

# MADRAS RECORD OFFICE.

Government of Madras.

*Judicial* DEPARTMENT.

|          |        |                         |
|----------|--------|-------------------------|
| G.O. No. | 362    | Press<br><del>Mis</del> |
| Dated    | 5-3-19 | 86                      |

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*Proceedings of the Madras Government, Judicial Department,  
5th March 1867.*

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Read the following papers:—

No. 62. From the Commissioner of Police, Madras, to the Chief Secretary to Government, Fort Saint George; dated Madras, 4th March 1867, No. 27.

On receipt of Order of Government, No. 233 of 16th February 1867, I wrote to the Brigade Major at Bellary to know what had become of prisoners Kennedy and Duffee, the warrants for whose custody in the Madras Penitentiary, under the order of the Chief Justice of the High Court, had been for some time in my possession.

2. The Brigade Major informed me in reply that he had transferred my communication to the Officer in charge of Jail, Ootacamund, where the prisoners were in confinement.

3. On the 1st March I received letter No. 279, herewith enclosed, from the Superintendent of the Ootacamund prison, which gave me no clue as to the authority under which the prisoners were there confined.

4. The *Walmer Castle* was advertised to sail on the 6th, so I telegraphed to send the prisoners down forthwith, supposing that they had been sent to Ooty under some misconception. The warrants for their confinement in the Madras Penitentiary were in my possession, and the G. O. by His Excellency the Commander-in-Chief (herewith enclosed) confirming the sentence of the Court, directs that the prisoners shall be sent to the Presidency.

5. The prisoners arrived this morning in conformity with my telegram, and I find by the enclosed copy of a warrant from Colonel H. J. Brewster, Commanding Bellary, (Vide Section 30, Mutiny Act of 1866), that they have been confined in Ootacamund Jail to complete the remainder of their imprisonment by sentence of European District Court Martial, previous to undergoing the penal servitude awarded by a General Court Martial.

6. The authorities concerned with the ultimate disposal of the prisoners thus sentenced to penal servitude would not seem to have been made aware of this intermediate incarceration in Ootacamund Jail, or of the term of such confinement. Hence some confusion has arisen; and as it appears that the term of imprisonment awarded to prisoner J. Duffee, by sentence of European District Court Martial, does not expire till 24th July 1867, I have the honor (with reference to G. O., No. 233 of 16th February 1867, before quoted) to request further orders in his case. Meanwhile, I have detained the escort who brought him from Ootacamund, in order that they may re-conduct him thither if necessary.

7. It will be observed that the sentence awarded to prisoner H. Kennedy by District Court Martial expired on the 30th January 1867. It does not appear why he was kept in Ootacamund Jail after that date, and here again there would seem to have been want of complete understanding as to the ultimate disposal of the prisoners.

8. I enclose the warrants of the High Court to be returned.

Referred, through the Military Department, to the Judge Advocate General for his opinion, as to whether the remainder of the sentence passed upon the prisoner Duffee by the District Court Martial must be undergone in this country, or whether the order for his embarkation may stand.

FORT SAINT GEORGE,  
5th March 1867.

(Signed) A. J. ARBUTHNOT,  
Chief Secretary.

*Proceedings of the Madras Government, Judicial Department,*  
*5th March 1867.*

Referred to the Judge Advocate General for immediate report.

FORT SAINT GEORGE,  
5th March 1867.

(Signed) H. MARSHALL, Major General,  
*Secretary to Government.*

No. 63.

No. 123 of 1867.

MEMORANDUM.

The Judge Advocate General has the honor to return the papers received with the Secretary to Government's (Military Department) Memorandum of this date, in the case of Driver James Duffee, D. Brigade, Royal Horse Artillery, as to whether the remainder of the sentence passed upon him by a District Court Martial must be undergone in this country, or whether the order for his embarkation may stand.

2. The prisoner was sent to the Jail at Ootacamund under instructions from His Excellency the Commander-in-Chief to undergo the sentence of imprisonment passed on him by the District Court Martial, previous to undergoing another sentence of penal servitude since passed on him by a General Court Martial to commence at the expiration of that imprisonment, which will not be completed till 24th July 1867.

3. Under the 31st Section of the Mutiny Act for 1866, now in force, the General Commanding-in-Chief in any Presidency in India, in the case of a prisoner so confined, is empowered to give, as often as occasion may arise, an order in writing, directing the prisoner to be delivered over to Military custody for the purpose of being removed to some other prison or place in any part of Her Majesty's dominions, there to undergo the remainder of or any part of his sentence.

4. No such order has been issued, it appears, by the Commander-in-Chief for the removal of Driver Duffee from the Jail at Ootacamund, and he should, therefore, either be returned to that Jail, to undergo the remainder of his imprisonment, or an order for his removal to England be obtained from the Commander-in-Chief, in accordance with the provisions of Section 31 of the Mutiny Act. The first named course appears the best to be adopted.

JUDGE ADVOCATE GENERAL'S OFFICE, (Signed) H. PRITCHARD, Colonel,  
FORT SAINT GEORGE, *Judge Advocate General.*  
5th March 1867.

*To the Secretary to Government, Military Department, Fort Saint George.*

Ordered that the foregoing letter from the Judge Advocate General be communicated to the Judicial Department, with reference to docket in that Department, dated 5th March 1867.

(Signed) H. MARSHALL, Major General,  
*Secretary to Government.*

No. 64. ORDER THEREON, 5th March 1867, No. 362.

Under the opinion given by the Judge Advocate General in the foregoing Memorandum, the Governor in Council directs that the prisoner James Duffee be sent back to the European Jail at Ootacamund to undergo the remainder of the sentence of imprisonment passed upon him by a District Court Martial.

*Proceedings of the Madras Government, Judicial Department,*  
*5th March 1867.*

2. His Excellency the Commander-in-Chief will be requested; in future, to communicate with Government when he proposes to order the confinement of Military prisoners in the Jail at Ootacamund.

(True Extract).

*Chief Secretary.*

To the Commissioner of Police, with five enclosures returned.

- „ Military Department.
- „ Superintendent of the European Jail at Ootacamund.
- „ Inspector General of Jails.
- „ Accountant General.

Exd. J. Tulloch.

Judicial Department. 30

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following papers

From the Commissioner of Police - Dated 4<sup>th</sup> March 1867 No 27

Judge Advocate  
Spent thro Judicial Department } 5<sup>th</sup> 123.

Order thereon 5<sup>th</sup> March 1867. No 382

Under the opinion  
given by the Judge Advocate  
General in the foregoing  
Memorandum, the Governor  
in Council directs that  
the prisoner James Duffee  
be sent back to the Euro-  
pean Jail at Cochin  
to undergo the remainder  
of the sentence of im-  
prisonment passed upon  
him by a District Court  
Madrass.

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2. His Excellency the  
Commander in Chief will  
be requested in future  
to communicate with  
Government when he proposes to order  
the confinement of military  
prisoners in the jail at  
Cotacumand.

To the Commr of Police 18/3 3  
— Military Dep't 11  
— Supt. of the European  
jail at Cotacumand 12  
— Asst. General of Police 13  
— Asst. General 14

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24th July 1867 - 1868 - 1869

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Judicial 1864. Department.

No. 362

PROCEEDINGS OF GOVERNMENT.

24th July 1865. 804

1864 - 1865 - 1866

Dated 25th March 1867

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