M.R.O. 1—30,000—16-10-22.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 1119 Press Mis.

259-262

Dated 23.7. 1864

4/5

Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department, 23rd July 1864.

Read the following papers :—

No. 259. From W. ROBINSON, Esq., Inspector General of Madras Police ; to A. J. ARBUTHNOT, Esq., Chief Secretary to Government, Fort Saint George, dated Vizagapatam, 4th January 1864, No. 66.

General Department.

"Some difference of practice exists as to the proper manner of escorting and "otherwise dealing with Military deserters, Native and European."

2. They are sometimes arrested by Police and made over to the nearest Military authority. Sometimes they are arrested by Military authorities themselves. The Military authorities require the Police to escort these persons when sent back to their Regiments. Frequently the escort is a very distant one.

3. Desertion is a Military crime. And, strictly speaking, all duties connected with the escort, &c., should devolve on that Department. Again, I am not sure that there is a form of a Warrant which would justify the Police in keeping such persons in custody, or make escape or rescue illegal.

4. I beg the instructions of Government on the following points :—

I.—Are the Police to escort Military deserters back to the Regiment or elsewhere ?

II.—Under what Warrant are they to act ?

Referred for the opinion of the Government Pleader on the second of the two points stated in the last paragraph of this letter.

FORT SAINT GEORGE, 21*st January* 1864.

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

No. 260. From C. DALE, Esq., Government Pleader, Madras ; to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George, dated Madras, 28th June 1864, No. 132.

21st January 1864, No.—

I do myself the honor of acknowledging the receipt of the Proceedings of Government, under the date and number noted in the margin.

2. I observe I am not required to advise on the first question put by Mr. Robinson.

3. I presume from the language used by Mr. Robinson that the questions refer to the case of soldiers, European and Native, who have been convicted of the crime of desertion ; have suffered the punishment ordered by the Court ; and who, upon the expiration of their sentences, the Police are required to escort back to their Regiments.

4. Assuming I have arrived at a correct conclusion of the premises on which Mr. Robinson requires an opinion, I do myself the honor of stating that, in my opinion, as the Law now stands, no form of Warrant that could be prepared would justify the Police in keeping such persons in custody, or make escape or rescue illegal.

5. In the Mutiny Act for Her Majesty's Forces, provision is made that every Jailer, &c., having a soldier in his custody shall give notice to the Military autho-

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rules of the day and hour on which the imprisonment will expire, and in the United Kingdom I believe it is the invariable practice for a Military escort to be in attendance to take charge of the discharged prisoner.

6. In the 20th and 21st Victoria, Chapter 66, the Mutiny Act for the Troops in the service of the East India Company, a similar provision is made.

7. I return Mr. Robinson's letter and the Order of Government thereon.

Referred for the opinion of the Advocate General on the point indicated in the reference made to the Government Pleader, under date the 21st January last, on a letter from the Inspector General of Police, dated 4th idem, No. 66. The Government Pleader has misunderstood the question, which relates to persons arrested on a charge of desertion from their Corps, and not to Military deserters who have served their term of imprisonment.

FORT SAINT GEORGE,
6th July 1864.

(Signed) J. D. SIM,
Secretary to Government.

No. 261. From J. R. BOYSON, Esq., Government Solicitor, Madras; to J. D. SIM, Esq., Secretary to Government, Madras, dated 16th July 1864, No. 402.

I have the honor to acknowledge the Order of Government noted in the margin, with its enclosures, relative to the authority of the Mofussil Police to escort Military deserters back to their Regiments, and form of Warrant to justify such custody whilst in *transitu*.

Dated 6th July 1864, and endorsed on Government Pleader's letter to Government of 28th ultimo, No. 132.

2. I submitted the papers for the consideration of the Advocate General, with whom I have also conferred; and,

3. I now forward a copy of his Opinion, and return the order and enclosures above noted.

COPY—OPINION.

I do not think the Police can be called upon by the Magistracy or Military to take charge of persons apprehended upon suspicion of desertion, for the purpose of marching them to their alleged Regiments.

2. With respect to Native soldiers and European soldiers other than those technically known as Her Majesty's Forces in India, I am not aware of any enactment or authority by which the Police can be called upon to discharge any duty in connection with deserters simply as such.

3. The course is purely Military; and I apprehend until the establishment of the Police upon its present footing deserters were invariably handed over to Military escorts.

4. With respect to British soldiers to whom 21 Vic., Cap. V applies, it will be found that Section 31 lays down the course to be pursued.

5. If the Regiment to which the alleged deserter belongs be not in India at the time of his desertion, as for instance when it has embarked for England or Service in China, Burmah or elsewhere, the Justice of the Peace is to commit him to some public prison, and for such conveyance the warrant of the Justice of the Peace would be sufficient for the Police to act upon; or if the Regiment be in India, the Justice of the Peace may commit him to be delivered at the nearest Military station, and for such purpose his warrant would protect the Police.

6. But beyond that I am of opinion there is no power authorizing the Police to convey deserters. The Act appears to have intended that from the moment the deserter was lodged in prison or delivered over to the nearest Military station, the Military authorities should take charge of him.

7. The greatest public inconvenience might arise if the Police had to march deserters from the spot where they were found to their Regiments. A deserter might be arrested at Cape Comorin, while his Regiment was at Peshawar.

8. If a prisoner so being conveyed were to pass within the original jurisdiction of the Supreme Court, I am of opinion that he might obtain his release under the *Habeas Corpus* Act.

MADRAS,
15th July 1864.

(Signed) J. B. NORTON,
Advocate General.

(True Copy.)

(Signed) J. R. BOYSON,
Government Solicitor.

No. 262. ORDER THEREON, 23rd July 1864, No. 1119.

Ordered that the opinion of the Advocate General, recorded above, be communicated to the Military Department, to the Inspector General of Police, and to the Magistrates of Districts.

(True Extract.)

J. D. SIM,
Secretary to Government.

To the Military Department.
" Inspector General of Police.
" Magistrate of

Exd. J. Tulloch.

Judicial Department. 2

PROCEEDINGS of the MADRAS GOVERNMENT:

Read the following letters —

From the Inspector Genl. of Police — Enter 4th January/64 No. 66.
" the Govt. Reader — 28th June — " 132.
" the Govt. Solicitor — 16th July — " 402.

Order — 23d July 1864. No. 1119.

Ordered that the opinion of the Advocate Genl., recorded above, be communicated to the Mily. Dept., to the Inspector General of Police, & to the Magistrates of Districts.

The Mily. Dept.
" Inspector Genl. of Police.
" Magistrate of the several Dists.
} dispd 28/7

[redacted] Department.

No. 1117.

PROCEEDINGS OF GOVERNMENT

Feb 1004/65

Dated 23d July 1841

Passing orders regarding the Military Deserters.

25 62.