MADRAS RECORD OFFICE.

Government of Madras.

DEPARTMENT

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Proceedings of the Madras Government, Judicial Department, from 18th to 24th June 1852.

Read the following papers,

No. 128. From Colonel J. C. BOULDERSON, Commissioner of Police; to J. R. BOYSON, Esqr. Honorable Company's Solicitor, dated 21st May 1852.

In accordance with Orders of Government, under date 28th April last, I have the honor to submit for the consideration of the Advocate General my opinion on the proposed amendments of Act XIII of 1856, and to state what other amendments are in my opinion necessary.

Act XIII of 1856, Section 13.

1. The alterations proposed in the wording of Section 13 appear to me judicious, by it several members of the Police establishment, holding responsible situations, though not exactly Police Officers, will be rendered amenable to trial for receiving bribes and unauthorized rewards, and the restrictive meaning, which the word to it is proposed to omit, naturally cause, will be removed.

Section 53.

2. If the proposed alteration of Section 53 be confirmed, it will bring a large number of houses of doubtful and suspicious character called "Coffee and Refreshment Rooms" more immediately under the control of the Commissioner of Police, and as a general rule the Keepers of all places of public entertainment and resort, should be obliged to take out a License from that Office.

Section 118.

3. The amendment proposed for Section 23, will correct a mistake which has entered notes.

Section [illegible], Clause 12.

4. The additions made to Section 21, Clause 12, will give to the Commissioner of Police a power, the want of which has been felt.

Section [illegible]

5. If the proposed alterations of Section 76 be confirmed, it will confer on the Commissioner of Police a considerable degree of power, by granting to him an independent right to examine and inspect the weights and measures in use in the bazars, &c., without any complaint being made, but as I fear the power might be abused, if delegated to many persons, I would rather that an able and intelligent Officer was specially selected for this duty, and that the powers of "any Inspector or superior Officer of Police" be allowed to remain exactly as it stands at present, and that the additional powers, which it is proposed to grant, be given by a new Section, instead of the alterations of the one now under review.

6. While dealing with this subject I would also submit, that in order effectually to check the fraudulent practices, which there is every reason for believing are very common in Madras, and which will be corrected but very gradually by means of occasional inspection, it might be advisable to carry the law further, and make it imperative on every dealer, under a penalty, to produce his weights and measures for examination and stamping within a reasonable time after the commencement of the existing Act take effect. It appears to me perfectly fair to impose this necessity upon shop-keepers and bazarmen, in order that false weights and measures may be, as far as possible, got rid of at once, and it should also I think, be made a penal offence for every vendor afterwards to use in his trade any weight or measure which did not bear the official stamp. It might likewise be expedient to provide for periodical examination of all such articles, although this is of less consequence than the original testing and stamping proposed by me, since a vigilant and active Inspector would be able to prevent extensive tampering with weights and measures once approved.

7. As prisoners have on several occasions managed to escape from the custody of Police Officers while on their way to and from places of confinement, it seems to me necessary that the words "from legal custody," should be added to Section 39 to render such an escape a punishable offence. As the Section now stands the escape must be out of a "place of legal confinement" only, and if the distance which prisoners have to be taken between the Police Courts, the Penitentiary, and the Lock-up-House be taken into consideration, and also

Section [illegible] Escaping Prisoners in the [illegible]

[illegible]

[illegible]

the temptation and opportunities to effect an escape which [illegible] are [illegible] through a [illegible], it will be evident that a further provision is necessary to prevent it.

[illegible]. It seems to me also that some provision should be made for the punishment of Police Officers [illegible] wilfully [illegible] prisoners, when such Officers are in the execution of their duty.

[illegible]. On the [illegible] May 18[illegible], it was ruled here, by the Law Officers of Government, that a Magistrate has no power, under the Police Act, to punish any offence of this kind.

12. The opinion referred to is given in margin.

Sections [illegible]

11. As the common and most usual resorts at the lower [illegible] which [illegible] proportions are made are [illegible] and the [illegible] of the [illegible] places, and as these drugs equally with opium and other intoxicating substances, are employed in other ways as well as smoking, I submit that the [illegible] and [illegible] Sections would be rendered more efficacious, if the Sections were altered by the introduction of the following words in substitution for others, viz., "smoking or consuming [illegible], [illegible] or any preparation of opium or other intoxicating drug or substance."

12. In many of our toddy and arrack shops, liquor is sold by the servant of the licensed dealer (the proprietor) whose name is borne upon the sign board, and in many cases the same person is the owner of, and takes out a license for, several such shops. The question has been raised here, as to whether the master can be held responsible for the acts of his servants in sale of any [illegible] in any such shops, and it has been determined that he cannot, upon the ground that in the Abkarry Act XIX of 18[illegible], the Law specially renders the master responsible for the act of his servant, and it is presumed, that the Police Act, if the case was meant to be so ruled, would have contained a like provision. If such be the case, the sooner the Law is altered the better, because under the above view, the licensed dealer may always escape the penalty of breach of license by employing a party to sell for him.

Section [illegible]

13. The [illegible] of Clause [illegible] of this Section might be much extended, and that to the great advantage and comfort of the public, by more [illegible] removing it from the [illegible] of the Section, and then because it is a common practice here in many [illegible] and for [illegible] of [illegible], [illegible] of various [illegible], the [illegible] and [illegible] together, to beat tom-toms and make many unusual noises at unseasonable hours of the night, whereby the rest of their neighbours is much disturbed. It seems to me necessary that the Commissioner of Police should be vested with power to prescribe certain hours of the night [illegible], and thereby to put a stop to a nuisance which has caused much complaint.

Section [illegible]

14. Clauses [illegible], [illegible], [illegible] of this Section would be rendered [illegible] of more public benefit, and would tend [illegible] to the prevention of accidents, if any wilful obstruction of a public thoroughfare was made an offence punishable by a Magistrate. As the case stands at present, a number of offences are [illegible], and [illegible], but unless the other [illegible] is [illegible], it has been found that the Magistrate cannot inflict a penalty. For example a cart or [illegible] may be drawn on a road or street, [illegible] any place [illegible] in the [illegible] [illegible] and not for sale, traffic [illegible] and [illegible] [illegible] along very [illegible] [illegible] of our streets in [illegible], or [illegible] [illegible] so as to [illegible] [illegible] [illegible] from passing, and none of these [illegible] are held to be offences under the Act. A [illegible] [illegible] may [illegible] [illegible] and [illegible] [illegible] in the streets, and passengers are [illegible] obliged to [illegible] to an [illegible] [illegible], or take [illegible] [illegible]. At the present time [illegible] of our [illegible] thoroughfares [illegible] and [illegible] of goods are [illegible] along a [illegible] to the great annoyance of many of the inhabitants and of the

dangerous [illegible] to those who ride on horseback or travel in conveyances. [illegible] [illegible] also is common and very dangerous, but under the Police Act such proceedings are no obstruction, and there is no Clause which will allow them to be treated as a nuisance. It seems to me that the Police should have the power of preventing such evil practices, and that people should be required to carry such articles on sledges or on trucks, the passage of these being restricted to the sides of our public thoroughfares as much as possible.

15. I would suggest that hand carts (the number of which has increased largely of late, and is daily increasing) or trucks plying along the central part of the thoroughfares, is exceedingly hazardous, and that for the sake of public security, their traffic should be confined to the sides, as was formerly the rule under the old Police Regulations. Wheeled carriages or carts of that description, on which bulky and heavy goods, projecting possibly far beyond the cart itself are often transported, cannot be moved out of the way of horses or horsed vehicles, and it is far from an uncommon occurrence to see the men who drag them abandon their charge on the rapid approach of other conveyances. The trucks or hand carts meanwhile being left perhaps more or less across the road, thereby causing many accidents and in one case last year a man died from the injury he received by a collision with one of these vehicles.

16. These remarks apply also to heavily laden bullock carts, more especially those which carry long logs of wood, bamboos, and iron bars sticking out behind, the presence of these, mixing on among the lighter and more swiftly moving vehicles which crowd our highways is exceedingly hazardous, and should I think be again prevented. In their endeavour to clear out of the way of conveyances approaching them, they are very apt to do mischief laterally or on their rear. The Act might, I submit, to bestow some power of control as to this matter likewise.

Section [illegible]

17. Complaint has frequently been raised against the Police for allowing beggars covered with sores (and especially lepers, of whom there are in [illegible] so a large number dreadfully diseased) to seek for alms on our public thoroughfares without making any attempt to remove them, and the complaint is not an unreasonable one, because it is well known that Section [illegible] of the Act gives to Magistrates the power to punish offenders who may be put up before them as so doing, but the Section has almost become a dead letter and that because the only place, to which the Magistrate can impose for such an offence, is the Penitentiary and so it is far from desirable to introduce lepers and diseased persons into the Jail, from the fear of [illegible] with them sickness and disease, and thereby bringing that excellent establishment into bad repute, we have been under the necessity of allowing these unfortunates to roam about with impunity. I therefore gladly avail myself of this opportunity to mention the subject under the hope that the Law may be altered, or any rate so far, as to give to a Magistrate the power to sentence lepers to imprisonment in a Leper Hospital.

18. The Act contains no provisions relative to the age of parties entrusted to drive vehicles along the public roads, and as a natural consequence of that omission, they are frequently placed under the charge of lads of tender age, who neither practically comprehend the safe management of animals, nor have the requisite physical capacity for their control, hence it follows that the lives and property of Her Majesty's subjects are constantly endangered by the incompetence of [illegible]. In England I believe the Magistrates have summary power to deal with such [illegible], and for the prevention of accidents, it seems to me that our Police Act should be made similarly to embrace the subject, so as that the practice of committing vehicles to the care of persons not of [illegible] age [illegible] [illegible] to give them may receive an effectual check.

Section [illegible]

19. By Section XV, a Police Officer may resign his Office by giving 2 months' notice of his intention to the Commissioner of Police and so far as the Native portion of the force is concerned the time is ample, because new hands are readily enlisted, but it is not so with respect to the mounted branch of the force, its subjects are not so easily secured, and when selected it takes many months to make them good horsemen and otherwise fit them for the duty of a Police Officer. If men had to give a long notice, those whose only object is to procure immediate [illegible] would not be so ready to engage themselves, and the service would not so often be

...made a more convenient site by parties who have really no intention to remain in the Towns. We now find that the men who keep the Towns do so just before an election they have been dismissed duly. I propose therefore, that under the Act section or clause of enlarging Towns the limits be extended, so that the line of suburbs be extended to a mile round, and that no man be held eligible to go on such duties until he has completed a service of three months.

20. In conclusion, I beg leave to point out the necessity for having the law clearly laid down as to what constitutes the "parts of the road" in this country, as in the case in England European Drivers and Europeans are not of course acquainted with it, and as per the judgment of the latter clause of Considerant in original minute, has been misunderstood, or made the ground of many frivolous complaints. It is perhaps unnecessary to show whether they have strongly cycle or ring about the morning. It is perhaps unnecessary to show whether in front or from behind, and the light of the horses of carriages, &c., approaching them whether in front or from behind, and the circumstances of their movements in the form of frequent collisions and many serious accidents. We have such a law having been passed thereby last year, one of which we before observed, was by an injury received from a hackery. It has been said that there are cycle for which a penalty is provided in certain bye-laws, but whatever the theory of the case may be, there is practically none to be had of a common hackery-man's bye. The Magistrate finding that they are not enforced as attempts in the provinces. Very great advantage would result to the public, and a great amount of satisfaction would be given, if provision were made in the Police Act for this difficulty.

No. 30. From Colonel J. C. BRIDGES, Commissioner of Police, to J. B. NORTON, Esq., Town and Secretary, dated 31st June 1859.

1. In compliance with the orders of Government, under date the 18th inst., I have the honor to submit for the consideration of the Advocate General a few observations on that portion of the Bill therein quoted which has reference to the "Carriage of Public Conveyances," and in doing so to add a few words on a Police subject, under Act XXII of 1856, on which the Advocate General favored us with the opinion as Police had, when the Regulations and appeal that the Bonds be sent back by express, as the circumstances, and I would be well obliging to express the wording which the objectionably argues more exact as time.

Act XXII of 1856, Section 21.

Driving a carriage with a wilful disregard of any bye-law, &c.

Clause 5. Whoever shall wilfully disregard any bye-law, &c. duly made under the provisions of the last preceding section, and duly published in the manner prescribed in that behalf, or who shall wilfully neglect to comply with any such bye-law, shall be punished with fine not exceeding Rupees Fifty.

2. It seems necessary that a slight alteration should be made in Clause 5 of the Section, which relates to the lighting of carriages and other vehicles by night, so that the terms be not left to the words of that Clause are given as simple. Legal doubts have been raised as to what should be considered as the parts of the road with which any one may be thus conveyances, what are the many persons using the Bridges of the ...

...general clause of Act XX of 1856 becomes so open to some as to be found the Magistrate will not inflict a penalty for so trifling an offence as the omission of the Act, as which it will be observed, "Lights" is spoken of in the singular number, and with indefinite article "a" attached. The interpretation of any single light as accompanied the object which the Act clause of the Section was for the sake of brevity, to avoid the necessity of prescribing minutely forms the millions of vehicles in each shape, when some of the Magistrates believe the intention of the Framers of that Clause would be as amply shown if the dimensions of the lamps were specified as to enable them to be seen at a certain distance in an ordinary night, but without fixing it positively, and the point is especially a case one, as to which wide ... of opinion may well exist. The remedy seems to be some of uniformity which could be ... on the Law and to applicable to the Police, and which for this purpose provided that no ... lamps who may put a wrong ... on the wrong of the Clause, as the award of a case being ... under the Supreme Court under these circumstances. I would recommend that the words "sufficient lights" should be substituted for those now in the Clause, which although would make the meaning clear and sufficiently comprehensive. I need not point out the ... of single lights to guard against approaching such other lamps against frivolous because it would be much like the expensive lamps carried each as direct rule of the carriages that ought

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Lights may be, and at least until they are so close together as to render collisions almost inevitable, in the event of any suitable lamps have been made. When two lights are visible however, there can be no doubt as the matter one way and of overtaking, supposing each party to drive carefully and to keep on the proper side. Mischances will happen even then, so long as the power of ordering the "side of the road" is vested in the Police and Magistracy, as was pointed out in my last letter under date 31st October, but they will become far less common than they are at present.

2. With reference to the subject of regulating by Law the fares of Hack-Carriages, to which my attention is directed in Fiscal Minutes of Consultation of date April 28th, 1859, I have made particular inquiry into the records of the Government instructions, and beg leave to submit the result of them in the following observations.

1. The common kind of public conveyance used in Madras by the poorer classes are chiefly of two kinds, viz., first "Pallaki bye bandies" as they are termed, and secondly "Bandy-gramjoos" or small vehicles on two wheels, drawn by country Ponies—the former are generally kept in good order and are driven by Hindoos. It does not appear to me necessary to refer further to them. As regards the latter, however, of which a vast number ply for hire (besides those kept merely for private use) I am of opinion that the Law should provide in various ways for their regulation. The same number of conveyances of this description may be 6 or 700. They chiefly abound in Triplicane, Mylapore, and the Eastern portion of the Town, and are generally driven by Moor boys. These vehicles are commonly in a state of miserable disrepair, are drawn by animals worse than half-starved, often lame, frightfully galled, in various stages of disease and totally unfit for work, of which they nevertheless are obliged to perform an extraordinary amount day after day, as many persons being crammed into the body as they can possibly hold, besides the driver, and often one hanging on behind. The bodies drawn even by Ponies in such condition, and how long soever or sickness are far beyond their strength, and these they are obliged to drag at a fast pace for several hundred Distances, sometimes as much as 20 miles during the day, and occasionally still longer journies, but if the overtaxing of the Ponies at the more regular hours is inhuman, how much greater the cruelty inflicted on the wretched, worn out, suffering objects constantly seen, between the shafts of the above class of vehicles. Humanity loudly calls for Legislative amendments on their behalf, so far as it may legitimately be exercised. I would question whether that the every conviction of many of those conveyances and the rotten harness made up of odds and ends of rope and leather which for the most part put on them, leads to constant accidents, rendering guilt to the Law and limbs of the persons who make use of them, the upsetting and breaking down of them is matter of common occurrence.

2. It is not practicable to remove all the evils above noticed, but I submit that under to the rules following would operate beneficially in checking some of them, and might be established without any undue interference. I therefore propose,

1st.—That the permission of all persons keeping these Pony Carriages for hire, shall be discussed for that purpose and the number kept in each recorded.

2nd.—That the names of the bona-fide owners of the same shall be particularly registered.

3rd.—That every vehicle shall be numbered.

4th.—That a limit should be set to the number of persons which each may carry. That number not to exceed four, whether male or female and no infants children half grown as well as adults but exclusive of infants in arms. This is the utmost load that should be permitted.

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Within the Presidency limits 1½ Rupee per diem. I object to smaller charges for broken periods of the day, because the effect would be to enable hirers to take double work out of the Ponies at half price, and so to injure them and defraud them owner at the same time. It might however be left open to parties to make their own arrangements for short times and distances without reference to the prescribed rate per day.

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2. It is not practicable to remove all the evils above noticed, but I submit that under to the rules following would operate beneficially in checking some of them, and might be established without any undue interference. I therefore propose,

1st.—That the permission of all persons keeping these Pony Carriages for hire, shall be discussed for that purpose and the number kept in each recorded.

2nd.—That the names of the bona-fide owners of the same shall be particularly registered.

3rd.—That every vehicle shall be numbered.

4th.—That a limit should be set to the number of persons which each may carry. That number not to exceed four, whether male or female and no infants children half grown as well as adults but exclusive of infants in arms. This is the utmost load that should be permitted.

5th.—That the ordinary legal sense of fare demandable shall be as under,

Within the Presidency limits 1½ Rupee per diem. I object to smaller charges for broken periods of the day, because the effect would be to enable hirers to take double work out of the Ponies at half price, and so to injure them and defraud them owner at the same time. It might however be left open to parties to make their own arrangements for short times and distances without reference to the prescribed rate per day.

Without the Presidency limits, and within the Jurisdiction of the Collectors of Madras, 5 Rupees per diem.

Further than this I do not think it would be feasible to go on the way of amendment. It seems to me that when animals are kept for exportation for beyond the already sweeping boundaries, there owners should be left free to make their own bargain with those who hire cattle and the same remark applies to cases wherein those Regulations are found dead, or extra public occasions, when the demand for conveyance is unusually great and those rates proportionably raised. There seems to me no good reason why those who supply, should not in these cases under the mind of an extraordinary demand, as is done by dealers in any other commodity to the regulations laid down by the laws of the country. Such an exception does not I think, affect the propriety of laying down a general rule, to prevent some degree of unfairness and fraud on the ordinary charges of those who let out carriage cattle of the kind in question.

6. I am quite opposed to associating with the practice of demanding payment of the sum of hire the estimate of the damages to be awarded, which is common among those who let out cattle, entirely agreeing with the Honorable the Member for Madras, whose Minute on the subject of April 11th, 1853, I believe that the best mode of fixing the proceedings complained of are to prevent persons provided by the contract of the parties of the European community" and I may add East Indians likewise. In many cases the hire would amount to much or all, more the amount of the damages may be take the precaution of executing a bailee bond.

Clause.—That Police Officers shall be empowered to stop any such vehicles on which more than four persons and a driver shall be found by them for the purpose of taking the number of the same, such a step being only to ensure adherence to the Magistrates orders by summons or warrant, as well as the keeping of the peace, as may be provided.

Clause.—That Clause 7, Section LXXXI be so altered and enlarged as specifically to include all cases in which animals may be found working when unfit for draught or cattle, whether from exhaustion, sores, old age, serious lameness, disease or any other cause, and that Inspectors and Commissioners of Police should have authority to stop the further use or labour of the same, as they now have, and to take the said animals before a Magistrate for the purpose of their being personally inspected by him, in order to the finding of such there to be dealt with.

7. In the event of any of these suggestions being adopted, it will be necessary of course to make provisions for the keep of pounds to give effect to them in cases of infringements including the power of withdrawal of licenses.

(A true copy.)

(Signed) J. C. WHITEHEAD,
Commissioner of Police

No. 11 From Lieutenant Colonel H. CULLEN, Second Magistrate of Police, to F. FREMOFF, Esq., Chief Secretary to Government, Fort St. George, dated 9th June 1853, No. 6.

I have reference to the letter from H. Porter, Esq., Member of the Legislative Council, to your address dated Fort William, 18th April 1853, and addressed to the Secretary to Commissioner, Judicial Department, No. 504, dated Fort St. George, 21st April last, I have the honor to make the following remarks.

2. The provisions of the Bill for the amendment of Act XXIII of 1841 were discussed when in the Legislative Council of India on the 24th April 1850. I remember great care therein, but while an alteration of the Police Act is under consideration I would respectfully offer a few suggestions for the consideration of the Legislative Council.

3. It would appear to me expedient and advisable to make a provision for regulating the hire of conveyances plying for public hire in Madras.

4. The records of the Police Courts afford ample evidence of disputes and breaches of the peace arising out of grooms engrossing the fare of cabmen.

5. Every conveyance should be licensed by the Commissioner of Police. Such licenses also strictly ensuring both that the animals be kept in a serviceable and proper condition and the number of adults, or adults and children permitted to occupy it.

6. I suggest the advisability of restricting the number of passengers such conveyance be permitted to carry as calculated to check much cruelty and inhumanity at present existing, as it is of no uncommon occurrence to see one of even seven stout Natives crowded into a carriage which should not be licensed to carry more than 4 persons.

7. While upon the subject of conveyances for public hire, it would be well to draw attention to the difficulties experienced by the Magistrates in dealing with cases under Clause VII, Section LXXXI of the Police Code.

8. Clause VII enacts that "whoever cruelly beats, abuses, or tortures any animal" shall be liable to a fine not exceeding twenty Rupees.

9. Under this provision the driver of a conveyance is often arraigned for torturing and ill-treating an animal. He is prosecuted and fined. The fine is unpaid and a warrant of distress is issued. The defendant in the case probably possesses little beyond the cloth he is wearing and private complaints are the part of the owner, the owner of the tortured animal.

10. In such case the owner is really the more guilty party of the two, but the Magistrate has no authority to distrain his property or punish him in any way, and while the law remains as it is, the offence escapes.

11. In such cases it would be advisable that authority be given to seize both animal and conveyance, as the ultimate security for any fine which may be imposed upon the driver, and that the Magistrates be empowered to issue their warrant of distress (in case of non-payment of fine) whereby the conveyance may be distrained, thus visiting the penalty upon the owner of public party, the owner, rather than the driver of the vehicle.

12. Section LXXXII provides for the punishment of violent or indecent behaviour in any "Police Office, Station or Station House."

13. I would beg that instead of the above, the following be substituted: "Whoever is guilty of any violent or indecent behaviour in any Police Court, Office, Station or Station House, &c."

14. I ask the insertion of the word "Court" because it has been argued by lawyers that the Station House and other are generally for violent or indecent conduct in a Magistrate's Court.

15. Section C provides that "whoever commits perjury in any judicial proceedings before a Magistrate may be committed by such Magistrate for trial before His Majesty's Supreme Court of Judicature."

16. The crime of perjury is difficult and often impossible of proof and the subjection of false witnesses I regret to say is becoming more rife each year in Madras.

17. I would seek whether some Magistrates might be empowered summarily to punish cases of gross prevarication in the manner of giving evidence before them. This I feel confident would act as a wholesome restraint upon the too common practice of suborning false witnesses.

18. Section XIII is much needed and has I believe already worked much good, but I would ask why confined as it is that one only the provision "enabling a charge upon insufficient grounds" be liable to punishment, but that all aiding and abetting in the prosecution of a false charge, who shall in the opinion of the Magistrate have guilty knowledge of such falsity, should be punishable in the same way.

19. The offence of affixing papers containing defamatory and indecent accusations upon, or near the houses of private persons and of making or exposing, has been more than once proved before me and I have found great difficulty in dealing with it.

20. The one instance of this (the perpetrator of threatening) appears to me to be an offence which a Family Assault, was adjudged for passing a defamatory paper upon the said person inflicting indecency and injustice upon the family occupying the house.

Many similar offences against the Law of the road are punishable in England by Statute—for instance,

3 Geo. 4, C. 126, S. 122. A Driver meeting any other carriage and not keeping his own suitably on the left or near side of road.

Ditto. Wilfully preventing any person from passing him, or any carriage under his care upon the road.

Ditto. Use use of Carts driven by any one under the age of thirteen years.

3. The offences specified in Section 61 are punishable by fine not exceeding twenty Rupees and in default the Magistrate has the power to award simple imprisonment under the provisions of Section 115. I would here remark that simple imprisonment is not felt as a severe punishment by the lower order of Natives and that some of the offences enumerated in the Section above mentioned appear to call for more severe treatment in extreme cases. For instance, furious and reckless driving or riding, the setting on of a vicious dog at any person, or aggravated ill usage of animals. I therefore suggest that in such cases the Magistrate be empowered to sentence offenders to suitable punishment or to imprisonment with hard labour.

4. Section CX directs that the judgment in certain cases should be drawn in the form given in the schedule, but this form is made applicable to very few offences. The schedules annexed to Act II and 12 Vict. Cap. 43 and 43 contain a variety of Forms of convictions and Processes of every kind. A similar schedule to Act XIII of 1856 would be very useful as the Form B "contains sentences" might be declared applicable to every offence.

5. I take this opportunity of requesting the attention of Government to the question of fees and costs. Formerly a fee of four Annas was granted on the issue of every summons except in some cases the circumstances of the applicant were such as to lead the Magistrate to grant them gratis.

This fee was discontinued in March 1857 by order of Government in consequence of a communication from Mr. Elliot the Legislative Member for Madras, and since that time the number of summonses has greatly increased as will be seen from the statement in the margin, showing the number of summonses issued at the Town Police Court during the last three years.

Vide Extract of Minutes of Consultation No. 203, dated 12th March 1857.

1856	1,774
1857	2,870
1858	2,201

With reference to para. 6 of Mr. Elliot's Minute, I beg to state that it never was the practice to charge a fee on "Interrogatories."

In para. 4 of the same Minute, Mr. Elliot remarks that the unnecessary summoning of witnesses must be best checked by the Magistrate exercising a sound discretion in granting subpœnas. It is quite true that the Magistrate may restrict the number of witnesses, but it not unfrequently happens that persons are summoned who know nothing of the facts at issue. Now it is impossible that the Magistrate can exercise any discretion in such cases. The applicant states that such and such persons were present when the offence was committed, and the subpœnas must be granted as a matter of course.

Section 115 of the Act gives the Magistrate power to grant costs, which costs must be paid to one or other of the parties, but as the great majority of summons cases consist of petty disputes in which both parties are generally to blame, costs can seldom be granted.

I therefore propose that a small fee be levied on the issue of every summons as heretofore, and as is the case in England, and further that a similar fee be charged for every subpœna, the Magistrate always having the power to grant them gratis at his discretion. I am a small fee would make a most salutary check on false taking and the summons, or subpœna, and thus tend to check many applications.

On the disposal of the case the Magistrate may order the sums of money to be repaid to the complainant by the defendant of such appear reasonable.

22. Reference to Section LXXXIII Clause XI will show that the above offence could and he must be, but even but Clause XV of Section LXXXI authorized in the punishment would not be any objection to the same.

23. It may be urged that the offences I have enumerated should be tried by Civil action, but Commissioners and Natives especially are so extremely dismissive that serious aggrieved in such cases should be able to obtain speedy and summary redress from a Magistrate.

24. In a former communication I urged the consideration the advisability of providing some punishment for careless riding the encumbrance of carriages. But it was I believe deemed by the Legislative Council inexpedient to frame any law upon the subject. Complaints respecting heedless riders are so many the serious evils consequent and I do sincerely hope that some clause may be provided in the Bill for the amendment of Act XIII of 1856, which will meet the requirements of the case.

25. With reference to Act XIII of 1856 being set in force for the punishment of breaches of contract by servants, workmen, and labourers in certain cases.

26. Section II of the above Act says also — "It shall be present to the consideration of the Magistrate that such servant, workman or labourer has received money in advance from the employer on account of any work and has wilfully and without lawful or reasonable excuse neglected or refused to perform or has performed the same according to the terms of the contract, the Magistrate shall, on the application of the employer, either order such servant, workman or labourer to repay the money advanced and to perform the work, either on other terms as to payment as the Magistrate shall think reasonable, or order that such servant, workman or labourer be imprisoned with hard labour for any term not exceeding one month, unless such money be sooner repaid, &c."

27. Now I am well known, and much of the trade of giving evidence and witnesses paid or otherwise particularly in such and especially. Some time I have known the Government to object to certain payments of grain that have given to witnesses to make a condition and the witnesses had [illegible] or refused a decree by the Court on [illegible] to make such conditions as to receive such grain, I would be I should not look such as to prevent any the application of such grain under the present enactment. I would add therefore that the discretion be committed either to the Court or to the discretion of the Magistrate that such grain or money should be paid to the satisfaction of the Magistrate that such witness, workman or labourer be repaid the money advanced and to perform the work, either on other terms as to payment as the Magistrate shall think reasonable, &c."

28. The experience of the above enactment of confinement of some persons who employ the worst employment as I have they may and the frequent presumptions of others, being an Article which I have no remedy under almost daily observation.

29. From Major W. F. MILLARD, Magistrate of Police, to SECRETARY TO GOVERNMENT, Judicial Department, Fort St. George, dated 7th June 1859, No. 24.

With reference to Section 9 of Commissioner's No. 382 dated the 29th April 1859, I have the honour to state that all the proposed amendments appear admissible, and some essential improvements.

In regard to the first amendment, I have to submit the following observations:—

The old Police Regulations sentenced a Native to stripes of solitude even before a punishment unless they kept on the left hand side of the road, leaving sufficient space for others to pass them on the right. Clause 8, Section 61 of the present Act is not sufficient to restore license to this respect, and some provision on the subject is much needed. The distance is especially great with respect to carts which are now driven at very fast pace at parts of the main thoroughfares.

Many similar offences against the Law of the road are punishable in England by Statute—for instance,

3 Geo. 4, C. 126, S. 122. A Driver meeting any other carriage and not keeping his own suitably on the left or near side of road.

Ditto. Wilfully preventing any person from passing him, or any carriage under his care upon the road.

Ditto. Use use of Carts driven by any one under the age of thirteen years.

3. The offences specified in Section 61 are punishable by fine not exceeding twenty Rupees and in default the Magistrate has the power to award simple imprisonment under the provisions of Section 115. I would here remark that simple imprisonment is not felt as a severe punishment by the lower order of Natives and that some of the offences enumerated in the Section above mentioned appear to call for more severe treatment in extreme cases. For instance, furious and reckless driving or riding, the setting on of a vicious dog at any person, or aggravated ill usage of animals. I therefore suggest that in such cases the Magistrate be empowered to sentence offenders to suitable punishment or to imprisonment with hard labour.

4. Section CX directs that the judgment in certain cases should be drawn in the form given in the schedule, but this form is made applicable to very few offences. The schedules annexed to Act II and 12 Vict. Cap. 43 and 43 contain a variety of Forms of convictions and Processes of every kind. A similar schedule to Act XIII of 1856 would be very useful as the Form B "contains sentences" might be declared applicable to every offence.

5. I take this opportunity of requesting the attention of Government to the question of fees and costs. Formerly a fee of four Annas was granted on the issue of every summons except in some cases the circumstances of the applicant were such as to lead the Magistrate to grant them gratis.

This fee was discontinued in March 1857 by order of Government in consequence of a communication from Mr. Elliot the Legislative Member for Madras, and since that time the number of summonses has greatly increased as will be seen from the statement in the margin, showing the number of summonses issued at the Town Police Court during the last three years.

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Section 115 of the Act gives the Magistrate power to grant costs, which costs must be paid to one or other of the parties, but as the great majority of summons cases consist of petty disputes in which both parties are generally to blame, costs can seldom be granted.

I therefore propose that a small fee be levied on the issue of every summons as heretofore, and as is the case in England, and further that a similar fee be charged for every subpœna, the Magistrate always having the power to grant them gratis at his discretion. I am a small fee would make a most salutary check on false taking and the summons, or subpœna, and thus tend to check many applications.

On the disposal of the case the Magistrate may order the sums of money to be repaid to the complainant by the defendant of such appear reasonable.

Proceedings of the Madras Government, Judicial Department, from 18th to 24th June 1858.

PROPOSED AMENDMENTS.

1. Drivers of vehicles of whatever description, and all persons carrying or propelling carts, trucks or any other thing along the public road shall keep to the left or near side of the road, leaving sufficient room for others to pass them on the right, or be liable to a fine not exceeding 20 Rupees, or in default thereof, to imprisonment with or without hard labour for a period not exceeding fourteen days.

2. Whoever rides or drives any animal or drives any vehicle in so furious or negligent a manner as to endanger the safety or property of others, shall be liable to imprisonment with or without hard labour for a period not exceeding three months, or to corporal punishment not exceeding thirty stripes with a rattan.

3. Whoever wantonly hinders or obstructs another vehicle from passing him shall be liable to a fine not exceeding 20 Rupees.

4. No vehicle shall be driven by any one under the apparent age of thirteen years, and for any infringement of this rule, the owner of the vehicle shall be liable to a fine not exceeding 20 Rupees.

5. At the end of Clause 2, Section 61, I would add the words "the amount of the fine to be recovered either from the driver or the owner according to the discretion of the Magistrate."

6. In Clause 3, Section 61, after the words "drives any cart, carriage, or vehicle," I would insert the words "or any other thing" in order to meet the case of large timber, stones, &c., by which the thoroughfares are frequently obstructed.

(Signed) W. J. [illegible],
Police Magistrate.

No. 22. From T. G. CLARKE, Esq., Magistrate of Police, to THOMAS PYCROFT, Esq., Chief Secretary to Government, Fort Saint George, dated 18th June 1858.

1. With reference to Extract from Minutes of Consultation, dated 28th April 1858, No. [illegible], Judicial Department, forwarding copy of a Bill amending certain Sections of Act XIII of 1856, and requesting the opinion of the Magistrates for the Town of Madras on the proposed amendments, "and on any other that may seem to them to be necessary."

2. I have the honor to state that the amendments appear to me both necessary and desirable, more especially Section 3 of the Bill, bringing as it will all Eating Houses, Coffee Houses, Boarding Houses, and Lodging Houses &c., under the immediate surveillance of the Police, whether or not spirituous or fermented liquors are sold therein, or [illegible], by obliging the keepers of such places, in common with the keepers of Taverns, Punch Houses, and Toddy shops, to obtain a License from the Commissioner of Police.

3. I have reason to believe that the power intended to be given in Section 5 of the Bill to Inspectors, or superior Police Officers, to enter any shop or premises without, in the first instance, waiting the necessity of a complaint, to inspect weights and measures, will materially tend to put down the system of fraud, which is practised to a serious extent in this Presidency Town. Heretofore the paucity of these cases brought before Magistrates, I apprehend, can only be attributed to the reluctance of people being put to the inconvenience of preferring complaints.

4. With reference to owners of public conveyances refusing to ply unless they receive pre-payment, I beg to observe, that to the best of my knowledge, I have no reason to believe that the practice prevails to any great extent in this Town. Whenever such demand is made, it is generally confined to passing strangers, and to those whom the owners [illegible]. [illegible] of 14 years' experience in connection with the Police and the Magistracy in this Town, enables me to add that I have never heard any complaint of inconvenience on this account.

Proceedings of the Madras Government, Judicial Department, from 18th to 24th June 1858.

Former Regulations, No. [illegible]
Sections 1st and 2nd.

1st. No bullock cart shall be allowed to be driven by any person [illegible] under the age of 14 years. [illegible]

2nd. All drivers of carriages and [illegible] are to drive and ride carefully and moderately along the high roads, taking the left side, and leaving a sufficient space for others to pass them on the right side, [illegible]

5. I would however beg to suggest that some provision be made to prohibit boys of tender years from being entrusted with the driving of cattle or conveyances of any description whatever. This is a serious evil in Madras, and pregnant with danger, more especially from their thoughtless and careless way of driving. They neither know, nor are they required to know, which side of the road to drive. In the old Police Code, there were some useful provisions under this head which are annexed in the margin.

6. Having now disposed of the points under immediate reference, I would, as requested by Government, respectfully submit such other amendments of the Police Code (Act XIII of 1856) as have suggested themselves to me.

7. Under Section 27, parties summarily convicted of stealing or receiving stolen property are liable to imprisonment with, or without hard labour for a term not exceeding 6 months, or if a male to corporal punishment not exceeding 30 stripes of a rattan.

Section XXXIII.
Embezzlement, Fraudulent misappropriation, &c. [illegible] by their employers.

8. I would suggest that parties convicted of the offences referred to in the following Section, viz., XXXIII, be rendered also liable at the discretion of the Magistrate to corporal punishment.

9. My reason for proposing the amendment is that in many cases, imprisonment with, or without hard labour, is scarcely deemed a punishment by the majority of the class of people commonly tried for such offences. It must be well known to all who have had any experience in this Town, of the Police and Magistracy, that frequently individuals commonly known as "reputed thieves, vagrants, &c." seek admission into our Jails by wantonly committing themselves. They have often told me in their defence, that their only object was to get back to Jail, where they were sure of being provided with the necessaries of life, and that with little or no labour.

10. I could enumerate several instances in which, under summary convictions, such individuals have been off and on for years in Jail. It is even not uncommon for prisoners to tell the peons, on their expiration of the sentence in Jail, to take care of their cumblies, &c., as they intend to return soon.

11. Under these circumstances, I am induced to recommend the application of the lash, which they generally dread much more than imprisonment with hard labour.

Section XXXII.
Charge of stealing, embezzlement, &c., of property [illegible]

12. Under Section XXXII, the Magistrate can summarily adjudicate only in such cases where the property stolen "belongs to "any Master, Officer, or Seaman of such Ship "or Vessel, or to any other person employed "or engaged in any capacity on board thereof, or who is about to sail as a passenger therein." But should the property stolen, belong to any passenger, who may land at Madras, or to importers or exporters of merchandize, &c., where the value exceeds 50 Rupees, the case will still have to be committed for trial to the Criminal Sessions; and the inconvenience which this Section was intended to remedy will not be met, because in such cases generally the evidence of parties belonging to the ship or vessel, is necessary for the ends of justice, and they are obliged therefore to be detained.

13. With reference to Section XXXIX, I beg to observe that on a late occasion a prisoner was brought before me by the Police, charged, under this Section, with escaping from legal confinement, but according to the depositions

Section XXXIX.
Penalty for escaping from a place of legal confinement.

of the witnesses on the case, the prisoner did not escape out of any place of legal confinement, but from the custody of the police after he was escorting with a gang on the public road.

11. It is not for me to presume to offer any opinion as to the legality, or otherwise, of availing employments for prisoners, out of the precincts of the Jail to which they are committed. It is an incident however to prisons from the attempting to escape, or escaping from the custody of the prison, while so employed, it would be unnecessary, in my opinion, to amend the Section in such a way as would enable the Magistrates to deal with such cases. I would therefore suggest that, after the words "escape out of any place of legal confinement," the following be added, "or out of the custody of any Police Officer."

Section 224.
Punishment when similar crime of imprisonment for some and shorter.

12. Section 224, provides for the maintenance of wives, legitimate or illegitimate children. The necessity of maintaining illegitimate children, when they have the means to maintain them apart, as orderly persons, or when physically incapable of earning their own livelihood, has formed itself strongly upon my attention from the numerous applications made at the Police Courts for relief in such cases.

13. It is unfortunately to be obliged to submit such a proposition; but such unfortunately is the cruelty and inhumanity sometimes manifested by some of the lower classes of Natives towards their parents, that I feel it my duty to avail myself of the present opportunity of bringing the painful fact thus prominently to notice, in the hope that some provision should be made to remedy the evil.

Clause 2.
Abandoning child or endangering its recovery.

14. For Clause 2 of Section 317, I would, after the words "knowingly conceals," insert "or keeps," so that the clause would read "or any other thing whatsoever."

15. The proposed amendment would render the Clause much more useful, for as it is now worded, a parent, or other person, who abandons a child, or endangers its recovery by any other means than concealment, if the abandonment be caused by any other action or intention, the case cannot be dealt with under this Clause.

Section 23.
Power to Magistrates to enlarge the bearing of cases and compel witnesses, or order that no person or class of the charged cases be sent congregated.

16. In Section 23, the word "Agent" is used as well as the words Council and Governor. Under the Provisions of Act XXIII of 1843, in all cases of summary conviction the powers exercised are entitled to be intended by Council, as Executive of Her Majesty's Courts. But as this has been of three years, under especially since the establishment of the Court of Small Causes, a set of imprisonment may have sprung up, who practice at that Court, and hence frequently arise the motions upon the Magistrates to hear some orders for the punishment of Natives. It would therefore be desirable to have whether under the word "Agent" they ought, or ought not to be empowered by the Magistrates, as whether the Agents are to be exercised only as those of the supreme Courts of high Court, and those I have no doubt would, when the words "exercise out of any place of legal confinement," also followed by the words "or out of the custody of any Police Officer."

*Act 10 of 1850 Section 2 Clause 2.

17. Section XXIII, provides for the maintenance of wives, legitimate or illegitimate children. The necessity of maintaining illegitimate children, when they have the means to maintain them apart, as orderly persons, or when physically incapable of earning their own livelihood, has formed itself strongly upon my attention from the numerous applications made at the Police Courts for relief in such cases.

18. It is unfortunately to be obliged to submit such a proposition; but such unfortunately is the cruelty and inhumanity sometimes manifested by some of the lower classes of Natives towards their parents, that I feel it my duty to avail myself of the present opportunity of bringing the painful fact thus prominently to notice, in the hope that some provision should be made to remedy the evil.

19. In Clause 2 of Section XXXII, I would, after the words "leave any such, such," insert "or keeps," so that the clause would read "or any other thing whatsoever."

20. The proposed amendment would render the Clause much more useful, for as it is now worded, a parent, or other person, who abandons a child, or endangers its recovery by any other means than concealment, if the abandonment be caused by any other action or intention, the case cannot be dealt with under this Clause.

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*Act 10 of 1850 Section 2 Clause 2.

Section 255.
Power of Magistrate.

22. Section CCLV provides for the punishment of Magistrates and Police Officers acting beyond their under the Act. I would however beg respectfully to submit that the protection afforded in this Section appears to be limited under the provisions of the Statute 11 and 12 Victoria, Chapter 44, Section 1, to which I would solicit attention, and express my earnest hope that that Section of the Statute as quoted in the margin may in its integrity, be made equally applicable to the Magistrates here.

23. There is another subject to which I would respectfully beg to call attention; although it may be considered irrelevant to the matter under reference, yet I look upon it as important, and I would hope press the same upon the kind attention of the Government.

24. In England, under a special Statute, the Justices of the Peace are prohibited from administering what are called Extra Judicial Oaths, or Affidavits, under a severe penalty; but in this Presidency I am, in the absence of all law on the subject, the Magistrates are required to administer them.

25. I would here beg to refer to paras 5 and 6, of the Extract from Minutes of Council, dated 17th March 1857, No. 312, Judicial Department, from which, it will be seen that Mr. Daniel Elliot, the Madras Member of the Legislative Council, is of opinion that it is necessary whether there is any legal authority for the Magistrates to administer such Oaths, or Affidavits; and the Government have been pleased to request under date the 17th April 1857, to address the Government of India on this important subject; and although upwards of two years have elapsed, yet no decision appears to have been come to.

26. I would also respectfully beg to observe, that by the administration of such Extra Judicial Oaths, and Affidavits, the Magistrates are liable to a Criminal Information; and there is another important point connected with this subject, and, that in the event of parties for corrupt statements as such Extra Judicial Oaths and Affidavits, they cannot be indicted for perjury.

27. Before concluding, I cannot refrain from making myself of the present opportunity of earnestly urging upon the consideration of Government the absolute necessity of providing some Law as regards Madras and Bengal. I approach this subject with considerable diffidence, as I apprehend that there is great difference of opinion as to the propriety of the interference of the Legislature in this matter.

28. Even the passing of that most useful and valuable Act XXII of 1850, providing for the punishment of breaches of contract by artificers, workmen, and labourers, I am encouraged to hope that the Legislature in Calcutta will be induced to pass some Law on the subject to which I have alluded.

29. I can scarcely conclude as Government the serious distress and inconvenience to which many Natives and Europeans are subject in consequence of the cold seasons, unsuitable, or absence of their furniture.

22. Applications are frequently made by Attorneys of the Supreme Court for copy of court minutes. Although many of the Text Books of Law provide the necessary Forms, yet I have never known any two practitioners there agree as to the correctness, from there being so varied and extensive. Were the Forms once laid down, as the Form F. declared generally applicable, there would be an end to all doubts on the subject.

*Section 44 of 24 and 25 Chapter 67 of the Statutes concerning the practice of the Courts at the Sessions of the Peace in England, with respect to summary convictions and orders provided every Clerk of Sessions.

Section 444.
Conclusion of notice.
Manner of service.
Proof of service.
&c. &c.

*Sections 44 and 45 Statute Chapter 67 Section 1.
*The meeting shall be a continuation or adjournment of the Sessions to the consideration of those matters to be examined, and being duly convened as the complete session and Justices of the Peace may hold from time to time the execution of the duty to such Justices, and subject to any special orders in the premises as such Justices shall be at liberty to make in the case of the Clerk, and to the recognizances, so that the same may be duly adjourned from such time to time continuously, and without examination and proceedings anew; and if at the time of such adjournment from the previous time being prescribed the attendance shall be given such adjournment by the Court, or a special proof be given to the Justices."

23. Section CXII provides for the prosecution of Magistrates and Police Officers acting beyond their under the Act. I would however beg respectfully to submit that the protection afforded in this Section appears to be limited under the provisions of the Statute 11 and 12 Victoria, Chapter 44, Section 1, to which I would solicit attention, and express my earnest hope that that Section of the Statute as quoted in the margin may in its integrity, be made equally applicable to the Magistrates here.

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30. I can scarcely conclude as Government the serious distress and inconvenience to which many Natives and Europeans are subject in consequence of the cold seasons, unsuitable, or absence of their furniture.

32. [illegible]

33. [illegible]

34. Constant appeals and complaints are made of the misconduct and [illegible] [illegible] Small Cause Court [illegible]

35. I feel persuaded that were the servants in Madras conscious that they were liable to the summary jurisdiction of the Magistrates, [illegible]

36. [illegible] provisions of the Police Code.

37. [illegible]

No. 31.

Extract.

[illegible]

7. [illegible]

8. I propose to [illegible]

9. [illegible]

4. Section 12. [illegible]

[illegible]

6. Section 27. Mr. Clarke, in paras. 7 and 8 of his letter, suggests to add to this Section the concluding words of Section 27, viz., [illegible] weight. Major Wilson's [illegible] [illegible] Section 27. I think they would tend greatly to check a great and increasing abuse.

7. Section 22. Mr. Clarke, in para 12 of his letter, suggests, for the reasons there given, that the summary jurisdiction here given to Magistrates, in certain cases of theft, should be extended to [illegible]. It appears to me that, thereby, increased effect will be given to the object and intention of the Legislature in framing this Section. It may well be, that, though the property stolen may belong to a passenger landing at Madras (or Calcutta) or to a person resident in either of those towns, [illegible]

8. Sections 23 & 33. The Commissioner of Police, in paras. [illegible]

9. Section 43. Mr. Clarke suggests altering this Section so as to [illegible]

10. Sections 50 & 51. Section 50 has been partially amended in Section 111 of the new Bill. I think the object of the amendment will be still further advanced by the alteration suggested by the Commissioner of Police, in para.

[illegible]

tion 41 which refer to drivers, horses, and vehicles, it is necessary to authorize the Magistrates, in cases where fines are not paid, to seize and sell the animal or vehicle. These are cases where the offender has nothing wherewith to pay. Simple imprisonment is laughed at by Natives (indeed many genuinely like it, and seek it, as Mr. Clarke has shown in paras. 9 and 10 of his letter. Nothing will be effective but either corporal punishment or imprisonment with hard labor for the horse-keepers, drivers, &c., and seizure and sale of the animals and vehicles as regards the owners. These will then be influenced by a regard for their pockets not to trust their animals and vehicles to such or improper persons. The Magistrates all desire moreover a provision forbidding the entrusting the care of horses or vehicles to females, or to males under the apparent age of 15 years.

Section 41.

14. I would also direct particular attention to the necessity of making slow moving and heavily laden vehicles, such as the Commissioner of Police has noticed in paras. 15 and 16 of his letter, keep (*as formerly*) to the sides of the road. All the *Madras* roads are expressly made for this purpose, with a bullock road at each side and the proposed enactment might therefore be confined to Madras. This alone would prevent many accidents, and much public inconvenience.

Section 41, Clause 1 and 6.

15. Clause 1 and 6—the former by the words "in a manner so rash or negligent as to indicate a want of due regard for the safety of others"—the latter by the words "misbehaves himself in the driving &c. of such cattle so as to cause mischief or obstruction," may possibly, have been intended to apply to cases of violation of the Rule of the Road; but if so, they are much too vague and indefinite to have that effect; and, as to Clause 6, it seems framed with the express view of omitting the case of vehicles, as it cautiously confines itself to "cattle" only.

Section 41, Clause 9, 12, 11.

16. With regard to Clauses 9, 12, and 11, apparently intended to guard against obstructions of the public thoroughfare, the Commissioner of Police has well shown (para. 11 of his letter) that they *omit more cases than they specify*, and confine the Magistrates' powers to the few cases specified, and thus render the Act nearly useless. The obvious remedy seems to be, as he suggests, to render *any wilful* obstruction of a public thoroughfare an offence. The cases which he has particularized, of *rolling bales of goods*, and more particularly coals and barrels *along that crowded highway the Madras beach*, from the Light House to the Custom House, are a *daily and most dangerous nuisance*. The road is not very wide, it is thronged, all day long, with horses and carriages of all descriptions, and hardly a day passes that horses are not knocked, and their riders or drivers and the inmates of the vehicles exposed to be thrown down amongst the rough stones of the break-water (between which and the road there is no wall, fence, rail, or protection of any kind) or into the sea, by barrels being rolled along, which are sent moving in or across their path. It is absolutely necessary, for the safety of life and limb, to confine the carriage of such articles, *at least on this road*, to slings or trucks, as the Commissioner of Police has urged. All the Magistrates concur in recommending this. In Clause 9, Mr. Clarke proposes, and I concur, to add the words "*or any other thing whatsoever*," after the words "horses any cart, carriage or truck."

Section 41, Clause 12.

17. The Magistrates also all concur in the recommendation of the Commissioner (see para. 12 of his letter) as regards *Clause 12* of the Section. If this Clause as it now stands was simply made a distinct and separate Section, it would be perfectly effective; but encumbered and restricted as it now is, by the limitation at the beginning of Section 41, viz., the words "in any public street, road, thoroughfare or place of public resort," it is unable to meet a very great nuisance, noticed in para. 12 of the Commissioner's letter, against which the public of all classes have a right to be protected.

Section 41, Clause 13.

18. Clause 13 would perhaps be a convenient place for inserting the prohibition of a practice which the Magistrates concur with me in regarding as a very dangerous and very common nuisance, viz., the flying of kites in the public thoroughfares by Europeans and East Indian children, and by Natives (especially Mussulmans) of all ages. The effect of a kite floating about before the face of a timid, or restive horse, can require no description from me.

Section 23, Clause 11 and 12

23. Clause 11 was probably suggested to prevent for a time what Colonel Cadell has always feared. 23, 24 and 25, it does not seem, and which the Commissioners of Police believe are in case of frequent occurrence amongst the East Indian population of Bengal, viz., the calling of fictitious and indecent names, such as

Clause 11.

sexual opprobrious language, upon public roads or other places and assemble

Clause 12.

in Clause 12. The subject however is one which seems to me to have

those offences with the subject matter of Clause 23, and I would suggest

Amendment suggested

that after the words "indecent or threatening or insulting manner," the words "or gross sexual offence, or exhibition any libellous or inflammatory placard, disfigurement or obscene picture or drawing" should be introduced. Nothing more likely to excite a breach of the peace can well be imagined than such factually attacks on domestic character, and I agree entirely with Colonel Cadell, that it would be well to empower the Magistrate to inflict a heavier fine than Rupees 20, and also of the Commissioners, to substitute imprisonment with or without hard labour.

Section 24.

24. Colonel Cadell proposes to introduce in Section 24 the word "Court" between the words "Police" and "Officer," the alteration would but otherwise the Section seems to me sufficient as it stands.

Section 26.

26. The Magistrates all consent to leaving Section 26 to be considered as one to which of course, they having sanctioned to Legal Practitioners, the words "habits to imprisonment," the words "of injury or process effected with either such heavier or lighter punishment as circumstances, there in a figure of which Imprisonment."

Section 27 and 28.

27. Colonel Cadell refers to Sections 27 and 28 at page 56 to 59 of his letter, I do not especially see how the same as at present at page 17 would be contrary to the others. But I understand from him that he would be satisfied if power were given to the Magistrate to fine an Engineer for "gross gross misdemeanor," would it be more satisfactory which Section 27, these other words and "charge" under on "the sufficient grounds," should be made known as a fact, by oath of accusation as well as the fulness of compliance. I have no doubt these are many cases in which gross and willful neglect, and are frequent, and the remedy under Section 28 is practically a failure, as not one person in a thousand will prosecute a Magistrate for a fine of some such gross being given to the Magistrate, hence the duty, trouble and expense of prosecuting in such cases. The difficulty, do not exist in that these offences, viz., in ordinance of Law, amounts to neglect of information, and the Magistrate has not yet thought fit to give Magistrates summary jurisdiction in such cases.

Section 28.

28. In Section 28, Mr. Charles Lewis, Esq. wants to have the word "Agent" defined. I assume not the necessity.

Section 29.

29. In Section 29, Major Wilson thinks it all the latter suggested an alteration substituting the charge of a month for 3 months for dangerous or suspicious, perhaps half that amount would be better, upon every Summons of suspicious applicant for a station owing to the presence of the applicant, the Magistrate might think in the same than given. The party otherwise that time might elapse to make arrangements to fall on the party in the wrong, and that the course would thereby embarrass and sometimes to fail on the party in the hand to prevent the public from being improperly put to expense on such occasions.

Section 30, Section 3.

30. In regards Section 30 and the form of conviction (Schedule F, F, F) and 31, of the Magistrates seem to think either that the form should be made only applicable to all cases of ordinary convictions under the Police Act, instead of being what by these 3 Sections is also also a set of forms of convictions and punishments, the three attached as 29 and 30 Vict. Cap. 27 and 28, should be provided by the Police Act. Police suggestion would doubtless prove of great assistance to Magistrates in Police.

31. With reference to Section 32, Mr. Charles Lewis the power of the Police Magistrate to a very important section, after what the Sections 29 and 30 Vict. Cap. 27, Section 3

law a direct bearing, viz., the prosecution afforded or intended to be afforded to Indian Magistrates acting under the Police Act. I quite agree with Mr. Charles on the point and strongly recommend that Section 32 be amended by adding after the words "before the commencement of the action," the words follow, viz.—"and in every such action it shall be expressly alleged in the plaint or declaration that the Act complained of was done maliciously and without reasonable or probable cause, and if at the trial of any such action upon the ground issue being pleaded, the Plaintiff shall fail to prove such allegation, he shall be nonsuited, or a verdict shall be given for the defendant." This is but a fair and reasonable protection, the want of which has already operated to the prejudice of Magistrates acting with the utmost bona fides, and they certainly do not stand in law in India than as England.

32. The question of Fines, Licenses and sureties for public exhibits is considered by Colonel Cadell in paras. 2, 3, 5 & 6 of his letter. The sanctioning and licensing would certainly be an improvement. As regards fines, I cannot think that there exists as yet any necessity for such a measure in Madras.

Acts 11 of 1853.

33. In paras. 31 to 37, Colonel Cadell suggests some alterations in Act 11 of 1853, which considerations I have no doubt, but hardly coming within the limits of the Police Act.

Some General Regs. &c. &c. &c. &c. &c. &c. &c. &c.

Acts 11 of 1853

Law of Evidence and Summons.

34. Mr. Charles Lewis in paras. 25, 26 and 27, adverts to the subject of *Rules Judicial Courts* (Reg 3 and 6 Wm. 4th, Chapter 62, Section 12) now administered, it seems, under orders from Government (Extract Minutes Consultations 17th April 1827). In paras. 28, 29 and 30 he also calls attention to the question of Act 11 of 1853 and the Law of Evidence and Summons, but these subjects, important as they undoubtedly are, seem hardly included within the meaning of the present reference.

Madras, June 15th, 1853.

(Signed) THOS. SYDNEY SMYTH,
Advocate General.

No. 15.

Extract forwarding to Government my opinion respecting the various proposals of the Magistrates with reference to the amending of Act 11 of 1853, the Commissioners of Police have sent in additional suggestions.

2. Section 23, Clause 2 of the Police Act. Colonel Henderson here suggests altering the present words "a sufficient light" which he says, very truly, admit the construction it should say *single* light that one light may be a sufficient compliance with the requisitions of the Act. He also says, such signal words, that one light, *if at the entrance on which side it is placed*, is more likely to lead to collisions than to aid in preventing them. As a remedy he suggests that it should be made imperative on all vehicles to have two lights and that the words should be "sufficient lights." I think however that the accident pointed out is likely to arise from the use of a single light, would be obviated by inserting that, when one light only is used, it should be always placed on the driver's *right* hand. This, if the driver keeps to his own side of the road (the left) will, I think, in most cases be found sufficient. No doubt two lights are better than one, but the additional cost on the present class of Native vehicles seems not undeserving of consideration.

3. As regards the cost of the Commissioner's suggestions respecting the licensing and numbering of vehicles, the registration of the animals that draw them, and of the numbers that they ought to carry, and the establishment of fares, they hardly seem to me to come within the province of legal sanctions at all. As regards licensing and numbering (and licensing would include the registration of the animals that such licensed vehicle should carry) I have already mentioned that I approved of these measures.

4. As regards fares, I am quite unable to offer any opinion on the sufficiency or otherwise of the fares proposed. The interest is so confined to establish fares, I think the obvious principle to be adopted, is the simple one of time and distance—one mile for a mile, &c., an hour for an hour, &c., as in Paris, London, Berlin, &c. I cannot see why the fare should be fixed for a whole day (see para. 4, Clause 4, of Colonel Henderson's letter) and not for any period of a day.

5. If however there are to be [illegible], they must be [illegible] by bye laws passed by the Local Government and on consideration of local circumstances, the price of [illegible]. [illegible] would probably result from an attempt to frame one table of fares for the three Presidency towns.

6. As regards [illegible], that I think must be dealt with in a separate and different way [illegible] in which the Commissioner himself proposed in para. [illegible], Clause [illegible]; and as regards [illegible] I think they are well able to do.

7. [illegible]

8. [illegible]

(Signed) [illegible],
[Advocate] General.

Madras, [illegible] June 1859.

No. [illegible]. Order thereon, [illegible] June 1859, No. [illegible].

Resolved that the following letter be despatched.

(Signed) T. PYCROFT,
Chief Secretary.

No. [illegible]. To [illegible], Esq., Member for Madras of the Legislative Council of India, dated Fort Saint George, [illegible] June 1859, No. [illegible].

I am directed by the Honorable the Governor in Council to acknowledge the receipt of [illegible]

2. [illegible] Commissioner of Police for the Town of Madras [illegible]

3. [illegible]

4. [illegible]

5. The Government, I am instructed to [illegible]

6. [illegible]

by Section 53 of Act XIV, 1856. The Government would not however wish the bye laws to be confined merely to regulating the Rule of the Road to which the proposal of the Advocate General would seem more immediately to apply—although this is a matter of much importance. They would desire general authority to make, and from time to time to add to and alter, such bye laws as may be necessary for regulating the many matters of detail which have to be attended to for the due carrying out of the Act, provided that such bye laws be not at variance with the express terms of the Act, or with its general principle and spirit. With whatever care and deliberation a comprehensive enactment such as Act XIII, 1856, may have been framed—and doubtless great pains were taken in its preparation—there cannot but be many points of local detail which do not admit of being embraced in a general Legislative measure adapted to three places so dissimilar as Calcutta, Madras and Bombay, and which can only be, and should be left to be, regulated by the Local Government.

(Signed) T. PYCROFT,
Chief Secretary.

Ext. F. Carlodge.

Judicial Papers

Proceedings of the Madras Government

Read the following papers

From the Commissioners of Police — Commissioners Office 17th June 1859

From Lieut. Col. Elphinstone Magistrate of Police for the Town of Madras for the Major of Police for the Black Town — Commissioners Office 17th June 1859

From Major Millett Magistrate of Police for the Town of Madras — Commissioners Office 17th June 1859

From G. Edwards Esqr. Magistrate of Police for the Southern Division — Commissioners Office 16th June 1859

From the Advocate General — Commissioners Office 17th June 1859

Ordered that the following papers be published

(Signed) H. D. Harris
Secretary to Government
Judicial Department

Fort St. George
17th June 1859

1811 11

Note Upon the Petition of Sundry Inhabitants of the Town of Stockbridge