

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	1717	Press Mis.
^{5-6.} Dated	2-12-19 1864	

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Not to be folded or roughly handled

2/12/19
2/12/19

*Proceedings of the Madras Government, Judicial Department,
2nd December 1864.*

No. 5. Read the following letter from W. ROBINSON, Esq., Inspector General of Police; to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George, dated Madras, 21st November 1864, No. 2386.

General Department.

I have the honor to submit, for the consideration of Government, the following question:—How are European British subjects to be punished in the Mofussil for minor offences not provided for under Regulation II of 1820, *ex. gr.*, cases coming under the head “drunk and incapable,” “drunk and riotous,” mischief, and other offences made punishable under Sections 47 and 48 of the Police Act?

2. I need scarcely add that, especially in Cantonments and large towns, there are European pensioners and an increasing number of loose loafing Europeans who are prone to offences of the nature enumerated. The matter is therefore of much importance; for at the time I write I have six cases of this character in abeyance against European pensioners in the Cantonment of Saint Thomas' Mount alone. The men have been arrested, but the Magistrate cannot dispose of them or hold them to bail.

3. Hitherto the practice has been to arrest and put the case up before the Magistrate under the Police Act, and many convictions have been obtained.

G. O., dated 31st October, No. 1567.

4. The opinion of the Advocate General, dated 19th ultimo, shows that this practice, so far as the jurisdiction of the Magistrate is concerned, has been illegal.

5. Assaults on Police officers are, I think, provided for by Regulation II of 1820; and I have no doubt that, on the general grounds of preventing crime and protecting personal property, the Police may still take up Europeans who are found drunk and incapable of taking care of themselves, who are riotous, or likely to commit offences, who indecently expose themselves and the like, and to lock them up until sober.

6. But what is then to be done with them? The Magistrate has no jurisdiction. To commit to the High Court on such charges would not, I think, be a right or justifiable course; while perfect impunity must lead to a great increase of drunkenness and disorder.

7. I enclose a letter by Captain Cloete, Superintendent of Police at the Mount, on this subject:

From Captain H. D. CLOETE, Superintendent of Police, Madras District; to W. ROBINSON, Esq., Inspector General of Police, Madras, dated Saint Thomas' Mount, 18th November 1864, No. 410.

I have the honor to bring the following circumstances to your notice, in the hope that you will move in the matter.

2. The Proceedings of Government with Advocate General's opinion (declaring that Section 48 of Act XXIV of 1859, is not applicable to European subjects other than Police Officers, and that they should for breaches of this Section be committed to the High Court) have been received; both the Joint Magistrate and myself anticipate that serious outrages may be committed by such persons, if under no immediate control, and not liable to summary punishment.

3. I have put up pensioners Rabbit and Costello for being drunk and incapable of taking care of themselves in a public thoroughfare, under Clause 6 of Section 48 of Act XXIV of 1859;

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these cases, though proved, the Magistrate has dismissed, being of opinion that committing such cases to the High Court would be objectionable.

4. Section 5 of the Penal Code declares that nothing in this Act is intended to repeal, suspend, or affect any special or local law; Act XXIV of 1859 is one of these laws, not to be affected by the Penal Code; Section 4 declares every servant of the Queen to be subject to punishment under this Code, *ergo*, if he is subject to punishment under this Code, and this Code does not affect Act XXIV. It stands to reason, I think, that he is subject to punishment under Act XXIV by a Justice of the Peace; but if not, the irregularities and annoyances, and perhaps injury to life and property, likely to occur by drunken European pensioners being under no control, and not liable to summary punishment, are quite manifest, specially in Cantonments where there are large numbers of them continually in a state of intoxication. This, apart from the absurdity of committing a European (say from Bellary or Trichinopoly) to be tried by the High Court for being drunk and incapable, warrants, I think, some law being made to meet the case, if there is not one already.

5. Section 510, Penal Code, provides for *misconduct* by a drunken person, but there is nothing in that Code to provide for the offence of lying helplessly drunk in a public thoroughfare.

6. Pensioner Rabbit on a previous occasion, in a fit of intoxication, broke the door of the lock-up, was fined, and a portion of the fine taken to pay for the repair of the door. On this occasion he has broken the window, the case against him being dismissed, who is to pay for the repair of the window, or for any damage done by these men when intoxicated?

7. With these remarks, I leave the matter in your hands, being fully assured that an early decision in the matter is necessary, both as regards the past and future acts of the Magistracy and Police, for according to the Advocate General's opinion every arrest and punishment of a European, under Section 48 of Act XXIV of 1859, has been illegal. I shall continue to arrest these men, when found drunk, under the general law, and release them when sober on their own recognizances to appear when required, pending the final decision of Government.

P. S.—I send this direct to save time.

H. D. C.

No. 6. ORDER THEREON, 2nd December 1864, No. 1717.

Referred to the Advocate General for his opinion.

2. It would appear that the defect in the law, adverted to in the foregoing letter, can only be remedied by legislation. If so, Mr. Norton is requested to submit a draft of such an Act as, in his opinion, will meet the requirements of the case.
(True Extract.)

Chief Secretary.

To the Government Solicitor.

Exd. J. Tulloch.

Judicial P^{ro}cedure
From The Inspector General
of Police
To The Chief Secy to Govt
H. D. C. George
Dated 21st November 1864
Recd: 24th
N^o 2386
N^o 2429
Submit for the Consideration
of Government a letter from Capt.
C. S. S. of Police, Madras District
on the subject of minor offences
committed by European British subjects
in the Mofussil.
with an order

2nd Dec 1864 No 1717
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Chief

To the Government Solicitor.

Edw. J. Tulloch.