

MADRAS RECORD OFFICE.

Government of Madras.

Judicial

DEPARTMENT.

G.O. No. 1417

Press
~~His~~

294-295

Dated

29

8

1862

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Not to be folded or roughly handled

JUDICIAL DEPARTMENT.

PROCEEDINGS OF THE MADRAS GOVERNMENT.

Read the following letter from JOHN MILLER, Esq., Acting Government Solicitor, Madras; to the Honorable T. PYCROFT, Chief Secretary to Government, Fort Saint George, dated 14th August 1862, No. 368.

- Dated 12th August 1862, No. 1,294, Judicial Department.
1. I have the honor to acknowledge the Proceedings of Government noted in the margin, and the papers which accompanied them.
 2. I laid them before the Advocate General for his consideration, and herewith forward a copy of his opinion.
 3. I also return the papers above noted.

COPY—OPINION.

There is nothing to shew that any "Judicial Proceedings" have been instituted against either of these alleged deserters; and, even if there had been, the Records of Government (especially the *Precis*, dated 28th June 1858, signed G. N. Taylor, Acting Collector in charge of the Special Agent's Department—of which *Precis* a printed copy was sent to me on the 26th November 1860,) shew that the authorities at Pondicherry have not hesitated to decline delivering up parties against whom Judicial proceedings had been instituted.

The first of such cases, in the *Precis*, occurred on the 3rd July 1830; the last two on the 7th March and 29th August 1855.

Desertion from Military service, as observed by Government, is clearly not a heinous offence within the purview of Act VII of 1854.

I am, however of opinion that under Act I of 1862, extending till 5th December 1863, the provisions of Act XXVIII of 1857, it is competent to Government to deal with this case under Sections IX to XIII of this latter Act, according as circumstances may suggest.

I do not think that the facts of Ensign Wilkinson's case are in point; but, so far as they apply, they are in my opinion an authority against the extradition of a deserter M. DeMelay, there declined to comply with Colonel J. S. Fraser for the delivery over of Ensign Wilkinson to a guard, and though at last a sort of *amicable private arrangement*, Ensign Wilkinson *consenting thereto* was entered into, by which he returned to the Madras territories on his parole, the circumstances were so completely exceptional as to be quite beyond the sphere of any provisions of the Treaty, or of the usages existing between the two Governments respecting the extradition of offenders. Colonel Fraser distinctly admits that had M. DeMelay stood on precedent or punctilio he might easily have found grounds for refusing to surrender Ensign Wilkinson.

(Signed) T. SYDNEY SMYTH,
Advocate General.

13th August 1862.

(True Copy.)

(Signed) JOHN MILLER,
Acting Government Solicitor.

ORDER THEREON, 29th August 1862, No. 1417.

Resolved, that a copy of the above letter and of its enclosure be furnished to the Commissioner of Police, in reference to his letter of 11th instant, No. 99.

2. It does not appear clear that the provisions of Article IX of the Convention of 7th March 1815, as they have hitherto been carried out in practice, apply to the extradition of Military deserters—at least there seems to have been no instance in which the surrender of such parties has been made either by the English or by the French Governments. Without, however entering upon this question, which is not necessary, inasmuch as no application for the deserters has been received from the French Government since Mr. Tolput's letter of the 9th instant, the Governor in Council thinks that it will be sufficient to dispose of the present case

however

+ which is not neces-
-sary as much
as no application
for this document has
been received from the
French for line in
Vol 1st & 2nd of 11
of 1st vol.

however entering upon this part
of the question, the Government
opines that it will be
sufficient to dispose of the present
case under the passport. Act
xxxv of 1857 extended by Act
II of 1872. The two Draguers now
in charge of the Commission of
Police during the period travel-
ling in the British Territory
without license, will under
section 20 of the Act of 1872
cross the territories. It is
impossible to see with confidence
to be secured via the border
cherry territory. Visit of the
will arrange for the necessary
conduct under an escort to the
French frontier where his party
will have to be ~~detained~~
~~the same things will be done~~
~~by the same means~~ ~~at that point~~ It will be the
authorities indicating in the
arrival of the men at their point
to be taken measures
respecting

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respecting them as they may
see fit
3. Copies of these papers will
be furnished to the Special Agent
for Foreign Settlements for his
information.

J.P.

The Commissioner of Police with
the Special Agent in charge of the Special
Agent's Department at Chodabre.
with Com No 1294

Respect 29th

27th

Ind 1862. Department.

No. 1417.

PROCEEDINGS OF GOVERNMENT.

Dated 29th Dec 1862.

1750.

Transmitted copy of a
letter from the Acting Agent
Collector to the Commissioner
of Police with a view to
ascertain the extent of
the loss of the Government
Treasury at Pondicherry
who had been delivered into
the hands of the Government
at Pondicherry. Also furnish
to the Special Agent of the
Government for his information
the names of the persons who
were of the Government.