

21 Nov 1895

Judicial (1895) Department.

ORDINARY MS.

G.O., No. 2436.

Dated 25 Nov 1895.

INDEXED.

[Despatch Abstract.]

EXTRADITION ~~TO~~ MYSORE.

Forwarding to the Advocate-General copy of the letter from the Resident in Mysore, with its enclosures, regarding the--of one Kantappa alias Kooka, with the request that he will furnish Government with his opinion as to the legality of the course proposed therein.

BACK PAPERS.

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

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
	5860	27	95				
		20	6 1 96				

Copy for Office Descriptive Roll

Of Kautappa alias Kooka who absconded after committing the offence of Criminal Breach of contract on 9th February 1895.

1. Name - Kautappa alias Kooka
2. Father-in-law's name - Chinnappa.
3. Caste - Aliyasantana Bilawar or
sevaru Drakalu Caste.
4. Age - about 28.
5. Color - Dark brown
6. Special Marks - None known. Is a shortish
sturdy man. slight whiskers
and moustache when last seen
7. Residence - Kerla in Portage Grama,
Mangalore Taluk, South Canara.
8. Connections in Kerla Village close to
Gowraukere village, his eldest brother-in-law
Kuttanna (?)

Copy
Sd/- M. Narasimhaiah
General Secretary.

Copy for Office

Whereas Her Highness the Maharani-Regent assisted by the Dewan and Council of the Mysore Government are for the time being administering the executive Government of Mysore and whereas one Kantappa alias Kooka, described more particularly in the Descriptive Roll hereto annexed, is accused by Mr. Hamilton of having committed an offence in Mysore against Act XIII of 1859 in respect of a sum of Rs. 300/- advanced to him on April 4th, 1894, for work which he has fraudulently neglected to perform, this requisition for the surrender of the said Kantappa alias Kooka to the Mysore Government is preferred through the Resident of Mysore to the Local Government of Madras.

"By Order of the Mysore Government"

Sd/- S. Narasimangar,

General Secretary to the Mysore Govt.

Proceedings of the Chief Commissioner of Mysore, Judicial Department,
23rd July 1878.

Copies of these Proceedings will be communicated to the Madras and Bombay Governments for information; and their attention invited to para 14 of the letter above read from Government of India.

Proceedings of the Chief Commissioner of Mysore, Judicial Department,
23rd July 1878.

From the Under-Secretary to the Government of India, Foreign Department, To the Chief Commissioner of Mysore—Judicial—No. 84 J, dated Simla, the 25th June 1878.

I am directed to acknowledge the letters from your office marginally noted, and to convey to you the instructions of the Government of India upon the question of reciprocity in regard to civil and criminal processes between the Courts of Mysore and those of British India.

No. 6628—J, 89, dated 8th October 1877.
" 11233—J, 183, dated 21st March 1878.
" 815—J, 11, dated 4th May 1878.

2. On the 20th September 1877, your predecessor was informed by a letter from this office that the Planters' Association of Wynad had presented to His Excellency the Viceroy a memorial complaining of the loss and inconvenience caused to their industry by the formalities then attendant upon the extradition of criminals from Mysore to the Wynad. To remove these formalities, your predecessor was instructed to issue an executive order directing that the processes issued by Wynad Criminal Courts, and claims for the surrender of accused persons to Wynad Magistrates, should be treated and respected by the Magistrates and Police of Mysore as if such processes had been issued, or such claims had been made, by Magistrates of a neighbouring Mysore District. Mr. Saunders was at the same time informed that the Governor General in Council was prepared to take up the question of reciprocity in regard to civil processes also. And it was added that if, after consultation with the Judicial Commissioner, Mr. Saunders should see fit to make any representation or recommendation on the subject of this letter, his views would be fully considered by the Government of India.

3. On the 8th October Mr. Saunders reported that, in compliance with the instructions of Government, he had issued the executive order abovementioned. He added that the question of reciprocal action in the matter of civil processes would be considered and reported upon in consultation with the Judicial Commissioner.

4. On the 21st March, Mr. Saunders submitted the promised report, which however was not confined to the subject of civil processes, but dealt with the general question of reciprocity between the Courts of Mysore and British India. Enclosed in the report was a letter from the Judicial Commissioner giving his opinion on this question. Mr. Sandford thought that an executive order of Government would suffice to make the processes of British Courts respected in Mysore, but that legislative action would be necessary to obtain reciprocal treatment for Mysore processes in British Territory. And he doubted whether it would be equitable to enforce respect to the processes of British Courts in Mysore so long as reciprocity did not exist. Upon this opinion, your predecessor observed that the necessity for legislation in order to obtain reciprocity seemed to be indisputable, but with regard to the doubt expressed by Mr. Sandford, he inferred from the analogous case of the Central Provinces and Berar that no serious difficulty would arise in establishing a system of complete reciprocity. Mr. Saunders forwarded at the same time copy of a letter from the Government of Madras requesting that the Niigiri District might be admitted to the benefits of the executive order lately issued in regard to the Wynad Courts. He saw no reason for refusing this concession and suggested that it might be extended to all Districts of the Madras and Bombay Presidencies lying contiguous to Mysore.

5. On the 4th May, you addressed the Government of India in continuation, forwarding copy of a memorandum upon the question at issue which had been submitted by yourself when holding the appointment of Judicial Commissioner. In this memorandum it was recommended that complete reciprocity in the matter of criminal processes should be established between the Districts of Mysore, Coorg, Wynad, and the Nilgiris. For the rest of British India it was proposed that a definite list of offences should be drawn up, and that mutual surrender should be made in regard to such offences only. This arrangement you thought could be effected without legislation by the exercise of the authority vested in the Government of India under the last clause of section 11 of the Extradition Act XI of 1872, the second schedule of the Act being somewhat enlarged. You recommended the proposal for the acceptance of Government.

6. The Governor General in Council has considered the several opinions and recommendations advanced in the course of the foregoing correspondence, and I am now desired to communicate to you the following observations and orders upon them.

7. First, as regards the execution of British Council is of opinion that to enable the Mysore issued by the Courts of British India, nothing more

8. In so far as criminal processes are concerned

*Proceedings of the Chief Commissioner of Mysore, Judicial Department,
23rd July 1878.*

9. At the same time an order might be issued by you directing all Civil Courts in Mysore to respect the civil processes of British Indian Courts as they would respect the civil processes of neighbouring Courts in Mysore.

10. The processes of British Courts, both Civil and Criminal, would then be respected in Mysore as they are respected in British Territory. There remains the question how far reciprocity can be obtained for the processes of Mysore Courts.

11. On this point I am to say that it is doubtful whether complete reciprocity is attainable without legislative action on the part of Government, and the Governor General in Council considers that under present circumstances it is not desirable to resort to such action. But the provisions of the existing Law already authorize British Indian Courts to take some cognizance of the processes of Civil and Criminal Courts in Mysore, and in the opinion of the Government of India this power is sufficient to prevent any serious miscarriage of justice.

12. As regards criminal processes, the Extradition Act No. XI of 1872 contains the necessary provisions. The Chief Commissioner of Mysore is a Political Agent for the purposes of this Act. Therefore under section 9, any British subject, European or Native, who commits an offence in Mysore and then enters British India, may be tried in British India as if the offence had been committed there, if the Chief Commissioner certifies that the charge is one which ought to be enquired into in British India. And as the Chief Commissioner is administering the executive government of a Foreign State, he may apply to the British Government under section 14 of the Act for the surrender of any person, whether a British subject or not, who is accused of having committed an offence in Mysore. Further if any person not being an European British subject is accused of having committed in Mysore one of the offences specified in schedule II of the Act, the Chief Commissioner may issue a warrant for his arrest under section 11, and this warrant will be executed by the Magistrate of any District in British India in which the accused may be found.

13. Assuming, then, that the list of offences specified in schedule II of the Act includes all offences for which the extradition of criminals between different States is thought actually necessary, the provisions of the Act would, in the opinion of the Governor General in Council, be practically effective for the purposes of Law and Police in Mysore. It is true that the exact reciprocity contemplated in paragraph 8 of your memorandum above mentioned would not be attained. But the Governor General in Council considers that the slight advantage conferred on British Courts by the difference of procedure is of no material consequence.

14. As regards civil process, I am directed to draw your attention to sections 229 and 434 of the Civil Procedure Code, which provide for the execution in British India of the decrees of Courts situated outside British India, and to section 391 of the same Code, which provides for the execution of commissions issued by such Courts. If these Sections of the Civil Procedure Code were supplemented by the issue of an executive order to officers in British India directing the service of Mysore summons, a considerable measure of reciprocity in the matter of civil process would have been obtained for the Mysore Courts.

15. Briefly therefore the procedure to be observed for the future by the Courts of Mysore and British India in regard to the execution of civil and criminal processes would be as follows: The processes of British Courts would be respected in Mysore exactly in the same manner as the processes of Mysore Courts. The processes of Mysore Courts would be respected in British India to the extent and in the manner provided for by Act XI of 1872 and by the Civil Procedure Code, the service of summons being ensured by executive orders.

No. 3072—JUDL. 7, DATED BANGALORE, 23RD JULY 1878.

ins
of the Government of India, conveyed
Chief Commissioner resolves to issue the
guidance of all Magistrates and Civil Courts

*Proceedings of the Chief Commissioner of Mysore, Judicial Department,
23rd July 1878.*

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Secretary.

To.—The Judicial Commissioner.
" Inspector General of Police.
" Commissioners of Divisions.
" Deputy Commissioners of Districts.

NOTIFICATION.

CRIMINAL.

The 23rd July 1878.

No. 111.

Under the authority of His Excellency the Viceroy and Governor General in Council, the Chief Commissioner directs that all criminal processes of whatsoever description, when issued by any Magistrate having jurisdiction in any District of British India, shall be acted upon and executed by all Magistrates and Police Officers in Mysore, under the same conditions, and in the same manner, as if such process had been issued by a Magistrate having jurisdiction in Mysore.

NOTIFICATION.

CIVIL.

The 23rd July 1878.

No. 112.

Under the authority of His Excellency the Viceroy and Governor General in Council, the Chief Commissioner declares that—

(1) All decrees of any Court established in British India which cannot be executed within the jurisdiction of the Court by which it was made, may be executed in the manner provided by sections 223—228 of the Code of Civil Procedure within the jurisdiction of any Court in Mysore.

(2) That all processes of whatsoever description issued by any Civil Court in British India, may be acted upon and executed by all Courts in Mysore, as if such process had been issued by a Court having jurisdiction in Mysore.

1878.

GOVERNMENT OF MYSORE.

JUDICIAL.

THE JUDICIAL COMMISSIONER.
INSPECTOR GENERAL OF POLICE.
COMMISSIONERS OF DIVISIONS.
DY. COMRS. OF DISTRICTS.

7 July 28rd.

No. 3072.
7.

Directs that the within mentioned
ifications giving effect to the orders of the
vernment of India regarding the execu-
in Mysore of Criminal and Civil Pro-
ses issued in British Territory, be published
he information and guidance of all
trates and Civil Courts in Mysore.

1895.

Encl. No. 3
To
G. No. 4858

CURRENT No. 4858
No. 4065. En. 3

FROM

THE RESIDENT IN MYSORE

CHIEF SECRETARY
14 OCT. 1895
GOVERNMENT OF MADRAS

To

The Chief Secretary to the
Government of Madras.

Dated Bangalore, 12th October 1895.

SIR,

I have the honor to report
that the Maharani Regent and
the Council for the time being ad-
ministering the executive Government
of the Territory of Mysore have for-
warded to me for transmission to
the local Government of Madras the
enclosed requisition that Kantappa
alias Kocka son-in-law of Chinnappa
residing in Kerla village Postige grama
Mangalore Taluk South Kanara,
is accused of having committed
fraudulent breach of contract in res-
pect of a sum of Rs 500 advanced to
him on April 4. 1894 at the instance

of Mr. J. S. Hamilton of Chandra-
pore Estate, Mudigere Taluk, Kadas
District, and should be surrendered
for trial. I have the honor to re-
quest that under Section 14 Act
XXI of 1879 the Governor in Council
may be pleased to issue orders for
inquiry into the truth of the ac-
cusation, and if satisfied issue a
warrant for the delivery of the ac-
cused at Mudigere to the 2nd
Class Magistrate of Mudigere, or
Kadas District, or if more conveni-
ent at Bangalore Peta to the Dis-
trict Magistrate of Bangalore
District.

2. I may add that the Late
Resident Mr. Lee-Warner with
special advertisement to the letter of the
Government of India, to the address
of the Chief Commissioner of Mysore,
84 J. Dated June 25. 1878, para-
graph 12 (Copy attached) and to
the fact that Offences under Act XIII

1859 are not scheduled for the pur-
poses of Section 11 Act XXI. 1879 and
therefore can only be dealt with under
Section 14 of the Extradition Act, ad-
vised the Darbar to make trial of
the only procedure which the Extra-
dition Law allows for the surrender
of persons accused of non scheduled
offences. No doubt this circuitous
procedure will entail expenses but
it has been thought desirable to
try the effect of it, and I have only
to add that Mr. Hamilton is pre-
pared on receipt of an intimation
from the Magistrate to whom the Madras
Government may issue an order under
Section 14 Act XXI. 1879, to support the
inquiry by the production of proofs
and witnesses. I have therefore the
honor to request that I may be informed
of the orders passed upon this requisition.

I have the honor to be,

Sir,
Yours most obed^t Servant,
H. M. Young
Resident.

CURRENT No. 4858

Judicial Dept

The Resident

in Mysore

No 4065

Dated 12.

Recd 14.

Regd 14.

Oct 95

Enclos 3.

Subject

Forwarding a petition from
Kantappa alias Kooka
Son-in-law of Chinnappa
residing in Herla Village
Pootegra grama, Mangalore
District.

Precedents please +

the treaty with Mysore.

Try 959/92

3-6-89

506207

20-3-93

(One)

2098799 D 21. 12. 90.
1744 D 10. 10. 89.
959 D 26. 89.

For orders

As to whether the requisition
may be forwarded to the D.M. of
S. Canara & a report called for?
Submitted that it may. The
State in which this question now is
is shown by the letter to India.

in go. 3006
8.12.94

printed in go 1309
19.6.95

W. H. 95

6/11/95

This is apparently intended as a
test case. 12/11/95

The procedure proposed to be
adopted seems to be quite clear,
but it is distinctly opposed to what
I have always thought was the object
of the extradition Act, viz., that persons
accused of serious offences in one State
of flying to another should be delivered
up by the latter to the former for trial.
If however, the procedure now proposed
is adopted in earnest, it would appear
that the only restriction on extradition
from the most petty nuisance case
is that the Govt. of the State from which the
accused person has fled must itself
resolve to take action against him and a
course of procedure which it may be
assumed that the Govt. would not
usually be prepared to follow in very petty
cases. Before however, sending the case to
the D.M. for inquiry (which is the
humble request made to a
subordinate) & subsequent report, I should
like the debate on the Act of 1872 and

predecessor of 1872, which
was then in force at the
time India was in the hands
of the British.

1878, of which I
also, & I looked up to see if
any light is thrown on the procedure
now proposed to be followed, the effect
of which is that, if people will take
trouble to look, every offence is extra-
ditable. This is very strange, I think,
that in the note in go. 3006
8.12.94
Mr. Antennor should have over-
looked this section 14, the same
time of which ~~the~~ seems to
me to place ~~the~~ the planting
community in a much better
position than it has hitherto
occupied to anyone that they
occupied.

8/11/95

Let H.E. see -

Let us see what further light can
be thrown on this question by the
information called for by the hon.
Mr. P. H. I have always understood
that extradition did not apply to
this particular class of offence. But
if it does, by all means let us put
it in force - only we must be sure
of our ground first. This is evidently
a test case - and before any thing is done,
I think we should be fortified by the
opinion of the Advocate General. In
fact we ought to move, until we know
how he views it - or we may get
into trouble. He should see all the
papers - as this is a very important
matter.

Exhibition
to my son.

H.E.

27/11/95
28/11/95

175
[G.]
25
300-5-10-05

Judd. DEPARTMENT.

G. No.

FOR ORDERS.

Note for H.M.

The debates relating to the extra-
dition Bills of 1872 & 1879 have as ordered,
been put up. It will be observed from
the passage marked A that the effect of
Bills would be that nearly all serious
offences would be dealt with as easily as if
they were committed in Native States, as
if they had been committed in British India.

Nothing else is any way to
the point appears to the debate
was apparently a very careful one.
The Select Committee's report cannot
be traced in spite of careful search.

May the papers now go on to
the Adm. Genl.?

W. C. W. G.

20
19/11/95.

Yes
W.C.W.G.
21/11/95

FOR ORDERS.

H. E. THE GOVERNOR.

THE HON'BLE MR. H. W. BLISS, C.I.E.

THE HON'BLE MR. J. GROSE.

C8.

Order of 25 Nov '95 no 2436

Copies of the President's letter with its enclosures (to be kindly returned) will be forwarded to the Adm. Genl. with the request that he will furnish Govt with his opinion as to the legality of the course proposed therein.

2. Copies of ~~the~~ Govt's letter to the Govt. of India No- 1408 10.8.92
Indl. of ~~the~~ Govt. 1238 and 1309 17.6.93 and 19.6.95
Indl. will also be forwarded in order that the Adm. Genl. may be in a position to appreciate the situation in which the matter now stands.

25 Nov 95 (P.O.)
To Adm. Genl. with papers mentioned
note enclosed 13/11/95
Note. The proceedings probably quite legal but it will not satisfy the planters to be told this. It is too cumbersome for them. Vide this recent address to the Viceroy
11/20/11
R 21/11

When for copying

When copied

When examined

When signed

189

READ AGAIN G.O., No.
189

DATED

CURRENT No.

ENCLOSURES TO O. No.

ORDER OF GOVERNMENT

.. .. A A A A A A A

LETTERS OF GOVERNMENT.

STATEMENT WITH DITTO.

PAPERS NOT FILED UP, BEING MEANT FOR DESPATCH
IN ORIGINAL.

N.B.-

A = Copy in full.

B = Not to be copied.

P = Copy abstract only.

Q = Copy heading only.

No.

FROM

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

THE CHIEF SECRETARY TO THE GOVERNMENT OF MADRAS.

Home Department.
Judicial.

Simla, the October 1895.

SIR,

I AM directed to acknowledge the receipt of your letter No. 840, dated the 24th April last, on the subject of the allowances to be granted to the part-time Cantonment Magistrates of Poonamallee and Wellington.

2. In my letter No. 55, dated the 15th January last, it was observed that the Governor General in Council was disposed to think that the allowances drawn by the Cantonment Magistrates of Wellington and Poonamallee were too high in comparison with the work performed and that they should not be continued. It was added, however, that His Excellency in Council would be prepared to consider any proposal which the Government of Madras might see fit to make for the grant of smaller allowances to these officers, provided that it was accompanied by full statistics of the work done by them. These have been furnished in your letter under reply, but no suggestions are made regarding the allowances to be drawn by the officers doing the work, pending a settlement of the question whether their allowances should be charged to the Civil or the Military budget.

3. The number of cases tried by the Cantonment Magistrates during the years 1891, 1892 and 1893 are stated to have been as follows:—

	1891.	1892.	1893.
Wellington	334	237	233
Poonamallee	238	147	120

It is also observed in paragraph 2 of your letter that, inasmuch as the Government of Madras maintains a full Civil Magisterial Staff, they have no need for the services of the Cantonment Magistrates at Wellington and Poonamallee. I am to say that the Governor General in Council concurs with the Government of Madras in considering that no agency additional to the ordinary magisterial staff is necessary for the discharge of the magisterial work either at Wellington or Poonamallee, and under these circumstances it appears to be desirable that this branch of the Cantonment Magistrates' work should be made over to the civil authorities.

4. There remains the executive portion of the work at present done by the Cantonment Magistrates at Wellington and Poonamallee, and the question to be decided is whether those officers are entitled to any allowances for performing it. I am to say, for the information of the Governor in Council, that the Government of India with the concurrence of His Excellency the Commander-in-Chief have on another occasion held that such duties are included in those which the Station Staff Officer can and should be called upon to perform as part of the military duties of his appointment.

In these circumstances the continuance of the allowances at present paid to the Cantonment Magistrates of Wellington and Poonamallee appears to be unnecessary, and I am to request that orders may, with the permission of the Governor in Council, issue directing their cessation from the date on which the Government of Madras are able to arrange for the conduct of the magisterial work at those stations.

5. I am to add, with reference to paragraph 3 of your letter, that the question of issuing notifications under section 33 of Act XIII of 1889 is being separately considered.

I have the honour to be,

SIR,

Your most obedient Servant,

J. P. HEWETT,

Offg. Secy. to the Govt. of India.

No.

COPY forwarded to the ^{Financial} _{Military} Department for information.

By order,

L. M. THORNTON,

Deputy Secy. to the Govt. of India.

India

No.

FROM

J. P. HEWETT, Esq., C.I.E.,

Offg. Secretary to the Government of India,

TO

THE CHIEF SECRETARY TO THE GOVERNMENT OF MADRAS.

Home Department.
Judicial.

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No.

FROM

J. P. HEWETT, ESQ., C.I.E.,

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TO

THE CHIEF SECRETARY TO THE GOVERNMENT OF MADRAS.

Home Department.
Financial.

Simla, the *October 1895.*

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By order,

L. M. THORNTON,

Deputy Secy. to the Govt. of India.

*Ind. fo. 2436 rub
25-11-95*

Ind.

780 to Ind. C No. 4858