

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 897

Press
~~Mis.~~

59-60

Dated 10. 6. 1882 19

4/5

Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department,
10th June 1862.

No. 59. Read the following letter from JOHN MILLER, Esq., Acting Government Solicitor, Madras; to A. J. ARBUTHNOT, Esq., Acting Chief Secretary to Government, Madras, dated 28th May 1862, No. 266.

1. I have the honor to acknowledge the Proceedings of Government noted in the margin, and as requested I submitted the same for the consideration of the Advocate General, and now forward a copy of that Officer's opinion.

COPY—OPINION.

Under Section 3, 20th and 21st Victoria Chapter III, it is clearly *competent* to the Governor in Council to direct the conveyance of the five Convicts in question to Her Majesty's Settlements in Western Australia, though originally sentenced to penal servitude, and not to transportation, but, in my opinion, it cannot be regarded as *obligatory* upon him to do so. The words are "*may* be conveyed;" they are permissive only and not mandatory. Government therefore might, in my opinion suspend or modify or cancel any such Order that it has passed.

2. It is clear that nothing in Act XXIV of 1855, can be construed or acted on so as in any way to alter or affect the provisions of any of the Mutiny Acts; but, if the Governor General's consent were obtained, under Section VIII of this Act, and these Convicts then removed to Ootacamund, it appears to me that this would be no interference with 20th and 21st Victoria Chapter 66. These men, under its provisions, are sentenced to penal servitude, no place being named for carrying out the sentence, and under the Warrants of the Chief Justice and Puisne Judge they are now confined in the Madras Penitentiary as a place of intermediate imprisonment. They therefore are, strictly and literally, "European Convicts imprisoned under a sentence of imprisonment for a term exceeding one year," and as such I am of opinion that it is competent for the Executive Government of Madras, with the consent of the Governor General of India in Council to order the removal of such prisoners from the prison in which they are confined (viz. the Madras Penitentiary), to any other public prison within any part of the said Territories (viz. Ootacamund) either to undergo there the whole term of their sentence, or until they could be removed to Western Australia, and I cannot see that so doing will in any way affect or alter any provision of the 20th and 21st Victoria Chapter 66.

3. But it appears to me that it is not even necessary to resort to Act XXIV of 1855 at all; for, reading the 20th and 21st Victoria, Chapter 66, Section XXIV and the Warrant of commitment, I am of opinion that if the Governor in Council cancels the order for removing these five Convicts to Western Australia, he may "cause such offenders to be removed or sent to some place (Ootacamund to wit) within the Presidency where they were sentenced * * * and such offenders shall undergo the sentence of * * * Penal Servitude which has been passed upon them in such place to which they shall be so removed or sent."

4. In any future case, if any particular reason exist for wishing to send to Western Australia any Convicts sentenced to Penal Servitude, I am of opinion that, if it were necessary to do so, the Judges, if applied to, would find no difficulty in directing them to be removed to Ootacamund as the place of "intermediate custody."

(Signed) T. SYDNEY SMYTH,
Advocate General.

27th May 1862.

(True Copy.)

(Signed) JOHN MILLER,
Acting Government Solicitor.

No. 60.

ORDER THEREON, 10th June 1862, No. 897.

Under the opinion of the Advocate General submitted with the Acting Government Solicitor's letter of the 28th ultimo, and adverting to the provisions of 20 and 21 Victoria,

*Proceedings of the Madras Government, Judicial Department,
10th June 1862.*

Cap. 66, Section XXIV, His Excellency the Governor in Council resolves to direct that the five Military Convicts referred to in Major Wilson's letter of the 10th ultimo, viz.:—

William Buckley,
Samuel Summers,
James Walker,
John Berry,
William de Nonal Ramus,

be sent to the European Prison at Ootacamund, there to undergo the remainder of the sentences of Penal Servitude which have been passed upon them.

(Signed) A. J. ARBUTHNOT,
Acting Chief Secretary.

Exd. T. O'Connor.

Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

*Read the following
letter from the Acting Govern-
ment Solicitor.*

(Here enter 28th May 1862 N^o 265.)

Order thereon 10th June 1862 N^o 897

*Under the opinion
of the Advocate General sub-
mitted with the Acting Govern-
ment Solicitor's letter of the
28th ~~August~~ ^{May}, and adverting
to the provisions of 20 and 21
Victoria Cap. 66 Section XXIV,
His Excellency the Governor in
Council resolves to direct
that the five Military con-
victs referred to in Major
Wilson's letter of the 10th ~~August~~ ^{May}
viz. William Buckley.*

Samuel Summers

James Walker.

John Berry.

W^m de Nonal Ramus.

be

be sent to the European Prison
at Colacammund, there to undergo
the remainder of the sentences
of penal servitude which
have been passed upon
them.

by R

13th Dec 1861

To The Commissioner of Police. 3
" Inspector General of Sails. 3
" Officer in charge of the
European Prison, 3
at Colacammund.
" Superintendent of Marine. 3

Despatch 10th

M. L. L. L. L.

Dec. 29th May 1862 No 54

Prosser
1862. Department.

No. 897.

PROCEEDINGS OF GOVERNMENT.

Dated 10 June 62

Feb 11 1864.

Resolving the removal
of 5 Military Comis
to the Cassinian Basin
at Oatman.