

## MADRAS RECORD OFFICE.

Government of Madras.

*Judicial* DEPARTMENT.

|               |                  |
|---------------|------------------|
| G.O. No. 2391 | Press<br>Mis.-C. |
| Dated 19-11-  | 1881             |

Not to be folded or roughly handled

GOVERNMENT OF MADRAS.  
JUDICIAL DEPARTMENT.

19th November 1881, No. 2391.

Extradition.

Read the following paper:—

*From H. J. STOKES, Esq., District Magistrate of Madura, to the Chief Secretary to Government, dated Madura, 3rd November 1881, No. 840 [Current No. 3294].*

With reference to G.O., dated 14th March 1872, I have the honor to report that I received a letter from the Chef de Service, Karikal, on the 26th September 1881, enclosing a warrant for the arrest and surrender of one Karuppan, of Marudangudi, in Madura Taluk, who was reported to have committed theft of a cart and bullocks in Karikal. The prisoner was arrested and brought before me on the 14th October, and was kept under remand till the 27th October, pending a reference to the Chef de Service for the evidence in the case and for a Constable who could identify the prisoner;

\* (Copy enclosed.) but as that officer, in his letter,\* dated 25th October 1881, and received on the 26th, replied that his requisition might be complied with without the evidence, I passed proceedings† under date the 27th ultimo, and the prisoner was handed over

† (Copy enclosed.) to the Head Constable who came from Karikal on the same day.

2. Reference to Government was not made by me, as the procedure to be followed in such cases was not known, and as the copy of the G.O., dated 14th March 1872, prescribing the same, for which application was made in my letter, dated 19th October, was not received till the 31st idem.

3. With reference to paragraph 4 of the Government Order under reference, I beg to suggest that the general direction to surrender to the French Authorities all persons claimed by them as fugitives from justice in respect of offences of a grave character, given to the Magistrates of South Arcot, Tanjore, Malabar, and Godavari may be extended to Madura and such other districts as Government think proper. Railway communications having been established since the Government Order makes the extension requisite.

ORDER THEREON, 19th November 1881, No. 2391.

A copy of G.O., 14th March 1872, No. 359, will be furnished to all District Magistrates.

2. The authority given to the four District Magistrates quoted in paragraph 4 of that order will be extended to all other District Magistrates, who will be requested not to lose sight of the instruction given at the close of the paragraph.

(True Extract.)

R. DAVIDSON,  
Chief Secretary.

To all District Magistrates.  
" the Inspector-General of Police.  
" the Government Solicitor.

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

Read again G.O., 26th July 1871, No. 1053.

Read also letter from the Government Solicitor, Madras, to the Chief Secretary to Government, Fort St. George, dated Madras, 9th August 1871, No. 217, submitting the following opinion of the Advocate-General:—

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, 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.

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 Section 21, or with an offence which is serious and aggravated, and for which the person accused cannot be tried under Act I of 1849 (Section 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 (Section 19), to take any steps until he has received an order, in writing, from the Government for inquiring into the truth of the charge (Section 1); when he has received this order, he is to make a judicial inquiry 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 (Section 7). It is only after a consideration of the Magistrate's 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 (Section 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 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.

4. Now it appears clear that the treaty of 1815 cannot be dealt with in the manner provided by Sections 1 to 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 inquiry 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 Phill. Int. Law, page 427), which contains provisions analogous to those of Act VII of 1854. It seems to me, therefore, that the case is one which must be provided for in the manner pointed out in Section 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 authorised 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.

ORDER THEREON, 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 *felonies* 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.

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 immedi-

South Arcot.  
Tanjore.

Malabar.  
Godavari.

ately 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.)

D. F. CARMICHAEL,  
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. F. R. Bantleman.

1831

JUDICIAL

1831

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Madras District Magistrate's Office

3<sup>rd</sup> November 1881

CURRENT No. 3294 P

No. 840.

From, A. J. Stokes Esquire,  
District Magistrate of  
Madras.

To, The Honorable R. Davidson C.S.I.  
Chief Secretary to Government  
Madras.

Sir,

With reference to G.O. dated 14<sup>th</sup> March/81,  
I have the honor to report that I received a letter  
from the Chief-de-Service Karikal on the 26<sup>th</sup>  
September 1881, enclosing a warrant for the arrest  
and surrender of one Karuppan of Marichangudi  
in Madras Taluk who was reported to  
have committed theft of cart and bullock  
in Karikal. The prisoner was arrested  
and brought before me on the 14<sup>th</sup> October  
and was kept under remand till the 27<sup>th</sup>  
October, pending a reference to the Chief-de-  
Service for the evidence in the case and  
for a Constable who could identify the  
prisoner but as that officer in his letter  
dated 25<sup>th</sup> October 1881, and received on the 28<sup>th</sup>

Copy enclosed

Refused

replied that his requisition might be completed  
with without the evidence. I passed Proceedings (copy enclosed)  
under date the 27<sup>th</sup> Tellicherry and the prisoner  
was handed over to the Head Constable who  
came from Karikal, on the same day.

2. Reference to Government was not made  
by me as the procedure to be followed in such  
cases was not known and as the copy of  
the G.O. dated 14<sup>th</sup> March 1872 prescribing  
the same, for which application was made  
in my letter dated 19<sup>th</sup> October was not re-  
ceived till the 31<sup>st</sup> idem.

3. With reference to para 4 of the G.O.  
under reference, I beg to suggest that the  
general direction to surrender to the French  
Authorities all persons claimed by them, as  
fugitives from justice in respect of offences  
of a grave character given to the Magistrates  
of South-Arakan, Tanjore, Malabar and  
Godavari may be extended to Madras and  
such other Districts as Govt think proper.  
Railway Communications having been esta-  
blished since the G.O. makes the extension requisite

I have the honor to be  
Your most Obedt. Servant

By Order.  
Dist. Magistrate

Karikal, le 25 octobre 1837  
11

Republique française

Inde

Karikal.

N° 416.

Monsieur le Collecteur,

En réponse à votre lettre en  
date du 19 Octobre courant, N° 801 j'ai  
l'honneur de vous informer que la Commu-  
-nication du procès verbal de l'information  
presque contre le prévenu Karoupane n'est pas  
exigible. En effet, la Convention du 7 Mars  
1818 qui règle les rapports des Deux Gouverne-  
-ments en matière d'extradition n'a  
consacré aucune restriction de ce genre  
et stipule formellement au contraire que  
"tous les Européens ou autres quelconques contre  
qui il sera procédé en justice seront  
délivrés sur simple demande" Le gou-  
-vernement de l'Inde française n'exige  
la production d'aucune pièce pour livrer  
les inculpés recherchés par la justice  
anglaise. M. M. Les Collecteur de Bangalore,

de Negapatam de Mayavarom et de  
 Manjicoupan, usant de reciprocité font  
 Droit a nos Demandes d'extradition sans  
 Exhibition des proces verbaux d'information.

J'espère Monsieur le Collecteur que vous  
 vous ferez bien, adoptant le mode de pro-  
 céder conforme a' la convention du 7 Mars  
 1818, suivi par vos collègues, me livrer le  
 prevenu Karoupane, dont l'identité  
 sera certifiée par les agents de police  
 porteurs de cette lettre.

Veuillez agréer, Monsieur le Collecteur  
 l'assurance de ma haute considération

Le Chef de service pri

(signed) Chimant Chomey

(True Copy)

Milieu,  
 St-Martin

Enclosure No 1.

In a letter

From

The Dist Magistrate  
Madurai

No 840.

Dated 3<sup>rd</sup>

Received

} November 1881

No

Subject

Copy of letter in French

from Chef de Service

Karikal No 416 dated 25<sup>th</sup>

October 1881

Input 329/4/81

Proceedings of the District Magistrate  
of Madurai, dated 27<sup>th</sup> October 1881

Read letter from the Chef-de-Service,  
Karikal, No 416, dated 25<sup>th</sup> October 1881.

Gurusami Raja Head Constable (affirmed)  
Knows the accused, whose name is Karep-  
pau who is accused of having stolen  
a cart and bullocks six or seven months  
ago in Karikal.

Velu (Constable).

Knows accused who is named Kareppau  
and is accused of theft of cart and bul-  
locks belonging to a dancing girl.

Order

Give warrants to Head Constable to  
detain prisoners in custody and take them  
to Karikal.

(True Copy)

(Signed) H. J. Stokes  
Dist Magistrate  
L. A. R. V.  
S. J. Magistrate  
For Dist Magistrate

Enclosure No. 2.  
In a letter  
From  
The Distt Magt  
Madura

No. 840.  
Dated 3<sup>rd</sup> November 1881

No.

Subject.

Copy of Distt Magt's Proceeding  
dated 27 October 1881.

In J<sup>o</sup> 3294/81

From Dist Mag. Madura  
dated 3 Nov 81

A copy of G.O. 14 March 1872  
No. 3572.D  
will be supplied to all  
Dist. Magt.

Yes - traveling district  
under the same rules  
as in a district. He  
advises for the  
future that we  
may do in 1872

For orders whether the  
authority, given to certain  
Magt. by para. 4 of the G.O.  
above quoted, shall be  
extended to Madura &  
other districts.

In the case brought to  
notice the person, whose  
extradition was required,  
was a Native British  
Subject. A French subject  
must always be given up;  
in the case of  
a British Subject there seems

x

to be a direction (vide  
the Yarns case in G.D.

26 July 71. & Chap. III of  
XXI of 79)

*[Signature]*

*[Faint, mostly illegible handwritten notes on the left margin]*

I don't think it is  
the last person of the I  
Act of 1871  
"nothing in the Act  
shall apply to  
certain cases - of which  
there is one.

The Treaty says "Especially  
proceeds & others" which  
is intended to be  
from the time of  
the beginning of the  
proceeding line - and  
the same of the  
being a public act  
is pending in the  
practice.

*[Small handwritten mark or signature]*

29/8/81 12-1738  
 340-14-11-64  
 341-11-5-67  
 342-16-7-31  
 343-14-2-72

(1881)

Order 19<sup>th</sup> Nov 1881, No 2391 From <sup>Field Department</sup> <sup>Crataditau</sup>

The District Magistrate  
 Madurai

A copy of G.O. No. 14 March  
 1872. No. 359. will be  
 furnished to all Dist.  
 Magistrates.

The authority given to the  
 four Dist. Magistrates  
 quoted in para 4 of  
 that order will be ex-  
 tended to all other  
 Dist. Magistrates who  
 will be requested not  
 to lose sight of the in-  
 struction given at the  
 close of the para.

Yours obediently  
 All D. Mag. 13/11/81  
 J. G. P. 16/11/81  
 Govt. Secy. 17/11/81  
 H. P.

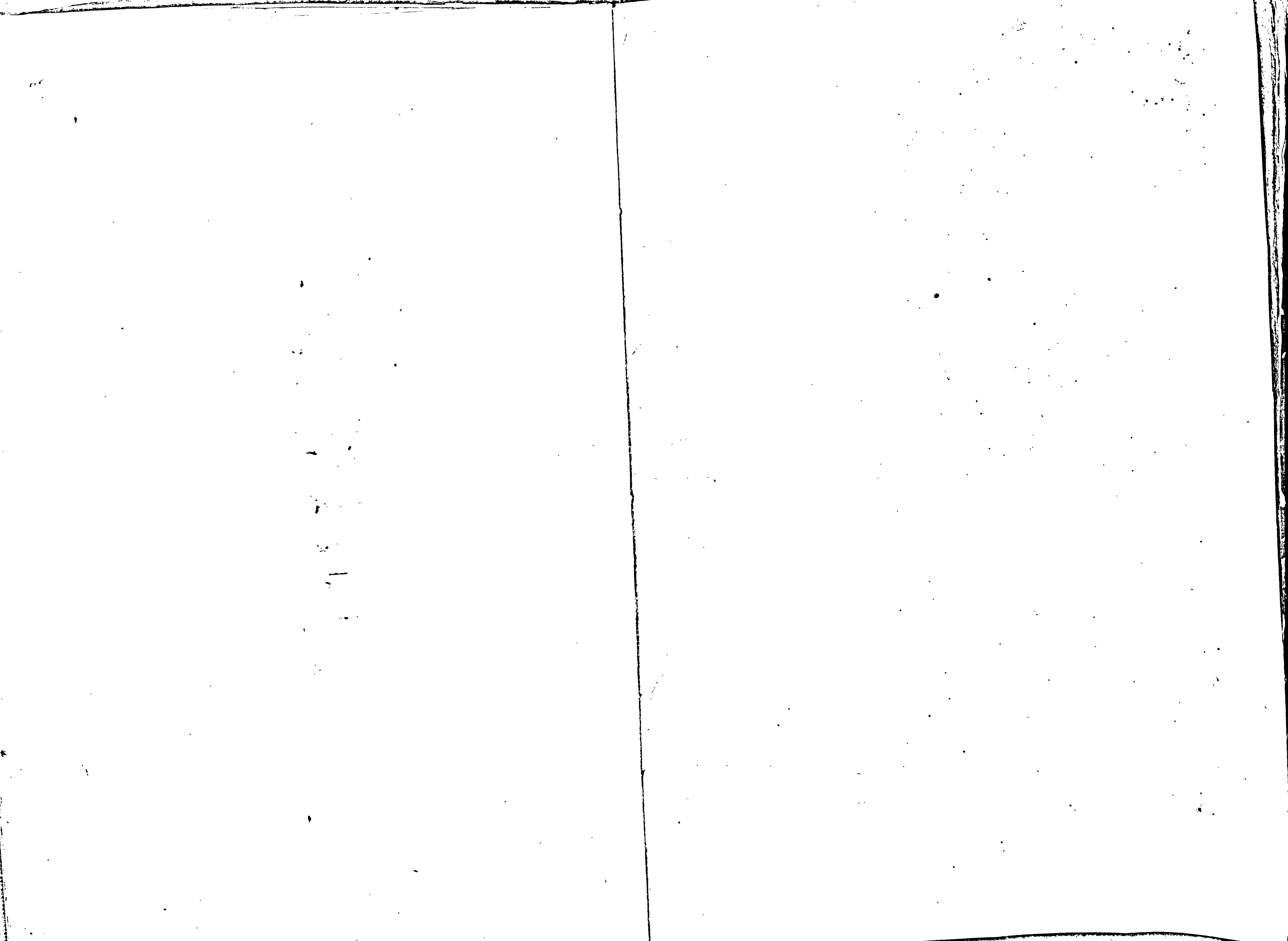
2391/81

No 840  
 Encl. Two.

Dated 3<sup>rd</sup> } November 1881  
 Received

CURRENT No. 3294

Subject-  
 Suggesting that the general  
 direction contained in G. O.  
 dated 14<sup>th</sup> March 1872, to  
 surrender to the French  
 Authorities all persons clai-  
 -ed by them, as fugitives for  
 justice in respect of offences  
 of a grave character given  
 to certain Magts may be ex-  
 tended to this Dist & such other  
 Distts as Govt think proper



16.7.04  
14.10.05

29.11.04 ✓  
27.1.05 ✓  
15.3.06 ✓  
8.8.06 ✓  
2.11.13 ✓

18.12.20 ✓  
31/29.11 ✓  
13.9.32 ✓  
12.5.34 ✓

21/6-55  
2

Extradition ~~copy of~~  
~~359 of 1872~~ furnished to all  
the authority given  
to certain St. Mag to  
surrender to the French author-  
ties all persons claimed by  
them as fugitives from justice  
in respect of offences of a grave  
character, extended to all other  
St. Magistrates.

2391  
19-11-1881  
✓

