Scott. II,27—45,00 —15-11-35.

Judicial 1880 ~~(193~~) **Department.**

Govt **SERIES.**

G.O. No. 610

Dated 15-3-1880.

Confdl

[Despatch Abstract.]

Rangoon Commissariat Frauds

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

Judicial DEPARTMENT

Chief Secretariat, 18 .

My dear Hudleston

There is no B.I.S.N. steamer to Rangoon after tomorrow, till the 31st instant.

What is to be done

Yours very

No help for it. Impossible to go tomorrow.

Please turn over

---

well worthy of

Department.

114.

Solicitor or pleader

may if deemed advisable

be sent over — If

Recorder and Burmese

Criminal Courts. Do

you wish assistance

Note.-

A P&O Steamer will leave Madras for Calcutta on the 22nd Instant - & is due at Calcutta on the 26th Idem.-

A BISN Steamer leaves Calcutta for Rangoon on the 26th & is due at Rangoon on the 30th Idem.

How would it do for Mr Tarrant to take that route.

Can the Adv Gen - & J.A.G. post Tarrant up by 22nd - D.A. thinks so - W.G. has left - but you might tell Tarrant ~~that~~ that route is open

(P&O?)

if the B.I.S.N. - will guarantee his str. reaching before the steamer leaves Calcutta the morning following

The Hon'ble Mr. Hudleston.

Demi-official correspondence circulated for information showing, among other things, that it will not be practicable for Mr. Tarrant to proceed to Rangoon before the 31st. instant.

A. 17.3.80

17/3/80.

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER

G.O.	No.	Department.	Date.

Judicial DEPARTMENT

It is well worthy of

Judicial DEPARTMENT.

No. 849

From the Ag. Government Solicitor

Dated 12. March 1880. No. 114.

Communicating the result of the interview he has had with the Commissary General and forwards copies of depositions and letter of Explanation written by C. Davasagamoney connected with the Rangoon Commissariat frauds.

FOR ORDERS.

12.3.80

Among the [illegible] other papers [illegible] Commissariat

13/3

Barrister or pleader may if deemed advisable be sent over —

Recorder and Burmese Criminal Courts. Do you wish assistance

Rangoon Commissioner
transmits

FOR ORDERS.

Recd. per Circ-
26-3-80

papers sent to
Adv. Genl.
26/3

C12/3
R24/3

I think it well worthy of serious consideration whether prosecution under the Indian Penal code for ~~the~~ ~~receiving~~ accepting a gratification other than legal remuneration ..... re. I.P.C. 161 – (& vide illustration b–) would not be the simple & proper mode of dealing with these cases –

Probably these men who are here might be tried here – the ~~same~~

Solicitor or [illegible] Recorder and Burmese

measures would be meted
out to both Military &
civilians concerned —
and the Criminal Courts have power to
punish by imprisonment &
and fine — thus in the
case of conductors &c — some
of the illgotten gains would
have to be surrendered — on a
conviction —

If convicted — it would not
prevent the men from being
tried by Court-Martial for

their improper conduct
and sentenced to dismissal
&c —

If acquitted the decision
would be arrived at
after fullest investigation
& if acquitted for
want of technical proof —
Govt. would have to guide it
in future action — the evidence
on which to base
any further procedure &c —
I think it might be well

that the law officers ~~[illegible]~~ advice on this question should be obtained at once - ~~that~~ if necessary the evidence may be secured by Commission before any of it is lost by disappearance of persons - & I cannot but think the case ~~of~~ of Col S. assumes a form in which it would be justifiable in a ~~criminal~~ criminal case to seize & seal up - & search all his papers bearing on the charge. Bl 3/3

---

they have made. If the Court judge ~~[illegible]~~ of the case, then Govt will have the benefit of that opinion. W. 15/2

P.S. I find that by the Rules of Procedure of the Army Discipline and Regulation Act 1879 that a Court of Inquiry cannot be allowed to express an opinion - and that the formation of an opinion rests entirely on the reviewing authority - also that when that opinion is adverse, a communication must be made to the parties to that effect. W. 15/2

If the evidence that could be established before a Court Martial would suffice to bring home conviction I think it would be the more usual and preferable course to try all the Military before a Military Court. But I am advised by the J. Advocate now conducting the duties of that office, that much of the evidence that could be produced before an ordinary Court of Justice under the Indian Evidence Act could not be produced before a Court Martial. In short in the cases of the officers accused, the evidence for the prosecution would almost entirely depend upon the evidence

Recorder and Burmese

on oath of Mr Elias Cowen. It would be contradicted by the books & other documentary evidence which could be produced under the Indian Evidence Act; and which evidence cannot be examined without carrying with it very great weight in support of Mr Cowens statement on oath.

The chance of conviction before a Court Martial is so doubtful, that I have felt that to bring the officers accused before a Tribunal of the kind would be to afford them the means of escape; for once pronounced "Not guilty" it would not be possible to deal with them except through the Secretary of State, whilst to resort to such a course would seem like a determination on the part of Govt to inflict a punishment upon officers already pronounced not guilty.

If the officers are tried & convicted under the penal code, the measure of the punishment awarded will be of no moment — they would not be tried again by a Military Court; but it would certainly be the duty of the C in C to bring to the notice of Government any conviction of the kind, and for him to express an opinion as to whether the officers should be allowed to remain in the service.

It would never do to deal differently with the different classes of offenders; and I think that the best course is to bring all the accused to trial before the Rangoon Court.

After the evidence received has been gone into by myself with the Offg J. A. General, and as it would seem that no more evidence is now forthcoming, Colonel Wilson may close his report upon each case, when they can be submitted to Govt. These Reports with their accompanying documents would form the ground work for the prosecution, & Govt. should make the whole papers over to their Law Officer, with instructions to institute proceedings against the accused with ~~instructions~~ as little delay as practicable. Lt. Col Weldon & Captain Hallett — should be instructed to assist in the prosecution;

The Court of Enquiry which has been investigating the evidence has instructed not to express an opinion; but I think it may be a prudent precautionary measure for me now to instruct the Court to express an opinion. Their time for many weeks past has been devoted to the subject — they have had all the witnesses before them, & have been able to judge of their manner of giving evidence as well as of the statements

I concur in the opinion that under the circs. it is advisable to deal with these cases by Crim! charge under the Penal Code, wh. will admit of all being dealt with on equal footing — rather than by Court Martial in some cases & Crim! charge in others. with the result that

Recorder and Burmese

the truth of the Evidence
&c. will be admissible
in the Crim: Ct. will
be inadmissible in
the Ct. Martial –

I cld infer from
what we have heard
from Col. Wilson that
it may be advisable
to send over a lawyer
from Madras to conduct
the prosecution. He
might wire to Wilson

profession on this point.
In any case I think
it wd be well that our
Adv. Gen. shd see all
the papers & advise
as to the Prosecution
Commisy Gen. or his
Depy shd prosecute
I presume. E.B.

5/3/80

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

Retd fm Cir
5.3.80

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judicial DEPARTMENT

Fort St. George
10. March 1880.

INDIAN TELEGRAPH.

Code Form C. (P. 1.)—G. T Press.—No. 304.—7-8-—200000.

Class. S ential

To (Station) Ins

Words. 16.

Day. 10 Hour. 16. Minute. 41 -

R.D.

11 MAR 80

From (Station) Rangoon

No. 250

Official Instructions.

To (Person) Madras

From (Person) Col: Weldon -

Finished
court case
I inquiry before
Thayetmyo prosecute Shall
managers tonghoo
civilly.

Recd. from Hrs. Mts., By L. N.

Date MADRAS 10-3-80

Sent to At Hrs. Mts., By L. N.

Telegraph Master.

to request y mode of prosecution to ted, and whether you consider it desirable to send a lawyer, from Madras to conduct the prosecution

Ex: Ind
(Sigd) R. Davidson

Retained —
That a Madras
solicitor or pleader
may if deemed advisable
be sent over — ?

Government decide
prosecute frauds in
Recorder and Burmese
Criminal Courts. Do
you wish assistance

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

Retd. fm Cir
5.3.80

Judicial DEPARTMENT

Fort St. George
Confidential 10. March 1880.

Dear Mr. O'Sullivan.

In continuation of the papers brought to you yesterday by Coll. Wilson, in charge of the Judge Advocate General's Office, I am desired to forward to you confidentially the accompanying papers and letters by members of Government relating to the Commissariat frauds case in Rangoon. I am to request you to advise as to the mode of prosecution to be adopted, and whether you consider it desirable to send a lawyer from Madras to conduct the prosecution.

Yrs. truly
(Sigd) R. Davidson

"Government decide prosecute frauds in Recorder and Burmese Criminal Courts. Do you wish assistance

Returned —
That a Madras solicitor or pleader may if deemed advisable be sent over — [illegible]

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

Seen

The persons alluded to here may be tried by the Civil tribunal. I should bring them to trial if the Law Officers consider that there is sufficient evidence to justify this being done.

12/3

Retd per Cir
15.3.80

Judicial DEPARTMENT

No.

From the Advocate General. d/12th March 1880.

Opinion regarding Prosecution - Rangoon frauds.

Let Mr Carmichael see this.

I think prosecution in Rangoon shd be conducted by Rangoon Counsel. The Attorney General & a leading Junior being retained —
That a Madras Solicitor or pleader may if deemed advisable be sent over —

FOR ORDERS.

Submitted that a telegram, to the following effect, in Cipher or otherwise, be sent to Colonel Weldon; and that all the papers be transferred to the Military Department.

"Government decide prosecute frauds in Recorder and Burmese Criminal Courts. Do you wish assistance

Madras Lawyer - Could he plead in Burmese Courts."

H 12.3.70

Watch & advise —

That the intimation to Weldon - or other authority in Burmah sh'd contain distinct orders to charge such individuals as are in known to be so provided ag'st at once - & that no intimation of this proposed proceed can be given until such order is issued - I presume the officiatg Judge Advocate can at once indicate the

Sent - office - letter has passed

cases & the charges —

I think it would be politic. To supersede Col Stansfeld by a permanent appointment at Thyetmoo at once posting him to some other station. Madras for instance pro. tem. as whatever be result of enquiry he can never have efficient control at Thyetmoo or in Burmah —

The Conductor Langly & any other will I apprehend be sent over when charges are laid —

As regards transfer to
Mil Dep of all
the papers — I am
not sure it is correct —
If prosecution criminally
I apprehend the prosecution
must be by Govt & not
of the Mil Dep — as
the offences were committed
by Com^t Officers & not as
Military officers —
The fraud having been
committed on this Govt
by officers accounting to
it & appointed by it. I
shd have ~~thought~~ the
trials might have been
here — but the Adv Gen I see

decides they must be in Burma &
that Burma Govt. must direct trial —
on this view — Burma Govt. will have to
be asked by telegraph to concur with
this Govt in directing trial — before charges
can be laid — I presume Mil Dep will
detain the officers at Rangoon in arrest pending these steps
HL 13/3

FOR ORDERS.

Rangoon Prosecutions

A.G.'s Note

I. There really is no decent Counsel in Rangoon — Earlier in these Procs, I remember the Govt. Pleader there advised one of the accused, C.R.S if I recollect right.

The Adv. Genl., in saying that a Madras Barrister might not be heard at first, forgets that the Code of Crim. Pro. expressly provides that a Barrister or Attorney may be employed in any Court; i.e. any Court to wh. the Code applies — now, the Code applies to all British India (& B. Burma is B. India) — but it shall not affect the procedure of the High Cts, or of the three Presy Magistrates."

I don't know much about the Recorder's Ct. of Rangoon — but it cannot be, or wd. be so styled, a High Ct. — at all events, our man cd. easily get himself enrolled by the time the case reached

the Recorder's Ct.—
& meanwhile he can be usefully employed in the Committing courts.

It so happens that Tarrant—who was bred at the Calcutta Bar—was selected some years ago to officiate as Recorder of Rangoon—& was there six months—He is our Public Prosecutor, qua our own High Ct. cases—I shd. advise sending him; as he is up to local peculiarities—

Put him, I wd. say, in commun. with the Judge Adv. Genl. here, & let him see all the papers—confer with O'Sullivan—& go over, armed with all proper authority—

He cd. arrange with Mitchell or any other competent friend to carry on his work—& he wd. be paid at the rate we pay the Govt. Pleader when we send him up to a Madras Mofussil Ct.

H. S. C. 13/10

Concur in opinion with A.G. that as regards all the cases, it shd. be decided as speedily as possible who are to be prosecuted whether with the special sanction of Govt. or without it. & ~~that~~ in the former cases we shd. cipher to the Chief Com: B.B. to secure formal concurrent authority as soon as prosecns. are determined on. As regards the latter cases the Commdg. Genl. shd. direct Col. Hawkins to prosecute as local Hd. of the Dept.—unless "the Queen" prosecutes in all alike. I think Mr. Tarrant wd. be a good selection to send over if we send. On this point I wd. ask the Advs. opinion—My present impression is that it is advisable to send some one—& I don't think there wd. be any difficulty in getting them heard. but I suppose it wd. excite the local bar against us at once –

I don't see what object is to be attained by referring the papers to Mil. D. if prosecution is to be not by Court Martial – except in so far as it may be necessary to know the selection of cases for prosecution. I think the J.A.G. & the Adv. Gen. shd. together make out the list – when the Ct. of Enquiry has reported.

13/3

I think the Burmah Crown lawyer shd be retained for the prosecution

I think I agree [illegible]

be a good selection

I think the [illegible] being shown to the lawyers here – we should ask Burma by cypher to concur in directing prosecution of all we select – this does not involve specifying charges – further than under the particular section – it is I think most important that officers when released from arrest shd be ordered not to leave Rangoon by the Mil. authority – until further orders –

If the papers are placed before the Law Officers at once (with a request to indicate those agst whom prosecutions shd be instituted) we ought to have their reply & be able to communicate with Burma Govt. by Wednesday evening.

15/3

As Commander in Chief I have not as yet received the last portions of the Proceedings of the Court of Enquiry, nor the additional statement which Lieut Colonel Stansfield proposed his intention of sending at an early opportunity – But there is no necessity on that account to delay the transfer of the case to the Advocate General, to be dealt with in the Civil Courts.

The course that suggests itself to me is, that the Proceedings of the Court of Enquiry and the whole of the documentary Evidence &c., &c. otherwise collected by Lieut Colonel Weldon be at once made over by the Officiating Judge Advocate General to the Advocate General, in view to his taking all the necessary legal steps for the prosecution of all Offenders before the Ordinary Civil Tribunals in Burmah.

Before the Chief Commissioner of British Burmah can be asked to sanction the accused being brought to trial, the first necessity seems to be that he should be furnished with a list of the accused, and with the Charges preferred against them.

The Officiating Judge Advocate General is the Officer on the spot best acquainted with the evidence now in existence; He should therefore be required to assist the Advocate General in preparing a list of the persons to be prosecuted, and to afford the Crown Prosecutor, or any other legal Officer to be consulted here, all the assistance in his power.

They must I presume be at the call of the Crown & cannot appear against the Crown without leave I apprehend JSL

If the Crown Officers of the Rangoon Court have not already been preengaged by the accused, it seems to me that the case should be entrusted to their hands, but if those gentlemen have been already retained by Colonel Stansfield or Captain Hunt or any of the accused, I presume that their services could not be made available, and then the only course will be to send a legal Officer from Madras to conduct the Prosecution.

Under any circumstances however I am strongly of opinion that the presence of a law Officer from Madras to watch, if not to conduct, the proceedings, is desirable. The case is a difficult and a delicate one, because of the nature of the evidence; and if the accused are well advised, no doubt constant objections will be raised by the Counsel for the defence, which can only be met by able counsel on the side of the Government. As regards furnishing evidence for the Prosecution there can be no difficulty; for a lawyer entrusted with the duty would be ably assisted by Lieut Colonel Weldon and Captain Hallett, and would also have the benefit of the Proceedings of the Court of Enquiry.

Not being a lawyer and not being versed in the practices and technicalities of the Courts, I am unable to say how existing legal obstructions are to be removed; but once the whole of the papers are made over to the Advocate General I presume that it will be for him to give definite

advice

advice to Government on each point, as to the course to be pursued, when it will only remain for Governt. to pass the necessary orders thereon.

Once the case is made over to the Civil Courts, all Military interference and control must I consider as a matter of necessity and justice cease, and according to my impression, all the accused whether Military or pure Civilians will stand in the same position before the law; when it will be for the Civil Court to determine whether the offences with which they are accused are bailable, or what measures will be necessary to insure their appearing for trial.

At present Captain Hunt is under open arrest: I should have to release

him from arrest; as this means of security is only provided by Military regulations, and with a view to future Military Proceedings.
As regards his appointment in the Commissariat he is suspended from the discharge of his duties.

Lt Colonel Stansfield is not under arrest; but he has been ordered to remain at Rangoon pending the decision upon his case

I would not officially remove from the Commissariat either of these Officers or any of the subordinates of that Department until their trials are concluded.

The Quarter Master of the 44th who appeared before the Court of Inquiry at Rangoon has been allowed to return to his duties, because his presence was said to be indispensable to prepare some annual returns. The Quarter Master Sergeant of the same Regiment is under arrest - I should have to release him - Some Warrant Officers and Non Commissioned Officers of the Commissariat Departt are under suspension and not allowed to discharge their duties.

Already a considerable period has been unavoidably occupied in procuring Evidence and in conducting the Proceedings of the Court of Inquiry - It seems to me most important that no delay be permitted in bringing the accused to trial as soon as may be practicable; and I would therefore urge that whatever further steps, legal or otherwise, may be necessary for bringing the accused to trial may be pushed through with all speed.

14/3/80

Confidential

15 March 1880.

Dear Mr O'Sullivan

I send the orders of Govt. on your Opinion & also the further notes of Members of Govt. for your perusal and return.

The Govt. have decided on deputing Mr Tarrant, the Crown Prosecutor, to proceed to Rangoon, and assist in the prosecution.

In reporting the names of the persons to be prosecuted, please define the Section or Sections of

---

Rangoon Commissariat frauds case.

2. The Advocate General will in consultation with the Officer in charge of the Judge Advocate Genl's Office, and the Crown Prosecutor Mr Tarrant, and after consideration

of the Penal Code under
which each should be
dealt with.

Jr Secy.

Sd/ R. Davidson
Ch. Secy.

AB 5.3.95

throu

&speed

Confidential

Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following ~~letter~~ Opinion from the Advocate General, Madras, d 12th March 1880.

Order thereon 15th March 1880, No. 6/C.

The Military Department will be requested to direct the Officer in charge of the Judge Advocate General's Office to transfer at once to the Advocate General all the papers connected with the Rangoon Commissariat frauds case.

2. The Advocate General will in consultation with the Officer in charge of the Judge Advocate Genl's Office, and the Crown Prosecutor Mr Tarrant, and after consideration

of the evidence recorded in the papers, report to Government the names of those persons against whom prosecutions should be instituted in the Burmah Criminal Courts.

(True Extract.)

A. Davidson.
Chief Secretary.

To
The Advocate General, Madras.

Govt. of {1880} Madras.

To

Dated }
Recd. } 1880, No.

Nos.

Confidential

Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following ~~letter~~ Opinion from the Advocate General d/12th March 1880.

Order thereon. 15 March 1880.
No. 610.

The Military Department will be requested to direct the officer in charge of the Judge Advocate General's Office to transfer at once to the Advocate General all the papers connected with the Rangoon Commissariat frauds Case.

2. The Advocate General

will, in consultation with the officer in charge of the Judge Advocate General's office, and the Crown Prosecutor Mr. Tarrant, and after consideration of the evidence recorded in the papers, report to Govt. the names of those persons against whom prosecutions should be instituted in the Burmah Criminal Courts. –

A 15.3.80

Military Dept.
Advocate General
The Crown Prosecutor } DPW 15/3

GO 15 March 1880
no 610

Govt. of { 187 } Madras.

To

Dated } 187 , No.
Recd. }

Nos.