M.R.O. 1—29,000—16-12-29.

# MADRAS RECORD OFFICE.

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## Government of Madras.

Judicial DEPARTMENT.

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| G.O. No. | 375 | Press Mis. |
| 101-104 | | |
| Dated | 14 3 19 1866 | |

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

Read the following papers:—

No. 101. From the Inspector General of Police, to the Chief Secretary to Government, Fort Saint George; dated Russelcondah, 12th December 1865, No. 2410.

I solicit the indulgent consideration of Government while I draw attention to paragraph 5 of the letter of the Acting Inspector General of Jails, dated 16th October, on the subject of the strength of working gangs of Convicts sent out to work beyond the precincts of the jail under the safe custody of the Police, and the responsibility of Jail and Police Officers respectively in this matter.

2. The safe custody of the convicts is the first consideration in the eye of the law, and it should likewise be a paramount consideration with the jail authorities. The labor of the convicts throughout the Presidency is almost universally without the precints of the jail, and entirely beyond the reach, or effective aid or control, of Jail Officers, as regards safe custody. Practically, so soon as the gang passes out of the jail gates, the responsibility of Jail Officers ceases, and the Police alone are accountable, until they again deliver over their charge in the afternoon to the Jail Officers.

3. Their responsibility is legal, and the personal liberty of each Police man is staked on the safe custody of every convict committed to their charge. In case of an escape, the law implies negligence; and nothing can save a Police man from a Criminal trial. It is very difficult to rebut the implication of the law, and experience has shown that conviction, followed by punishment of great severity, is the almost invariable result.

N. B.—There have been very few instances of escape that I am aware of for which the Guard has not been judicially tried, and, in almost every case, the guard was put on the roads in chains. I have a man in Chittoor Jail, if he is yet alive, who was put on the road for five years. One of the Convicts (with 12 years of his sentence still to run) of a small gang which he had been required by the jail authorities (in direct contravention of jail rules, limiting the number of convicts sent out to 36) to take charge of, slipped away and escaped. A jail warder accompanied the party, but no legal responsibility attached to him. No appeal was preferred in this hard case, on the ground that the man was protected by the rule that limited the gang to 36 with six Constables, and that he must accept the consequences of taking part in a breach of both Jail and Police Rules, when he took charge of a gang he could not possibly guard.

4. Further it has already been ruled by the Supreme Government that the Police Officers are the persons who, under the instructions of Government, are to judge of the Force required to perform a duty that may be required of them by another Department, and not the Officers of that Department. The judgment is justly placed where the responsibility lies. This is the principle on which these two departments have hitherto worked together in fair harmony, and I earnestly trust the Government will affirm it and forbid a change.

5. The opinion of a few Officers in charge of jails have been placed before Government. I venture to suggest that the persons who should have been consulted by the Acting Inspector General of Jails were the responsible and experienced Officers of Police. Their views might with advantage have been laid before Government on a point of this kind, in which, in practice, they alone are interested. The question is what can you guard? What means have you to assure the safe custody of a gang of convicts of certain strength working beyond the precincts of the Jail, with reasonable safety to the responsible guard?

6. The Government has limited these means of safe custody, both as respect men and arms, at first, to one Policeman to 6 convicts, and subsequently to one and 7 convicts. It must be borne in mind that sick leave and casualties reduce the

weak working establishment below its apparent strength, and the work of convicts is generally at places situated far from support. One firelock and two swords to three men is the armament of the Force.

7. In justice to the Police, a limit has also been fixed, below which gangs sent beyond the precincts of the Jail are not to be reduced. At first the limit was 36, which admitted of six men proceeding with the gang. In 1863, financial considerations required further reduction of the means of guarding convicts, and the minimum of the gang was raised, with the assent of Government and of the Inspector General of Jails, to 50; such a gang admits of seven men, being sent out with a gang.

8. I venture to state that no person of judgment inspecting a gang of 50 convicts at work in the open air along a hundred of yards or more of road, all armed with spades, rammers, and crow bars, and with abundance of stones at hand, and guarded by a sparse hedge of human bones and flesh of 3 Constables on either side, and a petty officer in charge, can but feel that greater risk cannot be reasonably run, or individual responsibility be further taxed.

N. B.—I inspected this morning a gang of convicts ordered out by the Jailer of the Station I write from. There were eight stalwart men, every one of whom was armed with a heavy iron crow-bar, pick axe, or spade, and their guard consisted of one miserable Constable, armed with an unloaded fire-lock. The work that had been ordered did not require more than 8 men. I should at once have punished the Police for breach of Jail and Police Rules, but felt that the Acting Inspector General of Jail's recommendation stopped me. The Agent considerately came to my aid, and the gang joined a regulative gang, when it became possible to guard them. The thing is not just to the Services of Government. Every available man at the Station is being pressed forward for service in the Hills, and I could not deal with an outbreak of convicts. But this is known to Police Officers only, and this state of things will be increasingly prevalent, if the Acting Inspector General of Jail's recommendation be accepted.

9. With gangs of 36, can only 5 Police men and no petty officer be sent out. With smaller gangs (above 20) only 3 or 4 Policemen. Officers dare not undertake the safe custody of such gangs outside Jail precincts with the means allowed. Men cannot be found who will be willing to imperil their liberty against such odds.

10. I am quite aware that some few Officers in charge of Jails think that they can best use their convict labor by undertaking small works and breaking up gangs. They would break them up without limit. I beg to submit a correspondence with Mr. T. I. P. Harris; but I know that this is not the opinion of the experienced Inspector General of Jails. To work on this plan, it will be necessary to increase the Establishment and raise the proportion of Police. This I cannot recommend. The cost would far exceed the equivocal advantages anticipated by even such Officers.

11. Police Officers never have, and never will, hesitate to undertake the responsibilities put on them by the Government limit. They always have and always will do all in their power to meet the wishes of Officers in charge of Jails, so far as the means at their disposal admit, in regard to taking charge of gangs below that limit. But, in justice to them, I submit that the exercise of discretion on this point must be with them, and not with Jail Officers, as proposed by the Acting Inspector General of Jails.

N. B.—The two or three instances noted in the enclosures to the letter of the Acting Inspector General of Jails would have been adjusted at once by a note to the Superintendent. I will not trouble Government with instances on the other side.

12. The Police has been in charge of Jails for four or five years, and harmony and mutual understanding have, on the whole, been preserved. While I attribute this, in general, to the considerate feeling of Officers hitherto in charge of the Jails, Police Officers are deeply indebted to the experienced Inspector General of Jails, who has throughout evinced a firm resolve to require his Officers to conform to the



Government limit and Jail Rules, and has supported Police Officers when they have referred to this limit, as the arbiter between Jail Officers and themselves, in cases of difference of view and inability to undertake the duty which the former have occasionally sought to require of the latter.

13. I earnestly trust that the Government will affirm the continuance of the same system, and place the judgment in these matters (within the general limit fixed by themselves for our guidance in common) on those with whom the responsibility lies, and not with Jail Officers, who practically are irresponsible.

14. The Government may be assured that the Inspector General of Jails and myself will settle, as we have hitherto done, every difficulty that may arise in the most reasonable and liberal manner. Police Officers are now men of experience and judgment, and Government may rest assured that they will exercise a just and wise discretion as to what their men can safely do to meet the reasonable wishes of Jail Officers.

15. If the Government think that 50 is too high a minimum, I would far rather, in the interest of harmony and fairness to the Force, accept a minimum of 42 to a gang. But a regulated minimum we must have; and the discretion of taking charge of gangs below that strength must, as hitherto, lie with the responsible Police.

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From T. I. P. HARRIS, Esq., Session Judge of Trichinopoly, to the Inspector General of Police; dated Trichinopoly, 12th September 1865, No. 213.

I have the honor to request you will be good enough to favor me with your opinion whether, under certain circumstances, there exists any objection to the gangs of convicts, when sent out to work, being separated or detached, when the distance where some of the Prisoners are employed is only a short way off from the place where the rest are working.

2. I can instance cases where, whilst the Prisoners were employed on the Race Course, at spots on which there was not room for more than a few of them to be worked, the rest of the gang remained perfectly idle, although work was cut out for them in the immediate vicinity of the spot in question.

3. When the Prisoners are all within sight of the Police Guard, where no houses, or buildings, or trees, or any objects of any kind intervene, to shut out the view of the rest of the convicts, I hardly think the Rule in question is intended to be applied so strictly that the labor of a great number of Prisoners shall frequently be entirely thrown away, and if a remedy can possibly be furnished by you it would be a very great public advantage.

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From the Inspector General of Police, to the Session Judge of Trichinopoly; dated Kotagherry, 23rd September 1865.

I cannot recommend any change in the Jail Rules in respect to breaking up gangs at work.

2. In the first place, safe custody cannot be assured, and discipline is no where if gangs are broken up. One Constable is allowed for the guard of seven convicts. I need scarcely remind you that one man alone cannot guard seven men; in event of one escaping, either he must let the fugitive go without an attempt to recapture him, or the six remaining convicts must be left without guard. Seven (7) constables, however, may efficiently deal with two or three escapes amongst a gang of 50; though, even to meet this exigency requires great management. Again I cannot have a responsible officer to see that a single man does prevent, and does not connive at, communication with his charges, say seven in number, and you cannot have a warder to see that they do their work or observe Jail rules. There is safety and efficiency in masses.

3. As a matter of effective and economical working of convicts, the system you allude to is bad. Convict labor, in fact any description of labor of the kind for which convicts should be

employed, is best done and supervised in masses. Public resources are not turned to good account when gangs of able-bodied men are pottering, half a dozen here and half a dozen there, about a Race Course road, with no order and less supervision.

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Referred to Mr. Rohde for his remarks.

(Signed) A. J. ARBUTHNOT,
*Chief Secretary.*

FORT SAINT GEORGE,
*5th January* 1866.

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No. 102. From the Inspector General of Jails, to the Chief Secretary to Government, Fort Saint George; dated Ootacamund, 8th January 1866, No. 673.

In acknowledging your endorsement of the Inspector General of Police's letter to Government, of the 12th December, relative to the minimum strength of gangs, I have the honor to forward my Circular promulgating the Government Order.

2. There can be no doubt that a captious insistence on the words of the Rule, as determined on by Mr. Robinson and myself, has in some few instances resulted in inconvenience. I brought an instance verbally to Mr. Robinson's notice when I was on leave, and he at once repudiated the construction his Officers placed on the order. I had cleared the Jail at Ootacamund of all but, I think, 28 laboring convicts, and I was informed that the Police refused to guard a smaller number than 36. In my opinion the Rule, as now placed before Jail Officers by my Circular, will obviate all practical inconvenience.

3. I must confess that my experience is against giving Officers in charge much latitude in the matter. I think, in general, work can always be found for gangs of 36, and that where a departure from this course is necessary, in order to secure work for the prisoners, the option now given should be sparingly exercised, and that the occasions should be limited to cases of absolute necessity.

4. The Police guard is necessarily limited. The Jail Superintendent should determine the strength of his gangs for the following day, and notify the same to the senior Police Officer; but should accident or sickness, or other cause, reduce the strength of the gang of 50 to 45, or that of 36 to 33, I see no reason why the guard provided for the gang of 36 should not take charge of 33, or that provided for 50 take charge of 45 prisoners; provided, however, that the requisition on the Police was not in excess of the provision, and that the arrangement threw on that Force no addition to the duty provided for.

5. With the exceptions of the words in paragraph 5 of Colonel Wilson's letter ("nature of the work, or the"), I do not think Mr. Robinson will object to Colonel Wilson's letter.

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No. 103. From the Inspector General of Jails, to the Chief Secretary to Government, Fort Saint George; dated Ootacamund, 12th January 1866, No. 687.

I have the honor to acknowledge a copy of correspondence between Mr. T. I. P. Harris, Session Judge of Trichinopoly and the Inspector General of Police, relative to the dispersion of gangs at labor, referred to me with reference to a letter, No. 2410, from the Inspector General of Police, which formed the subject of a reference on the 5th instant.



2. It appears to me that Mr. Robinson's reply to Mr. Harris was on the general principle at stake, and that the case, as put by Mr. Harris, was not necessarily one to which Mr. Robinson's reply referred.

3. Mr. Harris speaks of a work on the race course requiring the labor of a few men only of a gang, the rest of which might have been conveniently employed under the same guard at a little distance, within sight of the whole of the guard.

4. As the question was put by Mr. Harris, and with the meaning I should put on his expressions "only a short way off," "in the immediate vicinity," I think the mere fact of the gang being put to different tasks was a matter of no importance. Mr. Robinson has never objected to gangs being employed in any way provided the cordon of Police guards within which they move is not so extended as to render support to any one Constable difficult. In a case such as that represented by Mr. Harris, the only question for the Police was whether, with proper precaution, the Police guard could be so extended as to guard the whole body of prisoners entrusted to their safe keeping. If the arrangement was practicable, it was clearly no part of the duty of the Police to interfere with the work on which the several sub-divisions of the gang were employed. If the prison's officers desired to extend the gang to a distance that was incompatible with their being controlled by the whole guard, the Police would, I suppose, be justified in declining the charge.

5. It would be very difficult to lay down any rule applicable to all situations, but I think it likely that these questions would never arise were the Officer in charge personally to communicate with the Superintendent of Police or Senior Police Officer on any doubt occurring. At the same time, I must admit that there has too often been a tendency to obtain the convenience of the labor of prisoners without regard to the risk incurred.

6. So convinced was I of the impropriety of detaching prisoners to every small work, that I always used private funds for such work when in charge of Jails. At Vizagapatam and Masulipatam I had subscriptions in aid of such works, and at Guntoor, Mr Purvis, the Collector, insisted on relieving me of a portion of the cost. If a work is so trivial that it will not admit of 36 prisoners being employed on it advantageously, it surely is not too much to expect those who benefit by it to pay for it.

7. I beg to forward a copy of a Circular, No. 86, in the propriety of which I think Mr Robinson will agree.

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No. 104. ORDER THEREON, 14th March 1866, No. 375.

On further consideration of the subject adverted to in the foregoing papers, the Governor in Council resolves to modify the Orders of the 13th November last, No. 1623, so far as to declare that, as a general rule, the gangs of convicts sent to work outside the Jail shall not be less than 50; that in every case in which the Superintendent of a Jail may find it necessary to send out a smaller number, he shall report the circumstances, with a full explanation of his reasons, to the In-

spector General of Jails, and that no Superintendent of a Jail shall be at liberty to send out a smaller gang than 36, without having obtained the previous sanction of the Inspector General of Jails.

(True Extract).

*Chief Secretary.*

To the Inspector General of Jails.
" " of Police.

Exd. J. H. Burns,

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# CIRCULAR No. 86.

The Inspector General of Jails finds that convicts are expected, in some stations, to do all labor required in the repair of public roads, though it often may be of such a trifling nature that a single person might do what was needed in a day, and that convict gangs are thus broken up to meet the convenience of the public and to save a few annas to the community who benefit by the roads.

2. In many stations funds are collected to meet casual expenses in the repair of station roads. If this practice were general there would be no difficulty in executing such trivial repairs as cannot be advantageously done by convict labor with due regard to the Rules laid down. The Inspector General cannot permit breaches of those rules for the sake of trivial works.

3. The greater portion of the roads at Masulipatam, the roads about Vizagapatam and Trichinopoly and several works in connection with the roads at Guntoor have been, to Mr. Rohde's knowledge, made by means of funds supplied by the Residents; he believes the practice is not confined to those stations, and he hopes that no inconvenience will arise from the prohibition to the employment of prison labor where its application would involve a breach of the Rules.

4. The Inspector General of Police will be requested to intimate to his Superintendents that Officers in charge of Jails are not authorised in breaking up gangs of convicts guarded by the Police, for the sake of labor on trivial repairs, &c.

OOTACAMUND, Office of Inspector General of Jails. 12*th November* 1860.

*(Signed) J. Rohde*

*Inspector General of Jails.*

To

All Officers in charge of Jails.

My dear Arbuthnot

You must be just here - depart from sound principle and your measures will be out of gear and jarring in every Jail in the country. Police Officers are men that know what is fair and I dare not accept Wilsons unexpressed recommendation - there is not an Officer in the force that does not know that the safe principle is lost sight of - not one that does not know that the apple of discord has been thrown into the management of every Jail in the country. We cannot work it - you can't justly leave all our heavy responsibilities on one side and leave irresponsible (for such they legally are) Jailors (we have far more to do with these than with Officers in charge of Jails) to weight us as they please regardless of our means of fulfilling our responsibilities - Alters - your law of escape. Try your Jail Officers in case of escape instead of your Police Officers and be willingly accept Colonel Wilsons recommendation - But Police Officers are too just to ask them men to do impossibilities and then indict them for failing. We dont add this and the heavy anxieties and endless contentions

that

that are disheartening and breaking down
your Peelers throughout the country.

Believe me that there is nothing
so indiscreet as the discretion of irresponsible
men. I could fill pages of instances. And
for both the authorities laid before Govern-
ment are ... T.D. Harries & Geo. Thompsons
and Wilson who has not worked your
Jails for 3 months.

So my dear Arbuthnot Govern-
ment must give us a clear note of
principle — are your details will be
worked out justly and in harmony as
hitherto. But we must have a Daysman
here between us. Kindly be that Daysman
and final referee.

Wilson tells us that Rohde says
he did not mean what he said. You know
an Englishman's answer to that if it be
so. When the retrenchment of 1862 came,
I worked out its appointment under Mr.
Bycroft's immediate direction. I told
him that if the minimum gang at out
door labour were raised from ~~from~~ 36
(with 6 constables) to 50 I would try
the Jails with one to seven, and relieve
the Budget of 15000 to 20,000 Rs. Mr.
Bycroft assented; Rohde was referred to

And

My dear Arbuthnot

You must be prudent here. Depend
for sound principle & you engross with
out of fear & favour in every part in the
country. Police officers are men that
know what is fair & I dare not accept
Wilsons unexperienced recommendation
there is not an officer in the force that
does not know that the safe principle
is look right-hand one that does not know
that the apple of discord has been thrown
into the management of every jail in the
country. We cannot work it. You cannot
both bear all our heavy responsibilities
on one side & bear irresponsible (private
& legal) on Jailors (we have far more to do
with them than with officers in charge of jails)
& work it as they please regardless of our
& work it as they please

means of pulling on responsibilities
able to devise escape Dry pan fast Open
in case of escape in Read of P Police
officers & in utility I accept Col W's
recommendation - Port Police Officers
are too few & ask their men & do an-
-swerable & their under their pun-
-ishing - No Doubt add this & the heavy
anxieties & endless contentions that are
distracting & breaking down P Peelers
throughout the Country

Believe me that there is room for
indiscreet as the discretion of irresponsible
men - Send full lapse of instances - and
for both the authorities Earthquake Port-au-
au Sup Harrison & Sec Thompsons & Colonel
who has not visited P. Jails for 8 months -
to my dear Archbishop Fortescue
Give us a clear view of principle here -
P. Island will be worked out pretty & in-

harmony as hitherto - But in any
case a day's mean here between us Bishop
the last day's mean & final referee -

Adam tells me that Col Cox says
he did not mean what he said - you
know an Englishman's answer & that go
& so - When the retrenchment of 1863 -
came I worked out its application under
Mr Pigeon - made deductions - I
told him of the minimum pay at out Con-
-stables ~~were raised~~ from 36/ with Constable
~~were raised~~ £50 And my Returns will show
to Seven children the Budget of 15000 £
expenditure Mr Pigeon accepts Rodda's
the allowances Returns that prison labour
is only effective when the men are kept to
it like a large well Supervised Gang & de-
-cent his Budget - we have some worse
Generally on this plea - and I don't believe
for a moment that Mr Pigeon will allow
Rodda to turn round now & say he did
not mean what he accepted - What Mr Pig

deliberately arranged between us – Old Rohde is settling down to a free born British Planter – this may account for much – Dont Mr Pycroft is too righteous to accept this nonsense in public matters. But if the Govt think that 42 armed convicts with 6 constables (such as I can get for your money) is a safe – or not an absolutely unsafe minimum – pray fix it – & then leave the pronouncement as to accepting Still graver responsibility with those whom you & the Law hold responsible

I can assure you Police Officers are as able to form as sound a judgment as your native Jailors or Officers in charge of jails

Jas Barry

J. Robinson

Russell Island 12 Dec 1855



and of course accepted the alternative. He knows that prison labour is only effective when the men are kept together in large well Supervised gangs and it relieves his Budget. We have since worked generally on this pledge, and I dont believe for a moment that Mr Pycroft will allow Rohde to turn round now and say he did not mean what he accepted. What Mr Pycroft distinctly arranged between us. Old Rohde is settling down to a free born British Planter – this may account for much, but Mr Pycroft is too righteous to accept this nonsense in public matters.

But if the Government think that 42 armed convicts with 6 constables (such as I can get for your money) is a safe – or not an absolutely unsafe minimum – pray fix it and then leave the judgment as to accepting still graver responsibility with those whom you and the Law hold responsible.

I can assure you Police Officers are as able to form as sound a judgment as your native Jailors or Officers in charge

charge of Jails

I am sincerely Yours
(signed) H. Robinson

Rajahmundry
12 Dec. 1865.

Copies of Letter from Lieut. Col. Haly
Inspr. Genl. Police
Letter from Lieut. Col. Haly
Inspr. Genl. Jails
Rajahmundry
12 December 1865.

Judicial Department.

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**PROCEEDINGS of the MADRAS GOVERNMENT.**

Read the following papers.

From the Inspector General of Prisons & Police. — d/ 12 Decr 1865 No 2110.

From the Inspector General of Jails. d/ 8 & 12 Jany 1866 Nos 673 & 697.

Order thereon 14 March 1866 No 375.

On further consideration of the subject adverted to in the foregoing papers, the Governor in Council resolves to modify the Orders of the 13 Nov. Last, so far as to declare that, as a general rule, the gangs of convicts sent to work outside the Jail shall not be less than 50; that in every case in which the Superintendent of

of a Jail may find it necessary to send out a smaller number, he shall report the circumstances, with a full explanation of his reasons, to the Inspector General of Jails, and that no Superintendent of a Jail shall be at liberty to send out a smaller gang than 36 without having obtained the previous sanction of the Inspector General of Jails.

Inspector Genl. of Jails. } Sept 14/3
Inspector Genl. of Police }

*Judicial* 1866. *Department.*

*No.* 375.

PROCEEDINGS OF GOVERNMENT.

*Dated* 4 *March* 1866.

Press No. 2755, G. M.—14-11-65—500.

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