M.R.O. 1—50,000—16-10-59.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial **DEPARTMENT.**

G.O. No.	891	**Press** ~~Mis~~
57-58		
Dated	8. 6.	19 1886

Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department,
5th June 1866.

Read the following :—

No. 57. Letter from the Secretary to the Government of Bengal, to the Secretary to the Government of India, Foreign Department; dated Fort William, 29th March 1866, No. 2312.

I am directed to acknowledge the receipt of your letters, Nos. 239 and 242, dated, respectively, the 10th and 12th instant, and, in reply, to say that the Lieutenant-Governor, in making his request to be supplied with copies of Treaties and Acts relating to the rendition of Criminals to Foreign States with which we have treaties, had in view European and other Foreign Powers, and not Native States, such as those to which Mr. Aitchison's compilation relates. As no copy of these Treaties is available in the Foreign Office, arrangements have been made for supplying the Library of the Bengal Office with a copy of Heinke's Treaties.

2. The great necessity which exists for furnishing the Local Governments with copies of such Treaties as that with the United States of America, and such Statutes as 6 and 7 Vict. Cap. 75 and 76, is fully illustrated by the case referred to in the extract from the letter from the Secretary to the Government of Bombay, No. 11, dated 5th April 1860, which forms one of the enclosures of your letter, No. 239. In that case, the Government of Bombay was apparently led into error by ignorance of the existence of an extradition treaty with America, and their proceedings, which were based on this error, seem to have been confirmed by the Government of India. This Government had recently to deal with a case exactly analogous to that in which the Government of Bombay refused extradition. The Consul-General of the United States of America requested the arrest and surrender of an American Seaman, named Joseph Clark, charged with murder on board the American Ship *Leucothea*, while on the high seas. This Government was not in possession of a copy of the Treaty with America, but the difficulty was obviated by the courtesy of the Consul-General, who lent the Government his copy of the Treaty. The Lieutenant-Governor, however, desires me to observe that it is not becoming or expedient that the Local Government should be compelled to have resort to such a means of satisfying itself of the justice of the demands of a Foreign State.

3. The Lieutenant-Governor had, with the advice of the Advocate General, issued orders for complying, in due course, with the demand for extradition made in the case of the Seaman, Joseph Clark; but, finding that these orders were totally at variance with the decision of the Government of Bombay and the Government of India in the analogous case above alluded to, His Honor caused all the papers to be again laid before Mr. Cowie, and the accompanying is a copy of the opinion given by him.

4. I am to add that the Convention with France, dated 7th March 1815, to which you allude in paragraphs 2 and 3 of your letter under reply, has reference only to French Settlements in the East Indies. The Convention under which extradition is now effected in regard to France is the convention of 1843, though it is understood that, under the terms of the Convention, notice has lately been given by the French Government of its cessation, but no official intimation of this proceeding has as yet reached this Government.

OPINION.

In the case of Joseph Clark, the American seaman charged with murder on the high seas, on board an American Merchant vessel, I am of opinion that the proceedings which have been taken

have been according to law. As I understand the case, the Lieutenant-Governor, on the requisition of the Consul for the United States, issued his warrant to a Calcutta Magistrate and Justice of the Peace, before whom depositions have been taken and the accused committed to Jail; and on another warrant of the Lieutenant-Governor, the accused has been delivered to the American Consul, for conveyance to the United States.

2. I am not aware that the Extradition Treaty of 7th August 1842 between Her Majesty and the United States' Government has ever been revoked, and unless it has been, the provisions of the 6 and 7 Vic., Cap. 76, are still in force. The 1st Section of that Act has express reference to the offence of murder committed, not within the territories, but within the *jurisdiction* of the United States.

3. It is true that, according to international law, as recognized by English Jurists, Merchant vessels belonging to subjects of, and entering under the Flag of, a Foreign State, do not in law constitute part of the territories of that State. But, in speaking of the jurisdiction within which the offence was committed, I think the Act of Parliament clearly has reference to the Government, the Municipal Courts of which would have exclusive jurisdiction to try the alleged offence. Indeed, if this is not the meaning of the Act, I am at a loss to understand the use therein of the term 'jurisdiction', as distinguished from "territories." In the class of cases contemplated by the Act, the United States' Courts, and they only, would have jurisdiction to try the offences for which the accused persons are delivered up to the American Government.

4. I think it is unnecessary to make any particular observations on the opinion given in 1860 by the then Advocate General of Bombay, as that opinion turns exclusively on the meaning to be given to the term "territories," and the supposed absence of any existing Extradition Treaty.

21*st March* 1866. (Signed) T. H. COWIE.

No. 500.

Copy forwarded to the Government of Fort Saint George for information.

FOREIGN DEPARTMENT,
POLITICAL, SIMLA,
18*th May* 1866.

(Signed) J. W. S. WYLLIE,
Under Secy. to the Govt. of India.

No. 58. ORDER THEREON, 5th June 1866, No 891.

To be recorded.

(True Extract.)

J. D. SIM,
Acting Chief Secretary.

Exd. J. H. Burns.

Judicial 1866 Dept

From
Under Secy to Govt of India
For. Dept
No 500.

Rd 18/5/66
Ry 31/5 May/66

No 1176.
Comm[n] Copy of Mr Ewbs
Opinion regarding the
Extradition of Criminals
to Foreign States —

Exd. [illegible]

5th June 1866 No. 891.

J. D. Sim