M.R.O. 1—[illegible]—14-12-53.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 686 Press Mis.

61-62

Dated 4. 8. 19/1886

41

Not to be folded or roughly handled

No. 61. Read the following letter from the Magistrate of Salem, to the Chief Secretary to Government, Fort Saint George; dated Salem, 7th April 1866, No. 18.

I have the honor to submit for the consideration and Orders of Government, the following questions, at the request of my Acting Head Assistant Magistrate when in charge of the Sub-division.

I. Suppose an offence (not heinous) was committed by a subject of a foreign State, and a Warrant is issued by the authorities there for the apprehension in British Territory of the accused, can the authorities in the British Territories endorse the Warrant, or give up the alleged offender.

II. Suppose an offence (not heinous) was committed by a British subject in British Territory, and process is issued for the apprehension of the accused, who has escaped and is in foreign territory, can the authorities in those territories be required to give up such offender.

2. Warrants in petty cases of theft are often forwarded by the Mysore authorities, through their peons, for the apprehension of certain persons who are stated to be in this District, with a request to endorse them.

3. It is evident that the provisions of Act VII of 1854 will not apply to such cases, for they do not come under one of the offences designated as "heinous" in Sections 21 and 22 of that Act. It is also evident that such cases cannot be dealt with under Act I of 1849, for it is not alleged that the persons against whom the Warrant is issued are British subjects, or such persons as are contemplated by that Act.

4. I do not understand, therefore, under what authority such Warrants could be endorsed, or the alleged offenders given over to the Mysore authorities.

5. I referred these questions to the Sessions Judge; but he declined to give any opinion, on the ground that the Legislature was silent on the subject, and that the questions involved political considerations.

6. I request, I may be instructed as to how I am to deal with such cases.

No. 62. ORDER THEREON, 4th May 1866, No. 686.

The Governor in Council observes that the questions raised in the foregoing letter must be answered in the negative. Act VII of 1854 which governs the Procedure in cases of arrest of foreigners charged with the commission of offences in foreign States is expressly confined to "heinous" offences as defined in Section 21 of that Enactment. In a letter to Government from the Advocate General of Madras, written in 1851, in a case which would appear to have eventually led to the passing of that Act, he stated:—"By

Paragraph 2.

"the law of all civilized nations, the "country in which a criminal is found who has committed any serious crime, such "as felony or murder, gives aid to the country in which the crime has been com-"mitted, with a view to bringing such criminal to punishment." He added, "the "interference of a Magistrate in any way,

Paragraph 6.

"as regards crimes committed in an in-"dependent and separate State, should, in my opinion, be confined to cases of felony

Proceedings of the Madras Government, Judicial Department, 4th May 1866.

"and murder; for no grounds of suspicion can legally justify an arrest or trans-
"mission of a party guilty only of a *misdemeanour*; nor has the Magistrate or Go-
"vernment any authority to take bail in such cases. I doubt if it would be thought
"expedient by the Imperial Legislature to authorize arrests by backing Warrants
"issued from Ceylon in all cases of simple misdemeanour, such as common as-
"saults."

2. These views were apparently adopted in passing Act VII of 1854, and petty offences, such as the Magistrate of Salem refers to, being thus expressly excluded from its purview, the authorities of one State cannot claim to have their Warrants, for the apprehension of persons charged with the commission of such offences, backed and executed by those of another under the Act in question, unless the offences should be such as fall within the reservations contained in Section 22.

(True Extract).

Chief Secretary.

To the Magistrate of Salem.

Extd. R. H. Lee.

No 18

Salem Magistrate's Office
Salem 7th April 1866

From,

The Honorable D. Arbuthnot
Magistrate of Salem.

To,

The Honorable A. J. Arbuthnot
Chief Secretary to
Government Fort St. Geo
Madras

Sir

I have the honor to submit
for the consideration and orders of Govern
the following questions at the request of my
Ag Head Assistant Magistrate when in
charge of the Subdivision.

I Suppose an offence (not being
was committed by a subject of a Foreign St
and a warrant is issued by the authorities
there for the apprehension in British territo
of the accused. Can the authorities in the
British territories endorse the warrant or give

up the alleged offender?

II Suppose an offence (not heinous) was committed by a British subject in British territory and process is issued for the apprehension of the accused who has escaped and is in Foreign territory Can the authorities in those territories be required to give up such offender?

2 Warrants in petty Cases of theft are often forwarded by the Mysore Authorities through their peons for the apprehension of certain persons who are stated to be in this district with a request to endorse them.

3 It is evident that the provisions of act VIII of 1854 will not apply to such Cases for they do not come under one of the offences designated as "heinous" in Sections XXI and XXII of that act. It is also evident that such cases cannot be dealt with under act I of 1849 for it cannot be alleged that the persons against whom the warrant is issued are British subjects or such persons as are contemplated by that act.

But they come all these Cases under the Code of Criminal Procedure

4 I do not understand therefore under what authority such warrants Could be endorsed or the alleged offenders given over to the Mysore authorities.

5 I referred these questions to the Sessions Judge but he declined to give any opinion on the ground that the Legislature was silent on the subject and that the questions involved political Considerations.

x Vide Judge's letter

6 I request I may be instructed as to how I am to deal with such cases.

I have the honor to be
Sir
Your Most obedient Servant

D R Theobald
Magistrate

Judicial Department.

PROCEEDINGS of the **MADRAS GOVERNMENT.**

Read letter from the Magistrate of Salem
2/7 April 1886 No 10.

Order thereon. 4th May 1886 No 686.

The Governor in Council observes that the questions raised in the foregoing letter must be answered in the negative. Act VII of 1851, which governs the procedure in cases of arrest of Foreigners charged with the commission of offences in Foreign States, is expressly confined to "heinous" offences as defined in Section XXI of that Enactment. In a letter to Govt from the Advocate General of Madras written in 1851 in a case which would appear to have eventually led to the passing of that Act

Act to delay this matter, I spoke him - but I doubt I consider that desirable to him to the Magistrate explaining upon the Advocate General's opinion, as there are

1886 Dated 2 Department
Rec'd
Judicial
No 686
The Magistrate of Salem
The Chief Secretary to
Government
Madras
No 758
Dated 7th April 1886
Received 10th
Submitting for the consideration and orders of Government certain questions arising from the application of the Extradition Act to Foreigners residing in a Native State.

Act, he stated:— "By the
"law of all civilized nations,
"the country in which a
"criminal is found who has
"committed any serious crime,
"such as felony or murder,
"gives aid to the country
"in which the crime has been
"committed with a view to
"bringing such criminal to
"punishment." He added
"the interference of Magis-
"trate in any way as regards
"crimes committed in an
"independent and separate
"State should in my opinion
"be confined to cases of felony
"and murder; for no grounds
"of suspicion can legally
"justify an arrest or trans-
"mission of a party guilty
"only of a misdemeanour,
"nor has the Magistrate or
"Govt. any authority to
"take bail in such cases.

Para 2.

Para 6.

We are now deprived by the Magistrate of Salem— Also, the only "foreign" Secretary with We the H.d appli- cation of the Labo- rers in charge of the Labo- rers, a Chief to have any concern in Mysore. Both as both the I. P. Code and the Code of Criminal Procedure have been adopted in Mysore, there seem doubtful whether the usual minor Magisterial Civilities might not justly be withheld from the Inhabitants of

I doubt if it would be thought
"expedient by the Imperial
"Legislature to authorize
"arrests by backing War-
"rants issued from Ceylon
"in all cases of simple mis-
"demeanour, such as common
"assaults."

2. These views were ap-
parently adopted in passing
Act VII of 1865, and petty
offences such as the Magis-
trate of Salem refers to
being thus expressly excluded
from its purview, the
Authorities of one State
cannot claim to have their
Warrants for the apprehen-
sion of persons charged
with the commission of
such offences backed and
executed by those of another
under the Act in question,
unless the offences should
be such as fall within

The

Judicial 1865. *Department.*

No. 666.

PROCEEDINGS OF GOVERNMENT.

Dated 4 *May* 1865.

Press No. 2755, G. M.—14-11-65—500.

The reservations contained in Section XXII

Magistrate of Lahaul dated 8th

37 Appl
113 Diary