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TAMIL NADU ARCHIVES

GOVERNMENT OF TAMIL NADU

Judicial DEPARTMENT

G.O. No. <u>161-162</u>	Press.
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Dated <u>1</u> — <u>2</u> —	<u>1868</u> <u>197</u>

Not to be folded or roughly handled

V.S.M.

Proceedings of the Madras Government, Judicial Department,
1st February 1868.

No. 7. Read the following letter from the Secretary to the Government of India, Home Department, to the Secretary to Government, Fort Saint George; dated Fort William, 5th December 1867, No. 80-913.

In his report on the health of the convicts at Port Blair for July, the Senior Medical Officer of that Settlement has commented strongly upon the excessive mortality among certain gangs of convicts stationed on Viper Island, consisting of the old, blind, lepers, and cripples unfit for work. Amongst these men, the mortality reached as high as 5-7 per cent. during that month.

2. There can be no doubt that Natives of India, if they are, on arrival at Port Blair, either old, sick, or infirm, succumb almost infallibly, and within a very short time, to the climate of that Settlement. Moreover, only healthy and able-bodied convicts, fit to work, are required at Port Blair, where the expense of maintaining prisoners is far in excess of the cost in the most expensive Jails on the mainland of India.

3. His Excellency in Council, therefore, feels it incumbent on him to urge on His Excellency the Governor in Council to issue immediate and stringent instructions to the proper authorities to stop the transmission of such invalids to Port Blair, and to request that every convict, before he is selected for transportation at the prison in which he is confined, and also, before embarkation, may undergo close examination, and that none be sent who are above 45 years of age, and who are not in robust health and fit for hard labor, and that the arrangements for their conveyance may be such as shall, as far as possible, prevent any deterioration of their health during the voyage.

Health
more
strict

4. I am to request His Excellency the Governor in Council will charge some competent Officer with the responsibility of seeing that these instructions are in future strictly obeyed.

Extract from the Proceedings of the Government of India, in the Home Department (Public), under date the 2nd December 1867, No. 79-832.

Read a letter from the Chief Commissioner of British Burmah, No. 874, dated the 24th June 1867, submitting a Report by Major H. Nelson Davies on his inspection of the Penal Settlement of Port Blair, together with a Minute thereon by Colonel Fytche, and other documents relating to the subject.

RESOLUTION.—It will be convenient, in remarking on the several subjects mentioned in Major Davies' Report, to follow, as far as possible, the arrangement adopted in the Minute of Colonel Fytche, and to communicate the orders of Government on each subject in the order therein noticed.

2. 1st—As to the health of the convicts in the Settlement.

The death rate in 1866 reached 10½ per cent., or four per cent. more than that of the previous year. Several causes are assigned for this increase of mortality, the chief of which are—

- 1.—Climatic influences.
- 2.—The importation of unhealthy convicts, or men unfit, by age, &c., for transportation.
- 3.—Defective diet.
- 4.—Work of an unhealthy nature.

3. As to the first of these causes, it seems beyond doubt that the unhealthy condition in which

the body of the convicts now are is directly ascribable to the results of malaria.* At the same time, Dr. Gamach quotes, with concurrence, Dr. Morton's statement—"That the climate is not

* See Dr. Gamach's Report on the sanitary condition of the Settlement for 1865, and Report of the Sanitary Commission appointed by Major Davies, in Appendix, Vol. I, pp. 1-32.

inimical to either Europeans or Natives of India *who arrive here in a tolerably healthy state, who partake of nutritive and wholesome food, and are exempt of jungle work.*" The remarkably healthy state of the European Detachment (the Naval Brigade, while in existence, was equally healthy, of the Madras Sappers, and of the Madras convicts whom Mr. Homfray has messaged at Port Mouat,* go to show that the conclusion is true.

* Chief Commissioner's letter forwarding July's Report, page 1, paragraph 4.

4. In 1861 much of the unhealthiness was ascribed to want of proper accommodation and over-crowding. These causes of complaint have now been removed to a very great extent, so that the present excess of malaria can only be accounted for by the want of clearing near some of the stations, and the recent clearings near others, also by the necessity for "bundling" certain swamps.

5. As regards the removal of malaria, the practical difficulty is—*first*, that the work of the clearing and bunding is unhealthy to the men employed; and, *secondly*, that, for the time being, it makes the immediate neighbourhood of the work of reclamation more unhealthy than ever. When convicts, whether Burmese or others, are employed on such works, certain precautions as to quinine, extra rations, spirit rations, proper hutting in healthy position within reach of their work, proper clothing, and coverings to the legs and feet, seem necessary. As to the unhealthiness caused by clearing and reclamation, the only remedy seems to be, as regards existing stations, to carry out these operations systematically, with a view to the rapid completion of the works undertaken; and, *secondly*, the exposure to the subsequent temporary aggravation of the malaria of as small bodies of men as practicable, these being selected from the most acclimatized and healthy, and being protected by special sanitary precautions.

6. The works recommended are the clearance of the jungle on rear of Hadlo and Aberdeen, and the bunding of the swamps at Phoenix Bay and South Point. These appear to be the most urgent works, and the Chief Commissioner agrees that they should first be undertaken. A specific plan should be called for by the Chief Commissioner from the Executive Engineer, and all the available labor be at once assigned to the work during the present dry season. The stations so cleared should be abandoned, as far as possible, during the next two or three rainy seasons.

7. The next important work seems the bunding of the swamp at Brigade Creek, and eventually the bunding of the "shallow flats" at the head of Port Blair. These measures, if carried out carefully and systematically, would apparently greatly improve (ultimately) the sanitary condition of the Settlement, and would further afford an ample acreage for the entire crop of forage, vegetables, and fruit required for the Settlement, and at least for the major part of the supply of rice.

8. The great point seems to be the inauguration of a regular system of clearing, and the application of all the available resources of labor to one work, or set of works, till it is completed, and the avoiding the exposure, to the results of the clearing, of the convicts, as far as possible, till the clearings have become healthy. The Governor General in Council requests the special and constant attention of the Chief Commissioner and the Superintendent of Port Blair to this vital point.

9. The second cause of evil is, without doubt, that many convicts sent to Port Blair are either unfit subjects for transportation at all, or arrive in a state of emaciation which unfits them to resist the climate.

10. None but able-bodied convicts should be sent to Port Blair at present, or, at any rate, until the present adverse conditions of the Settlement as regards causes of malaria are removed. No convict should be sent to the Andamans who is over 45 years of age, and who is not in robust health. To this end a very close examination should be made of all prisoners at the port of embarkation, and very careful sanitary precautions should also be adopted as to embarkation, so as to ensure the health of the convicts during the voyage. The Governor General in Council commends this point to the careful attention of the Local Governments.

11. The third cause assigned is deficient diet. The present deficiency arises from two causes—

1st.—The scarcity of certain articles, viz., vegetables, fish, meat, milk, ghee, oil, &c.

2nd.—The mode of dieting the convicts.

12. As to the first point, the Governor General in Council approves of the action taken by the Chief Commissioner, as reported in paragraphs 8 to 15 of his Minute. His Excellency in Council concurs with that Officer that it reflects great discredit on the Medical Authorities of the Settlement that the deficiency of vegetable diet was not brought to the notice of the Superintendent, and he entirely approves of the system of supervision prescribed in the 9th paragraph of his Minute. The means proposed in paragraph 15 of increasing the supply of fish are also approved.

13. As to the second point, and with reference to the remarks in paragraph 15 of Colonel Fytche's Minute, the Governor General in Council entirely concurs in the necessity of introducing the messing system, in substitution of the present system of giving the prisoners a money allowance to purchase food. There seems to be no doubt that the bulk of the convicts who have to purchase food, whether convicts on money allowance or self-supporters, rarely get enough food, especially of animal food and anti-scorbutic food, not so much because they cannot afford it, as because they stint themselves. The only remedy appears to be to introduce the messing system, which has already been introduced with the best results at Port Mouat by Mr. Homfray; and this system should now be introduced among all classes carefully and judiciously, including Hindoos, who should be allowed Brahmin cooks. A set of diet scales adapted to the different nationalities at Port Blair should be carefully prepared on a liberal plan. As regards self-supporters, the first thing to be done is to introduce somewhat stricter discipline among them; and, *secondly*, to reduce to the rank of ordinary convicts any one who seems unable or unwilling to keep himself in good case.

14. The fourth cause of evil—the employment of convicts on work of an unhealthy nature—has been sufficiently disposed of by the remarks and instructions communicated under the head of climatic influences.

15. The Governor General in Council will now proceed to notice the other proposals submitted in the Report and Minute.

16. *Question of retaining Port Mouat as a Settlement* (Paragraph 16 of Minute).—The Governor General in Council concurs in the reasons assigned in this paragraph for maintaining this Settlement as a self-supporting one. The opinion of the Superintendent of Port Blair, it is observed, has already been requested on this point, and the reduction of the strength of prisoners from an entire division of 400 men to a quarter of a division is approved.

17. *Cost to the State of each convict at Port Blair* (Paragraph 17).—The cost is estimated at Rupees 30 per mensem, which is enormous. The attention of the Superintendent should be urgently directed to this point, with a view to the reduction of the cost, which appears to be easily practicable.

18. *Commissariat* (Paragraph 18).—The Commissariat arrangements of the Settlement appear very bad, and the Governor General in Council agrees with the Chief Commissioner that they call for close investigation and revision. At the same time, His Excellency in Council would wish to be informed who is responsible for the present state of affairs as described in this paragraph. The recommendations regarding the selection of a new site for the cattle and sheep sheds, the selection of a better class of animals for shipment, the arrangements to be made for all ordinary supplies of rice, and the system of indenting for stores on the Commissariat, appear to be very proper. The entire subject of this paragraph will, however, be further considered in the Military Department, and in communication with the Government of Madras, to which the Commissariat Establishment at Port Blair is directly subordinate. His Excellency in Council has been in personal communication with the Chief Commissioner and with General Macpherson, who have been desired, in communication with the Master Attendant, to decide what articles can be most efficiently and cheaply supplied from Rangoon and Calcutta, respectively, and to submit a

*Proceedings of the Madras Government, Judicial Department,
1st February 1868.*

And that copies of the same documents be sent to the Military, Financial, and Public Works Departments, for the issue of such orders as may be necessary in those Departments.
(True Extract).

(Signed) E. C. BAYLEY,
Secy. to Govt. of India.

No. 8. ORDER THEREON, 1st February 1868, No. 101.

In accordance with the instructions contained in the letter above recorded, and in continuation of the Government Order dated 16th July 1867, No. 1124, the Governor in Council directs that every convict whose sentence of transportation it is intended to carry into effect, shall, before he is sent to the port of embarkation, be examined as to his physical condition by a Committee consisting of—

- 1.—The Officer in charge of the Jail.
- 2.—The Magistrate of the District, or, in his absence, the Covenanted Civil Officer in charge of the station.

When the Officer in medical charge of the Jail is not also the Superintendent he will be added to this Committee.

2. If, on examination, the convict appears to have passed his 45th year, or is from infirmity or disease unfitted for hard labor, the Committee will submit a report to the Inspector General of Jails, for the orders of Government, and such convict shall not be sent from the Jail in which he is confined, until the orders of Government are received. The Committee will specify in their report whether the infirmity or disease under which the convict is suffering is of a chronic or temporary nature.

3. If the convict is considered to be under 45 years of age, in robust health, and fit for hard labor, he will be sent for embarkation to Madras, where he will, before embarkation, be again similarly examined before a Committee consisting of—

1. The Commissioner of Police, or other Officer in charge of the Penitentiary.
2. The Officer in Medical charge of the Penitentiary.
3. The Superintendent of Marine.

4. This Committee will observe the directions stated above, and will, in like manner, report to Government any case in which a convict is not considered to be in a fit condition for transportation.

(True Extract).

To the Inspector General of Jails;
" Inspector General, Medical Department.
" Magistrate of
" Commissioner of Police.
" Superintendent of Marine.

Exd. J. H. Burns.

Chief Secretary.

JUDICIAL DEPARTMENT.

No. 162.

FROM R. S. ELLIS, Esq., c. B.,
Chief Secretary to the Government of Fort Saint George,
TO THE SECRETARY TO THE GOVERNMENT OF INDIA,
HOME DEPARTMENT.

SIR,

I am directed to acknowledge the receipt of Mr. Secretary Bayley's letter, dated 5th December 1867, and, in reply, to forward the Proceedings of Government, containing the instructions issued

Dated 1st February 1868, No. 161.

for the examination of convicts sentenced to transportation, both at the Jails at which they are confined, and, again, prior to embarkation.

2. I am to observe that the Governor in Council is of opinion that whenever it may be decided that a convict is by advanced age, serious chronic infirmity, or active disease, unfitted for hard labor, and, therefore, according to the view taken by the Government of India, not a fit subject for transportation, it will be necessary to legalize the suspension of the sentence of transportation by applying the provisions of Section 54, Code of Criminal Procedure, or those of Section 55 of the Indian Penal Code, as the case may be.

3. The Governor in Council is also of opinion that it is not desirable to pronounce definitely that no criminal who is more than 45 years of age shall be transported. The knowledge of this very considerable alteration of the law, would, it is feared, have an evil effect on the criminal classes of the country, by removing the check which the fear of transportation advantageously exercises in the repression of crime of a heinous nature. It will, it is submitted, be better that the Local Government should deal with each case on its merits, keeping in view the object contemplated by the Government of India—the reduction of the mortality among convicts at the Settlement of Port Blair.

4. I am desired to solicit the instructions of the Government of India upon these questions.

FORT SAINT GEORGE,
1st February 1868.

I have the honor to be,
Sir,
Your most obedient Servant,

Chief Secretary.

Exd. J. H. Burns

No. 72
 Extract from the Proceedings of the Government of India, in the Home Department, (Public),
 under date the 2nd December 1867.

British Burmah, No. 874.

No. 80
 710
 From E. C. BAYLEY, Esquire,
 Secy. to the Govt. of India,

To The Secretary to Govt. Madras

Dated Fort William, the 5th December 1867.

SIR,

IN his Report on the health of the convicts at Port Blair for July, the Senior Medical Officer at that Settlement has commented strongly upon the excessive mortality among certain gangs of convicts stationed on Viper Island, consisting of the old, blind, lame, and criminals unfit for work. Amongst these men the mortality was as high as 57 per cent. during that month.

2. There can be no doubt that Natives of India, if they are, on arrival at Port Blair, either old, sick, or infirm, succumb almost infallibly, and within a very short time, to the climate of that Settlement. Moreover, only healthy and able-bodied convicts, fit to work, are required at Port Blair, where the expense of maintaining prisoners is far in excess of the cost in the most expensive jails on the mainland of India.

3. His Excellency in Council, therefore, feels it incumbent on him to urge on His Excellency the Governor in Council to issue immediate and stringent instructions to the proper authorities to stop the transmission of such invalids to Port Blair, and to request that every convict, before he is selected for transportation at the prison in which he is confined, and also before embarkation, may undergo close examination, and that none be sent who are above 15 years of age, and who are not in robust health and fit for hard labor, and that the arrangements for their conveyance may be such as shall, as far as possible, prevent any deterioration of their health during the voyage.

4. I am to request His Excellency the Governor in Council will charge some competent Officer with the responsibility of seeing that these instructions are in future strictly obeyed.

I have the honor to be,
 Sir,
 Your most obedient servant,

E. C. Bayley

Secy. to the Govt. of India.

by special sanitary precautions.

6. The works recommended are the clearance of the jungle on rear of Haddo and Aberdeen, and the draining of the swamps at Phoenix Bay and

1868.
 HOME DEPARTMENT.

From The Chief Secretary to Government,
 Port Saint George.
 To The Secretary to the Govt. of India,
 Home Department.
 Dated 1st February 1868.
 Recd.

No. 162.
 Enclosure.

Forwarding the Proceedings of the Madras Government, containing the instructions issued for preventing the transportation of old and sickly convicts to Port Blair.

Received from the
 Chief Commissioner of British
 Burmah, No. 874,
 dated the 21st June 1867,
 submitting a Report by Major H. Nelson
 Davies on his inspection of the Penal
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 ments relating to the subject.

19th June 1867
 21st June 1867
 22nd June 1867
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 30th July 1867
 31st July 1867

No. 874
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RESOLUTION.

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 in Major Davies's Report, to follow, as far as possible, the arrangement adopted
 in the Minute of Colonel Fytche, and to communicate the orders of Govern-
 ment on each subject in the order therein noticed.

2. 1st.—As to the health of the Convicts in the Settlement.

The death rate in 1866 reached 10½ per cent., or four per cent. more than
 that of the previous year. Several causes are assigned for this increase of
 mortality, the chief of which are—

- 1.—Climatic influences.
- 2.—The importation of unhealthy convicts, or men unfit by age, &c. for trans-
portation.
- 3.—Defective diet.
- 4.—Work of an unhealthy nature.

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 1866, and Report of the Sanitary Com-
 mission appointed by Major Davies in
 Appendix, Vol. I., pp. 132.

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 Morton's statement—"That the climate is *not*
 inimical to either Europeans or Natives of India
who arrive here in a tolerably healthy state, who
partake of nutritious and wholesome food, and are exempt of jungle work." The
 remarkably healthy state of the European Detachment (the Naval Brigade,
 while in existence, was equally healthy) of the Madras Sappers, and of
 the Madras convicts whom Mr. Homfray has
 messaged at Port Mout,† go to show that the
 conclusion is true.

4. In 1861 much of the unhealthiness was ascribed to want of proper
 accommodation and over-crowding. These causes of complaint have now been
 removed to a very great extent, so that the present excess of malaria can only
 be accounted for by the want of clearing near some of the Stations, and the re-
 cent clearings near others, also by the necessity for "banding" certain
 swamps.

5. As regards the removal of malaria, the practical difficulty is—*first*,
 that the work of clearing and bunding is unhealthy; to the men employed;
 and *secondly*, that, for the time being, it makes the immediate neighborhood
 of the work of reclamation more unhealthy than ever. When convicts, whe-
 ther Burmese or others, are employed on such works, certain precautions as
 to quinine, extra rations, spirit rations, proper hutting in healthy position
 within reach of their work, proper clothing, and coverings to the legs and feet,
 seem necessary. As to the unhealthiness caused by clearing and reclamation,
 the only remedy seems to be, as regards existing Stations, to carry out
 these operations systematically, with a view to the rapid completion of the
 works undertaken; and *secondly*, the exposure to the subsequent temporary
 aggravation of the malaria of as small bodies of men as practicable, these
 being selected from the most acclimated and healthy, and being protected
 by special sanitary precautions.

6. The works recommended are the clearance of the jungle on rear of
 Haddo and Aberdeen, and the bunding of the swamps at Phoenix Bay and

South Point. These appear to be the most urgent works, and the Chief Commissioner agrees that they should first be undertaken. A specific Plan should be called for by the Chief Commissioner from the Executive Engineer, and all the available labor be at once assigned to the work during the present dry season. The Station so cleared should be abandoned, as far as possible, during the next two or three rainy seasons.

7. The next important works seem the bunding of the swamp at Brigade Creek, and eventually the bunding of the "shallow flats" at the head of Port Blair. These measures, if carried out carefully and systematically, would apparently greatly improve (ultimately) the sanitary condition of the Settlement, and would further afford an ample acreage for the entire crop of forage, vegetables, and fruit required for the Settlement, and at least for the major part of the supply of rice.

8. The great point seems to be the inauguration of a regular system of clearing, and the application of all the available resources of labor to one work, or set of works, till it is completed, and the avoiding the exposure, to the results of the clearing, of the convicts, as far as possible, till the clearings have become healthy. The Governor General in Council requests the special and constant attention of the Chief Commissioner and the Superintendent of Port Blair to this vital point.

9. The second cause of evil is, without doubt, that many convicts sent to Port Blair are either unfit subjects for transportation at all, or arrive in a state of emaciation which unfits them to resist the climate.

10. None but able-bodied convicts should be sent to Port Blair at present, or, at any rate, until the present adverse conditions of the Settlement as regards causes of malaria are removed. No convict should be sent to the Andamans who is over 45 years of age, and who is not in robust health. To this end a very close examination should be made of all prisoners at the port of embarkation, and very careful sanitary precautions should also be adopted as to embarkation, so as to ensure the health of the convicts during the voyage. The Governor General in Council commands this point to the careful attention of the Local Governments.

11. The third cause as signed is deficient diet. The present deficiency arises from two causes—

1st.—The scarcity of certain articles, viz., vegetables, fish, meat, milk, ghee, oil, &c.

2nd.—The mode of dieting the convicts.

12. As to the first point, the Governor General in Council approves of the action taken by the Chief Commissioner as reported in paragraphs 8 to 15 of his Minute. His Excellency in Council concurs with that Officer that it reflects great discredit on the Medical Authorities of the Settlement that the deficiency of vegetable diet was not brought to the notice of the Superintendent, and he entirely approves of the system of supervision prescribed in the 9th paragraph of his Minute. The means proposed in paragraph 15 of increasing the supply of fish are also approved.

13. As to the second point, and with reference to the remarks in paragraph 15 of Colonel Fyche's Minute, the Governor General in Council entirely concurs in the necessity of introducing the messing system in substitution of the present system of giving the prisoners a money allowance to purchase food. There seems to be no doubt that the bulk of the convicts who have to purchase food, whether convicts on money allowance or self-supporters, rarely get enough food, especially of animal food and anti-scorbutic food, not so much because they cannot afford it, as because they stint themselves. The only remedy appears to be to introduce the messing system which has already been introduced with the best results at Port Mout by Mr. Homfray; and this system should now be introduced among all classes carefully and judiciously, including Hindoos, who should be allowed Brahmin cooks. A set of Diet Scales adapted to the different nationalities at Port Blair should be carefully prepared on a liberal plan. As regards self-supporters, the first thing to be done is to introduce somewhat stricter discipline among them; and

secondly, to reduce to the rank of ordinary convicts any one who seems unable or unwilling to keep himself in good case.

14. The fourth cause of evil—the employment of convicts on work of an unhealthy nature—has been sufficiently disposed of by the remarks and instructions communicated under the head of climatic influences.

15. The Governor General in Council will now proceed to notice the other proposals submitted in the Report and Minute.

16. *Question of retaining Port Mout as a Settlement.* (Paragraph 16 of Minute.)—The Governor General in Council concurs in the reasons assigned in this paragraph for maintaining this Settlement as a self-supporting one. The opinion of the Superintendent of Port Blair, it is observed, has already been requested on this point, and the reduction of the strength of prisoners from an entire division of 400 men to a quarter of a division is approved.

17. *Cost to the State of each Convict at Port Blair.* (Paragraph 17.)—The cost is estimated at Rupees 30 per mensem, which is enormous. The attention of the Superintendent should be urgently directed to this point, with a view to the reduction of the cost, which appears to be easily practicable.

18. *Commissariat.* (Paragraph 18.)—The Commissariat arrangements of the Settlement appear very bad, and the Governor General in Council agrees with the Chief Commissioner that they call for close investigation and revision. At the same time, His Excellency in Council would wish to be informed who is responsible for the present state of affairs as described in this paragraph. The recommendations regarding the selection of a new site for the cattle and sheep sheds, the selection of a better class of animals for shipment, the arrangements to be made for all ordinary supplies of rice, and the system of indenting for stores on the Commissariat, appear to be very proper. The entire subject of this paragraph will, however, be further considered in the Military Department, and in communication with the Government of Madras, to which the Commissariat Establishment at Port Blair is directly subordinate. His Excellency in Council has been in personal communication with the Chief Commissioner and with General Macpherson, who have been desired, in communication with the Master Attendant, to decide what articles can be most efficiently and cheaply supplied from Rangoon and Calcutta, respectively, and to submit a Report on the subject, as also upon the best mode, and best season, of transporting the annual supply of sheep to Port Blair.

19. *Clothing of Prisoners.* (Paragraph 19.)—The arrangements proposed in this paragraph are approved.

20. *Communication with the Coast of British Burmah and other Marine arrangements.* (Paragraphs 20 to 22.)—These proposals will be considered in the Military (Marine) Department. The Chief Commissioner's proposal for the sale of the two schooners, now employed between British Burmah and Port Blair, and the purchase, in lieu, of a vessel of between 400 to 500 tons, suitable for carrying cattle and fodder, should be referred to the Master Attendant for report, and, in the meantime, it should be seen that the vessels are not allowed to lie idle in port as stated by Colonel Fyche.

21. The proposals in paragraphs 21 and 22 appear to be proper.

22. *Circuit House, Stone-Barrack, and Burial Ground, at Ross.* (Paragraphs 23 to 25.)—These paragraphs call for no remark beyond a general approval of the Chief Commissioner's proceedings.

23. *Andaman Tokens.* (Paragraph 26.)—The Governor General in Council would wish to have the opinion of the Superintendent of Port Blair, whether the issue of these tokens may not in future be abolished.

24. *Self-supporters.* (Paragraph 27.)—The Governor General in Council concurs in the opinion of the Chief Commissioner on this subject, which has already been noticed in this Resolution.

25. *Marine Stores.* (Paragraph 28.)—The arrangements proposed by the Chief Commissioner appear to be very proper, but the subject belongs to the Military (Marine) Department, to whom a communication will be made on this point.

26. *Flogging, Price of Meat, House-rent, and Convict Servants.* (Paragraphs 29 to 32.)—The recommendations contained in these paragraphs are approved, but it does not seem necessary for the present to demand any house-rent from Officers occupying Government buildings.

27. *Military and Police.* (Paragraph 33.)—The Governor General in Council is willing that the strength of the Free Police shall be fixed at 400, unless it be possible to adopt Major Davies's suggestion to station a second Company of Madras Native Infantry at Port Blair. The Governor General in Council thinks that this proposal should, if possible, be carried out, and the Madras Government will be addressed regarding it. If this additional Company be sent, the strength of the Police need not exceed 300.

28. The retention, or otherwise, of the Convict Police is left to the discretion of the Chief Commissioner. They appear to be few in number, and so scattered as to be in no way dangerous. The proposals for a block-house and stockaded Police posts are approved, but the palisades should be of a rough description, and in such case no great expense need be incurred.

29. *Superintendent's Office Establishment.* (Paragraph 34.)—The recommendations made in this paragraph appear to be very proper. The revised Office Establishment proposed by Major Davies in the 157th paragraph of his Report, at a cost of Rupees 1,134 per mensem, is sanctioned.

30. *Forest management.* (Paragraph 35.)—The Governor General in Council concurs that it is unadvisable to introduce a separate Department at present.

31. *Mr. Green's property.* (Paragraph 36.)—It is understood that this question has been settled in the Department of Public Works.

32. *Erection of a School-house, postponed.* (Paragraph 37.)—Approved. The subject has been already noticed in the letter from this Department, No. 2438, dated 18th July 1867.

33. *Search for the missing Crew of the "Assam Valley."* (Paragraph 38.)—This subject has been separately considered by the Military (Marine) Department.

34. *Water-supply on Ross.* (Paragraph 19 of Major Davies's Report.)—The Governor General in Council commends the remarks on this subject to the careful attention of the Chief Commissioner, and desires that the water-supply may be increased by such means as that Officer may think best calculated to effect the desired object.

35. *Wharf.* (Paragraph 20 of Report.)—The remarks in this paragraph will be considered in the Public Works Department.

36. *Viper Island and Jail.* (Paragraph 46 of Report.)—Major Davies's remarks on the improvement of this Island, and the ventilation of the Jail which is being built on it, are commended to the careful attention of the Chief Commissioner, who will see that the recommendations are duly carried out.

37. *Rules for Port Blair.* (Paragraph 55 of Report.)—On this subject a separate communication will be made to the Chief Commissioner.

38. *Marriage of Convicts.* (Paragraph 83 of Report.)—As a rule, it seems desirable to encourage marriages as freely as practicable. The Governor General in Council desires that the Chief Commissioner will lay down such Rules on the subject as he may consider proper.

39. *General Remarks.* (Paragraphs 41, et seq.)—It only remains now to notice the proposals submitted by the Chief Commissioner under this heading.

40. The Governor General in Council cannot but observe, on a review of Major Davies's Report, that the administration of Port Blair has been sadly weak and ineffective; and he shares in the hope expressed by the Chief Commissioner that the recent inspection, and the arrangements that have been, or are about to be, made in consequence, will tend to its improvement materially. And that this object may the more effectually be attained, His Excellency in Council is pleased to determine that the Settlement shall be

placed permanently under the orders of the Chief Commissioner of British Burmah, that the Officers of the Settlement shall be under his control, and that he shall be responsible for its proper administration. Referring to the suggestion made in the 43rd paragraph of Colonel Fytche's Minute, regarding regular communication between Port Blair and British Burmah, His Excellency in Council will be glad to receive any definite proposal on the subject which the Chief Commissioner may wish to make.

41. As to the recommendation* of the Chief Commissioner for altering the designations of the Officers employed in the Settlement, the Governor General in Council does not consider that any useful object would thereby be gained, and he would, therefore, rather let present designations stand. But His Excellency in Council is prepared to consider favorably the recommendation for the appointment of an additional Officer to Port Blair to aid the Superintendent in the administration of the Settlement. This proposition will be duly considered on the submission, by the Chief Commissioner, of the usual Proposition Statement, with such observations as may show that the additional aid is urgently necessary.

42. The distribution of work proposed in paragraph 41 among the Superintendent and the other Officers of the Settlement is approved, on the understanding that all the subordinate Officers will be, as at present, under the control of the Superintendent, and bound to obey his orders, subject to appeal, if necessary, to the Chief Commissioner.

43. The system of periodical inspections proposed in paragraph 45 is also approved.

44. Referring to the remarks made in the 47th paragraph of Colonel Fytche's Minute, the Governor General in Council entirely concurs in the necessity of relieving Dr. Gamach at Port Blair. The Madras Government will accordingly be requested to select some other Medical Officer without delay to take Dr. Gamach's place, and, in doing so, to take into consideration the remarks made by Colonel Fytche in this paragraph of his Minute.

45. In conclusion, the Governor General in Council desires that the thanks of the Government may be communicated to Major Davies and the other Officers named in the 48th paragraph of Colonel Fytche's Minute. Referring to the 4th paragraph of his letter No. 874, dated the 24th June 1867, the Governor General in Council will be prepared to sanction the disbursement of any extra expenses that any of these Officers may have incurred in the discharge of the special duty on which they have been employed.

ORDERED, that a copy of this Resolution be communicated to the Chief Commissioner of British Burmah for information and guidance.

Also, that copies of the Inspection Report (in three volumes), and of this Resolution, be sent to the Governments of Fort St. George, Bombay, and Bengal, for a similar purpose.

And that copies of the same documents be sent to the Military, Financial, and Public Works Departments, for the issue of such orders as may be necessary in those Departments.

(True Extract.)

E. C. Bayley
Secy. to the Govt. of India.

Memo. for orders

These papers are a continuation
of the former correspondence
begun by this Govt, regarding
the great mortality among
the convicts at Port Blair.

It is now established to
the satisfaction of the Gov. Genl
that one cause of the mortality
was, "the impaction of
unhealthy convicts or men
unfit by age or for transportation."

By para 3 of Mr. Secretary
Bagley's letter "every convict
sentenced to transportation is
to be examined at the prison
in which he is confined,
before transportation."

From the
Bagley

17th Nov 1861

From the
Bagley

17th Nov 1861

17th Nov 1861

to see if he is fit for hard
labor and is not more than
45.

We have anticipated the
practical part of these
instructions by the orders
communicated to Inspector
General of Jails. 16th July
last. No 1124.

It only remains to appoint
Committees of Inspection at
up country stations and
at Madras.

At stations where there is
a Jail the Com^{tee} may be

1 The Officer in charge of Jail

The Zillah surgeon if
it is not already the Officer in
charge of Jail

3 The Magistrate or the

Wth
The Govt of India do not
seem to have considered
the point raised by Mr.
Carmichael as to the
legality of not carrying
out a sentence of transportation.

I think in case of age &
that the Gov. in Council
should alter the sentence
under the powers conferred
in Sec. 55. I. P. C. & give
a term of imprisonment in lieu
of transportation.

The same might be done also
in case of chronic infirmity -
incapacity for hard labor.

In case of acute illness the
transportation would only
be delayed until recovery
& report as to the fitness
for work transportation.

Yours & the
above

Yours
Wth

business.

I should like to see their
paper ^{again} with this letter from
Mr. Carmichael as to the
alleged ^{of unduly} with
sentences of transportation
Wth

Yours
Wth

12/10

and officer in charge of station
when the Mag. is absent.

I do not think the High
Court will like the judge
who pronounces sentence
to be the decide on the
question of whether the
prisoner shall undergo the
sentence or not.

Otherwise the Judge who
is also a visitor of the Jail
might be on the Com^{tee}
also.

I think two must suffice
for a quorum.

In Madras:

I would suggest for the
Com^{tee}

- 1 Commissioner of Police
- 2 Medical Officer in the
penitentiary
- 3 Jeph. of Madras

The acts of the Govt of India appear to be to contravene the law of India. They have promulgated an act of the Legislature which declares that murder shall be punished by death or transportation for life; but it is now intimated to the Govt that in cases of the proposed transportation, under a judicial sentence of a murderer above 45 years of age, there shall be no transportation, and the Govt is called on to satisfy the acts of our established tribunals, by keeping murderers so sentenced, in the same place local limits of the Presidency.

I cannot help feeling that the people of this Presidency will regard this innovation as a deprivation of justice, and I am strongly surprised with the belief that when this now ordered alternative punishment becomes known, as it soon will be, to our European judges, many cases will be punished by death, instead of the transportation for life which is supposed to be intended, which they will be aware will never be enforced.

I think it should be suggested to the Govt of India that the same rule as to

the old, blind law, might be person above 45 years of age, all being with the Govt of India, in the case of transportation, in spite of the law in the subject of the Govt, it can legally be carried out.

W.D.

I cannot agree in the opinion of Mr. Phillips that further legislation is necessary to enable this Govt. to act on the wishes of the Govt. of India in regard to suspending sentences of transportation imposed upon prisoners who may be convicted either on account of age or for any other reason, & to assist & to send to Port Blair. I feel sure that if we made a representation to this effect we should be supported by the European Govts. & the provisions of Section 56 of the Code of Criminal Procedure which

shall in every part of the
presentment & with the
provisions shall have been
introduced.

As already stated the nature of transportation
in every case of ^{delay or} chronic idleness or
infirmity should be formally
modified by the Govt. under
the section above quoted (Section
54 of the Prison Penal Code)
which will make the case of
prisoners whose condition is
such as not to demand expeditious
& release & (the prison) and
modification of the sentence
being proposed on the report of
a Committee of Officers. And
cases of prison and temporary
ship, the execution of the
sentence of transportation can
of course be delayed just as the case
of a prisoner of war is.

Delayed punishment in ^{102/12} ~~the~~ ^{the} ~~the~~
of the arrangements for
shipping the prisoners. In
this no special enactment
can be required.

by A.

17th January 1868

I suppose that 45. seems
to me a very early term
at which to debate
transportation. I think
that a remonstrance
might have been
to the Supreme Govt.
on that subject. I do
not think that any
age should fixed.
I think that each
case should be
dealt with as it
deserves.

age, extreme debility
or actual disease a
Committee of Officers
as already designated,
should consider the
case and recommend
the mitigation of the
Sentence. The Govt. will
sanction the remission
in each particular
case but to lay down an
absolute rule that
after the age of 45.
no criminal is to be
transported would be
to strike at the root of
one of our most
deterrent penalties.
The order of the
supreme gov't. appears to
be to have economy
in humanity more in view
than justice.

187/11
Judicial Department 13

PROCEEDINGS of the MADRAS GOVERNMENT.

^{again}
Read the following letter from the
Inspector General of jails of 8th July 1867 No 62, recorded
in Proceedings of 16th idem No 1124.

Read also the following letter
from the Secretary to the Government of India, Home
Department.

Here enters 5th Decr 1867 No $\frac{80}{93}$.

Order thereon 1st February, 1868 No 161.

In accordance with
the instructions contained
in the letter above recorded,
and in continuation of the
G.O. dated 16th July 1867 No 1124,
the Governor in Council
directs that every convict
whose sentence is transportation
shall before he is sent
to the port of embarkation
be examined by a Committee
consisting of

WOU N. W. A.
+ it is intended to carry into effect,
as to his physical condition:

W. A.
W. A.

1. The officer

2. The Magistrate of the District or in his absence the ^{Covenanted} Civil Officer in charge of the station. When the officer in medical charge of the jail is not also the Superintendent he will be added to this Committee.

3. If on examination the convict appears to have passed his 45th year, or is from infirmity or disease unfitted for hard labour, the Committee will submit a report to the Inspector General of Jails, for the orders of Government, and such convict shall not be sent from the jail in which he is confined, until the orders of Government are received.

The Committee will specify in their report whether the infirmity or disease under which the convict is suffering is of a chronic or temporary nature.

4. If the convict is under 15 years of age, in robust health, and fit for hard labour, he will be sent for embarkation to Madras, where he will before embarkation be again ^{carefully} examined before a Committee consisting of

- 162/14 12
1. The Commissioners of Police, or other officer in charge of the Penitentiary.
 2. The officer in medical charge of the Penitentiary.
 3. The Superintendent of Marine.

5. This Committee will observe the directions stated above and will in like manner report to Government any case in which a convict is not considered ^{to be} in a fit condition for transportation.

The High Seal of Said
Hospital Medical Dept
Master of
Govt of Police
Govt of Marine

closed for the
first time of the proceedings

13

Judicial Department

No. 162.

To

The Secretary to the Government
of India,

Home Department

Sir,

I am directed to acknow-
ledge the receipt of Mr Secretary
Bayley's letter dated 5th Decr
1867, and in reply to forward
the Proceedings of Government,
containing the instructions
issued for the examination
of convicts sentenced to trans-
portation both at the jails
at which they are confined,
and again prior to embarka-
tion.

2. I am also to observe
that the Governor in Council
is of opinion that whenever
it may be decided that a
convict is by ^{advanced} age, ^{chronic} infirmity, ^{or} disease, or
fitted for hard labor, and

N.
W. L.

Advances of service

by

69.00

East 1868. Department

No. 161.

PROCEEDINGS OF GOVERNMENT.

Dated 1st February 1868.

22/2/68.

according to the view taken
therefore, ~~as ordered~~ by the Govt
of India, not a fit subject
for transportation, it will
be necessary to legalize the
suspension of the sentence
of transportation by ~~commuting~~
~~it, under Section 55 of the Indian~~
~~Penal Code for imprisonment~~
~~for a fixed period.~~

3. The Governor in Council
is also of opinion that it
is not desirable to pronounce
definitely that no criminal
who is more than 45 years of
age shall be transported.
The knowledge of this very
considerable alteration of
the law, would, it is feared,
have an evil effect on the
criminal classes of the
country, by removing the
check which the fear of
transportation advantageously
increases in the repression
of crime of a heinous nature.
It will, it is submitted, be
better that the local Govt
should deal with each
case on its merits, keeping
in

according to the view
taken

W/

+ applying the provisions of Sec 54
Code of Criminal Procedure, or
those of Section 55 of the Indian
Penal Code, as the case may be
or then of 55 of the
Indian Penal Code
can be done.

W/

182/16 1/2

in view the object contemplated
by the Government of India,
the reduction of the mortality
among convicts at the
settlement of Port Blair.

4. I am desired to submit
the instructions of the
Government of India upon
these questions.

W/

Fort St. George
1st February, 1883

Initials of the draft, which
in some respects, is in conformity
with my view of the matter. But
I do not think it was ever intended
by the framers of our two Codes to
use the Sections quoted, in support
of what, in fact, is a nullification
of the laws of the land. But assuming
that their use in that way was
contemplated, I feel perfectly certain
that it is quite beyond the controlling
power of the Supreme Govt to require
the Govt to apply those Sections in a
wholesale manner to sentences passed
in that, which, in a conventional and
independent exercise of their own proper
functions, the Govt. would see no reason
for noticing. WOK

2. H. 18. V

June 1868. Dispatch

70 No. 182.

To
The Secretary to the
Government of India
Home Department.

26th 1868. 2993.
1857.
1857.
Dated 18th July, 1868.

15-
Forwarded to
Mr. of the Indian Post
containing the residue.
Items placed in bundles
The transportation of
the said residue, consists
of 1868.

7-9