M.R.O. 1—77,006—8-6-37.

(1) Number of pages_____

(2) Date of repair_____

(3) Initials of the Reference_____

# MADRAS RECORD OFFICE.

## Government of Madras.

Judicial DEPARTMENT.

G.O. No. 752 Press/Mis.

Dated 3-6- 1871.

***Not to be folded or roughly handled***

No. 50. Read the following letter from Lieutenant-Colonel W. J. WILSON, Inspector-General of Jails, to the Chief Secretary to Government, Fort St. George, dated Madras, 17th March 1871, No. 39:—

I have the honour to submit, for the consideration of Government, the expediency of issuing instructions for the more careful preparation of warrants in the cases of insane prisoners committed to jails.

2. These persons may be divided into two classes, viz., those charged with the commission of some offence of a criminal nature and those who are sent to jail for observation and for safe custody by reason of their being dangerous either to others or to themselves.

3. There is seldom any difficulty as regards men of the class first mentioned, as the section under which the committal is made is generally set forth in the warrant and the matter is reported to Government by the Committing Officer, but this is not the case with respect to men of the other class, the warrants connected with whom are generally vague and indeterminate. This would not matter much in a Central Jail, but in District Jails where there are frequent changes in the supervision, and young officers are appointed who, in many instances, have no knowledge of legal matters and consequently accept all warrants as correct, it is very desirable that, in every case of a committal under the Code of Criminal Procedure, the section should be set forth in the warrant, and that in every other case the warrant should be specific and determinate in some way or other. For example, if a man suspected to be a lunatic should be sent to jail for observation and safe custody pending ultimate transfer to a Lunatic Asylum, the fact should be stated in the warrant, which ought also to provide for the prisoners being brought before the Committing Officer or some Magistrate on the expiration of a certain fixed period. Warrants as they now frequently run, directing the keeper of a jail to detain a prisoner "until further orders," or "until delivered by due course of law," appear to be objectionable even when the Committing Officer remains in the district, but when he leaves it, as not unfrequently happens, the "due course of law" becomes doubtful, and undue responsibility is thrown upon the Superintendent of the Jail. Moreover, so far as I am aware, there is no special law by which the committal to jail of insanes not charged with some specific offence is authorized, and, as such committals can only be justified on the ground that there is no other place in which to keep the patients, it is the more incumbent upon the Committing Officer to see that they are brought before him within a reasonable period, either for release or in order that they may be recommended for transfer to an asylum. As matters now stand, the Committing Officer contents himself with issuing the warrant.

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No. 51. ORDER THEREON, 5th June 1871, No. 752.

In the foregoing letter, the Inspector-General of Jails submits, for the consideration of Government, the expediency of issuing instructions for the more careful preparation of warrants in the case of insane persons committed to jails, either for safe custody under Chapter XXVII. of the Code of Criminal Procedure, or for temporary custody and observation prior to transfer to a Lunatic Asylum under Act XXXVI. of 1858.

2. It is observed that it is not competent to the Government to prescribe the form of the warrant or order which, under Chapter XXVII. of the Code of Criminal Procedure, is issued by a Criminal Court to the Officer in charge of a jail for the custody of a lunatic, pending the orders of Government. Under Section 443 of the Code, this can only be done by the High Court. The Government presume that the form of warrant or order to which the Inspector-General of Jails refers as containing the direction to detain a prisoner "until delivered by due course of law," is the Form No. 4 of the Forms of warrants of commitment to prison, prescribed by the High Court by their order of November 1868. But, as Colonel Wilson states that there is seldom any difficulty as regards the warrants issued in the case of insane persons charged with the commission of an offence, the Government think it unnecessary, at present, to make any reference in this matter to the High Court. They deem it desirable, however, to take this opportunity to draw the attention of the several Magistrates of Districts to the subject.

3. With regard to persons found wandering at large and deemed to be lunatics, or believed to be dangerous by reason of lunacy, there is, as Colonel Wilson observes, no special law which authorizes their committal to a jail. But the Government have, in their Order under date the 30th September 1867, No. 1561, expressed an opinion to the effect that such person "should, under the provisions of Clause 4 of Act XXXVI. of 1858, be detained in custody by the Magistrate until a Medical Officer shall have had an opportunity of observing him, and determining whether or not he is a lunatic;" and it is apparently under the authority of this opinion that certain Magistrates have committed persons of this class to jail for temporary custody and observation.

4. The Government concur with the Inspector-General of Jails that these committals can only be justified on the ground of there being no other place than the jail in which to keep the patients, and that it is, therefore, "the more incumbent upon the Committing Officer to see that they are brought before him within a reasonable period, either for release or in order that they may be recommended for transfer to an asylum." They resolve, therefore, to direct that this requirement be attended to, in future, in every case in which it may be necessary to send a wandering or dangerous lunatic to a jail for observation, and that the order for the temporary reception of such lunatics in jail be prepared in the form appended to these Proceedings.

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FORM.

*To*

*The Superintendent of the Jail at* ———.

Whereas (*here enter name of person*) has been found wandering at large, and is deemed to be a lunatic (*or is believed to be dangerous by reason of lunacy, as the case may be*), you are hereby required to receive the said ——— into your custody in the said jail of ———, and him there safely to keep until a Medical Officer shall have had an opportunity of observing or examining him in pursuance



of Section 4 of Act XXXVI. of 1858, and determining whether or not he should be sent to a Lunatic Asylum under the provisions of that Act.

Dated this —— day
of ———

(Signature.)

Seal.

(True Extract.)

W. HUDLESTON,
*Acting Chief Secretary.*

To the Inspector-General of Jails.
Magistrate of ———.

Exd. J. Wright.

Govt. of [1871] Madras.

JUDICIAL.

To

THE INSPECTOR-GENERAL OF [illegible].

[illegible] June 1871.

Read [illegible]

G. O., 30th June 1871, No. 765.

JUDL.
Nos. 50-51.

Prescribing the Form of Order to be issued for the temporary custody of wandering or dangerous lunatics in a jail for observation prior to transfer to a Lunatic Asylum.

Judicial Department

Memorandum for Orders.

Letter from the Inspector Gen.l of Jails, dated 17th March 1871 No 39.

In this letter the Jails Inspector General of Police submits for the consideration of Government, the expediency of issuing instructions for the more careful preparation of warrants in the case of insane persons committed to Jails either for safe custody under Chapter XXVII of the Code of Criminal Procedure or for temporary custody and observation prior to transfer to a Lunatic Asylum under Act XXXVI of 1858.

2. It is to be observed that

Read 13th March 1871 — Nos 23-25.
" 20th July 1865 — " 230. 238.
" 30th Oct.r 1866 — " 290. 291.

Inspector Gen.l of Jails

Chapter XXVII Code of Criminal Procedure

Chapter XXXVI Act for the Establishment of Lunatic Asylums

95-6-71

No 529.

that it is not competent to Government to prescribe the form of Warrant or Order which, under Chap. XXVII of the Code of Criminal Procedure, a Criminal Court issues to the officer in charge of a Jail for the custody of a lunatic, pending the Orders of Government. Under section 443 of the Code, this can only be done by the High Court. It is presumed that the form of Warrant or order to which Colonel Wilson refers, as containing the direction to detain a prisoner "until delivered by due course of law," is the Form No 4 of the Forms of Warrants of commitment to prison, prescribed by the

High Court by their Order of November 1868, which is printed at page 581 of Nelson's Commentaries. But as Colonel Wilson states that there is seldom any difficulty as regards the Warrants issued in the case of persons charged with the commission of an offence, it may perhaps be thought unnecessary at present to make any reference to the High Court on the subject.

3. With regard to persons found wandering at large and deemed to be lunatics, or believed to be dangerous by reason of lunacy, there is, as Major Wilson observes, no special law by which their committal

to Jails is authorized. But the Government in their Order under date the 30th Septr 1867, No 1561, have expressed an opinion to the effect that such persons "should under the provisions of Clause IV of Act XXXVI of 1858, be detained in custody by the Magistrate until a Medical officer shall have had an opportunity of observing him and determining whether or not he is a lunatic". And under the authority of this opinion it seems to be the practice + + for Magistrates to commit persons of this class to Jail for temporary custody and observation.

See G.O. 13 April 1871 No 456

14. Major Wilson represents

that in such communications made on the ground that there is no other place in which to keep the prisoners, it is the more incumbent upon the Commanding officer to see that they are brought before him within a reasonable period either for trial or in order that they may be recommended for transfer to an Asylum.

It is submitted that instructions to the above effect may be communicated to the several Magistrates of Districts and that they be directed to adopt the following Form of Order:-

Form

Form.

To The Superintendent
of the Jail at ——

Whereas there (enter
name of person) has been
found prandering at large
and is deemed to be a pau-
per, or is believed to be
dan'g'rous by reason of ——
the said may be; you
are hereby required to receive
the said —— into your
custody in the said Jail
of —— and him there
safely to keep until a
Medical officer shall
have had an opportunity
of observing or examining
him in pursuance of
Section 4 of Act XXXVI of

1858 and determining
whether he or not he should
be sent to a Lunatic
Asylum in pursuance of the provi-
sions of that Act.

(Signature)

Dated this —— day
of ——

(Seal)

Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letter from

The Inspector General of Jails, dated 17th March 1871 No 39.

Order thereon 5 June 1871. No. 752.

In the foregoing letter the Inspector General of Jails submits for the consideration of Government the expediency of issuing instructions for the more careful preparation of warrants in the case of insane persons committed to Jails, either for safe custody under Chapter XXVII of the Code of Criminal Procedure, or for

temporary custody and observation prior to transfer to a Lunatic Asylum under Act XXXVI of 1858.

2. It is observed that it is not competent to the Government to prescribe the form of the Warrant or Order which, under Chapter XXVII of the Code of Criminal Procedure, is issued by a Criminal Court to the Officer in charge of a Jail for the custody of a Lunatic, pending the orders of Government. Under Section 443 of the Code, this can only be done by the High Court. The Government presume that the form of warrant or order to which the Inspector



General of Jails refers as containing the direction to detain a prisoner until "relieved by due course of law," is the Form of Warrant of Commitment to prison preceded by the High Court by their Order of 1st December 1868. But as Colonel Wilson states that there is seldom any difficulty as regards the discharge of prisoners in the case of persons charged with the commission of an offence, the Government think it unnecessary at present to make any reference in this matter to the High Court. They deem it desirable, however, to take this opportunity to draw the attention of the several Magis-

trates

of the Disciple to the subject.

3rd Field regard to persons found wandering at large and deemed to be lunatics or detained to be examined by reason of lunacy, before an Order to Medical Attendant, or special Case in the Chancery Lunacy Commission shall be a Field.

Such Field Operations from in their Order under date the 20th Sept. 1859 No. 1561, express an opinion to the effect that such persons should under the provisions of Statute 16 & 17 Vict. cap XXXVI of 1858 be detained in Custody upon the Magistrate's Medical Certificate shall have

paid an opportunity of observing him and determining whether or not he is a lunatic, and as it appears that under the existing law, Justices have no power to commit persons brought before them as lunatics, but only to remand them for further examination, that the Committee of persons of unsound mind cannot be carried into effect on the ground of there being no place within the Jail in which to keep such patients, and that it is therefore desirable more immediate upon the Committing Officers to see that they are

brought before him
such a warrant
period either former-
-ly named, or in order
that they may be re-
-commended for trans-
-portation as the
They resolve therefore
to direct that the pro-
-per measures be taken
-ed to, in future, in
every case in which
the magistrates shall
to send a wandering
or dangerous lunatic
to a jail for observa-
-tion; and that the
order for the tempo-
-rary reception of
such lunatics in jail
be prepared in the
form appended to
these Proceedings.

Form

To the Keeper [or Keepers]
of the Jail at
in the County [or Counties]
of

Whereas [here state the
name of person] has
been brought before
me, one of Her Majesty's
Justices of the Peace
for the said County [or
Counties] of
as a wandering or dan-
-gerous lunatic [or as
a person alleged to be
such wandering or dan-
-gerous lunatic], and
it appears to me that
the said
is such wandering or dan-
-gerous lunatic, and
that it is necessary
for the safe custody
of the said
that he should be
detained in safe custody
for a short time, and
for the purpose of
examining him
in pursuance of
Section 11 of 8 & 9 Vict. XXXVI
of 1858

Date the ___ day
of ___

(Seal)

To the Inspector Genl of Jails &c
Magistrates of ___ Dists &c

Govt. of {187} Madras.

Judicial.

To

The Insp. Genl. of Jails

Dated June 5 } 187 , No. 752

Recd.

Nos. 50 - 57.

Prescribing the form of order to be issued for the temporary custody of wandering or dangerous lunatics in a Jail for observation prior to transfer to a Lunatic Asylum -

Govt. of [1871] Madras.

# JUDICIAL.

To

THE INSPECTOR-GENERAL OF JAILS,
&c., &c., &c.

*Dated June, 5th.*

*Recd.* Encl.

*G. O., 5th June* 1871, *No.* 752.

**JULY.**
**Nos. 50-51.**

Prescribing the Form of Order to be issued for the temporary custody of wandering or dangerous lunatics in a jail for observation prior to transfer to a Lunatic Asylum.