

Judicial (1895) Department.

ORDINARY MS.

G.O., No. 905

Dated 3rd May 1895

INDEXED.

[Despatch Abstract.]

EXTRADITABLE OFFENCES.

Communicating to the Resident in Travancore and Cochin the Advocate General's opinion on the subject of dealing with sailors, &c., committing offences in British Territory and passing into the Native States and vice versa.

BACK PAPERS.

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

FURTHER PAPERS.

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

Ref on C. 3668
1894Resident's office in circuit
Cochin, 26 February 1894

From

H. B. Brigg Esquire M.A., C.J.E.

To

Resident in Travancore and Cochin

The Honorable Mr. J. F. Price C.S.I.

Chief Secretary to Government

Fort St. George

Sir,

In July 1893 the Port officer at Cochin reported to me that three of the crew of a British ship at anchor off Narakal deserted and escaped into British Cochin and that the Police at the latter place declined to arrest them without warrant. He accordingly requested me to grant a certificate under section IX of act XI of 1879 that the charge against them under section 245 of the merchant shipping act 1854 was one which ought to be tried in British India. I declined however to issue this certificate as it then seemed to me that offences under the merchant shipping act were not extraditable, but as a serious failure of justice might result in such cases from the present state of the law, I requested the Dewan of Cochin to let me know whether he saw any objection to the special Magistrates of the State being empowered to deal with offences committed within the Ports of the State and the towns adjacent thereto under the acts and rules noted in the margin and if he saw no objection how the Sirkar would propose to deal with the matter.

2.

In reply, the Dewan now states that under the Foreign Jurisdiction and extradition act, the acts specified in the foregoing paragraph are already applicable to all European British subjects in the State, but that as offences under these acts are occasionally committed at Narakal by Europeans and others who are not British subjects

merchant sea men act I of 1859
... ship being act V of 1883
Indian merchant sea men
act III of 1876
merchant shipping act VII of
1880
Indian Ports act I of 1884
Quarantine rules under
act I of 1870

these

these acts and rules may, with advantage be adopted mutatis mutandis.

3. In para 235 of his last administration report also, the Dewan has brought prominently to notice the difficulty experienced in dealing with sailors who desert their vessels in British territory and then pass into the Cochin state and vice versa.

4. An consideration of the whole matter, it now seems to me that the question of taking extradition proceedings under extradition act XX of 1879 does not arise in such cases. That act applies to all European British subjects within the dominions of Princes and States in India in alliance with Her Majesty (section 1). Under section 9, the law relating to offences and to criminal procedure in British India extends to such European British subjects and under section 6, Justices of Peace appointed under the act have power to try them. The term "offence" in section 9 is not defined but ~~there is a~~ ~~provision~~ it may be interpreted to mean any act or omission made punishable by any law for the time being in force as has since been done by the general clauses act I of 1887. If so, but on this point I am doubtful, offences under the acts and rules specified above committed by European British subjects in native states are triable by Justices of Peace appointed for those states if the offenders are found therein. If they escape into British territories they can be dealt with there under section 188 of the Criminal Procedure Code which reenacts section 9 of act XX of 1879 repealed by the same code. The law as regards other Europeans and Americans is not explicit but they can under section 455 of the British Criminal Procedure Code, be also tried as British subjects until objected to. It is however still not quite clear how offenders escaping into native states should be dealt with, be they British subjects or not.

5. In these circumstances it seems to me that the most comprehensive and satisfactory way of dealing with this very troublesome and important question is by passing a regulation making

On page 40 of the Report - marked with tape

MR

How will this meet the case of offenders escaping into native States?

Extension of the Penal Law of Cochin may or may not be expedient but what has this subject to do with extradition - unless until the offender in Cochin escapes from Cochin?

As no papers are said to be traceable by the Dept.

making it penal in Cochin to commit any of the offences mentioned in the acts and rules referred to and empowering the special Magistrates of the state to try offenders against this law be they European or native British subjects, natives of Cochin or Travancore, or of other Treaty States in the Indian Empire or Americans or Europeans not being British subjects. If the Government agrees with me in thinking so I shall advise the Sir to pass such a regulation. If, again, the Government thinks that legislation should be undertaken, it must be, I submit, in the shape of a regulation taking in only such of the sections of the acts alluded to, as can be made applicable to Cochin. The greater portion of these acts are entirely inapplicable in Cochin. The Dewan's proposal to adopt them mutatis mutandis is thus inadvisable. It is possible that this subject has already been dealt with by the Government in connection with the important Coast-state of Baroda. I would therefore suggest that reference be made to the Government of India on the subject.

I have the honor to be

your most obedt. servant.

A. B. Figg
Resident.

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MR

CURRENT No. 1094

From

The Resident in Travancore and Cochin

To

The Chief Secretary to Government
Fort St George

Dated 24th February 1895
Despatches 1st March 1895

Recd 5/3
Rep 4/3

Ref one. no. 3668
1895

Enclosure - - -

Suggesting that reference be made
to the Government of India on the
subject of dealing with sailors &c
committing offences in British territory
and passing into the Native States and
vice versa.

5/4/95

(over)

5.0 17/4/92 no 87 S C Matruil
20/7/93 no 199
24/5/94 no 2804

CA

Endorsement. No. 712

Referred to the Honorable
the Advocate-General for
favour of remarks.

(By Order)

29/3/95 A. Hatterworth,
Under Secretary
Fort St George
1 April 1895

TO BE FORWARDED
WITH REPLY.

1895

From

The Advocate General

Madras

Ref no 712/95 papers

To

The Chief Secretary to Govt.

Fort St George

Dated 10th April

Despatches 10th "

Recd 11/4

Rep 12th

Enclosure (1) 1895
no 1094

Forwarding opinion on the
points raised in the letter
from the Resident in Tra-
vancore Cochin dated the
24th February 1895 -

1895
no 22/4

CHIEF SECRETARY
11 APR. 1895
GOVERNMENT OF MADRAS

no. 1094 & 1827/95

Order 3 May 1895
no 905

The Advocate General's opinion
will be communicated to the Resident in
Travancore & Cochin.

24-4-95
30/4/95

To The Resident in T & C. 9 of no. 1094 & 1827/95
A. DESPATCHED
10 MAY 1895

17/2/95 note. The Resident suggested a reference
to the Govt of India on the subject. - His letter
is anything but clear, & without a
much more definite statement of the
difficulties caused by the present state of
the law, there seems not sufficient cause
to advocate fresh legislation. Discretion by
sailors is not a very serious offence, &
ship captains must take their own precautions
to prevent it, where the law cannot help
them.

24-4-95 but is worth ad for our
interests - let it alone
on this subject - no 3074
Should say 'Let it alone'
MS

Re the letter from the Resident in Travancore
and Cochin dated the 24th February 1895 and the
endorsement No. 712 thereon dated the 1st April 1895

Opinion

1. The Resident expresses his opinion that desertion
by a merchant seaman is not an extraditable offence,
and that some legal provision for dealing
with such cases is absolutely necessary.

2. The first part of the opinion is correct. The
extraditable offences are enumerated in the Sched-
ule to the Foreign Jurisdiction and Extradition Act
XXI of 1879, and an offence within the meaning of
the Merchant Shipping Act, 1854, Section 246, is not
included.

3. With regard to the second part of the Resident's
opinion, I must point out that the law relating to
extradition is confined to such offences as are univer-
sally regarded as heinous and destructive to the se-
curity of life and property, e.g. those dealt with in the
sections of the Indian Penal Code enumerated in the
Schedule above referred to, and the Schedule to the
Portuguese Treaty Act, IV of 1880. If the Resident meant
that desertion by merchant seamen should be de-
clared to be an extraditable offence, I entirely disagree
with him. The so-called "offence" is really a
breach of contract of service on the part of the
deserter.

4. The Resident appears to go beyond the case of desertion by a merchant seaman when he speaks of "any of the offences mentioned in the Acts and rules referred to" by him in paragraph 1. I confess I do not quite understand what the Resident meant by these references. The Act lays down what the extraditable offences are. Their number should not be added to without good reason for so doing.

5. The Resident suggests that one of the two following courses should be adopted, viz. -

(a) By the Cochin State "passing a regulation making it penal in Cochin to commit any of the offences mentioned in the Acts or Rules referred to, and empowering the special Magistrates of the State to try offenders against this law be they European or native British subjects, natives of Cochin or Travancore, or of other Treaty States in the Indian Empire, or Americans, or Europeans not being British Subjects" - or

(b) Legislation ... in the shape of a regulation taking in only such of the sections of the Acts alluded to, as can be made applicable to Cochin.

6. The Resident admits that "the greater portion of these Acts are entirely unworkable in Cochin," hence the alternative suggestion. If that

that be so, then the Resident apparently desires to have a number of new "offences" created by "legislation" in order that the present difficulties attending extradition may be got over. Even if this suggestion were carried out, I fail to see how it would affect "offenders escaping into Native States." Again, the penal laws of Cochin such escaped offenders ^{will} ~~do~~ not sin when they offend ~~the~~ against similar laws elsewhere. The Cochin Courts ^{can} ~~could~~ not try them, and Extradition ^{can} ~~could~~ not be demanded on the ground of similarity of laws. Enlarging the list of criminal offences in Cochin may or may not be desirable, expedient or necessary, but how can such increase affect the present law relating to extradition?

7. I regret if I have misunderstood the letter under consideration, or have misstated the writer's suggestions and difficulties. My excuse is that the letter does not state clearly what the points are on which advice is sought. In parts the Resident seems to go generally into the law relating to Extradition. That law cannot be disposed of in an "Opinion", and I can only refer to Sir Ed. Ward Clarke's work thereon. In other places the Resident seems to deal with certain classes of

of cases which have arisen or which may arise with regard to extradition, but unfortunately no distinct cases are stated so as to allow of distinct opinions being expressed with regard to them. I must, therefore, refer generally to Mr. Mayne's Commentary on Section 4 of the Indian Penal Code in which he deals with the various cases which may arise with regard to extradition.

J. H. Spring Branson

Advocate General

Madras

10th April

1895

Madras 10th April 1895

From

The Honble J. H. Spring Branson

Advocate General

To

The Honble J. V. Price Esq

Chief Secretary to Govt.

Fort St George

Sir,

With reference to your endorsement on the letter from the Resident in Travancore and Cochin dated the 24th February 1895, I have the honor to forward herewith my opinion on the points raised in that letter which I return herewith.

I have the honor to be

Sir

Your most obedient servant

J. H. Spring Branson

Advocate General

When given for copying _____
When copied _____
When examined _____
When signed _____

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READ AGAIN G.O., No.
189

DATED

CURRENT No.

ENCLOSURES TO C. No.

ORDER OF GOVERNMENT

A A A A A A A

LETTER OF GOVERNMENT.

STATEMENT WITH DITTO.

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

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