M.R.O. 1—32,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 631-632 Press ~~Mis.~~

34-41

Dated 6—5—~~19~~1809

Not to be folded or roughly handled

Read the following letters.

No. 34. From H. FORBES, Esq., Member for Madras of the Legislative Council; to T. PYCROFT, Esq.. Secretary to the Government of Fort St. George, dated Fort William, the 26th February 1859.

I have the honor to inform you that the Bill for the better regulation of the Police in the Madras Presidency was read a first time this day, and to forward a copy of the Bill as it was introduced.

2. I wish to make a few observations on the alterations which I made in the Bill brought up by Mr. Robinson.

3. In the first Section it appeared to me unnecessary to retain the Clause which interpreted the words "Local Government." It was evidently taken from Act XIII of 1856 on which much of the Bill is based, and it was not noticed that, whereas that Act applies to all India and to the Straits Settlements, and that the interpretation of the term is necessary, it cannot be wanted in an Act which applies to one Presidency only.

4. So also it appeared unnecessary that a definition should be given of the term "Member of Police Force," the term was, throughout the Bill, used indiscriminately with that of "Police Office" of which no interpretation was given, and as the latter is a term perfectly familiar to all, and bearing a recognized meaning in all Legal enactments, it appeared more convenient to introduce it universally, and to get rid of the interpretation of "Member of Police Force."

5. Another change was made in this Section in the Clause which interpreted the word "Magistrate" to mean "all persons possessed of any criminal functions;" this interpretation would have included the Judges, and as that was obviously not intended, I substituted words which will, I believe, more truly convey the meaning which the Government intend that the word "Magistrate" shall have.

6. Section II appeared to me to repeal absolutely all the Regulations and Acts mentioned in the Schedule to the Bill, and as the new scheme is to be only gradually introduced, the result of passing it in its original form would have been to leave the Magistracy and Police of the Districts into which the new arrangement was not immediately introduced, without any Law at all. I have therefore qualified the repeal by confining it to those Districts which may, from time to time be included in the General Police District.

7. Some words have been taken out of the middle of this Section, because I was able to attach no meaning to them, and Mr. Robinson could not tell me why they were introduced. I am informed by those learned in the Law that they have no legal signification, but if the Government should hereafter be otherwise advised, they can be re-inserted in Select Committee, on an explanation of their meaning being given.

8. A new Section III has been prepared as a more regular and intelligible way of amending Act III of 1857 than that adopted in the Schedule of the Draft Bill.

* Original.

9. An addition has been made to Section III* as it appeared doubtful if, in its original form, it might not be construed into depriving the Ameens of Police of the power granted to them by the laws referred to in the addition now made.

10. Section V has appeared to me to be unnecessary. The Government have always exercised the power of altering the limits of Districts, and within the past few years have exercised it very frequently. A Talook from Madura was placed in Trichinopoly, the Poonganoor Paliput was taken from Cuddapah and put into North Arcot, and the boundaries of many Districts have been made more regular. No law was considered necessary for these changes, and it does not seem to be more necessary now.

11. I have had some discussion with Mr. Robinson regarding Section VIII, and I have now altered it in accordance with what he has assured me is the wish of the Government of Madras. I wish however to call attention to the fact that, as now drafted, the Section gives to the Chief Commissioner and to all the Superintendents of Police, that very union of the functions of a Magistrate and a Police Officer, which it is the expressed principle of the Bill to take from the present Magistrates. Besides the Chief Commissioner, who is to be a Magistrate in every District, there will, under this Section, be two Magistrates in each Zillah, wholly inde-

pendent of each other, and it is only Mr. Robinson's assurance that leads me to suppose that this can be the intention of the Government.

12. Mr. Robinson is of opinion that, as the exercise of a Magistrate's functions by the Police Superintendent is to be confined to duties necessary to the preservation of the peace, the prevention of crimes, and the detection, apprehension, and detention of offenders, it is not probable that any inconvenience will arise from these Officers acting wholly independent, and free from the control of the Magistrate of the Province. To me it has appeared that the five points particularly mentioned are essentially matters of Police, and that, if they cannot be effected unless the Police Officer be also a Magistrate, the principle on which the Police is taken from the present Magistrates is, to a great extent, abandoned.

13. The Section, as now drafted, does not contain any restriction on the action of the Chief Commissioner as a Magistrate, which the original Section did, and it does not make the District Superintendents as Magistrates, subject to the Magistrate of the Zillah, as did the original Section by providing that they should be Joint Magistrates. The changes have been made to meet Mr. Robinson's views, and he assures me that they are approved by Government.

14. The alterations which follow in several ensuing Sections call for no particular remark, but in Section XVIII an important alteration has been made, and the change would have been more radical if I had not yielded my own strong opinion to Mr. Robinson's wish that the Section should remain as it is now drawn.

15. Originally, the provision of the Section was, in effect, that the responsibility of the peace should remain with the Police as long as no difficulty arose, but should be transferred to the Magistracy directly a crisis was imminent. As I have been able to understand the ground of the proposed change, it is that a separate Police will have better information, more power of concentration, and more vigor in the preservation of the peace, than the Magistrates and present Police have had, but this Section opens with declaring that "when it shall appear to any *Magistrate* that tumult, &c., may be apprehended, * * it shall be the duty of such *Magistrate* to appoint * * * special Police Officers.

16. In this provision it appears to me that the principle of the proposed change has been again lost sight of, for it supposes the Magistrate, and not the Police, to be the authority who will be first cognizant of anticipated outrage, and places on the Magistrate, and not on the Police, the responsibility of adopting measures to maintain the public peace.

17. The Government are aware that, unfortunately, I am not able to approve the proposed change, but I have no doubt that, if the change be made at all, it must be made wholly and entirely. The Government must have some one on whom to fix the responsibility of the peace, and confusion and failure must, I think, inevitably result if, with no broad line of distinction showing when the action of one authority is to cease, and that of the other to commence, and no such line is possible, it is to be the duty of the Police to maintain order when no tumult is expected, and the duty of the Magistrate to do so, directly outrage is imminent. It is my opinion that the Section should be drawn so as to leave the duty if—providing special Police Officers to the Police alone—they are supposed to have the best information, they are believed to be best able to judge of the probability of any lawless act, and on them ought therefore to rest the responsibility of determining what extra force they need, and the duty of providing that force. In my view it is an executive and not a judicial act; it is an act to be done on the instant when no time for deliberation can be had, and as it is proposed to pay the Police Inspectors double what is now given to the Tahsildars who are the highest Native Magistrates, I can see no ground for supposing that the former will not be, on the score of respectability and position at least as competent as the latter, to form a decision when any crisis occurs.

18. Mr. Robinson would still prefer that the responsibility in times of difficulty should be placed upon the Magistrates, and if the Government are of the same opinion, I will bring the subject forward in the Select Committee, but the Bill meets with some opposition, and it will increase the difficulty of passing it, if the principle on which it is based be not maintained intact.

19. At Mr. Robinson's request a new Section has been introduced after Section XXVI. As he at first drafted it, it provided for the issue of Summonses and Warrants by the Officers of Police but in this again he appeared to me to be departing from the principle on which the Bill is founded. That principle, as I have already said, I understand to be an entire separation of the Magistrate's executive and judicial functions, but having effected this, and created a

separate Police, the next step taken by the proposed Section was to invest the Police with the Magistrate's functions of issuing Summonses and Warrants. I thought that this was not only opposed to the principle which the Government desired to introduce, but would inevitably lead to collision of authority, and I believe that Mr. Robinson is satisfied that the Section should remain as it is now entered.

20. I propose to move the second reading of the Bill on the 12th Proximo, which will be as early as will be possible. It is necessary that it should be printed and be in the Members' hands a few days before the second reading, and the 5th or the only intervening Council day, is already devoted to the re-commitment of the Civil Procedure Code which will certainly occupy the entire day.

21. Opposition will be made to the Bill, but I do not at present anticipate that the Council will be divided.

No. 35. From H. FORBES, Esq., Member for Madras of the Legislative Council; to T. PYCROFT, Esq., Chief Secretary to Government, Fort Saint George, dated Fort William, the 14th March 1859.

I have the honor to inform the Government that the Madras Police Bill was read a second time on the 12th Instant.

2. On the motion for the second reading being put from the Chair, the Member for the North Western Provinces put the following questions to me—

1st.—Should this Bill pass into law, who will be considered responsible in the Districts into which it is introduced for the maintenance of order and the repression of crime, the District Magistrate or the District Superintendent of Police.

2nd.—In such Districts what are to be the duties of the Police on the apprehension, without the issue of a Warrant by the Magistrate, of persons charged with criminal offences, in addition to bringing the accused before a Magistrate within a certain period? In such cases, are the Police to make any preliminary investigation, and if so, what is to be its nature and extent, and by what rules are the Officers making the investigation to be guided?

3rd.—Under the head "Police Officer" in Section XXIII of the Bill, what Officers of the intended Police force are intended to be included?

4th.—Are the Village Watchmen, Chowkedars, &c., to be entirely under the District Superintendent and Chief Commissioner of Police, and to be appointed and removed by those Officers, or is the District Magistrate to exercise any, and what control over them?

5th—With what object, and for what purpose, is the Chief Commissioner of Police to be appointed a Magistrate throughout his jurisdiction?

3. In regard to the first of these questions, I have received no decided expression of the opinion of the Government, and such information as I have been able to gather from the papers furnished to me, was not entirely consistent.

4. In a paper entitled "general principles to be observed in the organization of the Police" forwarded to me by Mr. Robinson, I find it stated that "the Superintendent will be responsible for all Executive Police duty," and that "the prevention of crime must be
Para. 17. Para. 40. viewed as the object and guiding aim of all organization and disposition of the Police. The principle of individual responsibility for the suppression of crime within the limits of their respective charges * * * must therefore be impressed upon, and be practically required of, every individual in the force, from the Superintendent in charge of a District to the Village Watcher."

5. From these extracts it would appear that the responsibility was intended to rest on the Officers of Police, but in a Minute recorded by the Right Honorable the Governor on the 11th of September 1856, it is said, "the Collector and Magistrate should be considered as the chief administrative Officer of Government in each Province. In this capacity he should direct the distribution of the Police, and call for their services when required," and it appeared to me that, on the Officer who was to direct the distribution of the Police, and to decide when their services were to be called for, the responsibility of the peace of the District must be intended by the Government to rest.

6. Moreover, in Section XVIII of the Draft Act sent to me from Madras, it was provided that the Magistrate should be the authority to decide on the necessity of appointing an extra force whenever tumult was to be feared, and although, in my letter of the 26th Ultimo, I endeavoured to argue against this provision, and to shew that in accordance with what I supposed to be the principles of the measure, the Superintendent of Police and not the Magistrate should be the authority to act, still, the Act, as drawn in Madras, was all I had to show what were the intentions of the Government.

7. As a reply therefore to the first of the questions put by the Member for the North Western Provinces, I said that the Magistrate would be responsible, and as my authority for the assertion I read the extract from His Lordship's Minute to which I have above referred.

8. In reply to the second question, I repeated to the Council what I had said on indroducing the Bill, that it was intended that the functions of the Police should be regulated by the Code of Criminal Procedure, that the Sections which referred to these functions had been left in the Bill sent up by the Government, because it was uncertain when the Code would be passed, and that they would be struck out if the Code became Law before this Bill was passed, or would be modified, so as to suit what it might be intended should eventually be the Law of Procedure, of the Bill were passed before the Code became Law.

9. The third question was partly answered in my reply to the second, but I added that the Section of the Bill, which provided that it should "be the duty of every Police Officer to arrest without Warrant" the parties who might commit the offences specified in the several Clauses of the Section, was taken from Section II of Chapter VI of the Criminal Procedure Code.

10. In reply to the fourth question put to me, I read to the Council extracts from the Minutes recorded by the Right Honorable the Governor on the 4th of May 1855, and the 11th of September 1856, regarding the Village Police, and I referred the Member for the North Western Provinces to the interpretation Section of the Police Bill, which defines the word "Police," as including the Village Police, to Section XI which provides that the appointment of all the Police, including therefore the Village Police, shall rest with the Chief Commissioner, and also to the second Section, which repeals the regulations under which heretofore the Village Police has been under the Collector and Magistrate.

11. The fifth question I answered from information given me by Mr. Robinson, who wher in Calcutta, stated to me, that the only object of making the Chief Commissioner a Magistrate throughout the Presidency was, that he might be employed by the Government in making investigations in times of political excitement or difficulty, which it might be considered inexpedient to entrust to the ordinary tribunals.

12. I shall be glad to find that I have correctly represented the views of the Government in these replies.

13. After my replies to these questions had been given, the Member for the North Western Provinces moved that the second reading of the Bill be postponed for four months, and that the Clerk of the Council be instructed to address the Government of India, and to request that the opinions of all the Officers of the several Governments might be collected upon the general principle of the measure. A debate ensued in which almost every Member present took part.

14. I met the amendment by the argument that the result of the proposal would certainly be that the Council would, at the expiration of the four months, be in precisely the same position as it is in at present, that we should receive the opinions of many able men on both sides, and that the question would still be in the position described by the Honorable the Court of Directors in the 4th paragraph of their Despatch, No. 13 of 1857, where they say, "you are probably aware that the principles which you so strongly advocate of separating the Judicial from the Police functions of the Magistrate, has been as strongly opposed by men of intelligence and experience * * *. The question has been freely and ably discussed on both sides. A satisfactory solution of it will best be obtained by a practical application of the two systems in different localities " * * *." The motion was then, by leave, withdrawn.

15. In the course of the debate an Honorable Member said that, although he agreed in the principle of the Bill, he was entirely opposed to the centralization which it would establish, and as this had appeared to me to be one of its main characteristics, and a point on which the Government laid great stress, I have since taken an opportunity of endeavouring to gather how

it was proposed to provide for the superintendence of the Police, in order that I might obtain from Government some declaration of the views which they may entertain upon his proposal.

16. The Member I refer to informed me that he would constitute in Madras, Commissioners of Revenue and Police, as there are now in Bengal, and on my representing that this would be the very union of Police and Revenue, which I have understood it to be the great object of the Bill to dissolve, it was suggested that there should be six Commisioners in the Madras Presidency, three for Revenue and three for Police superintendence, and an opinion was finally expressed that the Bill should contain no provision for any special superintendence whatever, it being left open to the Government to make whatever provision might from time to time appear advisable.

17. After the expression of my own opinion upon this measure, I am particularly anxious that the Government should be made acquainted with all that is thought about it. They will observe, in what I have said above, that even its warmest supporters are not agreed upon some of its main features and they will, I am sure, perceive the difficulty which I shall have in passing it, if, as will probably be the case, the opponents of its general principles, should, on a division, vote with those who, although generally in its favor, are opposed to one or more of its features which, in the opinion of the Government are vital.

No. 36. MINUTE by the HONORABLE the PRESIDENT, dated 5th May 1859.

Our answer to Mr. Forbes ought, I think, to be confined to two questions, a clear solution of which will embrace all the minor points raised by Mr. Harrington.

The local Superintendents of Police will be entirely under the orders of the local Magistrates.

And the functions of the Commissioner—or as I think he should be more properly called, Inspector General—will be confined to the organisation of the establishment and to maintaining it in a state of efficiency by a proper attention to promotion, discipline and other details of management.

The primary object of the plan is to place an improved instrument for the prevention and detection of crime at the disposal of the Magistrate; besides which incidental advantages of great public importance will be obtained, such as, the assumption by the Civil Power of its proper duties in the guarding of Treasuries, Jails, &c., the concentration and consequent reduction in amount, and improvement in efficiency of the Military force, and the general improvement of the population in character and resources, from the superior protection which will be afforded both from the exactions of Native subordinates and from the depredations of thieves and robbers.

(Signed) C. E. TREVELYAN.

No. 37. MINUTE by HIS EXCELLENCY the COMMANDER-IN-CHIEF, dated 5th May 1859.

This is all sufficient I think, paras. 5 and 6 of Mr. Robinson's letter of 3rd December, ought to have satisfied every doubt.

(Signed) PAT. GRANT.

No. 38. MINUTE by the HONORABLE W. ELLIOT, Esq., dated 5th May 1859.

Mr. Forbes appears to be in doubt regarding the opinions I have placed on record on former occasions when the re-organisation of the Police came under discussion.

This has arisen from these views having been expressed with reference to the particular aspect under which the subject was presented at the time.

I will state once for all, that I continue to entertain the same opinions which I formed when the plan was first proposed by Lord Harris.

I consider that the Deputy or Local Superintendents of Police should be under the Magistrate with regard to the *general* direction and employment of the Police force as *a whole*, but independent of the Magistrate, as regards the organisation and internal economy of the force which is vested in the chief Superintendent or Commissioner alone.

The force was intended, as I understand the scheme, to consist of two parts, a Constabulary body and a Village Police.

I therefore recommended that the village officers engaged in the latter should be *distinct* from those employed in the collection of the revenue.

(Signed) WALTER ELLIOT.

No. 39. MINUTE by the HONORABLE W. A. MOREHEAD, Esq., dated 5th May 1859.

The Magistrate is to be all powerful in his District. The Police force being placed at his disposal, to enable him to exercise full authority in all that respects the general welfare and peace of his District.

The Police force itself to be kept in a complete state of efficiency by the Commissioner and his Superintendents.

(Signed) W. A. MOREHEAD.

No. 40. ORDER THEREON, 6th May 1859, No. 631.

Resolved that the following letter be despatched—and that a copy of it be furnished to the Chief Commissioner, Mofussil Police.

(Signed) T. PYCROFT,
Chief Secretary.

No. 41. To H. FORBES, Esq., Member for Madras of the Legislative Council of India, dated Fort Saint George, 6th May 1859, No. 631.

SIR,

I am directed by the Honorable the Governor in Council to acknowledge the receipt of your letters under date the 26th February, and 14th March last.

2. In the second of these communications you have recited certain questions addressed to you by the Member for the N. W. Provinces, on the motion for the second reading of the Madras Police Bill being put from the Chair, with the replies which you gave to those several queries. You are desirous of being informed whether in your answers you have correctly represented the views of the Madras Government.

3. It appears to this Government that it will be only necessary for them to furnish you with specific instructions on *two* questions, and that a clear solution of these, will embrace all the minor points raised by Mr. Harrington.

4. You will therefore understand it to be the distinct and unanimous intention of the Madras Government—

First. That the local Superintendents of Police are to be entirely under the orders of the local Magistrates.

Secondly. That the functions of the Commissioner, or, as he should more properly be styled, the Inspector General, will be confined to the organization of the establishment, and to maintaining it in a state of efficiency, by a proper attention to promotion, discipline, and other details of management.

5. The primary object of the plan, I am desired to add, is to place an improved instrument for the prevention and detection of crime, at the disposal of the Magistrate; besides which incidental advantages of great public importance will be obtained, such as, the assumption by the Civil Power of its proper duties in guarding Treasuries, Jails, &c.; the concentration and consequent reduction in amount, and improvement in efficiency of the Military force; and the general advancement of the population in character and resources, from the superior protection which will be afforded both from the exactions of Native subordinates, and from the depredations of thieves and robbers.

6. I have likewise to forward for your information copies of Minutes which have been recorded on the subject by the Honorable Mr. W. Elliot and the Honorable Mr. Morehead.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. F. Cartledge.

Proc.ᵍˢ of Jud. Dept.
dated 6 May 1859 No. 631.

Read the following letter—

From Member for Madras of the Legislative Council 26 Feby & 14 March 59

Minutes by the Hon.ble the President of Fort 5 May 1859
do the Com.r in Chief do
do Hon.ble Elliot Esq.r do
do Hon.ble Morehead Esq.r do

Resolved that the following letter be despatched—& that a copy of it be furnished to the Chief Com.r Mof.l Police

No. 632 - ut sup.a

To the Hon.ble Members for Madras Leg.e Council

I am directed by the Hon.ble the Governor in Council to acknowledge the receipt of your letters under date the 26 Feby & 14 March last.

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of the Madras Govt —

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raised by Mr Harrington

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Secondly That the
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6. I have likewise to forward for your information copies of Minutes which have been recorded

Fort St. George
6 May 1859. Morehead —

Copy to the Ch. Cons. Mof. Police — Dispd. 14th

Pro: of Lieut Col Hay
Jud: Dist to Engr 21st May
No 170 of 1859

Jno Dick in Lieut 1859 Dept Qr

Rep Pate Cha 16 of 1859

No 631

Pro: of Lieut Col Hay

Dft 6 May 1859 - 9 8 8 6 Ft

Ft - 862 - Cons: 24 June
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