. ~~The Government of Madras wishes to bring~~ these instructions to the notice of the Government of India, in view of their being embodied

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have proved useful in inducing Magtes to be more careful in this very important matter & they are brought being embodied in the Code in such manner as may be considered most suitable.

(22) Section 167 - The Inspector General of Police ~~of this Presidency~~, considers that 15 days the total period of remand permissible under this Section ~~(six, fifteen days)~~ is not sufficient in all cases, and suggests that District and Divisional Magistrates should be empowered to extend this period to thirty days ~~in all~~ in all H. E. in council is inclined to support~~s~~ this proposal.

(23). Section 170 - In Judicial Department letter dated 2nd April 1894, No 794, the Madras Government supported a proposal to amend this Section with ~~a view to~~ the object of ~~the~~ exempting ~~of~~ certain railway servants from its ~~the~~ operation ~~thereof~~, by withdrawing the obligation that such persons shall execute bonds to attend at the Magistrate's Court on

FOR ORDERS.

HON'BLE MEMBER.

[G./24.]
500—23-7-95.

13.

DEPARTMENT.

Papers to be read in proceedings:—

Again G.O., dated 189 , No.
Again G.O., dated 189 , No.
Current No. of 189 , dated , from
" " " 189 , " , "
" " " 189 , " , "

ORDER.

on the date fixed by the Police officer for the appearance of the accused, it being left ~~and leaving it~~ to the Magistrate to summon them in accordance with the provisions of Sec. 72 of the Code. ~~On further consideration~~ H. E. in council thinks that this concession might with advantage be extended to such public servants of the Postal, Telegraph, Medical and other public departments, as the Local Government may, from time to time, by notif~~y~~ication designate. It is not necessary that all classes of servants of these departments should be exempted from the operation of the Section, but in the interests of the public, it ~~seems~~ is most undesirable that ~~public servants~~ such officials as postmasters, telegraph masters, medical officers in sole charge of ~~a dispensary~~ dispensaries, & others in like case should be called away from their duties except ~~on the~~ in accordance with ~~fixed date, when the~~ a summons fixing the date for their attendance ~~shows that their evidence will be taken~~.

(24) Sec. 172. – In the ~~case reported in I.L.R. XX Cal. 642~~ the Calcutta High Court has held (see I.L.R. XX Cal, 642) that statements made under Sec 161 ~~could~~ are not ~~be considered~~ privileged, merely because they ~~were~~ are incorporated in the diary referred to in Sec. 172. It is represented that this ruling places an unnecessary impediment in the way of the ~~Police~~ obtaining of information by the Police, as such information is likely to be withheld if it is generally

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[G. / 24. / 5]
500—23-7-95.

14

DEPARTMENT.

Papers to be read in proceedings:—

Again G.O., dated 189 , No.
Again G.O., dated 189 , No.
Current No. of 189 , dated , from
" " " 189 , " , "
" " " 189 , " , "

ORDER.

generally known that, at the ~~wish~~ instance of the accused, statements made to the Police, are liable to production in Court. The law has already recognized the need of treating such information exceptionally in that (Sec 162) it declares that ~~the~~ statements made to the Police, are not to be signed by the informants so that they may not be deterred from speaking their mind freely to the investigating officer ~~and~~ there seems to be no reason ~~therefore~~ why, while the law forbids the use of such statements against the accused, it should enable him to call for them for the purpose of contradicting the prosecution witnesses in examination. Further, the diary referred to in Section 172 consists almost entirely of copies of statements recorded under Section 161, and, if the latter are not privileged, it is of little use allowing a privilege to the use of the former. In these circumstances, H. Ec. * in Council, would suggest that the privilege allowed to Police diaries should be extended to statements made to the Police other than dying declarations.

(25). Sec 176 as amended by Act V of 1889. The chief Presidency Magistrate suggests that Sub Section (1) of this Section should be amended by the addition of the following proviso,

So as

[G./24.]
50—23-7-95.

15

158

DEPARTMENT.

Papers to be read in proceedings :—

Again G.O., dated 189 , No.
Again G.O., dated 189 , No.
Current No. of 189 , dated , from
" " , 189 , " , "
" " , 189 , " , "

ORDER.

So as to dispense with a Magisterial enquiry in cases of death from natural causes in prison:

"Provided that no enquiry "into the cause of death "of a person who dies in "prison, need be held ~~in~~ "Except in the cases mentioned "in Sec 174 (1). Clauses (a), (b) & (c)."

It is said that a Magisterial enquiry is quite unnecessary in such cases, seeing that the prisoner's death is certified by the Medical Officer, in charge of the Jail, to have occurred from natural causes, that the work imposed becomes heavy in times of epidemic and is most inconvenient in

And that the Magistrates are exposed in such times, to a needless risk of infection themselves, and of spreading it amongst others.

The ~~exception~~ obligation to hold an inquest on every prisoner who dies in jail in the Presidency town, appears to have been taken from Sec. 9 of the Coroner's Act IV of 1871, which, however, excepted from the obligation "cases in which the death has been caused by Cholera or other epidemic disease."

If this exemption were re-introduced into the present law, the arguments advanced, so far as it relates to the heaviness of work, and the danger in times of epidemic, would be met, and H. E. in Council, is not satisfied that there are good grounds for extending the exemption to all cases of death from natural causes in prison, as proposed

16.

168

as proposed by the Chief Presidency Magistrate. On the other hand it is very desirable, that there should be an independent investigation, to satisfy the friends and relatives of the deceased, as well as the general public, that the death in such cases was the result of natural causes.

(26). Sections 188 & 193 - ~~[illegible]~~ There ~~Government sees~~ is no objection to the amendments of these sections, in the manner contemplated in paras 11 & 12 of Appendix II to the Home Department letter under reply.

(27) Section 195. (1) The expression "so referred to" appearing in paragraph 3 of the section should be omitted, as it might be held to prohibit a court on the trial of a case, in which sanction had been given, from trying a charge which did not require sanction, and which, but for this

provision, it could have tried. The Expression, moreover, is unnecessary, for, if the offence disclosed by the facts is not referred to in the Section, its trial does not require Sanction and there is, therefore, nothing to prevent the Court from framing a charge of it; if, on the other hand, the offence is referred to in the Section, it would be covered by the words "any other offence", without further reference to the Section.

(ii) In the case of perjury in the alternative – One deposition being before one Court, and the other before another Court – it should ~~should~~ not be necessary to require the Sanction of both the Courts, as the Bombay High Court has held in I. L. R., II. Bom, 34, and X Bombay 190. The law should be made clear on this point.

(iii) There have been many Contradictory rulings

on the

is most inconvenient in

[illegible] tice-

as, the scope of the term "Court" in this section especially, as regards the point whether Sub Registrars are "courts", when exercising certain powers. The attention of the Government of India, is particularly invited to the decision in I. L. R., 15 Mad., 138.

(28). Section 200 – ~~It is [illegible] supports the suggestion of the District Magistrate of N. Arcot, that~~ A proviso should be added to the Section to the effect that "When the complaint is made by a Court, under Section 476, nothing herein contained shall be deemed to require a Magistrate to ~~ex.~~ Examine the Complainant."

(29) Section 202 – (i) The Section in its present form, seems to empower a Magistrate, to require a Police officer, beyond the local limits of his jurisdiction, to enquire and report upon a case

Committed

mitted within his jurisdiction. As it is undesirable t such an extensive power reference should be sted in the Magistracy, is proposed to insert e words "within his ~~within~~ jurisdiction," fter the words "Police officer," o as to restrict the scope f the Section.

i) ~~The Government considers~~ It is considered that ~~for the interests of justice~~ the power of reference conferred by the Section, should be extended to cognizable cases, in which the Magistracy does not distrust the truth of the complaint. Under the present law, if a complainant in a cognizable case, presents his complaint direct to the Magistrate, instead of to the Police; the Magistrate has no power to call in the aid of the Police, to work up the prosecution case, and this state of things is

is most inconvenient in the interests of justice.

(30) Sec. 203. (i) A provision should be added so as to make it clear, that the Magistrate should record his reasons for the dismissal of a complaint under this Section. In the case reported in I. L. R. 14 Cal., 141, the Calcutta High Court has held that even as the section at present stands, the Magistrate is bound to record his reasons, but it is desirable, that the Section itself, should provide for this distinctly.

(ii) The Section calls for amendment also with reference to the ruling of the Madras High Court in Criminal Revision Case No. 719 of 1883, in which the Hon. the Judges, held that the dismissal of a complaint for a non-cognizable offence, for failure to pay process fees was illegal, ~~and the provision of the Government are also in favour of its adoption.~~

This ruling seems to be opposed to the provisions of Section 31 of the Court Fees Act 1870, which, ~~on the other hand,~~ contemplates the levy of fees in such cases.

(31) Section 236 - In 1885, in I. L. R. X Bom., 124, it was held, that, where one of the alternative charges fell under one Section of the Penal Code (e.g. Sec. 182 false information), and the other under another (e.g. Sec 193, perjury), these two were distinct charges and therefore, unless one or the other charge was positively proved to be false, a conviction thereon could not be sustained, simply on the ground that the two statements on oath, one under each charge, were contradictory, and one must therefore be false, and the other true. A somewhat similar view was also expressed by the Calcutta High Court in I. L. R. 10. Cal. 937. The

The form appearing in Schedule V No. XXVIII (ii) clause (4), on the other hand, seems to contemplate the institution of a charge containing alternative charges of perjury. As the Code, however, is destitute of a distinct provision to this end, much confusion is caused, and a number of miscarriages of justice have taken place. It is therefore desirable, that the law should, with sufficient clearness, provide for conviction for contradictory statements, no matter what Section of the law, the specific statements may fall under.

(32). Section 239 - H. E. in Council, supports the amendment suggested by Mr. Justice Knox of the Allahabad High Court. ~~The majority of the officers consulted by the Government, are also in favour of its adoption.~~

This ruling seems to be opposed to the

adoption.

(33) Section 244. It seems desirable that Magistrates should be empowered to acquit the accused at any stage of a summons case. The law as at present stands does not seem to allow this.

(34) Sec. 263. It is suggested that it should be made obligatory on Magistrates & Benches acting under this chapter to record shortly the substance of the evidence in all summary trials. It is often impossible for such Magistrates & Benches to say at the beginning of the trial whether an appealable sentence will be passed or not. Further, the existence of such a record would not only serve as a check on the proceedings of summary courts, but would also be of use for the completion of the judgment required by Sec. 264 in cases where it is found defective, without the appellate court being compelled to order a new trial.

(35) Sec 282 – ~~This Court would~~ It is ~~in favour of proposal~~ recommended that the section may be revised so as to give the presiding Judge a discretion to proceed with the trial, notwithstanding the death or unavoidable absence of a juryman. Such an even– is more likely to occur protracted trial and it wo–

be an unnecessary waste of time to begin the trial de novo in every such case. If on these occasions a difference of opinion arises among the rest of the Jurors, the absentee should be reckoned as concurring with the minority.

(36) Sec 288. Under Sec 205 a Magistrate may dispense with the personal attendance of the accused even in warrant cases if he sees fit to issue a summons in the first instance. If, during the progress of the trial before the Magistrate, it turns out that the case is one to committed to the Sessions, the evidence taken in the pleader's presence in such a case should be equally available under Sec 288. It is therefore suggested that after the words "in the presence of the accused" in this section should be inserted the words "or of his pleader if his personal attendance has been dispensed under Sec. 205".

It is also advisable to add to the section an explanation to the effect that the deposition of a witness taken before a committing Magistrate shall be held to be sufficiently proved by the certificate under the Magistrate's hand that it was duly taken in the presence of the accused or of his pleader if his personal attendance has been dispensed with under Sec. 205

(37) Sec. 337 - ~~(i)~~ (i) the words "other than a Presy. Magistrate" occurring in the last paragraph of the section should be omitted. There seems to be no reason why Presy. Magistrates should not be made to record their reasons for tendering pardon as ~~Pr. Magistrates~~ [illegible] other Magistrates are now required to do.

As desired by H. E. the Govr.

(ii) Attention is ~~also~~ invited to the amendments suggested to this section by the Commissioner of Police, Madras, & the District Magistrate of Tinnevelly.

(38) Section 345 - (i) It is recommended that criminal intimidation of the less grave type included in the table in the first paragraph

first paragraph of the Section should be removed ~~[illegible]~~ therefrom and inserted in the 2nd paragraph; so as to make it compoundable only with the permission of the Court. Criminal intimidation is rather a difficult offence to bring under the law and, in view of the facility which at present exists of compounding it, persons resort to it too readily for purposes of unmerciful aims. It is a more nefarious crime than hurt, assault or mischief which are, more often than not, acts committed on sudden impulse or under temporary, though perhaps mistaken, sense of grievance. Moreover, it is generally practised on the weak who, in view of the lack of character which might have made them the object of crime, should have the support of Court in compounding with the offender.

ii This Government would also

Suggest that the offence of Kidnapping under Sec 363 of the Indian Penal Code should be made compoundable with the permission of the Court when the accused is one of the parents of the Kidnapped minor or person, as, otherwise, the law would practically require a Magistrate to widen the breach between a husband and wife who may desire to be reconciled.

(39) Section 350 - H. E. in Council is in favour of ~~[illegible]~~ enacting a provision, similar to that contained in this section, permitting a Sessions Judge, on sanction by the High Court in each individual case, to hear a case which has been begun by another. Such a provision seems to be necessary to avoid public inconvenience in protracted Sessions cases which would otherwise be caused in the present state of the law by the

death or illness of the Sessions Judge.

(40) Section 352 - It is recommended that the words "or near" may be inserted after the words "remain in" in paragraph 2, so that witnesses who remain within ear-shot after having been ordered to leave the Court may be made punishable by law.

(41) Section 367 - It is suggested that a clause may be added to the Section to the effect that, ~~where a court~~ when a shorthand writer is appointed to a court, the Judge should be at liberty to dictate the Judgment or the charge, as the case may be.

(42) Section 381 - With reference to the remarks in para 2 of Appendix II to the Government of India letter under reply, it may perhaps be as well that a provision is inserted enabling the District Magistrate or the Senior Sub Divisional

~~Officer~~ Magistrate present at headquarters to issue a warrant under this Section, (after the High Court's order of Confirmation is received) in the event of death, removal, incapacity of or absence of the Sessions Judge -

(43). Section 387 - The provisions contained in Secs. 83 & 84 as to endorsing arrest warrants should be made applicable to distress warrants issued under this Section, so as to facilitate the destraint and sale of moveable property found beyond the local limits of the jurisdiction of the sentencing Court -

(44) Section 391. The Section should be amended so as to show clearly that, in cases where a sentence of whipping is added to one of imprisonment, the term ~~harm~~ ~~term~~ of such ~~imprisonment~~ imprisonment shall be at least for fifteen

days. ~~H. E. in Council~~ His Exc. is ~~opposed to~~ not in favour of the suggestion that whipping should not be combined with imprisonment except in the cases of incorrigible offenders for whom imprisonment has been already found inefficacious.

(45) Section 392. H. E. in Council agrees with the Government of Bengal in considering that the interpretation of the Expression "in the way of School discipline" occurring in the section should be left to the discretion of the Court as at present.

(46) Chapter XXVIII of the Code Contains no provision for the ~~Exemption of a~~ execution of a sentence of forfeiture of property passed under Section 62 of the Penal Code. It is suggested that this omission may be supplied by the addition of a section to this Chapter somewhat Similar to section 88 of the C.P.C..

28 The Code is also destitute of any provision for the remission of a sentence where solitary imprisonment has been awarded as part of the punishment but it is found impracticable, owing to the health or temperament of the prisoner, to carry it out. It is ~~therefore~~ recommended that a provision analogous to Sec. 395 may be enacted.

(47) Sec. 411 - This section should be repealed as it confers enormous powers on Presy. Magistrates (while the Code does not provide for adequate supervision over their work) and appeal should be allowed in all cases where a Presy. Magistrate passes a sentence of imprisonment exceeding one month or of fine exceeding 50 rupees. Further in the opinion of this Court, provision should be made allowing the High Court to exercise ~~the same~~ all the powers over Presy. Magistes. which a Dt. Court now exercises over 1st class Magistrates ~~in~~ within its jurisdiction.

(48) Sec. 423 - (i) A clause should be added to the effect that, where a Subdivisional Magistrate reverses a conviction on appeal on the ground of want of jurisdiction in the convicting court

and there exists no court subordinate to him competent to retry the case, he shall, if he does not think fit that the case should be ordered to be committed, refer it to the Dt. Magist. who shall either dispose of it himself or transfer it to a competent Court for disposal.

(ii) Power may, with advantage, be given to appellate courts to enhance the sentences of ~~lower~~ lower courts when disposing of appeals.

(49) Secs. 425 + 442. – These sections should be revised so as to provide distinctly that, where a sentence of imprisonment is reversed or modified, the High Court should issue either a warrant or send a copy of its order direct to the officer in charge of the Jail in which the prisoner is confined, so that he may have the benefit of the order as soon as possible. A copy of the Judgment or order of the appellate court should of course continue to be sent to the Court ~~of~~ by which the sentence appealed against or revised was passed.

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(51) Sec 426 - Under the present law, if a sentence of rigorous imprisonment has merely been suspended by an appellate court pending the decision of an appeal by a convicted person, the period of such suspension is not excluded in computing the term of such imprisonment and, in consequence, the accused in many cases undergoes simple imprisonment instead of rigorous during a considerable portion of his term of prison life. In the opinion of H. E. in C there is no more hardship in excluding the period of simple imprisonment in such cases than in not reckoning in a sentence of imprisonment the time spent in jail before trial. It is therefore suggested that the section should be amended so as to provide that no period during which a sentence is suspended shall form part of any sentence of rigorous imprisonment.

(51) Sec 437 - (i) The variance ~~which existed~~ between the High Courts which existed in 1885

28 as to the meaning of the expression "further enquiry" occurring in this section no longer exists; the ruling in I. L. R. VIII Mad. 336. having been superseded by the Full Bench decision in I. L. R. XIV Mad, 334, a majority of six out of seven Judges of the Calcutta High Court having adopted (see I. L. R. XV Cal, 658) the view taken by the Bombay High Court in I. L. R. X Bom. 131, and the Allahabad High Court having ruled similarly in Queen-Empress v. Choto (I. L. R. IX All, 52). As all the High Courts are now agreed that there may be further enquiry even in cases where no additional evidence is forthcoming, no further action seems called for. It is however suggested that the words "fresh enquiry" may be substituted for the words "further enquiry" so as to remove all possibility of misapprehension as to what all the High Courts now ~~hold~~ held to be the intention of the ~~legislature~~ section

(ii) A proviso should be added to the section to the effect that, in the case of a discharge

FOR ORDERS.

C. No.

DEPARTMENT.

G 27

600-25-7-95.

FOR ORDERS.

FOR ORDERS.

under Secs. 209 + 253, notice should be given to the accused before the case is reopened.

(52) Sec. 439 - (i) It is desirable that a provision should be inserted, similar to that contained in Sec. 427. enabling the High Court to issue a warrant for the arrest of an accused person in cases where that High Court is exercising its powers under this section. Under the present law the High Court has no power to order the arrest of the accused in such cases, but can only issue a notice to him and, if he absconds, it has no means of enforcing his attendance.

(ii) Attention is invited to this Govt.'s letter of the 3: Oct. 94, No 2388 and the Home Dept. reply thereto, having reference to a proposal to amend this section so that the powers therein conferred may be exercised only after the record have been called for & perused.

FOR ORDERS.

C. No.

DEPARTMENT.

FOR ORDERS.

53 (~~48~~) Section 443 - The word "Charge" should be replaced by the expression "offence alleged to have been committed." In the Code 'charge' is a technical word and is used elsewhere in a peculiar sense.

54 (~~49~~) Section 475 A - H. E. in Council is in favour of the amendment suggested by the Chief Commissioner of Assam.

55 (~~50~~) Section 480. It is recommended that Section 174 I. P. C. may be added to the list of contempts liable to be dealt with under the Section, so that witnesses who disobey summonses may be punished summarily. The inclusion of the Section as proposed will, it is believed, have a salutary effect in lessening the delays that are so frequent in criminal trials owing to the non attendance of parties and witnesses on frivolous excuses. The right of appeal

which Section 486 allows against an order under Section 480 seems to be a sufficient safeguard against any possible abuse of power which the proposed extension of the Section may involve.

(51.) Section 487 - This Government is opposed to the amendment suggested by the Government of Bengal on the ground that its adoption would lead to more trouble and delay than arises under the existing law. ~~For~~ Even, if the Section were ~~allowed~~ altered as proposed an application would in almost every case be made to the High Court for a transfer to another court, and generally with success.

(52) Section 488 - (i) The Expression "or if they are living separately by mutual consent" & "or that they are living separately by mutual consent", as the case may be, occurring in Clauses 2 & 3 of the proviso to the section might be

omitted, seeing that, in a large number of cases where an allowance is ordered, the parties are so living and that the provision that a wife is not entitled to an allowance "if without sufficient reasons she refuses to live with her husband" affords quite sufficient protection to the husband.

(ii) It should be provided that any allowance that may be ordered under this Section should be made payable from the date of the complaint and not from the date of the order as at present. ~~Such~~ Such a provision seems to be equitable and will tend to discourage attempts on the part of defendants to delay the proceedings in ~~such~~ maintenance cases.

(iii) In the case reported in I.L.R. 16. Cal. 781, the Calcutta High Court has held that the proceedings under this being of the nature of Civil Procgs. the person sought to be charged is a competent witness in his own behalf. As there seems to be some doubt as to whether a defendant in a maintenance case under sec. 488 could be examined on oath, it may perhaps be as well that an explanation is added to the section embodying the decision of the Calcutta High Court.

(ii) Provision should be made empowering criminal courts ~~to to pass orders~~ to pass

(a) orders in terms of a compromise or razinamah as Civil courts are now permitted to do, &

(b) interim orders deciding questions regarding lawful guardianships of a child when dealing with an application for maintenance.

(i) A clause should also be inserted on the lines of the last clause of sec. 148 allowing Magistrates to make an order as to costs incurred in the trial.

(58) Sec. 495 - The third paragraph of this section added by Act X of 1886

is a source of great inconveni in the trial of police cases in Magistrate's courts in this Pres there being no prosecuting Vakils for these courts as in Northern India, Court Head Constab or Inspector to conduct such prosecutions. It not unfrequently happens that almost all the efficient Police officers in a division take part in an investigation and considerable difficulty is experienced in such cases in deputing a proper Police officer unconnected with the case to prosecute it before a Magistrate. It is therefore essential that the section should be amended so as to allow the Police officer who conducted the investigation of a case to prosecute it with the previous sanction of the Court. ~~before which it will be tried~~

(59) Sec 498 - ~~This Court would~~ It is recommended ~~extend~~ that the powers conferred by this section may be extended to District and Sub-Divisional Magistrates as well. Copies of remand orders are now received by th

Magistrates and they have therefore opportunities of investigating, ~~perfering~~ where bail has been improperly refused or an excessive amount required, which they could avail themselves of, without the trouble of referring the matter to the High Court or Court of Sessi Greater supervision will thus be exercised over this important matter in respect of which a great deal of hardship is believed to be now caused to the people by ignorant or designing Sub Magistrates; and in the end the Sub Magistrates themselves would come to exercise their powers with more discretion and justice than they now appear to do.

(60) Sec 514 - The following procedure is suggested for adoption in a case of the kind refd. to in para 21 of Appendix II to the Home Dept. letter under reply: —

~~If a whole suretyship should lapse with the death of the surety. But~~ If a breach of t

398

bond involving forfeiture occurs before the death ~~the death~~ of the surety and if it is desired that the bond should be enforced, a notice should be issued to the representatives of the ~~[illegible]~~ deceased requiring them to show cause why they should not pay the amount of the bond out of ~~the~~ his property of and, in default of good cause shown or payment of the amount, a warrant should be issued against the property, if any, left by the deceased. If, on the other hand, the breach ~~involving~~ entailing forfeiture occurs after the surety's death, the liability against his property should continue only until his heir reports his death and a fresh surety is obtained

(61) Sec 517. This section should be amended so as to empower a court to pass orders for the disposal of all property which may have been before it in connection with a case tried and not merely for the disposal of ~~that~~ those in respect

of which an offence has been committed or which ha been used for the Commission of an offence as the section now provides.

(62) Sec 523 - It is suggested that a clause may be added specifically empowering the Magistracy to order the destruc tion of counterfeit coin, notes or stamps and implements for counterfeiting the same, obscene books, pamphlets and other articles refd to in Sec 292, I.P.C, and food or drink in a noxious state or in a state unfit for food or drink.

(63) Sec 526 A. - As anticipated by Sir Griffith Evans in ~~throughout~~ his speech in the Legislative Council on the bill which became Act III of 1884, this section is greatly abused by for the purpose of gaining time to obstruct justice and get at the prosecution witnes In view to minimise this evil, it is suggested that the following provision may be

added: —

" Provided that the Court may
" refuse to exercise such power,
" if, for reasons to be recorded
" in writing, it considers that
" such notification is made
" for the purpose of vexation
" or delay or for defeating the
" ends of justice.

" Explanation. The Court,
" notwithstanding any
" application made or proposed to be made under sec.
" 526, may, and, as a rule,
" shall, examine all the wit-
" nesses named for the prose-
" cution, without waiting for
" the result of such application

It is true that there is no-
thing in the present section
~~forbidding~~ precluding the examination
of the prosecution witnesses
before an adjournment is
granted; on the contrary,
the intention of the legisla-
ture seems to be in favour
of the postponement of the
grant of adjournment until
after the evidence for the
prosecution has been taken
But as there seems to be

a general misappre[illegible] on this p[illegible]t, it is perhaps just as well that a distinct provision should be made in the Code so as to remove all uncertainty.

(64) Sec. 552. – It ~~is~~ seems unnecessary to extend the provisions of this section to Mofussil courts as proposed by the Govt. of Bengal in 1886, seeing that section 560 which was added to the Code in 1891 contains sufficient provision for compensation in such cases.

(65) A provision should be added to the Code to the effect that a Court shall not be bound to take notice of any objection which it overrules, unless the pleader presents his objections in writing in which case the paper so presented together with the Court's written order rejecting or admitting the evidence with brief reas therefor shall form par of the record. The absenc of such a provision practica compels subordinate cour

FOR ORDERS.

40 88

(458)

to write down everything (whether relevant or not) a pleader chooses to say, lest an omission to note an objection might be taken undue advantage of by unscrupulous ~~vakils~~ pleaders in the appellate court.

(68) It is suggested that offences under Secs. 404, 409, 417, 418, 419, 420, 465, 468 & 471, I.P.C. may be made cognizable by the Police. Schedule II requires amendment also with refce. to Secs. 263 A & 477 A I.P.C. enacted by Act III of 1895 (Amdt.)

A.T.
2/9/95

V.B.

Note for the Hd. clerk

Please have this pu
in type sharp in con
of the portion sent down
yesterday ~~on Saturday last~~. Mr
Fisher desires that this
should be got through
as quickly as possible

Please send me the portions
as they are got ready.

J.T.
2/5/95

Please send 3 proofs
with broad margin
J.T.

FOR ORDERS.

C. No.

DEPARTMENT.

[G / 23]
600—25-7-95.

1 A

9 TH ~~SEPTEMBER~~ October 1895, No. 2096, JUDICIAL.

2 numbers

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

READ—the following paper :—

ORDER—dated 9th September 1895, No. 2096 Judicial.

The following letter will be despatched to the Government of India :—

[Here enter No. , dated September 1895.]

(True Extract.)

G. S. Forbes

Chief Secretary.

3/10/95 5/10/95

The C.S. should sign the copy of this of the letter which goes to India

1

9 TH ~~SEPTEMBER~~ Oct 1895, No. 2092 JUDICIAL.

JUDICIAL DEPARTMENT.

LETTER from

THE CHIEF SECRETARY TO THE GOVERNMENT OF
FORT ST. GEORGE,

To

THE SECRETARY TO THE GOVERNMENT OF INDIA,
HOME DEPARTMENT.

81 Copies Despd 22/10/95 – 5/10/95

W/ 8 Oct

H.D. 3/10/95

SIR,

In reply to your letter of the 22nd October last, No. 11-Judicial—1148, inviting proposals for the amendment of the Civil and Criminal Procedure Codes, I am directed to communicate to you the views of this Government with the opinions of the various officers and bodies consulted on the revision of the Code of Criminal Procedure. Proposals regarding the amendment of the Code of Civil Procedure will shortly be transmitted to you in a separate communication.

2. The various suggestions made in the papers enclosed will receive in due course the consideration of the Government of India. The only sections of the Code on which His Excellency the Governor in Council thinks it necessary to make any special recommendations are the following:—

(1) *Section* 9.—The amendment suggested by the Allahabad High Court in 1890 is appropriate, but as in this Presidency the Sessions Court is not always at the head-quarters of the District Magistrate, and as the Joint Magistrate is always at an out-station, His Excellency in Council would suggest that the words "the Sessions Court station" and "the Sub-divisional Magistrate within the limits of whose local jurisdiction the Sessions Court station is situated, being a Magistrate of the first class" be substituted for the words "head-quarters" and "Senior Joint Magistrate", respectively, in the proposed section 9-A.

N/-

(2) *Section* 10.—His Excellency in Council is in favour of the amendment suggested by the Punjab Government. While it is generally undesirable and impolitic to divide the supreme magisterial authority in a district, there is no objection to have in reserve power to relieve the District Magistrate by the appointment of an additional District Magistrate in the manner proposed to provide for very exceptional circumstances, such as the occurrence of famine, frontier disturbances or the like.

Recently

(3) *Section* 15 (i)—The tenure of office of Bench Magistrates may, with advantage, be restricted to a definite period of (say) ~~five~~ three years. It is sometimes advisable to have the power of changing the *personnel* of Benches without having recourse to the provisions of section 41 of the code.

u a

(ii) The attention of the Government of India is invited to the ruling in I.L.R., 20 Cal., 870, in which, following other previous rulings of the court, it is held that a member of a Bench of Magistrates may not give judgment and pass sentence unless he has ~~been a member of~~ the Bench during the whole of the hearing of the case. The ruling has been followed by the Madras High Court; and instances of the great inconvenience which is produced by this state of the law have been brought to the notice of Government. In one mofussal town, for example, in which about 5,000 cases come annually before the court, it is seldom possible to secure the attendance of the same Honorary Magistrates on two consecutive Benches. His Excellency the Governor in Council is inclined to consider that the interests of justice will not suffer by a provision to the effect that any part-heard case postponed to a future sitting of the Bench may, subject to the provisos of section 350 of the Code, be proceeded with if any member of the Bench has been present at the previous hearing.

sat on

N.B.

I suppose this means "has sat on the Bench"
Yes MS

(4) *Section* 21.—His Excellency the Governor in Council considers that the opportunity should be taken of examining carefully the question whether the Presidency Magistrates should not, in relation to the Chief Presidency Magistrate, be placed in much the same position ~~[illegible]~~ as regards the supervision and control of their work which the magistrates of a district hold to the District Magistrate. It is true that this would introduce a material alteration in the position of the Presidency

Note

Sec. 9

H.Cts differ slightly. The draft follows Hon. Mr Bliss. The Hon. Mr Grose points out that the subdivl. Magte is not always of 1st class but that nowadays the telegraph makes the point unimportant; & he suggests the nearest 1st class Magte.

Perhaps "nearest 1st class Magte or "nearest 1st class Magte of highest rank" wd do

I don't think will do – Magtes are constantly on the move – one would have jurisdiction one day & another the next; & parties wd never know to whom to go; nor wd a Magte himself know whether he had jurisdiction or not – The case of the divl. Magte not being of the 1st cl: is so rare that it may in practice be neglected.
MS

Yes/ Then the draft stands
S.B.
9/10

For my part I wd rather say three years
MS

I have no strong opinion but I think 3 is better than 5
J.G.

For the intended purpose – 3 years are better than 5. W.

For orders. The point in this recommendation was not noted on in the file circulated. It arose on some pp. referred by the Dt. Magte. of Bellary, which the H.M. directed shd be considered in connection with the revision. The suggestion follows the Bengal Rules for Benches which in this particular the H.Ct. declares to be ultra vires: but it has apparently worked without objection for some years before the Cal. H. Ct. declared it to be ultra vires.

Approved
MS J.G.

V. Parthasarathy

Magistrates, since the Chief Presidency Magistrate is at present virtually no more than *primus inter pares.* But there are many considerations which seem to call for a change in the existing procedure. In the opinion of His Excellency in Council, it would be a measure of useful reform if the Chief Presidency Magistrate ~~is~~ were invested at least with the powers conferred on a District Magistrate by sections 192, 435, 436, 437 and 438 of the code.

(5) *Section* 40.—It is not clear, as the law at present stands, whether re-investiture of magisterial powers is necessary where an officer appointed as a magistrate under the code who has been transferred *temporarily* to another office reverts to his original appointment or to an appointment of a like nature. It would be an administrative convenience if this doubt were set at rest by the insertion of a provision to the effect that whenever any person who has been invested with any powers under the code is transferred *temporarily* to another office under the same Local Government, he shall, unless the Local Government otherwise directs, continue on his return to his former or an equivalent or higher office to exercise the same powers as he previously exercised.

(6) *Section* 42.—It has been suggested that the words "or in quenching fire" should be inserted after the word "affray" in clause (*c*) of this section, and the Government supports the suggestion; the obligation being limited to cases where the fire threatens or endangers human life or property in a town or public place. It is observed that a similar provision in the Bill which became Act X of 1882 was omitted by the Select Committee which reported on the Bill, on the ground that "it did not properly belong to a Code of Criminal Procedure." This objection is not, however, altogether clear, seeing that the code in Chapters X and XI recognises the duty of the police and the magistracy to interfere in cases of public nuisance or where the lives or property of the public are in imminent danger.

(7) *Section* 45.—(i) Persons accused of *murder* should, it is considered, be included in clause (*b*) of this section.

(ii) This Government agrees in the suggestion of the Government of the Punjab, that village headmen should be legally empowered to prevent the cremation or burial of dead bodies in cases of sudden, unnatural or suspicious deaths, until the arrival of the police or magistrate. As it is, in the absence of a legal provision, heads of villages do, as a matter of fact, generally interfere in the manner indicated; and it is desirable that the practice should be legalized.

(iii) A proposal has been made to the effect that it should be compulsory on the lawful guardian where there is one, or the near relative of a deceased person, to give information in cases of sudden, unnatural or suspicious death. This Government is of opinion that the point is deserving of consideration.

Hon. Mr. Bliss thought the obligation shd exist.
Hon. Mr. Grose did not see how it cd be imposed on a "lawful guardian or a near relative", but wd place it on those present at the death or in attendance during the last illness
H.E. the Govr wd leave the responsibility where it is now [i.e. on the Vill. Magte. &c.] "To impose it "as proposed by the Hon. Mr. Grose wd probably "result in persons being left to die "unattended".
For orders whether anything need be said at all on the point.
Perhaps it may be dropped

(8) *Section* 57.—The revision of this section in the manner suggested by the Government of India meets with the approval of His Excellency in Council.

(9) *Section* 68.—It seems to be desirable to amend this section so as to provide for the service of summons not only by the police or the officer of the Court issuing it, but also by any public servant whom the Local Government may by rule authorize to do so. For instance, in the case of forest offences, such a provision would greatly facilitate service and save delay where the process has to be served in out-of-the-way places. The object in view could be effected by the addition, at the end of the second clause of the section, of words to include public servants, the selection and designation of such being subject to rules made by the Local Government in this behalf.

(10) *Section* 88.—His Excellency in Council would suggest that a clause be added to the effect that when the attached property of a proclaimed person becomes "at the disposal of Government," it should not, except in the two cases specified in the section, be sold without the orders of the Local Government.

(11) *Section* 106.—~~(i)~~ This Government considers that the section should be amended so as to empower Appellate Courts, when upholding a conviction passed by second or third class Magistrates in a case of rioting, assault, or other breach of the peace, to require the person convicted to execute a bond for keeping the peace.

Vathagiry

3

[Follows Hon^ble Bliss & H.E.; the Hon^ble Spore doubts if any ~~thing~~ alteration is necessary]

[The para about Sec 126 shd be placed before the para about Sec 127. JS]

note

Sec. 143. It seems to have been overlooked by H.ms that sec. 435 expressly declares orders under this sec.^n not to be open to revision. The act prohibited is assumed to be a public nuisance and being such the mag^te may prohibit it peremptorily in the public interests. If it is really not a public nuisance, then the sec.^n does not apply and the H.Ct. can intervene on the ground of ultra vires. The ~~removal~~ entrusting of such orders ~~from~~ to the mag^ts was secured only after a hard fight. GK

I adhere to my view that the aid of the H.C. should not be invoked in such cases HS

3

(12) *Section* 107.—The Government does not consider that a sufficient case has been made out for the amendment of this section in the manner indicated in paragraph 6 of Appendix II to Home Department letter, dated 22nd October 1894, No. 11-Judicial—1148. No practical inconvenience has been experienced in this Presidency from the absence of the provision suggested.

(13) *Section* 110.—A provision should be inserted for the taking of security for good behaviour from habitual protectors or harbourers of thieves and habitual aiders in the concealment or disposal of stolen property.

(14) *Section* 123.—The section as it stands seems to allow the officer in charge of the jail in which the person ordered to give security is detained to accept sureties and release the prisoner without any reference to the Court which made the order requiring security. In view of section 122, it should be distinctly provided that, in cases where sureties are required, the jail officer should not accept such sureties unless and until they shall have been first approved by the Court concerned. The object may be effected by the insertion at the end of paragraph 1 of the section of words to the following effect:—

> "Provided that in the last case, the sureties, if the security bond is with sureties, shall have been approved by the Court or Magistrate which or who made the order requiring the security."

(15) *Section* 124.—A provision would seem to be required authorizing a District or Presidency Magistrate to reduce the amount of security once fixed. There are many cases in which it may be desirable to have the power to do this.

~~(16)~~ (17) *Section* 127.—In the correspondence with the Government of India ending with the letter from this Government, No. 1710 J., dated 15th August 1895, the question has been fully discussed of taking power enabling the police to deal effectively with processions, especially in the matter of the removal of banners, insignia, costumes and similar things, the display of which is likely to cause a breach of the peace. [~~In the letter quoted it is proposed that the necessary powers should be given by the extension to this Presidency of certain appropriate sections of Act V of 1861 as amended by Act VIII of 1895. But if this suggestion should appear to the Government of India to be in any way unsuitable,~~] His Excellency the Governor in Council would recommend that a clause should be added to section 127 of the Criminal Procedure Code providing for the matter.

8

/d

I don't think this will do — H.E. in noting on my suggestion seems to have thought that Act V of 61, as amended by VIII of 95 gives the power we wanted — But it does not give any such power — The draft sh^d be altered — Recent occurrences at Dhulia may cause India to take a different view now from that they before held as to processions HS

It seems to me that we sh^d. get what we wanted under Sec^s. 10 & 11 of Act VIII of 95. But if there is any doubt let us ask straight for what we want in sec. 127. JS

has been approved & accepted.

7

(1~~6~~) *Section* 126.—(i) The code is silent as to the procedure to be followed in the event of a surety dying, or in the event of his insolvency or imprisonment, or of his being found after acceptance to be an unfit person on any other ground. This defect may, it is suggested, be remedied by extending to all such cases the procedure laid down in section 126 in the case of a surety voluntarily applying for the cancellation of the bond executed by him.

(ii) His Excellency in Council would also insert a provision empowering the Court to direct the detention in prison of the person ordered to give security, ~~pending~~ until ~~the acceptance of~~ the surety offered; otherwise, pending ~~the~~ inquiry as to the sufficiency of the surety, the harm sought to be prevented may be committed. ~~This provision seems to be necessary to enable the Court concerned to satisfy itself, after due enquiry, as to the adequacy, character and identity of the surety or sureties offered.~~

8/ (1~~7~~) *Section* 143.—An appeal should, it is considered, be allowed to the Subdivisional ~~or~~ District Mag^te against the order of a ~~Subordinate~~ Magistrate of the 2^nd or 3^rd class prohibiting the repetition or continuance of a public nuisance under the section.

9/ (1~~8~~) *Section* 144.—A proviso should be added ~~enabling~~ specifically declaring that a person affected by an order issued under this section may ~~to~~ come in subsequently and show cause why it should not be rescinded or modified if the circumstances admit of it. In this connection attention is invited to the remarks of the High Court at Calcutta in the case reported in I.L.R., 5 Cal., 132.

20/ (~~19~~) *Section* 145.—His Excellency in Council agrees with the opinion of the Hon'ble the Judges of the High Court in favour of amending the section so as to include clearly disputes concerning rights relating to tangible immovable property, as well as easements and rights to collect rents, since breaches of the peace frequently arise in respect of such matters. This might be sufficiently done by reverting to the

[The word "not" seems to be an error HS JS]

appeal has been taken to the High Court, & the result will be reported in due course; but if there is likely to be any doubt on the question, it sh^d be removed by an appropriate addition to the Code.

With reference to this & cognate sections I am to ~~note~~ state that ~~the~~ a Session Court recently held that a notice addressed generally to the villagers of a certain village to discontinue a public nuisance was insufficient notice so as to render any particular villager liable to prosecution for ~~the~~ disobedience of the order; the definition of "person" in sec. 11 of the Penal Code not covering the inhabitants of a village. On this point an

4

E. Rutherford

wording of the code of 1872, "land or the boundaries of any land or concerning any house, water, fisheries, crops or other produce of land." If this suggestion is adopted the language of section 147 should also be modified.

1/ (20) *Section* 150.—The section as it stands at present does not seem to impose any obligation on the police to communicate information of the actual commission of an offence. The ~~omission~~ defect should be supplied by an appropriate addition either to this section or in Chapter XIV.

2/ (21) *Sections* 156 *and* 159.—His Excellency in Council agrees that, as suggested by the Government of India, the magistracy should be specifically empowered to order the police to investigate a cognizable offence which under section 157 they have thrown out.

3/ (22) *Section* 164.—(i) In the case reported in I.L.R., 1 Cal., 207, the Judges of the Calcutta High Court have held that the words "any magistrate" occurring in this section must be restricted to any person exercising magisterial powers within the place where the statement or confession is recorded. As it is desirable that every facility should be given for recording dying declarations, and that any magistrate should be authorized to take them, His Excellency in Council would add to the section the following explanation:—

> "The words 'any magistrate' mean ordinarily 'any magistrate not being a police officer exercising any of the powers of a magistrate within the place where the statement or confession is recorded,' but they include any other magistrate (including a Presidency Magistrate) when the statement or confession is a dying declaration."

(ii) In order that magistrates recording confessions might, in doing so, have their attention directed to the requirements of the law, this Government in 1887 issued departmental instructions to the effect that every magistrate ~~in~~ recording a confession or statement under this section should (*a*) first record in writing his reasons for believing that the accused is going to make the statement voluntarily, (*b*) explain to the accused that he is under no obligation to answer any question at all, and (*c*) warn him that it is not intended to make him an approver and that anything he says may be used against him. The following precautions were also prescribed at the same time at the instance of the High Court: (*a*) that, if the magistrate doubts whether the accused is going to speak voluntarily, he should remand him to a sub-jail before recording the statement; and (*b*) that such confession or statement should not be recorded nor the warning above mentioned given in the presence of any police officer who arrested or produced the accused.

These instructions have proved useful in impressing upon magistrates the need of care and of a strict compliance with the requirements of the law in this very important matter. They are brought to the notice of the Government of India in view of its being considered whether in some form they may not with advantage be embodied in the code.

H.E. & Hon'ble Grose agree

The Hon'ble Mr. Bliss [illegible] W.H. [illegible]

Affirmed

4/ (23) *Section* 167.—The Inspector-General of Police considers that fifteen days—the total period of remand permissible under this section—is not sufficient in all cases and suggests that District and Divisional Magistrates should be empowered to extend this period to thirty days in all. His Excellency in Council is inclined to support this proposal.

[Hon Mess. Bliss & Grose agree: but H.E. differs, pointing out that if the period were extended the police wd. always go for the maxm., & that it wd. not be right to allow the police in this country to keep a man for 15 days in police custody before the case against him is brought under a Magte's cognizance. [Once a Magte. has taken cognizance the Magte may give such repeated remands as are required]

They wd. have to go to a superior Magte. & give reasons. I am for the 30 days

W.M.

J.G.

5/ (24) *Section* 170.—In Judicial Department letter, dated 2nd April 1894, No. 794, the Madras Government supported a proposal to amend this section with the object of exempting certain railway servants from its operation, by withdrawing the obligation that such persons shall execute bonds to attend at the Magistrate's Court on the date fixed by the police officer for the appearance of the accused, it being left to the magistrate to summon them in accordance with the provisions of section 72. His Excellency in Council thinks that this concession may unobjectionably be extended to such public servants of the postal, telegraph, medical and other public departments as the Local Government may, from time to time, by notification designate. It is not necessary that all classes of servants of these departments should be included in the exemption, but in the interests of the public it is undesirable that such officials as postmasters, telegraph masters, medical officers in sole charge of dispensaries, and others in like case should be called away from their duties except in accordance with a summons fixing the date for their attendance.

5

6/ (25) *Section* 172.—The Calcutta High Court has held (I.L.R., XX Cal., 642) that statements made under section 161 are not privileged, merely because they are incorporated in the diary referred to in section 172. It is represented that this ruling places an unnecessary impediment in the way of the obtaining of information by the police, as such information is likely to be withheld if it is generally known that, at the instance of the accused, statements made to the police are liable to production in court. The law has already recognized the need of treating such information exceptionally in that (section 162) it declares that statements other than dying declarations made to the police are not to be signed by the informant, so that they may not be deterred from speaking their mind freely to the investigating officer. The law also forbids the use of such statements against the accused. Moreover the diary referred to in section 172 consists almost entirely of copies of statements recorded under section 161 and, if the latter are not privileged, it is of little use allowing privilege to the former. In these circumstances, His Excellency in Council would suggest that the privilege allowed to police diaries should be extended to statements, other than dying declarations, made to and recorded by the police, under Section 161. /8

7/ (26) *Section* 176 *as amended by Act V of* 1889.—The Chief Presidency Magistrate suggests that sub-section (1) of this section should be amended by the addition of the following proviso, dispensing with a magisterial enquiry in cases of death from natural causes in prison:— 7/ 8/

> "Provided that no enquiry into the cause of death of a person who dies in prison need be held except in the cases mentioned in section 174 (1), clauses (*a*), (*b*) and (*c*)."

It is said that a magisterial enquiry is quite unnecessary in such cases, seeing that the prisoner's death is certified by the medical officer in charge of the jail to have occurred from natural causes, that the work imposed becomes heavy in times of epidemic, and that the magistrates are exposed in such times to a needless risk to themselves of infection and of spreading it among others.

The obligation to hold an inquest on every prisoner who dies in jail in the Presidency town appears to have been taken from section 9 of the Coroner's Act, IV of 1871, which, however, excepted from the obligation "cases in which the death has been caused by cholera or other epidemic disease." If this exception were re-introduced into the present law, the argument advanced, so far as it relates to the heaviness of work and the increased danger in seasons of epidemic, would be met. His Excellency in Council would not extend the exemption to all cases of death from natural causes in prison as proposed by the Chief Presidency Magistrate. It is very desirable that in the case of deaths occurring in jail the obligation of holding an independent investigation should be maintained for the satisfaction of the deceased's friends and relatives, as well as of the general public.

Mr. [illegible] Bleec is in favour of adopting Mr. Jones' suggestion in its entirety

8/ (26) *Sections* 188 *and* 193.—There appears to be no objection to the amendment of these sections in the manner indicated in paragraphs 11 and 12 of appendix II to the Home Department letter under reply.

9/ (27) *Section* 195 (i).—The expression "so referred to" in paragraph 3 of the section may be omitted as it may possibly be held to prohibit a court on the trial of a case in which sanction has been given from trying a charge which does not require sanction, and which, but for this provision, it could have tried.

(ii) In the case of perjury in the alternative—one deposition being before one court and the other before another court—it should not be necessary to require the sanction of both the courts, as the Bombay High Court appears to have held in I.L.R., II. Bom., 34, and X. Bom., 190. The law should be made clear on the point.

7/ (iii) There have been contradictory rulings as to the meaning of the term "court" in this section, especially as regards the point whether sub-registrars are "courts" when exercising certain powers. The attention of the Government of India is invited to the decision in I.L.R., 15 Mad., 138.

30/ ~~(28)~~ *Section* 200.—A proviso may be added to this section to the effect that nothing herein contained "when the complaint is made by a court under section 476, shall be deemed to require a magistrate to examine the complainant."

Melder

6

Note

The Insp. Genl. refers to the local jurisdiction of the Pol. officer – not of the Magist. A Dt. Magiste. may want to depute the Police Insp. of Saidapet for special reasons to conduct an enquiry at Conjeeveram. (Sd.) G. S. F.

31/ (~~29~~) *Section* 202 (i).—The section in its present form seems to empower a magistrate to require a police officer *beyond the local limits of his jurisdiction* to enquire and report upon a case committed within his jurisdiction. As it is undesirable that such an extensive power of reference should be vested in the magistracy, it is proposed ~~to insert~~ the words "within his jurisdiction" between the words "police officer" and "~~only~~ such other person," so as to restrict the scope of the section. that to be inserted

or by (ii) It is considered that the power of reference conferred by the section should also be extended to cognizable cases in which the magistrate is not prepared to declare that he distrusts the truth of the complaint. Under the present law, if a complainant in a cognizable case presents his complaint direct to the magistrate, and not to the police, the magistrate, unless he can say that he sees reason to distrust the truth of the complaint, appears to have no power to call in the aid of the police to investigate and report upon the prosecution case. It may be often inconvenient in the interests of justice that the magistrate should have this power; and the Government would accordingly recommend that the section be modified accordingly. 9/0/,/ /Ti d

32/ d (~~30~~) *Section* 203 ~~(i)~~.—A provision seems required to make it clear that the magistrate should record his reasons for the dismissal of a complaint under this section.

3/ (31) *Section* 236.—In 1885, in I.L.R., X Bom., 124, it was held that, where one of the alternative charges fell under one section of the Penal Code (*e.g.*, section 182, false information) and the other under another section (*e.g.*, section 193, perjury), these two were distinct charges and therefore, unless one or the other charge was positively proved to be false, a conviction thereon could not be sustained, simply on the ground that the two statements on oath, one under each charge, were contradictory and one must therefore be false and the other true. The form appearing in schedule V, No. XXVIII (ii), clause (4), on the other hand, seems only to contemplate alternative charges of perjury under the same section (section 193, I.P.C). To prevent miscarriages of justice and to aid in the suppression of perjury, it seems desirable that the law should provide for the trial ~~on~~ the alternative of contradictory false statements, no matter under what section of the law the specific statements may fall. /in

[The Hon. Mr. Grose wd. not notice the point]

4/ (32) *Section* 239.—His Excellency in Council supports the amendment suggested by Mr. Justice Knox of the Allahabad High Court with regard to the trial of two or more persons at one time, who are accused of perjury and certain cognate offences committed in the course of the same enquiry or trial. The Government does not believe that the accused ~~will~~ be prejudiced by the course proposed. wd. really

5/ (33) *Sections* 244 *and* 245—It seems desirable that magistrates should be empowered to acquit the accused at any stage of a summons case after hearing the complainant and the prosecution witnesses (if any), without being under the necessity of hearing all the defence witnesses. The law as at present stands does not seem to allow of this.

6/ (34) *Section* 263.—It is suggested that it should be made obligatory on Magistrates and Benches acting under this chapter to record shortly the substance of the evidence in all summary trials. It is often impossible for the courts to say at the beginning of the trial whether an appealable sentence will be passed or not. The existence of such a record would also serve as a useful check on the proceedings of summary courts, and be available for the completion of the record required by section 263 where it is found defective, without in the event of an appeal the appellate court's being compelled to order a new trial, as has occasionally happened. There would be little or no additional burden imposed by this requirement upon the court, since ordinarily every officer presiding at the trial of even a summary case is in the habit of making a short memorandum of the evidence as the case proceeds.

7/d (35) *Section* 282.—The Government would recommend a suggestion made by Mr. Justice Best, that a discretion should be entrusted to the presiding judge to proceed with the trial, notwithstanding the death or unavoidable absence of a juryman. Such an event is ~~more~~ likely to occur in a protracted trial, and it would be a great and unnecessary waste of time to begin the trial *de novo* in every such case. If in these circumstances a difference of opinion should exist at the close of the trial ~~arises~~ among the remaining jurors, the absentee ~~should~~ be reckoned as concurring with the minority. very ~~may~~ might d

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8/ (36) *Section* 288.—(i) Under section 205 a magistrate may dispense with the personal attendance of the accused, even in warrant cases, if he sees fit to issue a summons in the first instance. If, during the progress of the trial before the magistrate, it turns out that the case is one to be committed to the sessions, the evidence taken in the pleader's presence should, it is considered, be equally available under section 288. It is therefore suggested that after the words "in the presence of the accused" in this section should be inserted the words "or of his pleader if his personal attendance has been dispensed with under section 205."

(ii) It seems also advisable to add to the section an explanation to the effect that the deposition of a witness taken before a committing magistrate shall be held to be sufficiently proved by the certificate under the magistrate's hand that it was duly taken in the presence of the accused, or of his pleader if his personal attendance has been dispensed with under section 205.

9/ (37) *Section* 337.—(i) The words "other than a Presidency Magistrate" occurring in the last paragraph of the section should be omitted. This Government sees no ground for excepting Presidency Magistrates from the obligation imposed on other Magistrates of recording their reasons for tendering a pardon.

(ii) Attention is invited to the amendments suggested to this section by the Commissioner of Police, Madras, and the District Magistrate of Trichinopoly.

40/ ~~(38)~~ *Section* 345.—(i) It is recommended that the offence of criminal intimidation should be removed from the table in the first paragraph of the section and inserted in the second paragraph, so as to make it compoundable only with the permission of the court. Criminal intimidation is generally practised on the weak; and in view of the lack of character which has made them the object of the crime, they should have the support of the court in compounding with the offender.

(ii) This Government would also suggest that the offence of kidnapping under section 363 of the Indian Penal Code should be made compoundable with the permission of the court when the accused is one of the parents or legal guardians of the kidnapped minor or person.

41/ (39) *Section* 350.—His Excellency in Council is in favour of enacting a provision, similar to that contained in this section, permitting a Sessions Judge, on the sanction of the High Court in each case, to continue a trial which has been begun by another Judge. Such a provision would avoid the great public inconvenience which might otherwise be occasioned in very protracted sessions cases by the death or illness of the Sessions Judge.

2/ (40) *Section* 352.—It is recommended that the words "or near" may be inserted after the words "remain in" in paragraph 2, so that the court may have control over witnesses who remain within ear-shot.

3/ (41) *Section* 367.—It is suggested that a clause be added to the section to the effect that, when a shorthand writer is appointed to a court, the judge may *dictate* his judgment or charge. Shorthand writers are now employed in all the Sessions Courts in this Presidency.

4/ (42) *Section* 381.—With reference to the remarks in paragraph 2 of appendix II to the Government of India letter under reply, a provision may be inserted enabling the District Magistrate or the senior Sub-Divisional Magistrate present at headquarters to issue a warrant under this section (after the High Court's order of confirmation is received) in the event of the death, removal, incapacity or absence of the Sessions Judge.

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5/ (43) *Section* 387.—The provisions contained in sections 83 and 84 as to endorsing arrest warrants may with advantage be made applicable to distress warrants issued under this section, so as to facilitate the distraint and sale of moveable property found beyond the local limits of the jurisdiction of the sentencing court. The object of distress is sometimes frustrated by requiring that the warrant should be sent through the District Magistrate.

6/ (44) *Section* 391.—The intention of the section is that a sentence of whipping shall ~~can~~not be added to one of imprisonment, unless the term of imprisonment is at least fifteen days. The drafting should make this clear. This Government is not in favour of any other alteration of the section.

8

Appdx

7/ (45) *Section* 392.—His Excellency in Council, agreeing with the Government of Bengal, would leave to the discretion of the court as at present *the interpretation of the expression "in the way of school discipline."*

8/ (46) Chapter XXVIII of the Code contains no provision for the execution of a sentence of forfeiture of property passed under section 62 of the Indian Penal Code. It is suggested that the omission be supplied by the addition of a section to this chapter somewhat similar to section 88 of the Criminal Procedure Code. The Code also does not provide for the revision of a sentence where solitary imprisonment has been awarded as part of the punishment, and it is found impracticable, owing to the health or temperament of the prisoner, to carry it out. It is recommended that a provision analogous to section 395 may be enacted.

9/ del. (47) *Section* 411.—This section should be repealed So long as ~~as it confers enormous powers on Presidency Magistrates (while~~ the Code does not provide the same for adequate (vide remarks infra on sec. 21) ~~supervision over their work~~ ~~and~~ which is exercised in the case of mufassal magtes, an appeal should be allowed in all cases where a Presidency Magistrate passes a sentence of imprisonment exceeding one month or of fine exceeding 50 rupees. Further, in the opinion of this Government, provision should be made allowing the High Court to exercise all the powers over Presidency Magistrates which a District Court now exercises over 1st-class Magistrates within its jurisdiction.

(50) *Section* 417.—His Excellency in Council, concurring with the Judges of the High Court, is not in favour of the suggested amendment of this section so as to confer on the Crown the right of appealing against an order of acquittal passed by the High Court in the exercise of its original criminal jurisdiction. Miscarriages of justice must no doubt occasionally occur, but in this Presidency they are not of such frequency as to justify this Government in supporting a proposal which would materially lower the dignity of the High Court—the supreme judicial tribunal in the country. The finality of the High Court's decision is generally acquiesced in by the people and is a valuable element in the administration. In the opinion of His Excellency the Governor in Council it would be a public misfortune to disturb the confidence which this finality inspires, except on the clearest proof of commensurate advantage in the remedy provided by the measures suggested. As to this, His Excellency in Council believes that on the contrary the remedy proposed is likely to be more prejudicial than favourable to the cause of justice. /2

51/ d (~~48~~) *Section* 423 ~~(1)~~.—Where a Sub-divisional Magistrate reverses a conviction on appeal on the ground of want of jurisdiction in the convicting court and there exists no court subordinate to him competent to retry the case and the case is not of sufficient importance to require its being committed to the Court of Session, he should be empowered to refer it to the District Magistrate, who can then either dispose of it himself or transfer it to a competent court for disposal.

52/ (~~49~~) *Sections* 425 *and* 442.—These sections require revision so as to provide distinctly that, where a sentence of imprisonment is reversed or ~~modified~~ reduced, the High Court should issue either a warrant or send a copy of its order direct to the officer in charge of the jail in which the prisoner is confined, ~~in order~~ so that he may have the benefit of the order as soon as possible; a copy of the judgment or order of the appellate court being sent as at present to the court by which the sentence appealed against or revised was passed.

3/ d (50) *Section* 426.—Under the present law, if a sentence of rigorous imprisonment has merely been suspended by an appellate court pending the decision of an appeal by a convicted person, the period of such suspension is not excluded in computing the term of such imprisonment and, in consequence, the accused may undergo simple, instead of rigorous, imprisonment during a considerable portion of his term of prison life. There is, however, no more real hardship in excluding the period of simple imprisonment in such cases than in not reckoning in a sentence of imprisonment the time spent in jail before trial. It is therefore suggested that the section should be amended so as to provide that no period during which a sentence is suspended shall form part of any sentence of rigorous imprisonment.

Note Sec. 411

Under Sec. 21 we are proposing that the Chief P. M. shd. have powers of control similar to those of a Dt. Magte.

Hon. Mr Blair & Hon. Mr Grose agreed as to recommending the repeal of the section. H. L. notes that he does not approve of the proposal, "as the P. Magts "work under the eye of the H. Ct. & as long as their work can "be watched it is important that they shd. deal with as many "cases summarily as possible; & the work of the H. Ct. and the Madras "Attorneys wd. be enormously increased".

I adhere to what I said. The fact is that their work is not watched as it shd. be.
MS

4/ (51) *Section* 437.—(i) The variance which existed in 1885 between the High Courts as to the meaning of the expression "further enquiry" occurring in this section no longer exists. All the High Courts are now agreed that there may be further enquiry even in cases where no additional evidence is forthcoming, but to remove all possibility of misapprehension the words "fresh enquiry" may be substituted for the words "further enquiry" in the section.

(ii) A proviso should, it is considered, be added to the section to the effect that, in the case of a discharge under sections 209 and 253, notice should be given to the accused before the case is re-opened.

5/ (52) *Section* 439.—(i) It is desirable that a provision should be inserted, similar to that contained in section 427, enabling the High Court to issue a warrant for the arrest of an accused person in cases where that court is exercising its powers under this section. Under the Code the High Court has no power to order the arrest of the accused in such cases, but can only issue a notice to him and, if he absconds, it has no means of enforcing his attendance.

(ii) Attention is invited to this Government's letter of the 3rd October 1894, No. 2388, and the Home Department reply thereto, having reference to a proposal to amend this section so that the powers therein conferred may be exercised only after the records have been called for and perused.

6/ (53) *Section* 443.—The word "charge" should be replaced by the expression "offence alleged to have been committed." In the Code "charge" is a technical word.

7/ (54) *Section* 475*A*.—His Excellency in Council is in favour of the amendment suggested by the Chief Commissioner of Assam.

8/ (55) *Section* 480.—It is recommended that section 174, Indian Penal Code, may be added to the list of contempts liable to be dealt with under the section, so that a witness who disobeys a summons may be punished summarily. The inclusion of the section will, it is believed, have a salutary effect in lessening the delays that are unfortunately so frequent in criminal trials owing to the non-attendance of parties and witnesses on frivolous excuses. The right of appeal which section 486 allows against an order under section 480 seems to be a sufficient safeguard against the abuse of the power which the proposed extension of the section will confer.

9/ (56) *Section* 487.—This Government is opposed to the amendment suggested by the Government of Bengal on the ground that its adoption would probably lead to more trouble and delay than arise under the existing law. Even if the section were altered as proposed an application would in almost every case be made to the High Court for a transfer to another court and generally with success.

60/ (~~57~~) *Section* 488.—(i) The expressions "or if they are living separately by mutual consent" and "or that they are living separately by mutual consent," occurring in clauses 1 and 2 of the proviso to the section ~~might~~ be omitted, seeing that in a large number of cases where an allowance is ordered, the parties are so living, and the provision that a wife is not entitled to an allowance "if without sufficient reason she refuses to live with her husband" affords quite sufficient protection to the husband. may

(ii) It should be provided that any allowance that may be ordered under this section should be made payable from *the date of the complaint* and not from the *date of the order* as at present. Such a provision ~~seems to be~~ equitable and will tend to discourage attempts on the part of defendants to delay the proceedings. is

(iii) In the case reported in I.L.R., XVI, Cal., 781, the Calcutta High Court has held that the proceedings under this section being of the nature of civil proceedings, the person sought to be charged is a competent witness on his own behalf. As there seems to be some doubt as to whether the defendant under section 488 may be examined on oath, it is desirable that an explanation should be added to the section embodying the decision of the Calcutta High Court.

(iv) Provision should also be made empowering the court to pass an order in terms of a compromise or razinamah.

[Based on the remarks of the Hon Mr [illegible] the Hon Mr [illegible] & H.B. [illegible] not noted.]

(v) The question has been raised whether the court should not have power to make *interim* orders in regard to the lawful guardianship of the children of the parties when dealing with an application for maintenance. The attention of the Government of India is invited to the suggestion.

(vi) A clause should also be inserted on the lines of the last clause of section 148 allowing the court to make an order as to costs incurred in the trial.

61/ (58) *Section* 495.—The third paragraph of this section, added by Act X of 1886, is a source of great inconvenience in the trial of police cases in magistrates' courts in this presidency, where financial considerations forbid, at any rate for the present, or in the near future, the employment of prosecuting vakils or court head constables or inspectors to conduct prosecutions in the numerous subordinate courts that exist, and the very large majority of which are situated in places other than District, or even Sub-divisional, headquarters. It not seldom happens that all the competent police officers in the police division concerned have at some stage taken part in the investigation, and it is then often very difficult, if not impracticable, having in view the importance of the case, to depute a capable officer unconnected with it to conduct the prosecution before the magistrate. If a police officer has taken the slightest part in the preliminary investigation the objection allowed by the section is sure to be raised. The Government is well aware of the grounds on which the law has been enacted in its present form; but the inconveniences and difficulties in giving effect to it are so great that His Excellency in Council considers that in the public interests it may be modified, at any rate to the extent of withdrawing the prohibition if the appearance of the police officer as prosecutor has the previous sanction of the court, the sanction to be accorded if the court is of opinion that the accused will not be materially prejudiced thereby.

[X] For orders
(Sd) S.T.Z.

The instructions on this point are not very precise, but the recommendation I have drafted may meet the case S.T.Z.

62/ (59) *Section* 498.—It is recommended that the powers conferred by this section of admitting to or reducing bail may be extended to District and Sub-divisional Magistrates. Copies of all remand orders are now received by these magistrates in the exercise of their powers of superintendence and they have therefore opportunities of interfering where bail has been improperly refused or an excessive amount required, which they may avail themselves of, without the trouble of referring the matter to the High Court or the Court of Session. Greater supervision will thus be exercised over this important matter in respect of which a great deal of hardship may be caused to the people by ignorant or designing sub-magistrates.

3/ (60) *Section* 514.—With regard to the procedure to be adopted in the circumstances referred to in paragraph 21 of appendix II to the Home Department letter under reply it is suggested that, if a breach of the bond involving forfeiture occurs *before* the death of the surety and if it is desired that the bond should be enforced, a notice should be issued to the representatives of the deceased requiring them to show cause why they should not pay the amount of the bond out of his property and, in default of good cause shown or payment of the amount, a warrant should be issued against the property, if any, left by the deceased. If, on the other hand, the breach entailing forfeiture occurs *after* the surety's death, the liability against his property should continue only until his heir reports his death and a fresh surety is obtained.

[X] Drafted on ~~[illegible]~~ notes of H.M.S. But if the legal contract of a surety is purely personal, it must cease on his death; & it is not clear how we can assume the continuance of the liability upon his heir, or make the ~~[illegible]~~ deceased's property responsible in respect of a forfeiture occurring after the death. I w^d be inclined to omit the words after "liability" in the last sentence & insert "must determine, seeing that the surety's ~~the~~ responsibility is entirely personal"

Surely it is for the surety's heir to report the fact of his death — How else can the C^t know that another surety is necessary?
M

Yes — moreover an surety's liability is personal it may be made by the law to extend in this case

4/ (61) *Section* 517.—The Government adopts the suggestion of the High Court that this section should be amended so as to empower a court to pass orders for the disposal of *all* property which may have been before it in connection with a case tried, and *not* merely for the disposal of property in respect of which an offence has been committed or which has been used for the commission of an offence as the section now provides.

5/ (62) *Section* 523.—It is recommended that a clause be added specifically empowering the magistracy to order the destruction of (*a*) counterfeit coins, notes or stamps and implements for counterfeiting the same, (*b*) obscene books, pamphlets and other articles referred to in section 292, Indian Penal Code, and (*c*) food or drink in a noxious state or in a state unfit for food or drink.

6/ (63) *Section* 526*A*.—As anticipated by Sir Griffith Evans in his speech in the Legislative Council on the Bill which became Act III of 1884, this section is greatly abused for the purpose of delay in view of gaining over the prosecution witnesses or otherwise obstructing justice. To a considerable extent this evil is due to the inadvertence of the magistracy to the fact that the section does not oblige them to give an adjournment until the prosecution evidence is closed. This misapprehension is widespread. Ordinarily the taking of the prosecution evidence need not and should not be stopped because of an application under the section. To make this quite clear it seems advisable to add to the section an explanation to the following effect :—

Explanation.—The court, notwithstanding any application made or proposed to be made under section 526, may, and, as a rule, shall, examine all the witnesses named for the prosecution, without waiting for the result of such application.

The Government would also be inclined to add a proviso to the effect that the court may refuse to exercise such powers, if, for reasons to be recorded in writing, it considers that such notification is made for the purpose of vexation or delay or for defeating the ends of justice.

7/ (64) *Section* 552.—It seems to be now unnecessary to extend the provisions of this section to mofussil courts as proposed by the Government of Bengal in 1886, seeing that section 560 which was added to the Code in 1891 contains sufficient provision for compensation in such cases.

~~8/~~ ~~(65) A provision should be added to the Code to the effect that a court shall not be bound to take notice of any objection which it overrules, unless the pleader presents his objections in writing, in which case the paper so presented together with the court's written order rejecting or admitting the evidence with brief reasons therefor shall form part of the record. The absence of such a provision practically compels subordinate courts to write down everything (whether relevant or not) a pleader chooses to say, lest an omission to note an objection might be taken undue advantage of by unscrupulous pleaders in the appellate courts.~~

I have spoken to the Hon. Mr Bliss regarding the probability ~~of~~ that such a measure is more likely to increase than decrease work; & he decided to omit it (vide remark on Civil Pro Code)

8/ (66) *Schedule II.*—It is suggested that offences under sections 403, 404, 409, 417, 418, 419, 420, 465, 468 and 471, Indian Penal Code, may be made cognizable by the police. Schedule II requires amendment also with reference to sections 263A and 477A, Indian Penal Code, enacted by Act III of 1895 (India).

(True Extract.)

for *Chief Secretary.*

The following

Revision of the Code of Criminal Procedure

E

H. M. [illegible]

(From orders)

Clean proof

The points requiring the attention of H.Ms are noted on the margin of the draft

~~Press~~ — urgent

Strike off at once & send up a few spare copies S.H.

9/10/

Con

~~over~~ The following letter will be despd. to the G. of I.

Clean proof
very urgent
S.H. 16/9

23/9

th September 1895, No. , Judicial.

JUDICIAL DEPARTMENT.

Letter—from

THE CHIEF SECRETARY to the GOVERNMENT OF
FORT ST. GEORGE.

To

THE SECRETARY to the GOVERNMENT OF INDIA,
Home Department.

Sir,

In reply to your letter of the 22nd October last, No. 11-Judicial—1148, inviting proposals for the amendment of the Civil and Criminal Procedure Codes, I am directed to communicate to you the views of this Government with the opinions of the various officers and bodies consulted on the revision of the Code of Criminal Procedure. Proposals regarding the amendment of the Code of Civil Procedure will shortly be transmitted to you in a separate communication.

The various suggestions made in the papers enclosed will receive in due course the consideration of the Govt. of India. The only

2. ~~The~~ sections of the Code ~~of Criminal Procedure~~ on which th~~e Government~~ ~~considers~~ it necessary to ~~offer opinion~~ are the following :—

H.E. in C.

thinks

make any special recommendations

(1) *Section* 9.—The amendment suggested by the Allahabad High Court in 1890 is ~~desirable~~, but as in this Presidency the Sessions Court is not always at the head-quarters of the District Magistrate and as the Joint Magistrate is at an out-station, His Excellency in Council would suggest that the words " the Sessions Court station " and " ~~the nearest First-class Magistrate of the highest rank~~ " be substituted for the words " head-quarters " and " Senior Joint Magistrate ", respectively, in the proposed section.

appropriate

the subdivisional Magte. within the limits of whose local jurisdiction the Sessn. Ct. station is situated being a Magte. of the 1st. class

19A

Note S. 9

H. Ms differ. The words inserted are those of Hon. Mr. Bliss. The Hon. Mr. Grose points out that the subdivl. Magte. is not always of the 1st. class: but nowadays the telegraph makes the point unimportant. He suggests the nearest 1st. class Magte.

Perhaps "nearest 1st. class Magte." or "nearest 1st. class Mag. of highest rank" would do

S.B. 15/9

(2) *Section* 10.—His Excellency in Council is in favour of the amendment suggested by the Punjab Government. ~~Though~~ it is generally undesirable and impolitic to divide the supreme magisterial authority in a district, there is no objection to have in reserve power to relieve the District Magistrate by the appointment of an additional District Magistrate in the manner proposed to provide for very exceptional circumstances, such as famine, frontier disturbances, or the like.

While

(3) *Section* 15.—The tenure of office of Bench Magistrates ~~should~~ be restricted to a definite period of (say) five years. It is ~~sometimes advisable~~ ~~[illegible]~~ change ~~in~~ the *personnel* of Benches, without having recourse to the provisions of section 41 of the code.

the occurrence of

may with advantage

~~[illegible]~~ to have the power of

ing

of

(4) *Section* 21.—~~In the opinion of~~ His Excellency the Governor in Council, the Presidency Magistrates should, in relation to the Chief Presidency Magistrate, be placed in much the same position in respect of the supervision and control of their work ~~as~~ the Magistrates of a district hold to the District Magistrate. It is true that this would introduce a material alteration in the position of the Presidency Magistrates, since the Chief Presidency Magistrate is ~~as matters now stand~~ virtually no more than *primus inter pares*, but ~~the interests of justice~~ seem to call for a change in the existing procedure, ~~and,~~ in the opinion of His Excellency in Council, it would be a measure of useful reform if the Chief Presidency Magistrate is invested at least with the powers conferred on a District Magistrate by sections 192, 435, 436, 437 and 438 of the code.

not,

considers that the opportunity shd. be taken of examining carefully the question whether

which

m/

at present

there are many considerations which

B/ of

WP

(5) *Section* 40.—It is not clear whether ~~under~~ the law as at present stands, were re-investiture of magisterial powers is necessary ~~in a case~~ where an officer appointed as a magistrate under the code who had been transferred *temporarily* to another office reverts to his original appointment or an appointment of a like nature. It would be ~~a matter of great~~ an administrative convenience if this doubt is set at rest by the insertion of a provision to the ~~following~~ effect ~~in the code~~ that

"Whenever any person who has been invested with any powers under the code is transferred *temporarily* to another office under the same Local Government, he shall, unless the Local Government otherwise directs, continue on his return to his former or an equivalent or higher office to exercise the same powers as he previously exercised."

(6) *Section* 42.—It has been suggested that the words "or in quenching fire" should be inserted after the word "affray" in clause (*c*) of this section, and the Government supports the suggestion; ~~It would, however, limit~~ the obligation being limited to cases where the fire threatens or endangers human life or property in a town or public place. It is observed that a similar provision in the Bill which became Act X of 1882 was omitted by the Select Committee which reported on the Bill, on the ground that "it did not properly belong to a Code of Criminal Procedure." ~~His Excellency in Council is unable to agree with the Select Committee's~~ This objection is not however altogether clear, seeing that ~~as~~ the code in Chapters X and XI recognises the duty of the police and the magistracy to interfere in cases of public nuisance or where the lives or property of the public are in imminent danger.

(7) *Section* 45.—(i) Persons accused of *Murder* should, it is considered, be included in clause (*b*) of this section. ~~The reason of its omission is not apparent.~~

This Govt. agrees in the suggestion of the Govt. of the Panjab that (ii) Village headmen should be legally empowered to prevent the cremation or burial of dead bodies in cases of sudden, unnatural or suspicious deaths, until the arrival of the police or magistrate, ~~and this is proposed to be effected by enacting a provision somewhat similar to that contained in section 11 of Bombay Act, VIII of 1867. The provisions of section 174 of the Criminal Procedure Code and of Madras Regulation XI of 1816 are not sufficiently comprehensive, the former being merely of a permissive character, and the latter restricted only to cases where the village head might receive "information of the discovery of the body of a person supposed to have been murdered."~~ As it is, in the absence of a legal provision, heads of villages do, as a matter of fact, generally interfere in the manner indicated; and it is ~~manifestly~~ desirable that the practice should be legalized.

(iii) A proposal has been made to the effect that it should be compulsory on the lawful guardian where there is one, or the near relative of a deceased person, to give information in cases of sudden, unnatural or suspicious death. This Government is of opinion that the point is deserving of consideration.

(8) *Section* ~~50~~ 57.—The revision of this section in the manner suggested by the Government of India meets with the approval of His Excellency in Council.

(9) *Section* 68.—It seems to be desirable to amend this section so as to provide for the service of summons not only by the police or by the officer of the Court issuing it, but also by any public servant whom the Local Government may by rule authorize to do so. For instance, in the case of forest offences such a provision would greatly facilitate service and save delay where the process has to be served in out-of-the-way places. The object in view could be effected by the addition, at the end of the second clause of the section, of words to include public servants, the selection and designation of such being subject to rules made by the Local Government in this behalf.

(10) *Section* ~~89~~ 88.—His Excellency in Council would suggest that a clause be added to the effect that when the attached property of a proclaimed person becomes "at the disposal of Government," it should not, except in the two cases specified in the section, be sold without the orders of the Local Government.

(11) *Section* 106.—(i) This Government ~~would amend~~ consider that the section should be amended so as to ~~allow~~ empower Appellate Courts, when upholding convictions passed by second or third class Magistrates in cases of rioting, assault, or other breach of the peace, to require the person ~~or persons~~ convicted to execute a bond for keeping the peace.

Vakay 87

3

~~(ii) His Excellency in Council is also in favour of enacting a provision empowering Subordinate Magistrates, on conviction of an offence referred to in this section, to move first-class Magistrates having jurisdiction to take proceedings against the prisoner in view to security being taken from him.~~

see S. 349

(12) *Section* 107.—~~There seems to be no necessity to amend~~ this section in the manner ~~contemplated~~ in paragraph 6 of Appendix II to Home Department letter, dated 22nd October 1894, No. 11-Judicial—1148. No practical inconvenience has been experienced in this Presidency from the absence of the provision suggested, ~~and the difficulty pointed out by the Bengal Government can in most cases be overcome by an application to the Magistrate of the district wherein the suspect resides, as the jurisdiction of such Magistrate is not restricted to offences likely to be committed in his own district.~~

indicated

The Govt. does not consider that a sufficient case has been made out for the amendment of

c.

7 Shows the views of the majority the Hon. Mr. Grose dissenting

(13) *Section* 110.—A provision should be inserted for the taking of security for good behaviour from habitual protectors or harbourers of thieves and habitual aiders in the concealment or disposal of stolen property.

(14) *Section* 123.—The section as it stands seems to allow the officer in charge of the jail in which the person ordered to give security is detained to accept sureties and release the prisoner without any reference to the ~~Magistrate or~~ Court ~~who or~~ which made the order requiring security. In view of section 122, it should be distinctly provided that, in cases where sureties are required, the jail officer should not accept such sureties unless and until they shall have been first approved by the ~~Magistrate or~~ Court concerned. The object may be effected by the insertion at the end of paragraph 1 of the section of ~~some such~~ words ~~as these:~~ to the following effect:—

or

or

"Provided that in the last case, the sureties, if the security bond is with sureties, shall have been approved by the Court or Magistrate which or who made the order requiring the security."

(15) *Section* 124.—A provision ~~should be inserted~~ ~~empowering~~ a District or Presidency Magistrate to reduce the amount of security once fixed. There are many cases in which it may be desirable to have power to do this.

wd. seem to be required authorising

the

(16) *Section* 126.—(i) The code is silent as to the procedure to be followed in the event of a surety dying, or in the event of his insolvency or imprisonment, or of his being found after acceptance to be an unfit person on any other ground. This defect may, it is suggested, be remedied by extending to all such cases the procedure laid down in section 126 in the case of a surety voluntarily applying for the cancellation of the bond executed by him.

(ii) His Excellency in Council would also insert a provision empowering the ~~Magistrate or~~ Court, ~~as the case may be,~~ to direct the detention in prison of the person ordered to give security, pending the acceptance of the surety offered. This provision seems to be necessary to enable the ~~Magistrate or the~~ Court concerned to satisfy ~~himself or~~ itself, after due enquiry, as to the adequacy, character and identity of the surety or sureties offered.

or

or

Sec. 127 In the correspondence with the G. of I. ending with the letter from this Govt. no. 1710 J. d. 15 Augt. 95 the question has been fully discussed of taking power ~~to~~ enabling the police to deal effectively with processions, especially in the matter of the removal of banners, insignia, costumes & ~~the like~~ similar things, the display of which is likely to cause a breach of the peace. In the letter quoted it ~~has been proposed~~ is proposed that the necessary powers shd. be given by the extension to this Pcy. of certain appropriate sections of Act V of 1861 as amended by Act VIII of 1895. But if this suggestion shd. appear to the G. of I. to be in any way unsuitable, H.E. the Govr. [illegible] wd. recommend that a clause shd. be added to s. 127 of the C.P.C. providing for the matter.

(17) *Section* 143.—An appeal should, it is considered, be allowed against the order of a Subordinate Magistrate prohibiting a public nuisance under the section.

the repetition or continuance of

(18) *Section* 144.—A proviso should be added enabling a person affected by an order issued under this section to come in and show cause why it should not be rescinded or modified if the circumstances admit of it. In this connection attention is invited to the remarks of the ~~Hon'ble Judges~~ in the case reported in I.L.R., 5 Cal., 132.

subsequently

High Ct at Calcutta

The other matters noticed in connection with this section have been omitted in accordance with the views of the views of the majority

(19) *Section* 145.—His Excellency in Council agrees with the opinion of the Hon'ble Judges of the High Court in favour of amending the section so as to include clearly ~~all~~ disputes concerning rights relating to *tangible immovable property*, as well as *easements* and rights to collect rents, since breaches of the peace frequently arise in respect ~~thereof~~. ~~The best way of effecting this would probably be~~ by reverting to the wording of the code of 1872, "*land or the boundaries of any land* or *concerning any house, water, fisheries, crops* or *other produce of land*." If this suggestion is adopted the language of section 147 should also be ~~made more clear~~.

the

or

of such matters

some

This might be sufficiently done

modified

~~either~~ by an appropriate addition either to this section or in chap XIV.

(20) *Section* 150.—The section as it stands at present does not seem to impose any obligation on the police to communicate information of the actual *commission* of an offence. The omission should be supplied

Iom

(21) *Sections* 156 *and* 159.—His Excellency in Council agrees that, as suggested by the Government of India, the magistracy should be specifically empowered to order the police to investigate a cognizable offence which under section 157 they have thrown out.

(22) *Section* 164.—(i) In the case reported in I.L R. 1 Cal. 207, the Judges of the Calcutta High Court have held that the words "any magistrate" occurring in this section must be restricted to any person exercising magisterial powers within the place where the statement or confession is recorded. As it is desirable that every facility should be given for recording dying declarations, and that any magistrate should be authorized to take them, His Excellency in Council would add to the section the following explanation:—

> "The words 'any magistrate' mean ordinarily 'any magistrate not being a police officer exercising any of the powers of a magistrate within the place where the statement or confession is recorded,' but they include any other magistrate (including a Presidency Magistrate) when the statement or confession is a dying declaration."

(ii) In order that magistrates recording confessions might, in doing so, have their attention directed to the requirements of the law, this Government in 1887 issued departmental ~~instructions~~ to the effect that every magistrate in recording a confession or statement under this section should (*a*) first record in writing his reasons for believing that the accused is going to make the statement voluntarily, (*b*) explain to the accused that he is under no obligation to answer any question at all, and (*c*) warn him that it is not intended to make him an approver and that anything he says may be used against him. The following precautions were also ~~published~~ prescribed at the same time at the instance of the High Court :—

(*a*) that, if the magistrate doubts whether the accused is going to speak voluntarily, he should remand him to a sub-jail before recording the statement ; and

(*b*) that such confession or statement should not be recorded nor the warning above mentioned given in the presence of ~~the~~ any police officers or of the police officer who arrested ~~and~~ or produced the accused.

These instructions have proved useful in ~~inducing~~ impressing upon magistrates ~~to be more careful~~ the need of care & of a strict compliance with the requirements of the law in this very important matter ~~and~~ If they are brought to the notice of the Government of India in view of ~~their being~~ its being considered whether in some form they may not with advantage be embodied in the code ~~in such manner as may be considered most suitable~~.

(23) *Section* 167.—The Inspector-General of Police considers that fifteen days—the total period of remand permissible under this section—is not sufficient in all cases and suggests that District and Divisional Magistrates should be empowered to extend this period to thirty days in all. His Excellency in Council is inclined to support this proposal.

(24) *Section* 170.—In Judicial Department letter, dated 2nd April 1894, No. 794, the Madras Government supported a proposal to amend this section with the object of exempting certain railway servants from its operation, by withdrawing the obligation that such persons shall execute bonds to attend at the Magistrate's Court on the date fixed by the Police officer for the appearance of the accused, it being left to the magistrate to summon them in accordance with the provisions of section 72 ~~of the code~~. His Excellency in Council thinks that this concession ~~might with advantage~~ may unobjectionably be extended to such public servants of the postal, telegraph, medical and other public departments as the Local Government may, from time to time, by notification designate. It is not necessary that all classes of servants of these departments should be included in the exempt~~ed from the operation of the section~~ion, but in the interests of the public it is ~~most~~ undesirable that such officials as postmasters, telegraph masters, medical officers in sole charge of dispensaries, and others in like case should be called away from their duties except in accordance with a summons fixing the date for their attendance.

Vanny

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(25) *Section* 172.—The Calcutta High Court has held (I.L.R., XX Cal., 642) that statements made under section 161 are not privileged, merely because they are incorporated in the diary referred to in section 172. It is represented that this ruling places an unnecessary impediment in the way of the obtaining of information by the police, as such information is likely to be withheld if it is generally known that, at the instance of the accused, statements made to the police are liable to production in court. The law has already recognized the need of treating such information exceptionally in that (section 162) it declares that statements made to the police are not to be signed by the informants so that they may not be deterred from speaking ~~their~~ mind freely to the investigating officer, ~~and there seems to be no reason why, while~~ the law forbids the use of such statements against the accused, ~~it should enable him to call for them for the purpose of contradicting the prosecution witnesses in examination.~~ ~~Further,~~ the diary referred to in section 172 consists almost entirely of copies of statements recorded under section 161 and, if the latter are not privileged, it is of little use allowing a privilege to ~~the use of~~ the former. In these circumstances, His Excellency in Council would suggest that the privilege allowed to police diaries should be extended to statements made to the police, other than dying declarations under sec. 161 [illegible]

(26) *Section* 176 *as amended by Act V of* 1889.—The Chief Presidency Magistrate suggests that sub-section (1) of this section should be amended by the addition of the following proviso,

/ other than dying declarations

As I/

Moreover

by

also

& recorded by

by

6

C. Thungavolo

~~so as to~~ dispens~~e~~ jing with a magisterial enquiry in cases of death from natural causes in prison :—

> "Provided that no enquiry into the cause of death of a person who dies in prison need be held except in the cases mentioned in section 174 (1), clauses (*a*), (*b*) and (*c*)."

It is said that a magisterial enquiry is quite unnecessary in such cases, seeing that the prisoner's death is certified by the medical officer in charge of the jail to have occurred from natural causes, that the work imposed becomes heavy in times of epidemic, and that the magistrates are exposed in such times to a needless risk of infection ~~themselves~~ and of spreading it among others.

to themselves

The obligation to hold an inquest on *every* prisoner who dies in jail in the Presidency town appears to have been taken from section 9 of the Coroner's Act, IV of 1871, which, however, excepted from the obligation "cases in which the death has been caused by cholera or other epidemic disease." If this ~~exemption~~ were reintroduced into the present law, the arguments advanced, so far as it relates to the heaviness of work and the danger in ~~times~~ of epidemic, would be met, ~~and~~ His Excellency in Council ~~is not satisfied that there are good grounds for~~ extending the exemption to all cases of death from natural causes in prison as proposed by the Chief Presidency Magistrate. ~~On the other hand~~ it is very desirable that ~~there should be~~ an independent investigation ~~to satisfy~~ the friends and relatives ~~of the deceased~~, as well as the general public, ~~that the death in such cases was the result of natural causes~~.

Tow

exception

seasons

W^d. not

in the case of deaths occurring in jail the obligation of hol

sh^d. be maintained for the satisfaction of the deceaseds

The Hon'ble Mr. Bliss is in favour of accepting Mr. Jones' suggestion

(26) *Sections* 188 *and* 193.—There ~~is~~ no objection to the amendments of these sections in the manner ~~contemplated~~ in paragraphs 11 and 12 of appendix II to the Home Department letter under reply.

appears to be

of

indicated

(27) *Section* 195 (i).—The expression "so referred to" ~~appearing~~ in para. 3 of the section ~~should~~ be omitted, as it ~~might~~ be held to prohibit a court on the trial of a case in which sanction had been given from trying a charge which ~~did~~ not require sanction, and which, but for this provision, it could have tried. The expression, moreover, is unnecessary; for, if the offence disclosed by the facts is not referred to in the section, its trial does not require sanction and there is, therefore, nothing to prevent the court from framing a charge of it; if, on the other hand, the offence is referred to in the section, it would be covered by the words "any other offence," without further reference to the section.

may possibly

does

may

(ii) In the case of perjury in the alternative—one deposition being before one court and the other before another court—it should not be necessary to require the sanction of both the courts, as the Bombay High Court ~~has~~ held in I.L.R., II. Bom., 34, and X. Bom., 190. The law should be made clear on ~~this~~ point.

the

appears to have

Melder

1/8/07

(iii) There have been ~~many~~ contradictory rulings as to the ~~scope~~ meaning of the term "court" in this section, especially, as regards the point whether sub-registrars are "courts" when exercising certain powers. The attention of the Government of India is ~~particularly~~ invited to the decision in I.L.R., 15 Mad., 138.

(28) *Section* 200.—A proviso ~~should~~ may be added to this section to the effect that "when the complaint is made by a court under section 476, nothing herein contained shall be deemed to require a magistrate to examine the complainant."

(29) *Section* 202 (i).—The section in its present form seems to empower a magistrate to require a police officer *beyond the local limits of his jurisdiction* to enquire and report upon a case committed within his jurisdiction. As it is undesirable that such an extensive power of reference should be vested in the magistracy, it is proposed to insert the words "within his jurisdiction" ~~after~~ between the words "police officer," and "or such other person"; so as to restrict the scope of the section

(ii) It is considered that the power of reference conferred by the section should also be extended to cognizable cases in which the magistracy ~~does~~ is not prepared to declare that he distrusts the truth of the complaint. Under the present law, if a complainant in a cognizable case presents his complaint direct to the magistrate, ~~instead of~~ and not to the police, the magistrate ~~has no power to call in the aid of the police to work up~~ the prosecution case, ~~and this state of things is most inconvenient~~ in the interests of justice.

(unless he sees ~~no~~ reason to distrust ~~the truth~~ the truth of the complaint / can say that he / appears to have no)

investigate & report upon

It may be often

(30) *Section* 203 (i).—A provision ~~should be added so as~~ to make it clear that the magistrate should record his reasons for the dismissal of a complaint under this section. ~~In the case reported in I.L.R., 14 Cal., 141, the Calcutta High Court has held that even as the section stands at present the magistrate is bound to record his reasons, but it is desirable that the section itself should provide for this distinctly.~~

seems required

that the Magte. shd. have this power; & the Govt. would accordingly recommend that the section be modified accordingly.

~~(ii) The section calls for amendment also with reference to the ruling of the Madras High Court in Criminal Revision Case No. 119 of 1883, in which the Honourable the Judges held that the dismissal of a complaint for a non-cognizable offence for failure to pay process fees was illegal. This ruling seems to be opposed to the provisions of section 31 of the Court Fees Act, 1870, which contemplates the levy of fees in such cases.~~

vi

(31) *Section* 236.—In 1885, in I.L.R., X, Bom., 124, it was held that, where one of the alternative charges fell under one section of the Penal Code (*e.g.*, section 182, false information) and the other under another (*e.g.*, section 193, perjury), these two were distinct charges and therefore, unless one or the other charge was positively proved to be false, a conviction thereon could not be sustained, simply on the ground that the two statements on oath, one under each charge, were contradictory and one must therefore be false and the other true. ~~A somewhat similar view was also expressed by the Calcutta High Court in I.L.R., 10 Cal., 937~~. The form appearing in schedule V, No. XXVIII (ii), clause (4), on the other hand, seems to contemplate ~~the institution of a charge containing~~ alternative charges of perjury. ~~As the Code, however, is destitute of a distinct provision to this end, much confusion is caused and a number of~~ miscarriages of justice ~~have taken place~~. ~~It is therefore~~ desirable that the law should, ~~with sufficient clearness,~~ provide for ~~conviction for~~ contradictory statements, no matter what section of the law the specific statements may fall under.

S/S section

only under the same section (s. 193 I.P.C.).

of perjury, it seems

& to aid in the suppression

the trial in the alternative of

of

To prevent

7

false

(32) *Section* 239.—His Excellency in Council supports the amendment suggested by Mr. Justice Knox of the Allahabad High Court

with regard to the trial of two or more persons at one time, who are accused of perjury & certain cognate offences committed in the course of the same inquiry or trial. The Govt. does not believe that the accused will be prejudiced by the course proposed

& 245

(33) *Sections* 244.—It seems desirable that magistrates should be empowered to acquit the accused at any stage of a summons case, after hearing the complainant ~~(if any)~~ the prosecution witnesses (if any), without being under the necessity of hearing all the defence witnesses. The law as at present stands does not seem to allow this.

of

Even

(34) *Section* 263.—It is suggested that it should be made obligatory on Magistrates and Benches acting under this chapter to record shortly the substance of the evidence in *all* summary trials. It is often impossible for ~~such Magistrates and Benches~~ the Courts to say at the beginning of the trial whether an appealable sentence will be passed or not. ~~Further,~~ the existence of such a record would ~~not only~~ serve as a useful check on the proceedings of summary courts, ~~but would also~~ be ~~of use~~ for the completion of the ~~judgment~~ record required by section 264 ~~in cases~~ where it is found defective, without the appellate court being compelled to order a new trial

in the event of an appeal

Record

It

is

and

also

available

as has occasionally happened.

There wd. be little or no additional burden imposed by this requirement upon the court, since ordinarily every officer presiding ~~[illegible]~~ at the trial of even a summary case is in the habit for his own guidance of making a short memo. of the evidence as the case proceeds.

5

Note. The I.G. refers to the local jurisdiction of the Pol. offr. not of the Magte. A Dist. Magte. may want to depute ~~the~~ the Police Inspector of Saidapet for special reasons to conduct an inquiry at Conjeveram

S.K. 17/8

Note

Please see also the notes & orders against Sec 213

+ The Hon. the Gov. [illegible]

[illegible]

a suggestion made by Mr. Justice Best

a great and

The Govt. of

a discretion shd. be entrusted

(35) *Section* 282.—~~It is~~ recommended that th~~e section may be revised so as to~~ to ~~give~~ the presiding judge ~~a discretion~~ to proceed with the trial, notwithstanding the death or unavoidable absence of a juryman. Such an event is more likely to occur in a protracted trial, and it would be a unnecessary waste of time to begin the trial *de novo* in every such case. If ~~on~~ those ~~occasions~~ a difference of opinion arises among the ~~rest of the~~ remaining jurors, the absentee should be reckoned as concurring with the minority.

should exist at the close of the trial

in circumstances

(36) *Section* 288.—(i) Under section 205 a magistrate may dispense with the personal attendance of the accused, even in *warrant* cases, if he sees fit to issue a summons in the first instance. If, during the progress of the trial before the magistrate, it turns out that the case is one to be committed to the sessions, the evidence taken in the pleader's presence ~~in such a case~~ should be equally available under section 288. It is therefore suggested that after the words "in the presence of the accused" in this section should be inserted the words "or of his pleader if his personal attendance has been dispensed under section 205."

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Letic considered

of

(ii) It ~~is~~ seems also advisable to add to the section an explanation to the effect that the deposition of a witness taken before a committing magistrate shall be held to be sufficiently proved by the certificate under the magistrate's hand that it was duly taken in the presence of the accused or of his pleader if his personal attendance has been dispensed with under section 205.

from the obligation imposed on other Magistrates of

This Govt. sees no ground for excepting

(37) *Section* 337.—(i) The words "other than a Presidency Magistrate" occurring in the last paragraph of the section should be omitted. ~~There seems to be no reason why~~ Presidency Magistrates ~~should not be made to~~ record their reasons for tendering a pardon ~~as other magistrates are now required to do.~~

-ing

required

(ii) Attention is invited to the amendments suggested to this section by the Commissioner of Police, Madras, and the District Magistrate of ~~Tinnevelly~~ Trichinopoly.

The Hon Mr Grose is not in favour of notifying the

(38) *Section* 345.—(i) It is recommended that criminal intimidation ~~of the less grave type included in~~ the table in the first paragraph of the section ~~should be removed therefrom~~ and inserted in the second paragraph, so as to make it compoundable only with the permission of the court. Criminal intimidation ~~is rather a difficult offence to bring under the law and, in view of the facility which at present exists of compounding it, persons resort to it too readily for purposes of wrongful gain. It is a more nefarious crime than hurt, assault or mischief which are, more often than not, acts committed on sudden impulse or under temporary, though perhaps mistaken, sense of grievance. Moreover, it~~ is generally practised on the weak ~~who~~, in view of the lack of character which ~~might~~ have made them the object of crime, should have the support of court in compounding with the offender.

the offence of

shall be

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(ii) This Government would also suggest that the offence of kidnapping under section 363 of the Indian Penal Code should be made compoundable with the permission of the court when *the accused is one of the parents of the kidnapped minor or person*, ~~as, otherwise, the law would practically require a magistrate to widen the breach between a husband and wife who may desire to be reconciled.~~

or legal guardians

the great

(39) *Section* 350.—His Excellency in Council is in favour of enacting a provision, similar to that contained in this section, permitting a Sessions Judge, on sanction ~~by~~ of the High Court in each ~~individual~~ case, to ~~hear a case which has been begun by another~~. Such a provision ~~seems to be necessary to avoid~~ public inconvenience in protracted sessions cases ~~which would otherwise be caused in the present state of the law~~ by the death or illness of the Sessions Judge.

the

which might otherwise be occasioned

continue a trial

would

very

Judge

(40) *Section* 352.—It is recommended that the words "or near" may be inserted after the words "remain in" in paragraph 2, so that witnesses who remain within ear-shot, ~~after having been ordered to leave the court may be made punishable by law.~~

the Court may have control over

Follows the views of the majority, the Hon Mr Grose dissenting — See page by [illegible]

(41) *Section* 367.—It is suggested that a clause ~~may~~ be added to the section to the effect that, when a shorthand writer is appointed to a court, the judge ~~should be at liberty to~~ *dictate* ~~the~~ judgment or ~~the~~ charge, ~~as the case may be.~~

may

(42) *Section* 381.—With reference to the remarks in paragraph 2 of appendix II to the Government of India letter under reply, ~~it may perhaps be as well that~~ a provision ~~is~~ inserted enabling the District Magistrate or the senior Sub-Divisional

may be

Magistrate present at head-quarters to issue a warrant under this section (after the High Court's order of confirmation is received) in the event of death, removal, incapacity or absence of the Sessions Judge.

(43) *Section* 387.—The provision contained in sections 83 and 84 as to endorsing arrest warrants ~~should~~ be made applicable to distress warrants issued under this section, so as to facilitate the distraint and sale of moveable property found beyond the local limits of the jurisdiction of the sentencing court.

(44) *Section* 391.—~~The section [illegible] be amended so as to show clearly~~ that, ~~in cases where~~ a sentence of whipping is added to one of imprisonment, the term of ~~such~~ imprisonment ~~shall be~~ at least [illegible] fifteen days. This Government is not in favour of ~~the suggestion that whipping [illegible] should not be combined with imprisonment except in the cases of incorrigible offenders for whom imprisonment has been already found inefficacious.~~

(45) *Section* 392.—His Excellency in Council agrees with the Government of Bengal ~~in considering that~~ *the interpretation of the expression "in the way of school discipline"* ~~occurring in the section should be left~~ to the discretion of the court as at present.

(46) Chapter XXVIII of the Code contains no provision for the execution of a sentence of forfeiture of property passed under section 62 of the Penal Code. It is suggested that th~~e~~ omission ~~may~~ be supplied by the addition of a section to this chapter somewhat similar to section 88 ~~of the Criminal Procedure Code~~. The Code ~~is also destitute of any provision~~ for the revision of a sentence where solitary imprisonment has been awarded as part of the punishment, ~~but~~ it is found impracticable, owing to the health or temperament of the prisoner, to carry it out. It is recommended that a provision analogous to section 395 may be enacted.

(47) *Section* 411.—This section should be repealed as it confers enormous powers on Presidency Magistrates (while the Code does not provide for adequate supervision over their work) and appeal should be allowed in all cases where a Presidency Magistrate passes a sentence of imprisonment exceeding one month or of fine exceeding 50 rupees. Further, in the opinion of this Government provision should be made allowing the High Court to exercise all the powers over Presidency Magistrates which a District Court now exercises over 1st-class magistrates within its jurisdiction.

(48) *Section* 423 (i).—~~A cla[illegible] should be added to the effect that,~~ where a sub-divisional magistrate reverses a co[illegible]ion on appeal on the ground of want of jurisdiction in the convicting court and there exists no court *subordinate* to him competent to retry the case, ~~he shall, if he does not think fit that~~ the case ~~should be ordered to be~~ committed, refer it to the District Magistrate who ~~shall~~ either dispose of it himself or transfer it to a competent court for disposal.

~~(ii) Power may, with advantage, be given to appellate courts to enhance the sentences of lower courts when disposing of appeals.~~

(49) *Sections* 425 *and* 442.—These sections ~~should be revised~~ so as to provide distinctly that, where a sentence of imprisonment is reversed or modified, the High Court should issue either a warrant or send a copy of its order *direct* to the officer in charge of the jail in which the prisoner is confined, ~~so~~ that he may have the benefit of the order as soon as possible. A copy of the judgment or order of the appellate court ~~should of course continue to be~~ sent to the court by which the sentence appealed against or revised was passed.

(50) *Section* 426.—Under the present law, if a sentence of rigorous imprisonment has merely been suspended by an appellate court pending the decision of an appeal by a convicted person, the period of such suspension is not excluded in computing the term of such imprisonment and, in consequence, the accused ~~in many cases~~ undergoes *simple*, ~~imprisonment~~ instead of *rigorous*, during a considerable portion of his term of prison life. ~~In the opinion of His Excellency in Council~~ there is no more hardship in excluding the period of simple imprisonment in such cases than in not reckoning in a sentence of imprisonment the time spent in jail before trial. It is therefore suggested that the section should be amended so as to provide that no period during which a sentence is suspended sh[illegible] form part of any sentence of rigorous imprisonment.

The intention of the ~~section~~ is

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The drafting should make this clear.

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Appendix

The object of distress is sometimes frustrated by requiring that the warrant shd be sent thro' the Dist. Magte.

S.417. H.E. in C. concurring with the Judges of the H. Ct. is ~~considering~~ not in favour of the suggested amendment of this section so as to confer on the Crown the right of appealing against an order of acquittal passed by the H.C. in the exercise of its original crimil. jurisdn. ~~Have occurred~~ Miscarriages of justice ~~must have~~ occur no doubt occasionally, but in this Pr. they ~~have~~ are not of such ~~a few cases~~ frequency as to justify this Govt. in supporting a proposal which wd materially lower the dignity of the High Court, the supreme judicial tribunal in the country. The finality of the H. Ct. decision is generally acquiesced in by the people & is a valuable element in the administration. In the opinion of H.E. the final it wd be a public misfortune to disturb ~~unnecessarily~~ the confidence which this finality inspires & H.E. in C. believes that on the contrary the remedy ~~[illegible]~~ wd be more prejudicial than favourable to the cause of justice

except on the clearest proof of commensurate advantage in the remedy provided by the ~~measures~~ measures suggested. As to this,

proposed is likely to

It is understood that this represents H. Ex's views.

Based on the remarks of H. Ms. H.E. is opposed to this

Note

Please see notes & order against Sec 417. H.E. & the Hon. Mr. [illegible] in favour of the proposed amendment the [illegible] of the High Court [illegible] was especially desired would be found in the [illegible]. It is not clear whether the letter should contain the views of the Govt on the points raised.

there seems to be some doubt as to wheth defendant ~~in a maintenance case~~ under section 488 ~~could~~ may be examined on oath, i ~~perhaps be as well~~ that an explanation ~~is~~ be added to the section embodying the de of the Calcutta High Court.

(iv) Provision should also be made owering ~~criminal~~ courts to pass the ~~as civil courts are~~
~~(a)~~ orders in terms of a omise or razinamah
~~now permitted to de~~
~~(b)~~ *interim* orders ~~deciding~~ stions ~~regarding~~ lawful guardianship of the ~~a~~ child when dealing h an application for maintenance.

(v) (VI) A clause should also be inse on the lines of the last clause of section 148 allowing ~~magistrates~~ to make an orde to costs incurred in the trial.

(58) *Section* 495.—The third parag of this section, added by ~~Act X~~ of 1886, is a source of great inconvenience in the of police cases in magistrates' courts in this presidency, ~~there being~~ no proseg vakils f~~or these courts nor, as in the~~ ~~Northern India,~~ court head constables o spectors to conduct ~~such~~ prosecutions. It not ~~unfrequently~~ happens that ~~almost~~ he ~~efficient~~ police officers in a division take part in ~~the~~ investigation and ~~consider~~ ~~difficulty is experienced in such cases~~ in deputing a ~~proper police~~ officer unconn with ~~the case~~ to prosecute it before a magistrate. ~~It is therefore essential tha section should be amended so as to allow the police officer who conducted the estigation of a case to prosecute it with the previous sanction of the court.~~

(59) *Section* 498.—It is recommen hat the powers conferred by this section may be extended to District and Sub-divis magistrates ~~as well~~. Copies of remand orders are now received by these magistrate d they have therefore opportunities of interfering where bail has been impr ly refused or an excessive amount required, which they ~~should~~ avail themsel f, without the trouble of referring the matter to the High Court or Court of Sessio Greater supervision will thus be exercised over this important matter in respect o ich a great deal of hardship ~~is believed~~ ~~to be now~~ caused to the people by ignora designing sub-magistrates; ~~and in the end the sub-magistrates themselves woul e to exercise their powers with more discretion and justice than they now appe so.~~

(60) *Section* 514.—~~The following~~ edure ~~is suggested for~~ adoption in ~~a case~~ ~~of the kind~~ referred to in paragraph 21 ppendix II to the Home Department letter under reply:

~~If~~ a breach of the bond involving ure occurs *before* the death of the surety and if it is desired that the bond should be orced, a notice should be issued to the representatives of the deceased requiring m to show cause why they should not pay the amount of the bond out of his pro y and, in default of good cause shown or payment of the amount, a warrant sho e issued against the property, if any, left by the deceased. If, on the other ha e breach entailing forfeiture occurs *after* the surety's death, the liability again is property should continue only until his heir reports his death and a fresh surety obtained.

(61) *Section* 517.—This section shou be amended so as to empower a court to pass orders for the disposal of *all* property ch may have been before it in connection with a case tried, and *not* merely for t isposal of ~~those~~ in respect of which an offence has been committed or which has be used for the commission of an offence as the section now provides.

(62) *Section* 523.—It is ~~suggeste~~ t a clause ~~may~~ be added specifically empowering the magistracy to order the de tion of counterfeit coins, notes or stamps and implements for counterfeiting the s obscene books, pamphlets and other articles referred to in section 292, Indian al Code, and food or drink in a noxious state or in a state unfit for food or drink.

(63) *Section* 526A.—As anticipated Sir Griffith Evans in his speech in the Legislative Council on the Bill which bec Act III of 1884, this section is greatly abused for the purpose of ~~gaining time~~ ruct justice ~~and get at~~ the prosecution witnesses. ~~In view to minimize this evil suggested that the following provision may be added.~~—

(v) The question has been raised whether the Ct. shd not have power to ~~pass~~ make

Insert a suggestion

the Court

where financial considerations forbid, at any rate for the present, or in the near future, the employment of

Concerned have at some stage taken

may

If a police officer has ~~had~~ taken the slightest part in the preliminary investigation the objection allowed by the section is sure to be raised. The Govt. ~~is~~ ~~are~~ well aware of the ~~[illegible]~~ grounds on which the law has been enacted in its present form; but the inconveniences & difficulties in giving effect to it are so great that H.E. the G. considers that in the public interests it may be modified at any rate to the extent of ~~allowing~~ withdrawing the prohibition if the ~~appearance~~ of the police officer as prosecutor has the previous sanction of the Court, & the sanction to be accorded if the Court is of opinion that the accused will not be materially prejudiced thereby.

is desirable

in regard to the

The ~~suggestion~~ attention of the G of I is invited to this suggestion.

competent

in the numerous subordinate courts that exist.

the police

it is then often very difficult if not impracticable, having in view the importance of the case,

the

conduct the pros

all

capable

of admitting to or reducing bail

may be

to be ed

the circumstances

in the exercise of ~~the~~ their powers of superintendence

With regard to the

~~the~~ it is suggested that if

The Govt. adopts the suggestion of the H Ct that

property

recommended

(a)

(b)

(c)

~~notwithstanding~~ Jury

To delay in view of going over

or otherwise obstructing justice

To a considerable extent this evil is due to the ... of the ... the fact that ... does not oblige ... an adjournment ... closed ... the prosecution evidence is Ordinarily ... the taking of the prosecution evidence should not be stopped because of an application under the section. To make this clear it seems advisable to add to the section an explanation to the following effect:—

This misapprehension is widespread

(51) *Section* 437.—(i) The nce between the High Courts which existed in
1885 as to the meaning of the exp n "further enquiry" occurring in this section
no longer exists, ~~the ruling in I.L~~ VIII. Mad., 336, having been ~~superseded by~~
~~the Full Bench decision in I.L.R.,~~ ~~V. Mad., 334, a majority of six out of seven~~
~~Judges of the Calcutta High Court~~ ~~ng adopted~~ (*v.* I.L.R., XV. Cal., 658) the view
~~taken by the Bombay High Court~~ ~~I.L.R., X. Bom., 131, and the Allahabad High~~
~~Court having ruled similarly in Quee~~ ~~Empress *v.* Choto (I.L.R., IX. All., 52).~~ As all
the High Courts are now agreed there may be further enquiry even in cases
where no additional evidence is fo oming, ~~no further action seems called for.~~ ~~It~~
~~is however suggested that~~ the words esh enquiry" may be substituted for the words
"further enquiry" ~~so as~~ to remove possibility of misapprehension ~~as to what all~~
~~the High Courts now hold to be the~~ ~~ntion of the section.~~

(ii) A proviso should be ad to the section to the effect that, in the case of
a discharge under sections 209 and 2 , notice should be given to the accused before
the case is re-opened.

(52) *Section* 439 (i).—It is sirable that a provision should be inserted,
similar to that contained in section 7, enabling the High Court to issue a warrant
for the arrest of an accused person cases where that ~~High~~ Court is exercising its
powers under this section. Under ~~present law~~ the High Court has no power to
order the arrest of the accused in su ses, but can only issue a notice to him and,
if he absconds, it has no means of en ing his attendance.

(ii) Attention is invited to Government's letter of the 3rd October 1894,
No. 2388, and the Home Departmen ply thereto, having reference to a proposal to
amend this section so that the power therein conferred may be exercised only after
the records have been called for and rused.

(53) *Section* 443.—The word harge" should be replaced by the expression
"offence alleged to have been comm ." In the Code "charge" is a technical word
~~and is used elsewhere in a peculiar~~ ~~se.~~

(54) *Section* 475*A*.—His Exc ency in Council is in favour of the amendment
suggested by the Chief Commissioner Assam.

(55) *Section* 480.—It is recom nded that section 174, Indian Penal Code, may
be added to the list of contempts li to be dealt with under the section, so that
witnesses who disobey summonses m e punished summarily. The inclusion of the
section ~~as proposed~~ will, it is belie have a salutary effect in lessening the delays
that are so frequent in criminal tri owing to the non-attendance of parties and
witnesses on frivolous excuses. Th ght of appeal which section 486 allows against
an order under section 480 seems be a sufficient safeguard against ~~any possible~~
abuse of power which the proposed nsion of the section ~~may involve~~.

(56) *Section* 487.—This Gov ent is opposed to the amendment suggested by
the Government of Bengal on the g d that its adoption would lead to more trouble
and delay than arises under the ex g law. Even if the section were altered as
proposed an application would in alm every case be made to the High Court for a
transfer to another court and general with success.

(57) *Section* 488 (i).—The e essions "or if they are living separately by
mutual consent" and "or that they living separately by mutual consent," ~~as the~~
~~case may~~ be, occurring in clauses 2 3 of the proviso to the section might be
omitted, seeing that, in a large num of cases where an allowance is ordered, the
parties are so living, and ~~that~~ the pr on that a wife is not entitled to an allowance
"if without sufficient reason she r es to live with her husband" affords quite
sufficient protection to the husband.

(ii) It should be provided any allowance that may be ordered under this
section should be made payable from *date of the complaint* and not from the *date*
of the order as at present. Such a sion seems to be equitable and will tend to
discourage attempts on the part of d dants to delay the proceedings ~~in maintenance~~
~~cases~~.

(iii) In the case reported I.L.R., ~~16,~~ XVI Cal., 781, the Calcutta High Court
has held that the proceedings under section being of the nature of civil proceed-
ings, the person sought to be charge competent witness in his own behalf. As

in the section

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Letters considered

Code

the

will confer.

probably

Note
Attention is invited to the notes against Sec 475 at the bottom of page 57. The provision suggested already exists in the Code - Vide para 3 sec 475

Sigour

A Govidas

The P[illegible] also be inclined to ad[illegible]oviso to the effect ~~that~~

~~Provided~~ that the court may refuse to [illegible] such powers, if, for reasons to be recorded in writing, it considers that such notification i[illegible]r the purpose of vexation or delay or for defeating the ends of justice.

Explanation.—The court, notwithstan[illegible] application made or proposed to be made under section 526, may, and, as a rule, shall, ex[illegible]l the witnesses named for the prosecution, without waiting for the result of such applicati[illegible]

~~It is true that~~ there is nothing in t[illegible]ection precluding the examination of the prosecution witnesses before an ad[illegible] is granted; on the contrary, the intention of the legislature seems to be in [illegible]f the postponement of the grant of adjournment until the evidence for the [illegible]tion ~~has~~ been taken. But as there seems to be a general misapprehension on [illegible]int, it is perhaps just as well that a distinct provision should be made in the [illegible] as to remove all uncertainty.

shall [illegible]

to the now

(64) *Section* 552.—It seems unne[illegible] extend the provisions of this section to mofussil courts as proposed by the G[illegible]ent of Bengal in 1886, seeing that section 560 which was added to the Co[illegible]891 contains sufficient provision for compensation in such cases.

(65) A provision should be adde[illegible] Code to the effect that a court shall not be bound to take notice of any obje[illegible]n it overrules, unless the pleader presents his objections in writing, in wh[illegible]e paper so presented together with the court's written order rejecting or [illegible]g the evidence with brief reasons therefor shall form part of the record. [illegible]ence of such a provision practically compels subordinate courts to write d[illegible]thing (whether relevant or not) a pleader chooses to say, lest an omission [illegible] objection might be taken undue advantage of by unscrupulous pleaders i[illegible]ellate courts.

(66) It is suggested that offenc[illegible] sections 404, 409, 417, 418, 419, 420, 465, 468 and 471, Indian Penal [illegible] be made cognizable by the police. Schedule II requires amendment als[illegible]ence to sections 263A and 477A, Indian Penal Code, enacted by Act III [illegible]India).

/403,

Schedule II

S.7

for Cl

II

A.G.

13/9/55