

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	167	Press
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Dated	28-1-1867	

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Not to be folded or roughly handled

*Proceedings of the Madras Government, Judicial Department,
28th January 1867.*

No. 304. Read the following letter from the Secretary to the Government of India, to the Secretary to the Government of Fort Saint George; dated Fort William, 2nd January 1867, No. 12.

Home Department.

With reference to the correspondence ending with my letter No. 6912, dated 23rd December 1864, I am directed to forward, for the information and guidance of the Madras Government, the accompanying copy of the correspondence noted in the margin, from which it will be seen that the Governor General in Council has revoked the license granted to the prisoner James Burke, and has directed his re-transfer to the Jail at Ootacamund, to be there detained in penal servitude until the expiration of his original sentence.

From the Officiating Secretary to the Chief Commissioner of British Burmah, to the Secretary to the Government of India; dated Rangoon, 26th November 1866, No. 599C.

I have the honor, by direction of the Chief Commissioner, to acknowledge the receipt of docket No. 5818, dated 26th ultimo, from Mr. Under Secretary Howell, forwarding, in original, for early report, a petition from prisoner James Burke, who is undergoing a sentence of ten years' penal servitude, complaining of his having been transferred from Port Blair to the Rangoon Jail, of his being supplied with insufficient bedding and clothing in the Rangoon Jail, and praying for a remission of the remaining term of his imprisonment, and for a free passage to England. In reply, "I am directed to transmit, for the information of His Excellency the Governor General in Council, copies of correspondence noted in the

Letter No. 299, dated 24th April 1866, marked A., with annexures.
Letter No. 424, dated 10th October 1866, and annexures, marked B.
Letter No. 434, marked C.
Original petition, marked D.

margin, and to state that prisoner James Burke was sent to Rangoon from Port Blair, under the orders of the Superintendent of that Settlement, for the reasons given in his letter No. 299, dated 24th April last, a copy of which

is attached. From this letter it appears that prisoner Burke's behaviour while at Port Blair was so bad that the Superintendent recommended that the license granted him by the Governor General in Council should be revoked, and that the prisoner should be sent back to Jail at Calcutta, there to undergo in hard labor the remaining portion of his servitude. The prisoner arrived at Rangoon on the 3rd May last, and the Chief Commissioner directed that he should immediately be placed in the Rangoon Jail, and there kept in safe custody until further orders—the Chief Commissioner intending to take into consideration whether it would be advisable to recommend to Government that the prisoner should be kept in the Rangoon Jail or be sent to Calcutta. On the 10th ultimo the Inspector

* Copy attached, marked B.

General of Prisons, by his letter, No. 424* of that date, solicited the orders of the Chief Com-

missioner regarding this prisoner and two others, named Scott and Neill, and recommended that Burke should be sent to Calcutta. The Chief Commissioner being absent on the frontier his orders could not at once be obtained on this letter; and in the meantime, Mr. Under Secretary Howell's docket, forwarding prisoner Burke's petition to His Excellency the Governor General of India, was received. On receipt of this petition, Dr. Planck was at once called upon to report regarding the prisoner's behaviour during the time he had been in the Rangoon Jail, and a copy

† Marked C.

of his reply, with its enclosures, † is attached, from which it will be seen that the prisoner's behaviour has been anything but satisfactory,

and that his complaint that he had no bedding or clothing is entirely false. The Chief Commissioner, therefore, recommends that the license granted to prisoner Burke by His Excellency be revoked,

and that he be transferred to the Calcutta Jail, there to undergo in hard labour the remaining term of servitude awarded him. The Chief Commissioner also solicits the sanction of His Excellency to the detention of the prisoner in the Rangoon Jail since the 3rd May last; and, with reference to that part of Dr. Planck's letter, No. 424 of the 10th ultimo, which refers to the prisoners Scott and Neill, he solicits the sanction of His Excellency to the removal of the prisoner Scott from the Rangoon to the Moulmein Jail. The license granted by His Excellency to the prisoner Burke is herewith forwarded,* in order that it may be revoked, should His Excellency deem that course expedient. The prisoners Burke and Scott will be detained in the Rangoon Jail, pending the receipt of His Excellency's orders on this letter.

* Annexed to letter marked A.

A.
From the Superintendent of Port Blair, to the Officiating Secretary to the Chief Commissioner of British Burmah; dated 24th April 1866, No. 299.

I have the honor to enclose, for the information of the Chief Commissioner of British Burmah,

No. 12, dated 11th April 1866.

copy of a letter and Proceedings of the Court of the Assistant Superintendent of Port Blair, No. and date as per margin, bringing to my notice the bad conduct, during my recent absence on leave to Calcutta, of licensed prisoner James Burke.

2. Prisoner Burke arrived at this Settlement on the 16th of April 1865, and from the very first his conduct has been highly insubordinate, disrespectful and violent; the man has an almost uncontrollable temper, and at such times is actually dangerous to those who come near him.

3. But though I regret to be obliged to state the above to be, what from experience I have found is, prisoner Burke's character; and though from the first I saw that I should have great difficulty with this man, yet I have made it my duty towards him, as I make it my duty towards all European prisoners under my charge, to do all I could to reform him. I have had frequent and serious conversations with him when, on many occasions, he has been reported to me for violent and bad conduct; and it has been my duty to punish and reprimand him, pointing out to him how most surely his continuance in evil courses would lead to severe punishment. He has over and over again promised to amend, and each time he has been met with every encouragement, and in earnest exhortation invited to do well, but all, I regret to say, has been to no purpose, the man being an incorrigible offender.

4. So ungovernable is this man's disposition, that he is constantly guilty of acts of violence; there are instances against him even towards women of this kind, and his threatening and abusive tongue alarms all with whom he comes in contact. Consequently for such a man to be any longer at large in this Settlement, is, in my opinion, most objectionable; whilst, from the same cause, it is quite impossible for me to entrust him with any duty in which convicts would be placed under his orders (for want of education he is quite unfit for any other than out-door employment). Indeed, in any duty that I would put him to, his disobedience of my orders, as well as those of the Assistant Superintendent, and the advantages he has taken of his situation in various ways, has been so openly against the rules and regulations of the Settlement, that the man's presence has only been a constant source of trouble and anxiety instead of assistance to me, and I feel it is quite impossible, therefore, to employ him in a situation of trust any longer.

5. The Chief Commissioner is aware that I have no building or other suitable place so as to punish a man by confinement therein, the only other punishment open to me is to reduce his subsistence allowance, a course which, for many reasons, would be very objectionable. It is hardly necessary for me to remark how prejudicial to all efforts of a reformatory nature, as regards others of his class, is the presence of such a bad character and example.

6. Under all the above circumstances, therefore, I have determined on forwarding prisoner James Burke by this opportunity under charge of a guard to Rangoon, respectfully recommending

that, as he has failed in the performance of the conditions under which the "license" was granted to him by the Governor General in Council, the said "license" may be revoked, and that he be sent back to Jail at Calcutta, there to undergo in hard labor the remaining portion of his term of servitude, which will expire on the 3rd of October 1868.

N. B.—Prisoner Burke's "license" and a copy of his Descriptive Roll are appended, from which it will be observed that his character was "very bad" in Jail before he was sent to Port Blair.

From the Assistant Superintendent of Port Blair, to the Superintendent of Port Blair; dated 11th April 1866, No. 12.

I have the honor to forward, for your information, a Court Statement* of prisoner James Burke's recent behaviour in Haddo, and as well

* Extract from Miscellaneous Proceedings in Case No. 23 of 22nd March 1866.

in my Court; and, as he has flatly refused to obey the sentence passed upon him by this Court,

I request you will be so good as to give me further instructions as how I should deal with this prisoner.

Extract from Miscellaneous Proceedings.—Case No. 23 of 22nd March 1866.

Soon after arriving from Calcutta, to take up my duties, Major Ford, Superintendent, brought to my notice the conduct of prisoner James Burke, and directed me to keep watch on his conduct.

2. On several occasions I have had to reprimand him for using language to the Native convicts unfit to be reported, and also for writing impertinent letters to me.

3. On the 22nd March 1866, prisoner James Burke was reported to me by Mr. Overseer Bryant, of Haddo, for having struck and kicked a Division Gangsman, Narrain Sing, of the 4th Division.

4. I took up the case summarily, and, therefore, did not write any statement of evidence; and in consequence of the Overseer, Mr. Bryant, stating that he had with his own eyes seen the European convict strike the Native convict, I considered that sufficient evidence to convict upon.

5. The Division Gangsman's statement was to the following effect:—

He was walking past the garden of prisoner James Burke with a cabbage in his hand. Prisoner rushed out and called him a thief, and struck him with his fists; on which the Division Gangsman said it was a lie, and put himself into an attitude of defence.

Prisoner Burke at once raised his foot and kicked him on the abdomen close by the groin, and at the same time struck him again on the face with his fist—the man fell.

Mr. Overseer Bryant stated that he saw the Division Gangsman walking past the garden of prisoner James Burke. He saw prisoner Burke rush out violently and strike the Division Gangsman; he was too far off to hear any words between them.

The Division Gangsman defended himself, on which prisoner Burke raised his foot and kicked the Division Gangsman, who fell.

On Mr. Bryant telling him to desist, and that he should report the case, he replied that he did not care, he would do it again.

6. When put on his defence and asked what excuse he had, prisoner Burke acknowledged to having struck the man, and said he had done so because when challenged with having stolen the cabbage, the Division Gangsman had told prisoner Burke he was a liar (prisoner Burke could adduce no evidence to the fact of the Division Gangsman having made use of such an expression). On being told that he had committed a serious offence, and must be punished for it, more especially as this was not the first time he had been reported, prisoner Burke broke out into a tirade about the injustice he received, and said that he never got justice from any body. On being told to hold his tongue, and listen to what I was going to say, he would not obey; I, therefore, in addition to the first punishment of fine for assault, ordered him to be sent to the laboring gang for 14 days. The next day the Overseer of the Division to which prisoner Burke was sent reported that

4
Proceedings of the Madras Government, Judicial Department,
28th January 1866.

he would not work. I had him brought before me, when he refused again to work; I, therefore, placed him in confinement in the Police Guard, pending Major Ford's return to settle how prisoner Burke should be dealt with. On the second occasion of his being brought before me, I found that some months before Major Ford had called on prisoner Burke to take back his license, which he had sent into the Superintendent's Office, with a request that he might be sent back to prison. He had neglected to receive the license back, and it is still lying in the Superintendent's Office.

11th April 1866.

(Signed) J. H. FRASER, Captain,
Asst. Supt., Port Blair.

LICENSE UNDER SECTION 9, ACT XXIV OF 1855.

To all whom it may concern,—The Right Honorable the GOVERNOR GENERAL OF INDIA IN COUNCIL, sends greeting.

WHEREAS James Burke was, on the 3rd October 1862, in the Supreme Court of Judicature at Fort William in Bengal, tried for and convicted of murder, and was sentenced to penal servitude for six years from that date. And whereas it has appeared fit to the said Governor General of India in Council to grant to the said James Burke, a License to the effect and upon the condition hereinafter expressed.

Now therefore I, the said Governor General of India in Council, do hereby grant unto the said James Burke License to be at large within that portion of India called the Andaman Islands, during the unexpired portion of the said term of servitude of six years, under the conditions hereinafter expressed; that is to say, that the said James Burke, do while at the Andaman Islands aforesaid and until the expiration of the said term of six years from the said 3rd October 1862, for which term he has been so sentenced as aforesaid, perform any duty, service or work which the Superintendent of Port Blair may from time to time require him to perform; and do in all respects obey the lawful orders of the said Superintendent or of such other person as the Superintendent aforesaid or the Government of India shall from time to time appoint for that purpose, and conform and submit to such Rules and Regulations as the said Superintendent or any such person shall make in that behalf. But in default of performance of any of the above conditions this License shall be null and void.

TAKE NOTICE, however, that this License may at any time be revoked or altered by the Government of India.

Given under the hand and Seal of me, the Governor General of India in Council, this 23rd day of December 1861.

(Signed) JOHN LAWRENCE.

Proceedings of the Madras Government, Judicial Department,
28th January 1867.

5

Cell No. 28.—Register No. 2.—James Burke, Town or Village of Drummah County, or Shire of Leitrim, Ireland.

When received.	31st March 1862.	Crime.	1.—Robbery and assault. 2.—Murder.	Term of sentence.	1.—Four years' penal servitude. 2.—Six "	Date of sentence.	1.—2nd October 1858. 2.—3rd " 1862.	Date on which sentence expires.	1.—2nd October 1862. 2.—3rd " 1868.	By what Court sentenced.	Supreme Court of Judicature, Fort William, Bengal.	Age.	21 years.	Height.	5 feet 8½ inches.	Weight.	11 stones.	Description.				Profession.	Religious persuasion.	Character and previous life as ascertained from receipt into Jail.	Extent of education.	Remarks.—Showing the prisoner's conduct in Jail; health while in Jail; term spent; the mode in which the sentence is carried out; date of collection of fine, or infliction of stripes awarded in the sentence; also record of punishment, with reference to page in punishment book. Note also date of release, transfer, and generally all particulars necessary to be recorded in regard of the prisoner.
																									<i>Vide</i> misconduct book, page 1.—For using highly improper language towards a Warden, eight months' solitary confinement. The conduct of this prisoner during the time he has been in this Jail, viz., two years and 305 days, has been indifferent; he has enjoyed excellent health during the whole of his imprisonment here; he has been employed in mat-making, at which he succeeded very well. He has been punished once, as recorded above. He was transferred to the Penitentiary, Madras, on the 20th January 1865, for the purpose of being sent to Port Blair in the Andaman Islands, on a license as conveyed in G. O., No. 90, dated 16th January 1865. The sum of Rupees 82-7-0, the property of the prisoner, and Rupees 100-5-6, which were carried to his credit in the ledger on account of labor, were forwarded to the Commissioner of Police, as per letter, No. 154, dated 30th January 1865. (Signed) J. WARBURTON, Keeper of the European Prison.	
																									Can read and write.	

(Signed) J. WARBURTON,
Keeper of the European Prison.

(Signed) A. W. PHILLIPS,
Sessions Judge, in charge of the European Prison.

OUTCASTS,
30th January 1865.

Proceedings of the Madras Government, Judicial Department,
23th January 1867.

B.

From the Inspector General of Prisons, British Burmah, to the Officiating Secretary to the Chief Commissioner of British Burmah; dated Rangoon, 10th October 1866, No. 424.

I have the honor to forward, for submission to the Chief Commissioner, the accompanying correspondence* concerning prisoner James Burke and prisoners Scott and Neill.

* No. 376, dated 10th October 1866, with its accompani-
ments.

2. The Superintendent of the Rangoon Jail recommends that the prisoner James Burke should be transferred to India, on the grounds that, for his health's sake, he requires a change, and because the prisoner is anxious to be transferred to India.

3. The prisoner Burke is a man of bad character, who was sent to Rangoon from the Andaman Settlement because of his bad behaviour at the Settlement. His sentence of ten years' penal servitude will expire two years hence. I do not believe the prisoner's health will be improved by a change to Calcutta, and I am not prepared to recommend such a change on the grounds specified.

4. There is nothing to show that the prisoner has, by good behaviour in the Rangoon Jail, proved himself worthy of consideration.

5. Concerning the prisoners Scott and Neill, who were convicted of unnatural offence, the one with the other, the Superintendent of the Jail has recommended that the prisoner Scott should be removed to an Indian Jail.

6. As it is undoubtedly advisable that these two offenders should be separated, I would strongly recommend the removal of the prisoner Scott to the Moulmein Jail, there to serve out his sentence.

From the Superintendent of the Central Jail at Rangoon, to the Inspector General of Prisons, British Burmah; dated the 10th October 1866, No. 376.

With reference to the accompanying copy of letter from Secretary to the Chief Commissioner, regarding prisoner James Burke, a copy of whose Descriptive Roll I also attach, I have the honor to request that you will kindly bring the matter to the Chief Commissioner's notice again, as the man is now in an anemic ca chectic state of health, and requires change. He is anxious to be transferred to India.

2. I also beg to attach copies of correspondence regarding prisoners Scott and Neill. I would strongly urge that, considering the nature of the crime for which they are now undergoing imprisonment, it would be advisable they should be separated; I have no means of doing so in this Jail, and therefore beg leave to suggest the removal of prisoner Scott to an Indian Jail.

3. The prisoners themselves are anxious that they should not be confined together; and I think we are bound to encourage the development of any better feeling that may be in them.

From the Magistrate of Rangoon, to the Recorder of Rangoon; dated 19th March 1866, No. 83.

With reference to warrants of prisoners Scott and Neill, sentenced by your Court, under Section 377 of the Indian Penal Code, each to 10 years' rigorous imprisonment, I have the honor to request you will be good enough to inform me whether the above sentence could be commuted to penal servitude under Section 59 of the Indian Penal Code.

From the Registrar, Rangoon, to the Magistrate in charge of Jail, Rangoon; dated 20th March 1866, No. 14.

With reference to your letter No. 83 of the 19th instant, I am requested by the Recorder to inform you that he does not feel disposed to take any steps towards the commutation of the sentences on the prisoners Scott and Neill from rigorous imprisonment to penal servitude.

2. The matter had his best consideration both before and after the trial; and, as he thinks that the abominable crime of which the prisoners were convicted is not one which should receive any leniency, he thinks that rigorous imprisonment within the walls of a duly ordered Jail better

Proceedings of the Madras Government, Judicial Department,
23th January 1867.

meets their case than a sentence of transportation, or penal servitude, which would probably result in their deportation to the Andamans, where they might possibly be thrown together under circumstances of little or no restraint.

3. At the same time it rests entirely with the Executive Government, represented by the Chief Commissioner, to modify the sentence, should he deem it right so to do.

C.

From the Superintendent of the Central Jail at Rangoon, to the Inspector General of Prisons, British Burmah; dated 19th November 1866, No. 431.

In reply to your docket No. 275, forwarding original letter, No. 1943, from Secretary to Chief Commissioner, and petition from prisoner James Burke, herewith returned, I have the honor to inform you that the prisoner, who has done no work since his admission to the Rangoon Jail, has always evinced a spirit of insubordination and can never speak the truth.

2. Owing to his state of health, I wrote to you regarding his transfer to India on the 10th ultimo—vide my letter No. 376. This man's complaint, that he has no bedding or clothing, is entirely false; I attach an inventory, made yesterday morning, of his bedding and clothing, which is alone sufficient to disprove his statement; he has also a very comfortable cane cot, supplied by the Jail.

Inventory of prisoner Burke's property by him in the ward on the morning of the 17th November 1866.

Articles.	No.	Articles.	No.
Shirts, flannel.....	3	Pillow...	1
Pantaloon...	2	Rug or carpet...	1
Coats...	2	Rajaie or goodrie...	1
Waistcoats...	2	Comb...	1
Socks...	2 pairs.	Brush...	1
Collars...	2	Plate, tin...	1
Towels...	2	Spoon...	1
Hat...	1	Pot, tin...	1
Shoes...	2 pairs.	Razor...	1

(Signed) W. P. KELLY,

Supt. of the Central Jail, Rangoon.

From the Officiating Secretary to the Chief Commissioner of British Burmah, to the Inspector General of Prisons, British Burmah; dated Rangoon, 15th November 1866, No. 1943.

I have the honor, by direction of the Chief Commissioner, to forward, in original, a petition, to His Excellency the Governor General of India, from a prisoner, named James Burke, now in the Rangoon Jail, and request that you will call upon the Superintendent of the Jail to report as to the prisoner's behaviour since he was sent to the Jail on the 3rd May last, and as to the truth of his complaint that he is not supplied with bed, bedding, or clothing. You are requested to return the petition now forwarded, together with the report called for; and you are requested to add such remarks as you think proper and report whether you recommend that the prisoner should be detained in the Rangoon Jail, or be sent to Calcutta.

An early reply is requested.

Docket to the Assistant Secretary to the Chief Commissioner of British Burmah; dated Rangoon, 21th November 1866, No. 287.

Begs to return original petition of prisoner James Burke, together with copy of letter No. 434, with an inventory of the prisoner's property, as requested in your letter No. 1943, dated the 15th November 1866.

(Signed) C. PLANCK,

Inspr. Genl. of Prisons, British Burmah.

D.

To His Excellency Sir JOHN LAWRENCE, K. C. B., K. S. I., Governor General of India, Calcutta.
The humble petition of prisoner JAMES BURKE,
undergoing ten years' penal servitude.

RESPECTFULLY SHEWETH,—Your Excellency's poor petitioner, who has been sent from Port Blair for beating a Native Convict whom he caught stealing. He begs to state that he has been detained for the last six months in Rangoon Jail, where he never was sentenced to undergo a day's penal servitude; moreover, he receives neither bed nor bedding or clothing of any description. He is in a most miserable and wretched condition.

Your petitioner begs to state he has undergone eight years and a few months of the aforesaid sentence. He therefore solicits, with the blessing of Almighty, that your Excellency will take the imprisonment he has undergone into consideration, and grant him a remission of the remaining portion of his sentence; provide him with a passage to his native land, where he has not been since a boy of 15 years.

Lastly, your poor petitioner begs to throw himself on your mercy and those whom he has offended against, and fervently prays that he may be pardoned his past offences, which he committed through ignorance and by keeping bad company, which he most sincerely regrets, and will continue to repent to the day of his death.

As in duty bound, your Excellency's most humble
petitioner will ever pray.

(Signed) JAMES BURKE.

RANGOON,
30th October 1866.

No. 5818.

Forwarded, in original, to the Chief Commissioner of British Burmah, for early report.
Return requested.
SIMLA, 26th October 1866.

By Order,
(Signed) A. P. HOWELL,
Under Secy. to the Govt. of India.

From the Secretary to the Government of India, to the Chief Commissioner of British Burmah;
dated Fort William, 2nd January 1867, No. 9.

Home Department.

I am directed to acknowledge the receipt of your Officiating Secretary's letter, No. 599C., dated the 26th November last, regarding the prisoner James Burke, who was licensed to be at large at Port Blair, but who, for misbehaviour and insubordination, was sent by Major Ford to Rangoon, and has been detained in the Jail of that place since the 3rd of May last.

2. In reply, I am directed to state that the Governor General in Council revokes the license granted to the prisoner Burke; and I am to request that the accompanying order may be delivered at once to the Senior Magistrate of Rangoon, or to any Justice of the Peace in Rangoon, with a view to the prisoner being re-committed and returned, by the earliest opportunity, to the Jail at Ootacamund, under the provisions of Section 11 of Act XXIV of 1855.

3. I am desired to point out that, unless for very strong reasons, it was extremely irregular, and indeed illegal, to send away the prisoner from Port Blair, and to detain him in prison at Rangoon. Under Sections 9 and 10 of Act XXIV of 1855 a convict with a license is not liable to restraint; and what Major Ford should apparently have done was to have written to the Government of India, recommending the withdrawal of the license.

4. The case of the prisoner Scott has been dealt with in a separate letter, of this date.

From the Secretary to the Government of India, to the Magistrate of Rangoon; dated Fort William, 2nd January 1867, No. 11.

Home Department.

I am directed to inform you that the Governor General in Council is pleased hereby to revoke the license granted, under Section 9, Act XXIV of 1855, to James Burke, and dated 23rd December 1864; and I am to request that you will, in accordance with the provisions of

Section 11 of the aforesaid Act, issue a warrant for the apprehension of James Burke; and that you will duly re-commit him to the prison at Ootacamund, there to undergo the unexpired term of his original sentence.

No. 305. ORDER THEREON, 28th January 1867, No. 167.

Communicated to the Commissioner of Police, the Session Judge at Ootacamund, and to the Inspector General of Jails, for information and guidance.

2. The Commissioner of Police will arrange for the transmission of the European Convict James Burke to the Ootacamund Jail on his arrival at Madras.
(True Extract).

Chief Secretary.

To the Commissioner of Police.
" Session Judge, Ootacamund.
" Inspector General of Jails.
" Superintendent of Marine.
" Accountant General.

Exd. J. Tulloch.

No. 167-28 Jan 3. 1867
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- To Commissioner of Police
- To Session Judge, Ootacamund
- To Ins. Genl. of jails
- To Ins. Genl. of Madras
- To Ins. Genl. of Madras

dec 29/

[Signature]

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