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TAMIL NADU ARCHIVES

GOVERNMENT OF TAMIL NADU

Judicial DEPARTMENT

G.O. No.	232	Press.
B.P. No.		Mis.
Dated	12. 2. 1868	-197.

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1976

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Government {1868} of Madras.
JUDICIAL.

Recd.

} 1868.

Enclosures

Recd.

Spare copies

G.O., No. 232, 12th February 1868.

FEBRUARY.

Nos. 148-151.

Bellary Magistracy.

Further papers on the question of jurisdiction of the Judicial authorities in Bellary, over offences committed on the Ramandroog plateau, reviewed.

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

Read—the following papers:—

No. 148. From the Government Solicitor, Madras, to the Chief Secretary to Government, Fort Saint George; dated Madras, 20th December 1867, No. 819.

Referring to the Proceedings of the Government, noted in the margin, I have the honor to report, for the information of the Government, that the Judges of the High Court have this day delivered Judgment in the matter of the Criminal case No. 185 of 1866, referred to the High Court by the Magistrate of Bellary for the purpose of obtaining an authoritative decision whether the Ramandroog plateau is a part of British India, and as to the power of the Judicial authorities in Bellary to try any class of persons who have committed offences on the plateau.

1. The High Court has decided in effect that under the concession contained in the Tahannamah given by the Rajah of Sundoor, dated the 25th July 1847, persons not native subjects of the Rajah, committing offences on the plateau for which they are accountable to our Criminal Law, are protected from the Rajah's power over offenders, and that they alone can be apprehended, committed and tried by the Magistrate or Justices of the Peace and the Courts within Her Majesty's Indian Territories or by a Judicial Officer empowered to exercise jurisdiction on the plateau; while offences committed by the subjects of another Prince or State, not made amenable to our Criminal Law, must be dealt with (if at all), by the Government under the Tahannamah, as an international question.

2. The High Court has decided in effect that under the concession contained in the Tahannamah given by the Rajah of Sundoor, dated the 25th July 1847, persons not native subjects of the Rajah, committing offences on the plateau for which they are accountable to our Criminal Law, are protected from the Rajah's power over offenders, and that they alone can be apprehended, committed and tried by the Magistrate or Justices of the Peace and the Courts within Her Majesty's Indian Territories or by a Judicial Officer empowered to exercise jurisdiction on the plateau; while offences committed by the subjects of another Prince or State, not made amenable to our Criminal Law, must be dealt with (if at all), by the Government under the Tahannamah, as an international question.

3. I have applied for a copy of the High Court's Judgment. As soon as I have obtained it, I will lay it before the Advocate-General to enable him to make such observations upon it as he may think necessary, his predecessor, Mr. Mayne, as the Acting Advocate-General, having appeared before the Court and argued on behalf of the Government on the referred case. Till then I retain the several papers which I have received from you relating to the plateau.

No. 149. From the Magistrate of Bellary, to the Chief Secretary to Government, Fort Saint George; dated Bellary, 13th January 1868, No. 6.

I have the honor to submit, for the information and further directions of Government for my guidance, copy of the Judgment of the High Court of Judicature, received on the 6th instant, in the case of the disputed jurisdiction of the plateau of Ramandroog.

2. I beg to be informed if the instructions I gave to the Police in my letter of the 17th November 1866, No. 596, printed in Government Proceedings, dated 8th March 1867, No. 378, are approved, in reference to acting according to the spirit of the Tahannamah, viz., bringing before the Government Magisterial Officer stationed at Ramandroog, complaints made against British subjects only, and referring complaints against Sundoor subjects, to the Sundoor authorities.

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

Wednesday the twenty-third day of October, one thousand eight hundred and sixty-seven.

Present:

The Honourable Sir C. H. SCOTLAND, Knight, Chief Justice.
The Honourable Mr. JUSTICE HOLLOWAY.
The Honourable Mr. JUSTICE COLLETT.

Case No. 185 of 1866 on the Calendar of the Sessions Court of Bellary, referred by the Magistrate of Bellary under Section 404 of the Code of Criminal Procedure, and by order of the Madras Government, for the opinion of the High Court, as regards the jurisdiction of the Judicial Authorities in Bellary over offences committed on the Ramandroog plateau.

This case coming on for hearing, upon perusing the material papers connected with the case, and upon hearing the arguments of Mr. Advocate-General, counsel for the prosecution, and of Mr. O'Sullivan, counsel for the defendants, the Court delivered the following:—

Judgment.—This is a case referred for the consideration of the Court under Section 404 of the Criminal Procedure Code, and the question raised is whether the Session Judge of Bellary has rightly decided that he is without jurisdiction to try certain persons charged with having committed the offences under the Penal Code of wrongful restraint and kidnapping on the plateau of Ramandroog. But the case involves also the broad question whether or not the administration of criminal law over the plateau rests entirely with the Jaghiredar or Raja (as he is commonly styled) of Sundoor as the Chief or Ruler of a Native State, or with Her Majesty's Indian Government.

The persons charged with the offences were, it appears, Native Wallakars or Talaries in the employ of the Rajah, and the persons alleged to have been wrongfully restrained and kidnapped, were natives, inhabitants of the village of Ramandroog. The solution, therefore, of the point of the Session Court's jurisdiction depends solely upon the place of the alleged offences being or not being part of the Territories vested in Her Majesty by the Statute 21 and 22 Victoria Cap. C.V.I. Now unquestionably by the Notification published in the Gazette of the 24th of October 1848, the then Government declared the place to be incorporated with the Talook of Koo-Hegge, in the District of Bellary, and extended to all offences there committed, the jurisdiction of the Criminal Courts and Police authorities of that District; and if the fact had been that Her Majesty's Government insisted on the enforcement of that Notification against the Rajah in the interests of the State whether rightfully or wrongfully, this and every Court of Justice sitting within the Queen's Dominions, would be bound to treat that act of incorporation as conclusive, and at once uphold the jurisdiction of the Session Court. But the Acting Advocate-General, representing the Government, has altogether disclaimed any reliance on the Notification as an independent act of State, and rested the claim of jurisdiction on the Rajah's subordinate position under his Sunnud, and on the Tahannamah of the 25th July 1847, which appears, from the Government Order of the 2nd October 1865, to have been avowedly the basis of the Notification.

We have then, in the first place, to consider whether there is any support for the contention that the Rajah is not in the position of the Chief or Ruler of a State. The history of Sundoor appears to be this:—It was until the conquest of Hyder Ally part of the dominions of the Mah-ratta Ruler of Goety, and in 1790 it was retaken from Tippoo Sultan's Killadar and passed into the possession of Sheeva Row, who held it during the 2nd Mahratta War in 1817. He had maintained his independence against the Peishwa, but in that year surrendered to General Munro, whose stipulations for the grant of a Jaghire in exchange for his territory were confirmed by the Government, but not acted upon. In the succeeding year his former territory was restored to Sheeva Row by the Governor-General, and eight years later he received a Sunnud from the Government, the form of which is given in *Aitchison's Collection of Treaties, &c.*, volume 5, page 310. From that time to the present, each successor to the territory has received a Sunnud in the like form, excepting the restriction that the Rajah should not mutilate criminals nor inflict Capital punishment without the sanction of the Government, which was introduced into the Sunnud granted in 1811 to the present Rajah (see the form at page 311 of the same volume).

From these facts it clearly appears that, on the restoration, the territory of Sundoor became, as it had been before, the State of a Native Chief or Ruler, and that it has so continued to the present time. The Sunnuds do, no doubt, grant the lands in Jaghire, and establish a relation of subordination to the paramount British Government. But the powers recognized and the obligations enjoined by the stipulations in the Sunnuds are wholly incompatible with the position of an ordinary Jaghiredar, and consistent only with that of the Ruler of a State. A strong confirmation of the territory being the State of a ruling Prince or Chief (if confirmation was wanted) is afforded by the Sunnud addressed to the Rajah by Earl Canning in 1862, to the effect that the British Government would recognize the adoption of a successor made by himself or any future Chief of the State; and by the order of the present Viceroy in Council published in February 1867, declaring under the Statute 27 and 28 Victoria Cap. 15 the original Criminal jurisdiction to

extend to European British subjects being Christians resident in the Native States and Chiefdoms named therein of which Sundoor is one. The Tahnamah too, and the correspondence which led to it, are fatal to the argument that it has been the British territory.

It is hardly necessary in this case to cite authority to show that international law recognizes semi-sovereign States, that is, States which are placed in subordination to another protecting State in regard to the exercise of some Sovereign powers of Government. The public law of Europe and America is clearly so—See *Wheaton's International Law* 60-70, and 1 *Pothol* 91-94. And India furnishes numerous instances of the recognition of such States, the Rulers holding Samudra from the Government.

Having arrived at the conclusion that Sundoor is the State of a Native Ruler, though subordinate to the British power, we have next to consider what is the nature of the Tahnamah given by the Rajah in 1847. It sets forth that Europeans and persons had built long walls on the plateau, and others were likely to do the same; that the erection of walls by the Government was under consideration; and that the Collector desired to know on what conditions the plateau would willingly be given up. It then stipulates that the ownership of the land should remain with the Rajah, but that he would grant as much of it as might be required at a fixed annual rent, to be ascertained by survey and assessment according to the local usage, and reserves to him the right to certain revenue levies, and to any hidden property found on digging the land. And, in the 4th Clause, proceeds as follows:—

"It being probable that as European Officers take up their residence on the said Hill, many servants, tradesmen, private persons, and others will reside there, I have relinquished to the Company 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."

Now there is plainly no cession of the plateau contained in these stipulations. Their import, we think, quite the reverse, and it is difficult to understand how the Tahnamah could be made the basis of the territorial incorporation declared by the Notification, and made one object of the Proceedings of the Government and the Board of Revenue in the same year. The Tahnamah, therefore, in its operation, is of no avail to give the Session Court of Bellary jurisdiction, and we need say no more to dispose of the present case.

But for the guidance of the Judicial Officers and the Police authorities of the District, we think our opinion should be expressed as to what is conveyed by the 4th Clause and the effect. We consider that it surrenders exclusive Criminal jurisdiction over a limited class of persons, namely, Europeans and their servants, and all other resident persons and native subjects of the Rajah, and leaves the Government unfettered to provide in the way they deem right for the preservation of the peace, and the trial and punishment of offences committed by such persons. Now in the state of the law existing at the date of the Tahnamah and until the passing of Act I of 1849, the Criminal Courts and Magistracy of the District might probably have exercised that jurisdiction to its fullest extent over all resident persons other than subjects of the Rajah. But, under the present law, their jurisdiction to deal with offences committed within the territory of a Prince or State extends only to subjects and servants of the Queen, and persons resident for a certain time within Her Indian Territories.

Under the concession then, we are of opinion that persons, not native subjects of the Rajah, committing offences on the plateau, for which they are amenable to our Criminal law, are protected by the Magistrate or Justice of the Peace, and they alone can be apprehended, committed, and tried in the Territories, or by a Judicial Officer empowered to exercise jurisdiction on the plateau. Offences committed by the subjects of another Prince or State, but made amenable to our Criminal law, must be dealt with, if at all, by the Government, under the Tahnamah as an international question.

(A true Copy.)

(Signed) T. WILKINS,
Deputy Registrar, Appellate Side

No. 119. From the Government Solicitor, Madras, to the Chief Secretary to Government, Fort Saint George; dated Madras, 24th January 1868, No. 47.

Adverting to my letter, No. 819, of the 26th ultimo, regarding the question of jurisdiction of the Judicial authorities in Bellary over offences committed on the Ramandroog plateau, I have the honor to inform you that having obtained a copy of the Judgment of the Appellate High Court on the subject, I have submitted it

together with all the papers relating to the matter, for the consideration of the Advocate-General, with a view to his making such observations thereon as he might consider necessary, his predecessor, Mr. Mayne, having appeared on behalf of Government, on the argument of the question before the Court.

2. The Advocate-General not having felt it necessary to make any observations thereon, I send a copy of the Judgment for the information of Government, and likewise return all the papers which were sent to me in connection with the matter.

No. 151. ORDER THEREON—No. 232, Judicial, dated 12th February 1868.

With the letter recorded above the Magistrate of Bellary submits, for the information of Government, a copy of the judgment of the High Court in a case in which a question arose as to the jurisdiction of the Session and Magisterial Courts of the Bellary District over offences committed on the plateau of Ramandroog situated within the limits of the Sundoor territory.

2. The Magistrate refers to instructions issued by himself to the Superintendent of Police, Bellary, on the 17th November 1866, No. 506, printed in Proceedings of Government, 8th March 1867, No. 378, and requests information whether they are approved.

3. The judgment of the High Court is to the effect that there has been no cession of Sovereignty in the plateau of Ramandroog to the British Government, and that the "Tahanamah" executed by the Sundoor Rajah on the 25th July 1847, is of no avail to give the Session Court of Bellary the jurisdiction necessary to admit of its trying offences of the nature of those with which the two prisoners were charged in Case No. 185 of 1866 on the file of the Session Court, when committed by subjects of the Rajah or of any Foreign State.

4. The effect of the Tahanamah executed by the Rajah, as explained in the concluding part of the judgment of the High Court, restricts the jurisdiction of the Criminal Tribunals in the Bellary District to offences committed on the plateau of Ramandroog, by subjects and servants of the Queen and persons resident for a certain time within the Indian Territories. Any instructions which it may be necessary to issue to the Superintendent of Police will be based on the judgment of the High Court, which has been communicated to the Magistrate of the Bellary District.

(True Extract.)

R. S. ELIAS,
Chief Secretary.

To the Magistrate of Bellary.
" Inspector-General of Police.
" Government Solicitor.

N^o 819

High Court House Madras
20th December 1867

From
J. S. Brockman,
Government Solicitor, Madras

To,
The Honorable W. L. Ellis C. B.
Chief Secretary to Government

Sir,

Referring to the Proceedings of the
Government noted in the margin, I have
the honor to report for the information of the
Government that the Judges of the High
Court have this day delivered Judgment
in the matter of the Criminal Case
No. 185 of 1866 referred to the High Court
by the Magistrate of Bellary for the
purpose of obtaining an authoritative
decision whether the Ponnandroy
Plateau is a part of British India and
as to the power of the Judicial authorities
in Bellary to try any class of persons
who have committed offences on the
Plateau

The High Court has decided in

effect that under the Concession contained
in the Tahanamali given by the Rajah
of Soudoor dated the 28th July 1847
persons, not native subjects of the Rajah,
committing offences on the Plateau for
which they are accountable to our Criminal
Law, are protected from the Rajah's power
over offenders, and that they alone can
be apprehended, committed, and tried
by the Magistrates or Justices of the Peace
and the Courts within Her Majesty's Indian
Territories or by a Judicial Officer empower-
ed to exercise Jurisdiction on the Plateau
while offences committed by the subjects
of another Prince or State, not made
accountable to our Criminal Law, must
be dealt with, (if at all) by the Government
under the Tahanamali, as an international
question.

3. I have applied for a copy of the
High Court's judgment. As soon as I have
obtained it, I will lay it before the
Advocate General to enable him to make
such observations upon it as he may
think necessary. His predecessor, Mr. Mayne,
as the Acting Advocate General having
appeared before the Court and argued in

behalf of the Government on the referred
Case. Till then I retain the original
papers which I have received from you
relating to the Plateau.

I have the honor to be
Sir,
Your most Obedt. Servant

W. H. Brockman
Government Solicitor

Camp Anantapur

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Chas. A. McMillan, Esquire,

Magistrate of

Bellevue

To, The Honorable R. W. Ellis, Esq.

Chief Secretary to Government, Allahabad.

Anders

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Shave the honor to submit for the information
& further directions of Government for any guidance
of the judgment of the High Court of Judi-
cature received on the 6th inst. in the case of the disputed
jurisdiction of the pilotage of commanding-

2. I beg to be informed if the instructions I gave to the Police in my letter of the 17th November 1866 be not printed in Government Proceedings dated 8th March 1867 be so or otherwise, in reference to, being according to the spirit of the Lokmamah, being brought before the Government Magisterial Officer stationed at Ramnagar, complaints made against British Subjects only & referring complaints against Chunder Chakrabarty to the District Magistrate.

James A. Smith to Mr. [illegible]

[Handwritten signature]

Allen Woodford

Albuquerque

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149.

In the High Court of Judicature at
Madras.

Wednesday the Twentythird day of
October One thousand Eight hundred
and Sixty Seven.

Present.

The Honorable Sir. L. H. Scotland, Knight
Chief Justice.

The Honorable Mr. Justice Holloway.

The Honorable Mr. Justice Lockhart.

Case No 185 of 1866 on the Calendar
of the Sesssion Court of Bellary, referred by the
Magistrate of Bellary under Section 401 of the
Code of Criminal Procedure, and by order of the
Madras Government, for the opinion of the High
Court as regards the jurisdiction of the
Judicial authorities in Bellary over offences
committed on the Ramandroog Plateau.

This case coming on for hearing, upon
perusing the material papers connected with the
case, and upon hearing the arguments of
Mr. Advocate General, Counsel for the
Prosecution, and of Mr. C. Sullivan, Counsel for
the Defendants, the Court delivered the
following.

Judgment. This is a case referred for the
consideration of the Court under Section 401
of the Criminal Procedure Code, and the
question raised is whether the Session Judge
of Bellary has rightly decided that he is
not competent to try certain persons
charged.

copy
to
the
Magistrate

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copy to the
Magistrate
of Bellary
under Section 401
of the Criminal
Procedure Code
for his opinion
as to the
jurisdiction of
the Session Judge
of Bellary over
offences committed
on the Ramandroog
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charged with having committed the offences under the Penal Code, of wrongfully restraint and Kidnapping on the plateau of Ramandoo. But the case involves also the broad question whether or not the administration of criminal law over the plateau rests entirely with the Jaghirdar or Rajah (as he is commonly styled) of Sundoo, as the Lohia or Ruler of a Native State; or with Her Majesty's Indian Government.

The persons charged with the offences were, it appears, natives Wallahs, or Taluqs, in the employ of the Rajah, and the persons alleged to have been wrongfully restrained and Kidnapped, were natives, inhabitants of the village of Ramandoo. The solution, therefore, of the point of the Session Court's jurisdiction depends solely upon the place of the alleged offences being or not being part of the Territory vested in Her Majesty by the Statute 21 and 22 Victoria Cap. 87. Now unquestionably by the notification published in the Gazette of the 24th of October 1848, the then Government declared the place to be incorporated with the Taluk of Noodhega in the District of Bellary, and extended to all offences there committed, the jurisdiction of the Criminal Courts and Police authorities of that District, and the fact had been that

Government insisted on the enforcement of that notification against the Rajah in the interests of the State whether rightfully or wrongfully, this and every Court of Justice sitting within the Queen's Dominions, would be bound to treat that act of incorporation as conclusive, and at once uphold the jurisdiction of the Session Court. But the Acting Advocate General, representing the Government, has altogether disclaimed any reliance on the notification as an independent act of State, and rested the claim of jurisdiction on the Rajah's subordinate position under his suzerain, and on the Tahnamah of the 25th July 1847, which appears from the Government Order of the 2nd October 1865, to have been avowedly the basis of the notification.

We have then, in the first place, to consider whether there is any support for the contention that the Rajah is not in the position of the Lohia or Ruler of a State. The history of Sundoo appears to be this, It was until the conquest of Androddy part of the dominions of the Malabar Ruler of Cochin, and in 1790 it was taken from Tippu Sultan's Viceroy and passed into the possession of the British, who held it during the Maratha War.

in 1817. He had maintained his independence against the Pishwa, but in that year, surrendered to General Munro, in whose stipulations for the grant of a jaghir in exchange for his territory were confirmed by the Government, but not acted upon. In the succeeding year, his former territory was restored to Sheera Rao by the Governor General, and eight years after, he received a Sanad from the Government, the form of which is given in Nicholson's Collection of Treaties Volume 5 page 340. From that time to the present, each successor to the territory has received a Sanad in the like form, accepting the restriction that the Rajah should not mutilate criminals, nor inflict capital punishment without the sanction of the Government, which was introduced into the Sanad granted in 1841 to the present Rajah (see the form at pages 341 of the same volume).

From these facts, it clearly appears that, on the restoration, the territory of Sundoo became, as it had been before, the state of a Native Chief or Ruler, and that it has so continued to the present time. The Sanads do, no doubt, grant the land in jaghir and establish a relation of subordination to the Paramount British Government.

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But the powers recognized and the obligations enjoined by the stipulations in the Sanads, are wholly incompatible with the position of an ordinary Sagindar, and consistent only with that of the Ruler of a State. A strong confirmation of the territory being the state of a Native Prince or Chief (if confirmation was wanted) is afforded by the Sanad addressed to the Rajah by Lord Dalhousie in 1862 to the effect that the British Government would recognize the adoption of a successor made by himself, or any future chief of his State, and by the order of the present Viceroy in Council published in February 1867 declaring under Stat. 27 and 28 Victoria Chap: 15, the original criminal jurisdiction to extend to Europeans, British subjects, being Christians resident in the Native States and chiefships named therein, of which Sundoo is one. The Tahnamah too, and the correspondence which led to it are fatal to the argument that it has become British territory.

It is hardly necessary in this case to cite authority to show that international law recognizes Native Sovereign States, Chief States which are placed in subordination to another protecting State in regard to the exercising of Sovereign powers of Government.

The,

The public law of Europe and America is clearly
see Wheaton's International Law 89, 90. and
1 Phil. 91-94. And India furnishes numerous
instances of the recognition of such states, the
Rulers holding Summits from the Government.

Having arrived at the conclusion
that Surdaas is the state of a Native Ruler,
though subordinate to the British Power, we
have next to consider what is the meaning of
the Tahnamah given by the Rajah in 1847.
It sets forth that European gentlemen had
built bungalows on the plateau, and others were
likely to do the same; that the creation of
barabats by the Government was in due
consideration; and that the Rajah desired
to know on what conditions the plateau
would willingly be given up. It then stipulates
that the ownership of the land should
remain with the Rajah; but that he would
grant as much of it as might be required
at a fixed annual rent to be ascertained by
survey and agreement according to the local
usage; and reserves to him the right to certain
revenue imposts, and to any hidden property
found on digging the land. And in the 1st
Clause, proceeds as follows.

"It being probable that as European
officers take up their residences

Hill, many servants, tradesmen, private 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 offenses committed by
such people - such as violence, petty crimes,
thefts, murder, &c. The collector is to have
jurisdiction in such matters."

Now there is plainly no basis
of the Plateau contained in these stipulations.
Then, indeed, we think, quite the reverse; and it
is difficult to understand how the Tahnamah
could be made the basis of the territorial cession.
Operation declared by the notification, and made
one object of the proceedings of the Govern-
ment and the Board of Revenue in the same
year. The Tahnamah, therefore, in its operation,
is of no avail to give the Session Court of Bellary
jurisdiction; and we need say no more to dispose
of the present case.

But for the guidance of the Judicial
officers and the Police Authorities of the District,
we think our opinion should be expressed as to
what is intended by the 1st Clause and the effect.
We consider that it surrenders exclusive criminal
jurisdiction over a limited class of persons;
namely, Europeans and their servants and all
resident persons not native subjects of
the Government. It leaves the Government to
exercise jurisdiction over the rest.

to provide in the way they deem right for the preservation of the peace, and the trial and punishment of offences committed by such persons. Now in the state of the law existing at the date of the Sahamnah and until the passing of Act I of 1849, the Criminal Courts and Magistrate of the District might probably have exercised that jurisdiction to its fullest extent over all resident persons, other than Subjects of the Rajah. But under the present law, their Jurisdiction to deal with offences committed within the territory of a Prince or State, extends only to Subjects and servants of the Queen and persons resident for a certain time within Her Indian Territories.

Under the conception then, we are of opinion that persons, not native Subjects of the Rajah, committing offences on the plateau, for which they are amenable to our Criminal Law, are protected from the Rajah's power over offenders; and they alone can be apprehended, committed, and tried by the Magistrate or Justice of the Peace, and the courts within Her Majesty's Indian Territories, or by a Judicial officer empowered to exercise Jurisdiction on the Plateau.

Of course

Offences committed by the Subjects of another Prince or State, not made amenable to our Criminal Law, must be dealt with, if at all, by the Government under the Sahamnah, as an international question.

(A True Copy.)

Signed of Thomas Wilkins

Deputy Registrar

Appellate Side.

(True Copy of Copy)

A. J. Proctor

Genl. Secy.

Re
Jurisdiction of Judicial
authorities in Bellary over
offences committed on the
Rameswore Plateau.

(Copy)
Judgment of the Appellate
High Court, Madras.

Enclure
In No. 47 from Govt. to Govt.
of 21 January 1958

In the High Court of Judicature at Madras
Wednesday the twenty third
day of October, one thousand eight hundred
and sixty three.

Present.
The Honourable Mr. G. M. Vallance, Knight
Chief Justice.
The Honourable Mr. Justice Mellinay.
The Honourable Mr. Justice Collett.

Case No. 180 of 1861 on the Petition
of the Union Board of Bellary, against the
Magistrate of Bellary under Section 104 of
the Code of Criminal Procedure, and the Order
of the Madras Government for the opinion of the
High Court, as regards the jurisdiction of the
Magistrate in Bellary over offences
committed by the Demanding Native.

This case coming on for hearing, upon
perusing the material papers submitted with
the case, and upon hearing the arguments of
Mr. Advocate General, counsel for the Petitioner,
and of Mr. Mellinay, counsel for the Respondents,
the Court delivered the following-

Judgment. This is a case referred for the
consideration of the Court under Section 104 of
the Criminal Procedure Code, & the question
raised is whether the Union Judge of Bellary
has rightly decided that he is without jurisdiction
to try persons charged with having com-
mitted offences under the Penal Code of
Madras.

successful restraint and kidnapping on the
plains of Ramandry. But the case involves
also the broad question whether or not the ad-
ministration of criminal law over the Malabar
people exclusively with the Jaghordar or Rajah (who
is commonly styled) of Chundor as the
Chief or Ruler of a Native State, or with the
Majesty's Indian Government.

The persons charged with the offence were
it appears native Mallahs or slaves in the
employ of the Rajah, and the persons alleged
to have been wrongfully restrained & kidnapped,
were natives, inhabitants of the village of
Ramandry. The solution therefore of the
point of the Supreme Court's jurisdiction depends
wholly upon the place of the alleged offence
being or not being part of the territories
vested in Her Majesty by the Statute 21 and
22 Victoria Chap: CXX. Now unequivocally by
the notification published in the Gazette of the 2nd October
1848, the then Government declared the place to be incorporated
with the District of Woodbury in the District of Bellary
and referred to all offences there committed the juris-
diction of the Criminal Court and Police Commission
of that District; and of the fact has been that the
Majesty's Government intervened in the superintendence
of that jurisdiction against the Rajah in the interests
of the State whether voluntarily or forcibly, this over-
sight of justice falling within the British
Dominions, would be bound to pass that but if
incorporation is withdrawn, and it was upheld
the jurisdiction of the Supreme Court.

General. General. Representing the Government has
alleged the disturbance may reliance on the notification
is an independent act of State, and made the claim
of jurisdiction on the Rajah's subordinate position
under his Government, and on the Government of
the British Empire, which appears from the Government
order of the 1st October 1848, to have been previously
the basis of the notification.

We have taken in the first place to consider
whether this is any support for the contention that
the Rajah is not in the position of the Chief or
Ruler of a State. The history of Chundor ap-
pears to be this. It was under the conquest
of Hydrabad part of the dominions of the Nizam
Ruler of Hydrabad and in 1798 it was so taken from
the Nizam's dominions and passed into the con-
quest of the British. The Rajah was then at Hydrabad
in 1798. He had previously been
under the Nizam's dominions, but in that
year he was taken to General Baines, where Hydrabad
was for the period of a year in exchange for his
territory, and he remained in the Government, but not
into office. In the succeeding year his former territory
was restored to him by the Government, and
and right from then he received a demand from the
Government, the Government of Hydrabad to give in a list of
the names of the Rajah's subjects. From that
time to the present, and thence to the territory has
received a demand on the full form, requiring the
Rajah to the Rajah should not make any demand
in that regard, but should be bound to the Government
which was not in the hands of the Government.

granted in 1861 to the General Land Office (see the form at
page 341 of the same volume).

From these facts it clearly appears that on the
restoration, the territory of Vancouver became, as it had
been before, the state of a British Colony, and
that it has so continued to the present time the Government
of us should grant the same in 1847, & establish a
relation of subordination to the paramount British
Government. But the former recognized and the obligations
imposed by the stipulations in the Vancouver are wholly
incompatible with the position of an ordinary Colony,
and involved only with that of the Colony of a British
A strong confirmation of the territory being the state
of a ruling Prince or Chief (of Confederation has been)
is afforded by the Vancouver adopted to the Royal
Warrant in 1847, to the effect that the British
Government would recognize the adoption of a Governor
made by himself or any future Chief of the said
and by the order of the present Secretary in Council pub-
lished in February 1857 declaring under the 24th of June
28 Victoria Chap. 15 the original Criminal jurisdiction
to extend to European British Subjects being Christians
residing in the various states and Chiefly to the
towns of which Victoria is one of the Colonies
too and the correspondence which the British
to the Government that it has been British territory.

It is hardly necessary in this case to labor subtlety to show that international law recognizes some as sovereign states, that is states subject or placed in subordination to another, just as it is hardly necessary to trace of some sovereign powers.

The public law of Europe and America is clearly to
be observed International law 87-90 and 1 Phil 91-94.
and also furnishes numerous instances of the re-
surrection of such states, the Carlos Holandiz Succession
from the Government.

[illegible]

It being pointed out that as European Officers take up their residence in the Arab Hill, many the French, German, Spanish persons, and the native Arabs, who are attached to the European Government, the Arab & European functions of maintaining peace and buying & smuggling of arms and ammunition, and people such as we have, get the

crimes, theft, murder &c. - The intention is to have jurisdiction in such matters.

Now there is plainly no opinion of the Indian contained in these stipulations - They imply, we think, quite the reverse, and it is difficult to understand how the Indians could be made the basis of the territorial incorporation declared by the Legislature, and made the subject of the jurisdiction of the Government and the Board of Revenue in this land office. The Indian law then in its operation is of no avail to give the Indian Court of Delhi jurisdiction, and we need say are even to the effect of the present case.

But for the existence of the Judicial Officers and the Police authorities of the District we cannot see how it should be expected as to what is done by the Police and the District the intention that it surrenders exclusive jurisdiction over a limited class of persons, namely Europeans and their servants, and all other British persons not native subjects of the Rajah, and leaves the Government empowered to provide in the law the right for the prosecution of the crime, and the trial and punishment of offences committed by such persons. Now in the state of the law existing at the date of the Charter and until the passing of Act 1 of 1849 the Criminal Code and jurisdiction of the District might probably have been exercised that jurisdiction to be pulled & sent over to British persons other than subjects of the Rajah. But under the present law this jurisdiction is

held only by officers committed within the territory of a Province, and extends only to subjects and servants of the Rajah and persons residing for a certain time within the Indian territory.

Under the provisions then we are of opinion that persons who are subjects of the Rajah committing offences in the territory for which they are accountable under Criminal law are protected from the Rajah's power over offenders, and they alone can be apprehended, committed and tried by the Magistrate or Judges of the Bench, and the Bench within the Rajah's Indian territory, as by a Judicial Officer empowered to exercise jurisdiction over the Indian subjects committed by the subjects of another British or other not more accountable than Criminal law, must be sent out, if at all by the Government under the Government is an international question.

(1st time copy)

12th J. Williams

Secretary to the

Appellate side

(2nd time copy)

A. H. Williams
Magistrate.

N^o 47.
Madras January 24th 1868.

From
H. J. Buckman.
Government Secretary, Madras.

To
The Honorable R. L. Ellis Esq.
Chief Secretary to Government
Madras

Sir,
1. (Referring to my letter N^o 814, of the
20th 11th inst, regarding the question of jurisdiction
of the Judicial authorities in Bellary over
offences committed on the Ramachooz Plateau,
I have the honor to inform you, that, having
obtained a copy of the Judgment of the appellate
High Court on the subject, I have submitted
it, together with all the papers relating
to the matter, for the consideration of
the Advocate General, with a view to his
making such observations thereon as he
might consider necessary, his predecessor,
Mr. Mayne, having appeared on behalf
of Government, on the argument of the
question before the Court.
2. The Advocate General not having
deemed it necessary to make any observation
thereon

Recd. 25/1/68
25/1/68

For the
Secretary to Government
Madras

thereon, I send a copy of the Judgment for
the information of Government, and likewise
return all the papers which were sent to
me in connection with the matter.

I have the honor to be.

Sir.

Your Obedient Servant.

A. M. Brothman

Government Solicitor.

19
Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letter

From the Magistrate of Bellary. — See entry 13 Jan'y 1868 No 6.
— Government Solicitor — — 20 Dec + 24 Jan'y — — 4/

Order number 12 February 1868 N: 232.

With this letter ^{received} the
Magistrate of Bellary submits
for the information of Govern-
ment a copy of the judgment
of the High Court in a case
in which a question arose as
to the jurisdiction of the Session
and Magisterial Courts of the
Bellary District over offences
committed on the plateau
of Ramandooz situated
within the limits of the Sundar
territory.

25-3-93

For 1868. 22/1/68
The Court Solicitor.
The Chief Clerk to the Court.

Recd: 24/2/68
1868 24/2/68

22/1/68
22/1/68

Reference all papers in
connection with the question
of jurisdiction of the Session
Court at Bellary
over offences committed
on the Ramandooz plateau
together with a copy of
the judgment of the High
Court on this subject.

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23/1/68
22/1/68

2. The Magistrate refers to instructions issued by himself to the Superintendent of Police, Bellary on the 17th November 1866, No 506, printed in Proceedings of Government 8th March 1867 No 370, and requests information whether they are approved.

3. The judgment of the High Court is to the effect that there has been no cession of sovereignty in the plateau of Ramandroog to the British Government, and that the "Tahanamah" executed by the Sindhoo Rajah on the 25th July 1847 is of no avail to give the Sesion Court of Bellary the jurisdiction necessary to admit of its trying offences.

10
of the nature of those with which the two prisoners were charged in Case No 185 of 1861 on the file of the Sesion Court when committed by subjects of the Rajah or of any foreign State.

4. The effect of the Tahanamah executed by the Rajah, as explained in the concluding part of the judgment of the High Court restricts the jurisdiction of the Criminal Tribunals in the Bellary District to offences committed in the Plateau of Ramandroog, by subjects and servants of the Queen and persons resident for a certain time within the said Territories. Any instructions which it may be necessary to issue to the

Superintendent of Police
will be based on the judgment
of the High Court, which has
been communicated to the
Magistrate of the Bellary
District.

Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letter

From the Magistrate of Bellary No. 137 dated 13th Jan'y 1868 N. 6.
— " — Government, Solicitor — " 22nd Decr 24th Jan'y — N. 47.

Order.

With this letter
the Magistrate of Bellary
submits for the information
of Government a copy of
the judgment of the High
Court in case in which
a question arose as to the
jurisdiction of the Session
and Magistral Courts
of the Bellary District over
offences committed on the
plateau of Ramandroog
situated within the limits
of the Spindoo territory.

The Magistrate refers for
instructions issued by himself
to the Superintendent of
Police, Bellary on the
same.

To the Magistrate of Bellary
for the purpose of
putting the same into
effect.

Superintendent of Police
will be based on the judgment
of the High Court, which has
been communicated to the
Magistrate of the Bellary
District.

Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letter 5

From the Magistrate of Bellary Here enter 13th Jan'y 1868 N. 6.
— " — Government Solicitor — " 22nd Dec^r 21st Jan'y — N. 47.

Order.

With this letter
the Magistrate of Bellary
submits for the information
of Government a copy of
the judgment of the High
Court in case in which
a question arose as to the
jurisdiction of the Session
and Magisterial Courts
of the Bellary District over
offences committed on the
plateau of Ramandroog
situated within the limits
of the Sundoor Territory.

2. The Magistrate refers for
instructions issued by himself
to the Superintendent of
Police, Bellary on the 17th
November

To the Magistrate of Bellary.
Respectfully,
Govt. Solicitor.

November 1866 N° 306, printed
in Proceedings of Govt.
8th March 1867 N° 370 and
requests information whether
they are approved

3 The judgment of
the High Court commu-
nicates the opinion that

I would say
"in 2nd effect"
N. W. W.

there has been no cession of sovereignty in
of the plateau of Lamandou
to the British Government,
and that the 'Sahamamah'
executed by the Sundoo
Rajah on the 25th July
1847 is of no avail to
give the Session Court
of Bellary the jurisdiction
necessary to admit of its
trying offences of the
nature of those with
which the two prisoners
were charged in Case N° 185
of 1866 on the file of the
Session Court.

4 The effect of the
'Sahamamah' executed by
the Rajah as explained

with
X when committed by
Subjects of the Rajah
of any foreign State,

I hope Rajah W. W.
would not call his
infringement upon his
jurisdiction in the
N.

insert
in the Plateau of the
demanding W. W.

which it may be necessary to
any instructions given to
Magistrate to the
Superintendent of Police
will be based on the
judgment of the High
Court, which has been
communicated to
the Magistrate of the
Bellary District.

to Magistrate of Bellary
District Solicitor.

in the concluding part of the
judgment of the High
Court restricts the jurisdiction
of the Criminal Tribunal
in the Bellary District to
offences committed within
the limits of the Sundoo
Jaghuar, by subjects and
servants of the Queen and
persons resident for a
certain time within the
Indian Territories.

to this extent therefore it is
desirable that the Magis-
trate should modify
the instructions communi-
cated by him to the
Superintendent of Police
in November 1866.

W. W.

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Philadelphia

No.

PROCEEDINGS OF GOVERNMENT.

Dated

186

Resolved, That the
Committee on the
State of the
Union, be and they
are authorized to
report thereon to the
House of Representatives
at the next session.

23-0-93

23-7-03

4-1-18

27-8-32

Case 1862. Department.

No. 232

PROCEEDINGS OF GOVERNMENT.

Oct 1895.
— 1897/90.

Dated 12 February 1868.

148. 157.