

MADRAS RECORD OFFICE.

Government of Madras.

Medical DEPARTMENT.

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Proceedings of the Madras Government, Judicial Department,
12th October 1866.

No. 137. Read the following letter from the Officiating Commissioner for the Government of the Territories of His Highness the Maharajah of Mysore, to the Secretary to Government, Fort Saint George; dated Bangalore, 13th September 1866, No. 2904.

In acknowledgment of your letter, No. 1300, dated the 22nd August 1866, I have the honor to forward, for submission to the Right Honorable the Governor in Council, the accompanying copy of a letter, No. 126, dated the 7th of September 1866, which I did myself the honor, in my then capacity of Judicial Commissioner, to address to Mr. Bowring, the Commissioner of Mysore, on the general subject of the issue of warrants for the apprehension of British subjects for offences committed within the Mysore Province.

2. As I have in the above quoted letter communicated at some length the views which I myself entertain upon the question under discussion, I do not propose to recapitulate them in my present letter, but I think it right to bring to the notice of the Right Honorable the Governor in Council the fact that all applications for the rendition of criminals for offences committed within the Mysore territory are made in a formal manner, under the provisions of Act No. I of 1849 and VII of 1854, which have been specially enacted with a view to give some protection to the inhabitants of a Foreign State from depredations and other criminal offences committed by inhabitants of the conterminous Districts of Her Majesty's territory.

3. In connection with this subject, I deem it right to forward, for the information of the Right Honorable the Governor in Council, a copy of Circular instructions which, as Judicial Commissioner, I had printed and issued with the concurrence of the Commissioner for the guidance of all the Magisterial authorities in this territory, pointing out to them the procedure which they were invariably to adopt in applying for the rendition of criminals.

4. I need hardly add, that all warrants issued by the Magisterial authorities of the Districts of Her Majesty's territories adjoining Mysore are scrupulously attended to and enforced.

5. I would, in connection with the general subject of the rendition to Foreign States of criminals residing within British territory for offences committed beyond the British border, beg to annex a copy for the information of the Government of Madras of a Circular, No. 560, from the Secretary to the Government of India, dated the 29th May 1866, calling for a report on the practical working of Act VII of 1854, and in reply to which I have duly pointed out the difficulties which are not unfrequently experienced, owing to the formalities required by the Act and from other causes, in obtaining from neighbouring Districts the free delivery of persons charged with crimes committed in Mysore, which, although administered directly by British Officers, it must be borne in mind, is nevertheless a Foreign State.

6. In conclusion, I think it right to mention, that it has been reported to me by one of the District Officers of this territory, that owing to the inhabitants of the conterminous District of Her Majesty's territories having ascertained the difficulties raised to the arrest upon warrants issued by the Mysore Magisterial authorities of criminals within the British border, they have come to the conclusion that they can commit crime with perfect impunity in Mysore, and that crime has greatly

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increased and dacoities become more numerous in consequence during the present time of scarcity and dearth.

From the Judicial Commissioner, to the Secretary to the Commissioner, dated Bangalore, 7th September 1866, No. 126.

I have the honor to acknowledge your Docket, General No. 744 of the 29th August 1866, giving cover to a letter No. 1300 of the 22nd ultimo, addressed to the Commissioner by the Madras Government, and to offer the following observations for the information of the Commissioner.

2. In the above communication, the Madras Government have brought to the notice of the Commissioner the circumstance of the Sub-Magistrate of Sreenivaspoor and the Deputy Superintendent, Colar, having issued warrants under the Criminal Procedure Code for the apprehension of British subjects residing in the Cuddapah Districts, charged with offences committed in this Province, a course of procedure to which they have thought proper to take exception, on the ground of its being in contravention of the views expressed by the Advocate General of Madras, which were communicated to the Commissioner under cover of letter No. 1584, of the 7th November 1865, and transmitted to me with your No. 744 of the 17th idem, for the expression of my views thereon.

3. On referring to the communication here adverted to, the Commissioner will observe that the opinion of the Advocate General, though given generally in regard to the force and operation within British territories of processes issued by the Mysore Courts, was particularly directed, and had special reference, to the question immediately under consideration at that time, viz., as to whether British subjects resident within Her Majesty's territories, who failed to attend and give evidence in criminal trials, according to subpoenas or other like processes duly served upon them, were legally amenable to be dealt with and punished under the provisions of the Indian Penal Code, for such non-compliance or inattention to the injunctions of duly constituted authority. The Honorable J. B. Norton, on that occasion, expressed his opinion that the Courts in Mysore were legally incompetent to issue summonses or warrants to a British subject, resident in Her Majesty's Districts, to appear as a witness before such Courts, and as a necessary consequence no offence could have been committed by the refusal or non-compliance on the part of the witness not legally bound to attend to such requisition.

4. This hypothesis, however inconvenient and objectionable in practice, was based on the argument that the Criminal Procedure Code had not been regularly introduced into Mysore, either by the Indian Legislature, or by virtue of any power reserved in His Excellency the Governor General by such Legislature, but that it was merely extended in the exercise of that inherent authority vested in the latter, as administering the Province of Mysore. He therefore argued that the provisions of the above Act cannot *ex-mero motu* have any force or operation beyond the confines of this Province. However this may apply to the enforcement of processes issued for procuring the attendance of witnesses to give evidence in criminal trials, and to the non-obligation of the Courts of Her Majesty's Districts to comply with such requisitions, I am bound to maintain, in the interests of justice and in upholding that fundamental principle which demands that punishments should follow on the heels of crime, that it could never for a moment have been contemplated by the Supreme Government or the Government of Madras that the territories of Her Majesty should, on the strength of objections started on mere technical grounds, afford a safe rendezvous, or be practically converted into an asylum, for the refuge of criminals escaping beyond the limits of Foreign States administered by a British Commission. On the contrary, the provisions of Acts I of 1849 and VII of 1854, which, though objectionable in many of their details and defective in their operation, as illustrated in my letter to your address, No. 197 of the 22nd December 1865, and of my letter No. 125 of this date, nevertheless clearly shew that the Courts in Her Majesty's Districts are substantially required and enjoined to pay every due attention to applications made by Foreign States, for the rendition of accused parties. If warrants for the apprehension of parties in Her Majesty's territories who have committed crimes in Mysore which are issued by the Courts of this Province are entirely disregarded, it is impossible to conceive the amount of evil and mischief that would result by thus virtually holding out a premium for the commission of crime.

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12th October 1866.*

From the Judicial Commissioner in Mysore, to the Superintendent of the — Division; dated Bangalore, 30th June 1865, Circular No. 11.

It has been brought to my notice, that when the Amildars in the Mysore territory issue warrants for the apprehension of persons residing in Her Majesty's territories, they at present apply direct on the subject to the Tahsildars in the latter territories, and have discontinued the former practice of making, through their Deputy Superintendents, a formal requisition in the matter to the District Magistrates, to whom the Tahsildars are subordinate, with a view to the former obtaining the sanction required to be furnished to them by the Governments of the several Presidencies, under Section 5 of Act I of 1849. The course now pursued by the Amildars necessarily causes delay in the apprehension and rendition of the accused parties, in pursuance of the warrants issued by those officers, as the Tahsildars invariably make a reference to the Magistrates of their Districts, before they allow the prisoners apprehended there, to be removed into Mysore, and as the Magistrates of those Districts frequently are not willing to act upon the simple warrants of the Amildars, unaccompanied by a formal requisition from the Deputy Superintendents of the Districts. With a view, therefore, to remedy this defect in the mode of procedure now adopted by the Amildars, I have deemed it right, with the concurrence of the Commissioner, to prescribe the following rule, which I request you will cause to be clearly explained to all the District Officers and Amildars in your Division:—

RULE.

Whenever an Amildar in the Mysore territory issues a warrant for the apprehension of accused persons who reside, or are to be found, within the limits of Her Majesty's territories, the Amildars may apply direct to the Tahsildars or other subordinate Magistrates in the latter territories on the subject of the due execution of the warrants in question, but the Amildar, simultaneously with such application, should give an intimation of the fact to the Deputy Superintendent of the District to which he belongs, submitting at the same time a copy of the warrant issued by him. The Deputy Superintendent, immediately on the receipt of such intimation and of the copy of the warrant, shall forward the copy to the proper District Magistrate in Her Majesty's territories, with a request that he will, after obtaining the necessary sanction of the Government, as prescribed in Act I of 1849, issue orders for the rendition of the parties apprehended under the warrant, to the Amildar who may have issued the same.

From the Secretary to the Government of India, to the Commissioner of Mysore and Coorg; dated Simla, 29th May 1866, Circular No. 560.

Foreign Department.
Political.

The Right Honorable the Governor General in Council has lately had under consideration the question, whether the procedure prescribed by Act VII of 1854, however well adapted for dealing with offences of the first magnitude, is equally applicable to offences which, though they fall short of this character, are yet of great gravity, and demand strong measures for their repression. It is feared that the conterminous tracts where British territory and the territory of Native States meet, are too frequently hot-beds of crime, the law being so careful for the safety of the individuals charged by any Native State with offences committed beyond the British border, that practically suffering is entailed on the people living in these localities by the impunity with which crimes may be perpetrated, and the perpetrators escape into the first village within British territory.

2. I am, therefore, desirous to request that you will favor His Excellency in Council with your opinion on the practical working of Act VII of 1854; the points specially to be noticed being, whether the formalities required by the Act are found unnecessarily to interfere with the free delivery of persons charged with crimes committed in Foreign territory, and whether any modifications of the law are considered requisite.

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12th October 1866.*

No. 138. To the Commissioner for the Government of the Territories of His Highness the Maharajah of Mysore, Bangalore, dated Fort Saint George, 12th October 1866, No. 1606.

In acknowledging the receipt of your letter of the 13th ultimo, No. 2904, I am directed to explain that the issue, by Mysore Officers, of processes under the *Criminal Procedure Code*, to persons resident within British Territory, was the point to which attention was drawn in my letter of the 23rd August last, as being in contravention of the opinion of the Advocate General. It is, of course, open to the Mysore Authorities to apply for the surrender of offenders, under the provisions of Acts I of 1849, and VII of 1854, and prompt attention will always be paid by the Magistrates concerned to such requisitions.

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

dec 13/66

Judicial Department

No. 1606.

*The Commissioner for the Government of the
Territories of His Highness the Maha
Rajah of Mysore.
Bangalore*

Sir,

*In acknowledging the receipt
of your letter of the 13th ultimo
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MD

W.D.

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Fort St. George
12 October 1846

Received of
Judicial 1886 Report H.

N. Wood.

To
The Comrs for the Court
of the District of
the Highways to the
of Myrtle.

Filed 12 October 1886.