M.R.O. 1—38,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 998 Press ~~Mis~~

23-25

Dated 23-7- ~~1925~~

Not to be folded or roughly handled

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Proceedings of the Madras Government, Judicial Department, from 23rd to 29th July 1859.

Read the following papers.

No. 23. From Lieutenant Colonel W. G. WOODS, Adjutant General of the Army; to the Secretary to Government, Military Department, dated Fort St. George, 1st July 1859, No. 698.

Adverting to the order of Government in the Judicial Department, No. 774 of the 4th Ultimo, resolving that the Commissariat Officers at Bangalore, Secunderabad and Jaulnah, be appointed Justices of the Peace for the re-enlistment of European Soldiers, I have the honor, by order of the Commander-in-Chief, to forward for submission to Government a Memorandum, (No. 138 of 1859,) from the Judge Advocate General of the Army on the subject, as also a copy of the Advocate General's (Mr. Smyth's) letter, to Colonel Macqueen, expressing his legal opinion on the question.

2. His Excellency instructs me to suggest, that at Jaulnah, Mr. Bullock the Deputy Commissioner, and the Chaplain be appointed Justices of the Peace for the purpose of enlisting and re-enlisting Soldiers, the latter acting in the absence of the former.

MEMORANDUM.

No. 138 of 1859.

The undersigned has had the honor to receive the instructions conveyed in the Adjutant General's Memorandum,* No. 876, of the 15th Instant, directing him to submit his own opinion, and to refer the question to the Advocate General as to whether Major Miller, Captain Webb and Lieutenant Magrath, Superintendents of Police at Bangalore, Secunderabad and Jaulnah respectively, can legally attest any persons desirous of enlisting as soldiers, or can re-enlist soldiers.

* Accompaniments herewith returned.

Queen's Mutiny Act. It is provided for by the 55th Section of the Mutiny Act, that when any person in Great Britain or Ireland shall be enlisted as a soldier, he shall be attested before any Justice of the Peace or other Magistrate *not being an Officer in the Army*. The 60th Section, referring to enlistment and re-enlistment abroad, authorizes the Governors of Colonies or of Presidencies in India, to appoint any person not being a General Officer, *or holding any Regimental Commission*, to enlist and attest, or for any Justice of the Peace or Magistrate acting for the place of such enlistment, and not being a General Officer, nor holding any Regimental Commission to enlist or attest out of Great Britain or Ireland any soldier or persons desirous of enlisting or re-enlisting into Her Majesty's service.

The above would appear to decide, that none of the Officers named can attest soldiers.

In 1845, a difficulty of great legal importance occurred, a Medical Officer at Woolwich happened also to be a Magistrate for the County of Kent, and in the latter capacity he took from the recruits the declaration and administered to them the oaths, and made the attestation required by the Act, which however expressly states that the Magistrate so acting must not be an Officer in the Army, it became necessary to notify that those men who had been thus irregularly attested might take their discharge, and that if any of them wished to remain, they must be re-attested in a legal manner. As far as possible to remedy the inconvenience, it was provided in the Mutiny Act of 1846, Clause 81, that soldiers who had been irregularly attested and who should not have claimed to be discharged on or before the 17th of March 1846, should not be entitled to claim their discharge. The 105th Section of the present Mutiny Act is intended to meet a similar difficulty which originated when Artificers &c., were irregularly attested during the Crimean War. It therefore appears very advisable, that no risk should be run in a matter of so much importance, and most particularly so at the present time.

It may be observed, that under the provisions of the Mutiny Act for the East India Company's Troops, it was different; the 48th Section of the Mutiny Act, provided that it should be lawful for any Justice of the Peace, or Magistrate, or person exercising the Office of a Magistrate within the Company's Territories, or within any of Her Majesty's Dominions abroad, and for any person holding the office of British Resident within the territories of any foreign state, to enlist and attest any person desirous of enlisting, or any soldier desirous of re-

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essential that persons
who may be appointed

enlisting into the service of the *said Company*. But now all persons are enlisted or re-enlisted for Her Majesty's service only.

The undersigned begs to forward a copy of the Advocate General's reply to the reference made to him on the above subject.

(Signed) L. MACQUEEN, Lieut.-Colonel.,
Judge Advocate General of the Army.

From the Advocate General, Madras; to the Judge Advocate General of the Army, dated 27th June 1859.

I have the honor to acknowledge the receipt of your letter of the 25th Instant, and of the papers forwarded therewith under instructions from His Excellency the Commander-in-Chief, which papers I herewith return.

2. Your letter does not state in terms whether Major Miller, Captain Webb and Lieutenant Magrath hold Regimental Commissions, but I presume that they necessarily do so, and if so, I am clearly of opinion, that, under the terms of the Mutiny Act, 21st Vict. C. IX, Clause 60, it is not lawful for *Her Majesty* to authorize the Governor of Madras to appoint, or for the Governor to appoint any of these Officers, to enlist or to attest any soldier or person desirous of enlisting or re-enlisting into Her Majesty's service, and that any enlistment or attestation by them would be null and void.

3. It is highly desirable that none but responsible and trustworthy persons should be appointed for this purpose; but it is not essential that they should therefore be appointed to be Justices of the Peace. If appointed merely "to enlist and attest," Clause 60 gives to all persons *so appointed all the powers* of a Justice of the Peace in the United Kingdom *for the purposes* of enlistment and attestation. There can however be no harm in making such persons Justices of the Peace if it seems desirable to Government to do so.

4. At Bangalore, probably there will be little difficulty in selecting a fit person or persons, but at Secunderabad and Jaulnah, I am disposed to think with His Excellency the Commander-in-Chief, that the Chaplain, and in his absence the Post Master, would be the best person to appoint.

(Signed) THOMAS SYDNEY SMYTH,
Advocate General.

(True Copy,)

(Signed) L. MACQUEEN, Lieut.-Colonel.,
Judge Advocate General of the Army.

Referred to the Public Department.

(Signed) H. MARSHALL, Lieut.-Col.
Acting Secretary to Government.

No. 24. From Sir HENRY DAVISON, Kt. Chief Justice of Her Majesty's Supreme Court of Judicature at Madras; to the Honorable the Governor in Council, &c., &c., &c., dated Fort Saint George, 4th July 1859.

We have the honor to acknowledge the receipt of your letter of the 4th Ultimo, informing us of the nomination and appointment of Major E. E. Miller, Assistant Commissary General, Bangalore, Captain E. A. H. Webb, Assistant Commissary General, Secunderabad, and Lieutenant B. H. W. Magrath, Sub Assistant Commissary General, Jaulnah, to act as Justices of the Peace; and to inform you that we will order a Commission to issue in their behalf in conformity with the provisions of Act No. VI of 1845.

No. 25. ORDER THEREON, 23rd July 1859, No. 998.

From the accompaniments to the Adjutant General's letter, it is observed that, in the terms of the Mutiny Act, the Commissariat Officers at Bangalore, Secunderabad and Jaulnah, who have been recently appointed Justices of the Peace, cannot be employed for the re-enlistment and attestation of European Soldiers, in consequence of their holding Regimental Commissions.

21 Vict., Cap. IX, Cl. 60.

2. It appears, further, from the letter of the Advocate General,* that it is not essential that persons who may be appointed for the above purpose, should, therefore, be appointed Justices of the Peace. If appointed merely "to enlist and attest" Clause 60 of the Mutiny Act 21 Vict., Cap. IX, gives to all persons *so appointed all the powers* of a Justice of the Peace in the United Kingdom, *for the purposes* of enlistment and attestation.

* To Judge Advocate General, 27th June 1859.

3. Under these circumstances, and with the concurrence of the Right Reverend the Bishop, the Honorable the Governor in Council resolves, under Clause 60, 21 Victoria, Chapter IX, to appoint the Reverend J. V. Bull, B. A., Joint Chaplain, and the Reverend J. Gorton, M. A., Officiating Joint Chaplain at Bangalore, the Reverend J. D. Ostrehan, B. A., Joint Chaplain, and the Reverend R. Firth, M. A., Officiating Chaplain at Secunderabad, and the Reverend E. Kilvert, A. B., Chaplain at Jaulnah, each at their respective stations, to enlist or to attest any Soldier or person desirous of enlisting or re-enlisting into Her Majesty's service.

4. On any of the abovementioned Chaplains leaving or being removed from his station, reference will be made to Government by His Excellency the Commander-in-Chief, that his successor in the Chaplaincy may be similarly appointed to the duty.

5. Under these circumstances, it will not be necessary that Major Miller, Captain Webb, and Lieutenant Magrath, on whose behalf a Commission of the Peace has lately issued, should qualify as Justices of the Peace, unless their so doing, would be of service to them in the performance of the several duties now devolving on them.

(Signed) T. PYCROFT,
Chief. Secretary.

Exd. F. Cartledge.

Judicial.

Proceedings of the Madras Govt.

Read the following letters—

From the Adjutant General - Dated 1st July 1859 No. 698.

" the Chief Justice — " — 4th July —

Order thereon - 23 July - 1859 No. 998

21 Vict. Cap. IX. cl. 60.

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2 It appears from the letter of the Adjutant General, that it is not essential that persons who may be appointed

L Judge Advo: June 27 June 1859.

for the above purpose, should there not be appointed Justices of the Peace - If appointed merely "to enlist and attest" Clause 60 of the Mutiny Act 21 Vict C.IX - gives to all persons so appointed all the powers of a Justice of the Peace in the United Kingdom for the purpose of enlisting and attesting - 3. Under these circumstances, and with reference to A A the Bishop, His Honour the Governor in Council resolved under Clause 60 of 21 Victoria C.IX, to appoint the Reverend

I Hall B.A Joint Chaplain - & Rev. I Gorton M.A Offg Joint Chaplain at Bangalore - the Revd I D Strahan B.A Joint Chaplain & Rev. R Finlay M.A Officiating Chaplain at Secunderabad - and the Revd E Kilvert A.B Chaplain at Jhansi each at their respective Stations, to enlist & attest any soldier or person desirous of enlisting or enlisting into Her Majesty's Service -

4 On any of the above mentioned Chaplains leaving or being removed from their Stations information will be made to him by the

Chaplains Leave
and Ist Soldiers and
the Visiting Act.

Secretary in the Chaplaincy may
be similarly appointed
to the Duty —

5. And be it enacted, it will and
is necessary, that Major
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Lieut Mapath or whom
behalf a Commission
of the Peace has lately
issued, should qualify
as Justices of the Peace
under the Act
recited to be doing
which he of them
shall in the performance
of the several duties upon
devolving on them —

JP

Military Dept.
Adjt General of the Army
R R Vth Brig in Fort St George Madras
Officers Com.g Bangalore, Secunderabad
Cauln.t } Disp.d 25th

Lieut Col Burke } Desp.d 23d Inst.
" J. Gordon "
" D. Oshea "
" R Fisher "
" C Kelsall " } 25th

No.

Extract Mins. Cons.

Dated

Madras—Printed at the Government Press.

Pro of Govt 29 July

Judicial 1859 Dept

No 998.

Proceedings of Govt

of 23d July 1859.

Under circumstances stated
on & with the concurrence
of the Lord Bishop
appointed the Revd J.
V. Bull Joint Chaplain
at Bombalore and the
Revd R. Cotton Off.g
Chaplain, & the
Revd R. Firth Off.g
Chaplain at Secunder
-abad: and the Revd B.
Filbert Chaplain at
Jaulnah each at the
respective stations, to
enlist or attest any
Soldier or person desirous
of enlisting or reenlisting
into Her Majesty's
Service stating that it is
not necessary, that
Major Millar, Captn
Wells, and Lt Magrath

on whose behalf a Commission of the Peace
has lately issued,
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would be of Service
to them in the per-
formance of the
several duties now
devolving on them.

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No. 998. Proceedings of Govt dated 23rd July 1859.

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