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[Despatch Abstract.]

OFFENCES COMMITTED OUTSIDE
BRITISH INDIA.

Communicating to the Hon. the Judges of the High Court and the Advocate General, for remarks, letter from the Government of India forwarding a copy of one from the Government of Bombay submitting certain proposals for the amendment of the law regarding the abetment in British India of---.

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GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

READ—the following papers:—

From J. P. HEWETT, Esq., C.I.E., Officiating Secretary to the Government of India (Home Department—Judicial), to the Chief Secretary to the Government of Madras, dated Simla, the 19th June 1895, No. 14 Judl.-943.

I am directed to forward the enclosed copy of a letter from the Government of Bombay submitting certain proposals for the amendment of the law regarding the abetment in British India of offences committed outside British India. A copy of the judgment of the Bombay High Court, mentioned in the letter, is, with the other enclosures, also transmitted herewith.

No. 6456, dated the 24th September 1894.

It will be seen that the judgment gave rise to the question as to the advisability of—

(*a*) legislating on the lines of the Statute 24 and 25 Vict., Cap. 100, sections 4 and 9 as regards abetment in British India of homicides committed beyond British India; and

(*b*) amending the definition of abetment in section 107 of the Indian Penal Code, so as to make it include generally abetments in British India of all offences or of any class of serious offences.

Having consulted the Honourable Judges of the High Court and certain other authorities, the Local Government express themselves in favour of legislation on the lines proposed by Mr. G. M. Macpherson, Judicial Commissioner in Sind, Mr. J. Monteath, District Magistrate of Bijapur, and the Honourable Mr. Basil Lang, Advocate-General of Bombay.

2. It will be seen that the alternatives suggested by the Bombay Government in proposing legislation so as to make the abetment in British India of criminal acts committed beyond British India punishable, are that such legislation should extend (i) to cases of homicide only as in the English Statute, or (ii) to offences enumerated in section 11 of the Extradition Act, or (iii) to all offences.

3. I am to remark that section 108 of the Indian Penal Code already enacts *inter alia* that a person "abets an offence," who abets the commission of an act which is not, though in certain circumstances it would be, an offence. It appears to the Governor-General in Council, as at present advised, that an extension of the principle of this section so as to include the abetting of any act, which if done in British India would have been an offence under any of the sections of the Penal Code named in the schedule referred in section 11 of the Foreign Jurisdiction and Extradition Act, would have the effect of securing the object desired. Before, however, further considering the question, His Excellency in Council will be glad to be furnished with the views of the Honourable the Chief Justice and Judges of the High Court at Madras and of the Governor in Council on the subject.

ENCLOSURES.

From the Honourable Mr. W. LEE-WARNER, C.S.I., Secretary to Government, Bombay, Judicial Department, to the Secretary to the Government of India, Home Department, dated Bombay Castle, 24th September 1894, No. 6456.

The Governor in Council has lately had under consideration the judgment delivered by Her Majesty's High Court of Judicature at Bombay in the case of *Imperatrix* vs. *Ganpatrao Ramchandra*, in which it was decided that it is not an offence against the Indian Penal Code for a subject of the Queen-Empress in British India to abet a criminal act committed by a person who is not a British subject at any place beyond the limits of British India, inasmuch as such act, when so committed outside British territory, is not itself an offence against the Code.

1. The Judicial Commissioner in Sind.
2. The Honourable the Advocate-General.
3. The Remembrancer of Legal Affairs.
4. Mr. C. G. W. Macpherson, I.C.S., Sessions Judge of Belgaum.
5. Mr. T. S. Hamilton, I.C.S., Sessions Judge of Surat.
6. Mr. M. P. Khareghat, I.C.S., Sessions Judge, Ahmedabad.
7. Mr. F. S. P. Lely, I.C.S., District Magistrate, Surat.
8. Mr. J. Montheath, I.C.S., District Magistrate, Bijapur.
9. Mr. A. Cumine, I.C.S., District Magistrate, Khandesh.

2. With reference to this decision His Excellency in Council has obtained the opinions of the Honourable the Chief Justice and Judges of the High Court and the officers named in the margin as to the advisability of—

(*a*) legislating on the lines of the Statute 24 and 25 Vict., C. 100, sections 4 and 9, as regards abetment in British India of homicides committed beyond British India; and

(*b*) amending the definition of abetment in section 107 of the Indian Penal Code, so as to make it include generally abetments in British India of all offences or of any class of serious offences.

3. I am now directed to invite the attention of the Government of India to the judgment and opinions above referred to and to state that legislation on the lines proposed by Messrs. G. M. Macpherson and J. Monteath and the Honourable the Advocate-General appears to this Government to be necessary; but as such legislation would take the form of an amendment of the Indian Penal Code, it seems desirable that it should be undertaken by the Government of India and not by any local Government.

4. As regards the trial of abetments of petty offences, I am to state that the inconveniences feared by the Honourable Mr. Batty need not, in the opinion of the Governor in Council, be anticipated; for such abetments would not, as a rule, be complained of before British Magistrates very frequently; but if the proposed legislation is not to embrace such cases, then the limitation proposed by the Judicial Commissioner in Sind, in paragraph 5 of his letter No. 1111, dated 4th June 1894, seems to His Excellency in Council to be sound; and it is more definite than the High Court's proposal, that the amendment of section 107 of the Penal Code should be confined to abetments of "heinous offences".

Judgment in Criminal Review No. 11 and application for revision made by the Government of Bombay, No. 38 of 1894, in the case of *Imperatrix* v. *Ganpatrao Ramchandra*, 8th March 1894.

(JARDINE AND RANADE, JJ.)

Per Curiam.—Ganpatrao, a native Indian subject of the Queen-Empress, was committed by a Magistrate of the Surat District to the Court of Session at Surat, for abetting the commission of murder or of rioting, sections 302 and 147 of the Indian Penal Code being quoted in the charge, which the Sessions Judge amended by substituting section 302 with section 115, and section 148 with section 109. The alleged abetment consisted of words spoken in the British territory by the accused, inciting certain cultivators, Portuguese subjects, to kill or resist to death one Bhána, a Portuguese subject, if he attempted to remove the produce of certain land situate in the Portuguese territory of Damaun. A disturbance afterwards occurred in connection

with this matter, in which one man was killed and another wounded in the Damaun territory, these persons being Portuguese subjects. The Governor-General of Portuguese India then moved the Government of Bombay to bring the accused to justice as the instigator of the murder. As appears from the Government Resolution No. 7379, dated the 23rd December 1892, in the Political Department, the Government supposed section 188 of the Code of Criminal Procedure to be applicable, and directed the District Magistrate to take *the necessary action*, there being no Political Agent in the Portuguese territory, where the crime was committed. Section 188 has, however, no application to the case, as the accused is not charged with committing any offence beyond the limits of British India. After the Magistrate had committed the accused for trial, the accused took objection to the jurisdiction of the Magistrate and the Court of Session. The Sessions Judge held that he had no jurisdiction, and therefore cancelled the bail-bonds and set the accused at liberty. "The question for consideration," he wrote, "is whether the charge against accused is one which can be tried by a British Court. I am of opinion that it is not, because abetment means abetment of an offence; and offence as defined in the Penal Code means an offence committed in British India. An offence committed in Portuguese India is not an offence punishable under the Indian Penal Code. Therefore abetment of such an offence, even if it occurs in British India, is not an offence punishable under the Indian Penal Code." As, however, the Judge did not take the requisite steps to get the Proceedings terminated by the commitment being quashed by this Court under section 215 of the Code of Criminal Procedure, we called for the case and issued notices to show cause. The Government of Bombay has since made an application to have the order of the Sessions Judge revised, on the ground that the abetment is a substantive offence punishable under the Indian Penal Code, and within the jurisdiction of the Court of Session. We have had the advantage of the full and learned argument of the Government Pleader on these propositions. The question is whether the definition of abetment in the Indian Penal Code must be understood as containing a territorial term. On this question we are not without authority. In delivering the judgment of a Full Bench (Westropp, C.J., Bayley and Green, JJ.) in *Regina* vs. *Elmstone*, 7 Bom. H.C.R., 89, C. C., Sir Michael Westropp said, p. 118, "Inasmuch as the crime here abetted was committed on the high seas, and not within the territories vested in Her Majesty by the Statute 21 and 22 Vic., Cap. 106, and therefore not an offence made punishable by the Penal Code, the abetment thereof is not punishable under section 109 of that Code, so far as the Code itself, standing alone and unaided by any other enactment, is concerned." The learned Chief Justice then points out the special provisions in sections 124, 125 and 236 of the Penal Code for the punishment of abetment in British India of criminal acts elsewhere. A similar question about the definition of the words "stolen property" in section 410 was fully considered in *Emp.* vs. *Moorga Chetty* I.L.R., 5 Bom., 338, by a Full Bench, where Sargent, C. J., says, p. 347: "The presumption in constructing a Penal Code which, by section 2, is confined to acts and omissions within the territories of British India, would rather be, that an offence such as receiving and retaining stolen property, which is in its very nature accessory to the principal act, should be confined to those acts which are made criminal by the Code itself." This reasoning is applicable to the present case, the fact that the homicide or rioting was later in time than the accessory act of abetment being immaterial. It is clear from the report that the majority of the Bench (Sargent, C. J., and Melvill, J.) considered the definitions of offences in the Indian Penal Code to contain a limitation to locality in British India in their application to ordinary cases, we mean those to which special extra-territorial provisions like section 188 of the Code of Criminal Procedure do not apply, and those where no special provision for punishment is made, such as we find in section 236 of the Penal Code. The reasoning is not touched by *Reg.* vs. *Chill*, 8 Bom. H.C., 92, C. C., or *Reg.* vs. *Máruti*, I.L.R., 1 Bom., 15, which the learned Government Pleader has referred to. They are not intrepretations of section 40 of the Indian Penal Code, which defines the word *offence*. The Government Pleader admits with learned candour that this Full Bench decision is against his contention. It meets the argument for the Crown that abetment consists in the intention of the abettor, and not in the personal legal capacity of the individual abetted. This argument based on section 108, Explanations 2 and 3, is

the same as the dissenting member of the Bench, West, J., uses at p. 354 of the report. The views expressed by Sargent, C. J., and Melvill, J., may *a fortiori* be applied by us in the case before us, seeing that although the Legislature has extended the definition of stolen property in section 410 by adding the words "within or without British India" by Act VIII of 1882, section 9, it has refrained from doing the same to the definition of "offence" and of "abetment," refrained from making the particular circumstances punishable, independent of locality. This is sufficient answer to the arguments from inconvenience and from the enlightened tendency of jurisprudence in England. To give effect to these would, as Sir C. Sargent remarks at p. 348 of the report of *Emp.* vs. *Moorga Chetty*, be to travel out of the legitimate province of judicial construction. The proper remedy is in fresh legislation. In England the Statute 24 and 20 Vic., Cap. 100, sections 4 and 9, would give jurisdiction to try a case like the present. But it does not extend to India; and the Indian Legislature has not thought it necessary to pass such a law. Nor, except as regards murder and incitement to murder, has the criminal law of England gone so far as the contention of the Crown asks us to go. The case of *Reg.* vs. *Kohn*, 4 F. and F. 68, seems to be one where the conspiracy *contemplated* the scuttling of the ship in territorial waters. The questions raised in *Emp.* vs. *Moorga Chetty* and in the present case are like those raised in *Rev. Bernard*, I. F. and F. 240. Bernard was tried at the Central Criminal Court in 1858 as an accessory before the fact to the murder in Paris of several persons killed by a shell thrown by Orsini at the carriage of Louis Napoleon. Forsyth in his Cases and Opinions on Constitutional Law, p. 236, refers to this trial and to Chief Justice Best's remarks in *Dewutz* vs. *Hendricks*, 2 Bing, 315, in connection with plots in England against foreign sovereigns and States which he thinks the common law punishes as misdemeanours. Sir J. F. Stephen in his History of the Criminal Law of England, Vol. 2, p. 13, makes the following remarks on Bernard's trial:—"There were three Judges, and the case was left to the jury, but with an intimation that in case of a conviction the question whether the prisoner had committed a crime against English law would be stated for the Court for Crown Cases Reserved. The jury acquitted the prisoner. As regards the particular case of murder, and incitement to commit murder, the matter is now set at rest by 24 and 25 Vic., Cap. 160, sections 4 and 9. These sections provide in substance that persons who conspire in England to murder foreigners abroad, or in England incite people to commit murders abroad, or become in England accessories (either before or after the fact) to murder or manslaughter committed abroad, shall be in the same position in every respect as if the crime committed abroad had been committed in England. The question, however, still remains unsettled as regards all offences except murder. I do not think it proper to give a decided opinion upon this subject, because it is by no means unlikely to be raised judicially; but I will make one or two observations upon it. One strong argument against the criminality of such acts is that the law of England does not deal with crimes committed abroad at all. The law of England does not forbid a Frenchman in France to rob another Frenchman in France. This being so, it seems difficult to say that it forbids an Englishman to incite in England a Frenchman to commit a robbery in France. The argument on the other side is that in all common cases it would be highly expedient that all civilized countries should recognise offences committed in each others territories as offences for the purpose in question. But to this it may be replied that this is an argument for the Legislature and not for the Judges. The law as to conspiracies to commit crimes abroad stands on a footing rather different from the question as to accessories. A crime committed abroad is morally as bad as a crime committed in England, and there is authority for saying that any agreement to do an act of that nature is indictable. Whatever may be the merits of the case legally, it seems to me clear that the Legislature ought to remove all doubt about it by putting crimes committed abroad on the same footing as crimes committed in England, as regards incitement, conspiracy, and accessories in England. Exceptions might be made as to political offences, though I should be sorry if they were made wide." These observations of a great authority on the Law of Crimes are such as may fitly be considered by the Legislature, while they show the present undetermined state of the law of England on questions of abetments there of criminal acts in Foreign States. We may express a hope that our judgment following the principles

of two judgments of Full Benches (about which he may add we have consulted our learned Chief Justice) will help to make clear the law of British India. The subject is in our opinion one of interest to the Government of the country, which, if it took the matter into consideration, would be able, among other matters of expediency, to form an opinion as to the means possessed by our Courts of obtaining evidence of acts done in territories outside of British India and of finding out the position, character and motives of witnesses.

For the above reasons the Court rejects the application of the Government of Bombay, and under section 215, Criminal Procedure Code, the Court quashes the commitment to the Court of Session.

Letter from Mr. R. D. SETHNA, Registrar, High Court, Appellate Side, Bombay, to the Secretary to Government, Judicial Department, Bombay, dated the 12th July 1894, No. 1498.

I am directed to acknowledge the receipt of your letter No. 3244, dated the 11th May last, asking that Government may be favoured with the opinion of the Honourable the Chief Justice and Judges as to whether legislation on the lines of Statute 24 and 25 Vict., Cap. 100, sections 4 and 9, is desirable as regards the abetment in British India of homicides committed out of British India, and also whether an amendment of the definition of abetment in Section 107, Indian Penal Code, is desirable so as to make it include generally abetments in British India of all offences or any class of serious offences.

2. In reply, I am directed to inform you that as to the first question the Honourable the Chief Justice and Judges are of opinion that legislation on the lines of Statute 24 and 25 Vict., Cap. 100, sections 4 and 9, is desirable as regards the abetment in British India of homicides committed out of British India.

3. As to the second question, I am to say that the Honourable the Chief Justice and the majority of the Honourable Judges are of opinion that an amendment of the definition of abetment in section 107, Indian Penal Code, is desirable so as to confine it to abetment of heinous offences.

4. I am also directed to forward the accompanying copy of a minute recorded by the Honourable Mr. Justice Jardine on the subject-matter of your letter.

Minute by the Hon'ble Mr. Justice JARDINE, on the state of the law regarding abetment in British India of offences elsewhere.

It is, in my opinion, desirable that the Penal Code of British India should be amended on the lines of the Act of Parliament, 24 and 25 Vict. Cap. 100, sections 4 and 9, as regards the abetment in British India of homicides outside of British India. In so important a part of the criminal law, it seems to me desirable for international and other reasons that legislation should be uniform throughout the Queen's dominions. The subject in one territory ought to be protected against acts dangerous to his life done in another territory, as well as against depredation and false coining, for which sections 126 and 236 of the Indian Penal Code provide. The case of *Regina* vs. *Elmstone*, 7 Bom. H.C.R., 89 C.C., shows the protection afforded by the law of England against persons using British India as a base of operations for a crime to be committed on the high seas. It is probable that few cases, like *Queen-Empress* vs. *Ganpatráo*, of danger to the lives of foreigners in foreign territories have occurred, as the Indian Legislature has not thought it necessary as yet to alter the law declared in *Regina* vs. *Elmstone* and *Queen-Empress* vs. *Moorga Chetty*, I.L.R., 5 Bom., 338, on the meaning of abetment in the Indian Penal Code. But nevertheless it is no more desirable in British India than in the United Kingdom that people under the Queen's protection should incite to homicides in foreign States; and we can find reason for the Act of Parliament in Sir J. Stephen's remarks that as a crime committed abroad is morally as bad as a crime committed at home, it would be highly expedient that all civilized countries should recognize offences committed in each others territories.

2. While I think the Indian Legislature can wisely and safely follow Imperial Parliament, I do not advise that it should push the principle of the Act of 24 and 25 Vict. much further. Homicide is so great a matter that we may suppose that the public order of our own territories would soon be endangered if they were used frequently as places where plots could be concocted against persons across the frontiers. Take for example an agency for the sale of poisons or a shop where deadly weapons could be procured. The principle applied to the waging of war in sections 121 and 125 comes in, or in section 236 about false coining, as in many parts foreign coins are used on both sides of a frontier in India. Experience too has, I believe, shown that dacoits may fairly be treated as land pirates; so may thugs, slave-catchers and some other great criminals; and as we have treaty arrangements and conventions about these, it may be presumed that the French and Portuguese Governments and the Rulers of Native States would be willing to come to reciprocity in dealing with the offences most dangerous to public order everywhere.

3. I would not extend the principle much further until Imperial Parliament has done so, and thus provided an example which may be followed with some uniformity. No real inconvenience results from our present law of abetment in regard to whole chapters of the Penal Code and many special and local laws. Petty assaults, briberies perjuries, false weights and measures, nuisances, insults to religion, breaches of contract, offences against the marriage laws, defamations, intimidations, insults, &c., are classes of offences of no great importance in this respect considering the difficulty of ascertaining the law of the Foreign State and procuring evidence therefrom, perhaps from a vast distance, I would not burden our Police and Magistracy with such a perplexing jurisdiction. They are hard-worked as it is, and the revenues hardly allow of more officials being appointed. It often happens that in these petty cases, where perhaps the proper remedy is a suit, a complainant spins out the trial to immense length and general annoyance. I believe also that the Government would have greater difficulty, in proportion to the smallness of the offence, in making reciprocal arrangements: the good to be got depends on that reciprocity, and it is only where the crime being great, only one view of morals can be taken that Governments will agree.

4. There is a middle class of cases, namely, frauds such as forgery, cheating and criminal breach of trust. In most countries the arrangement is that one State will deliver to another a subject of the latter guilty of such crimes. In India some of the treaties provide for extradition. While I am not prepared to say how far we should go in legislating against conspiracies, I think these offences, even when there are two great commercial countries within 20 miles of each other like England and France, are not comparable to those, which openly attack the public order. An instigation from Bombay to forge a cheque at Goa is small if compared with one to kill the Governor-General of Portuguese India or indeed any Portuguese subject. If the Foreign Governments or the Native States have complained that their subjects are endangered because we have no law to punish the man, who at Bombay incites to fraudulent bankruptcy, cheating or forgery some one at Pondicherry, or Goa, or Baroda, or Srinagar, there may be a means of judging whether so great a Statute as the Indian Penal Code requires a fundamental change. If no inconvenience worth notice has occurred, if the other states have no desire to offer us equal arrangements as a motive for us to change our law, I would refrain from so doing. The Penal Code like most of our Statutes is based on experience as well as jurisprudence; and I think it most undesirable to change the law of crimes merely to gain a sort of symmetry, pleasant from a jurist's point of view. Opinions change and vary; and if the jurist is to have the chief hand in legislation on criminal law, another jurist may alter some few years hence what is enacted to-day.

5. Our Magistrates may be more usefully employed than in trying the smaller class of cases where no injury occurs in the Queen's territories; and I would check this in like manner as according to the recent interpretation of the High Court of Bombay, Section 54 of the Code of Criminal Procedure does not require the Police to bestir themselves without treaty or requisition or order of the Government or a Magistrate, to arrest without warrant a foreigner for an offence supposed to be committed

in a Foreign State, I think all our officials have enough to do in preserving our own public order. This I would strengthen against all those heinous acts which all good Governments condemn; and if necessary I would strengthen the law so as to punish people like those anarchists lately convicted under an English Statute who made preparations in London to commit homicides in Foreign States. We ought not to allow the Rulers or Officials of other States to be so endangered by acts done in British India; neither ought foreign territories to be available for that purpose against us.

5th July 1894.

Letter from Mr. Geo. M. MACPHERSON, I.C.S., Judicial Commissioner in Sind, to the Under Secretary to Government, Judicial Department, Bombay, dated the 4th June 1894, No. 1111.

As directed in Government Resolution No. 3243 of the 11th ultimo, I have the honour to forward the following report on the proposal to amend the Penal Code so as to make punishable under it the abetments in British India of offences which it is proposed to carry out in foreign territory.

2. The tendency of modern legislation may safely be said to be to render liable to punishment in their own country persons who therein conspire to carry out serious offences beyond the limits of that country, and generally speaking this seems to me to be a most desirable object. In an Indian Act passed this year, steps have been taken to render liable to punishment particular persons who omit to give information in India as to some such offences committed abroad.

3. As a general rule, it requires little argument to show that a person who by doing an act incurs punishment in his own country should not be able to do the same act abroad with impunity, and that, therefore, a person who in British India abets the commission of such an act abroad should be liable even as if the act abetted were to be committed in British India. If I abet the commission of murder in India, my guilt is much the same as if I abet the commission of a murder to be committed abroad, and I should be held liable to the same penalties in each case.

4. Furthermore, it is to be remembered that most residents of British India are liable in India for acts committed by them abroad which are criminal under laws in force in British India, without regard to the question whether such acts are penal where actually committed. This seems to me to remove the objection that the act abetted, though penal here, may not be so where committed, and that under the proposed amendment of the law, a foreigner might be punishable for abetting in India the commission of an act in his own country which is not criminal there. He has no right to come to British India and here to engage in a conspiracy to do that which is opposed to the criminal laws of British India. There would be very few such cases, but many cases may occur of subjects of Her Majesty conspiring here for the commission of criminal acts abroad. They would be liable generally speaking to punishment here for committing such acts abroad (*see* Section 3 of the Penal Code), and it seems to me anomalous that they should not also be liable for here abetting the commission of these acts abroad.

5. But if it is thought that this would be too wide an extension of the law as to criminal liability, the proposed amendment might be such as to include in "abetment" the abetment of any act to be committed abroad, which, if committed within British India, would be criminal, and to which the provisions of Section 11 of the Extradition Act would apply.

Letter from the Honourable Mr. BASIL LANG, Advocate-General, to the Under Secretary to Government, Judicial Department, dated the 18th June, 1894, No. 39.

With reference to Government Resolution No. 3243, Judicial Department, dated 11th May 1894, I have the honour to state as follows.

I think legislation on the lines of Statute 24 and 25 Vict., Cap. 100, Sections 4 and 9, is desirable as regards abetment in British India of homicides committed beyond British India. I think the law in India ought to be the same as that of Great Britain in respect of such offences.

2. I also think that the abetment in British India of all offences committed beyond British India should be made punishable, and that the definition of abetment in section 107 of the Indian Penal Code should be amended accordingly. I can see no valid reason for excluding any particular class of offences, and the argument adduced by the late Mr. Justice Stephen, and referred to in the judgment of Jardine and Ranade, JJ., that in all common cases it would be highly expedient that all civilized countries should recognise offences committed in each others territories for this purpose, appears to me to be a sound argument.

3. I think there would be no practical difficulty in the Court, trying the alleged abettor, obtaining evidence of the offence said to have been committed outside of British India, and judging as to the credibility of the witnesses.

Letter from the Honourable Mr. H. BATTY, Remembrancer of Legal Affairs, to the Secretary to Government, Judicial Department, dated the 4th July 1894, No. 996.

With reference to Government Resolution, No. 3243 of 11th May 1894, and the judgment in *Impetrarix* vs. *Ganpatrao Ramchandra* which accompanied it, I have the honour to submit my opinion that it is most desirable that the abetment in British India of acts or omissions abroad, which in British India would be offences of a serious nature, should be rendered punishable.

2. The English Statute 24 and 125 Vict., Cap. 100, Sections 4 and 9, though it may be all that the insular position of the United Kingdom requires, seems hardly wide enough for India, where British and foreign territory are so interlaced.

3. I think that it would be unnecessary, and probably inconvenient, for British Courts to have to deal with all abetments in British India of misdeeds that are to take effect in foregin territory ; and that it would be sufficient to make much provision only for cases of violent crimes, such as those of which the public are under section 44 of the Code of Criminal Procedure as amended by Act III of 1894 required to give information.

4. It seems only reasonable that in cases in which failure to give information of intention to commit crime would itself be punishable, direct abetment should also be punishable, whatever the locality in which the abetment may take effect.

Letter from Mr. C. G. W. MACPHERSON, I.C.S, C.I.E., Sessions Judge, Balgam, to the Secretary to Government, Judical Department, Bombay, dated the 21st May 1894, No. 748.

With reference to Government Resolution No. 3243 of May 11th, 1894, I am of opinion that legislation on the lines of Statute 24 and 25 Vict. Cap. 100, sections 4 and 9, is desirable as regards abetment in British India of homicides committed beyond British India or rather that an amendment of the definition of abetment in section 107 of the Indian Penal Code is desirable so as to make it include abetments in British India of all offences which if they took place in British India would be punishable with rigorous imprisonment for two years or upwards.

Letter from Mr. T. S. HAMILTON, I.C.S., Sessions Judge, Surat, to the Secretary to Government, Judicial Department, Bombay, dated the 4th August 1894, No. 1115.

With reference to Government Resolution, Judicial Department, No. 3243 of the 11th May last, I have the honour to state that, in my opinion, legislation regarding abetment of offences on the lines indicated is neither necessary nor desirable.

2. No doubt a man may theoretically be held guilty of abetting an offence—murder or any other—by reason of his having instigated its commission, when nothing was done in pursuance thereof, but, in practice, I think that no Court could convict an abettor without proof of some illegal act resulting from his instigation. It would be necessary, then, for it to take evidence whether the offence sought to be abetted was either actually committed or at least attempted. In other words, the Court would have to determine the guilt or innocence of a man who was not before it.

3. I know of no case, in my 24 years' experience as Magistrate and Judge, where an abettor was tried in one Court and his principal in another, nor do I see how such trials could be brought to a satisfactory conclusion.

4. Still less satisfactory would they be if the abettor were tried in a British Court, and his principal in a Foreign Court, for the decision of the latter could not be accepted as final by the former.

5. I am strongly of opinion that principal and abettor should be tried at one and the same time and by one and the same Court, whether British or Foreign.

6. For these reasons I am not in favour of the proposed legislation or Code amendment.

Letter from Mr. M. P. KHAREGHAT, I.C.S., Sessions Judge, Ahmedabad, to the Secretary to Government, Judicial Department, Bombay, dated the 30th June 1894, No. 854.

In obedience to Government Resolution No. 3243 of the 11th of May 1894, I have the honour to report that legislation on the lines proposed seems desirable, but only as respects serious offences like murder, culpable homicide, grievous hurt with a dangerous weapon, dacoity and robbery.

Memorandum from Mr. F. S. P. LELY, I.C.S., District Magistrate, Surat, dated the 18th June 1894, No. M-514.

The moral guilt and injury done to the community by abetment of a crime is the same in kind, though not perhaps always in degree, whether the scene of the resulting crime is in British or in adjacent native territory. That abetment is regarded as in itself a substantive offence apart from the principal offence, is shown by sections 115 and 116, Indian Penal Code, which make it punishable even though the act abetted is not done.

2. The man Ganpatrao (in the case under notice) is alleged to have used words which implied that Bhána should be murdered in a Portuguese village. But suppose that instead of localizing the crime he had instigated the cultivators to comit the murder wherever Bhána might be found, and suppose that Bhána had been killed in consequence in Portuguese territory, the abettor might, I apprehend, have been charged and convicted, under section 115, Indian Penal Code, of abetment of an offence which was not committed. That is to say, the law would assume what in every real sense of the words would be an untruth. Such fictions which place the law at variance with the common sense of the community are, I submit, to be avoided.

3. Moreover, the solidarity of the empire requires the proposed change. Every argument which was held to justify the English Statute with reference to (say) France applies with much more force to our even feudatory States in India. The British Government as the paramount power has ultimately as great an interest in the repression of crime in Native States as in any other part of the empire. It seems, too, illogical to punish a man who abets the counterfeiting of coin, and to let go a man who abets a series of dacoities which may shake the authority of a Chief to the ground.

4. For these reasons briefly stated I am respectfully of opinion that "abetment" should include abetment in British India of all offences wherever committed.

Letter from Mr. J. MONTEATH, I.C.S., District Magistrate, Bijápur, to the Secretary to Government, Judicial Department, Bombay, No. 1941, dated the 22nd May 1894.

With reference to Government Resolution No. 3243, dated 11th instant, I have the honour to make the following remarks.

2. It seems to me with due respect to the Honourable Judges that section 188 of the Criminal Procedure Code is somewhat more than a special extra-territorial provision. Through the operation of section 3 of the Indian Penal Code it makes that Code applicable to all Native Indian subjects committing offences beyond the limits of British India and to all European British subjects committing offences in the dominions of Princes or States in India in alliance with Her Majesty. It is to be noted that the Sessions Judge in the remarks quoted in the judgment is wrong in saying that "an offence as defined in the Penal Code means an offence committed in British India," the actual definition is "a thing made punishable by this Code," and it includes punishable acts committed beyond the limits of British India by any of Her Majesty's subjects to the extent above shown. I do not use this argument for the purpose of questioning the correctness of the decision of the High Court, for, in the case to which the decision relates, the substantive offence was not committed by Her Majesty's subjects. But the facts seem to me to show that the relations of British India with Princes or States in India in alliance with Her Majesty have already been put in respect of the punishment of crimes on a very different footing from the relations of England with Foreign States. Her Majesty's subjects, for whom alone the Government can legislate, have been made amenable to the same law for an offence committed beyond the limit of British India as for an offence committed within British India. It seems to me to be entirely inconsistent with the policy which has been adopted and in particular contrary to the principles which govern our relations with the protected Native States that a person should be able with impunity to abet in British India the commission of an offence by a foreigner beyond the limits of British India. For these reasons I am of opinion that it would not suffice to merely legislate on the lines of 24 and 25 Vict. Cap. 100, sections 4 and 9. I think that section 108 of the Indian Penal Code should be amended by the addition of some such words as follows :—"Or would be punishable under this Code if committed in British India or by a subject of Her Majesty."

Letter from Mr. A. CUMINE, I.C.S., District Magistrate, Khándesh, to the Under Secretary to Government, Judicial Department, dated the 9th July 1894, No. 5199.

I have the honour to report as directed in Government Resolution No. 3243 of 11th May 1894, Judicial Department.

2. All the officers I have consulted think that legislation is necessary. But it does not appear that legislation on the line of Statute 24 and 25 Vict., Cap. 100, sections 4 and 9 is desirable. It would appear enough to add some words to one of the sections of the Penal Code. And the section to which the words should be added does not appear to be section 107. That section defines the abetment of a *thing*. And there is no doubt that murder committed out of British India would come under the head "thing." The Code, however, makes punishable, not the abetment of all *things*, but only the abetment of such things as are *offences*. And the abetment of an offence is defined in section 108. Section 108 seems, therefore, to be the proper section to add the words to. I would, therefore, propose with submission to put a comma after the word "abettor" at the end of the first sentence of section 108, and add the following words "or the commission out of British India of the following acts which would be offences if committed within British India, viz., (naming them).

Subject.—Opinion as to whether legislation is desirable as regards abetment in British India of offences committed beyond British India.

3. The next question is what the acts are which should be entered. I think with submission that, besides murder, there should be entered the following :—

The different kinds of kidnapping, abducting (*vide* sections 363 to 369, Indian Penal Code), buying or disposing of any person as a slave and habitual dealing in slaves (sections 370, 371).
Selling or letting to hire a minor for purposes of prostitution (section 372).
Buying or obtaining possession of her for that purpose (section 373).
Robbery and dacoity (sections 372, 395, 397, 399).
The different kinds of lurking-house trespass or house-breaking by night (sections 456, 457, 458, 459).

ORDER—dated 8th July 1895, No. 1422, Judicial.

Communicated to the Honourable the Judges of the High Court and the Advocate-General, for favour of remarks.

(True Extract.)

Chief Secretary.

To the Honourable the Chief Justice, with C.L.
" Government Solicitor.

Exd. C. M. Brisson.

Govt. of {1895} Madras.

JUDICIAL.

Issued

Recd. Encl.

G.O., 8th July 1895, No. 1422.

JULY.

Offences Committed Outside British India.

Communicating to the Honourable the Judges of the High Court and the Advocate-General, for remarks, letter from the Government of India forwarding copy of one from the Government of Bombay submitting certain proposals for the amendment of the law regarding the abetment in British India of —.

Judicial department

CURRENT NO. 3132

From, The Govt of India
Home Dept (Jud)

Order dt/ 8th July 1895 No 1422

Communicated to the Hon'ble and the advocate for the Judges of the High Court for favor of remarks.

No 14 Jud / 943

Dated 19th June
Recd 1st July } 1895
Regd 2nd do
Encs: 1 & 7 Cs. of Govt.

Subject

Forwarding a copy of a letter from the Govt of Bombay, B 24-9-94, No 6456, submitting certain proposals for the amendment of the law regarding the abetment in British India of Offences committed outside British India.

Ms 4/7

To
The Hon. the C. J. with C. L. M. &c. 5 cs
with encl: to be kindly returned.
The Govt Law 5 cs

Note for orders.

It is stated that spare copies of the encls are not available. Perhaps the encl. might be printed & the question refd. to the Adv. Genl also for remarks?

Yes
4/7

MR
4-7-95

H.C.
Please print
Copies

Enclosure B 25

No. 6456 of 1894.

JUDICIAL DEPARTMENT.

Bombay Castle, 24th September, 1894.

FROM

THE HONOURABLE MR. W. LEE-WARNER, C.S.I.,
Secretary to Government;

TO

THE SECRETARY TO THE GOVERNMENT OF INDIA,
Home Department.

SIR,

The Governor in Council has lately had under consideration the judgment delivered by Her Majesty's High Court of Judicature at Bombay in the case of *Imperatrix* vs. *Ganpatrao Ramchandra*, in which it was decided that it is not an offence against the Indian Penal Code for a subject of the Queen-Empress in British India to abet a criminal act committed by a person who is not a British subject at any place beyond the limits of British India, inasmuch as such act, when so committed outside British territory, is not itself an offence against the Code.

2. With reference to this decision His Excellency in Council has obtained the opinions of the Honourable the Chief Justice and Judges of the High Court and the officers named in the margin as to the advisability of

1. The Judicial Commissioner in Sind.
2. The Honourable the Advocate General.
3. The Remembrancer of Legal Affairs.
4. Mr. C. G. W. Macpherson, I. C. S., Sessions Judge of Belgaum.
5. Mr. T. S. Hamilton, I. C. S., Sessions Judge of Surat.
6. Mr. M. P. Khareghat, I. C. S., Sessions Judge, Ahmedabad.
7. Mr. F. S. P. Lely, I.C.S., District Magistrate, Surat.
8. Mr. J. Monteath, I.C.S., District Magistrate, Bijápur.
9. Mr. A. Cumine, I. C. S., District Magistrate, Khándesh.

(*a*) legislating on the lines of the Statute 24 and 25 Vict., c. 100, Sections 4 and 9, as regards abetment in British India of homicides committed beyond British India; and

(*b*) amending the definition of abetment in Section 107 of the Indian Penal Code, so as to make it include generally abetments in British India of all offences or of any class of serious offences.

3. I am now directed to invite the attention of the Government of India to the judgment and opinions above referred to and to state that legislation on the lines proposed by Messrs. G. M. Macpherson and J. Monteath and the Honourable the Advocate General appears to this Government to be necessary; but as such legislation would take the form of an amendment of the Indian Penal Code, it seems desirable that it should be undertaken by the Government of India and not by any local Government.

4. As regards the trial of abetments of petty offences, I am to state that the inconveniences feared by the Honourable Mr. Batty need not, in the opinion of the Governor in Council, be anticipated; for such abetments would not, as a rule, be complained of before British Magistrates very frequently: but if the proposed legislation is not to embrace such cases, then the limitation pro-

posed by the Judicial Commissioner in Sind, in para. 5 of his letter No. 1111, dated 4th June, 1894, seems to His Excellency in Council to be sound; and it is more definite than the High Court's proposal, that the amendment of Section 107 of the Penal Code should be confined to abetments of "heinous offences."

I have the honour to be,
Sir,
Your most obedient Servant,
(Signed) W. LEE-WARNER,
Secretary to Government.

Judgment in Criminal Review No. 11 and application for revision made by the Government of Bombay, No. 38 of 1894, in the case of Imperatrix v. Ganpatrao Ramchandra, 8th March 1894.

(JARDINE AND RANADE, JJ.)

Per Curiam.—Ganpatrao, a native Indian subject of the Queen-Empress, was committed by a Magistrate of the Surat District to the Court of Session at Surat, for abetting the commission of murder or of rioting, sections 302 and 147 of the Indian Penal Code being quoted in the charge, which the Sessions Judge amended by substituting section 302 with section 115, and section 148 with section 109. The alleged abetment consisted of words spoken in the British territory by the accused, inciting certain cultivators, Portuguese subjects, to kill or resist to death one Bhana, a Portuguese subject, if he attempted to remove the produce of certain land situate in the Portuguese territory of Damaun. A disturbance afterwards occurred in connection with this matter, in which one man was killed and another wounded in the Damaun territory, these persons being Portuguese subjects. The Governor-General of Portuguese India then moved the Government of Bombay to bring the accused to justice as the instigator of the murder. As appears from the Government Resolution No. 7379, dated the 23rd December 1892, in the Political Department, the Government supposed section 188 of the Code of Criminal Procedure to be applicable, and directed the District Magistrate to take *the necessary actio*n, there being no Political Agent in the Portuguese territory where the crime was committed. Section 188 has, however, no application to the case, as the accused is not charged with committing any offence beyond the limits of British India. After the Magistrate had committed the accused for trial, the accused took objection to the jurisdiction of the Magistrate and the Court of Session. The Sessions Judge held that he had no jurisdiction, and therefore cancelled the bail-bonds and set the accused at liberty. "The question for consideration," he wrote, "iswhether the charge against accused is one which can be tried by a British Court. I am of opinion that it is not, because abetment means abetment of an offence; and offence as defined in the Penal Code means an offence committed in British India. An offence committed in Portuguese India is not an offence punishable under the Indian Penal Code. Therefore abetment of such an offence, even if it occurs in British India, is not an offence punishable under the Indian Penal Code." As, however, the Judge did not take the requisite steps to get the proceedings terminated by the commitment being quashed by this Court under section 215 of the Code of Criminal Procedure, we called for the case and issued notices to show cause. The Government of Bombay has since made an application to have the order of the Sessions Judge revised, on the ground that the abetment is a substantive offence punishable under the Indian Penal Code, and within the jurisdiction of the Court of Session. We have had the advantage of the full and learned argument of the Government Pleader on these propositions. The question is whether the definition of abetment in the Indian Penal Code must be understood as containing a territorial term. On this question we are not without authority. In delivering the judgment of a Full Bench (Westropp, C.J., Bayley and Green, JJ.) in *Regina* vs. *Elmstone*, 7 Bom. H. C. R., 89, C. C., Sir Michael Westropp said, p. 118, "Inasmuch as the crime here abetted was committed on the high seas, and not within the territories vested in Her Majesty by the Statute 21 and 22 Vic., c. 106, and therefore not an offence made punishable by the Penal Code, the abetment thereof is not punishable under section 109 of that Code, so far as the Code itself, standing alone and unaided by any other enactment, is concerned." The learned Chief Justice then points out the special provisions in sections 124, 125 and 236 of the Penal Code for the punishment of abetment in British India of criminal acts elsewhere. A similar question about the definition of the words "stolen property" in section 410 was fully considered in *Emp.* vs. *Moorga Chetty*, I. L. R., 5 Bom., 338, by a Full Bench, where Sargent, C. J., says, p. 347: "The presumption in construing a Penal Code which, by section 2, is confined to acts and omissions within the territories of British India, would rather be, that an offence such as receiving and retaining stolen property, which is in its very nature accessory to the principal act, should be confined to those acts which are made criminal by

the Code itself." This reasoning is applicable to the present case, the fact that the homicide or rioting was later in time than the accessory act of abetment being immaterial. It is clear from the report that the majority of the Bench (Sargent, C. J., and Melvill, J.) considered the definitions of offences in the Indian Penal Code to contain a limitation to locality in British India in their application to ordinary cases, we mean those to which special extra-territorial provisions like section 188 of the Code of Criminal Procedure do not apply, and those where no special provision for punishment is made, such as we find in section 236 of the Penal Code. The reasoning is not touched by *Reg.* vs. *Chill*, 8 Bom. H. C., 92, C. C., or *Reg.* vs. *Máruti*, I. L. R., 1 Bom., 15, which the learned Government Pleader has referred to. They are not interpretations of section 40 of the Indian Penal Code, which defines the word *offence*. The Government Pleader admits with learned candour that this Full Bench decision is against his contention. It meets the argument for the Crown that abetment consists in the intention of the abettor, and not in the personal legal capacity of the individual abetted. This argument based on section 108, Explanations 2 and 3, is the same as the dissenting member of the Bench, West, J., uses at p. 354 of the report. The views expressed by Sargent, C. J., and Melvill, J., may *a fortiori* be applied by us in the case before us, seeing that although the Legislature has extended the definition of stolen property in section 410 by adding the words "within or without British India" by Act VIII of 1882, section 9, it has refrained from doing the same to the definition of "offence" and of "abetment," refrained from making the particular circumstances punishable, independent of locality. This is sufficient answer to the arguments from inconvenience and from the enlightened tendency of jurisprudence in England. To give effect to these would, as Sir C. Sargent remarks at p. 348 of the report of *Emp.* vs. *Moorga Chetty*, be to travel out of the legitimate province of judicial construction. The proper remedy is in fresh legislation. In England the Statute 24 and 20 Vic., c. 100, sections 4 and 9, would give jurisdiction to try a case like the present. But it does not extend to India; and the Indian Legislature has not thought it necessary to pass such a law. Nor, except as regards murder and incitement to murder, has the criminal law of England gone so far as the contention of the Crown asks us to go. The case of *Reg.* vs. *Kohn*, 4 F. and F. 68, seems to be one where the conspiracy *contemplated* the scuttling of the ship in territorial waters. The questions raised in *Emp.* vs. *Moorga Chetty* and in the present case are like those raised in *Rev. Bernard*, I F. and F. 240. Bernard was tried at the Central Criminal Court in 1858 as an accessory before the fact to the murder in Paris of several persons killed by a shell thrown by Orsini at the carriage of Louis Napoleon. Forsyth in his Cases and Opinions on Constitutional Law, p. 236, refers to this trial and to Chief Justice Best's remarks in *Dewutz* vs. *Hendricks*, 2 Bing, 315, in connection with plots in England against foreign sovereigns and States which he thinks the common law punishes as misdemeanours. Sir J. F. Stephen in his History of the Criminal Law of England, Vol. 2, p. 13, makes the following remarks on Bernard's trial:—"There were three Judges, and the case was left to the jury, but with an intimation that in case of a conviction the question whether the prisoner had committed a crime against English law would be stated for the Court for Crown Cases Reserved. The jury acquitted the prisoner. As regards the particular case of murder, and incitement to commit murder, the matter is now set at rest by 24 and 25 Vic., c. 160, sections 4 and 9. These sections provide in substance that persons who conspire in England to murder foreigners abroad, or in England incite people to commit murders abroad, or become in England accessories (either before or after the fact) to murder or manslaughter committed abroad, shall be in the same position in every respect as if the crime committed abroad had been committed in England. The question, however, still remains unsettled as regards all offences except murder. I do not think it proper to give a decided opinion upon this subject, because it is by no means unlikely to be raised judicially; but I will make one or two observations upon it. One strong argument against the criminality of such acts is that the law of England does not deal with crimes committed abroad at all. The law of England does not forbid a Frenchman in France to rob another Frenchman in France. This being so, it seems difficult to say that it forbids an Englishman to incite in England a Frenchman to commit a robbery in France. The argument on the other side is that in all common

cases it would be highly expedient that all civilized countries should recognise offences committed in each other's territories as offences for the purpose in question. But to this it may be replied that this is an argument for the Legislature and not for the Judges. The law as to conspiracies to commit crimes abroad stands on a footing rather different from the question as to accessories. A crime committed abroad is morally as bad as a crime committed in England, and there is authority for saying that any agreement to do an act of that nature is indictable. Whatever may be the merits of the case legally, it seems to me clear that the Legislature ought to remove all doubt about it by putting crimes committed abroad on the same footing as crimes committed in England, as regards incitement, conspiracy, and accessories in England. Exceptions might be made as to political offences, though I should be sorry if they were made wide." These observations of a great authority on the Law of Crimes are such as may fitly be considered by the Legislature, while they show the present undetermined state of the law of England on questions of abetments there of criminal acts in foreign States. We may express a hope that our judgment following the principles of two judgments of Full Benches (about which we may add we have consulted our learned Chief Justice) will help to make clear the law of British India. The subject is in our opinion one of interest to the Government of the country, which, if it took the matter into consideration, would be able, among other matters of expediency, to form an opinion as to the means possessed by our Courts of obtaining evidence of acts done in territories outside of British India and of finding out the position, character, and motives of witnesses.

For the above reasons the Court rejects the application of the Government of Bombay, and under section 215, Criminal Procedure Code, the Court quashes the commitment to the Court of Session.

Letter from Mr. R. D. SETHNA, Registrar, High Court, Appellate Side, Bombay, to the SECRETARY TO GOVERNMENT, Judicial Department, Bombay, No. 1498, dated the 12th July, 1894.

SIR,—I am directed to acknowledge the receipt of your letter No. 3244, dated the 11th May last, asking that Government may be favoured with the opinion of the Honourable the Chief Justice and Judges as to whether legislation on the lines of Statute 24 and 25 Vict., Chapter 100, Sections 4 and 9, is desirable as regards the abetment in British India of homicides committed out of British India, and also whether an amendment of the definition of abetment in Section 107, Indian Penal Code, is desirable so as to make it include generally abetments in British India of all offences or any class of serious offences.

2. In reply, I am directed to inform you that as to the first question the Honourable the Chief Justice and Judges are of opinion that legislation on the lines of Statute 24 and 25 Vict., Chapter 100, Sections 4 and 9, is desirable as regards the abetment in British India of homicides committed out of British India.

3. As to the second question, I am to say that the Honourable the Chief Justice and the majority of the Honourable Judges are of opinion that an amendment of the definition of abetment in Section 107, Indian Penal Code, is desirable so as to confine it to abetment of heinous offences.

4. I am also directed to forward the accompanying copy of a minute recorded by the Honourable Mr. Justice Jardine on the subject-matter of your letter.—I have, &c.

Minute by the Honourable Mr. Justice Jardine on the state of the law regarding abetment in British India of offences elsewhere.

1. It is, in my opinion, desirable that the Penal Code of British India should be amended on the lines of the Act of Parliament, 24 and 25, Victoria, Chapter 100, Sections 4 and 9, as regards the abetment in British India of homicides outside of British India. In so important a part of the criminal law, it seems to me desirable for international and other reasons that legislation should be uniform throughout the Queen's dominions. The subject in one territory ought to be protected against acts dangerous to his life done in another territory: as well as

against depredation and false coining, for which Sections 126 and 236 of the Indian Penal Code provide. The case of *Regina* vs. *Elmstone*, 7 Bom. H. C. R., 89 C.C., shows the protection afforded by the law of England against persons using British India as a base of operations for a crime to be committed on the high seas. It is probable that few cases, like *Queen-Empress* vs. *Ganpatráo*, of danger to the lives of foreigners in foreign territories have occurred, as the Indian Legislature has not thought it necessary as yet to alter the law declared in *Regina* vs. *Elmstone* and *Queen-Empress* vs. *Moorga Chettty*, I. L. R., 5 Bom., 338, on the meaning of abetment in the Indian Penal Code. But nevertheless it is no more desirable in British India than in the United Kingdom that people under the Queen's protection should incite to homicides in foreign States: and we can find reason for the Act of Parliament in Sir J. Stephen's remarks that as a crime committed abroad is morally as bad as a crime committed at home, it would be highly expedient that all civilized countries should recognize offences committed in each other's territories.

2. While I think the Indian Legislature can wisely and safely follow Imperial Parliament, I do not advise that it should push the principle of the Act of 24 and 25 Victoria much further. Homicide is so great a matter that we may suppose that the public order of our own territories would soon be endangered if they were used frequently as places where plots could be concocted against persons across the frontiers. Take for example an agency for the sale of poisons or a shop where deadly weapons could be procured. The principle applied to the waging of war in Sections 121 and 125 comes in: or in Section 236 about false coining, as in many parts foreign coins are used on both sides of a frontier in India. Experience too has, I believe, shown that dacoits may fairly be treated as land pirates: so may Thugs, slave-catchers and some other great criminals: and as we have treaty arrangements and conventions about these, it may be presumed that the French and Portuguese Governments and the Rulers of Native States would be willing to come to reciprocity in dealing with the offences most dangerous to public order everywhere.

3. I would not extend the principle much further until Imperial Parliament has done so, and thus provided an example which may be followed with some uniformity. No real inconvenience results from our present law of abetment in regard to whole chapters of the Penal Code and many special and local laws. Petty assaults, briberies, perjuries, false weights and measures, nuisances, insults to religion, breaches of contract, offences against the marriage laws, defamations, intimidations, insults, &c., are classes of offences of no great importance in this respect Considering the difficulty of acertaining the law of the foreign state and procuring evidence therefrom, perhaps from a vast distance, I would not burden our Police and Magistracy with such a perplexing jurisdiction. They are hard-worked as it is, and the revenues hardly allow of more officials being appointed. It often happens that in these petty cases, where perhaps the proper remedy is a suit, a complainant spins out the trial to immense length and general annoyance. I believe also that the Government would have greater difficulty, in proportion to the smallness of the offence, in making reciprocal arrangements: the good to be got depends on that reciprocity, and it is only where the crime being great, only one view of morals can be taken that Governments will agree.

4. There is a middle class of cases, namely, frauds such as forgery, cheating and criminal breach of trust. In most countries the arrangement is that one State will deliver to another a subject of the latter guilty of such crimes. In India some of the treaties provide for extradition. While I am not prepared to say how far we should go in legislating against conspiracies, I think these offences, even when there are two great commercial countries within 20 miles of each other like England and France, are not comparable to those, which openly attack the public order. An instigation from Bombay to forge a cheque at Goa is small if compared with one to kill the Governor General of Portuguese India or indeed any Portuguese subject. If the Foreign Governments or the Native States have complained that their subjects are endangered because we have no law to punish the man, who at Bombay incites to fraudulent bankruptcy, cheating or forgery some one at Pondicherry, or Goa, or Baroda, or Srinagar, there may be a means of judging whether so great a Statute as the

Indian Penal Code requires a fundamental change. If no inconvenience worth notice has occurred, if the other States have no desire to offer us equal arrangements as a motive for us to change our law, I would refrain from so doing. The Penal Code like most of our Statutes is based on experience as well as jurisprudence: and I think it most undesirable to change the law of crimes merely to gain a sort of symmetry, pleasant from a jurist's point of view. Opinions change and vary; and if the jurist is to have the chief hand in legislation on criminal law, another jurist may alter some few years hence what is enacted to-day.

5. Our Magistrates may be more usefully employed than in trying the smaller class of cases where no injury occurs in the Queen's territories: and I would check this in like manner as according to the recent interpretation of the High Court of Bombay, Section 54 of the Code of Criminal Procedure does not require the Police to bestir themselves without treaty or requisition or order of the Government or a Magistrate, to arrest without warrant a foreigner for an offence supposed to be committed in a Foreign State, I think all our officials have enough to do in preserving our own public order. This I would strengthen against all those heinous acts which all good governments condemn: and if necessary I would strengthen the law so as to punish people like those Anarchists lately convicted under an English Statute who made preparations in London to commit homicides in Foreign States. We ought not to allow the Rulers or Officials of other States to be so endangered by acts done in British India: neither ought foreign territories to be available for that purpose against us.

5th July 1894.

Letter from Mr. GEO. M. MACPHERSON, I. C. S., Judicial Commissioner in Sind, to the UNDER SECRETARY TO GOVERNMENT, Judicial Department, Bombay, No. 1111, dated the 4th June, 1894.

SIR,—As directed in Government Resolution No. 3243 of the 11th ultimo, I have the honour to forward the following report on the proposal to amend the Penal Code so as to make punishable under it the abetments in British India of offences which it is proposed to carry out in foreign territory.

2. The tendency of modern legislation may safely be said to be to render liable to punishment in their own country persons who therein conspire to carry out serious offences beyond the limits of that country, and generally speaking this seems to me to be a most desirable object. In an Indian Act passed this year, steps have been taken to render liable to punishment particular persons who omit to give information in India as to some such offences committed abroad.

3. As a general rule, it requires little argument to show that a person who by doing an act incurs punishment in his own country should not be able to do the same act abroad with impunity, and that, therefore, a person who in British India abets the commission of such an act abroad should be liable even as if the act abetted were to be committed in British India. If I abet the commission of murder in India, my guilt is much the same as if I abet the commission of a murder to be committed abroad, and I should be held liable to the same penalties in each case.

4. Furthermore, it is to be remembered that most residents of British India are liable in India for acts committed by them abroad which are criminal under laws in force in British India, without regard to the question whether such acts are penal where actually committed. This seems to me to remove the objection that the act abetted, though penal here, may not be so where committed, and that under the proposed amendment of the law, a foreigner might be punishable for abetting in India the commission of an act in his own country which is not criminal there. He has no right to come to British India and here to engage in a conspiracy to do that which is opposed to the criminal laws of British India. There would be very few such cases, but many cases may occur of subjects of Her Majesty conspiring here for the commission of criminal acts abroad. They would be liable generally speaking to punishment here for committing such acts abroad (*see* Section 3 of the Penal Code), and it seems to

me anomalous that they should not also be liable for here abetting the commission of these acts abroad.

5. But if it is thought that this would be too wide an extension of the law as to criminal liability, the proposed amendment might be such as to include in "abetment" the abetment of any act to be committed abroad, which, if committed within British India, would be criminal, and to which the provisions of Section 11 of the Extradition Act would apply.—I have, &c.

Letter from the Honourable Mr. BASIL LANG, Advocate General, to the UNDER SECRETARY TO GOVERNMENT, Judicial Department, No. 39, dated the 18th June, 1894.

SIR,—With reference to Government Resolution No. 3243, Judicial Department, dated 11th May, 1894, I have the honour to state as follows.

1. I think legislation on the lines of Statute 24 and 25 Vict., Chapter 100, Sections 4 and 9, is desirable as regards abetment in British India of homicides committed beyond British India. I think the law in India ought to be the same as that of Great Britain in respect of such offences.

2. I also think that the abetment in British India of all offences committed beyond British India should be made punishable, and that the definition of abetment in Section 107 of the Indian Penal Code should be amended accordingly. I can see no valid reason for excluding any particular class of offences, and the argument adduced by the late Mr. Justice Stephen, and referred to in the judgment of Jardine and Ranade, JJ., that in all common cases it would be highly expedient that all civilized countries should recognise offences committed in each other's territories for this purpose, appears to me to be a sound argument.

3. I think there would be no practical difficulty in the Court, trying the alleged abettor, obtaining evidence of the offence said to have been committed outside of British India, and judging as to the credibility of the witnesses.—I have, &c.

Letter from the Honourable Mr. H. BATTY, Remembrancer of Legal Affairs, to the SECRETARY to GOVERNMENT, Judicial Department, No. 996, dated the 4th July, 1894.

SIR,—With reference to Government Resolution No. 3243 of 11th May, 1894, and the judgment in *Imperatrix* vs. *Ganpatráo Rámchandra* which accompanied it, I have the honour to submit my opinion that it is most desirable that the abetment in British India of acts or omissions abroad, which in British India would be offences of a serious nature, should be rendered punishable.

2. The English Statute 24 and 25 Vict., Chapter 100, Sections 4 and 9, though it may be all that the insular position of the United Kingdom requires, seems hardly wide enough for India, where British and Foreign territory are so interlaced.

3. I think that it would be unnecessary, and probably inconvenient, for British Courts to have to deal with all abetments in British India of misdeeds that are to take effect in foreign territory; and that it would be sufficient to make such provision only for cases of violent crimes, such as those of which the public are under Section 44 of the Code of Criminal Procedure as amended by Act III of 1894 required to give information.

4. It seems only reasonable that in cases in which failure to give information of intention to commit crime would itself be punishable, direct abetment should also be punishable, whatever the locality in which the abetment may take effect.—I have, &c.

Letter from Mr. C. G. W. MACPHERSON, I.C.S., C.I.E., Sessions Judge, Belgaum, to the SECRETARY TO GOVERNMENT, Judicial Department, Bombay, No. 748, dated the 21st May 1894.

SIR,—With reference to Government Resolution No. 3243 of May 11th, 1894, I am of opinion that legislation on the lines of Statute 24 and 25 Victoria,

Chapter 100, Sections 4 and 9, is desirable as regards abetment in British India of homicides committed beyond British India or rather that an amendment of the definition of abetment in Section 107 of the Indian Penal Code is desirable so as to make it include abetments in British India of all offences which if they took place in British India would be punishable with rigorous imprisonment for two years or upwards.—I have, &c.

Letter from Mr. T. S. HAMILTON, I. C. S., Sessions Judge, Surat, to the SECRETARY to GOVERNMENT, Judicial Department, Bombay, No. 1115, dated the 4th August, 1894.

SIR,—With reference to Government Resolution, Judicial Department, No. 3243 of the 11th May last, I have the honour to state that, in my opinion, legislation regarding abetment of offences on the lines indicated is neither necessary nor desirable.

2. No doubt a man may theoretically be held guilty of abetting an offence —murder or any other—by reason of his having instigated its commission, when nothing was done in pursuance thereof, but, in practice, I think that no Court could convict an abettor without proof of some illegal act resulting from his instigation. It would be necessary, then, for it to take evidence whether the offence sought to be abetted was either actually committed or at least attempted. In other words, the Court would have to determine the guilt or innocence of a man who was not before it.

3. I know of no case, in my 24 years' experience as Magistrate and Judge, where an abettor was tried in one Court and his principal in another, nor do I see how such trials could be brought to a satisfactory conclusion.

4. Still less satisfactory would they be if the abettor were tried in a British Court, and his principal in a Foreign Court, for the decision of the latter could not be accepted as final by the former.

5. I am strongly of opinion that principal and abettor should be tried at one and the same time and by one and the same Court, whether British or Foreign.

6. For these reasons I am not in favour of the proposed legislation or Code amendment.—I have, &c.

Letter from MR. M. P. KHAREGHAT, I.C.S. Sessions Judge, Ahmedabad, to the SECRETARY to GOVERNMENT, Judicial Department, Bombay, No. 854, dated the 30th June, 1894.

SIR,—In obedience to Government Resolution No. 3243 of the 11th of May, 1894, I have the honour to report that legislation on the lines proposed seems desirable, but only as respects serious offences like murder, culpable homicide, grievous hurt with a dangerous weapon, dacoity and robbery.—I have, &c.

Memorandum from Mr. F. S. P. LELY, I.C.S, District Magistrate, Surat, No. $\frac{M}{514}$, dated the 18th June, 1894.

The moral guilt and injury done to the community by abetment of a crime is the same in kind, though not perhaps always in degree, whether the scene of the resulting crime is in British or in adjacent native territory. That abetment is regarded as in itself a substantive offence apart from the principal offence, is shown by Sections 115 and 116, Indian Penal Code, which make it punishable even though the act abetted is not done.

2. The man Ganpatráo (in the case under notice) is alleged to have used words which implied that Bhána should be murdered in a Portuguese village. But suppose that instead of localizing the crime he had instigated the cultivators to commit the murder wherever Bhána might be found, and suppose that Bhána had been killed in consequence in Portuguese territory, the abettor might, I apprehend, have been charged and convicted, under Section 115, Indian Penal Code, of abetment of an offence which was not committed. That is to say, the law would assume what in every real sense of the words would be an untruth.

Such fictions which place the law at variance with the common sense of the community are, I submit, to be avoided.

3. Moreover, the solidarity of the empire requires the proposed change. Every argument which was held to justify the English Statute with reference to (say) France applies with much more force to our even feudatory States in India. The British Government as the paramount power has ultimately as great an interest in the repression of crime in Native States as in any other part of the empire. It seems, too, illogical to punish a man who abets the counterfeiting of coin, and to let go a man who abets a series of dacoities which may shake the authority of a Chief to the ground.

4. For these reasons briefly stated I am respectfully of opinion that "abetment" should include abetment in British India of all offences wherever committed.

Letter from Mr. J. MONTEATH, I.C.S., District Magistrate, Bijápur, to the SECRETARY TO GOVERNMENT, Judicial Department, Bombay, No. 1941, dated the 22nd May, 1894.

SIR,—With reference to Government Resolution No. 3243, dated 11th instant, I have the honour to make the following remarks.

2. It seems to me with due respect to the Honourable Judges that Section 188 of the Criminal Procedure Code is somewhat more than a special extra-territorial provision. Through the operation of Section 3 of the Indian Penal Code it makes that Code applicable to all Native Indian subjects committing offences beyond the limits of British India and to all European British subjects committing offences in the dominions of Princes or States in India in alliance with Her Majesty. It is to be noted that the Sessions Judge in the remarks quoted in the judgment is wrong in saying that "an offence as defined in the Penal Code means an offence committed in British India," the actual definition is "a thing made punishable by this Code," and it includes punishable acts committed beyond the limits of British India by any of Her Majesty's subjects to the extent above shown. I do not use this argument for the purpose of questioning the correctness of the decision of the High Court, for, in the case to which the decision relates, the substantive offence was not committed by Her Majesty's subjects. But the facts seem to me to show that the relations of British India with Princes or States in India in alliance with Her Majesty have already been put in respect of the punishment of crimes on a very different footing from the relations of England with Foreign States. Her Majesty's subjects, for whom alone the Government can legislate, have been made amenable to the same law for an offence committed beyond the limit of British India as for an offence committed within British India. It seems to me to be entirely inconsistent with the policy which has been adopted and in particular contrary to the principles which govern our relations with the protected Native States that a person should be able with impunity to abet in British India the commission of an offence by a foreigner beyond the limits of British India. For these reasons I am of opinion that it would not suffice to merely legislate on the lines of 24 and 25 Victoria, Chapter 100, Sections 4 and 9. I think that Section 108 of the Indian Penal Code should be amended by the addition of some such words as follows:—"Or would be punishable under this Code if committed in British India or by a subject of Her Majesty."—I have, &c.

Letter from Mr. A. CUMINE, I. C. S., District Magistrate, Khándesh, to the UNDER SECRETARY to GOVERNMENT, Judicial Department, No. 5199, dated the 9th July, 1894.

SIR,—I have the honour to report as directed in Government Resolution No. 3243 of 11th May, 1894, Judicial Department.

2. All the officers I have consulted think that legislation is necessary. But it does not appear that legislation on the lines of Statute 24 and 25 Vict., Chapter 100, Sections 4 and 9, is desirable. It would appear enough to add some words to one of the sections of the Penal Code. And the section to which the words should be added

Subject.—Opinion as to whether legislation is desirable as regards abetment in British India of offences committed beyond British India.

does not appear to be Section 107. That section defines the abetment of a *thing*. And there is no doubt that murder committed out of British India would come under the head "thing." The Code, however, makes punishable, not the abetment of all *things*, but only the abetment of such things as are *offences*. And the abetment of an offence is defined in Section 108. Section 108 seems, therefore, to be the proper section to add the words to. I would, therefore, propose with submission to put a comma after the word "abettor" at the end of the first sentence of Section 108, and add the following words "or the commission out of British India of the following acts which would be offences if committed within British India, *viz.*, (naming them).

3. The next question is, what the acts are which should be entered. I think with submission that, besides murder, there should be entered the following:—

The different kinds of kidnapping, abducting (*vide* Sections 363 to 369, Indian Penal Code), buying or disposing of any person as a slave and habitual dealing in slaves (Sections 370, 371).

Selling or letting to hire a minor for purposes of prostitution (Section 372).

Buying or obtaining possession of her for that purpose (Section 373).

Robbery and dacoity (Sections 372, 395, 397, 399).

The different kinds of lurking-house trespass or house-breaking by night (Sections 456, 457, 458, 459).—I have, &c.

1895
Jail Dept.
Enclos. No. 1
To 3132.
C. No

CHIEF SECRETARY
1 JUL 1895
GOVERNMENT OF MADRAS

CURRENT NO. 3132

No. 14 Jud 943

FROM

J. P. HEWETT, Esq., C.I.E.,
Offg. Secretary to the Government of India,

TO

The Chief Secy. to the Govt. of Madras.

Home Department.
Judicial.

Simla, the 19th June 1895.

SIR,

I AM directed to forward the enclosed copy of a letter from the Government of Bombay, submitting certain proposals for the amendment of the law regarding the abetment in British India of offences committed outside British India. A copy of the judgment of the Bombay High Court, mentioned in the letter, is, with the other enclosures, also transmitted herewith. It will be seen that the judgment gave rise to the question as to the advisability of—

No. 6456, dated the 24th September 1894.

(*a*) legislating on the lines of the Statute 24 and 25 Vict., Cap. 100, sections 4 and 9 as regards abetment in British India of homicides committed beyond British India; and

(*b*) amending the definition of abetment in section 107 of the Indian Penal Code, so as to make it include generally abetments in British India of all offences or of any class of serious offences.

Having consulted the Honourable Judges of the High Court and certain other authorities, the Local Government express themselves in favour of legislation on the lines proposed by Mr. G M. Macpherson, Judicial Commissioner in Sind, Mr. J. Monteath, District Magistrate of Bijapur, and the Honourable Mr. Basil Lang, Advocate General of Bombay.

2. It will be seen that the alternatives suggested by the Bombay Government in proposing legislation so as to make the abetment in British India of criminal acts committed beyond British India punishable, are that such legislation should extend (i) to cases of homicide only as in the English Statute or (ii) to offences enumerated in section 11 of the Extradition Act, or (iii) to all offences.

3. I am to remark that section 108 of the Indian Penal Code already enacts *inter alia* that a person "abets an offence," who abets the commission of an act which is not, though in certain circumstances it would be, an offence. It appears to the Governor General in Council, as at present advised, that an extension of the principle of this section so as to include the abetting of any act, which if done in British India would have been an offence under any of the sections of the Penal Code named in the schedule referred in section 11 of the Foreign

Jurisdiction and Extradition Act, would have the effect of securing the object desired. Before, however, further considering the question, His Excellency in Council will be glad to be furnished with the opinions of the Honourable the Chief Justice and Judges of the High Court at Madras and of the Government in Council on the subject.

I have the honour to be,

SIR,

Your most obedient Servant,

J. P. Hewett

Offg. Secretary to the Government of India.

No.

Extract from the Proceedings of the Government of India in the Home Department (Judicial), under date Simla, the June 1895.

Read again—

The undermentioned papers on the subject of the reorganisation of the Cantonment Magistrates' Department:—

Despatch to Her Majesty's Secretary of State, No. 185 (Financial), dated the 19th July 1892.

Despatch from the Secretary of State, No. 133 (Military), dated the 28th October 1892.

Letter to the Government of the North-Western Provinces and Oudh, No. 875, dated the 26th July 1893.

Resolution No. $\frac{\text{o-Judicial}}{774-784}$, dated the 18th July 1894.

RESOLUTION.

OFFICERS holding the sole-charge Cantonment Magistracies entered in the list appended to the Resolution No. $\frac{\text{o-Judicial}}{774-784}$, dated the 18th July 1894, were, by the orders contained in that Resolution, formed into an Imperial service under the Government of India. It is therefore necessary to lay down a definite rule regulating the confirmation of officers officiating in the Department.

2. The Governor General in Council is accordingly pleased to direct that the claims of Officiating Cantonment Magistrates to substantive appointments shall in future be considered by the Government of India in the order in which they entered the Department, irrespective of the Province in which they are serving or in which the vacancy occurs. In accordance with this ruling, when a vacancy takes place in consequence of the death, retirement, etc., of a sole-charge Cantonment Magistrate in one Province, the vacancy will be considered as a vacancy in the Department. The officer selected to fill such vacancy will ordinarily be the officer who has had the longest officiating service in the Department, irrespective of the Province in which he has been so officiating, provided that he is considered by the Local Government under which he is serving, and by the military authorities, to be deserving of confirmation. It will not, however, follow that he will be transferred to the particular cantonment in which the vacancy has occurred. The principle enunciated in the Resolution of the 18th July 1894, that local knowledge and experience should be made use of, as far as possible, will be kept in view, and, in pursuance of this principle, it may at any time be found necessary to place the cantonment vacated in the manner referred to in charge of an officiating officer having local experience. The distribution of the officers, permanent or officiating, in the Department, who are located in a particular Province, will continue to be left to the discretion of the Local Government or Administration under which they are serving and, as was intimated in paragraph 5 of the Resolution of the 18th July 1894, the Government of India will not make transfers from one Province to another without consulting the Local Governments concerned.

ORDER—Ordered that this Resolution be communicated to the Local Governments and Administrations noted in the margin, and to the Foreign, Military and the Finance and Commerce Departments for information.

Madras.
Bombay.
Bengal.
N.-W. Provinces and Oudh.
Punjab.
Central Provinces.
Burma.

J. P. HEWETT,

Offg. Secretary to the Government of India.

G. C. Press, Simla.—No. 240 H. D.—18-6-95.—340.

Scope of
C.I.N. 3067/95 -

Order

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Offg. Secretary to the Government of India.

G. C. Press, Simla.—No. 240 H. D.—18-6-95.—340.

Jud. Sp. 142 3 Sub
8-7-95

Jud. Sp. No. 3067 of 1895
Jud. Sp. 142 3 Sub

First copy sent to Press.

Returned for signature.

Despatched in print.

Number of copies required. { Order complete. / Letter only. / Order complete with Letter.

Reference G. O., No. 189 Dated

Current No.

Enclosures to G. No.

Order of Government .. .. ..

Letter of Government.

Statement with ditto.

Papers not filed up, being meant for despatch in original.

N.B.—
A = Print in full.
B = Not to be printed.
P = Print abstract only.
Q = Print heading only.