

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 1380

Press
~~Mis.~~

64-65

Dated 17.11.1961

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Not to be folded or roughly handled

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Proceedings of the Madras Government, Judicial Department,

14th November 1861.

Read again Proceedings 1st November 1861, No. 1,332.

No. 64. Read also the following letter from JOHN MILLER, Esq., Acting Government Solicitor; to W. S. WHITESIDE, Esq., Deputy Secretary to Government, Madras, dated 2nd November 1861, No. 778.

Dated 1st November 1861, No. 1,332, Judicial Department. 1. I have the honor to acknowledge the Proceedings of Government noted in the margin.

2. I submitted them for the consideration of the Advocate General and now forward a copy of his opinion.

COPY—OPINION.

There is no "Act" X of 1832, but the Inspector General of Jails probably meant "Regulation" X of 1832. I *incline* to think that its provisions are applicable to European and American Convicts sentenced to Penal Servitude, under Section 7, Act XXIV of 1855.

2. The provisions of Act XVIII of 1845 are not, in my opinion, applicable to European or American Convicts sentenced or confined under Act XXIV of 1855.

3. The provisions of Clause 2, Section 9, Regulation XV, of 1803 cannot be in my opinion applied to *any* prisoners confined under Act XXIV of 1855 in case of their escaping. Independently of the fact that, in order to hold that they could be so applied, it must be assumed that Act XXIV of 1855 gave or meant to give the Criminal Judges or the Foudary Court of the late East India Company a jurisdiction over British subjects which they had not before (an assumption which I think cannot be maintained), it is plain that Regulation XV of 1803, Section 9, Clause 2 is one of a most highly penal character, and must be construed strictly, and its provisions cannot be transferred by implication or intendment to a state of things differing so widely from that specified in the Regulation, as an escape from Jail does from a return from transportation from a place beyond the seas.

4. In my opinion the provisions of Clause 2, Section 5, Regulation VI of 1822, are not applicable to European or American Convicts confined under Act XXIV of 1855 in case of escape.

5. I think neither of these two last mentioned Regulations are applicable to British Seamen confined under what Mr. Rohde calls the Seaman's Act in the local Jail, but Regulation X of 1832, I *incline* to think, is so.

6. In my opinion Section VIII of Act XXIV of 1855 does not contemplate the removal of Convicts sentenced to *penal servitude*; but only with the consent of the Governor General of India in Council. The Act must be taken to intend what it so expressly says.

(Signed) THOS. SYDNEY SMYTH,
Advocate General.

2nd November 1861.

(True Copy.)

(Signed) JOHN MILLER,
Acting Government Solicitor.

No. 65. ORDER THEREON, 14th November 1861, No. 1,380.

A copy of the Advocate General's opinion will be furnished to Mr. Rohde.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. F. Cartledge.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read again Bros. 1st Novr. '61 N^o: 1332.

Read also letter from
the Govt. Solicitor—Inter 2nd Novr. N^o: 778.

Order— 14th November 1861. N^o: 1380.

A copy of the Advocate General's opinion
will be furnished to
Mr. Rohde.

W. M.

W. M.

J. P.

To the Secy of Secy of Secy 15.

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No. 1380.

PROCEEDINGS OF GOVERNMENT.

Dated 14 November 1861.

Submitting the Profructon
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of the offsecrete General
as to the applicability of
the edict of Regulation
passed with to European
or American Council
dear friend.