

Judicial (1895) Department.

ORDINARY PRINTED.

G.O., No 986

Dated 11th May 1895

INDEXED.

[Despatch Abstract.]

FOREIGN JURISDICTION AND EXTRADITION ACT, 1879.

Recording correspondence regarding the trial of prisoners surrendered to the States of Travancore and Cochin under the provisions of the----, and directing the Advocate-General's opinion on the subject to be communicated to the Resident.

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
	2162		5-9-94				

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
	3621		1895				

11TH MAY 1895, No. 986, JUDICIAL.

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

READ—the following papers :—

From H. B. GRIGG, Esq., C.I.E., Resident in Travancore and Cochin, to the Chief Secretary to Government, dated Cochin, 27th February 1895, Ref. on C. No. 334.

* * * * *

Para. 2. . . . I beg to enquire whether, when persons are accused of extraditable as well as non-extraditable offences and they are surrendered to Native States under warrants issued by Political officers for extraditable offences only, the courts of Native States are at liberty to try and punish them for the non-extraditable offences also. As the surrender of accused persons is not made on condition that they should be tried only for the extraditable offences, I am inclined to think the courts have the right to try and punish for the other offences also, but, politically, I should say that such cases should be specially reported before the sentence is passed, or at any rate given effect to, as abuses might otherwise occur and the protection to accused persons which the Act secures seriously impaired or lost. I presume there is no objection to the trial and punishment of an extradited offender for another extraditable offence not mentioned in the warrant, although even this practice might be attended by consequences not at all contemplated when the surrender was demanded by the Political officer. Thus a person might be extradited for robbery and subsequently convicted and punished for manslaughter and nothing be known of the fact until the half-yearly return was submitted.

* * * * *

From the Government Solicitor, Madras, dated 24th April 1895, No. 250.

ABSTRACT.—Forwarding the following opinion of the Advocate-General, dated 23rd April 1895 :—

[Regarding the trial of prisoners surrendered to the States of Travancore and Cochin under the provisions of the Foreign Jurisdiction and Extradition Act, 1879.]

OPINION.

1. The questions raised by the Resident may be thus stated :—

When accused persons are extradited under warrants issued by the Resident in Travancore and Cochin, can the courts in those States try the persons so surrendered for any non-extraditable offences mentioned in the warrants or for extraditable offences not mentioned therein? For the reasons given below I answer this question in the affirmative.

2. "Crimes are in their nature local and the jurisdiction of crimes is local." (a)

(a) Per De Gray, C.J., in *Rafael vs. Verelst* 2, W. Blackstone, 1058, *Keighley vs. Bell* 4. Post and Fin. 790.

(b) Per Heath, J., in *Mure vs. Kays* 4 Taunt. 43.

Extradition is only a means of bringing the accused before the tribunals having jurisdiction, and "the principle upon which all extradition rests . . . is, that a

State, against whose laws a person subject to their obligation has committed an offence, is entitled to ask, as a matter of international courtesy, that the authorities of the place in which he has taken refuge shall assist in his being brought to justice, by surrendering him to the executive of the country whose tribunals are entitled to punish the offence committed." (c) The question of the jurisdiction of those courts is entirely independent of the question of extradition. Jurisdiction depends upon the law of the country to which the tribunals belong. The granting of extradition is regulated and limited by treaty between independent States, or by legislative enactment in such cases as that now under consideration.

(c) Clarke upon Extradition, 3rd Edn., p. 223. question of the jurisdiction of those courts is entirely independent of the question of extradition. Jurisdiction depends upon the law of the country to which the tribunals belong. The granting of extradition is regulated and limited by treaty between independent States, or by legislative enactment in such cases as that now under consideration.

3. Extradition proceedings do not, in their nature, involve any right of the person surrendered to be secured against prosecution upon any other charge than the one upon which his extradition was asked. In *Caldwell's case* (d) Benedict, J., said "while abuse of extradition proceedings, and want of good faith in resorting

(d) Cited by Clarke p. 118; see also remarks of Macaulay, C.J., in *Reg. vs. Dan Aduam* U. C. Rep. 4 C. P. 288, cited by Clarke at page 112.

to them, doubtless constitute a good cause of complaint between the two Governments, such complaints do not form a proper subject of investigation in the courts. To hold otherwise would . . . permit a person accused of crime to put the Government on trial for its dealings with a foreign power . . . But whether extradited in good faith or not, the prisoner, in point of fact, is within the jurisdiction of the court charged with a crime therein committed; and I am at a loss for even a plausible reason for holding . . . that the court is without jurisdiction to try him . . . I cannot say that the fact that the defendant was brought within the jurisdiction by virtue of a warrant of extradition for the crime of forgery affords him a legal exemption from prosecution for other crimes by him committed."

4. In *Queen Empress vs. Khoda Uma* (e) the Sessions Judge of Ahmedabad held that when the extradition of an accused person has been obtained on a representation charging him with a particular offence, the court can try him for that offence alone. On appeal the Bombay High Court held that this decision was wrong, and that there was nothing apparent in the circumstances of the extradition to justify the view of the Sessions Judge that the ordinary provisions of the Criminal Procedure Code were not binding on the Sessions Court as its *lex fori*. "We think that it was competent to that court to alter the charge under section 227 and that it was incumbent on it in its expressed views on the facts to convict of theft under section 238, when acquitting of the more serious charge of dacoity." In the above case the accused were subjects of the Gaekwar of Baroda and their extradition was obtained on the charge of dacoity committed in the Ahmedabad district. The Sessions Judge held that dacoity had not been proved and that the prisoners could not be tried for theft as that was not the charge on which they had been extradited.

(e) I.L.R., 17 Bom., 369.

5. The Resident states that "the surrender of accused persons is not made on condition that they should be tried only for the extraditable offences;" there is nothing in the Treaties with Travancore or Cochin by which the power of the courts of those States to try extradited persons is limited to the offence for which the surrender is made (f); and the Foreign Jurisdiction and Extradition Act, 1879, (g) contains no provision similar to section 3 (2) of the Extradition Act, 1870 (h). The courts of the State to which a prisoner is surrendered for trial can try him for all offences committed within their jurisdiction.

(f) See Atchison's Treaties, Vol. V.

(g) Act XXI of 1879.

(h) 33 and 34 Vict., c. 52.

(Signed) J. H. SPRING BRANSON,
Advocate-General.

ORDER—dated 11th May 1895, No. 986, Judicial.

Recorded.

2. The Advocate-General's opinion will be communicated to the Resident.

(True Extract.)

Chief Secretary.

To the Resident in Travancore and Cochin.

Exd. A. Raith.

Govt. of {1895} Madras.
JUDICIAL.

Issued

Recd.

Encl.

G.O., 11th May 1895, No. 986.

MAY.

Foreign Jurisdiction and
Extradition Act, 1879.

Recording correspondence regarding the trial
of prisoners surrendered to the States of Travancore
and Cochin under the provisions of the —,
and directing that the Advocate-General's opinion
on the subject be communicated to the Resident.

[G.
75]

NOTE FOR THE UNDER SECRETARY.

The paper has been paired
as directed by Mr. W. W. W. W.
— please see his instructions
on the original. This

seems to be the only question
raised in the current.
This paper was never before
the Advocate-General before

2. We have run out of
our stock of better paper
the only office having
earned away a supply

we have ordered a
fresh supply & meanwhile
we have borrowed some
from the other office for
present use. W. W. W.

H. C.

Is this right? Surely
the Rest raised other
questions & the whole
letter should be com.
to the Adv. Gen.

But as a fact this letter
was com. to the A. G. some
time ago & I understood
that he had already sent
in his opinion.

See that there is no mistake.
2. Why has the office gone
back to the use of this
beastly white paper in spite
of the order that all papers
to be on the blue handwove? ^{is it}

Ref: on file 334

Half yearly Return under Rule 10 of the Rules under the Extradition Act (XXI of 1879) of persons made over by the Political Agent at Travancore for trial by the Courts of Native States under Rules 5 and 7 for the period ended 31st December 1894

Number	Name of person	Nationality	Offences with which charged	Where and when arrested	Before and place of surrender	Native State to which surrendered for trial	Reason for surrender	Nature of sentence passed with date of sentence	Remarks
703 of 1070 on the file of the District Magistrate Puducherry	1. Massoon Khan	Mussulman	Offences under	Tanjore	Before the District Magistrate Puducherry	Tanjore	For being concerned in the theft of jewelry from the Pagoda at Cape Comorin	Prisoners 1, 2, 3, 4, 5, 6, 8, 11, 12, 13 & 14 committed to the Magistrate's Sessions for trial on the 25-12-94	Pending before the Sessions Court on account of the non attendance of witnesses residing at Kullu and other places and to whom process have been sent for their appearance.
	2 Sheikh Hussain	Do	Sections 380, 458	13 June 1894 10 June 1894	21-7-94 7 July 1894	Do			
	3 Gulam Feylam	Do	461, 399 and 401	Do	Do	Do			
	4 Kalandar Khan	Do	of the Indian	Bangalore	30 July 1894 16 July 1894	Do	Under the office of the 3007 of 29-6-94	Prisoners 7 and 9 and 10 discharged on the same date	
	5 Hyder Khan	Do	Penal Code	Do	Do	Do	3029 of 30-6-94		
	6 Jan Mohamed	Do	Do	Do	Do	Do	4305 of 28-6-94		
	7 Mohammed Syed	Do	Do	Do	Do	Do	1231 of 30-6-94		
	8 Sarfuz Khan	Do	Do	Do	Do	Do			
	9 Mohammed Harif	Do	Do	Do	Do	Do			
	10 Meer Abdul Ali	Do	Do	Do	Do	Do			
	11 Byram Khan	Do	Do	Do	Do	Do			
	12 Meah Khan alias Abdul Rahman	Do	Do	Hyderabad (Deccan)	10-10-94 28 March 1894	Do			
	13 Kairatund Dewasay	Marwade	Do	Hubli	18-6-94 6 July 1894	Do			
	14 Meah Jan	Mussulman	Do	Do	22-6-94 16 July 1894	Do			
10110 of 1070 on the file of the third class Magistrate Kottar	Piraven Muniandy	Tamil	Theft under Section 380 I.P.C.	Pulamecottah	27-7-94 13 July 1894	Do	For having stolen a pair of bullocks belonging to one Akhramamedan Velayathan of Kottar	Prisoners sentenced to one month's rigorous imprisonment with 29 Oct 1894	
					25-10-94 10 February 1894	Do	Under the office of the 4760 of 25-9-94	14 February 1894	

no 55 of 1070 in the file of the second class ma- gistrate Thenkottai	Vallabam Thaven	Maraven	Theft under Section 379 I. S. C.	Thinnavelly 22-10-94 7 th January 1070 Alphay	Thenkottai 25-10-94 10 th July 1070	For having stolen a pair of bullocks belonging to a person at Thenevottai Vide this office no 2696 J 1297 27-13-5-94	Prisoner discharg- ed under Section 230 of the Criminal Procedure Code on the 21 st December 1894 8 th January 1070
no 17 of 1069 on the file of the first class Magistrate Cardamom Hills	Kori Nagar	Blacksmith	Section 406 I. S. C. Criminal breach of trust	Mathuram in Palghat 25-7-94 11 th July 1069	Devicolum 5 August 1894 22 July 1069	For having ab- sconded with the working imple- ments entrusted to him by his employer Vide this office no 2996 J 927 27-28-6-94	Prisoner sentenced to one month's rigorous imprison- ment on 13-8-94 2 nd July 1069
no 27 of 1069 on the file of the first class ma- gistrate Cardamom Hills	Paichen Kutthan	Tallen	do	Purvoor in Thinnavelly 13-9-94 29 March 1070	Devikulam 29-9-94 16 February 1070	For having ab- sconded with the working implements en- trusted to him by his employer Vide this office no 4253 J 1296 25-8-94	Prisoner sentenced to one month's rigorous imprison- ment on the 5-10-94 20 th February 1070

Case no 499 of 1069 on the
file of the third class ma-
gistrate Kotar reported
as pending, in the last
return has been disposed of
by the conviction and sentence
of the ~~1st~~ accused to one
month's rigorous imprison-
ment ~~and the discharge of~~
~~the 2nd accused under section~~
~~235 of Criminal Procedure~~
Code on the 17-7-94
3rd July 1069.

Handwritten signature/initials.

Thinnavelly
Dewan.

Ref: on encl. 334
1895

1157
Resident's office on circuit
Cochin, 27th February 1895.

From H. B. Grigg Esquire C.D.E.
Resident in Travancore and Cochin

To
The Honorable Mr. J. G. Price C.S.J.
Chief Secretary to Government
Fort Saint George

Sir,

I have the honor to submit herewith the
return of persons made over for trial by the Courts
of Travancore during the half year which ended
on the 31st December 1894.

2. The return shows that the total number
of persons surrendered during the half year was
18, of whom however no less than 14 were implicated
in a single case, the Cape Comorin Pagoda theft
case. Of these 18 persons, 3 were acquitted, one
discharged and 3 convicted, leaving 11 committed
to the sessions for trial. There has been considerable
delay in the committal of these persons but
as the Government is already aware the case
against them was a very important one
and the necessary evidence had to be collected
from all parts of India and even Ceylon. The
delay could not therefore be avoided. The sessions

trial is however going on and I have no doubt it
will soon be brought to a close. In this connection
and with reference to Case No 3 of 1070 on the
file of the District Magistrate, Pudukkottai,
I beg to enquire whether, when persons
are accused of extraditable as well as non-extraditable
offences and they are surrendered to Native States
under warrants issued by Political Officers for
extraditable offences only, the Courts of Native
States are at liberty to try and punish them for
the non-extraditable offences also. As the surrender
of accused persons is not made on condition that
they should be tried only for the extraditable
offences, I am inclined to think the Courts have
the right to try and punish for the other offences
also, but politically, I should say, that such cases
should be specially reported before the sentence
is passed, or at any rate given effect to, as abuses
might otherwise occur and the protection to
accused persons which the Act secures, seriously
impaired or lost. I presume there is no objection
to the trial and punishment of an extradited
offender for another extraditable offence not mentioned
in the warrant. although even this practice
might be attended by consequences not at all
contemplated when the surrender was demanded
by the Political Officer. Thus a person might be

extradited for robbery and subsequently convicted
and punished for manslaughter and nothing be
known of the fact until the half yearly return was
submitted.

3. In case No 110 of 1070 on the file of the 3rd Class
Magistrate, Kottar, there was a delay of nearly three
months between the date of arrest and that of surrender
due to the institution of Extradition proceedings after
the arrest of the party by the British Police. There was
also a little delay between the date of surrender and
that of disposal in case No 55 of 1070 on the file of
the 2nd Class Magistrate, Shencottah but it was under
two months.

4. The only person who was under trial
when the previous half year closed as stated in
para 2 of my Ref: on C^{no} 2287 of the 28th July
1894 was convicted and sentenced to one month's
rigorous imprisonment on the 17th Idem.

5. The corresponding return for
Cochin has not yet been received but I have
already sent a reminder for it and it will be
submitted on receipt.

I have the honor to be
Sir

Your most obedient servant

H. P. J.

Resident

1895

From

The Resident in Travancore and Cochin

The Chief Secretary to Government
Fort St. George

So 260 7 Feb 95 kival
So 2162 5994 kival
So 1994 18854 kival

CS

For orders

With reference to the Resident's query in para. 2 of his letter as to whether the Courts of native states are at liberty to try & punish persons accused of extraditable as well as non-extraditable offences but summoned under Pol. officers' warrants for extraditable offences only? No ruling on the subject can be traced - so the following intermediate order is proposed.

Order (Routine) 13 April 95 R No 451

The question raised by the Resident will be referred to the Advocate General for favour of the opinion

The Govt. Secy. 11/4/95 DESPATCHED
with copy of portion of para. 2 of letter
(marked with blue pencil) 11/4/95

Forwarding the return of persons made over for trial by the Courts of Travancore during the half year which ended on the 31st December 1894

11/4/95

(Forwarded)

CURRENT NO 2052

Re the trial of prisoners surrendered to the States of Travancore and Cochin under the provisions of the Foreign Jurisdiction and Extradition Act 1879.

Opinion.

1. The questions raised by the Resident may be thus stated:-

When accused persons are extradited under warrants issued by the Resident in Travancore and Cochin can the Courts in those States try the persons so surrendered for any non-extraditable offences mentioned in the warrants, or for extraditable offences not mentioned therein? For the reasons given below I answer this question in the affirmative

2. "Crimes are in their nature local and the jurisdiction of crimes is local" (a) "By the covenit of nations, the country in which the criminal has been found, has aided the police of the Country against which the crime was committed in bringing the criminal to justice" (b) Extradition is only a means of bringing the accused before the tribunals having jurisdiction, and "the principle upon which all extradition rests ... is, that a State, against whose laws a person subject to their obligation has committed an offence, is entitled to ask, as a matter of international courtesy, that the authorities of the place in which he has taken refuge shall assist in his being brought to justice, by surrendering him to the Executive of the Country whose tribunals are entitled to punish the offence committed" (c) The question

(a) De Gray, C.J. in *Rafael v. Exelst*
D.W. Blackstone, 1058
Keighly v. Bell, 4 Fost.
7 Feb, 740

(b) Per Heath, J. in
Murre vs. Ruy 4
Lamb, 43.

(c) Clarke upon
Extradition 3rd Edn.
p. 223.

question of the Jurisdiction of those Courts is entirely independent of the question of extradition. Jurisdiction depends upon the law of the Country to which the tribunals belong. The granting of extradition is regulated and limited by treaty between independent States, or by Legislative enactment in such cases as that now under consideration.

3. Extradition proceedings do not, in their nature, involve any right of the person surrendered to be secured against prosecution upon any other charge than the one upon which his extradition was asked. In Caldwell's Case^(d), Benedict, J. said "while abuse of extradition proceedings, and want of good faith in resorting to them, doubtless constitute a good cause of complaint between the two Governments, such complaints do not form a proper subject of investigation in the Courts, ... To hold otherwise would ... permit a person accused of crime to put the Government on trial for its dealings with a foreign power. ... But whether extradited in good faith or not, the prisoner, in point of fact, is within the Jurisdiction of the Court - charged with a crime therein committed; and I am at a loss for even a plausible reason for holding ... that the Court is without Jurisdiction to try him ... I cannot say that the fact, that the defendant was brought within the Jurisdiction by virtue of a warrant of extradition for the crime of forgery affords him a legal exemption from prosecution for other crimes by him committed."

4. In Queen Empress vs Khoda Uma^(e) the Sessions Judge

(d) Cited by Clark Rep 118 see also remarks of Macaulay C.J. in Reg v Van Buren U.C. Rep 4 C.P. 288 cited by Clark at page 112.

(e) I.L.R 17. Bom. 369.

Judge of Ahmedabad held that when the extradition of an accused person has been obtained on a representation charging him with a particular offence, the Court can try him for that offence alone. On appeal the Bombay High Court held that this decision was wrong, and that there was nothing apparent in the circumstances of the extradition to justify the view of the Sessions Judge that the ordinary provisions of the Criminal Procedure Code were not binding on the Sessions Court as its lex fori. We think that it was competent to that Court to alter the charge under Section 227 and that it was incumbent on it in its expressed views on the facts to convict of theft under Section 238, when acquitting of the more serious charge of dacoity". In the above case the accused were subjects of the Gaekwar of Baroda and their extradition was obtained on the charge of dacoity committed in the Ahmedabad District. The Sessions Judge held that dacoity had not been proved and that the prisoners could not be tried for theft as that was not the charge on which they had been extradited.

5. The Resident states that "the surrender of accused persons is not made on condition that they should be tried only for the extraditable offences; there is nothing in the Treaties with Travancore or Cochin by which the power of the Courts of those States to try extradited persons is limited to the offence for which the surrender is made."

And the Foreign Jurisdiction and Extradition Act, 1879, (1) contains no provision similar to Section 3 (2) of the Extradition Act, 1870 (2) The Courts of the State to which a prisoner is surrendered for trial can try him for all offences committed within their jurisdiction

(1) See Alabianus
Treaties, Vol V
(2) Act of 1879
(3) 23 & 24 Vict. c. 52.

J. H. Spring & Co.
Advocate General.

Madras
23rd April 1895

(True Copy.)

Ernest Barclay
Government Solicitor

CURRENT NO. 2052

To: (1895) Department

From
Ernest Barclay
Government Solicitor
Madras

To
The Chief Secretary
to Government
Coatacamund

21 R 17 Bombay 369
archivist's collection Vol V
23 & 24 Vict. c. 52
No 250

Dated 24 April 1895
Recd 25th do
Regd 26th do
Encl: "

Forwarded with reference
to the Order of Government
dated 13 April 1895
R. No 45 Judicial

Ernest Barclay
Government Solicitor

Law Dept. to be kept
then books quoted must be available

10.45/R/95 + papers

Hu?

Read again p. 13 ap. 95 R. No. 451

For order

Perhaps the Adv. Gen's opinion
may be printed + com. to the Resident in T. & C.
+ the Political Dept.?

Round 11. "May 1895, no. 986
P.S. Recorded 9/5/95
2. The Advocate General's
opinion will be communicated
to the Resident

In 1895 2.5.85
The Resident 24/5/95

From the post to the Resident
No. 250
Forwarding the copy of the
of the Adv. Gen. to the Resident

(Over)

24/5/95

24/5/95

307
11TH MAY 1895, No. 986, JUDICIAL.

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

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State, against whose laws a person subject to their obligation has committed an offence, is entitled to ask, as a matter of international courtesy, that the authorities of the place in which he has taken refuge shall assist in his being brought to justice, by surrendering him to the executive of the country whose tribunals are entitled to punish the offence committed." (c) The question of the jurisdiction of those courts is entirely independent of the question of extradition. Jurisdiction depends upon the law of the country to which the tribunals belong. The granting of extradition is regulated and limited by treaty between independent States, or by legislative enactment in such cases as that now under consideration.

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(g) Act XXI of 1879.

(h) 33 and 34 Vict., c. 52.

(Signed) J. H. SPRING BRANSON,
Advocate-General.

ORDER—dated 11th May 1895, No. 986, Judicial.

Recorded.

2. The Advocate-General's opinion will be communicated to the Resident.

(True Extract.)

Chief Secretary.

To the Resident in Travancore and Cochin.

Exd. A. Raiff.

Gobt. of {1895} Madras.
JUDICIAL.

Issued

Recd.

Encl.

G.O., 11th May 1895, No. 986.

MAY.

Stutter

Foreign Jurisdiction and
Extradition Act, 1879.

Recording correspondence regarding the trial
of prisoners surrendered to the States of Travancore
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