M.R.O. I—20,000—16-10-23.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 1517 Press ~~Mis.~~

55-56

Dated 10.12.1861 ~~D~~

7/8

Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department,
10th December 1861.

No. 55. Read the following Proceedings of Government in the Military Department, dated 29th November 1861, No. 4,331.

Communicating letter from the Home Department of the Government of India, forwarding for information copies of certain papers regarding the attesting of Soldiers. (Vide Proceedings Military Department, dated 29th November 1861, Nos. 721 & 722.)

No. 56. ORDER THEREON, 10th December 1861, No. 1,517.

To be recorded.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. T. O'Connor.

HOME DEPARTMENT.

JUDICIAL.

No. 110 of 1860, December the 12th.

To

THE RIGHT HON'BLE SIR CHARLES WOOD, *Bart., G. C. B.,*
Secretary of State for India.

SIR,

IN your Military Despatch No. 313, dated the 16th of August, you referred us to the 51st Section of the Mutiny Act passed on the 31st March last, (23 Vic., Cap. 9,) as removing the difficulty which had been experienced here in re-enlisting Soldiers at places where there are no resident Magistrates. Under that Section "any person," not being a General Officer, nor holding any Regimental commission, may be appointed to enlist and attest Soldiers, such persons having, in virtue of their appointment, the same powers in the matter as are given to Justices of the Peace in the United Kingdom. We find, however, that the Government has no power to make any appointment under this Section, except under warrant from Her Majesty's Secretary-at-War, and no such warrant has yet been received by us.

2. The necessity for the appointment of a person at Gwalior to enlist and attest Soldiers having recently been pressed upon our attention, it appeared to us to be doubtful whether a Justice of the Peace could act in the Territory of a Foreign State, or whether even under the authority of a warrant from the Secretary-at-War, the Government could appoint "a person" at Gwalior, or other place out of British Territory, to enlist Soldiers into the army of the line.

3. The Advocate General, whom we consulted on the point, observes that Her Majesty's Commission of the Peace confers no authority on any Justice to act as such beyond the limits of Her Majesty's Dominions; but that "no "legal objection exists to the appointment by the Government of India of a "person, not being a General Officer, nor holding a Regimental commission, "to enlist and attest Soldiers at Gwalior, or at places similarly situated out of "Her Majesty's Dominions, for Her Majesty's forces, provided the warrant "from the Secretary-at-War to the Government do not expressly or impliedly "limit the power of appointment to places within the British Territories in "India." "The question," Mr. Ritchie proceeds to observe, "is not free from "doubt, but as the Section (51) expressly points to enlistments out of Great "Britain and Ireland, without limiting such enlistments to places within the

No. 110 of 1860, December the 12th.

"British Colonies or Possessions, and as the corresponding Section in the "previous Acts,* from which it is taken verbatim, "is introduced by a preamble reciting that it is "expedient that provision should be made for enlisting and attesting persons "desirous of enlisting *abroad*, (which term comprehends both Her Majesty's "Dominions out of the United Kingdom and Foreign countries,) I think, on "the whole, that, when the warrant to the Government of India is general in "its terms, that Government may, under it, appoint a person to enlist or "attest at Gwalior, or at any place in India out of Her Majesty's Dominions."

* 16 Vic., Cap. 9, Sec. 59.
20 Vic., Cap. 13, Sec. 60.

4. We have accordingly to request that a warrant under the 51st Section of the Mutiny Act, so worded as to embrace India generally, including Native States as well as British Territory, may be forwarded to us.

We have the honor to be,
Sir.
Your most obedient, humble Servants,

Fort William;
The 12th December 1860.

(Signed) H. B. E. FRERE.
" CECIL BEADON.

JUDICIAL.

No. 120.

To

His Excellency the Right Hon'ble the GOVERNOR GENERAL of INDIA in COUNCIL.

My Lord,

Dated London, the 22nd August 1861.

With reference to the 1st paragraph of your letter dated the 12th December (No. 110) 1860, I herewith transmit to you a copy of a letter from the War Office, dated 19th July 1861, and of its enclosed Warrant dated 7th January 1850, empowering the Governments in India to appoint any person not being a general Officer, nor holding a Regimental Commission, to enlist and attest any Soldiers or persons desirous of enlisting or re-enlisting into the service of the Crown.

I have, &c.,
(Signed) C. WOOD.

22
Genl. No. 39.

War Office,
The 19th July 1861.

To the UNDER SECRETARY of STATE for INDIA.

Sir,

I am directed by the Secretary of State for War to acknowledge the receipt of your letter of the 20th ultimo, requesting to be furnished with Warrants of the nature referred to in the 52nd Section of the Mutiny Act of the present year, empowering Governors of Colonies or Presidencies in India to convey authority to enlist and attest Soldiers or persons desirous of enlisting or re-enlisting into Her Majesty's Army, and in reply to transmit the enclosed copy of a Warrant dated 7th January 1850, which was forwarded on the 9th of the same month to the Governor General of India, the Governors of Madras and Bombay, and the Commander-in-Chief in India.

This Warrant is now in force and is the Warrant alluded to in the above Section.

I have, &c.,
(Signed) EDWARD LUGARD.

Victoria R.

We do hereby authorize and empower you, in execution of the provisions contained in an Act passed in the 12th year of our Reign for the punishment of mutiny and desertion or which may be contained in any future Act which may be passed for the like purpose, to appoint any person or persons not being a General Officer in the Army nor holding a Regimental Commission to enlist and attest in any Soldiers or persons desirous of enlistingor re-enlisting into the service of us our heirs and successors.

Given at our Court at St. James's
this 7th day of January 1850.
By Her Majesty's Command.
(Signed) F. MAULL.

HOME DEPARTMENT.

JUDICIAL.

No. 66 of 1861, October the 10th.

To

THE RIGHT HON'BLE SIR CHARLES WOOD, *Bart., G. C. B.,*
Secretary of State for India.

SIR,

IN reply to your Despatch No. 120, dated the 22nd of August, we beg to point out that the Warrant referred to in Sir Edward Lugard's letter, as having been sent to India in 1850, is available for the purpose of enlisting and attesting Soldiers only *in the Presidency of Bengal*, and that it is desirable on this account that a Warrant should be sent out "so worded as to embrace India generally, including Native States as well as British Territory," as was requested by the President in Council in the concluding paragraph of his Despatch of last December.

2. The restricted application of the Warrant, from its being addressed to the Governor of the Presidency of Bengal, and from the use in the body of it of the words "Presidency of Bengal" to indicate the territorial limits within which persons might be appointed to enlist and attest Soldiers, was brought to the notice of the Court of Directors in 1853. On that occasion a letter from the then Advocate General was forwarded, in which he stated his opinion that if Her Majesty's Warrant had been expressed in the general terms used in the Mutiny Act, the Governor of Bengal might have been able to appoint a person to attest Recruits in Burmah, but that as the Warrant only empowered the Governor of Bengal to appoint persons to enlist and attest *in the Presidency of Bengal*, no such power existed.

3. The Court of Directors in reply intimated their intention to procure a Warrant more extended in its scope, but it does not appear that the intention was ever carried out.

4. We would now advise, having regard to the provisions of the 17 and 18 Vic., Cap. 77, Sec. 5, that a new Warrant be sent out addressed to the Governor General in Council, and that three separate Warrants be also sent, addressed to the Lieutenant-Governor of Bengal, the Lieutenant-Governor of the North-Western Provinces, and the Lieutenant-Governor of the Punjab, respectively. The Warrant to the Governor General in Council should apply to any of Her Majesty's Dominions in India and to the Dominions of any Native Prince or State. The other Warrants should empower each Lieutenant

gistrate, in his character of Local Magistrate, and not in his character of Justice of the Peace.

2. I do not think that any legal objection exists to the appointment by the Government of India of a person not being a General Officer nor holding a Regimental Commission to enlist and attest Soldiers at Gwalior or at places similarly situated out of Her Majesty's Dominions for Her Majesty's Forces, provided the Warrant from the Secretary at War to the Government do not expressly or impliedly limit the power of appointment to places within the British Territories in India. The question is not free from doubt; but as the Section expressly points to enlistments out of Great Britain and Ireland, without limiting such enlistments to places within the British Colonies or possessions; and as the corresponding Section in the previous Acts from which it is taken verbatim is introduced by a Preamble reciting that it is expedient that provision should be made for enlisting and attesting persons desirous of enlisting *abroad* (which terms comprehend both Her Majesty's Dominions out of the United Kingdom and foreign countries) I think on the whole that when the Warrant to the Government of India is general in its terms, that Government may under it appoint a person to enlist or attest at Gwalior or at any place in India out of Her Majesty's Dominions.

16 Vic., Cap. 9, Sec. 59.
20 Vic., Cap. 13, Sec. 60.

W. RITCHIE.

MILITARY DEPARTMENT.

PROCEEDINGS OF THE MADRAS GOVERNMENT.

Read the following letter:—

From the Under Secretary to the Government of India, Home Department, Fort William, 12th November 1861, *No.* 2251; *to the Secretary to the Government of Fort Saint George.*

I am directed to forward, for the information of His Excellency the Governor in Council, copies of the papers noted in the margin, regarding the attesting of Soldiers.

Judicial Despatch to the Secretary of State, No. 110, *dated 12th December* 1860.
Do. do. from do. do. No. 120, *dated 22nd August* 1861.
Do. do. to do. do. No. 66, *dated 10th October* 1861.
Opinion of the Advocate General, dated the 4th December 1860.

ORDER, No. 4331, *29th November* 1861.

Communicated to the Provincial Commander-in-Chief.

(True Extract.)

Secretary to Government.

To the Adjutant General.
" Dy. Adjt. Genl. H. M.'s British Forces.
" Judicial Department. Nott 3 Spare Copies.

Exd. A. A. DeMonte.

gistrate, in his character of Local Magistrate, and not in his character of Justice of the Peace.

Pros: 1st Nov.r 1860 - Off.r 1430.
Pro: 6th May, 1861 Off.r 603.
" — 17th — 91 — 2d Off.r 650.
" —

Judicial 1861 Dep.t
Prov.l Mar.l
Proc: of Govt in the
Guilty 9th 4331.

Dep.t 18th/62.

of 29th Inst.
of 3rd Dec.r 3/61

Encs 4. 13.
Chas. Cox.

No 1965

Copy letter from the
Hon.ble Dep.t of the Gov.t of India
forwarding for information Copies of certain
Papers regarding the
Attesting of Soldiers.
No. 1517 — 10th Dec.r 1861.
To be recorded. Gpo

dist. 13 Dec.

55—56.

55—56