

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

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Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department,
8th March 1867.

Read the following papers:—

No. 90. From A. WEDDERBURN, Esq., Collector of Bellary, to the Secretary to Government, Fort Saint George; dated Bellary, 19th November 1866, No. 84.

Political Department.

I have the honor to submit, for the consideration and orders of Government, copy of a decision* of the Session Court of Bellary, upon an appeal preferred by certain persons, subjects of the

* Calendar No. 185 of 1866.

Sundoor State, who were charged before, and convicted by, the Head Assistant Magistrate, of kidnapping, &c., that is, of removing persons from British Jurisdiction on the Ramandroog Plateau, upon which, in conformity with a Convention entered into with the late Rajah, British authority over British subjects was sanctioned to be exercised. On this subject I beg Government to refer to their Proceedings of 2nd October 1865, No. 8.

2. It will be observed, from the Session Judge's decision, that, as the territory itself was not ceded, he holds that the Ramandroog Plateau is not British territory, and that, consequently, the Penal Code does not run thereon; consequently, there was no kidnapping from British territory, or offence committed cognizable by our Courts.

3. It is not contended that the territory was ceded, but that the jurisdiction was ceded for obvious reasons at that time, and which are as forcible now.

4. On the strength of that Convention, Government built a Sanitarium for its Troops, and incurred expenses on the faith of the permanency of the agreement, which would never have been done, unless the Tahanamah† had been understood to have been of a permanent nature.

† Translation copy herewith enclosed.

5. As regards the technical point, of the Plateau of Ramandroog not being British territory, jurisdiction over British subjects resident thereon was ceded by its former possessor, for reasons which appear to be of a permanent nature. The Penal Code was not in existence when the authority was ceded. The question arises, will the Penal Code follow a jurisdiction which it was in the power of a Native Prince to grant?

6. The question did not arise then, probably on account of the uncertainty when the Penal Code would come into operation.

7. It seems desirable to obtain the opinion of the Advocate General on the subject of this jurisdiction, also as to whether the High Court should be moved to review the Session Court's decision, in reference to the consequences arising therefrom.

8. It seems impossible to allow of the Rajah's jurisdiction being exercised over British subjects resident on the Droog; at the same time, the committal and punishment of Sundoor officials for exercising jurisdiction over Sundoor subjects would have been better avoided, as it was evidently the object of the Tahanamah that the jurisdiction ceded should be over British and not Sundoor subjects.

‡ No. 572, dated 29th October 1866.
§ No. 506, dated 17th November 1866.

The Police have applied‡ to me for instructions as to guidance, copy of reply§ to which I enclose, and await further orders.

1	2	3	4	5	6	7	8	9	10	11	12	13	14
Number of Case.	Name and description of the accused.	Copy of the charge, or substance of the complaint.	Name of complainant.	Names of witnesses for prosecution.	Names of witnesses for the defence.	Statement of the evidence and grounds of conviction.	Finding and Sentence.	Date of offence.	Date of complaint.	Date of apprehension or appearance.	Date of commencing trial.	Date of sentence.	Explanation of delay.
185 of 1866.	1. Venkanna, of the Comaty caste, a Sheep-keeper. 2. Narasa, of the Boya caste, a Village servant.	That they, the said (1) Venkanna, (2) Narasa, on or about the 14th day of January 1866, at Ramandroog, in the Taluq of Hospett, did wrongfully restrain Budumma and Bavah Saib, and that they have thereby committed an offence punishable under Section 341 of the Indian Penal Code, and within the cognizance of the Court of Session.	The Queen.	1. Budumma. 2. Bavah Saib. 3. Narasawamy. 4. Moostafa. 5. Kcrannah. 6. Rajah.	...	The prisoners in this case have been committed to take their trial over the Plateau of Ramandroog, where the offences with which they are charged are punishable under Section 341 of the Indian Penal Code. II.—Kidnapping from British India, punishable under Section 363 of the Indian Penal Code. III.—Kidnapping with intent that the parties kidnapped should be secretly and wrongfully confined, punishable under Section 365 of the Indian Penal Code.	The Court, finding that it has no jurisdiction over the Plateau of Ramandroog, where the offences with which the prisoners are charged are punishable under Section 341 of the Indian Penal Code, committed, directs that they be discharged.	14th January 1866.	16th July 1866.	1st Prisoner, 16th July 1866. 2nd do. 21st do.	20th October 1866.	24th October 1866.	

2. These offences are described in the charge as being "within the cognizance of the Court of Session", and undoubtedly they are if committed within the local jurisdiction of that Court, or if committed beyond the local limits of the Court, when the case is transferred by the order of the High Court, under the provisions of Section 35 of the Code of Criminal Procedure.

3. Now, the offences with which the prisoners in this case are charged are alleged to have been committed on the Ramandroog, and it is contended for the defence that over this tract of country Her Majesty's Courts have not jurisdiction.

diction; that it forms a portion of the territory vested in the Rajah of Sundoor by virtue of a Sunnud granted by the Governor in Council of Fort Saint George to the late Rajah, under date the 12th January 1841, and continued to the present Rajah by a similar instrument, bearing date the 13th of October 1863.

4. On the other hand, it is contended that the right of administering Criminal Justice on the Plateau of Ramandroog was ceded to the British Government by the late holder of the Jaghire, and the transfer of Criminal Jurisdiction over the said tract to the District Courts was duly notified in the *Fort Saint George Gazette* of the 24th October 1848.

5. Before disposing of the case on its merits, it is, of course, necessary to determine this question of jurisdiction. The point at issue is—Whether the Plateau of Ramandroog, where the offences are charged are alleged to have been committed, forms a portion of British India, as defined in the Indian Penal Code.

6. Taking the Government Notification published in the *Fort Saint George Gazette* of the 24th October 1848 by itself, there can, I think, be no doubt that it does come within that definition. It was therein notified, for general information, that the tract in question, "lately appertaining to the Sundoor Jaghire in the District of Bellary, has been transferred to the Government of Fort Saint George, and incorporated with the Taluq of Kudlighi in that District, and the jurisdiction of the Criminal Courts and Police authorities of the District of Bellary is hereby declared to extend over the said Hill, according to the boundaries which are on record in the Collector's Office; and the Criminal Courts of the District of Bellary are hereby required to take cognizance of all offences committed within the prescribed limits, and sent up to the Courts by the Police or the Magistracy, and dispose of the same in accordance with the provisions of the General Regulations."

7. Had this Notification remained intact, had it not been subsequently modified and altered under an authority similar to that under which it was originally issued, there can be no doubt that the territory therein referred to became thereby vested in the East India Company, and would, as a matter of consequence, have come under the definition laid down in Section 15 of the Indian Penal Code. Whether the annexation was made with or without the consent of the former ruler is beside the question. It was incorporated by an act of Sovereignty, and having become part and parcel of British territory, the Courts within whose jurisdiction it fell were bound to take cognizance of offences committed within their local limits, as directed by the Notification.

8. But the Government which by an act of Sovereignty can thus acquire territory, can, I imagine, by an exercise of the same power, denude itself of such possessions, and this it appears to me the Government have done in this particular case.

9. A perusal of the Sunnud granted to the former Jaghiredar, under date the 12th January 1841, shows that on him and his heirs for ever were conferred the lands of Sundoor in Jaghire, free of Peshkash and pecuniary demand, also the entire management of the Revenue and Police of the Jaghire and the administration of Civil Justice. In the administration of Criminal Justice, he is directed to obtain from mutinying criminals, and the carrying out of capital sentences is prohibited without the previous sanction of Government.

10. Ramandroog lies within the limits of the Sundoor Jaghire, and over this tract, as well as the rest of his Estate, the Jaghiredar had Criminal Jurisdiction up to the date of the Government Notification referred to above.

11. From paragraph 7 of a letter from the Collector of Bellary to the Chief Secretary to Government, dated 28th August 1865, No. 66, and published in the Proceedings of Government, Political Department, dated 2nd October 1865, it appears that a former Collector in a letter to the Board of Revenue, dated 26th July 1846, No. 68, had stated that the Rajah of Sundoor "had agreed to make over the *Table-land of Ramandroog* to be managed by Government, any sums collected as Sayer, &c., being received by him, and to give up the Police jurisdiction over the said land." A reference, however, to a translation of the *Tahanamah* executed by the late Rajah or Jaghiredar shows that he *distinctly repudiated any transfer of territory*. "The ownership of the land on the said Plateau," he says in the 1st article of the document, "shall as usual remain firm to me," and he stipulates that parties occupying the same shall pay the usual assessment thereon. In the 2nd, 3rd, and 5th Articles he reserves to himself the right of levying customary cesses, of renting out the Abkarry and Moturpha Farm, and lays claim to all treasure trove. The only concession to be found in this treaty appears in Article 4, whereby he delegates to the Collector of Bellary for the time being his right of administering Criminal Justice on the Plateau.

12. I have referred to this document, not with the least intention of impugning the Act of State to which expression is given in the Notification in the *Fort Saint George Gazette*, but merely because it serves to explain the subsequent action of Government with reference to the terms of that Notification.

13. From paragraph 9 of the Collector's letter referred to above, and published in the Proceedings of Government, dated 2nd October 1865, Political Department, it appears that on the 11th January 1849, the then Collector was "requested to communicate to the Rajah of Sundoor the gratification which the Government had derived from his ready acquiescence in their wishes in respect to the Ramanamully tract, and to inform him that, while in the Notification in the *Gazette* of the 24th

"October 1848, it was perfectly understood that by the words 'transferred to the Government of Fort Saint George' was meant the transfer of the rule and government which must be vested in the Government of Fort Saint George, to enable the Government to extend the jurisdiction of the Criminal Courts and Police authorities of Bellary to the said tract, it was avowedly not meant in any respect to affect the proprietary right of the Jaghiredar."

14. In their Order of the 2nd October 1865, No. 247, the Government call upon the Collector to explain why the quit-rent for the ground occupied by the Barracks and other public buildings on the Droog had not been paid to the Jaghiredar, and direct him to pay up the arrears, and to continue the payment for the future. Referring to the cession made by the late Jaghiredar in the Tahanamah quoted above, the Government direct the Collector personally to explain its terms, and the "terms of the Notification that was published in the Gazette in accordance with it, and to point out to him that, recognizing this cession as a permanent arrangement, indispensably necessary for the establishment of the sanitarium, the Government have incurred all the expense entailed by its institution and maintenance, and they cannot now admit his claim to resume what was ceded." In the concluding paragraph of the Order, the Government say "the Collector will take care that the conditions of this Tahanamah are scrupulously observed in future. It would seem as if the conditions of this Tahanamah are scrupulously observed in future."

15. Now it appears to me that this recognition of the Tahanamah on the part of Government, and their injunctions as to its conditions being scrupulously observed, virtually cancels the Notification of the 27th October 1848, so far as the transfer of territory is concerned. They only claim to hold what was ceded by that Instrument, and that is merely the right to exercise Criminal Jurisdiction within certain limits of the Hill. That portion of the Sundoor Rajah's territory known as Ramandroog has not been ceded, and has not become vested in Her Majesty. It is a foreign territory over which a foreign Prince exercises acts of Sovereignty, and cannot in my opinion be considered "British India", as defined by Section 15 of the Indian Penal Code, to which country only the said Code is applicable. It is true that it is declared in the Act transferring the Government of India to Her Majesty, that all rights vested in the East India Company would by the transfer become vested in Her Majesty, but if the Indian Penal Code had become law whilst India was still under the Government of the Company, I do not think that the Company could have continued to exercise the right of Criminal Jurisdiction over the Plateau of Ramandroog, so long as the territory was vested in a foreign power.

16. It is worthy of notice also that in the Sunnud granted to the present Rajah, which bears date the 6th November 1863, and which continues to him and his heirs for ever the lands of Sundoor, no mention is made of any cession or absorption of any portion of his ancestral estate, nor is the right of the British Government to exercise Criminal Jurisdiction over the Ramandroog Plateau in any way reserved. On the contrary, the entire Civil and Criminal Administration of the Jaghire is thereby conferred on him, the only restriction being the mutilation of criminals and the power of life and death, which latter he is not to exercise without the previous sanction of Government.

17. After a careful consideration of the whole question, I have come to the conclusion that the Plateau of Ramandroog, situate within the limits of the Sundoor country, where the offences with which the prisoners are charged are said to have been committed, does not form a portion of British India, as defined in Section 15 of the Indian Penal Code; that, therefore, the provisions of the said Code are inapplicable to offences there committed, and that this Court has no Jurisdiction over the tract referred to. Under these circumstances, I direct the prisoners to be discharged.

SESSION COURT, BELLARY,

26th October 1866.

(True Copy). (Signed) A. WEDDERBURN,

Magistrate.

(Signed) H. E. SULLIVAN,

Acting Session Judge.

Translation of a Treaty tendered by the Rajah of Sundoor, dated 12th Sabhan, corresponding to the month Ashada of the year Plavungah.

To Company's Sirkar.

I, Venkuta Row Hindu Row Gharepudy Mamulikutumdar Sainaputty, the Sumstanie of Sundoor, do hereby enter into a Tahanamah to this purport, that as on the top of Ram Ghud, situated in my Jaghire, gentlemen having selected sites preferable for residence, and a few of them having already erected bungalows there, whilst there are more who would build their bungalows, and also probability of building Barracks, &c., being under consideration, I was, therefore, interrogated by A. Mellor, Esq., Collector of Bellary, for the information of Government, under what particular terms I would willingly give up the land of the said Ghud, I here enter into the following agreement.

1. The ownership of the land of the said Ram Ghud shall as usual remain firm to me, and there can be no objection with me, if as much of the lands as is required for the Company's Sirkar, as well as for private bungalows of Officers are taken on condition of fixing and paying Land Assessment thereon, and the area on which gentlemen's bungalows are built till now, together with that required in future for the Sirkar, and for Officers, for buildings, shall be surveyed, and an Assessment fixed with reference to the usage of the place. This Assessment to be paid every year to me.

2. Whatever is the emolument derivable from the branches namely Maravaly (Timber tax) Gidacavel (Forest watch,) &c., I shall continue to collect for me.

3. I have reserved for myself the power of rotating out the sale of country Arrack and Toddy on the said Hill, and collecting for myself the sum thereof, as well as of fixing a tax amicably with merchants who may establish Deekhans for trading there, and collecting the same without the interference of the Company's Sirkar.

4. It being probable that as English Officers take their residence on the Hill, many of the servants, tradesmen, and other private persons would reside on the said Hill, their quarrels, disputes, thefts, murder, &c., &c., shall be delegated or given up to the Police power of Company's Sirkar, the Magistracy of the Collector shall accordingly take cognizance of receiving and disposing the cases of the foregoing nature.

5. Whatever hidden property, such as ready cash, things, jewels, when discovered from underground appertaining to the Hill, whilst erecting bungalows and houses, or while excavating the earth for any purpose whatsoever, shall be delivered over to me, and they are not otherwise for the Company's Sirkar. Thus I have executed this Tahanamah at my own free will, on this twelfth day of Sabhan, or in the month of Ashada, of the year Plavungah.

The word "Yaketabut" is here written for signature.

(True Copy).

(Signed) A. WEDDERBURN,
Collector.

From the Superintendent of Police, Bellary, to the Magistrate of Bellary; dated Bellary, 29th October 1866, No. 572.

In forwarding report of cases tried by Session Court during week ending 27th instant, I have the honor to draw your attention to Case No. 185, and, with reference to the decision passed by the Court, request you will be good enough to instruct me as to whether the Police are to continue to exercise their powers at Ramandroog.

From the Magistrate of Bellary, to the Superintendent of Police, Bellary; dated Bellary, 17th November 1866, No. 506.

In reply to your letter of the 29th ultimo, No. 572, requesting instructions whether the Police were, after the late decision in appeal before the Session Court, to continue to exercise their powers on the Ramandroog, I have the honor to inform you that, with the view of the local preservation of order on the Plateau, the late Jaghiredar sanctioned the exercise of our jurisdiction among the temporary residents, not Natives of his own State, and that, pending instructions

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from Government, to whom the matter will be referred, and provided the Police do not interfere with the functions of the Sundoor State in the exercise of authority over their own subjects, no further instructions for the present appear to be called for.

Referred to the Acting Government Solicitor, for the opinion of the Acting Advocate General.

FORT SAINT GEORGE,
27th November 1866.

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

No. 91. From the Acting Government Solicitor, Madras, to the Chief Secretary to Government, Fort Saint George; dated Madras, 15th December 1866, No. 697.

Referring to the Order of Government noted in the margin, I have the honor to request that you will furnish me, for submission to the Acting Advocate General, in connection with the reference of the Sunnuds granted by the Governor in late and present Rajahs of the Sundoor territory, under dates the 12th January 1863 and 11th November 1863, respectively, and of the Proceedings of Government in its Political Department, dated 2nd October 1865, and that you will also afford me, for the same purpose, such further information as Government may possess, relative to the status of the Sundoor Rajah in regard to Government, particularly as to whether it is admitted that he is an independent Prince in regard to his acts, surrendered his independence, or of State has taken away such independence.

No. 92. From A. WEDDERBURN, Esq., Magistrate of Bellary, to the Chief Secretary to Government, Fort Saint George; dated Camp Garladinna, 4th December 1866, No. 86.

I have the honor to forward an original communication from my Head Assistant received to-day, relative to the question of jurisdiction at Ramandroog, in reference to which I forwarded the decision of the Session Judge on the 19th November last.

2. Of the enclosures of his letter, the copy of the Session Judge's decision, and of the translation of the Tahanamah, were sent with my letter. I enclose Mr. Lilly's statement of evidence and grounds of commitment, and the original Mahrattah Tahanamah (to be returned). In the translation of part of the 4th paragraph, there is a surplus in the rendering of the word "sodele," which means "relinquished," "given up," and does not bear the meaning of "delegated."

3. The Judicial opinion of the Session Court, however, does not rest on the construction of this word, but on the disavowal of annexation of the actual territory by Government; but as the Session Judge has used the word "delegated" in his decision, it is as well to note the fact of surplus in the translation.

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From W. S. LILLY, Esq., Head Assistant Magistrate of Bellary, to the District Magistrate of Bellary; dated Bellary, 29th November 1866, No. 32.

On the 4th of August last, two persons, named Venkanna and Narasa, were committed by me for trial before the Court of Session, on a charge of having wrongfully restrained and kidnapped certain inhabitants of the village of Ramandroog.

2. The facts of the case, which may be learnt fully from my statement* of reasons for their commitment, were briefly that these persons who were Wollakars or Talarics in the employ of the

* Enclosure 3.

Sundoor Jaghiredar arrested on Ramandroog the two complainants for the so called offence of cohabiting without the permission of the Sundoor Jaghiredar, and carried them off to some place within the Sundoor Jaghire where they were imprisoned for nearly a month.

3. On the 20th ultimo, the case came on at the Sessions held by the Acting Session Judge, Mr. H. E. Sullivan, who decided that he had no jurisdiction to try it, on the ground that the place where the offences of wrongful restraint and kidnapping were alleged to have been committed, viz., the Plateau of Ramandroog, is not within the limits of British India, as defined in Section 15 of the Indian Penal Code, and that the Court of Session at Bellary could not, therefore, take cognizance of them.

4. The grounds on which the Acting Session Judge arrived at this conclusion are set forth in his remarks† in disposing of the case, and as the matter is of some importance, I shall proceed to

† Vide enclosure 4.

offer some observations on them, as, with the greatest respect for his opinion, I think the correctness of his conclusion may be questioned.

5. The jurisdiction exercised hitherto without dispute by the Criminal Courts of this District over the Plateau of Ramandroog rests upon a Notification published in the *Fort Saint George Gazette* of the 24th November 1848, and the basis of this Notification was a Tahanamah executed by the late Jaghiredar of Sundoor on the 25th of July 1847.

6. The original Tahanamah† is enclosed. The following translation of it has been revised by one of the best Mahrattah scholars in the District, and is, I believe, perfectly correct.

† Enclosure 1.

"I, Vencut Rao Hindoo Rao Ghorpada Mamalkatmadar Sanapatti, the Somistanic of Sundoor, do execute this Tahanamah to the following effect:—The Table-land on Ramgad, situated in my Jaghire, being suitable for the residence of Europeans, some Gentlemen have already built their bungalows on it, while others are likely to do so; and, moreover the subject of erecting Barracks by Government at the place is under consideration, I have, therefore, been desired by A. Mellor, Esquire, the Collector of Bellary, to state, for the information of Government, on what conditions I would willingly give up the said Table-land, and I have entered into the following agreement.

"1st. The ownership of the said land of Ramgad shall as usual remain firm to me. There shall be no objection on my part to the grant on fixed rent of as much of the land as may be required for Government, as well as for Officers to build their own houses, &c., upon. The area of the land already occupied by the Bungalows of Officers, as well as that to be built upon hereafter by Government and Officers, shall be surveyed and assessed according to the local usage. The assessment to be paid every year to me.

"2ndly. I shall continue to receive whatever income may be derivable from rent of fruit trees, jungle, &c., connected with the said Hill.

"3rdly. I have reserved for myself the power of renting out the sale of country Arrack and opium on the said hill, and of imposing a tax with their own consent on Merchants who may open shops for trade there, and of levying the same. The Company's Government shall not interfere in the matter.

"4thly. It being probable that as European Officers take up their residence on the said Hill, many servants, tradesmen, and other persons, and others will reside there, I have relinquished to the Company's Government the Police and Magisterial functions of maintaining peace and trying and

"punishing offences committed by such people, such as violence, petty crimes, thefts, murder, &c.
"The Collector is to have jurisdiction in such matters.

"5thly. Whatever hidden property such as money or other property and jewels may be found
"in erecting Bungalows and houses, or in excavating earth for any purpose on the land appertaining to the said Hill, shall be delivered over to me; the Company's Government shall have nothing
"to do with it. I have thus executed this Tahanamah of my own free will, on this twelfth day of
"Shaban, corresponding with the month of Ashada of the year Plavungah.—Katabat.

7. The Notification prepared by the late Sudder Court upon the foregoing Tahanamah, and published for general information in the *Fort Saint George Gazette* of the 24th of October 1848, by order of the Governor in Council, and under the signature of a Secretary to Government, is couched in the following terms:—

"It is hereby notified for general information that the Table-land of the Ramandroog Hill lately appertaining to the Sundoor Jaghir, in the District of Bellary, has been transferred to the Government of Fort Saint George, and incorporated with the Taluq of Kudlighi in that District, and the jurisdiction of the Criminal Courts and Police authorities of the District of Bellary is hereby declared to extend over the said Hill, according to the boundaries which are on record in the Collector's Office."

"And the Criminal Courts of the District of Bellary are hereby required to take cognizance of all offences committed within the prescribed limits and sent up to the Courts by the Police or the Magistracy, and dispose of the same in accordance with the provisions of the General Regulations."

8. Regarding the effect of the publication of this Notification there would appear to be no room for uncertainty. It was an Act of State, whereby the Sovereign power proclaimed the annexation of the territory therein described, and should not be questioned by any Municipal tribunal: or as the Acting Session Judge remarks, in paragraph 7 of his judgment, "there can be no doubt that the territory therein referred to became thereby vested in the East India Company."

9. The ground on which the Acting Session Judge has come to the conclusion that the Plateau of Ramandroog is not now British territory, and that his Court has, therefore, no jurisdiction over offences committed there, is that this Notification did not remain "intact" but was

* Paragraph 7 of his Judgment (enclosure 4.)

"subsequently modified and altered under an authority similar to that under which it was originally issued*," and that Government "by an exercise of the same power" by which it acquired

ed the territory "subsequently denuded itself of such possessions†."

10. The subsequent action of Government, which the Acting Session Judge considers to have thus annulled and cancelled their Notification of the 24th October 1848, is the following portion of their Order of the 2nd of October 1865, No. 247.

"(6). As to the Jaghiredar's claim to resume the Police and Magisterial administration of the Droog which was ceded to Government by his father in the same Tahanamah, the Government desire that the Collector will personally explain to the Jaghiredar the terms of this cession, and of the Notification that was published in the Gazette in accordance with it, and point out to him that, recognizing this cession as a permanent arrangement indispensably necessary for the establishment of the Sanitarium, the Government has incurred all the expense entailed by its institution and maintenance, and they cannot now admit his claim to resume what was ceded, or consent to a change which would lead to endless difficulties, or compel the abandonment of the Sanitarium."

"(7). The Collector will also explain to the Jaghiredar the mistake into which he has fallen as regards fines for cattle trespass, which are not credited to Imperial Revenue, and must be expended for local purposes on the Droog, but the fines levied for unauthorized felling of trees, which is, in fact, a trespass on the Jaghiredar's property, must all be paid to him, his proprietary right remaining intact and being specially reserved by the Tahanamah."

"(8). The Collector will take care that the conditions of this Tahanamah are scrupulously observed in future. It would seem from his letter that there has been considerable laxity in this matter in times past."

11. The Acting Session Judge having quoted a portion of this extract from the Order of Government proceeds to remark thereon as follows:—

"(15). Now it appears to me that the recognition of the Tahanamah on the part of Government, and their injunctions as to its conditions being scrupulously observed, virtually cancels the Notification of the 27th October 1848, so far as the transfer of the territory is concerned. They only claim to hold what was ceded by that instrument, and that is merely the right to exercise Criminal jurisdiction within certain limits on the Hill. That portion of the Sundoor Rajah's territory known as Ramandroog has not been ceded, and has not become vested in Her Majesty. It is a Foreign territory over which a foreign Prince exercises acts of Sovereignty, and cannot, in my opinion, be considered British India, as defined by Section 15 of the Indian Penal Code, to which country only the said Code is applicable. It is true that it is declared in the Act transferring the Government of India to Her Majesty that all rights vested in the East India Company would by the transfer become vested in Her Majesty, but if the Indian Penal Code had become law whilst India was still under the Government of the Company, I do not think that the Company could have continued to exercise the rights of Criminal jurisdiction over the Plateau of Ramandroog so long as the territory was vested in a foreign power."

The reasoning of the Acting Session Judge it would appear may be briefly summed up thus: Government, in their Order of the 2nd of October 1865, have expressly recognized the Tahanamah, and enjoined a strict observance of it; by the Tahanamah nothing was in reality ceded, therefore Government have, in effect, by such recognition and injunction, cancelled their Notification of 24th October 1848, by which the annexation of the Plateau of Ramandroog was declared.

12. With reference to these remarks of the Acting Session Judge, I would with great deference observe that it would appear to be somewhat inaccurate to talk of the Tahanamah having been recognized in the Order above quoted, it being abundantly clear that the Tahanamah was the basis of the Notification which the Acting Session Judge supposes it to cancel. Then, as to the remark that the territory of Ramandroog has not been ceded, but merely the right to exercise criminal jurisdiction within certain limits, I would respectfully submit that the true construction of the Tahanamah is that which is suggested by the remarks of Government in commenting, in their Proceedings of the 2nd January 1849, on the terms of their Notification of the 24th of October 1848. "By the words transferred to the Government of 'Fort Saint George', they point out, 'was meant the transfer of the rule or government which must be vested in the Government of Fort Saint George to enable the Government to extend the jurisdiction of the Criminal Courts and Police authorities of the District of Bellary to the said Tract; it was not meant in any respect to affect the proprietary right of the Jaghiredar." Taking the Tahanamah as a whole, the gist of it would appear to be that the Jaghiredar cedes the territory, giving up his rights of sovereignty over it, but reserving to himself intact his property in the soil.

13. The Acting Session Judge was probably misled to some extent by the incorrect* translation of the Tahanamah to which he appears to have trusted. I do not quite understand how this document came before him in evidence, as I am sworn to, nor was the original at all put in.

* Enclosure 2.

informed the correctness of the translation was not sworn to, nor was the original at all put in. The rendering of the 4th article, quoted in the 11th paragraph of the Acting Session Judge's Judgment, is especially infelicitous: no such expression as 'delegated' occurs in the original—the word which I believe beyond all doubt means simply "surrendered" or "relinquished."

14. As regards the remark of the Acting Session Judge in the 16th paragraph of his Judgment that "in 1863, Sannud granted to the present Rajah, which bears date the 6th November 1863, and which comes to him and his heirs forever the lands of Sundoor, no mention is made of any cession or absorption of any portion of his ancestral estate," I would submit that the plain intent of the Sannud is evidently to continue to the present Jaghiredar the lands of which

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his father died possessed; and that if Government had intended to restore any portion of the Jaghire relinquished by the late holder, that intention would assuredly have been stated in express terms.

15. The decision of the Acting Session Judge will probably give rise to a good deal of uncertainty regarding the position of the authorities of the District over the Plateau in which the Sanitarium has been established, and as it is extremely undesirable that my time and that of my Subordinates should be wasted in petty disputes with the Jaghireदार and his employes, I would suggest the desirability of at once laying the whole subject before Government, and soliciting prompt action regarding it.

In the Court of the Head Assistant Magistrate of Bellary.

Regina *Versus*. 1. Venkanna.

2. Narasa.

Preliminary Inquiry No. 5 of 1866.

Statement of the evidence and grounds of commitment.

The 1st complainant in this case, who, as well as the 2nd complainant, is a resident in the village of Ramandroog states that, about six months ago, she was arrested by the 1st prisoner, on a charge of having held illicit intercourse with the 2nd complainant, without the permission of the Sundoor Jaghireदार, since the death of her husband, and handed over to the custody of the 2nd prisoner, by whom she was forcibly carried off to Sundoor. She was allowed however to return to Ramandroog the next day, because her father was dying. The day after that, she was again arrested by order of the 1st prisoner, and carried off to Sundoor by one Hoosain Sail, who has not been brought before this Court. On her arrival there, she was arraigned before "a certain European," to whom the 1st prisoner acted as Interpreter, fined Rupees 30 for unchaste conduct, and, failing to pay the fine, was kept in a Choultry for 25 days.

The 2nd complainant deposes that he was arrested by the 1st prisoner and another, on a charge of illicit intercourse with the 1st complainant, carried off to Sundoor, arraigned there before a European whose name he does not know, and sentenced for his lax morality to pay a fine of Rupees 35, and, on his making default, imprisoned for 25 days.

The evidence of the remaining three witnesses for the prosecution is not very direct against the prisoners, but goes to corroborate sundry details of the complainant's statements. The prisoners, however, allow the substantial truth of the allegations of the complainants. The 1st prisoner admits that he did arrest the 1st complainant for unchastity committed in the bazaar at Ramandroog, and give her into the custody of the 2nd defendant, who took her off to Sundoor, where she was punished. He alleges that he acted in good faith, and under a warrant signed by the Reverend Mr Macartney on the part of the Jaghireदार of Sundoor. As regards the 2nd complainant, he states that he directed him to go to Sundoor to answer to the charge of immorality made against him, which he refused to do, and that then peons came and took him off.

The 2nd prisoner admits having arrested the 1st complainant under the orders of the 1st prisoner. It appears, therefore, that no question is raised as to the main facts of this case, viz., that the prisoners did arrest the 1st complainant in a village within British India for a (so called) offence alleged to have been committed therein (of the fact of the village of Ramandroog being within the limits of British India, the Notification, dated 24th of October 1848, published at page 1021 of the *Fort Saint George Gazette* of that year, is sufficient evidence for the purposes of this preliminary inquiry); that they did carry her off, or cause her to be carried off, to a village under the control of a semi-independent Jaghireदार, and without the limits of British India, and did there take a part in procuring her imprisonment; and also that the 1st prisoner similarly caused the 2nd complainant to be restrained and carried away beyond the limits of British India, with a view to his confinement in some place unknown within the Sundoor Estate. These positions it is for them to justify, and as their defence has been reserved, it appears to be my duty to commit them, and they are hereby committed for trial before the Court of Session.

(Signed) J. S. LILLY,
Head Assistant Magistrate.

HOSPETT, 11th August 1866.

*Proceedings of the Madras Government, Judicial Department,
8th March 1867.*

No. 93. From the Acting Government Solicitor, Madras, to the Chief Secretary to Government, Fort Saint George; dated Madras, 15th January 1867, No. 24.

I have the honor to solicit your attention to my letter of the 15th ultimo, No. 697, and to beg the favor of a reply thereto, at as early a date as your convenience will admit of it.

No. 94. From A. WEDDERBURN, Esq., Magistrate of Bellary, to the Chief Secretary to Government, Fort Saint George; dated Camp Erratimmarayachern, 7th February 1867, No.

With reference to my letters of 19th November and 4th December 1866, Nos. 84 and 86, I have the honor to annex copy of letter from the Superintendent of Police of Bellary, and beg the early instructions of Government, as regards the view taken by the Session Court of Bellary on the subject of jurisdiction at Ramandroog.

From the Superintendent of Police, Bellary, to the Magistrate of Bellary; dated Alur, 4th February 1867, No. 74.

General Department.

I have the honor to forward two Occurrence Reports, sent to me by the Head Constable in charge of Ramandroog Station.

2. It appears that the person appointed to act as Sub-Magistrate at Ramandroog (by the Sundoor authorities) has, in his capacity as Magistrate, taken up and punished parties in cases which have hitherto always been disposed of by the Sub-Magistrate of the Bellary District stationed at Ramandroog.

3. I also understand that the Agent of the Jaghireदार has warned your Sub-Magistrate against exercising any of his functions on Ramandroog. Under these circumstances, I request instructions for the guidance of the Police.

No. 95. ORDER THEREON, 8th March 1867, No. 378.

On further consideration of the papers above recorded, the Governor in Council deems it advisable that the Magistrate of Bellary should, under Section 404 of the Code of Criminal Procedure, refer for the determination of the High Court the point now in issue, viz., whether or not the Criminal Courts of Bellary have jurisdiction over the Ramandroog Plateau, i. e., in other words, whether, under the terms of the Notification of the Madras Government, dated the 24th November 1848, and the Tahanamah* of the late

* 25th July 1847.

Jaghireदार, on which that Notification was founded, the Table-land in question is or is not to be considered as falling within the limits of British India, as defined in Section 15 of the Indian Penal Code.

2. The Advocate General, to whom a copy of these Proceedings will be communicated, together with the papers applied for in the Acting Government Soli-

*over the Ramandroog
plateau*

Proceedings of the Madras Government, Judicial Department,
8th March 1867.

citor's letter of the 15th ultimo, will be good enough to advise Mr. Wedderburn as to the terms in which the reference to the High Court should be made.

(True Extract).

Chief Secretary.

To the Magistrate of Bellary, with original Tahanamah.
" Acting Government Solicitor.

Erd. J. H. Burns.

Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following papers.

From the Magistrate of Bellary. 27 19. Nov. 1866 No 84.

From Govt. Solicitor. — 27 15 Dec. 1866 No 697.

From the Magistrate of Bellary. 27 4 — — — No 86.
for Solicitor 15 Jan. 1867 — 24
Magistrate of Bellary 7 February — 7

Order thereon 8 March 1867 No 378.

On further consideration of the papers above recorded the Governor in Council deems it advisable that the Magistrate of Bellary should, under Section 404 of the Code of Criminal Procedure, refer for the determination of the High Court the point now in issue, viz, whether or not the Criminal Courts of Bellary have jurisdiction over the Ramanadroog plateau

JP
WJ

plateau, i.e., in other words whether, under the terms of the Notification of the Madras Govt. dated the 24 Novr. 1848 and the Fakanamah of the late Jaghiredar on which that notification was founded, the table land in question is or is not to be considered as falling within the limits of British India as defined in Section 15 of the Indian Penal Code.

2. The Advocate General, to whom a copy of these Proceedings will be communicated together with the papers applied for in the Acting Government Solicitor's letter of the 15 ultimo, will be good enough to advise Mr Wedderburn as to the terms

25 July 1847

Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Recd the following letter from the Acting Government Solicitor.
(Memorandum 15th December 1855. No 247)

Order thereon.

Copies of the Summons given to the late and present Jaghirdars of Coondoor in 1841 and 1853 respectively will accordingly be furnished to the Acting Government Solicitor, as also a copy of the Proceedings of Government, dated 2nd October 1855. No 247.

The letter from the Magistrate of Bellary, dated 4th instant, written in continuation of his communication of the 19th ultimo, will likewise be forwarded for submission.

I would submit the whole matter to the Advocate General with all the documents in the State, in it, relating to the British Govt. Jaghirdars, or the possession of the Jaghirdars, or the point at which the status of the Jaghirdars is defined. I would

to the Advocate General.

As regards the status of the London Jaghirdar the Governor in Council observes that he is a feudatory of this Government, has his own courts, and pays no tribute. He has been recognized as an independent Chieftain Prince in regard to his Jaghirs, except so far as he has, by his own act, surrendered his independence, or except in so far as the Governor in Council, as the paramount Power, has thought fit, by an Act of State, to take away or circumscribe such independence.

the particular
than the States of the
Chieftain the "Governor in
Council, as in the draft, says he
called the Paramount Power
in de^{to} understand the
meaning of Independent
Chieftain Prince.

I do not see how any Jaghirdar can be an independent Prince. His Jaghirs must have been conferred on him by some authority to which he is subordinate. As far as the papers show London seems originally to have been a chief of the Peishwa held by the ancestors of the present Jaghirdar. It came to us by conquest and he of our bounty and as an Act of Policy recognized it by sanction and under certain restrictions upon the Feudal Rights to us of the Paramount Jaghirdar his power was limited but he has not been recognized as independent.

It is clear to me that a reference of this matter should be made to the Acting Advocate General. The two men sent by H^d apt. Magle, Mr. Kelly to the Sepem Court; cannot conclude, have been acquitted - in which case there would be no appeal to the High Court (Section 407 Code Crim. Proc.), - further Sepem Judge, Mr. Sullivan declares he had no jurisdiction over the Prisoners. ~~Mr. Kelly had committed for trial~~ - They are, then, liable to be brought to trial, since the High Court fail to appreciate the full drawn argument by which Mr. Sullivan supports his view and I conclude that if the High Court deem Mr. Sullivan to be in error, they will order a trial to be held. - I would therefore instruct the Magistrate of the District to address the High Court, under Section 404 of the Crim. Proc.

the re-
the court

code, and select their determination of what seems to be a point of law in which the Sepem Judge has erred. Should they uphold the Judge accept the propriety of interfering, their dictum will suffice to show that we can get out of the dilemma created by Mr. Sullivan, only by legislation, ~~of the Legislature~~ ^{by the Legislature} the main. - If they determine that Mr. Sullivan is wrong, we must release the two Prisoners and then send them with the rest of the matter.

It seems to me that, be it what it may, the opinion of the Acting Advocate General will be of little advantage. If he goes with the Sepem Judge, we may still feel that the High Court might have differed from him. If he differs from the Sepem Judge, ~~the High Court~~ that officer's opinion & the order of the High Court must still be passed.

The papers now circulated show

①

terms in which the re-
ference to the High Court
should be made

It was originally an im-
plantation to permit the
Sagheer to exercise only
civil ^{and criminal} power. Her right
to pass beyond that, is
acknowledged by implan-
tation in the Sumud issued
on the 12 Jan 1841, in which a
reference is made to the
exercise of criminal power
and since then it would
seem that they have never
been denied to the Sagheer.
But with
reference to the power
of interference in the case
of an owner to remove
the Sumud, I state
that a few cases like
that of Mr. Kelly have
drawn attention to the
necessity of this Sumud
in stepping forward
in the case of the
criminal administration
of this small territory.
In giving this last opinion, I of course, assume
that Mr. Sullivan's view is erroneous and that
it requires to be his jurisdiction over the Namau-
choo plateau, as formal and as public a re-
cognition as that which in 1848 was issued for
the purpose of bringing the plateau under the
control of the Sagheer. *W.D.*

Proc No. 2785, G.M. - 14.11.55-3

PROCEEDINGS OF GOVERNMENT.

No.

186 Department.

18.1.67

Magistrate of Bellary. ^{with original of Namau} Dispd 11/3.
Sg. Govt Solicitor.
Cops of the 2 Sumuds & one Pro.
referred to in Para 2 - sent to Mr
Brockman on the 15/3

Check to the Govt - 27/2/57

4-1-131

Federal 1864. Department.

No. 348.

PROCEEDINGS OF GOVERNMENT.

Office 1863-1869
1713-1721-
Date. 8th March 1869.

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