

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 1583-84	Press Mis.
56-58	
Dated 7-11-1918	

Not to be folded or roughly handled

*Proceedings of the Madras Government, Judicial Department,
7th November 1865.*

No. 46. Read the following letter from the Government Solicitor, Madras, to the Chief Secretary to Government, Fort Saint George; dated Madras, 5th October 1865, No. 587.

I have the honor to acknowledge the Proceedings of Government noted in the margin (with enclosures), relative to the
dated 13th September 1864, No. 1395, *Judicial Department*—*Force, and operation within the British Territories, of process (by Subpoena and otherwise) issued from Courts established in the Territory of Mysore.*

2. I submitted the matter for the consideration of the Advocate General; and,
3. I now forward a copy of his Opinion.

COPY—OPINION.

I have very carefully considered the matter referred to me by the Order of Government, No. 1172, dated 23rd August 1865. It appears to me to involve a question of very serious importance.

1. I do not conceive that His Excellency the Governor General purports to extend the Code of Criminal Procedure to Mysore by virtue of any power conferred on him by the 44th Section of the Code. Did I think so, I should consider the reasoning of His Excellency the Governor in Council in paragraph 2 of the Order of the 23rd August conclusive. But it appears to me that the Governor General, in administering the territories of Mysore under the provisions of the Treaty of 1792, is invested with just the same power as the Rajah would have had, supposing he had continued the actual ruler of his own Kingdom.

2. It is clear that the Rajah might have introduced into his own Kingdom any Regulation or Act of the Indian British Legislatures which he thought suited to the wants of his own people. This he might have done in any form he pleased—either by copying the whole Act verbatim, and so promulgating it, or by a simple declaration that such and such an Act was applied to Mysore.

3. This, I apprehend, is the power which the Governor General now exercises in declaring this or that Act extended to Mysore.

4. If, in the present case, any offence has been committed against the Law, I am of opinion that the offence was in Mysore, and not Bombay.

5. As I read the Criminal Procedure Code, it is in the power of a Magistrate to summon or arrest his witness for the attendance before him of any witness whose testimony he considers essential to the cause of justice, let that witness live where he will in British India. I am not aware that since his power in this respect to his own District, or even to his own Presidency, Section 181 confers the power of the Police in enforcing the attendance of any witness within the limit of his Police station. By Section 184, such witnesses may be he bound to appear before the Magistrate by recognition. Sections 185, 187 are guarded. Section 186 provides for the issuing of a warrant in the first instance. Section 189 provides for the enforcement of attendance by attachment, which is only to extend to property of the defaulter within the jurisdiction of the Magistrate issuing the attachment.

6. It may be argued that process immovables may issue to individuals, if this be the Law that a European may be summoned, or served with a warrant, at Cape Comorin, to give evidence at Rajahmundry, but the same objection might be urged in regard to England, where a subpoena to give evidence for the prosecution may be served any where in the United Kingdom. The distance in India is greater than in Great Britain, and the facilities of locomotion less. But this is only a question of degree, which does not affect the argument. On the other hand process injunctive may arise from an appellate holding—a holding which, in my opinion, the Code does not warrant.

7. The offence of not obeying the warrant must I think be an offence against the Court before which the person summoned is ordered to attend. How constant then be without obeying until the last moment at which he might have appeared has expired. In England when a witness is a resident and has been served with Subpoena, and neglects to attend, the Court out of which the process issued will it will punish by attachment, which shows that the disobedience is a contempt of that Court.

Proceedings of the Madras Government, Judicial Department.
7th November 1865.

9. To apply this, the offence here would be against the Mysore Court which issued the summons, not the Bellary Magistrate, under whose authority the summons was served.

10. But that which at the moment I stated to be in my opinion of the great importance remains to be considered. It appears to me that the Code of Criminal Procedure, applied as it has been to Mysore, not by the Indian Legislature, or any power restricted to the Government General by the Indian Legislature, but by his inherent authority as administering Mysore, and no more, must have any force or efficacy beyond the confines of that Kingdom. If, for example, the Rajah of Mysore, the Governor General, and suppose that this Act had been his, I think it will be pretty evident that it could not, apart from a Treaty for that object, claim to have his warrants run into British territory; and if this be well founded, then no offence has been committed in the present instance. Otherwise, the offence now charged, or rather that which would follow upon disobedience to the warrant now issued (for this may be only to enforce their appearance, and not for their trial for anything that appears to the contrary) would fall under Section 172 of the Indian Penal Code.

11. But, for the reasons above assigned, I am of opinion that the Mysore Court was not "legally competent" to issue a summons or warrant to a British subject resident in Bellary, to appear as a witness before such Court, and therefore that no offence has been committed by non-compliance to the summons or warrant.

12. If any offence had been committed, it might be dealt with under Act I of 1842, Section 5.

13. I observe that the word "contumacious" is made use of by the Government, as though this were a case which might possibly fall under Act VII of 1854. But if there were an offence, it is not a "heinous offence," or such as the Governor in Council would deem to fall under Section 22 of that Act. The application is not made under that Act, but under the Criminal Procedure Code. As it appears to me, the warrant is merely following up the summons for the purpose of procuring the attendance of the witness, not with the view of charging him under Section 172 of the Indian Penal Code. Lastly, no offence has been in my judgment committed.

End October 1865.

(Signed) J. B. NORTON,

Advocate General.

(True Copy).

(Signed) J. R. BOYDSE,

Government Secretary.

No. 57. ORDER THEREON, 7th November 1865, No. 1583.

The Governor in Council directs that copies of the foregoing Opinion of the Advocate General, and of the previous correspondence to which it refers, be furnished to the several Magistrates in this Presidency, and also to the Commissioner of Mysore.

(Signed) A. J. ARBUTHNOT,

Chief Secretary.

No. 58. To the Commissioner for the Government of the Territories of His Highness the Rajah of Mysore, dated Fort Saint George, 7th November 1865, No. 1584.

I am directed to send you the enclosed copy of an Opinion given by the Advocate General at Madras, regarding the force and operation within British Territory of a process issued by a Court in the Mysore Territory. Copies of the previous correspondence referred to in Mr. Norton's Opinion are also enclosed.

(Signed) A. J. ARBUTHNOT,

Chief Secretary.

Ext. J. H. Davis.

Proceedings of the Madras Government, Judicial Department.
30th June 1865.

No. 222. Read the following letter from A. HATHAWAY, Esq., Magistrate of Bellary, to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George, dated Camp Ramnadpatt, 17th June 1865, No. 58.

I have the honor, under the authority conveyed in Government Order, No. 754, dated 26th May 1865, Judicial Department, to request that you will be so good as to obtain for me the necessary sanction for my ordering the delivering

over for trial, before the established Court in the Territories of His Highness the Rajah of Mysore, of the persons named in the margin, as at present the Session Court is adjourned.

Names of Offenders
No. 1. *Shankar Gounder.* } For not appearing at legal
2. *Shankar Gounder.* } Sessions to attend at
3. *Shankar Gounder.* } Court at Bellary.
4. *Shankar Gounder.* } Court at Bellary.
5. *Shankar Gounder.* } Court at Bellary.

No. 224. ORDER THEREON, 30th June 1865, No. 922.

Before passing final orders on the foregoing letter, the Governor in Council directs that the Magistrate of Bellary will submit a full statement of the circumstances under which he proposes to deliver up the persons, therein referred to, to the authorities of Mysore. It should be stated whether or not they are British subjects, and whether they were summoned as witnesses, or on a charge preferred against them.

(True Extract)

W. HUDLESTON,

Acting Secretary to Government.

To the Magistrate of Bellary.

Ext. J. H. Davis.

R3N

*Proceedings of the Madras Government, Judicial Department,
25th August 1865.*

Read again letter from the Magistrate of Bellary, dated 12th June 1865, No. 38, recorded in Proceedings, dated 30th June 1865, No. 922.

No. 293. Read also the following letter from A. HATHAWAY, Esq., Magistrate of Bellary, to W. HUDLESTON, Esq., Acting Secretary to Government, Fort Saint George; dated Bellary, 10th July 1865, No. 44.

With reference to the Proceedings of the Madras Government, No. 922, dated 30th June 1865, directing me to submit a full statement of the circumstances under which I propose to deliver up the persons alluded to in the above Proceedings, and whether they are British subjects, and whether they are summoned as witnesses, or on a charge preferred against them, I have the honor to state that summonses for these men to appear before the Sub-Magistrate of Secrah, in the Mysore Territory, were sent to me by the Officiating Deputy Superintendent of Chitaldroog District, to be served on them, which was accordingly done. He wrote to me on the 30th May 1865, No. 44, stating that, as they have disobeyed the legal summonses, he has sent a warrant for their apprehension, and production before the Sub-Magistrate of Secrah in his District. Therefore, the orders of Government were solicited on the subject, this being a triable offence.

2. I have further to state that they are British subjects, and that they were summoned at first as witnesses, and not on a charge preferred against them.

3. The Secrah Judge having re-opened his Court since the date of my first letter, I can now, if Government think fit, apply to him on the subject.

No. 296. *Order in Council*, 25th August 1865, No. 1179.

The Governor in Council observes that the parties whose extradition is requested by the Mysore authorities belong to the Bellary District, and are charged with having disobeyed a Summons to appear and give evidence before a Mysore Magistrate. The Summons was doubtless served upon them, under the authority, and by the order, of the Magistrate of their own District, and the offence of disobeying the Summons was committed within its limits. It is clear, therefore, that the charge should be dealt with summarily by the Bellary Courts.

(True Extract).

A. J. ARBUTHNOT,
Chief Secretary.

To the Magistrate of Bellary.

Ed. J. H. B. B. B.

RVP

*Proceedings of the Madras Government, Judicial Department,
11th September 1865.*

Read again letter from the Magistrate of Bellary, dated 10th July 1865, No. 44,
recorded in Proceedings dated 25th August 1865, No. 1179.

No. 119. *Opium venders*, 11th September 1865, No. 1291.

On further consideration of the letter from the Magistrate of Bellary, recorded in the Proceedings of Government, under date the 25th ultimo, No. 1179, the Governor in Council is disposed to doubt whether the omission by the British subjects in question to attend as witnesses at "Sornah" in the Mysore Territory, in obedience to a summons issued by the Magistrate of that place, can be regarded by the Magistrate of Bellary as a Criminal Act, which should be treated by him as one for which, under the Indian Penal Code, he can award punishment.

2. The Governor in Council is led to the adoption of this view, by reference to the definition of the term "British India", given in Section 2, Code Criminal Procedure, which, it seems obvious, cannot, under the operation of Section 445 of the same Code, be rendered applicable to foreign territory such as that of Mysore.

3. Adverting, however, to the practical importance of the point, and to the probability of applications of the kind under notice being frequently made by the Magistrate in Mysore to the Magistracy of the border Districts in the Madras Presidency, His Excellency in Council resolves to refer the question to the Advocate General for his opinion, and meanwhile directs the Magistrate of Bellary to abstain from acting on the intimation conveyed to him in the Proceedings of Government, dated the 25th ultimo.

(True Extract). -

A. J. ARBUTHNOT,
Chief Secretary.

To the Government Solicitor, with Proceedings, Nos. 927 and 1179.
Magistrate of Bellary.

Ed. J. H. Davis

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letter
from the Govt. Solicitor

2/3 October 1865 No 587

Order thereon of November 1865 No 583

The Governor in Council
directs that copies of
the foregoing opinion of
the Advocate General
and of the previous cor-
respondence to which
it refers, be furnished
to the several Magistrates
in this Presidency; and
also to the Commissioner
of Mysore.

MR

GP.
WON

MA

To the Magistrate of the district of Mysore

58, 59.

POSTOFFICE OF GOVERNMENT.

No. 582.

Advisal 10057 Department.

27/11/11

Dated 7th November 1855.

Postoffice
11/11/11

Advisal 10057
to be sent immediately

R6W

Judicial Dept

No 1584.

To The Commissioner of Mysore.

Sir

I am directed to send
you the enclosed copy
of an opinion given
by the Advocate General
at Madras, regarding the
force and operation
within British Territory
of a process issued
by a Court in the
Mysore territory. Copies
of the previous corres-
pondence referred to
in Mr Norton's opinion
are also enclosed

GC

To Mr George
7 November 1855

JK

58.

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