

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 277

Press

~~Mis.~~

17-18

Dated

1-3-1918

5/6

Not to be folded or roughly handled

277

Proceedings of the Madras Government, Judicial Department,

1st March 1864.

No. 17. Read the following Extract from a letter from C. DALE, Esq., Government Pleader, Madras; to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George, dated Madras, 20th February 1864, No. 38.

I have the honor to acknowledge the receipt of the Proceedings of Government, under the date and number noted in the margin.

2. I have nothing before me to show what Courts exists in Ceylon, or their powers, or jurisdictions. I assume, however, that there is a Court, being a Court of Record, and having powers, within certain prescribed limits, similar to the powers exercised by the Court of Queen's Bench in England.

3. On that assumption I entertain no doubt that if a convict were shipped on board a vessel which touched at Colombo, the Court would have the power of issuing a writ of *Habeas Corpus ad subjiciendum*, calling on the party having charge of such convict to produce the body of such convict before the Court.

4. But no Court would so act on its own motion, and without some evidence making out a *prima facie* case for its interference.

5. To ground a motion for the *Habeas*, Affidavits must be filed, and certain expenses incurred in the employment of professional assistance.

6. If the party having charge of such convict was in possession of a proper commitment, and on the return of a *Habeas* set out such commitment, the Court would remand the convict to the custody from which he was brought, for "a commitment of a convicted prisoner, in execution of a sentence by a Court of competent jurisdiction to inquire into the offence, and to pass the sentence specified in the commitment, is sufficient on return to a *Habeas Corpus*, without specifying the particular circumstances necessary to warrant the sentence." And the Court of King's Bench have held, "It is enough that we find such a sentence pronounced by a Court of competent jurisdiction to inquire into the offence, and with power to inflict such a punishment."

7. The risk therefore of sending convicts in that manner is in reality merely ideal.

8. If this Government had reason to suppose that in any case a convict had rich friends who would attempt such a course, it might be desirable for Government to place themselves in communication with the Ceylon Government, and ask whether if the convict were sent by that route, and such an attempt were made, the Law Officers of that Government would be instructed to oppose the application.

No. 18. ORDER THEREON, 1st March 1864, No. 277.

The Governor in Council directs that paragraphs 1 to 8 of the foregoing letter from the Government Pleader be communicated to Mr. Rohde, with the intimation that the Government concur in Mr. Dale's opinion.

2. References of this nature will in future be made to the Advocate General.

(True Extract.)

Chief Secretary.

To the Inspector General of Jails.

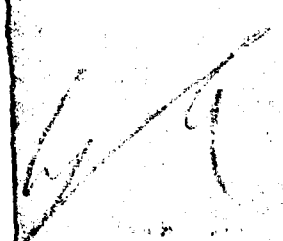
„ Government Pleader.

Exd. J. Tulloch.

to the Feb 20/64
My dear Mr. Robinson,
I have answered
the reference of the 16th
136 in the doubt raised
by Mr. Rohde. I have
submitted that the
questions that properly
have been referred to
the Ad. Genl. Since
I have held the
office, references have
been made, & I have
been asked to do work,
which did not properly
as

must be communi-
cated to Mr. Rohde with the
intimation that the Govern-
ment concurs in Mr. Gales
opinion.

References of this
nature will in future be made
to the Advocate General.



fall within the sphere
 of duties and money
 Govt. I never like to show
 any indisposition to do
 work so long as I was
 under the supervision
 (perhaps I should say
 depending) that Govt.
 was at liberty to the opinion
 expressed by Lord Harris
 Govt. that the salary
 should be Rs 1000. (for
 which I was informed
 before I accepted the
 Office) I preferred doing
 the work rather than
 incur any objection, although
 I have felt it later that
 I am not paid as it has
 been admitted I am
 about the same to perform
 work, especially involving
 in highly paid officials
 now however that the
 Govt. have declined to
 adhere to the proposition
 of the former Govt, I am
 inclined to keep mine
 as to pay to the strict
 terms in this regard when
 I took the Office, I think
 perhaps the Govt. or their
 part should at least not
 equal objection to the
 other refused for Govt.

Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following
 letter from the Government
 Pleader Madras.

(Here enter 20th February 1864 N^o 27)
 Order thereon 1st March 1864 N^o 27

The Governor in
 Council directs that the fore-
 going letter from the Govern-
 ment Pleader be communi-
 cated to Mr. Rohde with the
 intimation that the Govern-
 ment concurs in Mr. Dales
 opinion.

2. References of this
 nature will in future be made
 to the Advocate General.

To the Inspector General of Sails
 " Government Pleader

J. C. S.

Pleader, those marks
 for the circumstances
 which if any other
 nature should be made
 on my letter, that you
 will mention the reasons
 for any now brought
 to the question after having
 done performance of the
 which did not fall
 within those defined by
 Govt. You have not con-
 sidered with me
 regarding my fee for
 appearing on the Criminal
 Case for Calicut.
 You have not sent me
 a copy of Mr. Stoker's reports
 sent me for regarding
 that you of these subjects & holding
 that I should not be paid.

Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

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(Here enter 20th February 1864 No. 38.)
 Order thereon 1st March
 February 1864 No. 277.

The Governor and
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 ing letter from the Govern-
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 cated to Mr. Rohde with the
 intimation that the Govern-
 ment concurs in Mr. Dales'
 opinion.

2 References of this
 nature will in future be made
 to the Advocate General.

To the Inspector General of Sails
 " Government Pleader.

5. Feb. 1864.

Pro 10/10/126
16.2.64

Judicial 1864. Department.
No. 277
PROCEEDINGS OF GOVERNMENT.
Dated 1 March 1864.