16/3/04 ✓

Judicial (1895) Department.

ORDINARY PRINTED.

G.O., No. 2093

DATED 10 Oct 1895

INDEXED.

[Despatch Abstract.]

COMMENCEMENT OF SENTENCES.

Communicating to the Inspector-General of Prisons opinion of the Advocate-General that, in cases in which the High Court reverses the conviction and passes a fresh sentence in supersession of the sentence of death passed on a convict by a Sessions Judge, the new sentence should run from the date on which it was pronounced.

BACK PAPERS.

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

FURTHER PAPERS.

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

No. 2093, JUDICIAL, 10TH OCTOBER 1895.

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

READ—the following papers:—

From A. G. CARDEW, Esq., M.A., Inspector-General of Jails, to the Chief Secretary to Government, dated Camp, Madura, 14th September 1895, No. 797-C.

I have the honour to submit the following case which has arisen in the Salem Central Jail. Convict No. 8983, Sengoden, was convicted under section 302 of the Indian Penal Code and sentenced to death on the 30th April 1895 by the Sessions Judge of Salem, subject to the High Court's confirmation. The High Court on the 28th August in Criminal Appeal No. 269 reversed both conviction and sentence, convicted the accused of hurt and sentenced him to rigorous imprisonment for nine months. The Superintendent enquires whether the High Court's sentence runs from the 30th April or from the 28th August 1895.

2. The case is covered by the terms of Rule 261 of the Jail Code, but the circumstances are peculiar and it does not seem to me that that rule correctly applies. A prisoner sentenced to death is, until the High Court's confirmation is received, almost as much in the position of an under-trial prisoner as of a convict. His case is not that of an ordinary convict pending appeal, because his sentence cannot be carried out until the appellate order is received. In any case the period so undergone is not one of rigorous imprisonment, no hard labour being enforced. It thereby appears to me that the sentence of nine months' imprisonment passed on convict, No. 8983, should date from 30th August. The matter is not, however, free from doubt, and possibly the Advocate-General's opinion must be obtained.

3. Copies of the Sessions Court's warrant and of the High Court's order, together with a nominal roll of the prisoner, are enclosed.

From the Government Solicitor, Madras, dated 1st October 1895, No. 569.

ABSTRACT.—Forwarding the following opinion of the Advocate-General, dated 30th September 1895:—

OPINION.

The conviction of the accused of hurt is a conviction by the High Court and the sentence of nine months' rigorous imprisonment was a new sentence passed by that Court. I am of opinion that that sentence runs from the date on which it was passed, viz., the 28th August 1895. Suppose that the new sentence passed by the High Court had been rigorous imprisonment for three months, could it be argued that the sentence began to run from the 30th April, and, therefore, as more than three months had elapsed, the prisoner must be discharged without undergoing any rigorous imprisonment?

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

ORDER—No. 2093, Judicial, dated 10th October 1895.

The Advocate-General's opinion will be communicated to the Inspector-General of Prisons for information and guidance.

(True Extract.)

Chief Secretary.

To the Inspector-General of Prisons.

Exd. A. Raitt.

2

Govt. of {1895} Madras.

JUDICIAL.

Issued

Recd. *Encl.*

G.O., No. 2093, 10th October 1895.

OCTOBER.

Commencement of Sentences.

Communicating to the Inspector-General of Prisons opinion of the Advocate-General that, in cases in which the High Court reverses the conviction and passes a fresh sentence in supersession of the sentence of death passed on a convict by a Sessions Judge, the new sentence should run from the date on which it was pronounced.

CURRENT No. 4413

3

JUDICIAL.

JAIL (1895) DEPARTMENT.

From

THE INSPECTOR-GENERAL OF ~~JAILS~~, Prisons

To

THE CHIEF SECRETARY TO GOVERNMENT.

CHIEF SECRETARY GOVERNMENT OF MADRAS 16 SEP 1895

Dated 14-
Despatched } September 1895.
Received 16/9
Rep. 17/9

No. 4797

ENCLOSURES. 3

Subject.

Submits for the orders of Government the case of Convict No. 8983 Sengoden who was sentenced to death by the Sessions Judge Salem which in revision by the High Court was reversed to 4 months R.I. and begs to be informed the date from which the High Court's sentence should take effect.

Endorsement No. 2274.

Referred to the Advocate General for favour of opinion

R. 2679/95 (By order)

Lionel Bowden
24.9
Asst. Under Secretary

Copy forwarded
Dy. Superintendent
24/9/95
To the Govt Advs

TO BE RETURNED WITH REPLY.

the sen... ...nt. re...

Ag. Supdt. of Jails

Enclosure

(Seal.) 4/ Warrant.

To,

The Superintendent of the Central Ja
at Salem.

Whereas at the Session held before me
on the 19th, 22nd, 23d, 24th, and 25th days of
April 1895, Seupoden, 2nd prisoner in case
No. 27 of the Calendar at the said Session
was duly Convicted of the offence of Cul
-pable homicide amounting to murder
under Section 302 of the Indian Penal Cod
and sentenced to Suffer death, Subject to
Confirmation of the said Sentence by the Hig
Court of Judicature at Madras;

This is to authorize and Require you, the
said Superintendent, to receive the said Seupo
into your custody in the said Jail, together
with this warrant, and him there safely to kee
until you shall receive the further warrant
order of this Court, Carrying into effect the
order of the said High Court.

Given under my hand and the Seal of the
Court, this 30th Day of April 1895.

(Signed) W. J. Lake
Sessions Judge

(True Copy)
Salem Central Jail
6 September 1895.

L. M. Standen
Ag. Supdt. of Jail

Enclosure No. 5

Salem Central Jail.

Warrant of Commit-
-ment of Convict No.

8983 Seupodan.

4417

In the High Court of Judicature at Madras

Wednesday, the Twenty eighth day of August
One thousand eight hundred and ninety-five

Present:—

The Honorable Sir Arthur J. H. Collins Kt. Chief Justice

and

The Honorable Mr. Justice Parker.

Referred Trial No. 41 of 1895.

1. Sellappan and
2. Seupodan } 1st and 2nd Prisoners.

Trial referred by the Court of Session of the Salem Division for Confirmation of the Sentence of death passed upon the said Prisoners in Case No. 27 of the Calendar for 1895.

Criminal Appeal No. 269 of 1895.

Appeal by the 1st and 2nd Prisoners against the said Sentence.

This Case coming on for hearing upon perusing the Petition of Appeal, the record of the evidence and proceedings of the said Court of Session and the further evidence submitted in accordance with the order of this Court dated 12th July 1895; and upon hearing the Arguments of Mr. Venkatasramiah Chetti, for the 1st Prisoner

and of Mr. P. R. Sundaralingam for the 2d Prisoner Vakils engaged for the defence under G.O. dated 17th December 1884, No. 3273 Judicial, and of the Public Prosecutor in support of the Conviction, it is ordered that the Sentence of death passed upon the said 1st Prisoner Sellappan bey and the same hereby is, Confirmed and his appeal dismissed, and that the Con-viction of, and the Sentence of death passed upon, the 2nd Prisoner Singodan bee and the same hereby are reversed; and that the said 2nd Prisoner Singodan bee convicted of hurt under Section 323 and 114 Indian Penal Code, and that he be sentenced to nine months' ri-gorous imprisonment.

By the Court.
(Signd) C. G. Todhunter
Deputy Registrar
29-8. Appellate side.

(Signd) Arthur Collins
Chief Justice.
(") G. A. Parker.
Judge.

(True Copy)
(Signd) W. J. Tate.
Sessions Judge.

Sessions Court, Salem
August 1895.

(True Copy)
L. Saunders
ag. Supdt. of Jail

Salem Central Jail.
6 September 1895.

Exhibit No. III

Salem Central Jail

Copy of order of the High Court of Judicature at Madras in Criminal appeal No. 269 of 1896.

5
2
4413

Nominal Roll of Convict No. 8983 Name Veerapatan.

Crime	Sentence	Date of Sentence	Adjudicating Court	Age	State of Health	Conduct in Jail	Result of the appeal to High Court	Number of previous Convictions, if any, and Remarks
Section 302 I.P.C.	Sentenced to death.	30 April 1895.	Sessions Judge Salem.	22.	Good.	Good	Sentence of death reversed - and 9 months R.I. awarded in lieu. vide order dated 28th August 1895 from the High Court of Madras	

Salem Central Jail
6 September 1895.

Sd/ Saunders
Asst. Superintendent Central Jail

1

Enclosure No 1

Salem Central Jail

Nominal Roll of

Convict No. 8983

Sengodan

1st 20/3 Jud L
2nd 10/10/95

Jud 5

4413

No. C. 797.

Camp Madura
OFFICE OF THE INSPECTOR-GENERAL OF ~~JAILS~~ Prisons,
Dated 14th September 1895.

18

From

A. G. CARDEW, Esq., M.A.,

INSPECTOR-GENERAL OF JAILS,

To

THE Honble J. F. Price CSI

CHIEF SECRETARY TO GOVERNMENT,

SIR,

3 Enclosures.

I have the honour to submit the following case which has arisen in the Salem Central Jail. Convict No: 8983 Sengoden was convicted under Section 302 of the Indian Penal Code and sentenced to death on the 30th April 1895 by the Sessions Judge of Salem, subject to the High Courts confirmation. The High Court on the 28th August in Criminal appeal No: 269 reversed both conviction and sentence convicted the accused of Hurt and sentenced him to rigorous imprisonment for 9 months. The Superintendent enquires whether the High Courts sentence runs from the 30th April or from the 28th August 1895.

2. The case is covered by the terms of Rule 261 of the Jail Code, but the circumstances are peculiar, and it does not seem to me that that rule correctly applies. A prisoner sentenced to death is, until the High Courts confirmation is received, almost as much in the position of an Undertrial prisoner as of a Convict. His case is not that of an ordinary convict pending appeal because his sentence cannot be carried out until

4

the appellate order is received. In any case the period
to undergone is not one of rigorous imprisonment, no
hard labour being enforced. It thereby appears to me
that the sentence of 9 months imprisonment passed
Convict No 8983 should date from 30th August. The 28
matter is not, however, free from doubt, and possibly the
Advocate General's opinion must be obtained

3. Copies of the Sessions Court's warrant
and of the High Court's order, together with a nominal
roll of the prisoner are enclosed.

I have the honour to be
Sir,
your Most obt Servant
R Carden
Inspr Genl of Prisons.

No.

12

CURRENT NO. 4663.

Judicial (1895) Department

From
Ernest Barclay
Government Solicitor
Madras

To
The Chief Secretary to
Government
Ootacamund

No 569
Dated 1st October 1895
Recd 3d do.
Regd. 4th do.

GOVERNMENT OF MADRAS * CHIEF SECRETARY * 3 OCT. 1895 RECEIVED

Encls X cm. 4413 with
Encls: rcts.

Forwarded with enclosures with reference to the Order of Government dated 26 September 1895 No 2274. Judicial

to Ernest Barclay
Government Solicitor
Sutherland &c

For 1991 dy 24.9.95 Rs.
938 dy 18.5.92 Rs.
1563 dy 9.9.89 Rs.
886 dy 30.4.91 Rs.

Chrs 4413 & 4663.

Cr. cover dy 10th October 1895. No 2093.
P.S.

The Advocate Genl's opinion will be comd to the I. Genl of Prisons for information & guidance.

Rs 8.10.5
9/10/95

8/9/95
To the I. Genl of Prisons
dated 10/95
23/10/95

From the Govt Solicitor, Madras
dy 1 October 1895 No 569

Abstract - Forwarding the
Judgment of the 30-9-95
dy 30-9-95

13/ CURRENT NO 4663

NP

Opinion

The conviction of the accused of hurt is a conviction by the High Court, and the sentence of nine months rigorous imprisonment was a new sentence passed by that Court. I am of opinion that that sentence runs from the date on which it was passed, viz the 28th. August 1895. Suppose that the new sentence passed by the High Court had been rigorous imprisonment for three months, could it be argued that the sentence began to run from the 30th. April, and, therefore as more than three months had elapsed the prisoner must be discharged without undergoing any rigorous imprisonment?

Madras
30th. Septr 1895

H. St. Spring Branson

Advocate General.

(True Copy)

H. Lucas Barclay

Govt Solicitor

Sutherland Dr

No. 2093, JUDICIAL, 10TH OCTOBER 1895.

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

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

ORDER—No. 2093, Judicial, dated 10th October 1895.

The Advocate-General's opinion will be communicated to the Inspector-General of Prisons for information and guidance.

(True Extract.)

Chief Secretary.

To the Inspector-General of Prisons.

Exd. A. Raitt.

15

Govt. of {1895} Madras.

JUDICIAL.

Issued

Recd. *Encl.*

G.O., No. 2093, 10th October 1895.

OCTOBER

Commencement of Sentences.

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First copy sent to Press.

Returned for signature.

Despatched in print.

Number of copies required: Order complete. / Letter only. / Order complete with Letter.

Read again G.O., No. dated 18

Current No.

Enclosures to C. No.

Order of Government

Letter of Government.

Statement with ditto.

Papers not filed up, being meant for despatch in original.

N.B.—

A = Print in full
B = Not to be printed.
P = Print abstract only.
Q = Print heading only.

30-11-11

9-10-34 U

Dis No. 71 / Mag of 95

Head quarter Deputy Mag 15.

Dated 26th July 189

From

dlR Ry.

T. Gopalasamy Iyer Asst B...

Hd Quarter Dy Magistrat

Kumaon

To

The District Magistrate of

Kumaon.

Sir,

I have the honor to bring to your notice that an 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 I.P.C added by Act III of 1895 (India).

I have the honor to be,
Sir
Your most obedient Servant

(Sd) T. Gopalasami
Head Qr. Dy Magte

actum at

...on Ber No 843 dated 795
...y submitted to Chief Secretary
...overnment, Judicial Department
...rders.

...am not aware of any enactment
...mending Schedule II of C.P.C with
...ference to the two new sections of the
I.P.C referred to by the Deputy
Magistrate.

Kurnool
13th August 1895

D.t Magte

No 18.

CUDDAPAH Sessions COURT,
8th December 1894.

FROM

W H Urlob ESQUIRE,
the Sessions Judge,
CUDDAPAH.

To

The Chief Secretary
to Government
Madras

SIR,

With reference to G. O. dat
17th November 1894 Judicial No 279
I have the honour to suggest
that the alteration in Section 2
Criminal Procedure Code recom
-mended by the Honourable Mr Jus
Knox is most necessary.

2. In the Sessions Court of Nort
Arcot there were two instances
inconvenience caused by the pres
law. The trial of 2 persons for
committed in the course of one
action at the December Sessions

30-11-11

on bus No 843 and 795

y submitted to Chief Secretary

overnment, Judicial Department

rders.

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Magistrate.

Kurnool
13th August 1895

Dt Magte

Nº 18.

CUDDAPAH Sessions COURT,
8th December 1894

FROM

W H Welsh ESQUIRE,
the Sessions Judge,
CUDDAPAH.

To

The Chief Secretary
to Government
Madras

SIR,

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17th November 1894 Judicial Nº 279
I have the honour to suggest
that the alteration in Section 2
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-mended by the Honourable Mr Jus
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Arcot there were two instances
inconvenience caused by the pres
law. The trial of 2 persons for
committed in the course of one
-action at the December Sessions

30-11-11

number Rs 843/395

the September Sessions three persons were tried for perjury committed in the course of one transaction and law necessitated the formal repitition 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 Court caused by these tedious proceedings may in some instances become very serious.

I have the honour to be
Sir,
your most obedient Servant

Anvetsh Print name here

Sessions Judge

CURRENT No 653/

Judicial Department

From W. H. Welsh Esqre
Dist Judge
Cuddapah

To The Chief Secretary
to Government
Madras

CHIEF SECRETARY
8 DEC 1894
GOVERNMENT OF MADRAS

Dated 3rd December 1894
Recd 8

No 18.

Ltr—n

Subject

Suggesting, with reference
to G. O. No 2795 Judicial
dated 17th November 1894,
that the alteration in
Section 239 Criminal Pro-
cedure Code, recommend
ed by the Hon'ble Justice
Knox is most necessary.

Ref paper

86

Sessions Court, Salem
9th January 1895.

No. 10

28

From

T. M. Horsfall Esquire,
Ag. Sessions Judge,
Salem.

To

The Honorable the Chief Secretary
to Government,
Fort St. George, Madras

Sir,

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

2. Section 236. Criminal Procedure Code. The absence of any express provision 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

prep- ry, an positive; and so follows that a vast mass of perjury of this kind escapes punished. 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 conviction 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 anyone being at the time aware of the fact. Take the case of an acquittal

the Re... [illegible] ...t the Ca...

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.

I have the honor to be,
Sir,
Your most obedient Servant,

Priel mace

A.J. Sessions Judge.

J.J.

86

From,

The Ag. Sessions Judge,
Salem.

To,

The Honorable the Chief Secretary
to Government,
Fort St. George, Madras.

Dated 9th
Despatched do } January 1895
Received 11th

No. 10

Enclosure. "

CHIEF SECRETARY
GOVERNMENT OF MADRAS

Subject.

Submitting his suggestions with reference to G.O. dated 17th Nov. 94, No. 2795, Judicial Department.

Magt Dept

BELLARY COLLECTOR'S OFFICE.

Dated 14th January 1895.

Judl Dept No. 6

From A. Tremenheere Esqr
~~COLLECTOR OF~~
Dist Magte
BELLARY.

To

THE Chief Secretary to Government
Judicial Department
Madras

Sir.

In obedience to Government order 2795 / 17 Nov: 94, I have the honor 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 (XVII. 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

the Re... [illegible] ... Dist. the Case

Magistl

REVENUE DEPARTMENT.

From Dist Magt.
THE ~~COLLECTOR~~ OF
BELLARY.

To
THE Chief Secretary to
Government Judicial
Department
Madras
Magistl Memorandum No. 6

Dated 14th
Despatched 15th } January 95
Received 17th

Enclosures.

Abstract.

Submitting suggestions
for the revision of the
Code of Criminal
Procedure.

Government Pleader's Office,
High Court,
Madras, 14th January 1895.

No. 26.

From
E. B. POWELL, Esq.,
Government Pleader,
Madras.

To
The Chief Secretary to Govt.,
Fort St. George.

Sir,

With reference to the Proceedings of Government dated 14th November 1894, No. 2795, Judicial, I have the honor 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 case where that Court is exercising its powers under S 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

no means of enforcing his attendance - Such a case has actually occurred quite recently.

Now in cases where Government appeals against an acquittal under Section 417, there is an express provision - § 424, 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.

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

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 provision of the Code are abused is in reference to § 526A.

9. Under the provisions of this section if an accused person ~~satisfies~~ 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 § 526A. 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

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.

I have the honor to be,

Sir,

Your most Obed't Serv't,

[illegible] Private name here

Government Pleader.

195

Jail Dept.

From

The Government Pleader,

Madras.

Dated 17th January 1895.
Received 18th January 1895.

No. 26.

CHIEF SECRETARY
18. JAN. 1895
GOVERNMENT OF MADRAS

Submitting his remarks on the General revision of the Code of Criminal Procedure.

G. 3 300--24-7-94.

CURRENT NO 243

No. 10

City Police Office.

Madras, 19th January 1895

From Colonel H. D. H. Cox
THE COMMISSIONER OF POLICE,
MADRAS.

To The Chief Secretary to Government
Fort Saint George
Madras.

Sir,

With reference to G. O. dated 17th November 1894 No. 2795 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 Housebreaking by night is not triable exclusively by the Court of Session or High Court, & 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

T

the Re... at the ... not the ...

CURRENT NO 243

Jud Dep

From.

The Commissioner of Police
Madras

To

The Chief Secretary to Govt.
Fort St. George

Dated 19th January 1895
Received 21
Reg. 22

SECRETARIAT
GOVERNMENT OF MADRAS

No. 10.

The Code of Criminal Procedure.

Suggesting certain proposals for the Amendment of ——

CURRENT NO 246

Godavari District Court.
Rajahmundry 3rd January 1895.

No. 102. 198

From.

G. T. Mackenzie Esquire
The District Judge
Godavari.

To The Honorable Mr E. Gibson
Offg Chief Secretary to the Government of
Madras.

Sir,

I have the honour to reply to G. O. dated 17th November 1895, No 2795, judicial, regarding the Criminal Code.

2 The proposed new section 94 has been drawn to suit provinces where the Judge, the District Magistrate, and Several Joint Magistrates

the Re... st th... (D... nat. the Co...

all reside in one station. In this Presidency the Session Courts of Berhampore, Rajahmundry, Chingelput 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 pur-
suance of a previously arranged
plan. The rule that requires

such witnesses to be tried separately 20
for perjury is unnecessary and
it undoubtedly throws useless
labour on the Courts.

5 I beg permission to offer sugges-
tions 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 in-
-sisting 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 magistrates' 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 promi-
nently 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 suffi
cient to prove the deposition."

I have the honor to be
Sir.
Your most obedient Servant.

name here S. T. Mackenzie
Acting District Judge.

Judicial (1895) Department

From

The District & Sessions Judge
Godavari

To

The Chief Secretary,
to the Government of
Madras.

Date 21st
Deposd do } January 1895

Enclosures Nil

No 102

Subject

Submitting suggestions on
the proposed revision of
the Code of Criminal
Procedure referred to in
G. O dated 17th November
1894 No 2795 Judicial.

139—89. 100.

No 31.

SOUTH CANARA DISTRICT MAGISTRATE'S OFFICE,

Mangalore, 22nd January 1895.

From

W. H. Welsh Esquire,
The District Magistrate of
South Canara.

To

THE CHIEF SECRETARY TO GOVERNMENT,
Judicial Department,
Fort St. George.

Sir,

With reference to order No: 2795, Judicial, dated 17th November 1894, I have the honor 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, Third Edition, held that the dismissal of a complaint for a non-Cognizable offence under Section 263 for failure to pay process fees is illegal. Section 31 of

the

Judicial Dept 5) Dol

the Court Fees Act No. III 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 provi-sions of the Criminal Procedure Code I beg to suggest that the neces-sary amendment may be made.

I have the honor to be

Sir,

Your most obedient Servant.

W. H. Welsh

P. Duraiswami Aiyar

Asst. Dist. Magistrate.

340

Jud Dept

1895.

From,
The District Magistrate of
South Canara.

To,
The Chief Secretary to Government,
Judicial Department,
Fort St. George.

Dated 22nd January 1895.
Received 29th

Jud Disposal No. 31 Mng 04/1895.

ENCLOSURE
UNDER SECRETARY
27 JAN 1895
PUBLIC ETC DEPT

Subject.

Offering suggestion on the Revision of the Criminal Procedure Code.

No. 18

288

Presidency Magistrates' Court,
Egmore, Madras, 23rd January 1895.

N 56

FROM

A. R. Jones, Esquire,
Chief Presidency Magistrate,
Madras.

To

The Honorable Mr E. Gibson
Acting Chief Secretary
to Government
Fort St. George

Sir,

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

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 enquiry when any person dies in prison. This was not done by the Coroner before his office

Jail
office was abolished now is it done at the
Central as other Jails in the mofussil.
When a prisoners death is certified by
the Medical Officer to have occurred
from ordinary and natural causes I
do not see the use of a magisterial
enquiry. 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 enquiry may be advisable
and more or less necessary but when
an ordinary and natural death
occurs in a prison such an enquiry
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 enquiry in
cases of 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

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. & c."

2. The following offences should I
think be cognizable by the Police and
the 3rd 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. I.P.C.
Criminal Breach of Trust by a public
Servant Section 409 I.P.C. Cheating
sections 417, 418, 419, 420 I.P.C. 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 offices 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

3. The wording of section 488 might be made 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 favor 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

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 "in that sufficient reason she refuses to live with her husband" is quite sufficient protection to the husband.

I have the honor to be
Sir,
Your most obedient Servant

O. R. Jones

Chief Presidency Magistrate

28

Apr

CURRENT NO. 288

From

Judl Dept

The Chief Presidency Magistrate
Madras.

To

The Acting Chief Secretary
to Government
Fort St George

D- 23 January 1895
R. 24.
Rep 25

No 18

GOVT. CHIEF SECRETARY
24 JAN 1895
GOVERNMENT OF MADRAS

Submitting in
accordance with G. O.
dated 17 November 1894
No. 2795, Judicial, suggestions
for the amendment of the
Criminal Procedure Code.

[illegible]

CURRENT NO.

Tinnevelly District Magistrate's
Office, Dated 27th January 1895

From

341
348

A. W. B. Higgens Esquire
Actg: District Magistrate,
Tinnevelly

To

The Chief Secretary to Government,
Judicial Department,
Fort St: George

Sir,

In reply to G.O. No. 2795, 17-11-94, I have
the honor to enclose in original the remarks
of the following officers 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.

I have the honor to be,
Sir,
Your most obedient servant

Actg: District Magistrate

2

27-1-95 Compd ARR 29-1-95

1895 No. 371

Tinnevelly District Magistrate's Office

From

The Acting District Magistrate
of Tinnevelly.

To

The Chief Secretary to Government
Judicial Department
Fort St. George.

Dated 27th } January 1895
Received 29 }

No. 71

Enclosures—5

SECRETARIAT
29 JAN 1895
GOVERNMENT OF MADRAS

Subject. Forwarding the remarks of certain officers regarding the Revision of the Code of Criminal Procedure

Reminder no. 23 Sec. 11-1-1895 + Letter issued + Hf in Dispatch

Order No. 78 Etc 1895

Tinnevelly Head Asst. Magte's office

1895

From

J. A. Munro Esquire
Head Asst Magistrate
Tinnevelly

To

The District Magistrate
Tinnevelly

Dated 8th } January 1895
Despd. 9th }

Dis - No. 10 of 95

Sir

I have the honor to reply to your M 1573/20.12.94 on G.O. M 2795 dated 17th November 1894.

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 para 2 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.

I have the honor to be
Sir
Your most Obedient Servant

Peter Moore Pte Madras
Asst. Magistrate

AH

5
Jud
5.
321

General Dept. Deputy Trichy No. 71
Tinnevelly, dated December 1894.

368

From

A.R.Ry.
Rao S. A. Shunmuga Sundram Pillai Avl.
Ag Deputy Magistrate
on General Duties
Tinnevelly.

To

The District Magistrate
Tinnevelly.

Sir,

In reply to your endorsement No. 1573, dated 20th December 1894 on G.O. No. 2795 (Judicial), 17.11.94, I have the honor to offer the following remarks on the proposed general revision of the Code of Criminal Procedure Act X of 1882.

2. The Code after it came into force has been subjected to so many amend-

Containing all the amendments is a extreemely 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 ~~bale~~ 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

bail against his own warrant. will be a difficulty as to whom application for bail should be presented when there is no Sessions judge and where 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 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 [illegible]

Contain in it all the amendments in
exch there was an attempt to burn or
bury the dead body against the orders
of the Village Headman.

5. Section 54 — 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, and
offences grow rife solely on the support
given to the delinquents by harbourers &
protectors of them or disposers of the
property and 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 "Cognizible" 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. Section 156 & 159 It is in practice
that in cases where the Police under —
Section 154 dispense with local in-
vestigation of a Cognizable offence
the Magistrate either Suo motu or at
the request of the [illegible] Concerned
[illegible] not the law

Court, [illegible]

5. evidently there is no provision of law authorizing such a procedure. But as no inconvenience is felt by such orders, Magistrates may be legally authorized to make such orders which simply tend to detection of crime and promotion of Justice.

6. Section 239 — Whenever a number of persons are accused of offences under sections 193 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 the Code

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 I.P.C. 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 in con-

13. Section 54 — Whenever a surety bond is executed under section 106 Criminal Procedure Act it is in practice here to call on the Village Inmisiff of the Surety's Village to sign the bond as an attesting witness in support of the solvency of the Surety. Where a surety dies within the period mentioned in the bond, the Village Inmisiff 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 Moffusal Courts.

I have the honor to be

Sir

Your most Obedient Servant

Asst Deputy Magistrate

Printed name

7

39 N

No 2795 1894

COLLECTOR 3 JAN. 95 VINNEVELLY

From
The Deputy Magistrate
on Genral Duties
Tinnevelly

To The District Magistrate
Tinnevelly

Dated 29
Despd 31 } December 1894
Rcvd

No: 728.
Enc: Nil

Reporting on the proposed revision of the Code of Criminal Procedure Act X of 1882

Send under abstract
Mrs DO
4/1/95
5 Jan 4 31

No 76

From

The Public Prosecutor
Tinnevelly

To

The District Magistrate
Tinnevelly

Sir

With reference to your endorsement No 1573/20-12-94 on G. O. dy 17th November 94 No 2795 I have the honor to make the following remarks relating to the provisions of the code of Criminal Procedure.

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

SS 144 & 145. — The order to be passed under section 144 directing a person to do or abstain from doing a certain act in ~~certain~~ emergent cases may be made exparte and it is allowed to remain in force for not more

than 2 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 exparte order which may be passed. 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 Kuthba and recite imamat 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 & preventing imminent danger to life and property

may demand no doubt the restraint for a while of the exercise of ~~persons of~~ lawful rights 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.

ss 157, 169 & 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 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 memos 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 memos containing the abstract of the information which they may get in the course of the investigation.

ss 209, 210 & 218 Cases are sometimes committed to the Sessions Court in the absence of prima 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 Magistrate with directions to try 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.

ss 202, 226, 271 & 494 — In some cases the committing magistrates frame erroneous imperfect or no charges. The real charge against the accused committed to the sessions court 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 facts 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.

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

ss. 258 & 417 — Some of the 2nd & 3rd 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 records 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 2nd & 3rd class

still meaning that the Court

8th

on questions
2nd & 3rd class Magistrates as well 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 oreginal
side.

I have the honour to be
Sir
Your most obedient servant
A A K Martin
Public Prosecutor

Print name

22-1-95

No 205 Jnc
1895

From

The Public Prosecutor

Tinnevelly

To

The District Magistrate

Tinnevelly

Dated 22nd
Despd -
Received } January 95

No 16

Enclosures Nil

Submitting remarks relating to the proposed Amendment of the Criminal Procedure.

From

The Public Prosecutor

Tinnevelly

To

The District Magistrate of

Tinnevelly

Sir

With reference to your endorsement No 1573 dated 17th November 1894 Judicial, I have the honor to submit the following remarks

2 (I) The amendments proposed to be made in Sections 337, 497, 156 and 159 appear to be necessary.

(II) The exemption proposed to be made in favour of Railway servants stands on the same footing 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

wrought by inadvertence 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 re-trial unless some more evidence is likely to be produced. I consider that, even if no additional evidence were forthcoming, the revising 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 1st class Magistrates but not the Magistrates of the 2nd and 3rd class who are likely to misuse the power.

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

(i) Section 340 (1) Pleaders should be allowed to appear before other persons permitted by permission of the Court to intervene in criminal proceedings. Under the present law it allows men of questionable character only to defend the accused but debars them from conducting the prosecution. Though such persons would sometimes put their heads to disadvantage as a result unqualified view from appearing for the defence of the accused the law might prevent their employment on behalf of complainant unless they make the existing evidence etc.

(ii) Sec. 497 and 498. Detention of persons remanded to custody whereby 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 dispo-

subordinate Magistrates are practically uncontrolled in the matter of remanding persons, though section 16 requires that a copy of the order of remand by a Magistrate other than a District or Divisional Magistrate and the reasons therefor be forwarded to the District Magistrate within 24 hours. Though copies of remand orders under section 344 of the C.C.P. are being required from sub-Magistrates, neither the District Magistrate nor the Sessions Judge could interfere, even further than they are convinced that the remanding Magistrate is in the circumstances of the case. The absence of any legal authority empowering the District Magistrate to interfere in such cases has led to effect. The powers of reviewing the proceedings of the Sub-Magistrates in the matter should, I think, be extended to the District Magistrate.

I have the honour to be
Sir
Your most obedt. Servt.
F. V. Lancaster Hale
Deputy Magistrate

Paid remd

H.P.R. 26-1-95

No 202
1895

From

The Head Quarts. Deputy
Magistrate of
Tinnevelly.

To

The District Magistrate
Tinnevelly.

Dated 23rd
Desp.d do } January 1895
Rec.d

No Next

Ene. nil

Former Reference — 1573
20-12-94

Subject

Submitting proposals
Regarding the revision of
Criminal Procedure Code.

50
(pm) B
37/

Tinnevelly
23rd January 1895.

Dis No 72
Spec of 95.

From,

M. R. Ry
C. Subramania Aeyer Avargal
The Treasury Deputy Collector & Magistrate
Tinnevelly

To,

The District Magistrate
Tinnevelly

Sir,

Referring to your endorsement No 1573 dated 12th December 1894 on Government order 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 general 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 the 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 to 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

dispossess 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 prosecution under Section 182 I.P.C on a report by the Police that information given by them was false, should himself bring the case to suit ~~his~~ 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 I have occurred to me on a Consideration

of the subject.

Section 15. The tenure of office of Bench Magistrates should be restricted to 3 years. They can of course be reappointed.

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 I.P.C 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 ... to recorded by the Police. Either necessary.

at large unless the interests of

Sanction should not be given in such cases or the Police should be directed to read over the statements and get the necessary acknowledgement 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

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 finds him. The complainant who is in some cases ~~guarded~~ 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

at large unless the interests of the prosecution or the safety of the person of the accused require his detension under Custody.

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

I have the honour to be,
Sir,
Your most obed[t] Servt
Chas Lushington
Collector & Magistrate

Paid postage

25/11/30
Rec[d]
13-1

25 JAN. 95.

From,

The Treasury Dy Collector and
Magistrate
Tinnevelly

To,

The District Magistrate
Tinnevelly

Dated 23d January 1895
Recd

Dis No. 72 of 95
Acc

Subject

Submitting proposals and suggestions as regards the amendment of the Criminal Procedure Code.

1895 Jud Dept 2 Nos 371

No. 97 of 95

Coimbatore District Magistrate's office 27th January 1895.

518

From,

Herbert Bradley Esqre,
District Magistrate
of Coimbatore

To.

The Chief Secretary to Government,
Judicial Department,
Madras.

Sir,

With reference to Government order, dated November 17th 1894, No. 2795 Judicial, I have the honor 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 office 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

4. Section 45. A provisio
the headman of a village
cremation or burial of c
in some cases prove use
the power would be very r

5. Section 57. The proposed
is likely to be useful.

6. Section 68. The Code lay
Summons shall be served
or by an officer of the cou
This provision might be
more elastic so as to en
in Forest cases to be se
of the Forest Department,
I mention Forest cases
where a Summons has to
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for the Police to be emplo
The Forest Subordinates
and can with much
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amendment

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ed in serving it.
ars on the spot
less difficulty
ably also a Sum-
r possibly

a liquor dealer could in many cases
be served much more easily by a Peon
or Abkari officer than by the Police.

7. Section 193. I am not aware of any
inconvenience being felt in this Presi-
-dency.

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 sepa-
-rate 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 of Pro-
-cedure and
the orders of certain departments,

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 removeable from office without the sanction of Heads of Departments might be added - Nothing could be easier than by complaints against, say, the wh- or establishment of some Forest ranger to get the whole of them Summon -ed to a Court, and to plunder the forests of the ranger during their absence - I know of one case in which the whole of the Subordinates in a range were Simulta- neously Summoned to attend a and not many miles away, and I know of

of at least one case in which a Range officer has been maliciously prosecuted.

10. Section 204. Section 202 permits the post -ponement 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 prose- -cutions - If the number of Sanctio

a tendency to decrease, it is, I think, attri-
-butable to the reasons given in para
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 3 out of 5 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
-mons

upon juveniles, it seems inadvisable that a man whose sentence of imprison-
-ment is less than 15 days should be whipp-
-ed.

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. Other-
-wise 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 amend-
-ments 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 addi-tional evidence is forthcoming or not - If a reopening 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 Com-plainant. It subsequently claimed that power to do this is conferred upon it by this section - This power, if it exists, would be a most danger-ous one, as the High Court might be led away by some unscrupulous interloper and might pass entirely unjustifiable

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 sugges-tion 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 pro-vide another surety.

21. Section 552. If this section is made applicable to the Mofussil, orders passed under it should be appeal -able -

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 -

I have the honor to be
Sir,
Your most obed[t] servant
, marking my Pencil mark
For District Magistrate

E.V.

392

1895

From

The District Magistrate
of Coimbatore

To

The Chief Secretary to
Government
Judicial Department
Madras.

CHIEF SECRETARIAT
30. JAN. 1895
GOVERNMENT OF MADRAS

No. 92 of 95

Dated 27th January 1895
Received 30

Enc nil

Making certain suggestions
to amend the Criminal Pro-
cedure Code

CURRENT NO. 513 Judl Dept

No. 60

Court of Session, Coimbatore
28th January 1895.

From,

T. Weir, Esq.,
Session Judge,
Coimbatore.

To,

The Hon'ble E. Gibson,
Offg. Chief Secretary to Govt.
Madras.

Honorable Sir,

Referring to G.O, dated 17th November, 1894, No. 2795-Judicial, I have the honor to state that I have no remarks to make on the amendments suggested in the Code of Criminal Procedure, Act X of 1882.

I have the honor to be,
Hon. Sir,
Your most obedt. Servant,

Sessions Judge.

abstract
1895

CIRCULAR NO. 39

Judicial Department

From

The Sessions Judge,
Coimbatore.

To,

The Asst. Chief Secretary
to Government,
Madras.

CHIEF SECRETARY'S OFFICE
30 JAN. 1895
GOVERNMENT OF MADRAS

Dated 28
Recd 29 } January 1895
Read 30

No. 60

Enclosure.

abstract

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

No. 112 427 NELLORE COLLECTOR'S OFFICE,

Dated 29 January 1895

From ~~C. D. Macleane~~, Esq.,
Collector and District Magistrate
of Nellore.

abstract

To the Chief Secretary to Government
Madras

Sir,

With reference to Government Order dated 27th November 1894 No. 2771 Judicial I have the honor to state that I have no remarks to offer.

I have the honorable
Sir
Your Most Obedient Servant
P. Wyse
Assistant Magistrate
for the Magistrate

DMG

[Eng.: 15-1-91.]

From the District Magistrate 127
of Nellore.

To the Chief Secretary
to Government
Judicial Dept
Madras

Dated 29th January 1895

No. 112.

Read 31/1
Rep 1/2 Subject
Stating that he has no remarks
to offer in reference to G.O. No 2795
dated 27th November 1894.

CHIEF SECRETARY
31. JAN. 18
GOVERNMENT OF MADRAS

No. 142

OFFICE
OF THE
COLLECTOR & MAGISTRATE,
MASULIPATAM,
KISTNA DISTRICT.

Dated 29th January 1895.

From, J. N. Atkinson Esquire
and District Magistrate
The Acting Collector, Kistna District.

To,

The Chief Secretary to Government,
Judicial Department,
Fort St. George.

Sir.

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

1. 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.

Section 252. Clause II, section 20 of the Court Fees Act VII of 1870 prescribes the levy of process fees in all noncognizable 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 nonpayment of process fees. But some warrant cases are non-cognizable, and when the complainant in such noncognizable 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 noncompoundable warrant case the complainants 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.

I have the honor to be.
Sir.
your most obedient Servant.
Print name J. M. Atkinson
Acting Collector.
District Nagpur.

copd 1891
compd 166.

Section 252. Column II. Section 20 of the Court Fees

Jud.

442

189

Jud D

FROM,

THE COLLECTOR, & District Magistrate

KISTNA DISTRICT.

To,

THE Chief SECRETARY TO GOVERNMENT,

Judicial DEPARTMENT.

FORT ST. GEORGE.

Dated 29th January 1895

Despd:

Recd: 1/2

CHIEF SECRETARY'S OFFICE
GOVERNMENT OF MADRAS
1 FEB. 1895
No. 995.

Enclosures.

Subject.

Submitting proposals for the amendment of the Criminal Procedure Code.

446

No. 547.

Ostocamund Prisons

OFFICE OF THE INSPECTOR-GENERAL OF ~~JAILS~~,

Dated 30 January 1895.

From

A. G. CARDEW, ESQ., M.A.,

INSPECTOR-GENERAL OF ~~JAILS~~, Prisons

To

THE

CHIEF SECRETARY TO GOVERNMENT,

SIR,

No Enclosure.

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

A. Civil Procedure Code

Section 339. Words should be added to this section requiring payments of monthly subsistence to be made to officers in charge of Jails during ordinary business hours. As the section at present stands such monies can be tendered at any hour or on Sundays or holidays. Refusal to receive them may result in the debtor's release, which may afterwards be held to have been illegal.

Section 340. The words "while in intermediate custody or" should be inserted before the words "in jail". There is no reason why the sums dis-

-bursed

disbursed for the debtor's maintenance before he reaches the Jail should not also be recoverable as costs.

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 Honourable 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 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 Honourable Judges 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[x] 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 6 months' rigorous imprisonment instead, no warrant having meantime been issued.

[x] Gl. 10th January 1894 No 34 Judicial. Endorsement dated 21st February 1894 No 346 Judicial, and this office No C/555 dy 6th March 1894.

Section 381. A provision of law enabling the District Magistrate or Senior Subdivisional 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 Oct. 1894.

Section 391. Questions relating to this section were considered in Go. 5th February 1891 No 243 and 14th December 1892 No 2309. 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

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. 18th May 1892 No. 938. 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.

Section 426- With reference to the Advocate General's opinion recorded in G.O. 21st April 1883 No. 962 Judicial, 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 para 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.

I have the honour to be,
Sir,
Your most obedient servant
Paul Mac. Alg. Cardew
Inspector General of Prisons.

446

JUDICIAL.

JAIL (1895) DEPARTMENT.

From

THE INSPECTOR-GENERAL OF ~~JAILS~~ Prisons

To

THE CHIEF SECRETARY TO GOVERNMENT.

CHIEF SECRETARY'S OFFICE GOVERNMENT OF INDIA 1 FEB 1895

Dated 30 January 1895.

Despatched

Received 1/2

No. 547

ENCLOSURES. Nil

Subject.

Submitting his reply to G.O. 17 Nov. 1894 No. 2795 Judicial regarding suggested amendments in the Codes of Civil and Criminal Procedure.

Trichinopoly District Court
30th January 1895

No. 208.

478

From

R. D. Broadfoot Esquire
Ag. District Judge of
Trichinopoly

To

The Hon'ble Mr. E. Gibson
Ag. Chief Secretary to
Government
Fort St. George

Sir,

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 honor 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

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 2nd 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

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 Rajunamah, 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. Lawyers, class pleaders take advantage of

this

the Criminal Code gives to the appellate Court in such a case.

(c) In certain cases – Chiefly Civil cases the burden of proving some points is on plaintiff and of proving others is on defendant. In such a case, of Course, plaintiff begins. Suppose he confines his evidence to the points on which the burden is on him. Defendant in reply makes out a strong case on the issues left untouched by plaintiff. Plaintiff then claims to put in further evidence to rebut defendants' case The proper procedure in a case of this Kind should be clearly laid down.

(d) In Civil pleadings, I think the Statement of defence, should not be, as at present, the final pleading, but that it should be served on plaintiff and that then he should either file a reply or take and join issue on the Statement of defendant.

718

I have the honor to be,
Sir
Your most obdt. Servt.
D Thomas Ag. District Judge

Judicial 476

Jud D.

From

The District Judge
Trichinopoly

To

The Chief Secretary
to Government of Madras

Dated 30th January 95.

Recd 3 Febr
Regd 4 Febr
No. 208

UNDER SECRETARIAT
4 FEB 95
JUDICIAL DEPT.

Judicial

Subject

Submitting proposals for the amendment of the code of criminal and civil Procedure with reference to G.O No. 2795 Judicial dated 17th Novr last

Proceedings
4/2

72 abstract 489

Nilgiri District Magistrate's Office
Octacamund 31 January 1895

Refer G.O's 1139

From

J. D. Rees Esqr C.S.,
District Magistrate, Nilgiris,

To

The Chief Secretary to Government,
Judicial Department,
Madras.

Sir

With reference to Government order dated 17th November 1894 No 2795, Judicial, I have the honor to state that I have no remarks to offer regarding the proposed amendment of the Criminal Procedure code.

I have the honor to be,
Sir,
Your most obedient Servant,

R. Sayed Mujeed
Hon District Magistrate.

Encl

Judicial 469

Jud D

From

The District Magistrate

CHIEF SECRETARY TO GOVERNMENT
2 FEB 1895
Nilgiris

To

The Chief Secretary to
Government
Judicial Department
Madras

Dated 31 January 1895
Recd 2 Feb
Regd & Sen. Jail

Report No 1139

Abstract

Amendment of Criminal Procedure code

Informing that there are no remarks to offer regarding the

Disposal Nos 3 to 70 of 189.... Madura District Magistrate's office
30th January 1895

From L. C. Miller Esquire,
Officiating District Magistrate
Madura.

To The Chief Secretary to Government
Judicial Department
Madras.

Sir,

In reply to G.O. No 2795 Judicial, dated 17th November 1894, I have the honor 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 cases 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 Abkari Act I of 1886 has been apparently taken to obviate the necessity of examination in cases reported by Abkari 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 headquarters of District Magistrates (Rajamundry and Bellicherry) and there are Districts (eg Anantapur, Bellary and Kurnool) where there are no offices 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 Rajamundry 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" in 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 none 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

make administrative arrangements under the present Code as suggested by the Government of India in 1890.

As one of my Divisional officers the Deputy Magistrate of Madura Division would however, I 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 thieves and other offenders in their villages to make them

bind

remember 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 screen (for an analogous list vide Section 345).

9 Section 107. The Allahabad High Court, Indian Law Reports, Allahabad 26, points out a possible inconvenience which might arise from the grant of the powers proposed, and in most cases, the difficulty 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

2/ 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 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 Magistrates (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, it

treat

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

3/

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 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 "& the offence of Criminal intimidation when punishable under Section 506 of the Same Code with imprisonment for 7 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 40 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" ie 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

3/ on both sides of the question. On the one hand, a revising officer may find occasionally and really perverse misapprehensions 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 Magistrates' 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

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 & 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 application 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

much latitude the section might be altered by adding a proviso

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.

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 theft 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 to be 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 numbers of cases of injustice and the amounts 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 the arrested persons of benefit of it. In Presidency Towns, all Magistrates or are men who are entrusted with summary powers and who can hear all classes of cases, but Mofussil Second and Third 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 Second and third Class Magistrates as are given by Section 560.

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

I have the honor to be,
Sir,
Your most obedient &
humble Servant
Pro[illegible] Miller
Acting District Magte

R.L
8.V

Judicial 498

Judl D

Magisterial Department.

From

The ag: District Magis-
-trate
Madura.

Dated 30th January 1895.
Despatched 2 February 1895
Disposal No. 70 GENL of 1895

Encl 1.

Read 4/2

CHIEF SECRETARY'S
4 FEB. 1895
GOVERNMENT OF MAD

Subject.

Code of Criminal Procedure
Act V of 1882—
Submitting remarks
and suggestions in regard
to the revision of—.

Madura Division

General Dist & Deputy Collector's / Magistrate's Office,

January 1895

No. 6885

From M.R.Ry. Rao Bahadur. T. Pattabhiram Pillai Avergal

Deputy COLLECTOR / MAGISTRATE OF

Madura Division

To

The District Magistrate
Madura.

Sir,

With reference to your Rone No. 2677 of 94 dated 12-12-94, I have the honor 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.

It may clearly alter the limits without these words

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

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 54. The provision suggested by the Government of Bombay will

no

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, or Sub divisional 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 & 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 immoveable 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 or the
pools of these houses are charged by
the Police with the offence of Gambling
and punished by the Magistracy.

Sections 156 & 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 Shoddapanaikanur
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

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 Telegraph
Departments and all public offi-
cials should be shown this indulgence.
The Police officers 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

Section 193. In cases where there are additional or joint Sessions Judges, a provision may be made for one of them taking ones 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 these 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 joindes 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 joindes. As a rule, the evidence in such cases is the same and none of the accused can possibly be prejudiced thereby.

Sec: 193, 194, 195, 203 or 211 of the IPC

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

3

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

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 & 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 489. Whatever may be the administrative inconvenience any

any Magistrate that orders the prosecution under Section 182 of the IPC 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. 387 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 S.H.O which impliedly means that Sanction should be granted by the Official Superior of the Police S.H.O.

Section 514. The bail bond should deale 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

power, the Magistrates in the Mofussil also should have such powers.

Sections 528 & 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 views. 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 are 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

any

or the Village Magistrate himself is vindictive and tries the case under Regulation IV of 1876 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

I have the honor to be
Sir,
Your most obedient servant,

J Patterson
Deputy Collector. Magistrate.

DEC 1895 RECEIVED

Rle
1895

Camp (Kallakudi)

From
The Deputy ~~COLLECTOR~~ MAGISTRATE of
Madura Dt

To
The District Magte
Madura

Dated 18th January 1895.
Received

Dis No. 48 of 95
Enclosures. (Nil)
SUBJECT.

Offering his 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

await replies from other Subdnl Magtes to whom also reminders have been sent.

a/s Magte.

FR

Received with - Put up a draft if you desire to send any notes on the Code and Law relating thereto. If you do not bring the Rubber to me with the Law Reports called for in my note and the Code as amended up to date. When you have put up the draft I will return the whole to you for submission to Govt along with the amendments

K 22.1

Tanjore District Magistrate's office
1st February 1895

No. 105 Magl. CURRENT No 497

From,

J. Thomson Esquire
Acting District Magistrate of
Tanjore

To,

The Chief Secretary to Government
Judicial Department
Madras

Sir,

I have the honor to reply to Government Order of 17th November 1894 No 2795, Judicial, referring for remarks the proposals on the amend-ment 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 64 and 65, Indian Penal code: -

Reference

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 Rs is imposed and can-not be levied.

Query - Can 24 hours' or only 6 hours' impri-sonment be imposed in default of pay-ment?

I have found different interpretations in different Districts and from Chinglepet Sub-mitted a reference to the High Court but am ignorant of the result. It is clear that 10 Rs 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 Assis-tant magistrate questions the advisability of giving more powers of the sort to village Head-man; 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

be as well to have individual liability specified clearly in the Act.

Section 89 - If it is correct as held in Govern- -ment Order dated 11th March 1890 No 454, Judicial, 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 harbourers 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 1st sentence of the 2nd 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 favourable 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 com- -bining 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

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 prohi-bition 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.

I have the honor to be,
Sir,
your most obedient servant
Pandit Narain Chudhuri
Ag District Magistrate
2-2-28

RS/

Judicial No 497

From.

The District Magistrate
of Tanjore.

To

The Chief Secretary to
Govt. Jud. Dept.
Madras.

Dated 1st
Recd 4 } February 1895

No 105
Mapl.

GOVERNMENT OF Encl: Nil.

Subject.

Submitting proposals for
the amendment of the Code
of Criminal Procedure.

Please put these in type in
Cont. of previous Consols.

Re No 1420 May 95

557

From

C. J. West Esquire
Acting District Magistrate of
Tanjore

To The Chief Secretary to
Government
Judicial Department.

Encl: 2.

Dated Thabrapur 31 January 1895.

Sir,

As directed in G.O No 2795 Judicial
dated 17-11-94 I have the honor to offer
the following remarks on the proposals
to amend the Criminal Procedure Code.

2. The suggestion of Mr Knox referred
to in para 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

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 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. and 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 on appeal being allowed

allowed to the Divisional Magistrates.

5. I have no books in camp with me by which I can verify the statement in para 2 of the Head Quarters Deputy Magistrates 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-cognisable 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 Malahs & have no books of reference with me; and I cannot delay the report to obtain them.

I have the honor to be
Your most obt. servt

for Dt. Magte

Judicial
557
Jud D

From

The District Magistrate
of Ganjam

To

The Chief Secretary to
Government
Judicial Department

Dated Chatrapur 2nd February 1895.
Rec'd 7/2
Rep'd 8/2

Re No 1420 Mag 94.

CHIEF SECRETARY
7 FEB. 1895
GOVERNMENT OF MADRAS

Subject

Forwarding some suggestions on the Criminal Procedure code

To be put up after the Court's previous comments.
6/2/95
9/2

Ref C No 1885 Mag of 94 — Ganjam Head Quarters Deputy Magistrate's office Chatrapur 12th January 1895.

From

Dr R Ry
D. Srinivasarao Pantulu Garu
ag Head Quarters Deputy Magistrate
Ganjam

To The District Magistrate of Ganjam

Sir,

With reference to your endorsement C no 1420 Mag of 94, dated 18th December last to Government order no 2795 dated 17th November 1894, I have the honor to submit the following suggestions.

2. In sec: 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 &c &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 Magistrates' 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

to disbust the bruth of the complainl=, I consider it necessary that there should be a provision enabling the magistrate referred to in Sec: 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-ly the party concerned; and I consider that the omission should be sup-plied; 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 Courts 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 sec. 247 C.P.C. It does not seem to me that Sec: 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 appropiate than section 247. Again Sec 247 relates to Summons cases and the corresponding section which relates to warrant-cases is section 257; but cases of offences which cannot be compounded

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 fee.

I have the te

(Signed) D. Srinivasaraa
Asst. Sessions Judge

(True copy)

2-2-95

for Asst. Magistrate

Procedure

From
W. J. P. Rice Esquire
Offg Senior Asst Magistrate
& Sanjaun

To the District Magistrate
Sanjaun

Dated Berhampur 16th January 1895

915

Sir,

With reference to your footnote endo 1620 & mag 8 94 dated 10-12-1894. to G.O dated 17-11-1894 No 2795 Judl, I have the honor 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 para provides procedure in case of dis-obedience. 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

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compounded

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 bona 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. C. P. C. 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 dispatches 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 seems 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

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.

I have &c
(sd) E P Rice
Ag Union Asst Magte

(True copy)

2-2-95

for Ag District Magte

~~P. C.~~ Disposal No. 132

District Magistrate
VIZAGAPATAM ~~COLLECTOR'S~~ OFFICE
Dated 5 February 1895.

From

F. D'A. O. WOLFE-MURRAY ESQR.,

Ag. ~~Collector~~ Magistrate,

Vizagapatam District.

To

The Honorable J. F. Price,

CHIEF SECRETARY TO GOVERNMENT,

Judicial DEPARTMENT,

MADRAS.

SIR,

Referring to G.O. No 2795 dated the 17th November 1894, I have the honor 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. Sanyasi Raju Magistrate

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

I have the honor to be,

Sir,

Your most obedient servant,

Narayana Rao
by for Ag Dt Magistrate.

for a b
b from

Judicial 620

The District Magistrate
Vizagapatam.

To
The Chief Secretary to Govt.
Judicial Dept
Madras.

Dis Ltr 132

Dated
Desp 15 } February 1895
Recd 9

Enclosures. Nil

CHIEF SECRETARY
9 FEB 1895
GOVERNMENT OF MADRAS

Subject

Forwarding proposals for the amendment of the Criminal Procedure Code as directed in G.O. No 2775 J 17.11.94.

Amendments on Criminal Procedure Code

Section 40

In Government Order no 1765 J 20.9.92 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 henious Offence than robbery its omission in Section 45, clause b, is unaccountable.

Section 71. The Madras High Court held in Indian Law

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 98 but it does not provide for egress as well, as in Section 99. The result is rather anomalous. A provision for the liberation of the individual searching, should be added to it.

Section 195

In Indian Law Report 2 Bombay 34, Rejnia V. Balaji Sitaram, it was held that if it is intended to charge a person with perjury on two contradictory statements, the Section 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 complainant &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

the following amendment.

After the close of the section add

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

Sections 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 I.P.C. by a second 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 C.P.C. a Sub Divisional Magistrate may withdraw the very same case from the Subordinate Magistrates' Courts and try it himself. Under Section 428 C.P.C. an appellate Court can take additional evidence if it thinks it necessary to do so. If Sections 528 and 428 are read together with Sections 423 clause b.1, the appellate Court has evidently powers 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

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 guardian-ship of a child when dealing with an application for maintenance. I think the Magistrates may be empowered to decide such questions.

For Dy Ct Magistrate

1895 Jan 7 620

No. $\frac{O}{49}$ 1,000—10-94.

9829

DEPARTMENT.

No. 716

CHIEF OFFICE OF THE INSPECTOR-GENERAL OF POLICE,

Madras, 8th February 1895.

FROM

M. Hammick Esq. I.C.S.

the INSPECTOR-GENERAL OF POLICE,

TO

THE Chief Secretary

to Government.

Fort St George.

SIR,

Enclosures. 1

I have the honor, with reference to G.O. 17th November 1894. No. 2795 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.

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.

As

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 "habitual" 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

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 clear 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 as 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 provisions of Section 103

is neglected. I think it advisable so 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 so 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 ~~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 period 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 remand 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

might be allowed to extend the period to 30 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 15 days is allowed to the police to work out cases. Indeed I believe a justice can grant any number of remands for 8 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.

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 inquiry" 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 order 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 inquiry. 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 dated the 4th November 1894. No 2761. The matter raised by Colonel Porteous referred to in that Order might be brought to the notice of the Government of India.

There

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 any thing I can say on these vexed questions would throw any new light on them, and I have not therefor touched on them.

I have the honor to be,
Sir,
Your most obedt. Servt.,

M Hammick

Inspector General of Police.

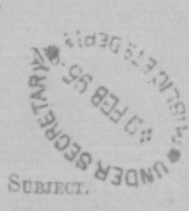
Jud. (1895) Department. 629

From H. Hammick Esq. I.C.S.
Inspector-General
of Police,

To Puisne

No. 716

Dated 8th February 1895.
Received 9th
Regd 11/2



Subject.

Submitting remarks on the proposed amendment of the Code of Criminal Procedure.

Part-in continuation
Ptd
R
11/2

CURRENT No. 634

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

1074

— Minion —

I have the honor 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 ~~[illegible]~~ 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

of a Jail in which the prisoner is Confined, but that pro-
cesure 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 regarding
or reversing sentences.

Section 437. The decision in Queen Empress vs.
Anus Khan I. L. R. 8 Madras 336 has been practically
overruled by the decision of the Full Bench of the
Madras High Court in Queen Empress vs. Sala
sinnatambi I. L. R. 14 Madras 335.

I do not think that Section 437 includes pro-
ceedings 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.

Anantapur Collector's Office,

679 Dated February 1895.

107 abstract

R. No. 114 of 94.

Enclosure

From H. A. Nicholson Esquire
The Collector and District Magistrate of
Anantapur.

To

The Chief Secretary
to Government
Fort St. George.

Sir,

With reference to G. O. No 2795 dated
17th November 1894, Judicial, inviting proposals
for the amendment of Criminal and Civil
Procedure Codes, I have the honor to state
that I have nothing to recommend.

I have the honor to be
Sir
Your most obedient Servant.

H. A. Nicholson

The District Magistrate.

8/2/95

Jud

CURRENT No 679

Jud

From

The Dt Magistrate.

Anantapur

No 1140

Date 8. 2. 95

Rec 12. 2. 95

Abstract

Subject

Stating that he has no remarks to offer on the proposd amendment of Civil & criminal Procedure Codes

Dis No. 112 of 95 Jud

District Magistrate's Office.

10 February 1895.

Dispd 11.

From

J. Anderson Esquire,

Actg. District Magistrate of Trichinopoly.

107A

To

The Chief Secretary to Government,

Judicial Department,

Madras.

Sir,

With reference to Government Order dated 17th November 1894, No. 2795 Judicial, I have the honor 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 para 1 the following proviso.

"Provided that when the Sentence of imprisonment does not exceed 15 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 grenching fire."

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

Sections 83, 84 & 287. 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 shews that orders passed thereunder can only have reference to "urgent" cases of nuisance.

Para 3 shews that, in "emergent" cases, orders may be passed "Exparte," thus implying that orders can be passed in cases which are not "emergent", provided they are not passed "Exparte". 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

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 2 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 10 or 15 or 20 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 I.P.C. 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".

I have the honor to be,
Sir,
Your most obedient Servant.

Ellenborough.
Dy. District Magistrate.

1895.

From J. Andrew Esq
The Offg. ~~COLLECTOR~~ of
Dt. Magistrate
Trichinopoly.

To

The Chief Secretary
to Government
Judicial De-
partment
Madras

Dated 10
Despd 11 } February 1895
Recd. 12

CHIEF SECRETARY'S
12 FEB 1895
GOVERNMENT OF MADRAS

Dis. No. 112 of 95

Enclosures. Nil.

Submitting remarks and suggestions on the proposed amendment of the Code of Criminal Procedure.

Dis No. 140 of 1895.

North Arcot Dt. Collector's Office,
Chittoor, February 8 1895.

From

G. F. T. Power Esquire,
Offg Collector and District Magistrate,
North Arcot.

To

The Chief Secretary,
to Government,
Madras.

Sir,

In reply to G. O. dated 17 November 1894, No 2795 Judicial, 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

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 1st para 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 2nd para:- 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

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 things 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

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 Submagistrate 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 Subdivisional Magistrate, simply in order that they may be remanded to custody till the return of the Submagistrate Much inconvenience is thereby caused if the subdivisional 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 Subdivisional Magistrates' 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 III 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 I.P.C Should be Compoundable with the permission of

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 Lubbay. 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 I.P.C

Though punishable with imprisonment or fine, are nonbailable :-

Sections 241, 254, 304 (Clause 2) 315-356, 379, 406, 411, 414, 462 and 506

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 1st para 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

India's letter, I have only the following remarks to make :- 114

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 or 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

an immediate report and the Tahsildar will probably proceed to the proposed Sureties' village and examine the village officers. Thus 2 or 3 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

I have the honor to be

Sir

Your most obedient Servant

DESPATCHED
11 FEB. 05

Asst. to Magistrate

Copy sent
Comm'd

CURRENT No 678

From

The District Magistrate,
North Arcot.

Jud.

To

The Chief Secretary
to Government
Judl. Department
Madras.

Dated 11
Despd } February 1895
Received 12

CHIEF SECRETARY'S
12 FEB. 1895
GOVERNMENT OF MADRAS.

Dis No 140/magl of 95

Subject.

Submitting certain Suggestions for the amendment of certain Sections of the Code of Criminal Procedure.

Encl. No. 6774 this
Post in continuation
12/2

Suppl. no. 2.

CURRENT No 0654

1150

From

J. G. D. Partridge Esquire I.C.S.
ag. Principal Asst. Magistrate
Ganjam

To

The District Magistrate
Ganjam

Dated Camp Gumma 22nd January 1895.

Sir,

With reference to your fortnightly C. No. 1420/Emg dated 10th December to G.O. no. 2795 Judl. dated 17th November 1894, I have the honor to make the following suggestions with regard to the criminal Procedure code.

Sec. 202.

This section does not apply to 3rd class Magistrates. There is no reason why a 3rd 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 sec. 203 C.P.C. or issue process for the attendance of the accused.

Sec. 252.

Under the rules framed by the Ma

Madras High Court, under sec: 20 of the Court fees act VII of 1870 fees are levied for serving and executing processes issued by the Criminal courts in non cog-nizable warrant cases, but under Sec: 252 a Magistrate is bound to as-certain the names of prosecution wit-nesses 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-cog-nizable warrant case for failure to pay process fees is illegal. Thus it does not appear that process fees can be collected in these cases.

Sec: 488.

Among certain castes it is a common practice for wives to file complaints under Sec: 488 Cr.C 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

referred to the village magistrate for report, in the same way as criminal cases can be referred under Sec: 202 Cr.P.C.

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 com-plaint and the final order passed. Besides no provision is made in this sec-tion for awarding to the complainant who is generally very poor, the expenses incurred in the trial.

Sec: 413.

As 1st class Magistrates are empowered to impose certain sen-tences from which no appeal lies, I think that 2nd class Magistrates may be allowed to impose fines not ex-ceeding 20 Rs in summons cases or in both summons and warrant cases without appeal.

Appeals have been made in cases where the fine has not exceeded 5 Rs and

the time

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.

I have the honor to be
(Sgnd) J. G. D Partridge
A/Principal Asst to Magr

RC No 1420/mag 94

Copy forwarded to the Chief Secretary in continuation of my letter No 1420/mag 94 dated 2nd February 1895.

I would support Dr Partridge's suggestion that 3rd class Magistrate be allowed to refer under sec: 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 3rd class Magistrates should abuse the section more than 2? class Magistrates.

Dr Partridge then proceeds to point out an inconsistency between the criminal Procedure code and the court fees act or rather the rules framed thereunder

of my
here it is not in the code. With regard
to the remarks regarding Sec: 488 Cr. P.C.
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

D Summerhayes
Asst Magr

Chalakgun
2nd February 1895

SS

From —

The District Magte of
Tanjore

To

The Chief Secretary to
Government
Judicial Department

Dated Chittapet 5th February 95.

Rec'd 11/2

CHIEF SECRETARY
11 FEB 1895
GOVERNMENT OF MADRAS

Subject

Forwg: copy of a letter from the Municipal Asstt to Magte Tanjore forwarding some suggestions on the Criminal Procedure code —

Malabar District Magte's Office
Calicut, 7th February 1895

No. 657 magl
gl. 95

656

1180

From,

H. Moberly Esquire
Actg District Magistrate of Malabar.

To,

The Chief Secretary to Government
Judicial Department,
Madras.

Sir,

Referring to G.O. dated 17th November 1894, No. 2795 Judicial, I have the honor 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 2nd and 3rd 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

Malabo

Malabar goes to the Laccadives it is necessary that the Sub-Collector who is first 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 C.P.C 195, it is not competent to the Court to go beyond the record in determining whether or not Sanction should be granted (I.L.R. 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 Magistrates 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.

I have the honor to be,
Sir,
Your most obedient Servant
Print name
Ag District Magistrate.

Dept

Adv

Jud

656

From,

The District Magistrate of
Malabar

To,

The Chief Secretary to Govt
Judicial Department
Madras.

Dated 7th
Despatched 9 } February 1895
Received 11

No 157 —

Enclosure-Nil

Subject

Submitting certain remarks in
Connection with the proposed Amend
-ment of the Criminal Procedure
Code.

Jud

701

No 80.

Madras 12th February 1895

1198

From

Ernest Barclay
Government Solicitor

To

The Chief Secretary to Government
Fort St George

Sir

With reference to my endorsement dated 9th instant relating to G.O. No 2795 Judicial of the 17th November 1894 I have the honor to forward herewith copy of Memorandum dated 11th instant I have received from the Advocate General on the subject and of its enclosures

I have the honor to be
Sir
Your obedient Servant
Ernest Barclay
Government Solicitor

Jud

No 401

Jud

From

The Govt Solicitor

No 80

Dated 12-2-95
Rec'd 13. 2. 95
Repd 14. 2-95

Encl-2

Subject.

Forwd copy of a memorandum received from the Advocate General on the subject of the Amendment of the Codes of Civil & Criminal Procedure, with its enclosure

Printed in workbook

Re- amendment of the Codes of Civil and Criminal Procedure

120 B

I.

With reference to my opinion dated the 7th inst I have the honor to enclose a suggestion by Mr. J. S. Smith of the Madras Bar for the amendment of the provisions of the Code of Civil Procedure relating to the execution of decrees.

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

J. St Spring Branson
Advocate General

Madras
11th Feby: 1895

(True Copy)

Lucas Barclay

Govt Solicitor

Government Solicitor

ENCLOSURE NO. 726

No 77.

13

Madras 12th February 1895

From

Ernest Barclay
The Government Solicitor
Madras

To

The Chief Secretary to Government
Madras.

CHIEF SECRETARY
12 FEB 1895
GOVERNMENT OF MADRAS
UNDER SECRETARY
14 FEB
PUBLIC DEPT

Sir

With reference to the Order of Government Judicial, dated 17th November 1894, No 2795 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.

I have the honor to be
Sir
Your obedient servant

Ernest Barclay

Government Solicitor

1895
Jud Dept.
1
701

CONSENT NO 720
Jud

From

The Regr. Solicitor

Madras.

No 77

Dated 12- 2—95
Recd 14- 2—95
Repd 15- 2- 95

Subject

Stating that the report of the Committee appointed in connection with the attorney's asstn. to consider what amendments are necessary to the Code of Civil Procedure will be sent to Govt. soon & that therefore he does not think it necessary to submit any separate remarks on the subject as having been in the Committee himself.

Re

I suppose this is to be sent to the above the other replies are pending

Yes please 20/2/95

Send Mr. Wilson's 21/142 letter

CONSENT NO 737
Jud

High Court of Judicature.
Madras, 14th February 1895.

No. 424.

From

A. W. Foster Esquire,
Registrar of the High Court
of Judicature, Appellate Side,
Madras.

To

The Honorable J. H. Price, C.S.I.,
Chief Secretary to Government,
Fort St. George.

Honorable Sir,

With reference to G. O., dated 17th November 1894, No. 2795, Judicial, 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 Honorable the Chief Justice and the Judges

2.

2. In this connection I am to bring to notice what appears to be a defect in the new section 310 A of the Civil Procedure Code, introduced by Act V of 1894. In this Presidency, a fee in the shape of poundage is levied on the amount realized in all sales in execution. As the amount of the poundage cannot however be calculated before the sale, it cannot be specified in the sale proclamation and the result is that when a sale is set aside under the section quoted, the poundage is lost, for neither the purchaser nor the decree-holder can justly be held liable and under the terms of the section, the judgment-debtor is required to pay only charges specified in the sale proclamation. In the opinion of the High Court, he should be made liable for all expenses of the sale.

I have the honor to be,
Honorable Sir,
Your most obedient servant,

Registrar.

Minutes:-

CURRENT NO. 737

Judicial {1895.} Department.

No.

FROM

The Registrar of the High Court
of Judicature, Appellate Side,
Madras.

Dated 14th February } 1895.
Received 15

No. 424.
Enc. a/

Forwarding a transcript of the minutes recorded by the Hon'ble the Chief Justice and the Judges on the proposals of the Government of India for the amendment of the Code of Criminal and Civil Procedure.

Print in continuation
Vol. No 157

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 G.O. was only received by me on February 18th - the day on which the Government desires to receive the remarks of the High Court upon the proposed amendments. I observe that the G.O. was received in the High Court on December 18th with five spare copies. It is to be regretted that those copies were not circulated to the Judges. With the

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 legis-
-lative alteration is necessary as far as Madras is concerned.

Nor do I think the suggested amendment to sec.
-tion 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 inter-
-ference obligatory.

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

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

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

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 pre-suppose 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

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

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

to make it clear there m[ay] be "further enquiry" when [the] 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 do 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

nable to make any sug-
gestions or observations.

Having read the memorandum
of Parker, J. I may say that
I am disposed to agree with
what he says about cri-
minal 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

Section 45. The addition to Sect.
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 im-
-movable property" in section
145 of the present Code com-
-prehensively express "any

land

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 Magis-trates 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

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 to 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. Cholu, 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

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.

JJ

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.

Mr. Justice Subramanya Aiyar:- As these papers cannot 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.)

Registrar,
Appellate Side.

No. $\frac{O}{49}$ 1,000—10-94.

804

DEPARTMENT.

No. 867

CHIEF OFFICE OF THE INSPECTOR-GENERAL OF POLICE,

Madras, 18th February 1895.

198

FROM

H. Hammick Esquire, I.C.S.,

INSPECTOR-GENERAL OF POLICE,

To

THE Chief Secretary
to Government,
Fort Saint George.

SIR,

Enclosures.

In continuation of my letter, dated 8th February 1895, No. 716, regarding proposed amendments in the Code of Criminal Procedure, I have the honor 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

1895
Jud Dept
Enclos. No.
To
C. No. 737

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 the 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

the freedom with which communications are made to the police are made, and the moment that it is generally known that at the risk 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. I have the honor to be,

Your most obedient Servant,

M Hammick.

Inspector General of Police.

Read. 7th M

Judicial (1895) Department.

CURRENT No. 807

From M. Hammick Esq., K.P.,
Inspector-General
of Police,

To

No. 867

Dated 18th February 1895.
Received 19th February 1895.

No.

Subject.

Offering further remarks regarding the proposed amendments in the Code of Criminal Procedure.

CHIEF SECRETARY'S
19 FEB 1895
GOVERNMENT OF MADRAS

CURRENT No. 855

Reference / Disposal No. 161 magb

Cuddapah District Magistrate's Office,
Dated 18th February 1895.

Enclosures. one.

From

J. Stevenson Esquire,
Ag District Magistrate,
Cuddapah.

To

The Chief Secretary to Government
Judicial Department
Madras.

Sir,

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

I have the honor to be
Sir
Your most obedient servant
Ag
For Ag District Magistrate

242 Kap

CURRENT No 855

Jud

From,

The District Magistrate of
Cuddapah.

To

The Chief Secretary to Govern-
-ment
Judicial Department
Fort Saint George

Dated 18th
Despatched 19 } February 1895.
Received 21

Encl = 1

Reference / Disposal No. 161

CHIEF SECRETARIAT
21 FEB 1895
GOVERNMENT OF MADRAS

Subject.

Forwarding suggestions regarding the amendment of Criminal Procedure Code.

Put up in continuation

22/2

Deputy Magistrate's Office
Jammalamadugu Dt.
Camp: Proddatore
Dated 3rd February 1895

From, M.K.Ry
K. Ganapayya Avergal
Acting Deputy Magistrate
Jammalamadugu.

To
The District Magistrate
Cuddapah.

Sir, With reference to your endorsement Reference on Current No. 1310 Magtl: dated 7-12-94 on Government Order No. 2795 dated 17-11-94 calling for suggestions on the amendment of the Code of Criminal Procedure I have the honor to Submit ~~the~~ 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 panchayet, to ascertain the

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 para 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,

In the latter part of the same Section Jurisdiction has been given to the Magistrates 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 immoveable property" not being defined may be extended to Certain rights not Contemplated by the Legislature. It is therefore advisible to define them.

Section 156 and 159. In Cognizable Cases where the Police have

dispensed

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 reinvestigation may be formally given in the Code.

Section 170. The exemption proposed to be made in favor 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

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 shew that the Complaint was groundless, an order may, I think, be made for further enquiry, 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

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 1st 2nd and 3rd Class Magistrates.

3. × × ×

I have the honor to be
Sir
Your most obedient Servant
(Signed) K. Ganapayya
Acting Deputy Magistrate

True copy

For Acting District Magistrate

No. 283

District Court, Chingleput,
20th February 1895

From,

C. H. Monnsey Esqre.,
Ag: District Judge,
Chingleput.

To

The Honble J. F. Price, C.S.I.,
Chief Secretary to Government,
Judicial Department,
Fort St. George.

Sir,

In reference to G. O. of the 1st/4th November 1894, No. 2795, 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 Vakeels ~~Association~~ 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

done

some delay in making a reply. I observe, however, that the Government of India wish for the replies before the end of this month.

3. In regard to the Civil Procedure Code I have not had sufficient experience of its practical working to enable me to make any suggestions.

4. The few remarks that I have to make upon the suggested amendments given in Appendix II of the G.O 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 Session 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 Session 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

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.

I have the honour to be,
Sir
Your Most Obedient Servant,

C. H. Mowatt
Ag District Judge.

C.H.M.

Judicial Dept
No 879

From

The Ag. District Judge
Chingleput.

To

The Chief Secretary to Govt
Judicial Department
Fort St. George.

No 283

Dated 20th
Received 20th } February 1895.

Enclosures Nil

Subject.

Submitting his opinion in Reference
G.O. No 2795 of the 17th November

947

JAMES SHORT,
Solicitor.

118, Armenian Street,

MADRAS, 25th February 1

CHIEF SECRETARY'S OFFICE
26 FEB 1895
GOVERNMENT OF MADRAS

FROM,

THE HONORARY SECRETARY

ATTORNEYS' ASSOCIATION

MADRAS

TO,

THE CHIEF SECRETARY TO GOVERNMENT

LEGISLATIVE DEPARTMENT.

FORT ST: GEORGE

MADRAS.

SIR,

With reference to G. O. dated 17th November 1894 No 2795 I now have the honor to forward the remarks and suggestions of the Association as to amendments in the Criminal and Civil Procedure Code 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 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 su

JAMES SHORT,
Solicitor.

118, Armenian Street,

MADRAS, 189 .

Code in respect of matters of ordinary practice which prevent difficulties.

As to the Civil Procedure Code the Association observes from para II of such letter that the "Government understand that the local Governments and "Administrations and the High Courts have been registering the difficulties and "obscurities which practice has brought to light in the Codes" and in this view the Association have omitted in their remarks to refer to the reported cases in which the various High Courts are in conflict or have experienced any difficulty in arriving at an interpretation of the Code and the Association have therefore confined their suggestions mainly to the various instances in which difficulties have come to their notice in the course of practice.

I have the honor to be

Sir,

Your Most Obedient Servant

James Short

Honorary Secretary Attorneys' Association Madras.

[G/9]
2,000—23-1-95.

Current No. 947

Department.

From

The Hon. Secy.
Attorneys Assocn

No.

Dated 26 - 2 - 95
Received 26 - 2 - 95
Enclosures 27 - 2 - 95

SUBJECT.

Forwd. remarks on amendments in the Civil and Criminal Procedure Codes.

Paid Rs 1/3

CHIEF SECRETARY'S OFFICE 1895 MADRAS

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Criminal Procedure Code

Suggestions and Amendments.

That the definition of "pleader" (11) 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 1 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 Readers. There is no necessity for the existence of the class of Practitioners called private Vakils which is the class of people comprised in clause (1)

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 chose 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

his own witness if he so chooses.

68

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 Rupees 50/- The same Procedure should apply to a Presidency Magistrate.

Jury System

The Jury System in the Mofussil is not

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 Venkata Subbiah) 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

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 79 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 407. We are inclined to think that
so far as the Mofussil is con-
cerned an appeal should be given
against an Order of discharge

Section 344. The Procedure in the event
referred to might, we think,
consist of

(1) Notice to the representatives
of the deceased Surety to
shew

show Cause why he should not pay the amount of the Bond out of the property of the deceased

(5.) On default of Cause shewn 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 172 as to the Prosecutors' 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 172 the decisions in

I. L. R XI. Mad 339
I. L. R. XIV. Cal 345
Ind L.R. 10. Cal 140.
Ind L.R. 11 Bom 436.
I. L.R. XIV All 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.

Section	Amendment Suggested	Remarks
Section 2	To insert in the definition of a decree after the words "not specified in section 588" the words "and an order passed under section 373"	It is not clear whether the definition of "decree" does, or does not, include an order passed under section 373 allowing an appellant to withdraw from his appeal or to abandon part thereof. There have been contrary decisions on this point.
—— " —— 13	To add an explanation VII " this section is applicable to appeals	It has been held that, although Section 13 does not apply to appeals, the principal of res judicata does.

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Section	Amendment Suggested	Remarks
" 30	Omit the words "at the plaintiffs escpense" and add at the end of the paragraph " and the court shall direct by whom the costs of and incident to such notice shall be borne".	

Section	Amendment Suggested	Remarks
" 32	Insert after the word "added" in paragraphs 2 and 3 the words "or substituted"	12
	To add paragraph 4 to Section 30	
" 33	Omit the words "if previously filed"	
" 37	Omit the words between "powers of attorney" and the word "authorizing	Cases have repeatedly arisen in which persons holding powers of attorney have claimed the right of audience &c in Court thereunder, their principals being resident within the Jurisdiction of such Court. Some Judges have held them entitled to appear, others have held the contrary. There does not appear to be any valid reason why persons who are prevented from press of business or other reasons should not appoint an Attorney to act for them.

Section	Amendment suggested	Remarks
——— " ——— 39	It should be specified whether the appointment in writing requires signing before an official or not.	13 Vakaulats both in the Appellate Court in Madras and in the Mofussil Courts have often been rejected because they are not signed in the presence of some official though the Code does not apparently warrant their rejection.
——— " ——— 43	To insert in paragraph 1 and paragraph 3 after the word "Cause" the words "or causes"	

28 - 2 Read

2d ½ - 1 Read

Section	Amendment Suggested	Remarks
— " — 51	That the section read as follows "The plaint shall "be signed by the plaintiff or by one of the plaintiffs "and his or their pleader and shall be verified - "at the foot by the plaintiff or one of the plaintiffs "or by some other person proved to the satisfaction "of the Court to be acquainted with the facts of- "the case - Provided that if the plaintiff is, or - "all the plaintiffs are, by reason of absence or - "for other good cause, unable to sign the plaint, "it may be signed by any person duly authorized "by him or them to sue on his behalf."	This section as at present framed makes it necessary to obtain orders at some escpense, enabling one partner to sign and verify the plaint on behalf of his partners if from absence or other cause they are unable to do so. It also enables the person duly authorised to sign and verify "if authorised on that behalf." If a person is authorised to sue that should, it is submitted, be sufficient authority to him to sign and verify.

Section	Amendment Suggested	Remarks
——" ——53	Omit (a)	
——" —— 54	Add a proviso "Provided that the Court may from time to time extend the time so fixed."	The Section at present is imperative and cases have arisen and may arise where it was and is desirable that the Court should have discretionary power to extend the time-

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Section	Amendment Suggested	Remarks
" 72 " 73		16 The System in practice in England by which the summons is served by the parties themselves is preferable to the one which exists under these sections. The Sammons would be served more espeditiously especially where the party to be served is resident outside the jurisdiction of the Court which issues the summons:-

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Section	Amendment suggested	Remarks
" 89		It is suggested that service on a defendant residing out of British India should be effected in the same way as writs issued by the High Court of Justice in England are served in India ~~as suggested~~.

Section	Amendment Suggested	Remarks
" 102	For the words "the Court shall dismiss" substitute the words "the Court may dismiss".	It seems desirable to make this clause permissive and not mandatory
" 106		If some defendants who have been served do not appear it is suggested that instead of waiting until the time of passing the judgment against all the defendants, the Court may at once pronounce judgment and issue a decree against such of them as do not appear without prejudice to the Plaintiffs right to proceed with the suit against the other defendants.

Section	Amendment Suggested	Remarks
" 111.		19 Regard being had to the numerous conflicting decisions on this section, it is suggested that the rights of set off should be more clearly defined

Section	Amendment Suggested	Remarks
—— u —— 129	Omit the words "at any time before the first hearing"	The omission of the words suggested will assimilate this section to order XXXI of the Judicature Acts. At present the usefulness of the section is to a great extent impaired, at any rate in Madras, by reason of the day of settlement of issues, which takes place long previous to trial, being considered "the first hearing" - If the amendment suggested is considered undesirable, then it is suggested that "the first hearing" be defined.
—— u —— 131	Insert after the word "produce" the words "or consent to the same being produced in Court"	At present section 131 seems some what inconsistent with section 140 which directs the Court to receive documents produced by the parties at the first hearing - If the documents are filed in Court the party cannot produce them. It is also desirable to define "first hearing."

Section	Amendment Suggested	Remarks
" 137	Insert the word "any" instead of the first word "the"-	Questions have arisen as to the power of a Subordinate Court to send for the records of a Superior Court-
" 138		Questions have arisen as to whether documents which the parties have had in readiness at the first hearing but have not been called for by the Court are admissible, and it is suggested that in this respect the section might be made more distinct. "first hearing" should be defined
" 139	After the number "138" insert the words "or mentioned in the list added or annexed to the plaint"	

Section	Amendment suggested	Remarks
" 153 " 157		72 Vide remarks on Section 106 Questions have arisen as to whether a decree can be at once issued against the defendants against whom Judgment has been pronounced. It is suggested that specific provision should be made enabling this to be done vide order 14 Rule 5 under the English Judicature Acts.
" 160 " 161		No provision is made for the payment of any special allowance to persons summoned to give evidence as experts and it is suggested that a provision to that effect is desirable.

Section	Amendment Suggested	Remarks
" 168		43
" 169		In many cases the issue of a warrant would enable the suitor to obtain the attendance of the witness required which he is unable to obtain under the present cumbersome procedure, and many cases must arise where the witness has no property to speak of. It is desirable that the Court should have the power to issue a warrant of arrest.
" 170		
		———
" 180		Provision should be made for allowing the defendant the right to address the Court on his own evidence and on the case generally.
		———
4	5	24½

Section	Amendment suggested	Remarks
u 218	Add a proviso as follows "Provided that "if the court shall make no order as to such costs the same shall be costs in the cause"	24

Section	Amendment suggested	Remarks 25
Ch. XIX		It is suggested that the procedure to be followed in executing decrees should be assimilated to the practice existing in the High Court of Justice and the County Courts in England and that the Court which passes the decree should itself issue the required writ of execution and transmit it to the Chief Ministerial Officer of the Court within whose Jurisdiction the Judgment debtor is living or his property is situated. The complaints of the public against the present procedure are numerous and in the opinion of this association well founded, it is cumbersome costly and lengthy; by it the Judgment debtor is enabled to avoid arrest by moving from one district to another and to dispose of his property before the Judgment creditor is in a position to attach it, in fact every facility is given to a dishonest debtor

Section	Amendment suggested.	Remarks
		debtor to hinder and defeat the execution of a decree obtained against him - At present there is an anomaly as under section 648 a Court can send a warrant to another Court for execution before decree, but after decree has been passed it has no power to do so.-
— " — 234	Insert at the end of this section the words "and examine him in relation thereto or "as to the property of the deceased".	
— " — 236	Omit	In the case of moveable property it is in the majority of cases impossible to file an inventory.-

Section	Amendment suggested	Remarks 27
" 238	Omit, or if the section is considered absolutely necessary omit the word "attachment" and substitute therefor the word "sale" and make it an additional clause to section 284	This section throws great and unnecessary impediments in the way of the execution creditor, and the delay which necessarily arises in obtaining the extracts in most cases affords the Judgment debtor time to dispose of his property before attachment.
" 244		Having regard to the numerous conflicting decisions, this section will doubtless have the attention of the Legislature, especially as to the interpretation to be placed on the words "parties to the suit" "representatives"
" 245		Vide remarks on Section 238

Section	Amendment suggested	Remarks. 28
— " — 248	Omit (a) and the first paragraph of the proviso and if the procedure regarding the execution of decrees be adopted omit explanation.-	It is not clear why the provision (a) is in= =serted unless it be to give notice to the Judg= =ment debtor that his creditor is on the # alert and to enable him to dispose of his property.-
— " — 256	Omit the words from the word "only" to the word "Rupees" and omit from the word "Judg= =ment-debtor" to the end of the section adding after the word "Judgment-debtor" the words "or his property".	It is not clear why the operation of this section should be limited either in # amount or extent.-

Section	Amendment suggested	Remarks.
" 266	Omit K.	Though it might be impossible to actually attach the right and interest referred to still the Court should be empowered to issue a prohibitory order to the Judgment debtor restraining him from dealing with such right or interest.

Section	Amendment suggested	Remarks. 30
—"— 268	In para 6 omit the word "may" after the words "of this section" and substitute the word "shall". Add a proviso. "If the debtor does not pay the amount of his debt into Court the Court shall issue a notice to him calling upon him to show cause, within a time fixed by such notice, why he should not pay the same into Court. If the debtor does not show cause then the Court shall issue execution as in an ordinary suit." —	It is suggested that the provisions of the Code relating to the attachment and realisation of debts due to a Judgment debtor should be entirely recast so as to assimilate the Indian to the English practice. The present procedure of putting up a debt for sale is costly and tedious and against the interests of the Judgment debtor as the debt may be bought in by the Judgment creditor for a nominal sum, which is all the Judgment debtor would get credit for. —

Section	Amendment suggested	Remarks.
—"— 270	---	This is the only section that relates to the attachment of negotiable instruments and from section 268 it would appear that the attachment of debts secured by such instruments is not contemplated by the Legislature It is hardly necessary to point out the many difficulties that must necessarily arise in carrying out the procedure laid down in Section 270 and it is suggested that the provision of section 268 regarding the attachment of debts should be extended to debts secured by a negotiable instrument
—"— 272		No provision is made in the Code as to the mode in which moneys attached under this section are to be paid out of Court

Section	Amendment suggested	Remarks. 82
— " — 276		Vide remarks on Section 270 as to the at= =tachment of debts secured by negotiable instruments.-
— " — 278	After the word attached insert the words "or directed to be sold" and after the word "attachment" insert the words "or sale"- Add at the end of para 3 the words "upon such terms as the Court thinks fit-	At present no provision is made in the Code for claims to property directed to be sold under a decree.-

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Section	Amendment Suggested	Remarks
——"—— 283		33 This is another section the various decisions on which have no doubt been brought to the notice of the Legislature.

Section	Amendment suggested	Remarks 384
— " 284		Vide remarks on section 272
— " 302	For the words "the judge may endorse" and "or may execute" substitute the words "the Judge shall endorse" and "or shall execute."	
— " 306		It has been held that if the Judgment creditor purchases the property he must pay in 25% of the purchase money. This appears to be in contradiction of section 294

Section	Amendment suggested	Remarks. 345
— " — 307		Vide remarks on the preceding section.
— " — 308		It is impossible to see upon what grounds the deposit should be forfeited to Government instead of being applied in part satisfaction of the decree.
— " — 311		Regard being had to conflicting decisions, it is desirable that the expression "material irregularity" should be defined.
— " — 351	Omit from in Clause (b) the word "properly" to the end of the Clause.	The section as at present is opposed to section 359 and also to the proceedings under the Insolvent Act, to which it is suggested it ought to be assimilated.

Section	Amendment suggested	Remarks. 86
—"— 373		Regard being had to the various decisions it is desirable that the section should be amended.-
—"— 380	After the word "money" to insert the words "or other property"	The insertion of the words is suggested looking to the number of instances which occur, of women being instigated to institute false suits, while no hardship is likely to occur the power in the Court being a discretionary one

Section	Amendment suggested	Remarks
—"— 407	Omit the words in para (b) "within the two months next before the presentation of the application"	If the applicant has disposed of his pro=perty fraudulently or with a view to obtain the benefit of this chapter such disposal should be a bar to the applica=tion irrespective of the date of such dis=posal.-
—"— 479		Provision should be made for the realiza=tion by a successful plaintiff of the security in deposit under this section and also in sections 493, 545 and 546

Section	Amendment suggested	Remarks
—"—532	After the word "specified" insert the words "or, if not specified at the rate of 6%"	There seems to be no reason why interest should be entirely disallowed only in proceedings under this chapter.
—"—544		Provision should be made for a minor re=presentative who wishes to appeal having a guardian or next friend appointed for that purpose.
—"—561		This section should state in explicit terms whether a respondent is entitled to raise questions as to the effect of the decree be=tween himself and a co-respondent.—

Section	Amendment suggested	Remarks.
—"— 562		There have been various contradictory decis=ions on the interpretation to be placed on the words "preliminary point" and a more ex=plicit definition of what is meant by the term is desirable.—
—"— 622		Regard being had to the decisions on the meaning of the words "illegally or with material irregularity" it is suggested that the section should be amended so that the High Court may call for the record of a case where a de=cree has been passed contrary to law.—

1912

High Court of Judicature,
Madras, 27th February 1895.

No. 537.

From

H. W. Foster Esquire,
Registrar of the High Court of Judicature,
Appellate side, Madras.

To

The Honorable J. H. Price, C.S.I.,
Chief Secretary to Government,
Fort St. George.

Honorable Sir,

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.

I have the honor to be,
Honorable Sir,
Your most obedient servant,

D Lowis

Ag. Registrar

Mar 1895

Ans 737.

5
Jud
2
947

1012

Judicial {1895.} Department.

No.

FROM

The Registrar of the High Court
of Judicature, Appellate Side,
Madras.

Dated 27th February
Received 31 MAR. 1895 } 1895.

GOVERNMENT OF MADRAS

No. 537.
Enc ..

Suggesting 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.

Transl in vernac: please

2/3

URGENT NO 1038

No. 97

Tinnevelly District Court.
28th February 1895.

41

From,

Bannatyne Macleod Esquire, B.A.
Barrister-at-Law.
Acting District Judge, Tinnevelly.

To,

The Chief Secretary,
to Government, Fort St. George,
Madras.

Sir,

I have the honor to submit herewith a letter dated 27th February 1895 from M.R.R.V. Rangachariar Avergal, 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.

I have the honor to be,

Sir,

Your most obedient Servant,

Bannatyne Macleod
Actg: District Judge

By

Judicial

NT No. 1038

Jud

Ag District Judge

Tinnevelly

Dated 28th February
Sent 1st March } 1895
Received 3
Regd

UNDER SECRETARY
MAR 95
PUBLIC DEPT.

Enclosure: — One letter.

Forwarding a letter from the Secretary to the Tinnevelly Law Library suggesting certain amendments to the Civil and Criminal Procedure Codes and requesting to transmit the same to the India Government.

The Tinnevelly Law Library
27th Feby 95

From
P. Ramaswami
Secretary

To

The District Judge
Tinnevelly

Sir,

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 meeting duly convened have considered 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.

The members of the bar request very much that they have not been asked to submit their views earlier.

I beg to remain
Sir,
your obedient servant
P. Ramaswami
Secy

Amendments suggested

Criminal Procedure Code Act

Sec 427

Provision should be made in this section to the effect that the reasons for such deposit should be recorded in writing and that a copy of the order should be given to the accused, if the accused apply for it.

Sec 167

The detention after arrest in the custody of the Police for more than 24 hours in cases should be considered unjustifiable. Provision should be made in this section that detention of persons arrested by the Police should be for shorter hours than 24 hours.

Sec 45

The Legislature should make it perfectly clear by the printed memorandum regarding the point of power to arrest persons to prevent the commission of offences by the members of persons committed to be extremely dangerous

members and other cases for the

at least in the Presidency of Madras
It is submitted that the proviso here
or the Subject needs no alteration or
amendment

Sec 239

It is submitted that the suggestion
made by Hon'ble E. Knox (now Mr. Justice
Knox of the Allahabad High Court) in
regard to the withdrawal of prisoners from
[illegible] under Sec 494 Cr. P. Code
(vide para 13 page 8 of the Memorandum)
cannot safely be accepted. The Bar hardly
protects in emphatic terms against the acceptance
of the suggestion

Sec 193

The Bar, while adopting the suggestion
made in para 12 page 8 of the printed
Memorandum, think it highly desirable
that authority in the office of Examiner of
Local Courts, temporarily vacant, not only
the Chief and Assistant Examiners' posts
but also Joint and Assistant Examiners'
posts, temporarily vacant, should be vested
with powers to perform the duties of the vacant office

It is very necessary that provision
should be made for suspending the
operation of the sentence of whipping
(where whipping is merely punishment

(awarded) until the appeal time expires
or notice the disposal of the appeal
if an appeal has been made

Civil Procedure Code of Act XIV of 1882

Section 278

Under this Section Claims can be
preferred only in regard to
where a property is directly the
decree sought to be attached, no claim is allowed under
there is no reason why any petition
should be made. Provision should
be made in the Section for entertaining
claims to property advertised to be
sold whether after attachment or
in pursuance of a direction in the
decree. Considerable time & labour
will be saved by making this provision

Section 305

This Section is made redundant by
Order 21 Rule 89 & Order 34 Rule 5
that the Section should be omitted
decrees also

Section 468

This Section applies in regard to
persons offences mentioned in Sections
195 & 196 under Rule 35 of 1858 or
under any other Law for the time being

in force. The title provision should lie made for the purpose of persons of unsound mind not duly arrested; both in the case of lunatics apprehended when fits to have to be brought and in the case of those who become mad after the institution of the suit.

Sections 567 & 568

Provisions similar to these sections in that Section should be made in the case of persons arrested who come under in the course of the suit.

Sec 573.

There is considerable difficulty in reading into the clause of the section as distinguished from those which come under the native religious endowments Act XX of 1863. The distinction must be clearly defined.

For the time a Court has decided in the section a minute may be recorded which shall be distinct proceeding might to be inserted in the Section referred.

Sec 574.

As in the case of plaints, copies of the memorandum of appeal must accompany every appeal to be served on the Respondent or Respondents as the case may be.

Sec 583.

This section is construed by the Calcutta High Court to case of appeals decrees only while the clause of the Bombay Code includes appeal decrees. The section should be worded so as to be in accordance with the views of the Madras High Court and the Surety be made liable in execution and not in a separate suit, when the Surety was party to the performance of the original decree or appeal decree.

Sec 589. It is considered highly desirable, if not necessary, that Second appeal should be provided for where there has been no concurrent finding on a question of fact by the Court of first instance and the first appeal Court.

J Campbell
Secy

There is no provision in the Civil Procedure Code for attaching documents as there is in the Criminal Procedure Code. Sometimes, in a case in the Lesser Courts, parties rely upon the documents in the possession of the other party, and the Lesser Court may [illegible] such documents, the party relying on which [illegible] to produce them, and the case is decided by the Lower. It is therefore highly desirable to enforce provisions in the Civil Procedure for attachment & seizure of documents.

In Compensation
Case

Letter from the Secretary to the Tinnevelly Law Library Dt. 27th February 1895 Submitting certain suggestions in regard to the proposed general revision of Civil and Criminal Procedure Codes

CURRENT NO. 961

Sessions Court, Kurnool.
February 1895.

No.
Encls:

From

W. M. Thorburn Esquire,
Sessions Judge,
Kurnool.

To,

The Secretary to Government,
Legislative Department,
Madras.

Sir,

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

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.

I have the honour to be,
Sir,
Your Most Obedient Servant.

W. A. Thorburn

Sessions Judge

CURRENT No. 961

From.

C.M. Thorburn Esqr.

Sessions Judge.

Kurnool.

To,

The Secretary to Government

Legislative Dept.

Madras.

Dated. 25: 2

Dept.

Rec. 27 February 95.

No. 1.

Encls: Two.

Subject

Suggesting amendments in the Code of Criminal Procedure and submitting two printed copies of Amendments.

Please print in consultation & expedite proof

14/3.

The replies to G.O. I. 17/11/94, No. 2795, Judl., are coming in & are being printed. This is Mr. Thorburn's contribution & it is wise in advance under the Chief Secretary's orders.

Thank you.

If there are many more Limbs like this not our chance of being able to reply to India by the 31st inst is not small

KW 5/3/95

Please K 6/3

W 9 Mar

CODE OF CRIMINAL PROCEDURE 1882.

PROPOSED AMENDMENTS 1895.

Section 7. That the word District be here and everywhere substituted for Division after the word Sessions. Such District needs not be conterminous with that of a District Magistrate.

Section 8. That the word Division be substituted for Sub-Division: in order that the latter word may become available for designating the charge of a subordinate (2nd or 3rd Class) Magistrate in this Presidency and elsewhere. Some Taluks are divided into two or three charges.

Section 10. That the District Magistrate be called Chief Magistrate: a name better expressive of his dignity and his functions.

Section 21. That a Chief Presidency Magistrate shall have all the powers over other Presidency Magistrates, which a District Magistrate has over his subordinates. This is specially necessary as regards transfers. Considering the low status and qualifications of the Magistrates now appointed in Madras (two out of four being held sufficiently paid with Rs. 350 a month), it is most unreasonable that they should retain their present position of almost complete independence of control.

Section 25. (*a*) Add Governors, Lieutenant-Governors, Chief Commissioners, Members of Executive Councils, Judges of the Punjab Chief Court and Judicial Commissioners, as Justices of the Peace for all India, and District Magistrates for their own territories.

(*b*). That Presidency Magistrates shall not be Justices of the Peace unless they are European British Subjects. The present state of things is a serious grievance to the European inhabitants of the Presidency-Towns, and encourages crime by practically denying justice. Many so dread going before certain Presidency Magistrates either as complainants or defendants, that they submit to grievous insult, trespass, plunder and extortion by servants and others.

Section 35. That the following words be added: "unless one of the "offences be punishable with transportation for life, in which case the limit of im- "prisonment shall be twenty years."

Section 45. That the following classes of persons be dealt with in clauses (*a*) and (*b*): incendiaries, extortioners (including insolent menacing or persistent beggars), and all persons of desperate and dangerous character, with a view to security being taken for their good behaviour.

Poor extortioners to be shot in the legs!

Section 46. That the following words be added to the last clause, "But "any thief, extortioner, robber, house-trespasser, or incendiary or person attempting "such offences may be shot in the legs with small shot, if he would probably other- "wise escape or cause hurt to the arrester". Principle approved by Cal. H.C. in R. v Potaph Chaukidar (II W.R. 9) 1865

Section 55. That the following classes of persons be dealt with in clause (*c*): reputed habitual perpetrators of mischief, or of wanton assault or hurt, or of any offence under Chapter XXII of the Indian Penal Code (Insult &c.).

Sections 64 & 65. That a Magistrate who is a Justice of the Peace may exercise these powers anywhere within the limits of the Local Government which he serves. They may do so very usefully on railway-journeys.

Section 68. Add the following clauses: "(*a*) a summons may be sent by "registered letter:"

"(*b*) when a summons is issued to a person equal or superior in rank to the "presiding officer of the Court (as determined by the Local Government in case of "doubt or dispute) it shall be sent with an official letter."

"(*c*) No person shall be summoned more than five miles from his home "except to the Head-quarters of the Court issuing the summons, or to which it is "made returnable." This reform will remove the only real grievance resulting from the union of executive and judicial functions in the same persons. It is undoubtedly a hardship to witnesses, parties and pleaders to have to follow the camp of a Sub-divisional Officer. At the same time it is often desirable, if not essential in the interests of justice, that he should view the scene of the offence, and examine on the spot witnesses who live in the neighbourhood. A local inspection is an invaluable aid in guaging the credibility of oral evidence.

Section 72. There is an erroneous notion prevalent that a subordinate may disobey a summons, if it does not come through his superior. It ought to be made clear that everybody is bound to obey a summons however served. It is sometimes impossible to serve through the superior within the necessary limits of time: especially when the superior is one who goes into camp. It ought also to be made clear that the Section is applicable only to clerks &c., in offices, and not to subordinates having separate offices of their own (*e. g.* Revenue Inspectors, Head Constables &c.) At the same time Courts ought to be directed to inform the superior simultaneously by letter, of the issue of a summons directly to his subordinate, in order that he may have time to make necessary arrangements.

Sections 106 *and* 107. (*a*). The power of taking security for keeping the peace may safely be extended to all Magistrates of the second class, subject however to appeal to the District Magistrate.

(*b*) "The fact that the petitioner has given evidence or information against a person is a sufficient reason for ordering such person to give security to keep the peace."

(*c*) In addition to refraining from breaches of the peace or provocation thereto; the person bound over ought to be required to refrain from wantonly or without necessity causing any annoyance by word look or deed, and (if the complainant so desire) to abstain from entering some particular street or the limits of some particular village, and from coming within a certain distance of complainant's house, or of any place where he is likely to meet complainant. And the protection given to the complainant ought to cover all members of his family and household.

Section 109. (*a*) The power of demanding security for good behaviour may safely be extended to Magistrates of the second class, subject to appeal to the District Magistrate.

(*b*) The words "other than begging" ought to be added after "no ostensible means of subsistence."

Section 110 (*a*) I would include the classes mentioned in the proposals under Sections 45 and 55. Persons of "desperate and dangerous character" were included under the Code of 1872 (S. 506), and the words ought never to have been dropped. Many, if not most, of the villages in this part of the country are infested with idle ruffians, who habitually annoy insult and even beat the quiet inhabitants, besides practising arson (which is not easy to prove), and levying blackmail (which individuals are afraid to resist or report).

(*b*) The Local Government might safely be allowed to invest Magistrates of the second class with powers under this section, in special cases and subject always to appeal to the District Magistrate.

Section 117. In all proceedings under this chapter some enquiry ought, if possible, to be held in the village inhabited or infested by the accused.

Section 123. (*a*) Imprisonment in default of security for keeping the peace ought to be either simple or rigorous. The former is no punishment to the large class of idle ruffians.

(*b*) The second clause of this section is unnecessary and mischievous. It may well be omitted. And the High Court ought not to have any power of revising proceedings under this chapter, except on a point of law.

Section. 132. The following clause to be added.

"(*a*) No person who fires a shot, when a stone or an equally dangerous "missile (liquid or solid) has been thrown at him or any person close to him, or at "any person or property under his protection." The present law is extremely cruel and unjust to constables and soldiers attacked by mobs. The life of a rioter ought never for a moment to stand in the way of preserving peaceful citizens and faithful public servants from grievous hurt and their property from wanton destruction. The tooth of a sepoy deserves more consideration from the State than the whole body of a *badmash*.

Sections 133 *&* 144. (*a*) The powers conferred by these sections may safely be extended to Magistrates of the second class, subject to appeal to the District Magistrate.

(*b*) All Magistrates having powers under these Sections ought to be further empowered (and enjoined) to suppress and prevent any nocturnal noise likely to disturb the sleep of any person during the natural hours (from 10 P. M. to 6 A. M.) At present the whole civilised population of India is groaning under the intolerable hardship of frequent loss of sleep for many nights in succession. The consequences of this (in most places) unchecked nuisance are far worse than those of any of the nuisances specially named and provided against in this Code and other Laws. I believe that it is punishable under Section 290 I. P. C. But this is often doubted or disputed, and when the complaint is made by a single person, he is liable to defeat by the quibble, that it is only a private nuisance and that his only remedy therefore is the transparent mockery of a Civil Suit. I append a printed copy of Magisterial proceedings in which I have discussed this question in all its aspects. Here I will merely reiterate that the unspeakable tom-tom has really nothing whatever to do with law or religion (Hindu or Muslim). Its use is no wise concerned with the validity of a marriage or the efficacy of an act of worship. It ministers to nothing but barbarous social vanity. It is merely an instrument of cheap swagger and coarse amusement.

Sections 125 (*b*) *and* 138. That these provisions, and all others relating to Juries in nuisance-cases, be omitted as unnecessary and obstructive; and that the following provision be substituted as Section 138. "The Magistrate shall make "enquiry on the spot, or at least in the town or village where the nuisance is alleged "to exist, whenever its existence is disputed, if such course be possible without excessive delay expense or inconvenience."

Chapters X & XI. Magistrates ought to be empowered to spend money from the contingent allowances of their offices (up to such limits as the Local Go-

vernments may fix) for the prompt execution of their orders under these chapters. The offender often successfully evades obedience, especially in cases of obstruction, by those arts of intrigue and passive resistance, in which the natives of this country are such adepts. If the magistrate be transferred before his order has been carried out, the matter may drop out of sight. His clerks will often keep his successor in ignorance.

Chapter XII. Possession Cases. Magistrates of the second class may safely be empowered to act under this section, subject of course to appeal. There is hardly any other power conferred by the Code, which is so little liable to abuse. The exercise of it cannot do any irreparable harm, or permanently affect any right. The long distance which a party often has to travel in this Presidency, in order to find a first-class Magistrate, is a grave drawback to the utility of this chapter. Also the consequent inability of the Magistrate to arrange for speedy enquiry on the spot, which is almost indispensable to a just decision. The framers of the Code, in this and many other matters, have not sufficiently considered the difficulties in the way of justice caused by distance from Courts in a country scantily provided with railways. Legislators whose experience is of the Punjab and the N. W. P. do not bear in mind the fact that our Sub-divisions are as big as their Districts.

Chapter XIII. The following provisions to be inserted.

"(1) It shall be the duty of the Police to prevent and suppress all noises "likely to disturb the sleep of any person between 10 P. M. and 6 A. M., or of a sick "person at any time. They may act without complaint, and shall be bound to act "immediately on complaint by the person suffering from the noise, or by his medical "attendant, servant, or any trustworthy person whom they reasonably believe to be "complaining on his behalf. They may arrest the person causing the noise, and detain "him not more than twelve hours. They may also take from him the musical ins- "trument or other thing with which the noise was made, and retain it till they have "an opportunity of producing it before a Magistrate for orders. Any Magistrate may "order the confiscation or destruction of such instrument, or restore it under such "conditions as he thinks fit, taking security for their fulfilment. The Local Govern- "ment may issue instructions to Magistrates as to their action under this Section, and "the District Magistrate may issue instructions to his subordinates if not inconsis- "tent with the former."

"(2) For the purposes of the foregoing any public servant not inferior in rank to a Tahsildar, and any landholder or other person specially empowered by the Local Government, may exercise all the powers of an officer-in-charge of a station, within such limits as the Local Government or the District Magistrate may fix."

"(3) The Local Government, or with its permission the District Magistrate, may forbid the use or possession of tom-toms, gongs, drums and similar instruments within cantonments and other specified areas, and may search for and confiscate such instruments when found within such areas."

Chapter XIV. A Section to be inserted, providing that the Local Government, the District Magistrate, or any person generally or specially empowered in this behalf by the Local Government, may at any stage of an investigation order the Police to stay proceedings, either finally or for such time as may seem fit.

Chapter XV. Section 177. Add these words "Provided (*a*) that when "the offence is Defamation by a newspaper the enquiry and trial shall take place "in the Court of the complainant's ordinary residence, unless he prefer a Court "which would otherwise be competent." The complainant in such cases is really

a defendant (of his character), and ought to have all the privileges of that position, as well as every other possible advantage. It is a hardship, often a practical denial of justice, that a man should have to leave his own place to get redress in such cases: *e. g.* if a man living in Malabar were defamed by a newspaper at Mussoorie.

(*b*) "When the offence is assault, hurt, insult, or grievous hurt under "provocation (even if not grave or sudden), the enquiry and trial shall take place "in the Court of the defendant's ordinary residence, if it can be ascertained "without excessive difficulty delay or expense". This is needed for the protection of travellers against persecution and blackmailing by the porters, boatmen, beggars, cadgers, thieves and miscellaneous miscreants, who infest sea-ports and railway-stations, generally under pretence of selling things or rendering services which are not wanted by their victims. At present, a man who rescues his baggage from some self-appointed porter probable thief and certain extortioner, in the only practicable way (which is by means of a stick), may lose his passage for a month, fail to keep an appointment of vital importance, be involved in ruinous expenses, and altogether suffer what would be a sufficient punishment for an ordinary house-breaker. See also the remarks on Section 202.

(*c*) "These provisos shall govern the whole Chapter."

Section 191 (*a*). Add "such complaint may be made to a District Ma- "gistrate by registered letter, if verified on oath by complainant before a Ma- "gistrate, within whose jurisdiction he is at the time of verification. The Magistrate "by whom the letter is received, or to whom it is referred for disposal, may, if the "case be of a simple nature and if he intend to pass a sentence of fine only, examine "the complainant and his witnesses by commission, if they reside in another District, "notwithstanding the restrictions of Chapter XL" This provision also is intended for the benefit of travellers or other persons, who may happen to suffer injuries when absent from their usual places of residence, and who cannot wait in, or return to, the limits of the Court having jurisdiction, without excessive expense delay or inconvenience.

Chapter XV. generally and Sections 196 *and* 197 *in particular* ought to be so remodelled as to invest Government with complete control of the administration of the Criminal law, (except to dictate or influence decisions); on grounds of public policy, and in the interests of equity: both of which are systematically disregarded by narrow-minded courts, especially in Presidency-Towns. In other words Government ought to determine when the Criminal Courts shall be set in motion and how long they shall continue in motion: what they shall have to decide, though not how they shall decide it. It is amazing that in the Mofussil no public authority can even exercise anything like the English Attorney-General's power of "entering a *nolle prosequi*." A crime is according to the first principles of most legal systems, a wrong done to the State, and it is clearly reasonable that Government should say whether there shall be any judicial dealing with such a wrong. The experience of every observant magistrate must show it clearly contrary to good morals and public policy and highly injurious to the common weal, that the criminal law should be, as it is, the unguarded tool of private greed and malice. For private wrongs the appropriate public remedy is an action for damages. A criminal complaint ought not to be a matter of general right, but a privilege allowed by the guardians of the public interests, on due consideration of all the circumstances of the case.

In Section 196. I would therefore add "VII, VIII, IX, X and XI" after Chapter VI (of the Penal Code), and "or Local Government," after "Governor-General in Council," in the last line.

For Section 197. I would substitute the following.

"No court shall entertain any complaint against any magistrate" Native "Commissioned Officer, or public servant of any kind whose pay is not less than "Rs. 100 per mensem, for any offence alleged to have been committed by him in his "public capacity, or as a private person, without sanction from the District Magis- "trate or from the Local Government on appeal. Nor against any District Magis- "trate, Commanding Officer of a regiment or military station, or any public servant "of equal or superior rank, without sanction from the Local Government. Nor "against any Governor, Lieutenant-Governor, Chief Commissioner, Member of an "Executive Council, Memberofthe Legislative Councilof India, Judge of a HighCourt "or Chief Court, or Judicial Commissioner, Bishop, General-officer, or any person "of royal rank, without sanction from the Viceroy and the majority of his Council. "Nor against the Viceroy, or the Secretary of State, or any member of the British "Royal Family; absolutely."

Protection of this sort is already needed, and will become more urgent every year, against the machinations of the seditious conspirators and individual evildoers, whose hatred must be incurred sooner or later by every officer who does his duty.

Further, for the same ends, I would insert the following provisions in this Chapter or Chapter XLVI.

(*a*) "No Court, below that of a District Magistrate or a Chief Presidency "Magistrate, shall entertain any complaint against a member of any Legislative "Council, an Ancient Zemindar (so styled by Government), or any other person "whom the Local Government may classify with the aforesaid persons for purposes "of this section".

(*b*) "The Viceroy-in-Council, the Local Government, or any officer em- "powered by either in this behalf, may forbid any Court to entertain any particu- "lar complaint, or to proceed further with any complaint which it has entertain- "ed. Such prohibitions shall operate as an acquittal, and the Court shall remove the "case from its file. With a view to enquiry previous to the exercise of this power "of prohibition, the Court may be ordered to stay proceedings for a definite time or "until further orders. If a Court has any doubt as to the propriety (on grounds "of public policy) of entertaining any complaint presented to it, it shall refer such "complaint for orders from the District Magistrate or Local Government.

These reforms would prevent the recurrence of judicial indecencies, like Mr. Hearsey's persecution of two successive Lieutenant-Governors of the N.W.P., and the more recent frivolous and vexatious complaint against the Hon and Rev. Dr. Miller of the Madras Christian College, by an ungrateful student.

For Section 198. I would substitute the following:

"No Court shall take cognizance of an offence (if acting under Section "191 (*a*) of this Code), except on the complaint of some person who is directly "and substantially aggrieved by that offence, or of his guardian, or of his agent "duly appointed". At present any mischievous person may launch a complaint, without the consent or even against the will of the only persons really injured. This is inexcusable, and almost unparallelled license. The need for restriction was shown very conspicuously by what happened at Puna, during the enquiry about Mr. A. T. Crawford. Some of his friends, or secret agents, filed complaints of abetting bribery against the mamlatdars, who had given evidence of payments made to him for their promotion, in reliance on a guarantee of indemnity given by Government.

Section 200. I would omit Proviso (*b*). This practice of the Presidency Police Courts is a mischievous and indefensible anomaly. There is rather more than less reason in a Presidency Town than in a Mofussil District, for demanding the security of a deposition before issue of process to drag a defendant into Court. In the former, false, and frivolous or vexatious complaints are not less, but more frequent than in the latter. I would substitute the following Proviso, as a further precaution against the abuse of the Criminal law by malicious and unscrupulous persons. "When the complaint is of assault, hurt, restraint, insult or intimidation, "the Court shall question the complainant thoroughly as to whether he provoked the "accused by assault,insult,trespass, mischief, nuisance of any kind, restraint, obstruc- "tion, jostling, persistent begging or importunity of any kind, following him about, "intruding in any way on his privacy or that of his relatives, interference with his "moveable property, cruelty to animals, blasphemous or indecent language, drunk- "enness, disorderly behaviour, obvious falsehood, disrespect to elders or other su- "periors, or any other source of provocation which may occur to the Magistrate's "mind. If the complainant deny that he gave any provocation and the Court find "that he did, it shall direct his prosecution for giving false evidence."

Section 202. I would make this applicable to all Magistrates; and add the following after "take cognizance" in the fifth line "or suspects the complaint "to be frivolous or vexatious, or that the act complained of was justified by the need "of self-defence, or by reason of trespass or any other offence committed or attemp- "ted by the complainant."

At the end of the section I would add "A Magistrate shall as a rule act "under this section, if the accused be known to himself or the Police as a man of "respectable position and character, and the complainant as a person of a low class "or bad or doubtful character. In all summons-cases, and in cases of insult or "intimidation, when the accused has taken a passage by sea and will be in danger of "losing it should the charge be proceeded with immediately, the Court shall either "postpone the trial till the return of the accused from his voyage, or shall return "the complaint with a direction to file it in the Court of the defendant's ordinary re- "sidence, unless there is reason to believe that he will remain absent from British "India for three years or more. Even in this last case the Court may postpone the "trial *sine-die* or return the complaint, if the injury suffered by complainant is not "of a serious nature, and is greatly disproportionate to the injury which defendant "would suffer from losing his passage".

Section 203. Add "A complaint may be dismissed under this section, if "the Magistrate think that the injury complained of has come upon complainant as "the just and natural consequence of his own previous misconduct, and that in view "of all the circumstances he has not suffered appreciably more than he deserved: in "other words, that the wrongs, on each side are nearly balanced."

Section 205. Add after first clause. "The Magistrate shall ordinarily do "so, if the defendant be equal or superior to himself in rank (according to such rules "as the Government of India, the Local Government, or his superior Officers may "frame for his guidance), in all summons-cases, and in other cases, when it appears "to him on the face of the complaint that a fine will be a sufficient punishment".

Section 209. Add after first clause. "The Magistrate shall not commit "for trial, if he would not himself convict on the evidence for the prosecution, sup- "posing it to be not materially affected by the subsequent defence; unless he is or- "dered by a superior court." This is rendered necessary by a ruling of the Bombay High Court (I. L. R. XI Bombay 374), that a Magistrate ought to commit "when credible witnesses make statements which, *if believed*, would sustain a conviction."

This decision is founded on English Statute-law, which is no part of the Law of India, and ought to be jealously excluded from a country, whose circumstances are so different from those of England. As Mr. Justice Holloway of Madras once observed, "In this country oral evidence is *prima-facie* not to be believed". This ruling must have a disastrous effect in the way of encouraging false charges of grave offences. Not to mention ruinous expense, it almost ensures the imprisonment for two or three months of any man, whose unscrupulous enemy can trump up a case, which does not obviously break down before the defence is heard. The risk of subsequent punishment for perjury is too slight to deter a vindictive man with a purse of moderate length. The cruel case of Dr. Pearse at Calcutta in 1893 is a good illustration of the injustice fostered by such decisions as the one now under protest.

Section 215. The High Court and Courts of Session ought to have power to quash a commitment, and return the case to the Committing Magistrate for disposal by himself, if he were competent to dispose of it from the first. There is a frequent disposition on the part of magistrates to evade responsibility and overload the Sessions Court. Especially so, when the defendant is a troublesome person, who has money to hire bullying counsel, and to corrupt or intimidate witnesses if time be allowed. Or the power of a magistrate to commit cases to the Sessions Court might be limited by requiring the consent of the District Magistrate, when the case is not one triable exclusively by that Court.

Section 222. The Section is clearly enough framed for reasonable persons, reading to find its real intention. But the following explanation ought to be added, to prevent such misdirection of juries on stupidly framed charges, as occurred in the notorious case of Shama Charn Sen at Calcutta in 1890.

"*Explanation.* It is not necessary to state points of time and place. It "is sufficient to say that an offence occurred between two dates, or on the road be- "tween two towns, or within the limits of a certain magisterial Sub Division."

Section 250. The following explanation ought to be added.

"*Explanation.* A complaint may be frivolous or vexatious, not merely "because the injury complained of is trifling in itself, but even when it is serious, "if the antecedent and attendant circumstances show an element of accident, or that "the complainant also deserves blame, and that on the balance of connected wrongs "the excess suffered by him is trifling."

I would raise the amount of compensation to Rs 100, and the term of imprisonment to sixty days. I would also allow the imprisonment to be either simple or rigorous. Simple imprisonment is no punishment to a large class of Indian offenders, unless long-continued.

I would omit the restricting words "instituted upon complaint" in the first line of the section, and add after the word "complainant" in the fourth line "or person at whose instance the police-report was made." I would make the provisions of this section applicable also to acquittals or discharges under Chapters XXI (warrant-cases) XXII (summary-trials). XXIII (trials by High Courts and Courts of Session), and also on appeal or revision. The charges of kidnapping tried by Sessions Courts are very frequently frivolous and vexatious.

Section 262. Add after second clause, "except by a District Magistrate "or Chief Presidency Magistrate, who may pass sentence for six months." A District Magistrate ought not to have less power than is now given to a Presidency Magistrate, to whom he is generally superior in qualifications.

Section 267. Add the first clause, "unless the High Court direct that a "case be tried by two or three Judges without a Jury, on the ground that the jury "may probably return a wrong finding under the influence of corruption, intimidati- "on or sympathy or antipathy arising from race, caste, creed, trade, social class, or "political party." The High Court shall so direct in any trial under Chapters v, vi, vii, viii, ix, x, xi, xx, or xxi of the Indian Penal Code, if desired by either party.

Section 283. No harm would be done and some trouble saved, by substituting "shall" for "may;" and omitting the words in the "discretion of the presiding Judge."

Section 298. I would add the following illustration.

(c) In trials for defamation, it is the duty of the Judge to decide "whe- "ther the imputation is for the public good, notwithstanding anything contained "in the First Exception to section 499 I. P. C." The question is far too difficult and delicate for an ordinary Indian Jury, or any Jury not entirely composed of well-educated men of honour.

Section 299. I would add the following illustration.

"(c) The question is whether an act was rightfully done in self-defence. "This is a question for the Jury." There is a prejudice against the right of self-defence, and a deposition to whittle it away, in the minds of many Judges, especially those imported from England in middle life, and Hindus of sedentary castes, who have an undiscriminating feminine horror of all violence, whether just or unjust. Nothing in law can be a greater benefit to the peaceful and industrious population, than the encouragement of self-defence against robber-castes and village-ruffians, in a country too vast and too poor to pay for a ubiquitous and really efficient Police. Nothing deters these wild beasts so much as the likelihood of unhampered resistance and instant counteraction. It is safer to trust the guardianship of this inestimable right to the Jury than to the Judge. If the Jury should be faithless or perverse, a just Judge may nullify their misdeed in more ways than one.

Section 306. The Madras High Court has ruled that if a Judge pass sentence according to the verdict of the jury, he may not pass a nominal sentance. This is an inexpedient restriction of the unqualified words of the Code. I would therefore add after "according to law;" "his discretion as to kind and amount of "punishment being unfettered except by the *maxima* enacted."

Section 307. After the first clause add " He may, if he choose, submit the "case, even if he do not disagree completely." This change was I believe, recommended by the Calcutta High Court, in the recent discussion of Jury-trials.

Chapter XXIII Part K. Add the following provisions.

"(a). Jurymen and Assessors shall receive batta and travelling expenses "like witnesses of the same class"

"(b) No Juryman or Assessor shall be summoned more than once a year, "unless he is a resident of the Court's Headquarters."

"(c) Jurymen and Assessors must be able to read and write English, "or some language generally spoken within the Court's territorial jurisdiction."

Section 334. Add the following "Sessions shall be held by High Courts "(and Sessions Courts) not less than once a month, excluding the months of "Recess." The holding of Sessions at Madras only once a quarter is a great hardship to innocent prisoners; and indeed to guilty ones, who may thus be kept 3 or 4 months in suspense, without any necessity.

Section 342. Add after first clause "The Court shall ask the accused "to explain how he came into possession of anything, which is alleged to have been "stolen, and may draw any inference from his answer or refusal to answer. It shall "ordinarily, at the instance of the prosecutor, adjourn the enquiry or trial and "summon witnesses for the purpose of testing the truth of the explanation given." This question may, I think, be legally put under the Section as it stands. But many Courts think otherwise, and counsel for defendants usually object. The consequence is general impunity for thefts by servants, when the articles cannot be identified by any special mark. A very glaring case occurred a few years ago at Calcutta. A servant of the Great Eastern Hotel, who had long been suspected of stealing brandy, was found in possession of many bottles of Exshaw's No. 1. He was asked to account for his possession of them, but his pleader objected, and he was acquitted by a Presidency-Magistrate.

Section 345. Add in the last line after "compounded" the words "without permission from the Local Government." There are few offences, which may not justly be compounded under some circumstances. And the Local Governments may be trusted not to abuse such a power.

Chapter XXV. I would insert a new Section as follows.

"In cross-examination or hostile examination as to credit and character all "questions likely to offend shall be put through the Court and so far as possible in "writing. The Court shall give warning of this rule when the Examination begins. "Each question shall be submitted to the Court in writing, and the Court may refuse "to put it, or make any change which it thinks fit, without assigning reasons until "specially asked to do so by a Court of appeal or revision. The question shall be "put and the witness shall answer in writing, if he can read and write, unless he "prefer to answer orally. If the witness cannot read and write, he may be exa- "mined in a private room, or after the Court has been cleared. The questions "and answers shall be shown to the Jury or Assessors, unless the Court "think fit to withhold them for reasons to be recorded. The Court may call "upon the party or counsel to state in writing his grounds for the question, and the "party or counsel must either comply with the order or withdraw the question. "All papers written in the course of proceedings under this Section shall form "part of the record, except in summary trials from which there is no appeal. "A party, agent, or counsel putting an offensive question to a witness in violation "of the spirit of this section, shall not be allowed to put any further question "until he has apologized in such form as the Court directs, and the agent or counsel "may be forbidden to appear further in court during the trial or enquiry."

The fear of insult and slander in the witness-box is the most fruitful source of failures of justice and impunity of crime. Injured parties will not come forward and witnesses conceal their knowledge, to escape being shot with poisoned arrows from behind the walls of coward's castle. The regular defence of a thief caught on the premises is the lie, that he came at the invitation of some woman in the house. A common false defence in other cases is to ascribe the charge, or the evidence in its favour, to enmity arising from some intrigue with a female relative of the witness or complainant. Sometimes the unfortunate woman is dragged into Court, and baited before a grinning crowd of lewd fellows of the baser sort. People in England or at Simla can have but a faint notion of the orgies of mental torture, which sometimes go on in the courts of subordinate magistrates, either careless or afraid of doing their duty as protectors of party and witness. But however good his intentions may be, the magistrate's present power is only a sham. He cannot prevent unexpected outrages on honest men and modest women. To disallow a question is only locking the stable-door after the steed has been stolen. The mischief is done, when the question is uttered.

The ordinary licensed pleader is sometimes ready enough play the skunk or the scorpion, when he can do so safely. But a prisoner can (very properly) employ anybody to defend him; and in such courts usually resorts to the cheaper agency of the unlicensed practitioner, known in Southern India as a "law-agent," or "private vakil." Of these men, (very frequently dismissed constables) it is not too much to say, that the majority are among the vilest vermin of the Order Bimana. Their main, if not their one idea, is to throw as much mud as they can find to hand. It is a blot on our judicial system, that there is not a third grade of pleaders, selected and licensed for practice in the Criminal Courts alone.

The proposed reform is indeed one which would with greater propriety find place in an amended Evidence Act. But the urgency is great. A beginning cannot be made too soon. And the abuse is much worse in the Criminal Courts than in the Civil.

Section 366. It is a waste of time to read the whole judgment. The finding and sentence are quite enough.

Section 370. This may well be omitted, leaving the general provisions of the Code applicable to the judgments of Presidency Magistrates. It is indeed worthy of serious consideration, whether the whole of the special provisions regarding these Magistrates should not be struck out of the Code, the Presidency-Towns being declared ordinary Districts subject to all the general provisions of the Code. Life would then be more tolerable to their respectable inhabitants; for the Courts would be more of a terror to evil-doers and a praise and protection to them that do well, under hard-headed and heavy-handed District Magistrates. The anomaly is historic, and to a great extent accidental. It lost all such *raison d'etre* as it may ever have had, when the old Supreme Courts and Sudder Courts were fused into the new High Courts, and when one Penal Code was enacted for the whole of India.

Chapter XXVII. The whole of this Chapter may well be omitted. It is to some extent a slur on the officers affected, and there is not the slightest necessity for it. The persons convicted can appeal, and always do, unless they are tired of life.

Section 386. This section unduly restricts the means of levying a fine. It is practically impossible to find what moveable property belongs to a member of a joint-family. All property moveable or immoveable ought to be made liable to distress and sale, including property held in partnership, or as a member of a joint family. The joint-family indeed ought to be made liable for fines inflicted on any member, to the extent of his share: the remaining members being empowered to recover from him in any partition.

Chapter XXIX. Ought to contain the following provisions:—

"A District Magistrate or a Chief Presidency Magistrate may remit one- "half or less of a sentence of fine, imprisonment or transportation passed upon "any offence committed within his District, if the defendant before or after convic- "tion give information which leads to the recovery of stolen property, or the con- "viction of other persons concerned in the same case, such information being treated "as confidential, if possible and if the giver so desire." At present the Criminal Law shows far too little consideration for the interests of persons who have suffered loss by offences.

Section 411. Certainly ought to be omitted. Presidency Magistrates are as a rule quite unfit to have these enormous powers over all sorts of offences without appeal.

Section 414. (Summary trials). After "three months only," add "or six "months if passed by a District Magistrate or Chief Presidency Magistrate"

Section 418. Add in third line "unless the Judge has disagreed with the "jury on matters of fact."

Section 437. Add "the examining Court may direct the transfer of the "case from the subordinate Magistrate concerned to some other Magistrate."

Section 439. Add after first clause "Provided that the High Court shall "not enhance any punishment or reverse any order of acquittal, or discharge, or "dismissal under section 203 or 249, except at the instance of the Local Govern-"ment, or on application sanctioned by that Government, and unless two Judges "chosen by lot concur in the order." It is clearly against public policy, that so exceptional and dangerous a power should be at the beck and call of private malice, or exercised on the impulse of a Judge who may be rash, inexperienced of India, and full of foreign prejudices.

In Allahabad this power can, or lately could, be exercised by a single Judge on his own motion. The most serious abuses however resulted at Bombay 8 or 9 years ago, when Sir William Wedderburn sat with Mr. Justice Nanabhai Haridas; till the Chief Justice had to interfere and reorganize the Benches.

Section 443. Insert "Chief" before "Presidency Magistrate".

Section 445. Add after "European British Subject" in third line "(who is not a public servant)." The only excuse for this section is, that otherwise the offender might not be found when wanted. This necessity is very unlikely to arise in the case of public servants.

Add also this third clause. "Provided also that he shall not issue a warra-"nt, unless the accused is a vagrant, or there are very strong grounds for belie-"ving that he will abscond."

Section 446 Omit "or Presidency Magistrate" European British Subjects ought not to be less protected in Presidency-Towns than in the Mofussil.

Section 459. Add "Provided that such enactments are not inconsistent "with any provision of this Chapter."

Section 480. As regards punishment, substitute for "simple impri-sonment," "imprisonment of either description, and for "one month," "three months (if the Court's ordinary powers of punishment extend so far)." And add "The Court may, instead of fining the offender order him to apologize to the "aggrieved person in such form as it thinks fit. And if the offender be not above "the rank of a sepoy or common constable, it may order him to receive six stripes "with a light rattan, or to perform a *sashtangam* (prostration of the eight members), "or to undergo any other ignominious punishment such as the Local Government "may approve and describe by notification in its Gazette." Perhaps it would be best to restrict these enhanced powers to Magistrates of the first class.

Section 480. Add the following provisos:—

(*a*) "No Court below that of a District Magistrate, a Chief Presidency "Magistrate, or a Sessions Judge, shall deal under this Section with a person of "superior rank as classified in this Code or by the Local Government. But any "Court may expel any person from the premises of the Court, and forbid his re-"entry."

(*b*) The Court, if it cause an offender to be detained in custody, may "send him to a Police-Station for that purpose, using such restraint as it may think "necessary."

"(*c*) A Court may arrest, punish or expel under this section any person "who treats any occupants of the Bench or Jury-box disrespectfully, or disobeys "any reasonable order of the Court, or conducts himself in an indecorous manner, "or threatens or wantonly insults any witness or other person concerned in the "proceedings."

"(*d*) A Court may punish under this section any witness party, agent or "counsel, who makes a statement which the Court considers deliberately untrue, "or wantonly offensive, or an imputation which the Court considers unjustifiable "for want of reasonable grounds." This however also would better be restricted to Magistrates of the first class and others specially empowered.

Note. Perjury still flourishes in this country because it is treated too seriously, and the offender has therefore too many chances of escape. It may safely be said that not one offender in a thousand is even sent for trial, because the trial involves so much trouble to all concerned. And of those who are tried the great majority, perhaps nine out of ten, are acquitted. From the necessary lapse of time the witnesses are very likely to be gained over, or to contradict themselves through forgetfulness. In dealing with this offence we must look on it as an inveterate custom of the country, from which the people have to be gently weaned; and we must fall back on Bentham's principle, that a light punishment fairly certain of incidence, is far more effective than a heavy punishment whose incidence is very uncertain, not to say improbable.

Section 487. Omit the words "and the Presidency Magistrates." The extent of their powers is nowhere defined. The Code seems to assume that being "Courts of record." they have the same powers which the High Court inherited from the old Supreme Court under the Law of England. This is a very doubtful supposition. The Letters Patent of the High Courts and the Act of Parliament under which they were issued (Act 24 & 25 Vic: c: 104) make no allusion to Presidency Magistrates. On the other hand it is certain that the majority of Presidency Magistrates are quite unfit to exercise such powers; while Sessions Courts are to say the least very much better fitted. I would therefore substitute for the omitted words "Sessions Judge (including Additional and Joint Judges), "District Magistrate and Chief Presidency Magistrate." And I would add at the end of the section, to prevent any dispute, that "All Judges of the Chief Court of "the Panjab, Judicial Commissioners, Sessions Judges (including Additional and "Joint Judges), District Magistrates, Chief Presidency Magistrates, District "Judges (or Additional Judges) in Regulation Provinces and Civil Judges in "other Provinces whom the Viceroy-in-Council may declare to be of equivalent "status, also Chief Judges of Presidency Small Cause Courts, shall have all those "powers of dealing with and punishing contempt of court, which are possessed "by a High Court established under Royal Charter, within such territorial limits "as the Local Government may fix."

Section 492. Substitute "Inspector" for "Assistant District Superintendent." An Officer of the latter rank is hardly ever available, even if qualified. In connection with this matter I may be allowed to suggest the following administrative arrangement. In every District, the funds now devoted to paying the Court-Inspector's salary and the fees of the Government Pleader should be used for paying an Assistant or Sub-Assistant Superintendent, who must also be a passed Pleader of the first grade. The management of the prosecution will thus be entirely, as it ought to be, under the Superintendent's control. Division of authority is mischievous. The funds available in this Presidency would certainly

A. Coolies and menials., (as determined by the Court or other public servant having to deal with them officially, under general rules framed by the District Court of Honour with the approval of the provincial Court.)

B. Sepoys and constables (to include ordinary rayats, artisans shop keepers and others not classified under A nor in a higher class.) The District Court may frame general rules for this class, as for class A.

C. Havildars and Head-Constables. (To include Heads of Villages, clerks and other public servants drawing Rs. 15 a month on pensionable service, and other persons specially placed in this class by the District Court of Honour.

D. Jemadars and Sub Inspectors of Police. (To include British soldiers and sergeants, public servants drawing Rs. 50 a month on pensionable service, pleaders of the second grade, graduates of Indian Universities, and other persons specially placed in this class by the District Court of Honour).

E. Subadars and Superior Inspectors of Police. (To include Warrant-Officers, Magistrates of the 2nd and 3rd Classes under this Code, public servants drawing Rs. 100 a month on pensionable service, Masters of Arts or Law in Indian Universities, pleaders of the first grade, and other persons specially placed in this class by the District Court of Honour).

F. Subadars-Major and Senior Warrant-Officers. [To include District Munsifs, Deputy Magistrates, all Magistrates of the first class under this Code, public servants drawing Rs. 250 a month on pensionable service, Vakils and Attorneys of the High Court, Advocates of the High Court (not being graduates of British Universities nor European British Subjects), and other persons specially placed in this class by the District Court of Honour.]

G. Commissioned Officers. (To include all members of Covenanted Indian Civil service, Covenanted Engineers and Forest-Officers, public servants drawing Rs 500 a month on pensionable service, Clergymen of the Churches of England and Scotland, Barristers or Scottish Advocates being European British Subjects or graduates of British Universities, medical practitioners being Europe an British Subjects, who are graduates of British Universities, or have been registered by the Medical Council of the United Kingdom, and other persons who may be specially placed in this class by the Provincial Court of Honour.

H. Field-officers. (To include Civil officers of corresponding rank in the Warrent of Precedence, all public servants drawing Rs. 1000 a month on pensionable service, and other persons who may be specially placed in this class by the Provincial Court of Honour.

I. General officers (To include Civil officers of corresponding rank in the Warrant of Procedence, and other persons who may be specially placed in this class by the Provincial Court of Honour.

J. Persons on whom Special Rank has been conferred by the Warrant of Precedence, or by special order of the Viceroy-in-Council.

(*Section* 544 A). *Explanation* I. The rank of a man's wife and minor children is determined by his own.

Explanation II. The Acting incumbent of any post has for the time being the rank of the permanent incumbent.

Explanation III. A person specially placed in any class may at any time be reduced to a lower class by the same authority.

Note I. The present rough division into three classes at the discretion of the Court is inadequate and practically unjust. Its vagueness leads to friction in various ways, and in Civil cases to positively insulting disputes between rival pleaders as to the status of a witness.

Note II. It is worthy of consideration, especially from a fiscal point of view, whether it would not be good policy to make payment of income-tax for three years on Rs. 600, Rs. 1200, Rs. 3000, or 6000 a year carry a right of admission to Classes C, D, E, or F, and of continuance therein during payment of tax at the same rate and during good behaviour (as decided by the District Court of Honour). Such persons may turn out to be receivers of stolen property.

The following separate section ought also to be here inserted.

Section 544 B. To be newly inserted, "In each District there shall be a "Court of Honour consisting of the District Magistrate, the Sessions Judge, and "one other public servant appointed by the Local Government, who shall be the "senior Military Officer on duty(if there be one). In PresidencyTowns there shall be "a similar Court consisting of the Chief Presidency Magistrate, the Commissioner "of Police, the Senior Military Officer (or some Field-officer deputed by him) and "two other public servants appointed by the Local Government. The District Supe-"rintendent, or some other Officer of Police appointed by Government, shall be "Registrar of the Court. The Court may summon any person to act as an Assessor, "giving his opinion but having no power of decision The proceedings of the Court "shall be carried on under rules framed by the Local Government, but shall in all "cases be private and confidential. They shall be subject to appeal to the Provi-"ncial Court."

"For the territory under each Local Government (or administration) "there shall be a Provincial Court of Honour, consisting of the members of the Local Government and High Court or Chief Court (including Chief Commissioners and Judicial Commissioners), with all General officers on duty within the said territory, all Heads of Departments (including members of Boards), and the Advocate-General. The proceedings of this Court shall be carried on under rules framed by the Viceroy-in-Council, and shall be private and confidential. They shall be subject to reversal or modification by the Viceroy-in-Council, only if the majority in favour of the decision be less than two- thirds of those voting.

Section 545 (*b*). It was, I have no doubt, the intention of the Legislature, that the widow and other dependent relatives of a man who dies in consequence of an offence should get compensation under this section. They can bring a Civil Suit under Act XIII of 1855, and in other respects the wording of the section is comprehensive enough to justify this opinion. But the Madras High Court has held otherwise without giving any reason, (I. L. R. XII Madras 352) and similar rulings have been made under by other High Courts. It is therefore necessary to add the following explanatory words.

"When a person dies in consequence of an offence, compensation may be "given under this section to the husband or wife, to the minor children and to other "dependent relatives of the deceased."

I would add a third clause for the protection of witnesses &c.

"(*c*). In compensation for any injury done since the complaint to the "person, property or reputation of any complainant or witness or police-officer, or "of his family, which the Court believes to have been done by the accused or his "friends in revenge or intimidation."

And the following fourth clause.

(*d*). "In compensation to the innocent purchaser of stolen property."

The want of any provision for compensating persons who suffer from malicious secret offences, (especially in consequence of judicial proceedings), is a very great hindrance to justice, and a grave blot on our judicial system. An Act, like the Irish Act passed for this purpose, is needed in India as much as in any part of the world. In many Districts the decent population is kept in abject terror by blackmailing criminal castes. In Tinnevelly for several years almost every case, in which Maravas were accused, was thrown out as a matter of course when it came up to the Sessions Court Even now there is great difficulty in getting convictions of housebreakers and dacoits If they fail to intimidate complainants and witnesses, they threaten to burn the houses and stacks of the Jurymen.

Section 550. Insert "Judges, Magistrates, Justices of the Peace and" before "Police-officers." And add "The District Magistrate may (with the approval "of the Local Government) confer any or all of the powers of an officer in charge "of a police station, on any public servant or landholder, who shows that he has a "satisfactory knowledge of the powers and duties of the office, within such limits "as the District Magistrate may fix."

Section 552. Omit the words "in a Presidency-town." There is no reason why people in the Mofussil should have less protection against vexatious arrest.

Add the following clause.

"When an accussd person, who has been detained in custody during the "whole or a part of any enquiry or trial, is acquitted or discharged, the Court may "by way of compensation give batta to him for the period of custody, as if he were "a witness, and shall, except for special reasons to be recorded, pay his travelling "expenses back to his usual residence according to his class."

At the end of the Chapter I would add the following miscellaneous provisions.

Section 560. "The Local Government may issue general instructions to "Magistrates as to the proper degree of punishment to be awarded to offences "under various circumstances. It may censure and punish Magistrates who dis-"regard those instructions, or who show themselves otherwise deficient in sense "of proportion and general discretion. And it may delegate these powers to "District Magistrates or the Chief Presidency Magistrate."

The Madras Presidency Magistrates are as a rule mischievously lenient in dealing with grave and wanton offences: as Government has lately noticed. They habitually let off thieves and house-trespasser with fines, and even highway-robbers with a month or two of imprisonment.

Section 561. "Accused persons shall be allowed to sit on the floor or on "a chair (according to their usual habits), except when making statements or ans-"wering questions." There is no excuse for the present senseless and cruel prac-

tice of making them stand for several hours. It is only a tradition from more brutal ages The mental distress under which they generally labour makes it a greater hardship to them than to a witness.

Section 562. "No witness shall be asked to kiss a book or any object in "taking an oath. There is no necessity for this insanitary traditional practice, which "may spread horrible contagious diseases."

Section 563. "A witness shall be allowed to sit when deposing, if he be "in a very weak state or suffering considerable pain, and as a rule after he has been "standing continuously for more than an hour. Under any circumstances the Co-"urt shall as a rule allow a witness superior in rank to the presiding officer, to sit "throughout the proceedings."

Section 564. "Any Court may fine any party or pleader who causes a "witness to be summoned for frivolous or vexatious reasons or purposes, not more "than Rs. 100, and may award compensation to the witness to that extent. It "shall ordinarily do so, if it think the evidence, which the witness gave or could "give or was called to give, either useless or trivial, and if the witness assert on re-"asonable grounds that he was called with the intention of putting him to loss, ex-"pense, inconvenience, indignity or annoyance of any sort."

Every judicial officer of moderate experience must have seen many cases calling for such treatment. Committing Magistrates, and executive officers who have made enquiries about offences are specially exposed to this kind of vindictive annoyance.

Section 565. "When a Judge or Magistrate is examined as a witness "regarding anything done, seen, heard, or otherwise perceived by him in any offi-"cial capacity, no question shall be put to him except by the Court, which may "however receive suggestions in writing from the parties."

It is monstrous that Committing Magistrates should be cross-examined by pleaders for defendants, as they sometimes are at present.

Section 566. "All Courts shall do whatever may be possible to secure the "comfort and privacy of persons having to attend in connection with any proceed-"ings, and their freedom from hardship or annoyance, in regard to chairs, waiting-"rooms, ventilation and other matters, according to their usual habits and mode of "life" It is a matter of the highest public policy, to render resort to Courts of Justice less repulsive than it now is, to persons of respectability and refinement. Witnesses are generally treated badly, and jurymen not much better.

Section 567. "A Magistrate or Judge (Civil or Criminal) may at any "time or place arrest any person who insults or intimidates him, or attempts to do "so, or commits or attempts to commit any offence in his presence against himself "or any other person."

Perhaps this might better be substituted for section 65 (Chapter V). There can be no doubt as to its necessity, in this time of general decay of respect for authority, in order to protect Judges and Magistrates out of Court against persons who have a grudge against them for what they have done in Court. Their liability to such insult and intimidation has, it is to be feared, a serious influence in deterring subordinate Magistrates from doing their duty. Living in the midst of bazars they are specially exposed to attack.

In connection with this section, it is necessary to modify Schedule II, by making offences under Chapter XXII cognizable by the Police (*i. e.* justifying arrest without warrant), at least when the person aggrieved is a public servant, whether he be on duty or not.

Finally:—I have made no proposals to reverse the changes introduced by Act III of 1884, because Government may consider that these must be maintained on grounds of public policy, being the result of compromise between opposing parties in the Council at a time of great public excitement. If it is not so, I may say that, like nearly all District-officers, I regard every provision of that Act as needless and most of them as mischievous.

SUPPLEMENT.

Section 250. Proviso.

"When a complaint under Section 323, 324, 334, 341, 352, 355, 358, 504, "or 506 I. P. C. (Assault, Hurt, Insult or Intimidation) is made by a person, who "was at the time of the alleged offence, in any place which he had no right to en- "ter, or where he had no right to remain after being ordered to leave, the charge "shall as a rule be dismissed as frivolous and vexatious, unless it be proved by un- "exceptionable medical testimony, that the complainant was disabled for three days "from doing his ordinary business, or that he suffered pain equal to six stripes with "a light rattan given by an average European jail-warder using his full strength. "The motive of the trespasser shall be immaterial, if his conduct actually caused, or "would naturally cause annoyance of any sort to a person of ordinary sense or "temper."

The law is now so administered by many Magistrates, especially in Presidency-Towns, as practically to deprive householders and others of the right of self-defence against trespass. The use of a boot or a stick is certainly no more than necessary in this country at least. A gentleman cannot be expected to touch with his hands an itchy oily odorous denizen of the bazar. A Brahmin would shrink from touching a Pariah even in self-defence.

Most of the Magistrates show themselves utterly ignorant of the difference between motive and intention. If a cobbler walks into a drawing-room to demand payment of a disputed debt, or a dismissed servant refuses to leave without a false certificate of good character, the average Presidency-Magistrate will hold that he has not committed criminal trespass! Yet every such trespasser knows that his only hope of getting what he wants is by causing so much annoyance, that the householder may yield to get rid of his offensive presence. Clearly therefore his intention is to cause annoyance, if not to intimidate. A man intends whatever he knows to be likely as the result of his action.

KURNOOL, MADRAS.
25th February 1895.

W. M. THORBURN,
Sessions Judge.

DISTURBANCE OF SLEEP.

VELLORE,
5th January, 1889.

PROCEEDINGS OF THE JOINT MAGISTRATE OF NORTH ARCOT.

Read memorial presented by thirty five residents of Vellore complaining of the public nuisance caused by persons who beat tom-toms and make other loud noises at night during the ordinary hours of sleep: also depositions by Captain Mayne, Mr. W. Vivian, Mr. T. Sheffield, Mr. J. Franklin, and Surgeon Major Lancaster: also the record of Summary No. 12 of 1888 on the file of this Court, embodying depositions by Assistant Surgeon G. Venkatasami Naidu and others.

1. As there is much misapprehension everywhere regarding the law applicable to the matter of this complaint, it is desirable to state clearly what can and what cannot be done by the Police, for their guidance, and for the information of the persons complaining and complained against.

2. The Police under section 43 of the Police Act have power to regulate the use of music on the streets by day or night. They may therefore prevent persons from singing or playing on instruments in any particular public place. They have no control however over noises made on private premises. The only law under which such noises can be dealt with is section 290 of the Indian Penal Code. Public nuisances punishable under that section are not cognizable by the Police. They can only warn the offenders, and take their names for report to the Magistrates.

3. Licenses are frequently issued by the Police for processions with tom-toms at night. The nature of these licenses is generally misunderstood. They do not protect the holders from prosecution for public nuisance by any person whose health or comfort is injuriously affected. They are mere statements that the Police will not interfere at certain times and places. Nobody, not even the Queen Empress, can license a public nuisance, it being a criminal offence. The licenses sometimes issued by Revenue-officers and Chairmen of Municipalities are illegal and valueless for any purpose whatever. They have no concurrent authority with the Police, who alone can control the use of public places for such purposes; subject however to direction by the Magistrates having jurisdiction.

4. It is sometimes denied that the nocturnal noises now complained of are public nuisances, and persons aggrieved are, therefore, disposed to doubt whether they have a remedy. I shall therefore discuss the matter fully before passing any order.

5. In the first place, it is argued on behalf of the persons who make these noises that they have a right to do so by immemorial custom, however cruel and injurious it may be to their neighbours. The sufficient answer to this is, that the

Penal Code overrides all customs and recognises no exceptions founded on them. It is an aggrieved person's right to complain, and a Criminal Court's duty to punish, in spite of any custom, however ancient and widespread it may be. The custom of beating tom-toms, and setting off fireworks at all hours of the night, for weddings and other ceremonies, is doubtless one of that description. But customs can be changed, have been changed, and if they are bad customs ought to be changed: and the sooner the better. Government has suppressed or is suppressing other barbarous customs equally old and cherished. *Sati* has been put down entirely. The purchase of girls for the service of temples has been made difficult, though the law is still extensively evaded. Robbery and house-breaking, are two old and cherished customs of the Madura and Tinnevelly Maravas, which nobody asks us to tolerate. Nor the more widely spread custom of levying blackmail under the name of kaval-fees. It is indeed practically unchecked in Trichinopoly and other places, but that is from want of power, not want of will. Two old and universal customs of the country are easing oneself at the road-side, and washing in wells of drinking-water. These are being put down with the professed approval of most Hindus who venture to call themselves enlightened, though there is certainly a passive resistance to the improvement on the part of the bulk of the people. They do not see anything wrong in their interference with the health and comfort of their neighbours, and they think it a hardship that they are not allowed to be as dirty as they please. Government rightly pays no regard to their opposition, nor to the antiquity and generality of the offensive customs. In these cases it recognises no prescriptive right in any man to save himself a little trouble at the expense of other men's health. Still less reasonable would it be to recognise a prescriptive right to get a little amusement at similar expense. For that simply is the claim made by the defenders of nocturnal firing and drumming, sometimes miscalled music. There is a pretence of religion about these practices, but they are really nothing but noisy public amusements.

6. The argument that these noises, when they accompany ceremonies called religious, ought not to be interfered with because they are part of worship, is one which has often imposed upon magistrates and Police officers, and made them unduly chary of attempting suppression. As to discharges of gunpowder in any form there ought to be no hesitation in meeting the allegation with a flat denial. It is obviously a modern innovation, a childish bit of play, which the lower order of Christians, as well as Hindus and Mussalmans, have grafted on their religious exercises. As to so-called music, there is more room for difference of opinion; but the purely arbitary nature of its conjunction with religion is very clear in such cases as that of the Moharram. That is now the great Saturnalia of the year, in which the lowerclasses of Hindus are even more prominent than the Musalmans whose festival it is supposed to be; but it was instituted as the anniversary of a mournful event, the murder of Ali's sons, which true Musalmans would commemorate by silence in sack-cloth and ashes. In all other cases there is very good reason to doubt whether anything but sheer obstinacy in having their own way prevents Hindus and Musalmans from being satisfied with the milder strains of flutes and stringed instruments, and from confining the furious din of tom-toms to the sixteen hours of daylight and early evening. But even if midnight uproar is a real part ofany religion, that is no reason why Courts of justice should hesitate to suppress it as an offence. The state exists primarily for the temporal welfare

of its subjects, and religious customs are entitled to protection only in so far as they are consistent with that first object of Government. No civilised Government can justly allow one class of the people to seek what they supposed to be their spiritual welfare, to the detriment of the persons and property of others, or in violation of the standard of common morality which the Government professes to uphold. The Government of India does not tolerate *sati*, or recruitment of girls for temple prostitution, intimately connected as these practices are with the Hindu religion. Being the guardian of public health, as well as public morals,(which it admits in the Penal Code), it cannot justly tolerate nuisances, any more than cruelty, indecency or dishonesty. If a man really believes that to make loud noises in the middle of the night is a religious duty, it is surely nothing but reasonable to expect him to choose for the purpose some remote corner, where his conduct will not torment any neighbour who does not share his superstition. But really devout people of any religion are the least likely of all to be noisy at any time.

7. Disturbance of sleep during the natural and necessary hours, which for ordinary persons may be reckoned, from 10 P. M. to sunrise, is clearly a public nuisance if a nuisance at all, because it affects all average human beings, and not merely persons whose nature, habits and circumstances may be peculiar. This generality of incidence clearly distinguishes it from a private nuisance. It is nothing to the purpose to say in objection that the complaint is usually made by a single person. Everybody dislikes to be disturbed in his sleep, though, for reasons obvious to experienced magistrates, it is not everybody who will take the trouble to complain, even if he knows that he has a right to do so. Many do not know. This is so notorious, that when the making of a sufficient noise has once been proved, further evidence as to its being a public nuisance ought to be held superfluous.

8. That it is a nuisance will not be denied by any person with a moderate knowledge of law, logic and physiology. There are four prime necessaries of animal life and health: air, water, food and sleep. Deficiency in the quality or quantity of any one of these must cause weakness, sickness, and in the end premature death. If wilful causing of such deficiency, without the justification of superior necessity, be a nuisance in regard to one, it must be such in regard to each. All stand on an equal footing physically and all must therefore receive the same treatment legally, where no exception is expressly made. Deprivation of sleep is an act in all respects of the same character as fouling the air, or the sources of drinking-water. These latter are undisputed public nuisances. Sufficient regular sleep is not less necessary than pure air and pure water, though the graver effects of want of it are not generally so easy to trace or to prove in particular cases. Everybody however suffers some distress, if kept awake by loud noises for even a single night; and everybody knows that being so kept awake is enough to kill a person in a critical stage of childbirth or disease. Even if the interference with sleep were only occasional and for one night at a time, it would be a public nuisance. But a single festival or wedding-ceremony often goes on for a week or ten days, and in large places like Vellore the din of tom-toms may last for a month without one night's intermission. This moreover is most likely to happen in the hot weather, when sleep is most precious and most difficult to get. Such a state of things is distressing to all, and to many quite intolerable: far worse than a severe beating, which

a court would punish with heavy fine if not with imprisonment. If there were no other effect than making people sleep by day, the consequent interference with men's ability to do their work and earn their living would alone be sufficient to make nocturnal noises a public nuisance within the purview of the Penal Code.

9. When steps are taken to abate this nuisance, the offenders are likely to argue that the practice has hitherto gone on without objection. That it has been usual in most large towns, to apply for licenses to the Police and the Magistrates, is alone enough to show that unlimited noise making has been decidedly objected to for a long time past. It is true that aggrieved persons have seldom resorted to legal proceedings civil or criminal. But this is certainly not because the grievance is not keenly or widely felt. People may have many reasons for not fighting against what they strongly feel to be injurious and unjust.

(*a*) They may be ignorant of their rights: may not know that what they suffer from is a legal wrong with a legal remedy. There is a widespread delusion, which Europeans have caught from Natives, that custom can justify what would otherwise be an offence.

(*b*) They may be deterred from taking legal steps by the likelihood of failure through the difficulty of finding the offender and proving the offence, or through the ignorance, timidity, perversity or partiality of the Court. Such cases are too often tried by Benches or Subordinate Magistrates.

(*c*) They may fear the incalculable expense and loss of time, and the various worries which make law-courts detestable to men of business who are not lawyers by profession.

(*d*) They may fear to provoke the hostility of certain classes of people among whom they live, or with whom they must come in contact.

These are the causes which prevent constant private murmurs from often passing into formal public complaints. Not, as may be alleged, the trifling or occasional character of the nuisance. It is never trifling when objected to, and is often very long continued. Complaints about other nuisances would be still more rare, if roads and wells were not under the care of public officers, such as constables and Sanitary Inspectors, whose business it is to prevent, detect and prosecute. Private persons would very seldom indeed take the trouble to complain, even if they saw a man in the act of washing in a well or easing himself at the side of a street. The Sanitary laws of the country are defective in not providing equally for the public suppression of every sort of public nuisance. But the Magistrates and Police can and ought to do something to help private complainants to mitigate the defect.

10. It is true, as will be said, that the objections to disturbance of sleep are raised almost exclusively by Europeans. Though not a few enlightened Natives would protest against the sleep-murdering tom-tom, if not intimidated by social pressure and the tyranny of custom, yet undoubtedly the majority would never complain of this nuisance: or of any other. But this by no means shows that they do not suffer injury, or even that they do not feel distress from the same

causes which affect the Europeans. They have the same animal necessities, and nearly the same sensibility to pain. But they do not think much about an injury which works slowly and obscurely; and their slavery to custom makes them endure apathetically much that is evil and distressing, if not positively painful. Besides, the pain is counterbalanced by pleasure, when they or their friends are the perpetrators of the nuisance; what would in ordinary be simply distressing to them as human beings, may minister to their amusement and their social vanity on special occasions. If the noise is made by strangers or even enemies, they understand that they cannot please themselves in an objectionable way, without letting others do likewise when their turn comes: and they bow to custom as to droughts or floods or any other inevitable evil. But their indifference is no reason for disregarding the wishes of those to whom the matter is not indifferent. Their pleasure is no reason for allowing them to inflict pain on others. No civilised Government can allow one man or a thousand men to torment another for their own amusement. One man's health must to its mind come before a million men's festivity. Only very gross and obstinate selfishness can make a man feel it any hardship that noisy amusements should be restricted to sixteen hours out of the twentyfour.

11. While firmly maintaining that loud nocturnal noises of every kind are public nuisances deserving of suppression, I do not think, and the complainants probably do not wish, that the suppression should be immediate and total. It is wise and necessary to introduce such changes in a gradual manner. Still it is due to the complainants, and will undoubtedly be for the general public benefit, to bring all the practices complained of under control, with a view to steady diminution of frequency. Some, such as the use of fire-arms, heavy discharges of gunpowder in other ways, grinding of oil-mills, or singing, shouting and playing on instruments by beggars and otherwise than at festivals and ceremonies, deserve no toleration. I have heard of a man who was learning to play the tom-tom, and for several weeks every night chose the small hours for his practice. Such a case calls for the severest penalty admissible by law. But the discharge of ordinary fireworks and the use of tom-toms and horns late at night must be occasionally allowed at ceremonies and festivals, under a system of licenses from the public authorities who have power to institute prosecutions under sections 191 (C) Criminal Procedure Code. Such licenses cannot however protect against private prosecutions by persons who may feel aggrieved. But in such cases, complaint is not likely to be made.

12. I shall therefore take action on the information before me in the following manner.

(A) As cholera is now prevailing and disturbance of sleep therefore specially injurious, I issue an emergent order under section 144 of the Criminal Procedure Code, to the public generally, and to every person, who is, so far as can be ascertained by the Police and Village Officers, in the habit of beating tom-toms or drums or blowing horns, or ringing bells, or of employing other persons to do these acts, directing him to abstain from so doing between 10 P. M. and sunrise, without permission from this Court, for which application must be made ten days beforehand. Copies will be sent to the Sub-Magistrates of the Town and Taluk and to the Vill-

age Magistrates of Kasba Vellore, Ramnaikenpaliam, Katpadi, Thorapadi, Velapadi, Thotapaliyam, Kavarapetta, Senbakam, and Konavattam, for proclamation in the usual manner. The local area affected by the order will comprise the aforesaid villages in addition to the Municipal town of Vellore. It will be in force for two months, during which time, it is hoped, the people will get into the habit of applying for licenses. I consider that, except for the Pongal and the Moharram, licences ought never to be granted for two days in succession or for more than two days in any one week. In no case ought any noise to be allowed after 2 A. M. and not more than once a week after 1 A. M. Competing applications for different days of the same week ought to be dealt with according to date of presentation; public festivals being preferred however to private ceremonies.

(B) On the expiry of the above order, proclamation will be made in the same way, that the making of any loud noise, by means of the human voice or tom-toms or drums or brazen instruments or gunpowder or oil-mills, or otherwise, between 10 P. M. and sunrise, is an offence punishable under section 290, and that persons wishing to avoid prosecution by the Police under the orders of the Joint Magistrate, must apply to that Magistrate for licenses. The licenses issued ought to state distinctly that they merely protect from interference by the Police.

(C) The Police and Village officers will be instructed to warn every person who between 10 P. M. and sunrise, in any place, public or private, makes any noise likely to disturb sleep, by beating tom-toms or drums, blowing horns or other brazen instruments, grinding oil-mills, singing, talking loudly, discharging guns or fireworks, or in any other manner, without having obtained a license from this Court, that he is thereby rendering himself liable to punishment. If the offender persists, the constable must take action under section 57 Code of Criminal Procedure, and send an occurrence-report to the Joint Magistrate, who will use his discretion as to proceeding further under section 191 *(c)*, unless a complaint is made to him by an aggrieved person. If the noise proceeds from private premises, whose owner or occupier refuses access or information, the constable shall report his name as an abettor of the offence. Constables must be careful not to give unnecessary annoyance at private houses. Beggars and vagabonds must be dealt with very stringently. There is no objection to playing on a stringed instrument like the *vina*, or upon a mild wind-instrument like the flute.

(D) The Police will be asked to arrange with the officer commanding the fort, for firing a small cannon or two or three carbines together at 10 P. M., in order to give warning to persons who have no clocks or watches.

The Police will be instructed to institute all prosecutions under section 49 of the Police act in this Court;

(E) The Police and village-officers will be instructed to render prompt assistance to any person whose sleep is disturbed and who wishes to warn the offender and ascertain his name.

(F) With a view to prevent accidents to carriages, the Police will be instructed to accompany processions with music, along the highroad from the jail through the cantonment to the Railway Station, and to stop the music when a horse approaches. Also to prevent persons from discharging guns or fireworks on the said road. Proclamation will be made that persons intending to proceed along the said road with music must give notice to the Police at least 6 hours before starting.

VELLORE,
5th January, 89.

(Signed) W. M. THORBURN,
Ag. Joint Magistrate.

(True Copy).

CURRENT NO. 1/1

District + Sessions Court South Malabar
Calicut 13th March 1895.

No. 55.

From,

R. S. Benson Esq MA LLB Barrister at Law
Ag District + Sessions Judge, South Malabar
Calicut.

To,

The Honble Mr. J. F. Price C.S.I.
Chief Secretary to Government
Fort Saint George.

Sir,

With reference to G.O. dated 17th November 1894 No. 2795, Judicial, I have the honor 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.

I have the honor to be,
Sir,
Your most obedient Servant,

R. S. Benson
Ag District + Sessions Judge

Forwarded

PRINT NO. 1314

Jud

From

The Addl Dist & Sessions Judge
of South Malabar
Calicut

To. The Chief Secretary to Government
Fort St George.

UNDER SECRETARY
16 MAR 95
PUBLIC & TR DEPT

Dated 13th
Recd 14
Read 16

March 1895.

No. 517
civil

Enclosures 2

Submitting the report of Rao/
T. Vamanrao Nair Addl District Munsif
of Kutnad & Notes of ARRy P.O.
Karumakara Menon called for
by G.O. dated 17th November 1894
No. 2795 Judicial in re proposed
amendment of the two Pro: Codes.

480/95
30-1

No. 40.

Cuttyore
District Munsif's Court, Kutnad
Ponani, 27th January 1895.

From

M.R.Ry. T. Vamanrao Nair
Avergal, B.A. B.L.
District Munsif of
Kutnad.
South Malabar.

To

R. S. Benson, Esquire M.A. LL.B.
Barrister at Law.
District Judge of
South Malabar
Calicut

Sir,

With reference to G.O. dated 17th Nov. 1894 No. 2795, Judicial, on the letter from the Govt. of India dated the 22nd October 1894 No. II Judicial 1148 inviting proposals for the amendment of the Codes of Criminal and Civil Procedure and referred to me for remarks, I have the honor 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 12 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

brought to light during the last 12 years.

The leading branches of Indian Substantive Law have, within the last 20 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 overestimate the importance of having a clear, compact, and Methodical Code of Procedure Law, suited to the provisions, and in keeping with the

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.

3. In considering the Code of Civil Procedure (Act XIV of 1882) the first matter that claims attention is the definition of terms contained in Section 2, and here, the point which requires to be remarked upon is the absence of any definition of moveable and immoveable property. Of all adjective laws, the law of Civil Procedure is most intimately concerned with property; and in a Code which professes to be an exhaustive and self-contained embodiment of the rules regulating such a Law of Procedure, the omission to define the 2 great divisions of property, moveable and immoveable, is a serious drawback. No doubt, the General

Clauses

clauses. Act I of 1868 contains a definition of immoveable and moveable property - but that definition, in so far as it appears to make standing timber, growing crops and grass, immoveable property as "things attached to the earth" cannot, without grave inconvenience, be adopted as suitable to the Law of Procedure. Different Enactments define the terms "moveable and immoveable" property differently. The definition which appears to be best suited to the Procedure Law is the definition contained in the leading Code of Indian Property law, viz the Transfer of Property Act, which is, next to the Penal Code, the most juristically-perfect piece of Indian Legislation. According to the definition given in the Transfer of Property Act, growing crops and grass, fall under the category of moveable property, and this is in accordance with the definition given in the Registration Act III of 1877. For purposes of the law of Civil Procedure, practical convenience requires that growing crops and grass should be defined as "moveable property". They cannot be treated as immoveable property without giving rise to considerable practical difficulties. To illustrate this by an example, I shall take the case of a decree-holder who, in execution of his decree, applies for attachment of growing crops which are about to be reaped. If such crops are treated as

(Vide 24 I.C. 1 Mad. 1931)

Penal Code

as immoveable property, the attachment must be by a prohibitory order under section 274, and the sale following upon it cannot take place till after the expiry of 30 days from the date of proclamation (section 290). The purchaser can get possession of the crops only in execution of his sale-certificate, and to get the sale certificate, he must wait for, at least, 30 days from the date of sale (Sections 312 & 316). If objections are made to the sale in the meanwhile, the sale can be confirmed only after the objections are disposed of, and the purchaser can get his sale-certificate only after the sale is confirmed. By the time that he gets his sale-certificate after all these proceedings are gone through, and proceeds to take possession, what would be the state of the crop? To a certainty, it would have matured and fallen, and become absolutely useless if not entirely decayed. In the presence of these risks, purchasers cannot be expected to bid more than a nominal sum in such illusory sales, and the result will be that the impecunious judgment-debtor will lose his crop, and at the same time, have his judgment-debt not appreciably diminished. If, on the other hand, the crop in question is treated as moveable property, all this risk and inconvenience can be safely avoided. The decree-holder can, in

that

that case, attach it as moveable property, and the attaching officer can take it into his custody under Section 269. If the crop is likely to perish if not reaped at once, it may either be sold instantaneously under the rules prescribed for the sales of property which is subject to speedy and natural decay (Section 269) or the Court may depute one of its officers to have it reaped in time and converted into grain as such conversion is the natural and necessary mode of conserving it from decay. This is the procedure generally adopted by the Courts in Malabar in the case of paddy crops attached in execution of decrees, and it is a procedure highly convenient in practice and attended with much benefit, both to the decree-holder and to the judgment debtor. For the reasons shown above, it is desirable, in my opinion, to set out in Section 2 a definition of "moveable" and immoveable property and to expressly exclude from the definition of immoveable property growing crops and grass. Another matter for comment in Section 2 is the definition of the term "decree". This definition, so far as it goes, is couched in terms of considerable legal precision, but it does not appear to be exhaustive. According to the latter of this definition, to constitute a decree, there must be a formal expression of an adjudication upon any right claimed or defence set up in a Civil Court. In other words, it

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it is only adjudications which formally dispose of matters in contest between the parties that fall under this definition of a "decree". The disposal of a suit on grounds which are preliminary to, and do not touch, the merits does not, strictly speaking, come under this definition. For instance, the dismissal of a suit for default of appearance (Section 98) or default of prosecution (Section 97) does not appear to fall under this definition. This is a defect, the removal of which will be a decided improvement. Further, the Section says that an order rejecting a plaint is within the definition of a "decree", but the definition of a "decree" as given in the Section does not, in terms, embrace such an order. A decree as defined presupposes an adjudication by the Court on a right claimed or a defence set up, but an order rejecting a plaint does not involve such an adjudication and is based upon grounds which are preliminary to the merits, such as the frame of the suit, its valuation, stamp &c. To say that such an order, which, construed according to its words, does not fall within the language of the definition of a decree, is within that definition has the appearance of an anomaly. This can be obviated by withdrawing such orders from the definition of a decree and by providing an appeal in respect of them in Section 588, the leading Section regulating appeals against orders.

4. Section 10. The expression "descent or

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place of birth" as used in this Section is not clear and exhaustive, and it appears to be desirable to amend it by the insertion of some such words as 'rank, nationality, or domicile', as the intention of the Section appears to be to exclude privileges of this description as grounds of exemption from the jurisdiction of Civil Courts.

5. Section 13. This Section which embodies the rule of "res judicata" which the Indian Legislature, differing from the view of English law, has placed in the domain of Procedure, is one of the most important, and at the same time, one of the most difficult, Sections in the whole Code; and accordingly considerable care and juristic research appear to have been bestowed in the preparation of it. It is a matter of legal history that on every revision of the law of Civil Procedure, the Section relating to "res judicata" has above all others, engaged the most careful and earnest attention of the Legislature. The wording of it has been enlarged and amplified on every successive amendment of the Code, and the language of the present Section is a decided improvement upon the language of the corresponding Section of the earliest Code of Civil Procedure, Act VIII of 1859. Though such is the case, it cannot be said that the wording of the Section as it stands at present is in every respect artistically perfect, and that it leaves nothing to be desired. That, notwithstanding the care and deliberation bestowed in the framing of this Section, it

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it is still defective in some respects and capable of improvement, is evident from the hopeless conflict of judicial interpretation which it has given rise to. The Indian Law Reports teem with cases in which judicial constructions diametrically opposed to one another have been placed upon the various parts of this section by the different High Courts in India, and in not a few cases judges of juristic eminence have pointed out in clear and unmistakeable language many of its defects and obscurities which still entrenched the Section (Vide I.L.R 8, All. 324, 11, All. 159 9, Bom. 75). As regards the wording of the Section (paras 1 and 2) it leaves room for improvement in some respects. The Section as it now stands is highly complex, and to a certain extent, devoid of artistic precision. Dividing the Section into 2 parts and reading the 2nd part of it with the words following the disjunctive particle "or", the sentence which results will stand as follows:— "No Court shall try any issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court of jurisdiction competent to try the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court." The expression

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"any issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit" does not read very happy. To speak of a matter being in issue in an issue is a use of language too technical for popular comprehension. An amendment of this phraseology will evidence greater perspicuity. Then again, the section as it now stands lays down that, to constitute the bar of "res judicata" in the case of an issue decided in a former suit, the Court which tried it should have been competent to try not only such issue, but also the suit in which issue is subsequently raised. The effect of this provision is that no adjudication whatever of an inferior tribunal will be res judicata in a subsequent suit concerning the same subject matter, provided that the subsequent suit can somehow be brought before a superior tribunal. Even if the Court which tried the issue originally had full jurisdiction in every respect to try such issue with conclusive effect, its decision upon the issue will not be res-judicata in a subsequent suit before a superior Court in which that issue is again raised. This appears to be a state of things not having much of reason and principle to support it. I shall illustrate what I mean by an example:— A Plaintiff who claims title under a deed of gift which comprises properties worth Rs 10,000 brings a suit in a Munsif's Court to recover an item of property worth Rs 500, included

included in it. The defendant denies the validity of the deed of gift and the Court, on an issue raised between the parties as regards the validity of the gift deed, finds it valid, and decrees recovery of the property sued for. It is not clear why the adjudication as regards this particular item of property should not be res judicata in a subsequent suit in which the validity of the deed of gift is in contest before a superior Court. The Madras High Court has held that in such a case the decision of the Munsif's Court as regards the particular item of property would be res judicata in a subsequent suit before a Sub Court, in which the validity of the gift deed is disputed (I.L.R. 8 Mad. 83). The result of a contrary view would be that no adjudication by a Munsif's Court on a matter within its jurisdiction could ever be conclusive between the parties in a subsequent suit, provided the adjudication involves the determination, incidentally, of a question of title to try which, with definitive effect, is beyond its competency. This could hardly have been the intention of the Legislature. If, however, such is the intention, the safest way of effectuating it will be to exclude such suits from the cognizance of inferior Courts, which are not competent to try the wider question of title. So long such Courts are authorized to try such suits and to adjudicate upon them with reference to their subject matter which is within the jurisdiction of such Courts, it is not consonant to

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legal principles or conducive to public welfare to treat such adjudications as nullities in a subsequent suit. Juristic reason requires that the decision of a Court upon a matter within its jurisdiction should always be conclusive between the parties, and that its adjudication upon that matter, conclusive at the time when it was made, should not be deprived of that character in subsequent proceedings between the same parties. A contrary rule would have the effect of upsetting titles acquired, and nullifying transactions entered into, on the faith of such adjudications. Then again, suppose a suit is brought in a Munsif's Court for recovery of Rs 1000 due on a bond, and the Court on an issue joined between the parties as regards the genuineness of the bond, find it the a forgery and dismisses the suit. Suppose the Plaintiff subsequently uniting this claim on the bond with a claim on another bond for Rs 6000 against the same defendant, brings a suit in the Sub Court for recovery of both the amounts. As the section now stands, the decision, in the first suit, of the Munsif's Court as regards the 1000 Rs bond will not be res judicata in the second suit instituted in the Sub Court because the Munsif's Court which tried it was not a Court of jurisdiction competent to try the suit in which the issue (as to the genuineness of the 1000 Rs bond) is subsequently raised." The consequence will be that the Sub Court will be entitled to try the issue de novo, treating, as absolutely null and void, the adjudication previously arrived at by the Munsif's Court which had full jurisdiction to decide it. This is only a

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a typical illustration, and the anomaly pointed out above can be predicated of every case in which astute litigants, with a view to nullify the effect of adverse adjudications, bolster up speculative claims, and by ingenious joinder of other Causes of action meant to enhance valuation, manage to bring subsequent suits before Courts of superior jurisdiction. The wording of the section leaves them considerable latitude to work such frauds upon the policy of the law, and it is therefore a matter worth considering whether the substitution of the words "such issue" for the sentence "suit in which such issue has been subsequently raised," in the concluding part of the 2nd para will not better carry out the intention of the Legislature. Then again, reading the first half of the section relating to suits as distinguished from issues, we get the following collocation of words "No Court shall try any suit in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit × × × × × × in a Court of jurisdiction competent to try such subsequent suit. The section speaks of "any suit in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit." The expression "the matter" refers to one particular matter, and cannot be held fairly applicable to a suit which involves 2 distinct matters, one only of which was in issue in the first suit. Then again, the question arises

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whether, to constitute the bar of res judicata in respect of the issue decided in the first suit, the Court which tried it should have had jurisdiction to try both the issues raised in the subsequent suit. In my humble opinion, many of these difficulties can be got rid of by making issues" instead of "suits," the basic ground of the rule of res judicata. In other words, the force of res judicata must be annexed to adjudications on issues" made by Courts competent to try such issues. The expression "competent to try such subsequent suit," does not appear to be exhaustive. It is not clear whether the word "competent" here means, as held by Mr. Justice West in I.L.R. 9 Bom 75, competent to try the suit with conclusive effect. In this connection it is necessary to remark that the expression as it stands fails to solve, in a satisfactory manner, the vexed question as to how far the decision of a matter by a Small Cause Court will be res judicata in (1) a subsequent Small Cause suit concerning the same matter and (2) a regular suit concerning the same matter. The wording of the section as it stands throws no clear light on the question as to how far and under what conditions a decision between co-defendants is res judicata in a subsequent suit, and as to whether a decision inter partes on a point of law, afterwards declared to be erroneous will operate as res judicata (vide I.L.R. 10 Calc 1087, 15 All. Pab. 327 I.L.R. 5 Mad 304). Then again the expression "parties under whom they or any of them

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them claim" is literally deficient, though it is a convenient equivalent of the "juridical" term "privies". According to the strict latter of it, a decree passed against a mortgagor after the mortgage, will be binding upon the mortgagee, because he "claims through" the mortgagor, but this is clearly not the law. It appears to be desirable, therefore, as observed by Mr. Justice Mahmood in I.L.R. 8 All. 324, to insert after the word "claim" the words "under a title arising subsequently to the commencement of the former suit". Moreover, in the expression "competent to try such subsequent suit" there is nothing to indicate whether the "competency" meant, refers to the time of the former suit or of the subsequent suit. This is an important matter in view of the possibility of jurisdictional changes. The interpretation which has been generally adopted by the Courts on the point is that the "competency" aforesaid refers to the time of the former suit (vide I.L.R. 11 Cal. 153, 15 Mad. 494) and this is certainly the interpretation recommended by reason and principle. The omission in the Section of any indication as to which of the two views has been accepted by the Legislature is a matter for comment. Then as to Explanation II, the words "any matter which might and ought to have been made ground of defence or attack in such former suit" are very wide and to a certain extent indefinite

indefinite. A liberal interpretation of these words will include within the scope of res judicata every possible matter which is relevant by way of defence or attack in a suit. No doubt, the word "ought" restricts to some extent the extensive operation of the word "might", but no indication is given as to what are the matters which fall within the purview of the word "ought". A suit for recovery of property may be brought on half-a-dozen distinct and independent grounds of title, such as inheritance devise, purchase, adoption &c. Supposing that a suit is brought upon one of these grounds of title, does the adjudication upon it preclude a subsequent suit based upon any of the other grounds of title? As the words stand in the explanation, the adjudication would probably operate as res judicata upon the other grounds, because it may well be contended that directly the Plaintiff failed on the specific ground alleged by him, he should have put forward the other grounds available to him in support of his title. This could not, however, have been the intention of the Legislature. To restrict the operation of this "explanation" to its legally permissible scope, it appears to be necessary to insert after the words "defence or attack" some such words as "with reference to the basis of action on which the suit is brought." I may mention in this connection that the High Court of Madras has put this construction upon the words of the "explanation" as

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as it stands (vide I.L.R. 7 Mad 264). It is desirable to amend the phraseology of this explanation so as to make it accord with the restricted views aforesaid deduced from a doctrinal interpretation of it.

In Explanation IV, the sentence "a decision liable to appeal may be final within the meaning of this section until the appeal is made", is framed, to quote the words of Mr. Justice Mahood, in "unspecific language" (vide his observation in the case reported in I.L.R. 11 All 159). The wording of the sentence is silent as to what happens when the appeal has been made. This appears to be a defect, seeing especially that the wordings of the preceding sentence attaches the quality of finality to all decisions duly perfected. In view of the inflexible structure of the main sentence, it is necessary to lay down in express terms in the subsequent sentence what the legal effect of an appeal is on a decision, so far as the question of res judicata is concerned. It is not clear, on the wording of the sentence as it stands, whether the rule embodied in it is the rule of English Law that a writ of error does not disturb the finality of a judgment except for the purpose of execution by operating as a "Supersedeas", or the rule of Continental Jurists which, treating the "Naturalia" of an appeal as the "effectus devolutivus et suspensivus", holds that a decision is not final till all the legal means by which it can be impeached have been exhausted. It is a matter of

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legal history that, in English law, a writ of error like its counterpart "provocatio" in Roman Law, was a process of gradual formation, and that all judgments were originally final. The liability of a judgment to be impeached in error (appeal) does not, according to the doctrine of "English Law," interfere with its finality for the purpose of the "Exceptio rei judicatæ". The view adopted by the Indian Legislature in the last sentence of Explanation IV appears to be more in accordance with the rule of English Law than the theory of Continental jurists. This is evident from the tenor of the sentence; but the use of the word *may* in it does not appear to be very apposite. The word "may" implies that there are cases in which a decision liable to appeal is not final; but it is not stated what those cases are. It will be well, if possible, to supply this omission. Then again, as I have already observed the sentence requires to be enlarged by the insertion of words showing what the legal effect of an appeal is, on the finality of a judgment for the purpose of res judicata. According to the decision of the Bombay High Court in I.L.R. 6 Bom. 110, the matter decided by a judgment becomes, after appeal is made, "res sub judice"; but in such a case, Section 12 precludes the trial of a subsequent suit in respect of the same matter pending the decision in appeal. In Explanation V, the words "in respect of a private right claimed in common for themselves and others" require comment. It is evident from the

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context that what is meant by a "private right" here, is a right of easement or other right analogous to it, which several persons claim under a common title. That this is so, has been expressly decided by the Calcutta High Court in the decision reported in I.L.R. 6 Calc. 49. The term "private right" is, however, a term of extensive legal import, and embraces every kind of rights other than public rights. Strictly speaking, a right to property is such a right, but it is doubtful whether it is within the purview of this section. It is desirable, therefore, to define the scope of the term "private right" in such a way as to prevent all possible misunderstanding. Then again, having regard to the conclusive character of the presumption laid down in this "Explanation", it is desirable that the law should provide all possible precautions for safeguarding the interests of those against whom the presumption is to operate. For this purpose it is necessary, in my humble opinion, to enact, not only that the litigation should have been bona fide, but also, that it should have been conducted with the due legal formalities enjoined by law to make it a representative suit (vide I.L.R. VIII Madras 496). Section 30 of the Code provides the mode in which such a litigation is to be conducted, to make the adjudication in it binding upon persons not actually before the Court. However bona fide the conduct of the litigation may have been, unless the legal pre-requisites prescribed by law for rendering an adjudication against a few individuals of a class conclusive

conclusive upon all the individuals of that class
are duly complied with, it is hardly legal to treat
the result of such litigation as binding upon that
class as a whole. It may be that the persons who
conducted the litigation bona fide, omitted certain
legal formalities essential to its success or failed,
through oversight, to utilize all the available means
of proof at their disposal. In such a case, it will
be unjust to treat the result of the litigation as
binding upon persons not constructively parties
to it; and it is desirable, therefore, to insert, after
the words "bona fide" in this explanation, some
such words as "and with the requisite legal
formalities."

6. Section 15. It will be a useful measure
of legal reform if, in connection with the contemplated
revision of the Code, this section can be so amended
as to make the Village Courts established by Madras
Act I of 1889, the exclusive tribunals for the trial of
petty suits up to 20 Rs in value. As matters now stand,
such Village Courts have concurrent jurisdiction
with the regular Courts in regard to petty claims
up to the amount of 20 Rs, but Suitors in the majority
of cases prefer to institute such claims before the
regular Courts on their Small Cause side. The
result is that, notwithstanding the creation of a
Special tribunal meant to relieve the regular
Courts of the great bulk of petty litigation, the
regular Courts are still deluged with petty suits,
which, in point of value, are cognizable by Village
Courts. A good deal of the time and attention of the
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Regular Courts is thus taken up with the trial of such
petty suits ranging in value from a pie up to
20 Rs, and the intention of the Government in estab-
-lishing the Village Courts is practically frustrated.
This is due to the fact that the Suitor has the choice
of 2 "forums", the jurisdiction being concurrent. If the
jurisdiction of the Village Courts is made exclusive in
regard to such petty suits, the Regular Courts will
be considerably relieved, and they will be able to devote
greater time and attention to judicial work more
important in character and better suited to their
position and dignity. This desirable change in the
law can be effected by making this section applicable
to Village Courts established by Madras Act I of 1889.
The term "Court" is not defined in this Code, as it
has been defined in the Code of Criminal Procedure,
and in the absence of such a definition, it is not
possible to say that it includes Courts established
by Special and local laws. Section 6 says that
nothing in this Code affects the jurisdiction of
Village Munsifs under the provisions of the Madras
Code. The Madras Code having been now replaced
by Act I of 1889, the question arises how far the
provisions of the Code of Civil Procedure affect it.
(Vide ILR XIII Mad 145)
In dealing with this question, it will be well if Section
6 is so amended as to bring about the desired change.
Another matter for comment as regards this Section
is the use of the word "grade" in the expression "Court

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of the lowest grade". Having regard to the meaning of the term "grade" as applied to Courts in administrative matters, it is questionable whether this word is the most appropriate to express the idea involved in this Section. The term "grade" implies difference in rank in identity of functions; but the term "Court" as used in this Section includes Courts of different and dissimilar jurisdictions. It is, therefore, a matter worth consideration whether the word "grade" may not be usefully replaced by the word "class" or by the word "jurisdiction".

7. Section 32. There is an anomaly in this section worth notice, and it is, that while the Court has power to add parties at any stage of the suit, its jurisdiction to strike out the name of a party is restricted to the time of the first hearing. The striking out of the name of a party is a matter which requires careful consideration and sound handling, and in many cases, it cannot be properly effected till the evidence is entered upon. If after the investigation is once begun, the Court cannot strike out the name of an unnecessary party, it means that the name of the party should be retained on the record till the disposal of the suit, and that the party should be subjected to the vexation, trouble, and expense, of such unnecessary retention, which does good to nobody. The removal of this restriction, which appears to serve no useful purpose will be a step

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step in the right direction.

8. Section 44A. This section appears to be defective. According to the wording of the Section, in suit for recovery of immoveable property, damages can be claimed only if the property is held under a contract. Suppose a trespasser commits waste on the land or converts to his own use moveable property found on the land. In suing for the recovery of the land, the owner cannot, according to this section, claim in the suit recovery of damages for the wrong done as aforesaid. This is a defect, and requires to be remedied. This can be effected by adding to clause(a) the words "damages arising from any wrong committed to the property".

9. Section 101. There is a clear anomaly involved in this section in that it does not empower the Court to set aside the exparte order and to hear the defendant then and there, when he appears during the hearing of the suit exparte, and assigns good cause for his previous nonappearance. According to the Section as it stands, it is only when the Court has adjourned the hearing of the suit exparte, but not when it is proceeding with the hearing exparte, that the defendant is entitled to come in and apply to set aside the exparte order. If the Court proceeds with the hearing exparte and concludes the trial then and there, the defendant who is all the while before the Court

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is perfectly helpless, and is obliged to wait till the decree is passed, and then to come in under section 108 to set aside the exparte decree. It is impossible to see the expediency of this procedure.

10. Section 111. The last para of this section requires a slight clearing up. It is said that a set-off pleaded in a written statement tendered under this section shall have the same effect as a plaint in a cross-suit. What the nature and extent of this effect is, and how far it is qualified by the words which follow, is not clear on the language of the para as it stands. For instance, it is not clear whether such a written statement should fulfil all the requirements prescribed for a plaint, and whether it is to bear the advalorem Court-fee stamp. Notwithstanding the obscurity of the section, the High Courts of Madras, Bombay and Allahabad have held, on a construction of it, that such written statements containing a claim of set-off should be stamped with the requisite Court fee stamp (vide I.L.R 15 Mad. 29, 13 Bom. 67; 8. All 396). It will be well if the result of these rulings is embodied in the section so as to make it more intelligible.

11. Section 120. It is not clear from this section whether the power of the Court to order the personal appearance of a party, on pain of a decree against him on default of appearance, is limited to the first hearing of the suit or whether such power can be exercised by the Court at any stage of the suit. The words of the section are wide enough to cover

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cover all stages of the suit, but the position of the section in Chapter IX, which relates to examination of parties by the Court prior to investigation into the merits, throws some doubt upon this view. It is very necessary for the efficient administration of justice that the Court should have, throughout all the stages of a suit, this salutary power over parties. It is after the first hearing that such a power becomes most useful. Very often, a party who is cited as a witness by the opposite side and whose evidence is very material on the question at issue finds it to his advantage not to attend, and accordingly he either absconds or wilfully evades service of summons. In such cases, the Court must have this summary power to enforce obedience to its mandate. Otherwise, an astute and cunning litigant will be enabled by means of a little stratagem to deprive his adversary of the benefit of his testimonial admissions. As the Code now stands, a party to the suit cited as a witness stands, as regards the penalty for non-attendance, in the same position as an ordinary witness not connected with the suit (Section 178). It is a notorious fact, that notwithstanding the provision of such penalty, considerable difficulty is experienced by the Courts of first instance in this Country in securing the attendance of witnesses in time. It is, therefore, highly desirable that the Court should have

have a stronger hold on a party to the suit, cited as a witness; and for this purpose, a slight amendment of the section so as to warrant the exercise, by the Court, of the power aforesaid at any stage of the suit appears to be expedient. Another matter which requires notice in this section is the wording of the last para of it. It lays down that in case the party ordered fails without lawful excuse to appear in person on the day appointed, the Court may pass a decree against him. It is not stated what the nature and scope of such a decree is to be. A "decree" means any decree, a term of indefinite import. Suppose a part of the claim sued for is admitted by the defendant, and the plaintiff at the hearing fails to appear as ordered. Is the whole suit to be dismissed? The same indefiniteness of language occurs in Section 177 where also the same phraseology is used.

12. Section 174. The omission to provide for the mode in which the fine imposed under this section upon a disobedient witness is to be realized is a serious defect in this section, and the effect of it is highly prejudicial to the administration of justice. In the absence of a clear guide as to the procedure to be adopted in such a case, many of the Courts of First Instance in the Mofussil quietly decline to impose fines under this section, and the result is that witnesses, encouraged by the strange leniency of the Courts, not seldom obstruct the course of speedy justice. It may be that under some

some other sections of the Code taken with the provisions of the General Clauses Act and the sections of the Penal Code relating to fines, a sort of procedure can be constructively deduced for the realization of such a fine; but this is certainly an unsatisfactory way of dealing with the question. The penalty prescribed in this section is a penalty which, from its nature, the Courts have constantly to put into operation, and to enforce then and there. A procedure of such constant and summary resort should be clearly defined, and it should be laid down in the section itself which authorizes the imposition of the fine. Seeing that the procedure for realizing a fine imposed upon a witness who has evaded service of summons is expressly provided in the sections 168 & 170, the omission to provide for the procedure to be followed in the case of a fine under Section 174 appears to be an oversight. The removal of this defect is a matter of extreme necessity in the interests of judicial administration. In my humble opinion, the procedure provided by Sections 168 & 170, viz, attachment and sale of the property of the recusant witness appears to be a very efficacious mode in which a fine imposed under Section 174 can be realized, in addition to imprisonment. But both in the case of attachment and imprisonment, having regard to the unilateral character of the proceedings under Section 174, express provision will have to be made as to the mode in which they

they are to be affected.

13. Section 177. The phrase "to give evidence" in this section is not clear. Whether the refusal to give evidence spoken of in this section includes a refusal to answer a question while the party is in the witness box, giving evidence is a moot point. A verbal amendment calculated to remove this doubt will be a decided improvement.

14. Section 182. This section does not require that the witness should sign the deposition given by him; but the practice in many Courts in the mofussil is to get the witnesses to sign their depositions. This is a practice both useful and expedient. It serves as a guarantee of accuracy, and as a security against subsequent retractation. It will be well if this practice which has sprung up as a "curius curiæ" is translated into a Legislative provision, and embodied in the Section.

15. Section 206. This section is silent as to which is the Court competent to amend a decree when there has been an appeal against it. The rulings of the different High Courts on this point are conflicting. The Madras High Court has held in I.L.R. 9 Mad 354 that it is competent to a Court of first Instance to amend its decree after it has been confirmed in appeal; but the contrary view has been held by the High Courts of Allahabad and Calcutta (Vide I.L.R. 11 All 267; 14 All 226, 21 Cal 259). The dissentient judgment of

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of Mr. Justice Mahmood in the case reported in I.L.R. 11 All 267 contains a masterly exposition of the principles underlying the question, and it agrees with the decision of the Madras High Court in I.L.R. 9 Mad 354. The view taken by the learned Judge in concurrence with the Madras High Court appears to be the view most in accordance with juristic principles, and practical convenience. An amendment of this section is highly necessary in view of the decisions aforesaid which have construed it in diametrically opposite ways.

16 Section 223. This section has given to considerable conflict of judicial opinion in regard to the question whether a Court to which a decree is sent for execution should be a Court competent to try the suit in which the decree is passed, with reference to the nature and value of its subject matter. For instance, Can the decree of a Sub Court for 20,000 Rs be sent for execution to the Court of a District Munsif? In the absence of any provision in the Section laying down the condition of jurisdiction as regards the Court to which a decree may be sent for execution, and in view of the fact that in Section 25, which deals with transfer of suits from one Court to another, there is an express provision prescribing competency of jurisdiction, the Madras High Court has held in I.L.R. 7 Madras 397 and 17 Mad 309 that a Court can, by reason of the extraordinary

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jurisdiction conferred by this section, execute a decree of any amount sent to it, though the suit in which it was passed was beyond the limit of its jurisdiction. The Calcutta High Court has dissented from this view (vide I.L.R. 16 Cal. 457). It requires to be made clear which of these conflicting views is in accordance with the real intention of the Legislature in framing this section. In my humble opinion there is no valid reason for creating by this section an extraordinary jurisdiction in Courts for the purpose of execution, and the policy of investing a Court with power to execute a decree in a suit beyond its jurisdiction is, to say the least of it, of questionable expediency. Very often, the execution of a decree involves more intricate, more delicate, and more responsible, legal determinations than the trial of the suit itself, and it is an anomaly that a Court which has no jurisdiction to try such a suit should be competent to execute the decree passed in it. It will be well, therefore, if the section is amended by the insertion in it of the words of limitation regarding competency of jurisdiction such as are contained in Section 25.

17. Section 232. The section speaks of the transfer of a "decree". It is not clear whether the term "a decree" includes a portion of a decree, where the decree contains two or more distinct and separate decretal awards, such as a decree for rent, a

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a decree for costs, and a decree for delivery of property, in the same suit. The Calcutta High Court has held in I.L.R. 17 Cal. 344 that a "decree" includes every component part of a decree, and that a part of a decree distinct in itself can be the subject-matter of an assignment. This is, of course, quite in accordance with reason and principle.

18. Section 235. The omission of the word "signed" in line 2 of this section is evidently an oversight. There is no reason why the important formality of "signature" necessary in the case of all judicial applications should be dispensed with in the case of such an important proceeding as an application for execution of a decree. That the law attributes to such an application as much solemnity and weight as a plaint is clear from the fact that it insists upon verification as a sine-qua-non of its validity, and such being the case, it is highly necessary to provide for signature as well. Then again, having regard to the usual practice of the Courts in requiring the production of a copy of the decree along with the application for execution, it will be desirable to enact that a copy of the decree shall accompany the application for execution. Without a copy of the decree, it will be difficult for the Court to ascertain whether the various particulars set out in the application are correct. The practice adopted by the Courts as a matter of necessity may, with advantage, be embodied in the section.

19. Section 244. It is a matter worth consi-
-deration whether in Clause (C) of this section the words "parties to the suit in which the decree was passed" may not, with advantage, be replaced by the words "parties to the decree." As the words now stand, if a man is impleaded as a party to the suit and is after-
-wards exonerated from the decree, he is as much within the purview of the section as a party to the decree, although to all legal intents and purposes, he is in the position of a stranger. Whether the restric-
-tion enacted by this section should be made appli-
-cable to a party so situated is a matter open to question. In my humble opinion it is not consonant to reason to hold him bound by such a restriction. Then again, in Clause (C) it is desirable to state in express terms whether the term "representatives" means representatives in their character as such or in such character as well as in their individual capacity. On this point there has been quite a crop of decisions by the High Courts, not in all cases rec-
-oncilcable. The latest decisions of all the High Courts are in favour of the latter interpretation (vide I.L.R 7 Mad 255, 17 Calc 711, 17 Mad 399, 9 Bomb 458, 12 Allahab 313). It will be well if the result of these decisions is incorporated into the section, so as to place its intention beyond doubt.

20. Section 253. The reason for restricting the summary liability for execution enacted by this section, to a surety who has become liable before the passing of a decree in the original suit is not apparent. There appears to be no valid reason why a

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a surety who has become liable for the decree pending on appeal, should be treated on a different footing. The wording of the section being defective in this res-
-pect, Courts have very often construed the word "decree" as including a decree in appeal, to prevent a failure of justice (vide I.L.R. 12 Bombay 411). It is very neces-
-sary in the interests of speedy and efficient administra-
-tion of Civil justice that surety bonds executed pursuant to the provisions of this Code, should in all cases be summarily enforceable. Otherwise, complications, delay, multiplicity of suits, and very often, miscarriage of justice consequent upon legal technicalities, will be the inevitable result (vide I.L.R 14 Madras 473.) Impressed with a due sense of this, the Legislature has in very many places in this Code, made express provision for the summary enforcement of such surety bonds in the manner provided by this section (253). But there are still some cases of surety-ship in regard to which the like provision has not been made. Reserving these cases for consideration in their proper places, all that I have to submit while dealing with this section is that it will be a desirable improvement in the law of pro-
-cedure if all cases of surety-ship under this Code are made summarily enforceable.

21. Section 257A. It is a doubtful ques-
-tion, on the wording of this section, whether a bond in discharge of a judgment debt made without the sanction of the Court is valid, and if so, to what extent. (Vide the decisions in I.L.R XI Mad 469, 12 Mad 61).

The removal of this doubt will be a great boon.

22. Section 259. A decree for the recovery of a wife is placed by this section in the same category as a decree for the recovery of a chattel; but the mode of execution prescribed is different. In the case of a chattel, execution is to be effected by the seizure and delivery of it to the party entitled; but in the case of a decree for the recovery of a wife, execution is to be effected by attachment of the judgment debtor's property or by his imprisonment. The decree contemplated by this section is evidently a decree for the recovery of a minor wife, from the possession of a third party who keeps her back from her husband. If the wife is of sufficient legal volition and is a free agent, the case becomes very often one of restitution of conjugal rights, which is provided for by section 260. That the decree contemplated by section 259 is a decree of the kind supposed above, is placed beyond doubt by the fact that the judgment debtor is spoken of as he (meaning evidently the third party). If, then, the decree dealt with by this section is a decree for the recovery of a minor wife from the possession of a third party who detains her illegally, it is clear that the remedy by attachment of property, and imprisonment, of that third party, is a very poor, and altogether inadequate, mode of execution. By making the recusant judgment debtor suffer in property and liberty, the husband plaintiff does not get the object of his suit, viz his wife. He sues for

for the possession of his wife, and the Court gives him a decree for it - but in execution of the decree, the law gives him quite a different thing instead, viz, the bare satisfaction of seeing his adversary suffer. For the law to tell a husband who has obtained a decree for the recovery of his wife, that it is powerless to execute the decree and give him possession of his wife, is an extremely sad confession of weakness. The glory of an enlightened legal system, strong in the reign of justice and order, consists in its ability to vindicate injured rights and to make complete and adequate, "identical restitution" in cases where pecuniary or other satisfaction is useless. It is impossible to conceive of a more important and fit case of "identical restitution" than the case of a wife kept away from her husband, and in a case like this, which concerns so intimately, the domestic happiness of individuals, and by consequence the well-being of society, it is in the highest degree desirable that the law should exert its power to the utmost. There appears to be no reason for not delivering the wife into the possession of the husband in execution of such a decree. Such a mode of execution was not unknown in the early years of British administration in India (vide the dicta in 6 W.R. 105, and 11 Moore's Indian Appeals 551). The objection to such a procedure is more sentimental than substantial, and it cannot be allowed to prevail in a case of such vital importance.

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to prevent all unseemly spectable in executing such decrees, the seizure of the person of the wife may be left to the husband Plaintiff under the supervision of an officer of the Court. With some such safe-guard as this, the section may well provide for the seizure of the wife in execution of the decree.

23. Section 260. The spirit of modern civilization and refinement and the dictates of enlightened humanity, and sound morality, alike demand the abolition of imprisonment prescribed by this section as a mode of enforcing a decree for restitution of conjugal rights. A suit for restitution of conjugal rights is a remedy introduced into India by the British Law, and was originally unknown to the personal laws of the Hindus and Mahomedans. The Hindu Law does not recognize a compulsory discharge of marital duties but treat them as duties of imperfect obligation tbe enforced by religious sanction. It is a well known fact that in England, the land of its birth, restitution of conjugal rights as a matrimonial remedy has, in progress of civilisation, lost much of its living force and operation. In the words of Mr. Justice Binkey it has become "discredited" in England, and it is well worth consideration whether it may not be now usefully changed in India, in the present circumstances of its family and social life. The evil of this institution has been graphically depicted by the great jurist Bentham in the following words

words "To live under the perpetual authority of a man you hate is, of itself, a state of slavery; but to be compelled to submit to his embraces is a misfortune too great even for slavery itself." Imprisonment of a wife as a means of enforcing conjugal obedience is a remedy unknown to Hindu jurisprudence, and the whole system of Hindu Law and family life is opposed to it. The sacred character of a Hindu marriage as an indissoluble bond of union lasting for life, and the rules of conjugal life laid down by the Hindu Law, are such as to render this remedy positively useless and unsuited to the Hindus. Decided cases having gone far, in establishing restitution of conjugal rights as a remedy in the law of India (Vide 10. Bom. 301; 5 Cal. 500, 8 All 149; 11 Mad 237) it is perhaps not practicable to do away with it at present, but there can be no difficulty in making it, by means of a suitable amendment in the law of Procedure, as little in conflict with the spirit of Hindu and Mahomedan Law as possible. The Hindu law is conspicuous for its tenderness towards the soft sex, and Manu, the great Law giver says "Let not a husband strike even with the petal of a gentle flower, the wife of his bosom." When such is the profundity of kindness to a wife enjoined upon a husband by the Shastras, it is a veritable irony of fate that the husband should be the means, by this section, of putting his wife in prison, and causing her mental anguish without measure

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and social degradation worse than death. The extreme unsuitability of this remedy to the condition of Hindu family life will be evident from the history of the famous Rugmibhai case reported in I.L.R 9 Bom. 529 and 10 Bom 301. In England, Statute 47+48. Vic Cap. 68 has recognized the propriety of abolishing imprisonment as a mode of enforcing a decree for restitution of conjugal rights, and there is no reason why the same should not be done in India. Then again, imprisonment of a wife in execution of a decree for restitution of conjugal rights is not a remedy which does any real good to the party for whose sake it is enacted. In cases in which "identical restitution" is undesirable, no useful end is gained by the imprisonment of the wife. Considering that the institution of marriage is "the tie of a Society and the basis of civilization" it is in the highest degree desirable that the law should treat obligations founded upon it on a different footing from a commercial contract. For these reasons, it is in my humble opinion highly expedient that the law should dispense with imprisonment as a mode of enforcing a decree for restitution of conjugal rights. In line 7 of the section the word his is used to denote the party bound by the decree. As the section includes cases where a wife may be the Defendant, it is desirable to insert the words "or her" after the word "his".

24. Section 268. The provisions of this section do not appear to be exhaustive. First of all, the word "debt as used in this section is not clear. It is a moot point whether a debt secured by a hypothecation of

of immoveable property is a "debt" to be attached under the provision of this section (Vide I.L.R 9 Cal 511; 15 All 134; 20 Cal. 805). Secondly, there is no provision in this section as to the way in which the person in whose hands moveable property is attached under clause (c) can get a discharge. Paragraphs 3 and 6 deal with the cases of attachment under clauses (a) and (b), but there is no corresponding provision for clause (c). This appears to be a defect. Thirdly, clause (a) lays down that the creditor prohibited under it cannot recover the debt until the further order of the Court. It is not clear whether this means that he cannot sue for it. If so, the provision is hard, as the claim may be barred by limitation in the meanwhile. Having regard to the decision in I.L.R. 13 All 76, it is necessary to provide for such a contingency. Fourthly, paragraph 3 of the section is silent as to the procedure to be followed when the debtor prohibited denies the existence of the debt. The Bombay High Court has held in I.L.R 4 Bom. 323 that a claim does not lie in such a case, and if this is so, it is not clear what remedy a person has against whom a fictitious debt is alleged and made the subject of an attachment. Fifthly, the section provides for attachment of debts and moveable property in the hands of third parties; but in the whole chapter there is no provision as to the way in which moveable property in the hands of third parties is to be got at, for the purpose of eventual sale. If the third party fails to

to produce the property for the purpose of sale, it is not clear what the remedy is in such a case.

25. Section 271. The prohibition enacted by this section to breaking open the outer-door of a dwelling house is fraught with considerable hardship to decree-holders, and is calculated in practice to encourage fraud and concealment on the part of cunning judgment debtors; and it is a matter for consideration whether the prohibition may not be safely removed. There are cases in which a dwelling-house consists of but a couple of rooms, without any outer door, as distinguished from the doors of the rooms themselves; and in such cases, officers executing the decree feel reasonable doubt as regards their power to break open the rooms. Taking advantage of this doubt fraudulent judgment-debtors conceal themselves and their property inside such dwelling-houses and defy the law. In my humble opinion, it is not expedient in a country like India to push the right of domestic sanctuary so far as this section has done, in deference to the doctrine of English Law that every man's house is his own castle.

26. Section 273. The first para of this Section is silent as to the way in which the proceeds of the attached decree are to be realized for the purpose of being applied in satisfaction of the decree sought to be executed. It is not clear whether, notwithstanding the attachment, the holder of that decree can execute it, and what the procedure is to be in case he fails to execute the decree, is not stated.

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It appears to be desirable to insert a provision in the section enabling the attaching decree-holder to execute the decree in such a case, on the analogy of the provision in clause (b). In the case of money-decrees passed by other Courts it is laid down in the Section that the Court receiving notice of attachment shall stay execution unless and until the attaching decree-holder applies to it for execution of the decree. Supposing that he neglects to execute the decree within the period of limitation, it is not clear whether the decree-holder therein can interfere for the purpose of taking out execution himself. As this point is doubtful, it will be well to make an express provision in the Section enabling the decree-holder therein in such a case to take out execution, subject to the money realized being detained in Court to satisfy the decree under execution. In the case of decrees other than money-decrees, there is no provision made in the section as to how, after the attachment, they are to be made available for satisfying the decree for which they have been attached. Perhaps, they are considered to fall under the term "saleable property" as used in Section 266 (vide I.L.R. 16 Bom 522), but even if this is so, the express statement of the procedure relating to them is highly desirable.

27. Section 276. It seems to be a serious defect in this section that it does not fix the period during

during which an attachment is to be in force. Very often, decree holders, with a view to vex and injure their judgment debtors, effect an attachment and then keep quiet till it suits their fancy to resume proceedings. The absence of a provision in this section as regards the period during which an attachment is to have legal efficacy is a direct encouragement to such evasiveness, and it is in a great measure responsible for the great dilatoriness which attends execution of decrees in Indian Courts. It gives rise, moreover, to innumerable complications and legal difficulties (vide I.L.R. 10 Cal. 416; 17 Mad 58, 180). It will therefore be a highly desirable improvement, if a provision fixing the period during which an attachment is to be in force is inserted in this Section, as in Sections 259 & 260.

28. Section 278. Under this Section, a claim lies only in the case of property attached in execution of a decree. When the decree itself directs sale of the property, there is no necessity for attachment, and in such a case no claim can lie on the wording of this section. This gives rise, in practice, to considerable hardship and injury. This may be illustrated by an example. A man fraudulently mortgages property belonging to another and the mortgagee brings a suit upon the mortgage and gets a decree for sale. When the property is advertised for sale in execution of the decree, the owner intervenes with a claim

claim objecting to the sale. The Court being powerless to entertain the claim can give him no relief and has to tell that he must wait till the purchaser comes to eject him. In the meanwhile he has to quietly reconcile himself to seeing his property being brought to the hammer through the fraud of another. This is an eminently unsatisfactory state of things, to say the least of it. But this is not all; the existence of a claim put forward, but not decided, very often deters purchasers, and results in the property being sold for far less than its real value. These injurious consequences can be avoided if a claim legally lies in such a case. To achieve this object, all that has to be done is to add the words "or proclaimed for sale" after the words "attached in execution of a decree", in the first para of Section 278, and to amend the subsequent paras in conformity with it.

29. Section 283. Whether a judgment-debtor is included in the term "party" as used in this section is a question which has given rise to considerable legal speculation. This question has not been solved by decided cases, beyond controversy (vide 4 M.H.C.R. 47, I.L.R. 11 Bombay 114, 15 Calcutta 674, 13 Madras 366, 17 Cal. 57 & 711). Having regard to the conclusive character of the order dealt with by this section, it is necessary that the doubt entertained by Courts on this point should be set at rest. Another point deserving notice

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in this section is as to how far the declaratory suit enacted by it is controlled by the provisions of section 42 of the Specific Relief Act. Whether, notwithstanding the restriction contained in section 42 of the Specific Relief Act, a suit for declaration lies under this section is a moot question (vide I.L.R. 9 Mad. 206; 16 Mad 140). The balance of public convenience appears to be in laying down a provision in the affirmative.

30. Section 287 To ensure the correct description of the property and to minimize as far as possible subsequent disputes in regard to it, it will be well if the Amin whose duty it is to proclaim the order of attachment under section 274 in the locality of the property is empowered to ascertain the necessary particulars regarding the property and to embody the result in a report to the Court. I understand that in some parts of the Madras Presidency, this procedure obtained while Act VIII of 1859 was in force and was attended with much benefit. Such ascertainment of particulars by a responsible officer of the Court will, subject to objections, serve as a useful check upon the information furnished by the decree-holder. Decree-holders in their hurry to bring the property to sale cannot always be expected to be very scrupulous in the manner in which they furnish the particulars, and it is necessary that the Court which sells the property of the judgment-debtor should maintain a check upon them. As things stand at present, the correctness of a Court sale depends exclusively upon

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upon the accuracy of the decree-holder; and the result is that judicial sales in this country are in many cases eminently unsatisfactory.

31. Section 291. It is not clear from this section, whether, when there are decree-holders who have applied for rateable distribution, the sale can be stopped on payment of the attaching decree-holder's judgment-debt and costs alone. The Madras High Court has held in I.L.R 10 Mad 157 that the sale cannot be stopped in such a case. If so, the question arises whether the other decree-holders can go on with the sale on the existing proclamation. It is desirable to clear up this obscurity.

32. Section 292. It will be a useful measure of reform if the prohibition to purchasing in Court-sale enacted by this section is extended to pleaders practising in the Court. It is a well-known fact that pleaders very often exercise considerable influence upon sales by reason of their local influence, and knowledge, and their position which gives them opportunities of secret information. The rule of public policy embodied in section 136 of the Transfer of Property Act, which prohibits the purchase of an actionable claim by a pleader practising in the Court within whose jurisdiction it falls is a fortiori applicable in the case of a Court-sale; and in the interests of sound administration of justice, the prohibition suggested above appears to be salutary.

33. Section 295. This is a section which has given rise to innumerable difficulties in practi-

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The following are some of the vexed questions which have arisen on this Section.

(1) What is the point of time when "assets" can be said to be realized by sale? There is considerable diversity of judicial opinion on this point. Some Courts have held that "assets are realized" on the date of sale (vide I.L.R 6 Bom 16), while others have held that they are realized when the whole purchase money is paid in, and the sale is confirmed (vide 18. Cal. 242).

(2) What is meant by "sale or otherwise"? Does it include a case of payment by the judgment-debtor after arrest in execution, or is the word "otherwise" used as "ejusdem generis" with the word "sale" (Vide I.L.R 13 Cal. 225; 6 Bom 588.).

(3) Is it necessary that an execution application filed prior to realization should be pending undisposed of, to enable a decree-holder to rateable distribution? (Vide I.L.R 4 Mad. 383.).

One of the objects of this section appears to be to prevent a multiplicity of attachments of the same property by different decree-holders; and for this purpose, the section enacts that where a decree-holder has already attached the property and is bringing it to sale, all the other decree-holders who are then in a position to attach, it shall share rateably in the benefit of such sale brought about by the attaching decree-holder. After the sale is actually effected at the instance of the attaching decree-holder, the property becomes the purchaser's; and as the decree-holders are not then entitled to attach the property those decree-holders who come in after the sale have no right, consistently

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consistently with the object of this section, to share in the sale-proceeds. If this is a correct view of the policy of the section, the words "prior to realisation" in line 3 should be altered into "prior to sale, or realization otherwise."

34. Section 305. According to the wording of this section, and the decision of the Madras High Court in I.L.R 14 Mad 277, sanction for private alienation can be granted only in cases in which there is a reasonable prospect of the whole decree-amount being realized by such alienation. In other words, the section can have application only in cases where the value of the property is equal to, or larger than, the decree-amount; but not in cases where the value of the property is less than the amount of the decree. The great majority of attachments with which the Mofussil Courts have to do are cases where the property is of little value, compared with the decree-amount; and if the section does not apply to such cases, it cannot have much operation. It is not clear why the beneficent provision of this section should be restricted in the above manner, seeing especially that it is a provision enacted in the interests of impecunious judgment-debtors who are about to be sold up in Court by their unscrupulous decree-holders. All that reason requires is that the private alienation should be bona fide effected for such fair value as the property is capable of fetching, and that the money realized

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should be produced in Court. Subject to this condition, and the condition prescribed by the last para, this section may usefully be amended so as to apply to all cases without the limitation aforesaid.

35 Section 306. In view of the decision of the Madras High Court in I.L.R. 14 Mad 235 that a bidder can withdraw his bid even after the lot is knocked down, a provision as regards the point of time up to which such withdrawal is allowable appears to be a desideratum in this section.

36. Section 310 A. This new provision of law enacted by the Amending Act V of 1894 would have been more appropriately posted as a rider to section 311, or as an independent section, as section 310 to which it now annexed appears to have very little connection with it. This newly-added provision is a highly indulgent measure of legislative amelioration; but its juristic consistency with the principle and scheme of the other provisions of the Chapter in pari materia, may well admit of doubt. To put it in the power of a judgment-debtor to set aside a sale regularly effected by a Court, for no reason affecting the sale, but simply because he chooses to come ~~forward~~ backward, does not appear to be very much consonant to legal principles, and it looks a little incongruous by the side of section 311, which, in words of considerable strictness, lays down that a sale can be set aside only on the ground of material irregularity combined with substantial injury. The result of making a Court sale so uncertain

uncertain in point of legal efficacy will be to deter purchasers by the fear of the risks involved, and to render Court sales more unsatisfactory than they are at present. If, as is probable, the object of this new provision is to protect the rights of honest debtors who, inspite of due diligence, find themselves unable to raise the judgment in time to save their property from sale, this object can be achieved by a provision of less general scope. The addition of a clause to section 311 making it discretionary with the Courts in cases of real hardship to set aside the sale within 30 days on the application of the owner of the property, is quite sufficient to attain the desired end. In my humble opinion, it is not expedient to enact a general right in favor of all judgment-debtors, both honest and dishonest. Even as the section stands at present, it is desirable to restrict the unduly wide operation of it by substituting for the words "the Court shall pass an order setting aside the sale" the words "the Court may, if it appears to it that there are sufficient grounds for so doing, set aside the sale". On the section as it now stands, it is not clear whether it applies to proceedings in execution commenced before Act V of 1894 came into operation. Notwithstanding clause (2) of section 1, which enacts that it shall come into force at once, it has been held by the majority of a Full Bench of the Calcutta High Court in I.L.R. 21 Cal. 940 that this new provision is not applicable to sales held

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in execution of decreas passed before it came into force. In view of this decision it appears to be necessary to render this point clear. Then again, it is not stated whether the limitation of 30 days prescribed by this section is subject to section 5 of the same Act and if it is, it is desirable to provide an appeal against an order under this section; and this can be done by adding in Clause 16 of section 588, the words "and Section 310A," before the words "under section 312". Another point worth notice is whether by reason of this new provision, section 312 does not require to be amended by the insertion of the word "310A" in line 2 of it. Then again, the expression ~~provision~~ "any person whose immoveable property has been sold" used in sections 310A and 311 is not clear. Whether it includes a mortgagee of the property is a moot point.

37. Section 311. As regards this section, a question which has been the subject of conflicting decisions is whether substantial injury proved can be presumed to have been the result of material irregularity, or whether the causal connexion between the two requires to be established by positive evidence (vide I.L.R 20 Cal. 599; 14 Mad 227). Another point worth consideration in this section is the ~~term~~ "decree-holder". This term has been construed by the Calcutta and Madras High Courts as including a decree holder claiming rateable distribution. (vide I.L.R. 20 Cal. 673; 10 Mad. 57). If this view is correct, the term requires to be amended.

38. Section 313. This section has been construed

construed by the Madras High Court in I.L.R. 17 Mad. 228 as meaning that if the person whose property purported to be sold has any the slightest interest in the property sold, the purchaser cannot claim to set aside the sale. In other words, a total want of interest in the property, it is held, must be proved to justify the application under this section. This is hard upon the purchaser. An amendment of this section is useful to remove this hard ship. Besides this, it is a point worth considering whether it is not advisable by an enlargement of the scope of this section, to give a right to the purchaser to apply for the setting aside of the sale where he is damnified by the fraudulent conduct of any of the parties to the sale.

In division H of Chapter XIX treating of resistance to execution, Sections 331, 332 & 335 speak of 'possession' in third parties in the sense of actual possession. The result of restricting the term to actual possession is that parties who are in constructive possession through their mortgagees, lessees or tenants are altogether deprived of the remedy prescribed by these sections. This is hard. It is not right that the protection of their interests in the property should be left to the tender mercy of their mortgagees, lessees or tenants. In case of a collusion between the

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latter and the decree-holder or the purchaser, they are obliged to bring regular suits with the disadvantage of being plaintiffs in ejectment. This hardship will be removed if the wording of the sections aforesaid is amended in such a way as to include cases of constructive possession in the term "possession".

39. Sections 336 & 337 C.P.C. These sections do not show what the procedure is to be when a judgment-debtor who is a substantial man is brought before the Court under arrest, and he applies for a few days' time to enable him to produce the judgment-debt in Court. It will be a cruel injustice to commit such a man to jail when the Court is satisfied that he is likely to produce the judgment if a few days' time is allowed. But as the sections now stand, the Court has no power to grant him time, leaving him in the custody of an officer of the Court. Even in the absence of an express ~~provision~~ power in this behalf, Courts sometimes adopt this practice, to remedy clear cases of hardship. The express enactment of such a power in the Courts is at once useful and necessary. No reasonable objection can be alleged against it, seeing that such a power is conferred upon Courts by section 337A clause (3), in the much less deserving case of a judgment-debtor whose object is to escape committal to jail.

40. Sections 339 & 341. A defect involved in

in these sections may be illustrated by the following case:— A judgment-debtor brought before the Court under arrest (section 336) is ordered to be committed to jail; but the decree-holder fails to make payment of the monthly allowance fixed by the Court and which he is bound, under section 339, to pay to the proper officer of the Court. It is not clear whether the discharge of the judgment-debtor in such a case is a "discharge from jail" within the meaning of section 341. This is a question of much practical importance, as the effect of such a discharge is to exempt a judgment-debtor from liability for re-arrest. On this question, the decisions of the Madras and Bombay High Courts differ, the former holding that a discharge of the kind supposed above is not a discharge from jail within the meaning of section 341 (vide I.L.R. 8 Mad 21) while the latter holds that it is (vide I.L.R. 9 Bom 181). This point requires to be made clear in view of this conflict of judicial opinion.

41. Section 349. It will conduce to greater convenience and practical benefit if the security furnished under this section be made summarily enforceable as in section 336. As decisions now stand, such security cannot be enforced in execution (vide I.L.R. 7 Mad 273). This is a manifest omission, and there appears to be no legal justification for it, seeing that other provisions of the Code bearing upon this matter enact such a power. (vide

vide section 549).

42. Section 351. In view of the usual practice of the Courts on the subject, it is desirable to enact, in continuation of the last para of this section, an express provision empowering the Court, on the application for insolvency being rejected, to re-take the judgment-debtor into custody, if already released on security, for the purpose of being committed to jail.

43. Section 368, Paras 3 & 9. It is not stated what the procedure is to be, when the person brought in by Plaintiff as the legal representative of a deceased defendant under para 3, happens to be a different person from the individual who comes in as such legal representative under para 9. How, and at what stage, this dispute is to be decided by the Court is not shown by this section.

44. Section 373. Para 2 of this section enacts that in the case of a withdrawal of a suit by Plaintiff without the permission of the Court, he shall be precluded from bringing a fresh suit for the same matter. This prohibition appears to be unduly wide, and to extend to suits for the same matter, though based on a different cause of action. All that reason and principle require is that suits based on the same ground of action should be prohibited, and it does not appear to be right that every suit, whatever its legal character may be, relating to the same matter should be brought

brought within this prohibition. It seems desirable therefore, to add the words "on the same cause of action" between the words "a fresh suit and "for the same matter". In para 3 of this section it will be well to replace the word "consent" by the words "written consent", to prevent unnecessary disputes as to whether there was consent or not in any particular case.

45. Section 374. It is possible that the case of a suit withdrawn under section 373 may be a case of "defect of jurisdiction or other case of a like nature" within the meaning of section 14 of the Limitation Act, and in such a case there will be a conflict between the provisions of this section and the provisions of section 14 of the Limitation Act, which allows a deduction of time. It is desirable to avoid this likely conflict by the use of appropriate words directed to that end.

46. Section 380. As I have remarked above, it will be a decided improvement in procedure to enact that every case of security given under the provisions of this Code is summarily enforcible in execution. The security for costs furnished under this section may accordingly be made summarily enforcible in the manner provided in section 353.

47. Section 386. It is not clear why the examination of a witness on commission is limited to the case of a "suit". Very often, Courts find

find it necessary to examine a witness on commission in execution proceedings, the trial of which is, in some cases, more important than the trial of suits. It will be better to remove the words "in any suit" from this section and to substitute for them the words "in any case in which the Court thinks fit to do so."

48. Section 392. Commissions issuable under this section are limited to cases where it may be necessary to ascertain (1) market value of any property (2) mesne profits (3) damages (4) annual profits. To the cases so specified must be added the case of compensation for value of improvements which, in the Malabar District of the Madras Presidency, is the most frequent, and the most important, subject-matter of commissions under this section. According to the customary law of Malabar which has always been recognized by the Courts as a "lex loci" and which has lately been the subject of legislative interpretation by Madras Act I of 1887, every person sued in ejectment has a right to claim the value of improvements effected by him on the land; and before his ejectment is ordered, the Court has to fix by its decree the amount of compensation for such improvements effected by him. More than 90 per cent of the "land suits" tried by the Courts in Malabar involve this question of improvements, and the inveterate practice of the Courts in such suits

suits is to issue commissions to experienced persons to prepare and submit valuation accounts of improvements. On the return of the commission, the Courts proceed to decide the question of improvements on the basis of such valuation accounts, after hearing the objections of the parties thereto, and on the evidence which they may adduce. This practice of issuing Commissions to ascertain the value of improvements being a practice of general prevalence in one entire District of the Presidency, it appears to be worth recognition in the law of Procedure enacted by this Code. It will be well, therefore, to add the words "value of improvements in respect of any property" immediately after the words "market value of the property" in the first para of this Section

49. Section 393. When Section 392 is amended in the way suggested above, it will be necessary to enact in this section a provision for directing a further enquiry, and for setting aside a Commissioner's account, as provided for in the last para of Sections 395 & 396.

50. Section 402. The collocation of the words of this Section is not very happy. "No suit shall be brought by a pauper to recover compensation for loss of caste, libel, slander, abusive language or assault." This sentence has the appearance of laying down that a pauper is absolutely precluded from bringing suits of the above description, whether he sues as a pauper or not. It has, moreover, the appearance of a promulgation of rule by the Legislature that a poor man has no right

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to caste, honor, reputation or personal liberty. It is not meet that the Law should have the appearance of countenancing such an ethically unsound and politically unwholesome doctrine. The object aimed at by this section can well be achieved without such undesirable result by changing the form of the sentence as "No person shall sue as a pauper to recover &c."

51. Section 425. This section lays down that no warrant of arrest shall be issued in suits against Government or against public officers, without the consent in writing of the District Judge. It is not clear whether the prohibition enacted applies to a warrant of arrest for enforcing the appearance of a disobedient witness. The words used are wide enough to cover such a case; but the reason for extending the prohibition to such a case is not apparent. The section appears to require amendment in this respect.

52. Section 463. This Section says that the provisions of Sections 440 to 462 (both inclusive) shall mutatis mutandis apply in the cases of persons of unsound mind adjudged to be so under Act 35 of 1858 or under any other law for the time being in force. The effect of this provision is that before a person can sue as the guardian of a lunatic or before a lunatic can be sued through a guardian, the lunatic must be adjudged as such, in an independent proceeding taken under the Lunacy Act. This is attended with considerable hardship in practice, especially in the case of a creditor who has to recover a small debt. It is not clear why the Court trying the suit should not be empowered to enquire into the fact of

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of lunacy and to appoint a proper person as guardian ad litem, when the fact of lunacy is proved to its satisfaction (vide the analogy of Section 443). Not to vest such a power in the Court will be a practical denial of justice in the case of poor suitors.

53. Section 491. Having regard to the highly penal provisions of this section, it appears to be necessary to provide sufficient precautions against its being put in operation against suitors who are the victims of bona fide mistakes. If possible, it will be better to make separate provisions for compensation in the case of improper arrests and in the case of improper attachments, as the consequence of an improper arrest is altogether different from that of an improper attachment of property. If this is not possible, the wording of the 1st and 2nd paragraphs requires to be re-cast by importing into them a little more strictness of language. As the section now stands the Court can fine a Plaintiff 1000 Rs if it is of opinion that the arrest or attachment was applied for on insufficient grounds. This is hard. The grounds which led him to make the application may have appeared to him sufficient; but if the Court happens to take a different view of the sufficiency of grounds, he becomes liable. Such a difference of opinion, which is inevitable in many cases, ought not to subject the party to punishment. Then again, para 2 says that in the case where the suit fails, the Plaintiff can be fined under this section if it appears to the Court that there was no probable ground for instituting the suit. This too appears to be hard. The Plaintiff may have had

had a strong case on the merits, but the suit may have failed on some technical ground of law, in regard to which the Plaintiff might have made a bona fide mistake. It is clearly unjust that the section should operate in such a case. It will be more in accordance with reason and justice to restrict the penalty prescribed by this section to cases where a Plaintiff without reasonable and probable cause makes such an application.

54. Section 497. The same remarks as those made above apply to section 497. As the effect of an improper injunction is more serious than that of an improper attachment of property, a little more severity is allowable in the penal provision of this section; but it is open to doubt whether the difference of phraseology made in para 2 of the section is sufficient for the purpose.

55. Section 521. In the expression "misconduct of the arbitrator, used in clause (a) of this section, it is not clear whether the term "misconduct" means misconduct in a moral sense, or legal misconduct such as irregularity of procedure or a conscious violation of the principles of justice. It is desirable to include both these phases of misconduct in clause (a), and for this purpose, the wording of it requires to be amended.

56. Section 539. It was decided by two Judges of the Madras High Court (the Honorable Mr. Justice Muthuswami Iyer dissenting) in I.L.R 14 Mad 186 that, under this section, a suit could be instituted

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instituted by two or more persons claiming an interest in a public trust to remove a hereditary trustee for breach of trust, but the recent Full Bench decision of the same High Court in I.L.R 17 Mad 462 has taken a different view. Having regard to the fact that the language of this section is borrowed from Sir Samuel Romilly's Act (52 George III Cap. 101.) and the decisions bearing upon it, and seeing that the Statute aforesaid was enacted to provide a summary remedy by petition, and that the section under notice appears in a chapter of the Code dealing with Special and summary procedure, it is clear that the operation of this section is limited to non-contentious proceedings which do not involve the adjudication of disputed questions of title. If, however, the wording of this section admits of a different interpretation, it is desirable to remove all cause of doubt by a suitable re-casting of it. (vide I.L.R 20 Calcutta 810)

57. Section 540. According to this section an appeal lies from all decrees of a Court of original jurisdiction, unless otherwise provided. In other words, an appeal is the rule in every case, and the only limitation to it is a provision to the contrary contained in any law. The section relating to appeal in the Code of Criminal Procedure is couched in terms quite the opposite of this. Under that section (404 of the Code of Criminal Procedure) no appeal lies from the judgment of a Criminal Court unless

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the same is expressly provided for. The provision relating to appeals in the law of Civil Procedure is thus wider and more comprehansive than the provision regulating appeals in the law of Criminal Procedure; and accordingly, greater finality attaches to the judgment of a Criminal Court than to the decision of a Civil Court. The reason and policy of the distinction so made is open to question. On abstract principles, the judgment of a Criminal Court dealing with questions of life and liberty needs to be more carefully hedged round with safe-guards than the decision of a Civil Court dealing with rights of property. If, having regard to the competency of the ordinary Criminal Courts in India, such a rule as is laid in Section 404 of the Criminal Procedure is considered by the Legislature a safe one, there is greater reason for adopting that rule in the case of Civil Courts, having regard to their position and functions. It is a fact well recognized in all quarters that the judges presiding over Civil Courts exercising original jurisdiction in India are, as a rule, more advanced, more efficient and better trained in the theory and practice of law, than the corresponding body of the judiciary exercising original Criminal jurisdiction; and the high capacity of natives of India for judicial work on the Civil Side has been admitted over and over again by eminent and responsible authorities. In view of the high degree of efficiency which the Civil Courts of First

First Instance in India have now generally attained, and having regard to the fact that such Courts are now mostly presided over by native judges of high character, high legal attainments and unrivalled experience of the society with which they have to deal, it is a question well worth consideration by the Legislature whether the time has not come for giving greater finality to the judgments of such Courts. A good many of the more important classes of appeals from the judgments of such Courts may now be usefully done away with, and appeals in important matters may be expressly provided, with a limitation analogous to that contained in Section 404 of the Code of Criminal Procedure. The effect of doing this will be to improve the tone and status of such Courts by giving them a higher sense of responsibility, and at the same time, to enable the appellate Courts to bestow more time and attention to their legitimate work. This is a reform much to be desired.

58. Sections 545 & 546. It is necessary for the proper and efficient execution of decrees, that the security furnished under these sections should be made summarily enforcible. Section 546 appears to require a re-casting. According to the first para of it as it now stands, the Court can, in the case of money decree under appeal, go on with the execution proceedings after taking security from the Plaintiff for the

the due performance of the appellate decree; but according to the 3rd para, when the execution proceedings have reached the stage of an order for the sale of the property, the sale has to be stayed on security being taken from the defendant. This is a little inconsistent. Why, when security has been already taken from the Plaintiff, the operation of it should be arrested in the middle of the execution-proceedings, and another security taken from the opposite party is, by no means, clear. Then again, it is possible that the appeal may be by a party other than the judgment-debtor whose property is going to be sold. The wording of para 3 is wide enough to cover such a case. But the reason for making it apply to such a case is not clear. Moreover, it is not clear why the provisions of this section are limited to immoveable property. Moveable properties require the same amount of protection, if not more. Immoveable property can be recovered in the event of a successful appeal by reversing the sale; but there is no means of getting at moveable property after it has once changed hands by sale. In the case of moveables of special value, such as heirlooms and other chattels possessing a value of affection not measureable in money, the absence of such a provision will be a great hardship. It is therefore a fit matter for consideration whether moveable property, or at least, some kinds of moveable property, should not be brought within the purview of

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of this para.

59. Section 561. The provisions of this section as it now stands on the amendment made by Act VII of 1888, are a decided improvement upon the section as it stood originally; but it is a matter admitting of doubt whether the period of one month from date of service of the notice of appeal prescribed for an objection-memo is not too long a period. Formerly such objection-memo had to be filed before 7 days next preceeding the date of hearing of the appeal, and now it is altered to one month from date of service of the notice of appeal. As in some Courts, more than a month elapses before a notice of appeal can be served upon the Respondent, the practical effect of the section is to make it impossible for an appeal in such a case to be disposed of till after the expiration of two months. The existence of the provision as regards one month renders it incumbent upon the Court in every case to allow, between the filing of the appeal and its hearing, an interval of time composed of this one month plus the time requisite for serving notice of the appeal upon all the Respondents. This will, in some cases, operate as a useless drag upon the freedom of the Court, and by tending to avoidable delay in the disposal of appeals, produce administrative inconvenience, not to speak of public dissatisfaction. In unimportant cases of appeals, and in cases where the

the parties reside in the immediate vicinity of the appellate Court, it is quite possible to dispose of an appeal within a month; but the Section as it now stands renders this legally impracticable. For these reasons it will be well if the period prescribed is reduced to 15 days.

61. Sections 562, 564, 565 & 566. These Sections as they now stand on the amendment made under Act VII of 1888 are perhaps less obscure than the corresponding sections in the Code of 1882, but it may well admit of question whether they are as exhaustive as those Sections. As sections 562 & 565 now stand, there is no express provision laying down the procedure in appeal, where the Court of First Instance has disposed of the suit on a preliminary point so as to exclude evidence as regards the merits, and the decree on such preliminary point is reversed in appeal. Perhaps, such a case falls within section 562. So does a case, where the evidence upon all the issues has been recorded, though the Court has disposed of the suit upon a preliminary point. (vide I.L.R 16 Mad. 208.). The propriety of making both these cases fall under section 562 may be doubted. Then again, Section 566 says that when the Court of First Instance has failed to try any material issue, the Appellate Court is to send down an issue for trial. In the case of a suit in which the material issues on the merits have been tried though findings have not been recorded, the appellate Court is to remand under section 562. In other words a

a fully tried suit is to be remanded outright for a fresh decision, while an untried suit is to be disposed of by the Appellate Court after referring issues for trial. This is a little inconsistent. Moreover, as these sections now stand, Cases falling under Section 562 fall within Sections 565 and 566 also, and this is not a satisfactory arrangement. It appears to be desirable to lay down distinctly in what Cases a remand is to be made and in what cases issues are to be referred. Another matter for observation in section 565 is the expediency of giving an appellate Court power to dispose of an appeal on the evidence, without having the benefit of the finding of the Court of First Instance upon it. A suitor is entitled to the benefit of the opinion not only of the appellate Court, but also of the Court by which the suit was tried, and it is hard to deprive him of this right, seeing especially that the Court of First Instance before which the witnesses are examined is in a better position to appraise the evidence at its proper value than the appellate Court. Such a power in an appellate Court is not desirable, seeing that the finding of an appellate Court on questions of fact is final (vide section 584).

61. Section 568. This section appears to confer upon an appellate Court far more power than is either necessary or desirable, in the matter of admitting new evidence

Clause (b) is unduly wide, and under it it is

it is possible to make out a new case in appeal by the letting in of an indefinite quantity of additional evidence. Seeing that Section 566 has already provided for cases of substantiale exclusion of evidence, clause (b) of section 568 may well be limited to cases where the production of any document or the examination of any witness is necessary to clear up a particular obscurity or to supply an evident omission. Otherwise, the record of the suit in appeal will be encumbered with a mass of new evidence on which the Court of First Instance had no opportunity of having its say.

62. Section 584. The High Courts being the Courts of final resort, and in public estimation, the strongest palladium of justice in India under the British Government, nothing can be more desirable than to provide a right of ultimate appeal to them in every case possible. The clauses (a) to (C) of this section are not wide enough to cover all the cases in which a right of second appeal to the High Court is expedient in the interests of public welfare. According to this section the finding of an Appellate Court on questions of fact is final, and cannot form a ground of second appeal to the High Court. This is so, even if the Appellate Courts' finding is in conflict with the finding of the Court of First Instance, and even if the finding was arrived at by the Appellate Court on a manifestly wrong or perverse view of the evidence, and in disregard

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of the reasons and arguments stated by the Court of First Instance in support of its finding. Having regard to the present state of high efficiency in general, of the Courts of First Instance in India, and their capacity to deal with questions of fact arising in suits before them, it is a question worth consideration whether it is desirable to give absolute finality to an appellate Courts finding on a question of fact, when it dissents from the finding of a Court of First Instance. Having regard to the diversified customs & usages which often come for decision before most of the appellate tribunals in India, it appears to be inexpedient to give absolute finality to their finding on a question of fact, when it is opposed to the conclusion of the Court of First Instance. It will be a decided improvement in the benign policy of this section, to provide for a second appeal to the High Court in cases where the Appellate Court's finding on the question of fact is contrary to the finding of the Court of the First Instance. The effect of enacting this provision will no doubt be to increase the Appellate work of the High Courts, but having regard to the gravity of the interests at stake, such a situation must be faced. If the provision aforesaid is added to the Section, a good many of the unimportant classes of appeals which now lie to the High Court may be done away with. Under the Code of 1882 the High Court often remedied the injustice of perverse Appel-

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-late findings on questions of fact by a free and liberal use of the power of remand and reference of issues given by Section 562 to 566; but seeing that those Sections have been considerably circumscribed in their scope by the amendment made by Act VII of 1888, and by the latest Privy Council Ruling on the subject of remand, it has now become more than ever necessary to lodge in the High Courts an express power to remedy the clear injustice resulting from an appellate finding manifestly wrong or perverse.

63. Section 622. This Section, which prescribes the revisional jurisdiction of the High Courts in non-appealable cases, is couched in terms far too narrow and restricted; and the consequence is that the Indian Law Reports teem with cases in which the High Courts, while admitting the propriety of interference in revision, have confessed their powerlessness to interfere, on the wording of the Section as it now stands. This is an eminently unsatisfactory state of things, and is very much to be regretted. There appears to be no valid reason why in Civil cases the High Courts should possess less extensive revisional jurisdiction than they have in Criminal cases, under Section 439 of the Code of Criminal Procedure. The ruling of the Privy Council in L.R. 11. I.A. 237 which has been largely followed by the High Courts has put upon this Section the construction that a wrong decision of a question of law by a Court having jurisdiction is not a ground for interference. The word "jurisdiction" and the expression "illegally or with material irregularity"

irregularity" in this Section have been construed in very many decisions of the High Courts after the Privy Council ruling aforesaid. Mr. Justice Mahmood in the case reported in I.L.R. 7 All 345 defines the term "jurisdiction" in its broad legal sense, signifying the power of administering justice according to the means which the law has provided, and subject to the limitations imposed by law upon the judicial authority. The same learned Judge in the case reported in I.L.R. 8 All 519 interprets the term "jurisdiction" as including over and above pecuniary or territorial limit to a Court's power, the presence or absence of a positive authority or power conferred by law upon tribunals. The scope of this Section was construed by the learned Judge in these words:— "In framing the Section, the Legislature gave to the High Court power to interfere with the action of subordinate tribunals in cases where there is no remedy either by appeal or otherwise and where those tribunals have either exercised or wrongly declined to exercise the authority, the power and the jurisdiction which the law confers upon them, or under the pretence of exercising such authority, power and jurisdiction have acted against a positive prohibition of the law." This is a very liberal and salutary view of the scope of the Section; but unfortunately, this view has not always prevailed in practice. The word "illegally" in this Section has been construed by the Allahabad High Court in I.L.R. 8 All 111 as referring to cases where the Court below has, in the exercise of its jurisdiction, come to a decision which is contrary to some specified law or usage having the

the force of law, or failed to determine some material issue of law or usage; and in the same case, the words "with material irregularity", were construed as referring to a material irregularity in procedure which may possibly have produced error or defect in the decision of the case on the merits. The same view has been taken by the Calcutta High Court in the decision in I.L.R 13 Cal 225, and by the Madras High Court in the Cases reported in I.L.R 11 Mad. 220, 303, 322, 144 & 17 Mad 410. It is very desirable in the interests of public welfare that the section should be so amended as to bring it into conformity with the eminently liberal and juristic view enunciated by the decisions aforesaid. To ensure full scope for the maxim "Ubi jus, ibi remedium", it is necessary that the High Courts as the tribunals of ultimate resort should have plenary jurisdiction adequate to the redressing of palpable injustice in every case in which a party is without a remedy under the ordinary provisions of the Code. For this purpose, the addition of a clause to this section conferring upon the High Courts a discretionary power to interfere in every case in which the ends of justice require such interference appears to be absolutely necessary.

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

of India, dated 22nd October 1894, No II Judicial-1148.

65. The amendment suggested in para 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 paras 2 & 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 para 4 of the Appendix is, in my humble opinion, highly unexpedient. 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 honor. Cases have been known of improper treatment of dead bodies having given rise to sanguinary riots. It will be unjust and unpolitic to leave such a delicate and serious matter to the tender mercy of village-headmen;

-men; a low body of public servants, in 9 cases out of 10, 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

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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 headman 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 or 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) & (b). 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

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 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 dilamma. 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 amandment of section 57 proposed in para 5 of the appendix does not appear to be a

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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 amandment of section 107 suggested in para 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 2 Cases, viz (1) the Case of a person residing <u>without</u> the jurisdiction, attempting to commit a breach of the peace <u>within</u> the jurisdiction and (2) the case of a person residing <u>within</u> the jurisdiction attempting to commit a breach of the peace

<u>without</u>

without the jurisdiction. That the section is fairly capable of this construction is clear from the judgment of the Hon'ble 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 preventives 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 Hon'ble 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 para 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

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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 Hon'ble 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 word '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 investi-
-gate a Cognizable offence when the officer in-
charge of the Police Station has, in the exercise of
his discretion, dispensed with a local investi-
-gation, 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 para 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 Com-
-plainant 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
requirments of public justice; but in the case
of witnesses, the same objection does not apply.
When a concession is made in favor of Railway

Servants

Servants, the same concession will have to be made
in favor of Government Servants, and it appears
to be necessary and expedient that such a Con-
-cession, limited to the case of witnesses, should
be made in favor 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 15 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 con-
-firmed by the Appellate Court. It is possible
to imagine cases in which the sentence of impri-
-sonment 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 re-taken 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

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 342. 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

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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 Madras 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 enquiry" or re-hearing 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 present standard of legal education and training which now generally 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

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 3 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 enquiry", 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 pre-judged 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

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-nistrative 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 para 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 XXXII 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 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

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 duly 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 exercising 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 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

5154

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, & which is eminently suited to the traditions 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

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 safe-guard 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

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 safe-guards, 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 Madras 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 prima 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 prima facie case is made out by the result of the

preliminary

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 prima 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 ~~in this Code~~ "given in evidence in such proceeding", used in clause (c) of Section 195 by the words "filed in Court in the course of such proceeding." Moreover, it appears to be

necessary

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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 enquiry 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 favor 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

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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 spectable 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.

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 inconvenient

by

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 arbitrariness 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

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

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

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, amongst 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

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 ILR 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 ILR 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

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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 ILR 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

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 30 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

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 ~~fine~~ 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

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.

I have the honor to be,
Sir,
your most obedient servant

Khan Sahib
District Munsif

From

The Dist Munsif of
Kutiad
Vatakara

To

The District Judge
South Malabar
Calicut

Dated 27th Jan
Despatched 28th do
Recd.
1895.

No 40.

Report on General revision of the Codes of Criminal and Civil Procedure referred for remarks in G. O. dated 17th Nov. 1894 No 2795 Jud.

Judl
1314

Judicial
Proc

UNDER SECRETARY
15 MAR 95
PUBLIC ETS DEPT

Kaniyacuppam 1396
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The Secretary to the Government of
Madras Legislature
Department.

Sir

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 be introduced in the said Code as a Subsection under S. 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 Judgment and unless and until the Court has provided itself with a copy of the written judgment ready for

delivery

delivery to the accused it shall not pronounce the judgment."

This Subsection 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 very near the Lower Court

In the absence of this provision the consequences are that the accused before they coued surmount the difficulties and delays in obtaining copies and present his appeal or revision and obtain bail, they are invariably Subjected to all the irrepairable 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 Subsection avoids all the above said injuries to the accused. Therefore I beg to request the proposed.

proposed Subsection may be recommended and orders on the application may be Communicated to me.

I have the honor to be
Sir
Your most obd.t Servant

M.a.e Narasimhapuri Pillay
Reader Municipal Cutcheri
Kandaboo D.t

No. 1306

Jud

2

From

The Ramaswamy Mudr
Head
Municipal Office
Cuddalore D.

Date.

Read 15 - 3 - 95

Read 4 - 3 - 95

Subject

Submg certain Suggestions in connection with the amendment of the Code of Criminal Procedure

Judicial Pub

500—17-8-94.

No. 530/M

Salem Collector's Office,
20th March 1895.
22nd March 95

From

G. STOKES Esq.,

Collector & Dist. Magte. of Salem.

To

The Chief Secretary to Government,

Judicial Department,

MADRAS.

Sir,

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

Section 10. In regard to the powers 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

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 37 I approve of the suggestion to add to this Section the provision of Sub Sections 3 + 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 Kuravers 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 inquiry 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 decision of the High court following the Calcutta High court put such 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

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proposed.

the Professional. 63D

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

I have the honor to be

Sir

Your most obedient Servant

Sessions

for Dt Magistrate

A
22-3-95

Dn
22/3/95

Judicial
P.

Jud 1462

2000—3.8.94.

Judicial Department.

From the Collector

and District Magistrate,

BRANCH SECRETARIAT
23 MAR 1895
GOVERNMENT OF MADRAS

Salem.

To

The Chief Secretary
to Government
Judicial Dept
Madras

Dated 20-3-95
Dispo 22-3-95

No. 530
M

Rec'd 23/3

Enclosure.

Subject.

Submitting Remarks
in the matter of amend-
ment of criminal
Procedure code

Judicial
P.

1491

No 121. Tellicherry 23rd March 1895.

640

From

A. Thompson Esqre,
District Judge of
North Malabar.

To

The Honourable J. F. Price,
Chief Secretary to Government,
Judicial Department,
Fort St. George.

Sir,

With reference to your Circular, No 614, I have the honour to state that I have no remarks to offer on the subjects in question.

I have the honour to be
Sir,
Your most obedient servant.

A Thompson
District Judge.

Jud

Abstract

1895.

Jud

From

The District Judge,

North Malabar.

To

The Chief Secretary

to Government

Judicial Department

CHIEF SECRETARY
25 MAR 1895
GOVERNMENT
MADRAS

Dated 23-3-1895.

Received 25-3-1895.

No. 121.

Abstract.

Stating that he has no remarks to offer with reference to Circular No. 614.

Crim Cod & Crl Pro Code

25/3

No. 343

District Court, South Canara.

Mangalore, 26th March 1895.

568

2 abstract

From,

M. D. Bell Esquire,

Ag: District Judge,

South Canara.

To,

The Chief Secretary to Government,

Fort St George.

Sir,

With reference to your Circular dated 19th instant, No. 614 Judicial, I have the honor to state that I have no remarks to offer on the proposals to amend the Codes of Criminal and Civil Procedure.

I have the honor to be,

Sir,

your Most Obedient Servant

M. D. Bell

Ag: District Judge.

* The Buildings in Co.

65

From

M. D. Bell Esquire
Ag: District Judge,
South Canara

To

The Chief Secretary
to Government
Fort St. George.

Dated 26 March
Desp —
Rec'd 29/3

1895

No 343

CHIEF SECRETARY'S OFFICE
29 MAR 1895
GOVERNMENT OF MADRAS

Abstract

Subject.

Stating that he has no remarks to offer on the proposals to amend the Codes of Crim.l & Civil Procedure

Extract No. A

Kurnool Collector's Office.

Enclosures.

Kurnool, Dated 27th March 1895.

From

C. M. Mullaly Esqr
Dist. Magte
ag. COLLECTOR OF KURNOOL.

To

Chief
THE SECRETARY TO Government
Judicial Department.

PUBLIC DEPT. * 30 MAR 95 * UNDER SECRETARY

Sir,

With reference to G. O. No:

2795
17-11-94

I have the honour to offer the following remarks in regard to the revision of the Code of Criminal procedure:

2. Para 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 Buggapalle case
Ramapa & Po
The Tarumiel Case
Pattikonda Taluk.
The Brundhavan case - Kandikotkur

The

The amendment appears to be desirable.

3. Para 5—: The amendment would be useful especially in border districts.

4. Para 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 Subdivisions. Occasions may arise when it may be necessary to transfer cases under section 110 from one Sub. Divisional magistrate to another.

5. Para 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

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
by Government.
to the High Court. 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 Govt. Pleader. The
Simplest Course would be for the Sessions
Judge or Dt. 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 amend-
ment 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.

I have the honor to be.
Sir
Your most obedient Servant.

Cumming

ag. Collector & Dt. Magte

&c.

D

CURRENT No. 1585

1895.

Correspondence Department.

From C. M. Mullaly Esqr
ag. Collector of
Kurnool.

To The Secretary to Government
Judicial Department

Dated 27th
Received 30 } March 1895.
Regd 30
Extn

No. A

Enclosures. nil

Subject.—

Offering certain remarks
with regard to the revision
of the Code of Criminal
Procedure.

31/3/95

K. C. O.—Reg. No. 178—dated 21-8-93—Copies 1000.

Judicial 8

CURRENT No. 1630

No. 246 DISTRICT COURT, NELLORE.

Enclosures (one) 30th March 1895.

From

G. T. T. Comes, Esquire

DISTRICT JUDGE,

CHIEF SECRETARY'S
Nellore.
1 APR. 1895
GOVERNMENT OF MADRAS

To. The Chief Secretary to Government.
Fort Saint George.
Madras.

Sir,

With reference to your circular No. 614 dated the 19th Instant calling for my remarks on the proposals to amend the Codes of Criminal & Civil Procedure as required in G. O. No. 2795 dated the 17th November last, I have the honor 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; & to forward herewith copy of a letter addressed to me by Mr. V. Gopala Charyulu 1st grade District Munsif of Nellore suggesting certain amendments to the Civil Procedure Code to which I have nothing to add.

I have the honor to be,
Sir
Your most obedt Servt
G. T. T.
District Judge.

748

CURRENT No. 1630

Judl

From

The D. Judge

Nellore

No 266

Date. 30 . 3 . 95

Recd. 1 — 4 . 95

Encl-1

Subject

Forwd. Certain Suggestions by Mr. Gopalacharlu D. Munsif of Nellore in re the proposed Amendment of the Cr. P. Code

No. 1060 Chingleput D.r MAGISTRATE'S OFFICE, 135

Station, Saidapet,

7 April 1895.

FROM

C. H. Monsey Esquire,

Ag: District MAGISTRATE OF Chingleput.

To Chief

THE SECRETARY TO GOVERNMENT,

Judicial DEPARTMENT,

Madras.

SIR,

I have the honour to reply to G.O. of the 17th November 1894, No. 2795 Judicial. 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 have 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

Section 9 :- amendment

Section 10 :- amendment
ment of additiona
Magistrates desirable

Section 42 :- a wife should
liability in not asse
to arrest her husba
think this necessary).

Section 106 :- Appellate cou
be liable to call for se
peace.

Section 107 - suggested tha
offender" be defined.
not be defined but
magistrate to decide

Chapter X - alter the hea
avoid references to

By the acting joint Magistr
in regard to chapter X obje
being appointed at all,
force. I would certainly
if the alleged offender
show cause against any
suggests that a magis
should not be bound to ta
he is acting under sec
in section 137, the words

unnecessary.

to enable appoint
l or Joint District

be exempted from
sting the Police
d. (I do not

ts should also
urity to keep the

t the term "habitual
I think it should
left to each
in each case.

ding so as to
'Public' nuisances").

ate (Mr Brodie) in
ts to a jury
as it is a mere
not allow a jury,
has attempted to
order. He further
trate may but
the evidence, if
tion 133 and that
"the facts are
such

such that no order under section 133
can be passed" should be substituted
for "the order is not reasonable or prop
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 juror
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 act-
ing 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 evi-
dence should be taken and that if both
parties claim possession, the property
should be attached. I should allow
evidence

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, Tirunallur division, thinks that the conditions obtaining regarding the confessions of an accused should be embodied in the code. I agree with him.

Section 210:- 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 G.O., add the words "or one of abetment of any such offence" after section 211.

Sections

such

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 recall and cross-examine all witnesses after the charge is made should be withdrawn. I should give the magistrate discretion to refuse to recall 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 Tirunallur and propose that a bench of Magistrates may try summarily cases of cruelty to animals; opening, keeping etc, a common gaming house and gaming in a common gaming house

Section 345:- Offences under the first and last clause of section 430, I.P.C., 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

on demands of accused to resummon and reexamine 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 retrial 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 3d 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 any order by as in section

an appeal in the case of 2d and 3d class Magistrates 560.

I have the honour to be,
Sir,
Your most obedient servant,

C. H. Mowbray
Ag: Collector,
District Magistrate.

FROM

THE MAGISTRATE OF

Chingleput Dt.

To Chief

THE SECY. TO GOVERNMENT,

Judicial DEPARTMENT,

Madras.

Dated 7
Despatched 8 } April 1895.
Received 9
Regd 10

CHIEF SECRETARY
GOVERNMENT OF MADRAS
9 APR 1895
RECEIVED

ENCLOSURE.

SUBJECT.

Submitting suggestions for the amendment of the Criminal Procedure Code and Civil Procedure Code.

Enclosures to letter Disposal No: 31/95 from the Collector and District Magistrate of South Canara.

No	Description of paper	Date	
1.	Town Sub Magistrate's Ittilla No: 35	5.4.95	
2.	Proceedings of the Town Sub Magistrate of Mangalore on Referred Charge Thut No: 13/1895	9.2.95.	

South Canara Dt: Magistrate's office Camp Kasergod 20th April 1895

A. Vasudeva Rau
Huzur Sheristedar.

Work no 328/95

Form of Statement prescribed for cases referred by the Police *suo motu* for orders under Section 173 C P. C., where the Magistrate does not take cognizance of the case under Section 191 C. P. C.

243

ASSISTANT'S OFFICE D. 15 FEB. 95

Proceedings of the 2? class Magistrate of Mangalore Town,

dated 9th February 1895.

Read Referred Charge Sheet No. 13/31 of 1895 on the file of this Court.

Offence.	Date of Report of Station.	Receipt of Referred charge sheet by Inspector.	Receipt of Referred charge sheet by the Magistrate.	Order of the Magistrate.
17. 1. 95.	3. 2. 95.	5. 2. 95.	5. 2. 95	9. 2. 95.

1. Name of the
   - (*a*) Station. ... ... — Mangalore Town
   - (*b*) Village. ... ... — Mangalore Town
   - (*c*) Taluk. ... ... — Mangalore
2. No. of the Referred charge sheet on the Police Register. ... ... — 26.
3. Crime—
   Law and Section under which punishable. ... ... — Knowingly delivering to another any counterfeit coin as genuine which, when first possessed, the deliverer did not know to be counterfeit, sec 241 I.P.C.
4. Name of accused person or persons. — Ramaya Shanabhaga.
5. Value of property – { Lost ... / Recovered ... }
6. Order to the Police regarding making or refraining from making further investigation and with regard to the bond. ... ... — Subsequ? to explain why he should the counterfeit coin to be delivered to Complainant instead of having it at once destroyed in his presence

Sd/-

9.3.95.

7. Explanation of delay. ... ...

8. **Order and Reasons for the same.** The accused seems to be a servant in a snuff-shop. The complainants' servant sold to the accused eight empty homeopathic medicine vials entrusted to him by the complainant to be so sold. The complainants' servant appears to say that on account of the price of the said vials the accused gave him a ~~piece~~ four anna piece and annas 1-4 in copper coins and that he delivered the money to the complainant who found the four anna piece to be of German Silver. The complainant seems to confirm the statement of his servant. The accused appears to say that the full amount of annas 5-4 were paid by him in copper coins. It seems to be admitted by the complainant's servant that the four anna piece in question was taken out from a small box in which all the daily sale proceeds of snuff are kept, and that it was given to him at night in the presence of many people.

2. The shop in question was searched. No other counterfeit coin was found.

3. Even if it be true that the accused delivered the coin in question there is nothing to shew that he knew it to be counterfeit.

4. The case which seems to be due to a mistake of fact may therefore be struck off.

5. The coin will be returned to the complainant.

2

/signed/ B. Shivayya
2nd Cl. Magte

True Copy.

Extract sent to Police

2nd Class Magte

Mgt.

F.—F. No. 171—91.

In continuation of Dis No. 31/95 May 5

CURRENT NO. 2037

SOUTH CANARA DISTRICT MAGISTRATE'S OFFICE,

Camp Kasergod 20th April 1895.

From

W. H. Welsh Esquire,

18

District Magistrate of

South Canara.

To

THE CHIEF SECRETARY TO GOVERNMENT,

Judicial Department,

Fort St. George.

Sir,

I have the honor, in continuation of this office Disposal number 3/ dated 22nd January last, respectfully to suggest for the consideration of Government, the addition of the following clause to section 523 Criminal Proceedure 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.

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.

I have the honor to be
Sir,
Your most obedient Servant.

Dt: Magistrate.

20/4

I.—P. No. 28—93.

Judicial Dept

CURRENT NO. 2037.

1895.

From,

The — District Magistrate of South Canara.

CHIEF SECRETARY'S OFFICE 25 APR 1895 GOVERNMENT OF MADRAS

To,

The Chief Secretary to Government, Judicial Department, Fort St. George.

Dated 20th April } Madras.
Received 25th } do 1895.
Recd 26th

In continuation of Dis. No. 31/95 Magl.

ENCLOSURE 2. 3.

Subject.

Respectfully suggesting for the consideration of Government the addition of the note clause to Section 523 Criminal Procedure Code when Act X of 1882 undergoes amendment.

Note for the Press.

Print only the comment.

Don't print the enclosure.

27/5/95

No. 2980 CURRENT NO 2513

~~Chief~~ OFFICE OF THE INSPECTOR GENERAL OF POLICE,

~~Madras~~, 17th May 1895.

FROM

M. Hammick Esq. I.C.S.

INSPECTOR GENERAL OF POLICE,

To

THE Chief Secretary to Government Vol. Commands.

SIR,

Enclosures.

With reference to the recent suggestion for the amendment of the Criminal Procedure Code, I have the honor 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 suggestion in

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 2d 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 2d 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

Mr Temple

28

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 I.P.C., 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 first class Magistrate. The cases are not

very

... Magistrates

very frequent and to make them triable by 1st class magistrates exclusively will not add appreciably to their work.

I have the honor to be,
Sir,
Your most obedt. Servt.,

M Hammick

Inspector General of Police.

3

CURRENT NO. 2513

Jud. (1895) DEPARTMENT.

(E)

FROM

M. Hammick Esq. I.C.S.,

INSPECTOR GENERAL

OF POLICE.

CHIEF SECRETARY GOVERNMENT OF MADRAS
18 MAY 1895

No. 1230

Dated 17 } May 1895.
Received 18 }
Reg.d 20.
Encs. 4

No.

SUBJECT.

Making a further Suggestion with reference to the amendment of the Cr. P.C. that cases under Section 223 I.P.C. should be made triable by 1st class Magistrates only.

MALABAR District Magistrate's Office
Calicut, 29th May 1895.

No. 899 Misl.

FROM

A. Moberly Esquire

Ag. District Magistrate, MALABAR.

CURRENT NO. 2513

To

The Chief Secretary to Government

Judicial Department

SIR

As the Government of India is considering the question of revising the existing Code of Criminal Procedure, I have the honor 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

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. Dept. I did not notice the above defects

I have the honor to be.
Sir
Your most obedient Servant
[signature]
Ag Dist. Magistrate

Judicial Department

CURRENT No.

CHIEF SECRETARY * 31. MAY. 1895 * GOVERNMENT OF MADRAS

From

The COLLECTOR / DISTRICT MAGISTRATE of MALABAR.

To

The Chief Secretary to Government

Judicial Department.

Dated 29 / Despatched 29 / Received 31/5/95 } May 1895.

No. 898

Enclosure. "

Subject.

Amendment of the Code of Criminal Procedure

Offering remarks in re —

Read and Pencil

Copy of a letter from J. Tyrrell Esquire, Superintendent Central Jail, Trichinopoly, dated 9th February 1895, R.C. 185 J :—

I have the honour to report that Convict R.C. 2964 Nana attempted to commit suicide in one of the solitary cells where he was undergoing sentence of judicial Solitary confinement. At unlocking this morning he was all right but was found shortly after with a thin coir rope around his neck which he had fastened to the upper bar of his cell. The rope was immediately broken, and the convict dropped down and taken to Hospital. I immediately visited the cell and also saw the prisoner in Hospital. He is in a semi-unconscious state. I am enquiring into the matter and shall send you a detailed report on Monday the 11th instant. A nominal roll of the prisoner is herewith forwarded. The convict was not hurt by the rope but before tying the rope he must have dashed his head three times either against the wall of his cell or against the iron bars of the door as he had three contused wounds along the top of his head which must have been self inflicted as no one could get near him, the

outer

outer wooden door of his cell being fastened.

—

Copy of another letter from the same Officer dated 12th February 1895, Nº 196 J.:—

In continuation of my letter Nº 185 J dated 9th February 1895, I have the honour to report that convict Nº 2964 Nama is, no doubt, improving in health and there is every probability of his soon being all right again. I was present yesterday when the Medical Officer was examining him, and, when asked to show his tongue he did so, and also, when asked, pointed out where he felt pain, namely, at the back of the neck. I visited him again this morning, and was informed that he was much better and that he could eat his food. The assistant Surgeon who saw him shortly after the rope was taken from his neck, considered that he was not much hurt and could talk if he wished to do so; and the medical officer is of opinion that he is not so bad as he pretends to be. He refuses to talk. The piece of rope, about a yard long, which he had round his neck was made from coir yarn taken from his mat but he had not fastened it around his neck properly, but simply put it so that it rested on the jaw bone and there is no mark of the rope about the neck, and he is said to have been standing on his feet and was not suspended, and this, no doubt, was the case when the rope was broken by Convict Warder Nº 527 Appayya, who was on duty in the solitary cell yard, and who broke the rope before the door was unlocked; and when the rope was broken he staggered a little and then fell on his bed, and he could not therefore have been unconscious or he would have fallen straight back; the three wounds on his head are, as the Medical Officer informs me, superficial ones and as these wounds are not across the head but along the head from fore-head to rear, he must have hit his head against the upright iron bar of his cell door, as the wounds would have been across the head had he hit his head against one of the cross bars of the door, and it is quite evident that before putting the rope about his neck he wiped the blood from the top of his head with his hand twice and then wiped his hand on the wall near the door and within a few inches of the floor, first on one side of the door and then on the opposite side. The Jailor was at the cell of this prisoner about 15 minutes before the matter was reported counting the men at unlock. I am of opinion that the prisoner only pretended to commit suicide with the view of getting into Hospital.

He

... shall be sentenced.

He has not been punished for any jail offence since his admission to jail on the 18th October 1894 and he has already done three weeks of his first sentence of solitary confinement and was put in for the 4th week on the 5th instant. He was sentenced by the Head Assistant Magistrate Kistna District under two counts, section 420 I.P.C, and was sentenced in each count not only to 2 years R.I. but also to 3 months solitary confinement. in each or in all to 26 weeks solitary confinement. Probably he was tired of solitary confinement, or he might have come to the conclusion that by committing himself in the way he did, he would be considered unfit to undergo solitary confinement in future, being of a suicidal tendency, and he would therefore require to be well watched. In the same row of 15 cells the upper three have condemned prisoners in them with two sentries over them but these sentries heard nothing, nor did the Head Warder in charge of the condemned prisoners, who was on the spot and only a few yards from the cell of No 2964 Nama, nor did the prisoners undergoing solitary confinement in

in the cells on each side of this convict hear anything -

(True Copies)

D.G. Carden
Inspector-General of Prisons.

1895
Jail Dept.
Section No. 1
To
C. No. 3168.

No. 43.

Rajahmundry Central Jail
13th May 1895.

From,

Surgeon-Major A. C. Marsden.
Medical Officer, Central Jail,
Rajahmundry.

To,

The Superintendent, Central Jail
Rajahmundry.

Sir,

With reference to your endorsement
No. 722 dated 14th May 1895 on memorandum
No. 2509 dated 9th May 1895 from the Inspector
General of Prisons, I have the honor to state
that this Convict attempted to Commit
Suicide by hanging on the 9th of February
last, whilst undergoing Solitary Confinement.
He very nearly died, but fortunately recovered
under Medical treatment. He was in hospital
for a fortnight and was subsequently tried
before the Magistrate and sentenced to one
months additional imprisonment for
this attempt at suicide.

2. Agreeably to rule 669 of the Jail Code,
which lays down that prisoners with

16-3-95

apparently suicidal tendencies should be carefully watched and not left alone in a cell, after I discovered these tendencies, I pronounced him unfit for Solitary Confinement.

3- I had also made a written recommendation in my Journal on his discharge from hospital, that this prisoner should be carefully watched and never left alone, nor trusted with any dangerous tool or weapon.

I have the honor to be, Sir,
Your most Obed^t Servant
Illegible Surgeon Major
Med^l Officer, Central Jail
Rajahmundry

1895
Jail Dept
Proceedings No. 2
Dated
C. No. 3818

[Form No. (4)—250—4-1-95.]

CURRENT NO. 3168

No. 3818. OFFICE OF THE INSPECTOR-GENERAL OF PRISONS, MADRAS,

Dated Ootacamund, the 2nd July 1895.

Penal 18

From

A. G. CARDEW, ESQ., M.A.,

INSPECTOR-GENERAL OF PRISONS,

MADRAS,

To

THE HONOURABLE MR. J.F. Price C.S.I.

CHIEF SECRETARY TO GOVERNMENT,

SIR,

2 Enclosures. 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

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 cell 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 No 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 Dr. 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

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 mis-adventure. 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.

I have the honour to be,
Sir,
Your most obedient servant,

A Gladstone
Inspector-General of Prisons.

V.8.

3

CURRENT NO. 3165

JUDICIAL. Dept

JAIL (1895) DEPARTMENT.

From

THE INSPECTOR-GENERAL OF PRISONS,

Madras,

To

THE CHIEF SECRETARY TO GOVERNMENT,

Criminal

Dated 2nd

Despatched July 1895.

Received

Rep 4-7-95

CHIEF SECRETARY'S OFFICE
3 JUL 1895
No. 3818.
GOVERNMENT OF MADRAS

ENCLOSURES. 2.

Subject.

Bringing to notice the necessity of a provision being inserted in the Criminal Procedure Code, by which Superintendents of Jails 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.

2091, 2092 12 Stamp

Gen. Dept. JULY 1895, No. 8 K, JUDICIAL.

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., dated 17th November 1894, Judicial No. 2795, I have the honour to suggest that the alteration in section 239, Criminal Procedure Code, recommended by the Honorable 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., Judicial Department, No. 2795, 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.

13

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 conv ct 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, dated 17th November 1894, No. 2795, Judicial, 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., dated 17th November 1894, No. 2795, 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., dated 17th November 1894, No. 2795, Judicial, 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., dated 17th November 1894, No. 2795, 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.

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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.

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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 dated 17th November 1894 (Judicial), 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., dated 17th November 1894, No. 2795, 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 Thoppukoeli (*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 reappointed.

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., dated 17th November 1894, No. 2795, Judicial, 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. 17th November 1894, No. 2795, Judicial, 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., 10th January 1894, No. 34, Judicial. Endorsement, dated 21st February 1894, No. 346, Judicial, and this office No. C. 555, dated 6th March 1894.

Section 381.—A provision of law enabling the District Magistrate or senior Subdivisional 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., 5th February 1891, No. 243, and 14th December 1892, No. 2309. 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., 18th May 1892, No. 938, 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.

Section 426.—With reference to the Advocate-General's opinion recorded in G.O., 4th April 1883, No. 962, Judicial, 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 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., dated 11th March 1890, No. 454, Judicial, 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., dated 17th November 1894, No. 2795, Judicial, 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.

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., dated 17th November 1894, No. 2795, Judicial, 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., dated 20th September 1892, No. 1765, 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., dated 17th November 1894, No. 2795, 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 period 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, dated 14th November 1894, No. 2761. 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., dated 17th November 1894, No. 2795, Judicial, 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., dated 17th November 1894, No. 2795, Judicial, 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., dated 17th November 1894, No. 2795, Judicial, 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, Judicial, dated 17th November 1894, No. 2795, 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., dated 17th November 1894, No. 2795, Judicial, 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., dated 17th November 1894, No. 2795, 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.

* * * * *

(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. of the 17th November 1894, No. 2795, 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., dated 17th November 1894, No. 2795, 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" (*n*) 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.

ENCLOSURE.

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., LLB., 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., dated 17th November 1894, No. 2795, Judicial, 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., dated 17th November 1894, No. 2795, Judicial, on the letter from the Government of India, dated the 22nd October 1894, No. II, Judicial 1148, 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.

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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 in corporeal 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., 344, 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 *prima 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

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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 *primâ 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 com-

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plainant 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.

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From M.R.Ry. M. C. NAMASIVAYAN PILLAY, Avargal, 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.

From G. STOKES, Esq., 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., dated 17th November 1894, No. 2795, Judicial, 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 526.—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.

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 M. D. BELL, Esq., 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 C. M. MULLALY, Esq., 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.

From G. F. T. POWER, Esq., 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.

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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. of the 17th November 1894, No. 2795, Judicial. 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 awardedhall 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 cell 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.