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MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.

359

Press

Mis.

Dated

10.2.43

18

1943

Not to be folded or roughly handled

No. 93. Read also letter from the Government Solicitor, Madras, to the Chief Secretary to Government, Fort St. George, dated Madras, 9th August 1871, No. 317, submitting the following opinion of the Advocate-General:—

The question involved in this reference is one of considerable importance, and it appears to me that the Order of Government, dated 8th May 1867, No. 741, which seems to have been made without reference to the Law Officers, is incorrect. That order lays down correctly that "the case falls within the provisions of Act VII of 1854," but assumes, incorrectly in my opinion, that the procedure laid down in sections 1 to 15 of that Act is to be pursued in the case of requisitions from the French Government.

3. Sections 22 and 23 provide for cases where an Extradition Treaty exist. The former section extends the epithet "heinous" so as to include any offence to which such treaty applies; the latter section enables Government by a mere order in writing to carry out the terms of the treaty, where it provides for extradition in different cases, or in a different manner from that provided for in the Act.

5. It appears to me that this may be done either by a general order of Government applicable to all cases, or by a special order issued in each case. The general order might direct that all applications by the French authorities should be directed to a particular officer, for instance to the Collector; that he should call for

G.O. M. No. 2776, ~~mem.~~ d 11/8/61

*Proceedings of the Madras Government, Judicial Department,
14th March 1872.*

such information or documents as were required to satisfy himself that a judicial proceeding had been instituted within French limits for a debt contracted, or for an offence committed within the limits; and that the person against whom such proceedings were instituted had taken refuge within the British limits, and that upon being so satisfied he should, either with or without reference to the Government, hand over the person claimed to the French authorities. If the Government authorized him to hand over without previous reference, I think his proceedings should be at once communicated to Government, so as to afford the officer the further protection of ratification of his act (see *Buron v. Denman* 2 Exch. 167); or the Government might direct that each case should be referred for special orders. In either mode of proceeding there must be an order in writing signed by one of the Secretaries of Government. The course hitherto adopted in South Arcot seems to be substantially the same as the former of the above modes of procedure, but there is probably no order in writing to justify it.

6. As to demands by the British Government they involve less nicety, as the person once delivered up would be dealt with by the usual procedure, and any flaw in the process of extradition would give rise to a claim for redress against the French authorities, not against the British, since the latter as soon as they get possessed of the person, would deal with him under the same principles as if he were a resident. If the French do not object I see no reason why the Government should not delegate to any selected officer the power to make demands under the treaty. If the French did object, it would probably be necessary that the demand should be a formal one proceeding from the Government.

(Signed) JOHN D. MAYNE,
Acting Advocate-General.

7th August 1871.

No. 94. ORDER THEREON, dated 14th March 1872, No. 359.

These papers were ordered to lie over, on the supposition that the question might be affected by the legislation contemplated by the Government of India on the subject of extradition. They may now be disposed of, it appearing that the Bill before the Governor-General's Council for the purpose of making Laws and Regulations does not extend, so far as India is concerned, to the dominions of other than Native States.

2. With the papers transmitted to the Advocate-General it would seem that G.O., No. 510, of 14th November 1861, Political Department, should have been forwarded, but it was inadvertently kept back. In paragraphs 4 and 5 of the letter of the Government of India to His Excellency the Governor of the French Settlements, it was remarked—

(1)—That by the tacit consent of both the contracting powers—the French and English Governments—the clause in the Convention of March 1815 relating to the extradition of *debtors*, has been treated as not in force and has not been acted on; consequently it must be considered null and void.

(2)—That, further, although the 9th Article of the Treaty speaks of *offences* generally, the subsequent and uniform exposition of the Article, by the Acts and Declarations of the two Governments, has virtually put an interpretation to some extent upon the word “*offences*,” so as to limit its meaning to offences of a grave character, and to exclude from the operation of the treaty (a) mere petty local offences, which would not necessarily be treated as criminal acts by the laws of both countries, and (b) political offences.

3. Paragraph 4 of the Advocate-General's letter must, therefore, be read with the foregoing limitations.

*Proceedings of the Madras Government, Judicial Department,
14th March 1872.*

4. Proceeding to consider the two alternative courses for the surrender of suspected criminals (in respect of whom the pendency of a judicial inquiry on the part of the French authorities has been established), suggested by the Advocate-General, the Governor in Council resolves to give a general direction to the Magistrates of those districts which are immediately adjacent to the several French establishments to surrender to the French authorities all persons claimed by them, as fugitives from justice in respect of offences of a grave character. All felonies and all crimes described as “*heinous*” in the Fugitive Foreign Offenders' Act, No. VII of 1854, would of course come within the category of grave offences. Other cases of grave offences might easily be suggested; and where there is room for doubt, a reference to Government will be requisite before surrender is made; while a report of his proceedings in every case of surrender should be invariably made by the Magistrate with a view to his protection by the ratification of his act, as advised by the Advocate-General.

(True Extract.)

Acting Secretary to Government.

To the Magistrate of South Arcot.
“ “ of Tanjore.
“ “ of Malabar.
“ “ of the Godavari district.
“ Government Solicitor.
“ Inspector-General of Police, with G.O., No. 1033.

Exd. W. H. French.

15.3.11
8-8-06
13.9.32
22-11-13
22-5-10
11-1-28
5/2/29
12.5.24
6-12-35
15-11-37
18.12.20

Regiment

Govt. of 1872 Ma
JUDICIAL.

To
THE MAGISTRATE OF SOUTH
&c., &c.

Dated March, 14th.

Recd.

Encl.

14th March 1872

MARCH.
Nos. 93-94.

Issuing orders on the subject of the extradition
of fugitives by the British and French Govern-
ments in India.

No. 317.

Madras, 9th August 1871.

From

H. G. Trichard
Government Solicitor,
Madras,

To

The Honorable R. S. Ellis, C. B.,
Chief Secretary to Government,
Cotacamund.

Sir,

1. I have the honor to acknowledge the receipt of the
Order of Government dated 25th July 1871, No. 1033,
Judicial Department, requesting the Acting
Advocate General's Opinion as to whether the extension
to all districts bordering on French territory, of the
practice observed in South Arcot in the matter of the
surrender on the part of the British and French
Governments of persons who being charged with the
commission of offences in the territories of the one -
State take refuge in that of the other, is free from
legal objection.

2. I submitted the matter for the consideration
of the Acting Advocate General and

3. I now forward herewith a copy of his
opinion.

I have the honor to be,

Sir,

Your most Obedient Servant,

H. G. Trichard

Government Solicitor.

Opinion

The question involved in this reference is one of considerable importance - and it appears to me that the Order of Government - 8th May 1867 N^o 741 which seems to have been made without reference to the Law Officers, is incorrect. That order lays down correctly that "the Case falls within the provisions of Act VII of 1854," but assumes, incorrectly in my opinion, that the procedure laid down in S.S. 1-15 of that Act is to be pursued in the case of requisitions from the French Government.

2. Act VII of 1854 provides for two classes of cases in which the delivery up of an offender is sought by a foreign Government. One where no treaty of extradition exists, the other where there is such a treaty. In the former case no demand for extradition is even admissible unless the person is charged with a heinous offence as defined in S. 21, or with an offence which is serious and aggravated, and for which the person accused cannot be tried under Act I of 1849 (S. 22). Further, assuming such a charge to be made, the Government is to be satisfied that a prima facie case of guilt is made out - therefore the Magistrate is not unless in emergent cases, (S. 19.) to take any steps until he has received an order in writing from the Government for enquiring into the truth of the charge (S. 1) when he has received this order he is to make a judicial enquiry as to the sufficiency of the evidence to make out a case of guilt, and if he is not so satisfied the prisoner is to be discharged (S. 7) It is only after a consideration of the Magistrate's report

Dec. 26th Jan 1868 - 157
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 20th Dec 1869 - 159

Indicent 1871. 18th Dec 1871

Chief Secretary to Govt

Chief Secretary to Govt

Chief Secretary to Govt

Chief Secretary to Govt

Chief Secretary to Govt

It appears to me that the Order of Government - 8th May 1867 N^o 741 which seems to have been made without reference to the Law Officers, is incorrect. That order lays down correctly that "the Case falls within the provisions of Act VII of 1854," but assumes, incorrectly in my opinion, that the procedure laid down in S.S. 1-15 of that Act is to be pursued in the case of requisitions from the French Government.

report, that the Government make the order for extradition, and then only if they agree in the view which he takes of the sufficiency of the evidence. (S. 14)

3. Sections 22 and 23 provide for cases where an extradition treaty exist. The former section extends the epithet "heinous" so as to include any offences to which such treaty applies - the latter section enables Government by a mere order in writing to carry out the terms of the treaty, where it provides for extradition in different cases, or in a different manner from that provided for in the Act.

4. Now it appears clear that the treaty of 1815 cannot be dealt with in the manner provided by S. 5. 1-15. In the first place it refers to suits for debts as well as to prosecutions for offences. In the next place it renders it obligatory on the British Government to deliver up all persons against whom judicial proceedings shall be instituted within the French limits, for offences committed or for debts contracted within the said limits, and who shall take refuge out of the same, irrespective of the opinion which the British Government may form as to the existence of the debt or the truth of the criminal charge. All that is to be established is the pendency of a judicial enquiry within the French limits in respect of a debt said to be contracted, or an offence said to be committed within its limits - where these facts concur the obligation to surrender is absolute - that this is so will appear evident on comparing the terms of this treaty with those of the treaty between France and England of February 1843 (1. Philb. Int. Law 137 27) which contains provisions analogous to those of Act VII of 1854. It seems therefore that the case is one which must be

be provided for in the manner pointed out in S. 23 of the last named Act.

5. It appears to me that this may be done either by a general order of Government applicable to all cases, or by a special order issued in each case. The general order might direct that all applications by the French authorities should be directed to a particular officer, for instance to the Collector, that he should call for such information or documents as were required to satisfy himself that a judicial proceeding had been instituted within French limits for a debt contracted or for an offence committed within the limits, and that the person against whom such proceedings were instituted had taken refuge within the British limits and that upon being so satisfied, he should either with or without reference to the Government, hand over the person claimed to the French authorities. If the Government authorized him to hand over without previous reference I think his proceedings should be at once communicated to Government so as to afford the officer the further protection of ratification of his act (See *Burton v. Deumain* 2 Exch. 167) or the Government might direct that each case should be referred for special orders. In either mode of proceeding there must be an order in writing signed by one of the Secretaries of Government. The course hitherto adopted in S. Arcot seems to be substantially the same as the former of the above modes of procedure but there is probably no order in writing to justify it.

6. As to demands by the British Government they involve less nicety, as the person once delivered up would be dealt with by the usual procedure, and any flaw in the process of extradition would give

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give rise to a claim for redress against the French authorities, not against the British, since the latter as soon as they get possessed of the person, would deal with ^{him} under the same principles as if he were a resident. If the French do not object I see no reason why the Government should not delegate to any selected officer the power to make demands under the treaty. If the French did object, it would probably be necessary that the demand should be a formal one proceeding from the Government.

/Signed/ John D. Mayne
Atty. Adv. Genl.
Aug: 7/41

/True Copy/

H. Richard
Government Solicitor.

15
Judicial Department.

Memorandum for Orders.

Letter from Govt. Solicitor - dated 9th August 1871.

In compliance with the Order of Government dated 26th July 1871, No 1033, the Ag Advocate General submits his opinion regarding the extradition of fugitives by the British and French Governments in India.

2. It is thought proper to bring to notice that since the issue of that Order it has been found that in 1861 the Government of India had occasion to express their views on this subject upon a reference made to them

by

Enclosure in letter from
the Government of India for
reference to the Chief Secy.
= copy to Govt. Secy. of India
= enclosed, dated 9th Aug.
1871, No 317.

2. Secy. to Govt. 1886/71

by the Governor of Pondicherry.

3. It will be seen from the letter of the Government of India, recorded in the Proceedings of this Government Political Dept, 14th Nov 1861, N^o 510, that the question having been raised as to whether the British Government, on principles of International law, and public policy, ought to treat Article 9 of the Convention of March 1815 between England & France as in full force and to avail itself of section 23 of Act VII of 1854 for the purpose of delivering up civil debtors and offenders generally, the Supreme Government observed that by the tacit consent of both

the contracting Powers, ¹⁷
~~the~~ ^{since} the date of the Treaty ~~and~~
~~to the present time~~ (a period of fifty-six years), the clause relating to the extradition of debtors, as distinct from that relating to criminals, had been treated as if it was not in force, and had ^{been} not acted on; and that in their opinion this circumstance was sufficient to justify the British Govt in declining to treat that branch of the Treaty as in force, and to render it proper for the British Government so to decline, while it maintained the force of the clause relating to criminal offenders.

4. The Government of India were further of opinion that although the 9th Article of

of the Treaty referred to offences generally, the subsequent and uniform exposition of the Article by the acts and declarations of the two Governments, had virtually put an interpretation to some extent upon the word "offences," so as to limit its meaning to offences of a grave character, and to exclude from the operation of the Treaty mere petty local offences, which ~~had~~^{would} not necessarily be treated as criminal acts by the laws of both countries, or political offences. They were, however, far from thinking that the operation of the Treaty should be limited in this respect to cases which in the English law were treated as felonies, or to the heinous

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offences enumerated in Act VII of 1854. In their opinion all such cases would fall within the provisions of the Treaty; and where a requisition was made properly supported under the Act, it should be complied with. And, conversely, the British Government need not scruple to call on the French Govt. to deliver up persons accused of having committed any of such offences within the British territories and of having sought refuge in a French Settlement. But where extradition might be required, either by the British or the French Government in the case of an offence not clearly falling within the

the description of a felony or a heinous offence but on the other hand not being obviously either a mere local and petty offence or a political one, the Government of India were of opinion that it much depended upon the circumstances of each particular case whether extradition should be sought or refused. ^{They added that} ~~and~~ it was impossible beforehand to lay down any universal rule which ~~will~~ should apply to all such cases. —

5. The views of the Government of India (which it will be seen, have been communicated to the French Govt), would, it is thought, render necessary a modification of paras 4 & 5 of the Opinion now given by Mr Mayne, as to the absolute obligation

My opinion was founded entirely upon the words of the treaty which I assumed to be still in force. But treaties become obsolete by disuse, or modified by mutual assent, evidence by the conduct of both parties, and my opinion would be materially altered by evidence of such modification. I was not aware of the proceedings of Nov 1861 when I wrote this.

of the British Government to deliver up all persons against whom judicial proceedings shall be instituted within the French limits for offences committed or for debts contracted within the said limits, and who shall take refuge out of the same, irrespective of the opinion which the British Government may form as to the existence of the debt or the truth of the criminal charge."

6. It is submitted therefore that the Proceedings of Government, ^{Pol. Dept. 14 Mar. 1861. N° 510} containing the letter of the Government of India above referred to, and the previous papers connected therewith, be furnished to the Advocate General, with request that

+ Pro. of Govt. Pol. Dept.
20. March 1860. N° 181.
— do — 19. March 1860. N° 155.
Ex. & Min. Cons. — 27 July 1858. N° 468.
— do — 9. July 1858. N° 440.
— 2. — 19 May 1858. N° 322.
Letter from Govt of India.
Foreign Dept. 2. June 1841. N° 1.
— do from Secy. Leg. Aff. 25 Nov. 1857.
— do — 27 Oct. 1857.
Genl. Letter from Honble. Secy. 12 May 1859.

that the subject may be re-considered and a further opinion submitted with special reference to the views expressed by the Government of India.—

7. Or, as it appears from the last para of the aforesaid Letter from the Govt of India that a reference was made by that Govt to the Home Govt, the case being one which concerned the interpretation of Treaties, and as no further communication has been recd by this Govt on the subject, it may be as well to apply to the Govt of India for a copy of the Home Govt's reply. At this reference, & to let the matter stand over until an answer is recd.—

+ I think that it would be well to defer any further reference to the Advocate General till it is ascertained whether the opinion of the Home Govt has been expressed upon the point B & C.

Draft

To The Secretary to the Govt of India
Foreign Dept.

Sir,

Letter from Govt of India
Foreign Dept. 5th March 1860
Letter from Madras Govt to the
Govt of India for Sept. 24th March
1860. No 181.
Letter from Govt of India dated
21st Oct. 1860 No 60.

Adverting to the Correspondence noted in the margin relative to the extradition of criminals by the British & French Govts in India, I am directed to enquire whether any reply has been recd from Her Majesty's Govt to the reference made to them on the subject by the Govt of India, and if so, to request that the Madras Govt may be furnished with a copy of the reply, and also with a copy of the Orders, if any, which the Supreme Govt may have issued thereupon.—

1871/72

Read again G.O. 26th July 1871
No 1033.

Read also letter from Govt. Secretary
of 9th August '71 No 317, forwarding
copy of the opinion of the (late) Acting
admiral on the foregoing correspondence.

Order 14 March 1872 No 359

These papers were ordered to be
on the supposition that the question might
be affected by the Legislative contemplated
by the Govt of India on the subject of
-dition. They may now be disposed of,
it appearing that the Bill before the
C.C.'s Council for the purpose of making
Laws & Regulations does not extend,
so far as India is concerned, to the
-dominions of other than Native States.

2. With the papers transmitted to the
admiral it was seen that G.O.
No 570 of 14th Nov. '61 Political Dept
-had been forwarded, but it was
-verbally kept back. In Paris 4th 25
of the letter of the Govt of India to his
Highness the Governor of the French Sahel,
it was remarked,

(1) that by the tacit consent of both the
Contracting powers - the French & English
Govts - the clause in the Convention of
March 1815 relating to the extradition
of debtors, has been treated as not in
force & has not been acted on; consequently
it must be considered null & void;

(2) that, further, although the 9th
article of the treaty speaks of offences

note Pro. and Sept
23rd Aug 71
No 179

Printed out to
Mr. [unclear]
afterwards by
[unclear]
[unclear] [unclear]
[unclear] [unclear]
of [unclear]

generally, the subsequent summary
 exposition of the Article
 by the Acts & Declarations of the
 two Govts, has naturally put a
 interpretation to some extent upon
 the word "offences", so as to limit
 its meaning to offences of a grave cha-
 racter, & to exclude from the operation
 of the Treaty those petty local offences,
 which are not necessarily to be treated as
 criminal acts by the laws of both
 countries, and (b) political offences.

3. Para 4 of the Adm. Genl's Order
 must therefore be read into the foregoing
 limitations.

4. Proceeding to consider the two alter-
 native courses for the surrender of
 suspected criminals, (in respect of
 "where the pendency of a judicial
 inquiry on the part of the French
 authorities has been established")
 suggested by the Adm. Genl, the

E. M. C. resolves to give a general
 direction to the Magistrates of those
 districts which are immediately
 adjacent to the several French
 settlements to surrender to the French
 authorities all persons claimed
 by them as being persons from French

in respect of offences of a grave
 character. All felonies & all crimes
 described as "heinous" in the Fugitive
 Foreign Offenders Act, No VII of 1854
 of course come within the category
 of grave offences. Other cases of
 grave offences might easily be dis-
 -tinguished; and where there is room for
 doubt, a reference to Govt will be requisite
 before surrender is made, while
 a report of his proceedings in every
 case of surrender shall be made by
 the Magistrate concerned, with a view
 to his protection by the ratification
 of his act, as advised by the Adm. Genl.

Dy 8/3.

unusually

To the Magistrate of South Arcot
 Tanjore Malabar
 Godavery District
 Govt. Solicitor
 Insp. Genl. of Police
 with G.O. No 1033

Sept 2/5

South Arcot
 Tanjore
 Malabar
 Godavery

Graduate of
Officer of the
Military Police
Department

35-9 JWC.
14.3.1872