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MADRAS RECORD OFFICE.

Government of Madras.

DEPARTMENT

GO No. 665	Press Mis
Dated 2 - 5 - 1870.	

Not to be folded or roughly handled

Proceedings of the Madras Government, Public Department,
27th May 1870.

Read again Proceedings of Government, dated 26th January 1870, No. 104.

Read also the following papers:—

No. 120. From Major C. S. HEARN, Inspector-General of Police, to the Chief Secretary to Government, Fort Saint George, dated Madras, 19th February 1870, No. 1086.

General.]

With reference to paragraph 5 of G. O., No. 104, of 26th January 1870, Judicial Department, I have the honour to submit a set of Rules for the guidance of Police Officers taking steps under Act XXI. of 1869.

2. I have found some difficulty in framing these rules owing to the absence of definite procedure in the provisions of the Act. Under Section 4 a vagrant may be "required" to accompany a police officer, but nothing is laid down as to the course to be pursued if the vagrant refuses to obey this requisition. The last clause of Rule 2 assumes the power to arrest in such cases, on the general principle that where the law enacts certain provisions it also gives the power to enforce these provisions if necessary. The provisions of Section 4 could only be enforced on a recusant by arresting him.

3. Then with regard to Section 23, which defines the offence of what may be called aggravated vagrancy, the Act lays down no procedure whatever. According to the schedule to Code of Criminal Procedure under the heading "offences against other laws" this is a bailable offence, for which the police may not arrest without warrant, and for which a summons shall ordinarily issue on complaint. On the report of the Select Committee being taken into consideration by the Council of

*Gazette of India Extraordinary, 21st
Sept. 1869.*

India, the Hon. Mr. Cockerell pointed out the want of working power in the provisions of the Act under this section. To meet the want he suggested that the provisions of Sections 4 and 23 might be worked in unison, but there seems to be a difficulty in this as there is some difference of jurisdiction, (compare last clause of Section 3 with Section 10). In Rules 3 and 4 I have proposed a procedure which seems to me to be in accordance with the general law, but on this point (as also on the power to arrest given by Rule 2) the Law Officers of the Government might be consulted. To leave an offender under Section 23 to his own devices while a summons or warrant was being procured would be in most cases a very futile proceeding, and it seems anomalous that the procedure in cases of aggravated vagrancy under Section 23 should be less stringent than in cases of simple vagrancy under Section 4. But if the Government should prefer to leave this part of the procedure undescribed, then the second part of Rule 2 beginning "If the vagrant should refuse," the second part of Rule 3 beginning "The European or other police officer," and the whole of Rule 4 might be omitted.

4. With reference to the opinion of the Committee on Vagrancy, contained in paragraph 4 of their letter, as to the grade of officers to be appointed under Section 27 for conducting prosecutions under the Act, I think that such prosecutions might be conducted ordinarily by Inspectors, but in their absence by Station-house officers. At the head-quarters of Joint and Head Assistant Magistrates the Police Inspector has usually a whole taluq under his charge, and his absence at a distant

police station of his division might entail a very inconvenient delay. A tendency to needless prosecutions under this Act could be easily checked, but I do not think that it is likely to exist.

5. My opinion has further been requested with regard to the administrative Rules to be framed under Section 34 of the Act.

6. (i.) With regard to the grant of certificates under Section 9 of the Act. The exact scope and intention of this section are not clear from the wording. The sort of person who is not *likely* to become a vagrant would probably not require a certificate at all; and, on the other hand, if a person *does* become a vagrant under the meaning of the definition, (Section 3,) it is not clear why he should be protected by a certificate the primary condition of which he has violated. The section was probably intended to apply to persons who are honestly striving to obtain means of employment, and who are only likely to be vagrants (against their will) until they succeed in their endeavours. All that can be said is that such certificates should be granted with great caution, but I am unable to suggest any precise rule to be laid down. I should suppose that a vagrant refusing to produce a certificate would, as a matter of course, be dealt with as an uncertified vagrant, but a rule on the subject would remove all doubt. The certificates should undoubtedly be printed in the principal vernacular languages, as well as in English.

7. (ii.) As to the deportation of persons of European parentage born in India, I conclude that persons are meant who have not only been born in this country, but who have never left it, or acquired a domicile elsewhere. Such persons not only have means and resources in India which are wanting to imported Europeans, but they would be singularly destitute of resource in a European country. Moreover they have no native place or parish to fall back upon. No persons can be removed from India save by their own consent, but it would seem advisable that no agreement should be entered into with persons of this class unless they can satisfy the Government that, from exceptional circumstances, they are likely to be able to gain a living elsewhere.

8. (iii. and iv.) I have introduced into Rule 7 the provision that the subsistence allowance shall not be paid to the vagrant himself, and Rule 8 provides against the supply of intoxicating liquor to a vagrant under escort of the police. But it would be well that the prohibition suggested by Government should be introduced into the licenses of all vendors of intoxicating liquor.

9. No other points occur to me on which administrative Rules are required.

Rules for the guidance of the Police under Act XXI. of 1869.

1. When a police officer considers it necessary to proceed against a vagrant under Section 4, he will, (within the limits of Madras town,) send for the Inspector or the European Sergeant of his division, carefully watching the vagrant meanwhile. Outside the limits of Madras town a police officer will watch the vagrant as above, and will send intimation to a European Inspector or Head Constable if available at hand. If no European police officer be available the police officer will send intimation to the Inspector of his division, or (in the absence of the Inspector) to the nearest Station-house officer.

2. On the arrival of the European, or other superior police officer named in Rule 1, the vagrant will be required to produce his certificate. If he has no certificate, he will be required to appear before the nearest Magistrate or Justice of the Peace or other officer invested with powers under Section 10. If the vagrant should refuse to accompany the police officer he may be taken into custody, and may be produced in the usual manner before the officer empowered to deal with the case.

3. If an offence under Section 23 is committed by a vagrant in view of a police officer, or if a complaint is made that such offence has been, or is being committed, the police officer shall act as laid down in Rule 1. The European or other superior police officer, on arrival, shall demand the name and residence of the offender with a view to laying information before a Magistrate and obtaining the necessary process. Should the offender refuse to give his name and residence, or give a name or residence which there is reason to believe to be false, he may be dealt with under the provisions of Section 108, Code of Criminal Procedure.

4. If a vagrant refuses to desist from committing an offence under Section 23 when required thereto, he may be taken into custody by any police officer under the general powers conferred by Section 21, Act XXIV. of 1859, and clause 2, Section 100, Code of Criminal Procedure.

5. In the event of unavoidable delay in putting the case before a Magistrate *reliable* bail may be accepted for the vagrant's appearance.

6. Vagrants forwarded to a work-house or other place, under Sections 5, 6, 7, and 8, shall be escorted by a European police officer, whenever this is possible.

7. The subsistence allowance of a vagrant escorted by the Police shall be in the keeping of the police officer in charge who shall make the necessary provision for daily subsistence. No such vagrant shall be permitted to enter any arrack shop or other place for the sale of intoxicating liquors, nor shall any intoxicating liquor be supplied to a vagrant en route.

8. Vagrants en route under the above sections will ordinarily be lodged in Police Station-houses, but will not be locked up unless this measure may be necessary.

9. Police officers may advance subsistence allowance (when necessary) under Section 8. The amount expended will be recovered from the Magistrate on a bill to be submitted by the Superintendent or Assistant Superintendent of Police.

10. The utmost patience and forbearance will be exercised by all police officers in dealing with vagrants under the provisions of the Act. They will take no notice of abusive language.

(Signed) C. S. HEARN,
Inspector-General of Police.

Referred to the Advocate-General for his opinion on the point referred to in paragraph 3 of this letter.

FORT SAINT GEORGE,
24th February 1870.

(Signed) J. I. MINCHIN,
Acting Chief Secretary.

No. 121. From the Government Solicitor, to the Acting Chief Secretary to Government, Fort Saint George, dated Madras, 4th March 1870, No. 112.

I have the honour to acknowledge the receipt of the Order of Government noted in the margin, together with its enclosures, requesting the Advocate-General's opinion relative to the proposed Rules for the guidance of the Police under the new Vagrancy Act No. XXI. of 1869.

24th Feb. 1870, made on letter from
Insp.-Genl. of Police to Govt., 19th
Feb. 1870, No. 1086.

2. I submitted the matter for the consideration of the Advocate-General, and have also conferred with him thereon; and

3. I now forward a copy of his opinion, and return the enclosures above noted, together with the telegram of the Home Secretary to Government forwarded to me yesterday.

OPINION.

Two difficulties suggest themselves to the Inspector-General of Police, both of them as to procedure, on the European Vagrancy Act, as to which my opinion is desired.

2. The first relates to Section 4, the second to Section 23. The first doubt arises upon a point of defective procedure, the second questions whether there is any procedure at all.

3. As to the first, the question arising on Section 4, I think the view taken by the Inspector-General of Police is correct.

4. It is to be regretted, I think, that the words of the section are not more explicit and express, especially when the English Vagrancy Act V., George 4, clause 83, Section 6, affords so clear a model. There any one may "*apprehend*" a vagrant taken in the act. And I cannot doubt that apprehension is what the Legislature means and aims at. True, it is left to be gathered from inference and argument, and perhaps may have to be settled by judicial construction, when a few more words or another term would have placed the matter beyond all doubt. The word "require" is far stronger than "request," and implies an authority to enforce what is "required" to be done. In the present case, if the police officer could take no other action upon the vagrant refusing to accompany him than repairing to the proper authority for a summons or warrant, it is clear that the provision would be simply nugatory and a dead letter. I am of opinion, therefore, on the principle "*quando aliquid mandatur, mandatur, et omne per quod pervenitur ad illud*" that the police officer "requiring" an apparent vagrant to accompany him may, on his refusal, lawfully apprehend him.

5. A good instance of this principle is afforded by Lord Coke's Reports, volume 12, page 131, where a Statute giving power to Justices to "require" any person "to take the oaths," the Justices may issue their precept to convene the parties; "for when the law granteth any thing to any one *that* also is granted, "without which the thing itself cannot be, and it is against the office of the Justices "and the authority given them by the law, that they shall go and seek the parties."

6. So here, unless the "requirement" can be enforced on the instant, the object of the Act "cannot be," and, therefore, a power of instant enforcement must be implied.

7. The matter is one of the very gravest importance; for the parties to be dealt with are precisely of the class likely to suppose that they cannot be summarily apprehended, to ask for a warrant, and to resist the police, especially native policemen, if an attempt is made to apprehend them without a warrant. Assaults are likely enough to be committed on the police in the discharge of their duty, grievous bodily hurt inflicted, and perhaps even life itself be destroyed. The conse-

quences of resisting a legal and illegal arrest are so different, and the difference so serious, that I cannot but wish no room had been left for question. On the best consideration I can give the point, I come to the conclusion that apprehension is legal under Section 4 in case of a refusal on the part of the vagrant to comply with the requirement of the police officer.

8. As to Section 23, it is true that no procedure is expressly laid down for bringing an offender before the Magistrate who is to deal with the case. But I think that the provisions of Section 4 would be clearly applicable to any person *found*, (the Act does not say by whom, but, I presume, by the police,) *i. e.*, taken in the act of asking for alms, doing so in a threatening manner, or continuing to ask for alms after having been required (I presume by the police) to desist.

9. A man is not less "apparently a vagrant" because he asks alms in a threatening manner, or because he persists in demanding them after he has been desired to desist; and "asking for alms" *simpliciter* constitutes vagrancy under the interpretation clause, Section 3; unless, indeed, a comma is to be inserted after "wandering about," when, in addition to "asking alms," the beggar must have no employment, or be without visible means of subsistence.

10. To constitute an offence under the first clause of Section 23, the vagrant must be proved to have "sufficient means of subsistence," but this can only be ascertained by the result of the inquiry which the Magistrate has to institute.

11. I am of opinion, therefore, that the procedure of Section 4 may be applied to all cases under Section 23, when the vagrant is *found* offending against its provisions.

12. When the police receives information that a vagrant *has been* begging, &c., I doubt very much whether the police could enter any house to take him without a warrant for his apprehension. At all events, it would be always the safest to watch him until he could be taken in the fact, repeating his offence, or to procure a warrant for his apprehension.

13. Again, it may be well to bear in mind the expediency of always dealing with European vagrants by means of European police officers, not natives, whenever practicable.

14. Did I not think that the procedure of Section 4 is applicable to Section 23, I should be of opinion that, as the offences under Section 23 are punishable with imprisonment for less than a year, an offender could not be apprehended without warrant; and that a summons must ordinarily issue, in the first instance, in accordance with the schedule to Act VIII. of 1869 affecting "offences against other laws" than the Indian Penal Code.

15. It is to be observed that whenever the procedure of Section 4 is applied, even in cases falling under Section 23, it must be strictly followed, and, therefore, in the Mofussil the offender must be taken before the nearest Justice of the Peace exercising the full powers of a Magistrate under the Code of Criminal Procedure: notwithstanding that the Magistrate empowered to deal with offences against Section 23 need only be a person exercising *not less* powers than those of a subordinate Magistrate of the first class according to the 4th clause of Section 3.

16. Some inconvenience may arise from this, but I see no help for it; whatever a Magistrate with the lesser powers may do, of course the Justice of the Peace with the full powers of a Magistrate may do. He may, therefore, punish under Section 23.

17. I think the passages which the Inspector-General of Police points out in Rules 2 and 3 ought to be omitted.

(Signed) J. B. NORTON,
Advocate-General.

2nd March 1870.

No. 122. ORDER THEREON, 27th May 1870, No. 664.

With his letter of the 19th. February last, the Inspector-General of Police submitted a draft of Rules for the guidance of Police Officers in enforcing the provisions of the European Vagrancy Act. In accordance with Major Hearn's request the draft was referred to the Advocate-General for his opinion, and the Government Solicitor submits, with his letter above recorded, a copy of Mr. Norton's opinion.

2. The Government observe from these papers that doubts are entertained as to the working power of the provisions of Sections 4 and 23 of the Act. Under the former section, a police officer may require a vagrant to accompany him to the nearest Magistrate of Police or Justice of the Peace exercising full Magisterial powers, in order to an inquiry being made into the vagrant's circumstances; and the latter section provides that a vagrant found asking for alms shall be punishable on conviction by a Magistrate; but as the Act is silent as to the course to be pursued for enforcing the provisions of these sections, the question arises as to how a vagrant who refuses to accompany the police is to be brought before the Magistrate of Police, Justice of the Peace, or the Magistrate who is to deal with the case, if there is to be no power of arrest without warrant.

3. With regard to Section 4, the Inspector-General is of opinion that, in the case of a vagrant refusing to comply with the police officer's requirement under this section, its provisions could only be carried out by arresting the vagrant. The Advocate-General concurring in this opinion states that, in such cases, apprehension is legal.

4. In reference to Section 23, Major Hearn proposes to adopt a procedure in accordance with that prescribed by the enactments noted in the margin, under the provisions of which the Police are authorized, (1) to detain in custody, with a view to future proceedings, suspected or accused persons who refuse to give their names and residence, or who give a false name or residence; (2) to apprehend disorderly characters; and (3) to arrest persons in certain cases without warrant. The Advocate-General, however, is of opinion that the procedure of Section 4 is applicable to all cases under Section 23 when the vagrant is found offending against its provisions; and he states, as his reason for this opinion, that "to constitute an offence under the first clause of Section 23, the vagrant must be proved to have 'sufficient means of subsistence,' but that this can only be ascertained by the result of the inquiry which the Magistrate has to institute."

Section 103 of the Code of Criminal Procedure.
Section 21 of the Madras General Police Act XXIV. of 1859.
Clause 2, Section 100 of the Code of Criminal Procedure.

5. On the other hand, it is observed that the schedule annexed to Act VIII. of 1869, (the Criminal Procedure Code Amendment Act,) prescribes the procedure to be adopted in the case of "offences against other laws" than the Indian Penal Code. According to this schedule, the offences provided for by Section 23 of the Vagrancy Act are bailable offences for which the police may not arrest without warrant, and for which a summons shall ordinarily issue on complaint. It is thought, therefore, that it might be held by the Courts that the procedure laid down by that schedule is alone legally applicable to cases falling under the Vagrancy Act; and that as this Act does not provide for the rules framed under Section 34 having the force of law, any rules that may be made as to procedure would not protect the police.

6. The Government, however, agree with the Advocate-General that, in regard to Section 23 as well as Section 4 of the Vagrancy Act, the power to arrest a recusant on the spot is intended by the legislature, and is indispensable to the successful operation of the Act. They think it necessary that this should be distinctly affirmed in the Rules of Procedure to be framed under Section 34.

7. The Government accordingly approve of the Rules proposed by the Inspector-General. They also approve of Major Hearn's suggestions as to the grant of certificates under Section 9, and the deportation, under Section 17, of persons of European parentage born in India. These suggestions will be embodied in a draft of the Rules which will be submitted to the Government of India.

8. The Government concur in opinion with Major Hearn that prosecutions under Section 27 of the Act should be instituted and conducted ordinarily by Inspectors of Police, but in their absence by Station-house officers. A notification to this effect will be published in the *Fort Saint George Gazette*.

9. Adverting to the recommendation made in paragraph 8 of Major Hearn's letter, relative to the prohibition of the sale of spirituous liquors to vagrants, the Board of Revenue will be requested to cause a specific entry, with reference to the proposed prohibition, to be made, in future, in all licenses granted, and contracts entered into, under the Abkarry Acts XIX. of 1852, and III. of 1864.

10. Resolved that the following letter be addressed to the Government of India.

(Signed) R. S. ELLIS,
Chief Secretary.

No. 123. To the Secretary to the Government of India, Home Department, (Public), dated Fort Saint George, 27th May 1870, No. 665.

With reference to your letter, under date the 30th September last, No. 4415, requesting an expression of the views of the Madras Government in regard to the Rules to be framed by the Government of India under Section 34 of "The European Vagrancy Act, 1869," I am directed to forward, for the purpose of being laid before the Governor-General in Council, the accompanying Draft of Rules, which, in the

opinion of this Government, should be issued for the guidance of officers in matters connected with the enforcement of the Act, together with copies of the correspondence noted in the margin, and to submit, for the consideration of His Excellency in Council, the following observations on the subject of these Rules.

2. It will be seen from the correspondence above referred to, that doubts are entertained as to the manner in which effect is to be given to the provisions of Sections 4 and 23 of the Act. Under the former section, a Police Officer may require a vagrant to accompany him to the nearest Magistrate of Police or Justice of the Peace exercising full Magisterial powers, in order to an inquiry being made into the vagrant's circumstances; and the latter section provides that a vagrant found asking for alms shall be punishable on conviction by a Magistrate; but as the Act is silent as to the course to be pursued for enforcing the provisions of these sections, the question arises as to how a vagrant who refuses to accompany a Police Officer is to be brought before the Magistrate of Police, Justice of the Peace, or the Magistrate who is to deal with the case, if there is to be no power of arrest without warrant.

3. With regard to Section 4, the Inspector-General is of opinion that, in the case of a vagrant refusing to comply with the Police Officer's requirement under this section, its provisions could only be carried out by arresting the vagrant. The Advocate-General, concurring in this opinion, states that, in such cases, apprehension is legal. Mr. Norton, however, is apparently not in favour of this procedure being specifically set forth in the administrative Rules to be issued under Section 34; for in the last paragraph of his opinion, he remarks that those portions of the Rules proposed by the Inspector-General of Police, which expressly provide for the power of arrest and detention in custody, ought to be omitted.

4. In reference to Section 23, Major Hearn proposes to adopt a procedure in accordance with that prescribed by the enactments noted in the margin, under the provisions of which the Police are authorized, (1,) to detain in custody, with a view to future proceedings, suspected or accused persons, who refuse to give their names and residence, or who give a false name or residence; (2,) to apprehend disorderly characters; and (3,) to arrest persons in certain cases without warrant. The Advocate-General, however, is of opinion that the procedure of Section 4 is applicable to all cases under Section 23 when the vagrant is found offending against its provisions; and he states, as his reason for this opinion, that "to constitute an offence under the first clause of Section 23, the vagrant must be proved to have 'sufficient means of subsistence,' but that this can only be ascertained by the result of the inquiry which the Magistrate has to institute."

5. On the other hand, it is observed that the Schedule annexed to Act VIII. of 1869 (the Criminal Procedure Code Amendment Act) prescribes the procedure to be adopted in the case of "offences against other laws" than the Indian Penal Code. According to this Schedule, the offences provided for by Section 23 of the Vagrancy Act are bailable offences for which the Police may not arrest without a warrant, and for which a summons shall ordinarily issue on complaint. The Gov-

ernment desire particularly to direct attention to the possible and indeed very probable event of the Courts holding that the procedure laid down by that schedule is alone legally applicable to cases falling under the Vagrancy Act; and that, as this Act does not provide for the rules framed under Section 34 having the force of law, any rule that may be made as to procedure would not protect the Police.

6. The Madras Government, however, agree with the Advocate-General that, in regard to Section 23 as well as Section 4 of the Vagrancy Act, the power to arrest a recusant on the spot is intended by the legislature, and is indispensable to the successful operation of the Act. They think it necessary that this should be distinctly affirmed in the Rules of Procedure to be framed under Section 34, and that the validity of these Rules should be left to be disputed at law by the vagrant.

7. The Government have accordingly approved of the Rules submitted by the Inspector-General of Police with his letter of the 19th February last, and have embodied them in the accompanying draft, with certain verbal alterations.

(Signed) R. S. ELLIS,
Chief Secretary.

Draft of Rules to be made under Section 34 of "The European Vagrancy Act, 1870."

1. When a police officer considers it necessary to proceed against a vagrant under Section 4, he will, within the limits of the town of Madras, send for the Inspector or the European Sergeant of his division, carefully watching the vagrant meanwhile. Outside the limits of the town of Madras a police officer will watch the vagrant as above, and will send intimation to a European Inspector or Head Constable if available at hand. If no European police officer be available, the police officer will send intimation to the Inspector of his division, or, in the absence of the Inspector, to the nearest Station-house officer.

2. On the arrival of the European, or other superior police officer named in Rule 1, the vagrant will be required to produce the certificate referred to in Section 9. If he has no such certificate, he will be required to appear before the nearest Magistrate of Police or Justice of the Peace exercising the full powers of a Magistrate, or other officer invested with powers under Section 10. If the vagrant should refuse to accompany the police officer he may be taken into custody, and may be produced in the usual manner before the officer empowered to deal with the case.

3. If an offence under Section 23 is committed by a vagrant in view of a police officer, or if a complaint is made that such offence has been or is being committed, the police officer shall act as laid down in Rule 1. The European or other superior police officer, on arrival, shall demand the name and residence of the offender with a view to laying information before a Magistrate and obtaining the necessary process. Should the offender refuse to give his name and residence, or give a name or residence which there is reason to believe to be false, he may be dealt with under the provisions of Section 108, Code of Criminal Procedure.

27th May 1870.

4. If a vagrant refuses to desist from committing an offence under Section 23 when required thereto, he may be taken into custody by any police officer under the general powers conferred by Section 21, Act XXIV. of 1859, and clause 2, Section 100, Code of Criminal Procedure.

5. In the event of unavoidable delay in putting the case before a Magistrate, reliable bail may be accepted for the vagrant's appearance.

6. Vagrants forwarded to a work-house or other place under Sections 5, 6, 7, and 8 shall be escorted by a European police officer whenever this is possible.

7. The subsistence allowance of a vagrant escorted by the police shall be in the keeping of the police officer in charge, who shall make the necessary provision for daily subsistence. No such vagrant shall be permitted to enter any arrack shop or other place for the sale of intoxicating liquors, nor shall any intoxicating liquor be supplied to a vagrant en route.

8. Vagrants en route under the above sections will ordinarily be lodged in Police station-houses, but will not be locked up unless this measure may be necessary.

9. Police officers may advance subsistence allowance (when necessary) under Section 8. The amount expended will be recovered from the Magistrate on a bill to be submitted by the Superintendent or Assistant Superintendent of Police.

10. The utmost patience and forbearance will be exercised by all police officers in dealing with vagrants under the provisions of the Act. They will take no notice of abusive language.

11. Certificates under Section 9 shall only be granted to persons who are honestly striving to obtain means of employment, and who are only likely to be vagrants (against their will) until they succeed in their endeavours. Such certificates shall be issued in the English and in the principal vernacular languages of the Presidency in which they are granted; and persons who have received certificates shall be bound to produce them when their production is demanded by a police officer.

12. No agreement under Section 17 shall be entered into with any person of European extraction, born in India, unless he can satisfy the Government that, from exceptional circumstances, he is likely to be able to gain a livelihood in any place beyond the territorial limits of India.

FORT SAINT GEORGE,
27th May 1870.

(Signed) R. S. ELLIS,
Chief Secretary.

Home 1870 Dept.

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From Government of

Fort Saint George.

Dated 27th May 1870.

No.

Enclosures

R.

Spare copies

D. No.

D.

Procs.

L. No. 665.

No.

MAY.
Nos. 120-123.

Forwarding Draft Rules in connexion with the
European Vagrancy Act of 1869, with certain
observations thereon.

X 13
Rules for the guidance of the
Police under act ~~XXI~~ of 1869.

1. When a Police Officer considers it necessary to proceed against a Vagrant, under section 4, he will, (within the limits of Madras Town) send for the Inspector or the European Sergeant of his Division, carefully watching the Vagrant meanwhile. Outside the limits of Madras Town, a Police Officer will watch the Vagrant as above, and will send intimation to a European Inspector or Head Constable if available at hand. If no European Police Officer be available, the Police Officer will send intimation to the Inspector of his Division, or (in the absence of the Inspector) to the nearest Station House Officer.

2. On the arrival of the European,

or other Superior Police Officer named in Rule 1 the Vagrant will be required to produce his Certificate. If he has no Certificate he will be required to appear before the nearest Magistrate or Justice of the Peace or other Officer invested with Powers under Section 10. If the Vagrant should refuse to accompany the Police Officer he may be taken into Custody, and may be produced in the usual manner before the Officer empowered to deal with the case.

3. If an Offence under Section 23 is committed by a Vagrant in view of a Police Officer or if a Complaint is made that such Offence has been, or is being, committed, the Police Officer shall act as laid down in Rule 1. The European or other Superior Police Officer on arrival shall demand the

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the name and residence of the offender with a view to laying information before a Magistrate and obtaining the necessary Process. Should the Offender refuse to give his name and residence, or give a name or residence which there is reason to believe to be false he may be dealt with under the Provisions of Section 108 C. C. P. -

4. If a Vagrant refuses to desist from committing an Offence under Section 23 when required thereto he may be taken into Custody by any Police Officer under the general powers conferred by Section 21 Act XXIV of 1859 and Clause 2 Section 100 b. b. P. -

5. In the event of unavoidable delay in putting the case before a Magistrate reliable Bail may be accepted for the Vagrant's appearance.

6. Vagrants forwarded to a work house

house or other place under Sections 5, 6, 7, and 8 shall be escorted by a European Police Officer whenever this is possible.

7. The subsistence allowance of a Vagrant escorted by the Police shall be in the keeping of the Police Officer in charge who shall make the necessary provision for daily subsistence.

No such Vagrant shall be permitted to enter any arrack shop or other place for the sale of intoxicating liquors, nor shall any intoxicating liquor be supplied to a Vagrant en route.

8. Vagrants en route under the above Sections will ordinarily be lodged in Police Station Houses, but will not be locked up unless this measure may be necessary.

9. Police Officers may advance subsistence allowance (when necessary) under section 8. The amount expended will be recovered from the Magistrate on a Bill to be submitted by the Superintendent.

Superintendent or Assistant Superintendent of Police -

10. The utmost patience and forbearance will be exercised by all Police Officers in dealing with Vagrants under the provisions of the act. They will take no notice of abusive language.

C. M. M.

Inspector General of Police

General.

No 1086

Chief Office of Insp^{te} Genl^l
of Police,
Madras, 19th February 1870

From,

The Inspector General of Police

To,

The Chief Secretary to Government,
Fort St. George.

Sir,

With reference to para 5 of
G. O. No 104 of 26th January 1870
J. D. I have the honor to submit
a set of Rules for the guidance
of Police Officers taking steps
under Act XXI of 1869.

2. I have found some diffi-
culty in framing these Rules in-
owing to the absence of definite
Procedure in the provisions of the
Act. Under Section 4 a Vagrant
may

1870 Department

Enclosure

In a letter from
the Chief Genl of Police
dated Madras 19th
February 1870 No 1086

Rules for the
guidance of the Police
under act XXI of

1869 -

Recd
24/7/70
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may be "required" to accompany a Police Officer, but nothing is laid down as to the course to be pursued if the Vagrant refuses to obey this requisition. The last clause of Rule 2 assumes the power to arrest in such cases, on the general principle that where the Law enacts certain provisions it also gives the power to enforce these provisions if necessary. The provisions of Section 4 could only be enforced on a recusant by arresting him.

3. Then with regard to Section 23 which defines the Offence of what may be called aggravated Vagrancy, the Act lays down no Procedure whatever. According to the Schedule to C. C. P. under the heading "Offences against other Laws." this is

Section 19 prescribes
the penalty for
refusing to obey
the Police Officer or
Justice.

Gazette of
India Ex-
traordinary.
21st September
1869.

21/9
a bailable offence for which the Police may not arrest without a warrant, & for which a summons shall ordinarily issue on complaint. On the report of the Select Committee being taken into consideration by the Council of India the Hon'ble Mr. Lockereell pointed out the want of working power in the provisions of the Act under this Section. To meet the want he suggested that the provisions of Section 4 and 23 might be worked in union, but there seems to be a difficulty in this as there is some difference of jurisdiction (compare last clause of Section 3 with Section 10). In Rules 3 and 4 I have proposed a Procedure which seems to me to be in accordance with the general Law, but on this point (as also on the power to arrest given by Rule 2) the Law Officers

Officers of the Government might be consulted. To leave an offender under section 23 to his own devices while a summons or Warrant was being procured would be in most cases a very futile proceeding, and it seems anomalous that the procedure in ^{cases of} aggravated Vagrancy under section 23 should be less stringent than in cases of simple Vagrancy under section 4. But if the Government should prefer to leave this part of the Procedure undescribed then the second part of Rule 2 beginning "If the Vagrant should refuse", the second part of Rule 3 beginning "The European or other Police Officer" and the whole of Rule 4 might be omitted.

4. With reference to the opinion of the Committee on Vagrancy contained in Para 4 of their letter as to the

233
the grade of officers to be appointed under section 27 for conducting prosecutions under the Act I think that such prosecutions might be conducted ordinarily by Inspectors, but in their absence by Station House Officers. At the Head Quarters of Joint and Head Assistant Magistrates the Police Inspector has usually a whole Salang under his charge, and his absence at a distant Police Station of his Division might entail a very inconvenient delay. A tendency to neglect prosecutions under this Act could be easily checked, but I do not think that it is likely to exist.

5. My opinion has further been requested with regard to the Administrative Rules to be framed under section 34 of the Act.

6. (i) With regard to the grant of certificates under section 9 of the Act. The exact scope and intention of this section are not clear from the wording. The sort of person who is not likely to become a Vagrant would probably not require a certificate at all, and on the other hand if a person does become a Vagrant under the meaning of the Definition (section 3) it is not clear why he should be protected by a Certificate the primary condition of which he has violated. The section was probably intended to apply to persons who are honestly striving to obtain means of employment, and who are only likely to be Vagrants (against their will) until they succeed in their endeavours.
all

25/4
All that can be said is that such certificates should be granted with great caution, but I am unable to suggest any precise rule to be laid down. I should suppose that a Vagrant refusing to produce a certificate would as a matter of course be dealt with as an uncertified Vagrant, but a Rule on the subject would remove all doubt. The certificates should undoubtedly be printed in the principal Vernacular languages as well as in English.

7. (ii) As to the deportation of persons of European parentage born in India, I conclude that persons are meant who have not only been born in this country but who have never left it or acquired

a domicile elsewhere. Such persons not only have means & resources in India which are wanting to imported Europeans, but they would be singularly destitute of resource in a European country. Moreover they have no native place or parish to fall back upon. No persons can be removed from India save by their own consent but it would seem advisable that no agreement should be entered into with persons of this class unless they can satisfy the Government that from exceptional circumstances they are likely to be able gain a living elsewhere.

8. (III & IV) I have introduced into Rule 7 the provision that the Subsistence Allowance shall not be paid to the Vagrant himself and

27, 5
and Rule 8 provides against the supply of intoxicating liquor to a Vagrant under escort of the Police. But it would be well that the prohibition suggested by Government should be introduced into the Licenses of all Vendors of intoxicating liquor.

9. No other points occur to me on which administrative rules are required.

I have the honor to be,
Sir,
Your Most Obedient Servant,

C. M. M.
Inspector General of Police.

Referred to the Advocate General for
opinion on the point referred to in paragraph 3 of
this letter -

Subsist. Case
26 January 1870
26
His Honorment Solicited
with Pres. of 26 Jan 1870
J. I. Muecke
As Chief Secy
J. I. Muecke dated 24/1

Dec. 29th May 1890.
 Sub - 1870 - 26th
 Thome
 The Chief Clerk:
 of Police.
 10466
 The Chief Clerk
 to Government
 of Mad. Govt
 Dated 19th Dec 1890
 Dec 29th 1890
 Sub - 1870 - 1086
 Enc: One
 Enclosed a set of
 for the guidance of
 Police Officers
 the for the
 of 1869.
 Enclosed.

No 112.

Madras, 4th March 1870.

From T. G. Prichard,
Government Solicitor,
Madras.

To
J. I. Minchin Esq^{re},
Actg. Chief Secretary to Government,
Fort St. George,
S.

Sir,

Dated 24th February
1870. made out
Letter from the
Inspector General
of Police to Govern-
ment dated 16th
February 1870 No. 7086

1. I have the honor to acknowledge the receipt of the Order of Government noted in the margin, together with its enclosures, requesting the Advocate General's Opinion relative to the proposed Rules for the guidance of the Police under the new Vagrancy Act No. **XXI** of 1869.

2. I submitted the matter for the consideration of the Advocate General and have also conferred with him thereon, and

3. I now forward a Copy of his Opinion, and return the enclosures above noted, ~~to~~ ^{as} together with the Telegram of the Home Secretary to Government forwarded to me yesterday). -
I have the honor to be

I have the honor to be,

Sir,

Your most Obedient Servant,
J. G. Richard
 Government Solicitor.

Two difficulties suggest themselves to the Inspector General of Police, both of them as to procedure, on the European Vagrancy Act, as to which my opinion is deemed.

2. The first relates to Section 4; the second to Section 22. The first doubt arises upon a point of defective procedure, the second questions whether there is any procedure at all.

3. As to the first, the question arising on Section 4, I think the view taken by the Inspector General of Police is correct.

Correct.

4. It is to be regretted, I think ^{that} the words of the Section are not more explicit and express; especially when the English Vagrancy Act 5 George 4 c. 83 Section 6 affords so clear a model. There any one may "apprehend" a Vagrant taken in the Act. And I cannot doubt that apprehension is what the Legislature means and aims at. True, it is left to be gathered from inference and argument, and perhaps may

Paid 1870
 King of the Government
 The City of New York
 May 190.
 \$10.00
 \$10.00

at Toronto City of the 23rd June
General's Order relative to
the proposed Rules for the
Governance of the Police in
under the new Corporation
Act No. XXI of 1849, and
return of a document to be
= Containing thereto. —

C 44/3.
 R. 12/5/70
 C 21/5/70
 12/

may have to be settled by judicial construction, where a few more words or another term would have placed the matter beyond all doubt. The word "require" is far stronger than "request," and implies an authority to enforce what is "required" to be done. In the present case, if the Police Officer could take no other action upon the Vagrant refusing to accompany him than repairing to the proper authority for a summons or Warrant, it is clear that the provision would be simply nugatory and a dead letter. I am of opinion therefore on the principle "*quando aliquid mandatur mandatur et omne per quod pervenitur ad illud*" that the Police Officer "requiring" an apparent Vagrant to accompany him may, on his refusal lawfully apprehend him.

5. A good instance of this principle is afforded by Ld. Cokes Reports Vol 12. p. 131 where a statute giving power to justices to "require" any person "to take the oaths" the justices may issue their precept to convene the parties; for

"for when the law granteth any thing to any one, that also is granted, without which the thing itself cannot be, and it is against the Office of the Justices and the authority given them by the law, that they shall go and seek the parties."

6. So here unless the "requirement" can be enforced on the instant, the object of the Act "cannot be," and therefore a power of instant enforcement must be implied.

7. The matter is one of the very gravest importance, for the parties to be dealt with are precisely of the class likely to suppose that they cannot be summarily apprehended, to ask for a Warrant, and to resist the Police, especially Native Policemen, if an attempt is made to apprehend them without a Warrant. Assaults are likely enough to be committed on the Police in the discharge of their duty, grievous bodily hurt inflicted, and perhaps even life itself be destroyed. The consequences of resisting a legal and illegal arrest are so different, and the difference so serious that

that I cannot but wish no room had been left for question. On the best consideration I can give the point, I come to the conclusion that apprehension is legal under Section 4 in case of a refusal on the part of the Vagrant to comply with the requirement of the Police Officer.

No. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.

8. As to Section 23, It is true that no procedure is expressly laid down for bringing an Offender before the Magistrate who is to deal with the case. But I think that the provisions of Section 4 would be clearly applicable to any person found (the Act does not say by whom, but I presume by the Police) i. e. taken in the act of asking for alms, doing so in a threatening manner or continuing to ask for alms after having been required (I presume by the Police) to desist.

9. A man is not less "apparently" a Vagrant because he asks alms in a threatening manner, or because he persists in demanding them after he has been desired to desist; and "asking" for alms simpliciter constitutes Vagrancy

10. Vagrancy under the interpretation clause Section 3, unless, indeed a comma is to be inserted after "wandering about", when in addition to "asking" alms, the beggar must have no employment, or be without visible means of subsistence.

11. To constitute an Offence under the first clause of Section 23, the Vagrant must be proved to have "sufficient means of subsistence", but this can only be ascertained by the result of the inquiry which the Magistrate has to institute.

12. I am of opinion, therefore, that the procedure of Section 4 may be applied to all cases under Section 23, when the Vagrant is found offending against its provisions.

13. When the Police receives information that a Vagrant has been begging, &c. I doubt very much whether the Police could enter any house to take him without a Warrant for his apprehension. At all events, it would be always the safest to watch him until he could be

be taken in the fact repeating his offence, or to procure a Warrant for his apprehension.

13. Again it may be well to bear in mind the expediency of always dealing with European Vagrants by means of European Police Officers, not natives whenever practicable.

14. I do not think that the procedure of Section 4 is applicable to Section 23. I should be of opinion that as the offences under Section 23 are punishable with imprisonment for less than a year, an Offender could not be apprehended without Warrant, and that a summons must ordinarily issue, in the first instance in accordance with the schedule to Act VIII of 1869 affecting offences against other laws than the Indian Penal Code.

15. It is to be observed that whenever the Procedure of Section 4 is applied, even in Cases falling under Section 23, it must be strictly followed, and therefore in the Mofussil, the Offender must be taken before the nearest Justice of the Peace exercising the full powers

37 / #
powers of a Magistrate under the Code of Criminal Procedure. Notwithstanding that the Magistrate empowered to deal with offences against Section 23 need only be a person exercising ~~not~~ less powers than those of a subordinate Magistrate of the first class according to the 4th clause of Section 3.

16. Some inconvenience may arise from this, but I see no help for it, whatever a Magistrate with the lesser powers may do, of course the Justice of the Peace with the full powers of a Magistrate may do. He may therefore punish under Section 23.

17. I think the passages which the Inspector General of Police points out in Rules 2 and 3 ought to be omitted.

Jof John Bruce Norton
Adv. Genl.

2nd March
1870

(True Copy)

H. P. Richard

Govt. Solicitor.

Draft of Rules to be
made under section 34 of
"The European Vagrancy
Act, 1870." —

1. When a Police Officer considers it necessary to proceed against a Vagrant, under section 4, he will, within the limits of the Town of Madras, send for the Inspector or the European Sergeant of his Division, carefully watching the vagrant meanwhile. Outside the limits of the Town of Madras a Police Officer will watch the Vagrant, as above, and will send intimation to a European Inspector or Head Constable if available, at hand. If no European Police officer be available, the Police

officer

N
 A/A

Copy of the above
 General's Office
 dated 2nd March 1870.

Enclosure in letter
 from the Government
 to the Acting Chief
 Secretary to Government
 dated 4th March 1870
 No. 112.

1870-24 May 1870 & 1871

Officer will send intimation
to the Inspector of his Division,
or, in the absence of the
Inspector, to the nearest
Station House officer.

2. On the arrival of
the European, or other superior
Police officer named in
Rule 1, the Vagrant will
be required to produce the
certificate referred to in
section 9. If he has no such
certificate, he will be required
to appear before the nearest
Magistrate of Police or Justice
of the Peace exercising the
full powers of a Magistrate,
or other officer invested with
powers under section 10. If
the Vagrant should refuse
to accompany the Police
officer he may be taken into
custody

13/13
custody, and may be produced
in the usual manner before
the officer empowered to deal
with the case.

3. If an offence under
section 23 is committed by
a Vagrant in view of a Police
officer or if a complaint is
made that such offence
has been or is being committed,
the Police officer shall act
as laid down in Rule 1. The
European or other superior
Police officer, on arrival
shall demand the name
and residence of the offender
with a view to laying infor-
-mation before a Magistrate
and obtaining the necessary
Process. Should the offender
refuse to give his name and
residence, or give a name or
residence

Off residence, which there is reason
to believe to be false, he may
or, he dealt with under the
provisions of section 108, Code
of Criminal Procedure.

2. 4. If a Vagrant refuses
to desist from committing
an offence under section 23
And when required thereto, he may
be taken into custody by any
Police Officer under the
general powers conferred by
section 21 Act XXIV of 1859
to, and clause 2 section 100, Code
of Criminal Procedure.

of
for
no
5. In the event of un-
aidable delay in putting
the case before a Magistrate,
reliable Bail may be accepted
for the Vagrant's appearance.

6. Vagrants forwarded
to a work-house or other place
under sections 5, 6, 7 and 8
shall be escorted by a
European Police Officer, when-
ever this is possible.

7. The subsistence
allowance of a Vagrant
escorted by the Police shall
be in the keeping of the Police
Officer in charge, who shall
make the necessary provision
for daily subsistence. No
such Vagrant shall be
permitted to enter any
arrack shop or other place
for the sale of intoxicating
liquors, nor shall any intoxicating
liquor be supplied to a
Vagrant en route.

8. Vagrants enroute
under the above sections
will ordinarily be lodged
in Police Station Houses, but
will not be locked up unless
this measure may be necessary.

9. Police Officers may
advance subsistence allow-
ance (when necessary) under
section 8. The amount expended
will be recovered from the
Magistrate on a Bill to
be submitted by the Super-
intendent or Assistant
Superintendent of Police.

10. The utmost patience
and forbearance will be
exercised

exercised by all Police
officers in dealing with
Vagrants under the provision
of the Act. They will take
no notice of abusive language.

11. Certificates under
section 9 shall only be
granted to persons who
are honestly striving to
obtain means of employment
and who are only likely to be
vagrants (against their will)
until they succeed in their
endeavours. Such certificates
shall be issued in the English
and in the principal vernacu-
lar languages of the
Presidency in which they
are granted; and persons who
have received certificates
shall be bound to produce
them

them when their production
is demanded by a Police
Officer.

12. No agreement under
section 17, shall be entered
into with any person of
European extraction, born in
India, unless he can satisfy
the Government that from
exceptional circumstances
he is likely to be able to
gain a livelihood in any
place beyond the territorial
limits of India.

PL

Dr. H. J. May
Rules

- 1 Letter from Insp. Genl. of Police
d/19th February 1870. No 1086.
- (3) Letter from Govt. Solicitor dated
14th March 1870. No 112.
- (2) Telegram from Home Dept. sent d/2nd March 1870. -
India - d/2nd March 1870. -

51
Judicial Department.

Memo for Orders

With reference to the
Order of Government
of 26th January last,
No 104, the Inspector
General of Police has
submitted, with his
letter of the 19th ^{February} ~~January~~,
a set of Rules for the
guidance of Police Offi-
-cers in enforcing the
provisions of the European
Vagrancy Act. In accord-
-ance with Major
Hearn's request, these
Rules were referred to
the Advocate General
for his opinion, and
the Government Solicitor

Sub. No. 27. May 1870
Old 11/10

has now furnished a
copy of Mr. Norton's
Opinion.

2. It will be observed that owing to the absence of definite procedure in the provisions of the Act, Major Hearn has specifically provided in Rule 2, for the power of arrest in the case of Vagrants refusing to accompany a Police Officer when required to do so under Section 4;—

in Rule 3, for the power of detaining in custody vagrants committing an offence under Section 23, who may refuse to give their names, or who may give names believed to be false;—

And in Rule 4, for

Agree with Mr Ellis & Mr. Foster
 that the power to arrest & the
 shot is intended & indispensable
 to the successful execution of the
 act. I would distinctly affirm
 that in the rules of procedure
 and in the right of procedure
 and law by the report of Mr.

asked ^{at Law} ~~at Law~~ ^{you} ~~you~~
 I am sure the Police is to the Police
 I am understanding what they
 are doing - and shall be directly
 at of course that if the Police
 refuses to allow before we may
 be denied be taken into custody
 by the Police - Yes, it had better be
 noted in the Police - Police is the
 accordance with the Provision under
 the English Vagrancy Law. All

See at the end for key
pairs. I would print
these patterns of the South
rules in italics & represent
explicit instructions.
Explaining that our Phoeni-
cians have an authoritative

53
the power of apprehension
or arrest without warrant,
where a vagrant refuses
to desist from begging.

3. Major Pearson remarks that if the Government should prefer to leave undescribed the procedure as above laid down, then the passages in Rules 2 & 3, referring thereto, & the whole of Rule 4, might be omitted.

4. The Advocate General states that the passages in Rules 2 & 3 above referred to, ought to be omitted. - Orders are requested.

5. The Course advised in para 11 of Mr. Wilson's opinion, as to the application of the procedure of Section 4 to all cases under Section 23, seems to

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be in accordance with
the views expressed by the
Honble Mr Cockerell
when the Bill was under
discussion before the Im-
perial Legislature.

Mr Cockerell said,
"that for his own part
"he entertained grave doubts
"as to the working of the
"provisions of Section 23.
"It was all very well to
"say that an European
"vagrant found asking
"alms" shall be punishable
"on conviction by a Magis-
"trate," but how is he
"to be brought before the
"Magistrate if there was
"to be no power of arrest
"without warrant in such
"cases? The European,
"unlike the Native mendi-
"cant, had no fixed
"local

But we further state
there are not the laws

Surely this shows that
the Legislature did not
intend or at least failed
to provide that Sect IV
(especially rape & in default
be it remembered) should
find the procedure
under Sect 23?

55
"local habitation, and, before
"a summons could issue
"on a charge of an offence
"under this section, he
"would in all probability
"be beyond its reach, and
"its service would be found
"impracticable. There was,
"perhaps, an indirect way
"of bringing the offender
"to account through the
"powers vested in the Police
"by Section 4; but then
"the operation of that section
"was deferred, and in the
"meanwhile the provisions
"of Section 23 were likely
"to prove inoperative. If
"the apprehended difficulty
"should arise, it might be
"met by the Government
"putting in force the
"provisions of Section 4,
"and instructing all Police
Officers

"Officers to act up to
"those provisions only in
"the case of persons who,
"being seen by or represent-
"ed to them to be asking
"alms, appeared to fulfil
"the first of the conditions
"constituting vagrancy
"under Section 3."

+ i.e. found asking for alms. -

6. With reference to
para 15 of Mr Norton's
opinion, it is submitted
that if the Government
deem it necessary to pro-
-pose an administrative
Rule to the effect of that
para, it would be well
to add a few words, so
as to provide for the
offender being taken before
the nearest Justice of
the Peace exercising the
full powers of a Magis-
-trate under the Code

But the Rules are not
the force of Law: and
cannot make that
legal which otherwise
is not law full.

As the Rules are our
Law in the first instance
and I would let the
party aggrieved pursue
the contrary. A.

Mr Norton seems to
be without Sec 10 of
the Act. This might be referred to him - B. C.

SOS N.

59
of the Criminal Procedure,
or before any officer
duly empowered under
Section 10. It will be
seen that this Section
enables the Local Govern-
-ment to invest any
Justice of the Peace,
District Superintendent
of Police, or Assistant
District Superintendent
of Police with the juris-
-diction and powers con-
-ferred by Part I of
the Act on a Justice
of the Peace exercising
full magisterial powers.
7. As to the grant of
Certificates under Section
9 of the Act, (See para 6
of Major Hearn's letter)
it may perhaps be deemed
sufficient to propose
a Rule to the effect
that

that such Certificates should only be granted to persons who are honestly striving to obtain means of employment and who are only likely to be vagrants (against their will) until they succeed in their endeavours; that such Certificates should be issued in English and in the principal Vernacular languages of the Presidency, and that persons who have received Certificates should be bound to produce them when their production is demanded by a Police Officer.

8. In regard to the deportation of persons of European parentage

Yes.
J. D. S. N.

I concur.

J. D. S.

N.

51.
born in India, Major Hearn thinks it advisable "that no agreement should be entered into with persons of this class unless they can satisfy the Government that from exceptional circumstances they are likely to be able to gain a living elsewhere."

9. It will be seen that Major Hearn has embodied in Rule 7 the provisions referred to in clauses III & IV of para 6 of the Order of the 26th January, with regard to the payment of subsistence allowance under Section 8, and the prohibition of the sale of spirituous liquors to Vagrants. The Board

of Revenue may be requested to cause a specific entry, with reference to the proposed prohibition, to be made in the licenses of all Vendors, under the authority vested in them by Section 7 of the Presidency Towns Act XIX of 1852 and by Section 6 of the Mofussil Act (Madras) III of 1864. This will meet the suggestion made in the concluding para of the Inspector General's letter.

10. - Major Kearns' opinion that prosecutions under the Vagrancy Act should be instituted & conducted ordinarily by Inspectors of Police, but in their

Yes - as soon as they can - but up country the Farmers are licensed and we cannot interfere with them in that manner, as that can be done -

Yes I do

absence, by Station House Officers - may be acted upon. All that is necessary is to issue an order to that effect under the provisions of Section 27.

I see time, though in the Department, to differ from the Advocate General as to arrest in that warrant under Sects IV & XXIII of the Act. The Law authorizes the Police Officers, to "seize" a Vagrant & accompany him to the Magistrate - and to accompany him to the Magistrate - on his conviction - to imprison him for a month or fine him or both. But the Act is silent as to the process by which he is to be put before the Magistrate if he declines to go. We must therefore look elsewhere for the process and we find it, I think, at the end of the Schedule attached to Act VIII of 1869, which says distinctly that in "Offences against the Law" that are the Penal Code (the case here) where the punishment is imprisonment under 3 years or fine only or fine with imprisonment under one year (also the case here) not only shall not the Police arrest without warrant, but the Magistrate himself shall ordinarily

as a summons to a Warrant. This seems to me fatal to Mr Norton's line of argument.

Mr Norton argues that because the vagrant must be put before the Magistrate, therefore he must be arrested in that warrant. But this does not follow. he may be summoned - & he may be arrested on a warrant. & I think, any Court with Act VIII of 1869 before it would decide that these are equally effectual, though less convenient methods of procuring the Vagrants appearance - while they have the advantage of being legal.

I think that the Act does not give the Rules framed under Sect 34 - the force of Law: so that a rule of the effect desired would not be good law. I should point this out to the Sup. Court and report Explicitly.
24/3 -
11/12/70
Instructions on the printed

I would caution his Honor, but as the Magistrate would send the Vagrants to the Court of Sessions I think it would be better to put it out with the Court which has the power.
R.A.

I go out under bond
to the same place in law
of the Court's opinion.
The Act does not warrant
them - as far as I am concerned.
R.A.

It seems to me that the word "seize" carries with it the means necessary to enforce the order. Moreover, the Act does not require that it be enforced. As an order it is enforceable. As an order it is enforceable.

Public Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following again Proceedings

of Government, dated 26th January 1870, No 104.

Read also the following letters.

From the Inspector General of Police, dated 19th February 1870, No 1086.

From the Government Solicitor, dated 4th March 1870, No 112.

Order thereon, 27 May 1870 No 66.

J.D.S.

See remarks on draft letter to Secy. for.

R.A.

With his letter of the 19th February last, the Inspector General of Police submitted a draft of Rules for the guidance of Police officers in enforcing the provisions of the European Vagrancy Act. In accordance with Major Hearn's request the draft was referred to the Advocate General for his

his opinion, and the Government Solicitor submits with his letter above recorded, a copy of Mr. Norton's opinion.

2. The Government observe from these papers that doubts are entertained, as to the working power of the provisions of sections 4, and 23 of the Act. Under the former section, a Police officer may require a vagrant to accompany him to the nearest Magistrate of Police or Justice of the Peace exercising full Magisterial powers, in order to an enquiry being made into the vagrant's circumstances; - and the latter section provides that a vagrant found asking for alms shall be punishable on conviction by a Magistrate;

but as the Act is silent as to the course to be pursued for enforcing the provisions of these sections, the question arises as to how a vagrant who refuses to accompany the Police, is to be brought before the Magistrate of Police, Justice of the Peace, or the Magistrate, who is to deal with the case, if there is to be no power of arrest without warrant.

3. With regard to Section 4, the Inspector General is of opinion

has

opinion that in the case of a vagrant refusing to comply with the Police Officers' requirement under this section, its provisions could only be carried out by arresting the vagrant.

The Advocate General concurring in this opinion, states that, in such cases, apprehension is legal.

4. In reference to section 23, Major Hearn proposes to adopt a procedure in accordance with that prescribed by the enactments noted in the margin, under the provisions of which the Police are authorized (1) to detain in custody with a view to future proceedings

* Section 108 of the Code of Criminal Procedure.
Section 21 of the Madras Genl. Police Act XXIV of 1859
Clause 2 Section 100 of the Code of Criminal Procedure.

19 18
proceedings, suspected, or accused persons, who refused to give their names, and residence, or who give a false name or residence; (2) to apprehend disorderly characters; and (3) to arrest persons in certain cases without warrant.

The Advocate General, however, is of opinion that the procedure of section 4 is applicable to all cases and section 23 when the vagrant is found offending against its provisions, and he states, as his reason for this opinion, that to constitute an offence under the first clause of section 23, the Vagrant must be proved to have sufficient means of subsistence, but that this can only be ascertained by the result of the enquiry which the Magistrate has

has to institute."

5. On the other hand, it is observed that the Schedule annexed to Act VIII of 1869 (the Criminal Procedure Code Amendment Act) prescribes the procedure to be adopted in the case of "offences against other laws" than the Indian Penal Code. According to this Schedule, the offences provided for by section 23 of the Vagrancy Act, are bailable offences for which the Police may not arrest without warrant, and for which a summons shall ordinarily issue on complaint. It is thought, therefore, that it might be held by the Courts that the procedure laid down by that Schedule is alone legally applicable to

19
to cases falling under the Vagrancy Act; and that as this Act does not provide for the rules framed under section 34 having the force of law, any rules that may be made as to procedure would not protect the Police.

6. The Government however, agree with the Advocate General that, in regard to section 23, as well as section 4 of the Vagrancy Act, the power to arrest a recusant on the spot is intended by the legislature, and is indispensable to the successful operation of the Act. They think it necessary that this should be distinctly affirmed in the Rules of Procedure to be framed under section 34, and that the validity of these

~~these Rules should be left
to be disputed at law by
the Vagrants~~

7. The Government accordingly approve of the Rules proposed by the Inspector General. They also approve of Major Hearn's suggestions, as to the grant of certificates under section 9, and the portation, under section 17, of persons of European parentage, born in India. These suggestions will be embodied in a draft of the Rules, which will be submitted to the Government of India.

8. The Government concur in opinion with Major Hearn, that prosecutions under section 27 of the Act should

125 71
should be instituted, and conducted ordinarily, by Inspectors of Police, but in their absence, by Station House Officers. A Notification to this effect will be published in the Fort Saint George Gazette.

9. Adverting to the recommendation made in para 8 of Major Hearn's letter, relative to the prohibition of the sale of spirituous liquors to Vagrants, the Board of Revenue will be requested to cause a specific entry, with reference to the proposed prohibition, to be made, in future, in all licenses granted, and contracts entered into, under the Abkary Acts XIX of 1852, and III of 1864.

10. Resolved that the following

To The Insp. Genl. of Police 6
 The Board of Revenue 6
 The Rev. Dept. 11
 The Madras Committee on
 European Vagrancy
 The Govt. Solicitor.
 Not to be accounted for to the Audit in C. 11

Vagrancy Rules

draft 28/5 with two enclos.
 Drafts sent 30/5

Public Department.

hobbs

I expect the drafts I would
 not make too much of the
 difficulty of arrest which
 warrant which I think is
 indispensable to the working of
 the act. N.

The Secretary to the
 Government of India.
 Home Dept. (Public)

Sir,

I pass the drafts to
 do not like the mode
 in which the subject
 is placed before the
 Sub. Gt.

With reference to your
 letter under date the 30th
 September last, N^o 4415,
 requesting an expression of
 the views of the Madras
 Government in regard to the
 Rules to be framed by the
 Government of India under
 Section 34 of the European
Vagrancy Act, 1869, I am
 in that warrant shall directed to forward, for
 be stated most decidedly the purpose of being laid
 if passed over as a before the Governor General
 were thought of and the in Council, the accompanying
 G. S. may not see the Draft

Bot. of 118 } Madras

Public

To
 The Secy. Genl. of Police
 Madras

Dated May 27 }
 Recd. 1870, No. 664.

Nos. 120. 123

Approval of the Draft
 Rules submitted by the
 Secy. of Police to the
 Secy. of Police in
 the provisions of the
 European Vagrancy Act,
 and directing that being
 embodied in a draft of
 Administrative rules, which
 are submitted

120-123

Special

C 21/5/70

Draft of Rules, which, in the
opinion of this Government,
should be issued for the
guidance of officers in
matters connected with the
enforcement of the Act, together
with copies of the correspondence
noted in the margin, and
to submit, for the consider-
ation of His Excellency in
Council, the following ob-
servations on the subject
of these Rules -

2. It will be seen from
the correspondence above
referred to, that doubts are
entertained, as to the ^{manner in which effect is to be given to} ~~provision~~
of the provisions of
sections 4 and 23 of the Act.
Under the former section, a
Police Officer may require
a vagrant to accompany
him

matter in its
true light. None ever I do
not think it right that
the Govt. should order a ^{revision} ~~Change~~
which they have too good
to be wise illegal & then

⁺ Proceedings of Govt., 26th January
1870, No 104.

Letter from Inspector Genl of Police,
19th February 1870, No 1086.

D^o - from Government Solicitor
4th March 1870, No 112.

the one as if judicially
proving the illegality on
its subjects. I would let
the doubtful rule stand
in the draft, but would
note the defect plainly
that in our opinion
arrest without warrant
is illegal - and that
the defect can only be
amended by legislation

I. O. P.

requires to accompany a
Police Officer.

him to the nearest Magistrate
of Police, or Justice of the Peace,
exercising full Magisterial
powers, in order to an enquiry being
made into the vagrant's
circumstances, and the latter
section provides that a
vagrant found asking for
alms shall be punishable
on conviction by a Magistrate,
but, as the Act is silent
as to the course to be pursued
for enforcing the provisions
of these sections, the question
arises, as to how, a ^{convicted} ~~person~~ ^{who}
is to be brought before the
Magistrate of Police, Justice
of the Peace, or the Magistrate
who is to deal with the case,
if there is to be no power of
arrest without warrant.

3. With regard to
section 4, the Inspector General

is of opinion that in the
case of a vagrant refusing
to comply with the Police
Officer's requirement under
this section, its provisions
could only be carried out
by arresting the vagrant. The
Advocate General, concurring
in this opinion, states that,
in such cases, apprehension
is legal. Mr. Norton, however,
is apparently not in favor
of this procedure being speci-
fically set forth in the
administrative Rules, to be
issued under section 34; for
in the last para of his
opinion, he remarks that
those portions of the Rules
proposed by the Inspector
General of Police, which
expressly provide for the
power

* Section 100 of the Code of Criminal
Procedure

Section 21 of the Madras General
Police Act XXIV of 1859

Clause 2, Section 100 of the
Code of Criminal Procedure

power of arrest, and detention
in custody, ought to be omitted.

4. In reference to
section 23, Major Hearn
proposes to adopt a procedure
in accordance with that
prescribed by the enactments
noted in the margin, under
the provisions of which the
Police are authorized (1) to
detain in custody, with a
view to future proceedings,
suspected or accused persons,
who refuse to give their names
and residence, or who give
a false name or residence;
(2) to apprehend disorderly
characters; and (3) to arrest
persons in certain cases without
warrant. The Advocate General,
however, is of opinion that the
procedure of section 4 is appli-
cable to all cases under
section 23 when the Vagrant
is

is found offending against its provisions, and he states, as his reason for this opinion, that "to constitute an offence under the first clause of section 23, the Vagrant must be proved to have 'sufficient means of subsistence,' but that this can only be ascertained by the result of the enquiry which the Magistrate has to institute."

5. On the other hand, it is observed that the Schedule annexed to Act VIII of 1869 (the Criminal Procedure Code Amendment Act) prescribes the procedure to be adopted in the case of "offences against other laws" than the Indian Penal Code. According to

I think it is
a little bit wrong

The Court will particularly to
direct attention to the
possible and indeed very
probable event of the
Courts holding

to this schedule, the offences provided for by section 23 of the Vagrancy Act, and bailable offences for which the Police may not arrest without warrant, and for which a summons shall ordinarily issue on complaint. It is thought, therefore, that it might be held by the Courts that the procedure laid down by that schedule is alone legally applicable to cases falling under the Vagrancy Act; and that as this Act does not provide for the rules framed under section 34 having the force of law, any rule that may be made, as to procedure, would not protect the Police.

6. The Madras Government however

however, agree with the
Advocate General that, in
regard to section 23, as well
as section 4 of the Vagrancy
Act, the power to arrest a
recalcant on the spot is
intended by the legislature,
and is indispensable to the
successful operation of the
Act. They think it necessary
that this should be dis-
tinctly affirmed in the
Rules of Procedure to be
framed under section 34,
and that the validity of
these Rules should be left
to be disputed at law by
the Vagrant.

7. The Government
have accordingly approved
of the Rules submitted by
the Inspector General of
Police

If the Court decides
that the warrant is
illegal, what punishment
is the Police Officer liable
to? Act Sec 220 of Penal

Code & in the book on Penit
to & an eye?

Police with his letter of the 19th
February last, and have
embodied them in the
accompanying draft, with
certain verbal alterations.

For Lawt. Genl.
27 May 1870 }

P. H.

May 1st to 6th
up India river
Duff & Company
Ruled.

Forwarding
Rules in connection
the European
List of 1870 with
at present in the
of the

4. 10. 34. J

Home 1870. Dept.

[]

From Government of

Fort St. George.

Dated

May 27th

1870

No.

Enclosures.

spare copies.

R.

D. No.

L. No. 665

Progs.

{ D.

{ No.

Nos.

120-5-122

Forwarding Draft.
Paid in connection
with the European
Vagrancy Act of 1853
with certain observations
thereon.