M.R.O. 1—38,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Political DEPARTMENT.

G.O. No. 468 Press ~~Mis.~~

Dated 27. 7. ~~11~~ 1858

Not to be folded or roughly handled

No. 17. From J. R. BOYSON, Esq., Honorable Company's Solicitor; to the Chief Secretary to Government, Fort Saint George, dated 19th July 1858, No. 398.

SIR,

I have the honor to acknowledge the Extract from Minutes of Consultation noted in the margin, and the papers therein referred to.

Minutes Consultation, dated 9th July 1858, *No.* 440, *Political Department.*

I submitted same for the consideration of the Advocate General and have since communicated with him thereon.

I now forward for the information of Government a copy of his opinion and return the papers above mentioned &c.,

COPY OPINION.

On receiving the Extract Minutes of Consultation under date the 19th May 1858, (No. 322, Political Department) I at once replied to the Chief Secretary in a demi official note that I wished to avail myself of the option given me in para: 7 of that Extract Minutes of Consultation and to reserve my opinion until I had before me the precis and other information which Government had called upon the Special Agent to furnish.

2. I took this course the rather that though the offence charged against Mr. Prudhomme is one included in the French Criminal Code it is by no means of so grave a nature as to fall, in common parlance, under the Class of Criminal offences, and though it is one for which to the best of my knowledge and belief extradition has never been granted (I believe not even demanded) by any European State from Great Britian or *vice versâ*, yet the terms of Article IX of the Convention of the 7th March 1815, between Great Britain and France do so exactly embrace the case that looking only to the terms of that Article, I could not see upon what ground compliance with the demand of the Governor of Pondicherry consistently with that Article be possibly avoided.

3. The full precis however furnished by the Special Agent forwarded to me with Extract Minutes of Consultation, dated 9th July 1858, (and containing no less that 20 cases of refusals by the French Government to surrender offenders, of which 3 cases only could be viewed as of a Civil nature) shews that his Statement, mentioned in para: 4 of Extract Minutes of Consultation of 19th May 1858, is strictly accurate, and in my opinion fully justifies such a reply to the demand for Mr. Prudhomme's surrender as Mr. Taylor has suggested, *viz.*, that the case is not of that serious nature for which alone extradition has hitherto been granted by either Government.

4. This general reply may perhaps be the most advisable one in the first instance without giving any reasons, or going into any particulars, as most in accordance with the spirit of Lord Auckland's Minute, dated 12th September 1840, approved of by the Honorable Court in their Despatch on this subject, dated 23rd March 1841, and as least likely to give rise to any controversy.

5. If however it should be hereafter necessary to justify the adoption of this course, and to shew precedents for it, the precis now before me affords ample materials for doing so.

6. So far back as the 29th November 1839, upon an application by the Pondicherry Government for the surrender of a Revenue defaulter, they were pointedly informed that the Provisions of Act IX of the Treaty in 1815, have long been considered inoperative by the tacit consent of both Governments except in cases of great importance and of a criminal nature, no objection or exception seems to have been taken to this reply, which was therefore tacitly admitted to be a correct statement of the case. Again, on the 6th April 1845, upon an application for the surrender of a person *convicted* of slander, the French Government was informed, and acquiesced in the reply, that the offence was not of that nature for which surrender had hitherto been granted by either Government.

7. The refusals of the French Government have been numerous, and at least three of them have been direct violations of the terms of the Article IX, quoted in the margin.* I annex the particulars in the margin.† On the 6th January 1837 to an application for an offender charged with child stealing; and on the 29th May 1838 where the party applied for was charged with extorting money by false pretences and threats, the French Government replied in each case that the offence was not of so serious a nature as to authorize the surrender of the accused party, and on the 27th June 1845, respecting persons charged with Robbery and Rescue *proved* by an enquiry before the Tahsildar, the reply was that the charge was untrue, that the complainants were really the guilty parties and that they must be surrendered. Indeed the reply that the charge was untrue seems to have been the general one on both sides.

* *All Europeans and others against whom Judicial Proceedings as aforesaid shall be instituted without the said limits and who shall take refuge within the same.*"

† 1830, *3rd July, Judicial Proceedings instituted in Chingleput Court, surrender refused.*
1855, *7th March, Assault and Robbery. Judicial Proceedings instituted, surrender refused.*
1855, *29th August, Theft of Jewels, Judicial Proceedings instituted, surrender refused.*

8. On the 9th October 1848, to an application for a Civil Debtor escaped from custody, the French Government replied that by the tacit consent of both Governments that part of the Treaty of 1815, which relates to Civil debtors has not hitherto been executed, and that unless there was a *Criminal Charge* against the party they could not order his surrender. Judging from the cases, I have referred to in the preceding para: it seems abundantly plain that this means not what the British Authorities consider a Criminal Charge (such as Child stealing and extorting money by false pretences) but what the Pondicherry Authorities choose to consider such, and they seem to allow themselves a pretty wide latitude in their views.

9. These instances in my opinion afford ample precedent, both English and French, for declining to surrender Mr. Prudhomme, for replying as suggested by Mr. Taylor, and for justifying that course and that reply should either be impugned.

10. Considering, as I do that the Article IX of the Treaty of 1815, must be understood not literally according to its precise terms but according to the modified meaning attached to those words by the tacit consent of both Governments as evidenced by a usage of above 40 years, I am of opinion that Mr. Purdhomme's case does *not* fall within the spirit of the provisions of Section 22 of Act VII of 1854.

17*th July* 1858. (Signed) THOMAS SYDNEY SMYTH,
Advocate General.

(True Copy.)

(Signed) J. R. BOYSON,
Honorable Company's Solicitor.

No. 18.

ORDER THEREON, No. 468; dated 27th July 1858.

The Governor in Council resolves to communicate the Advocate General's opinion to the Collector in charge of the Special Agent's Department for his information, and desires that he will make to the demand of the French Government for the extradition of Mr. Prudhomme the reply proposed in the last para: of his letter of the 26th April 1858.

(Signed) T. PYCROFT.
Chief Secretary.

Exd. J. A. Wilson.

No 468

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Fort St George
27th July, 1858.

To the Collector in charge of the Special Agent's Dept at Cuddalore, with 3 Orig Enclosures in his letter of 26th April & 8th May 1858.

Disp. 31st

P.C.R. July/58 No 22 123
Political Letter to Engr
28th Septr No 44 of 1858
Paras 25 & 27

12-

5-12-13

In Cons. 21 July
Political 1358 Sept

From
The Honorable Comptr Sols
To
The Chief Secy to Govt

Dated 19 July
Received 20 -

No 398
11 Enclosures

No 1814.

Forwarding the Advocate Generals opinion on the application for the Extradition of Mr. Prudhomme and returning all the papers received for submission to the Advocate General.

C.E. July
R.24

Seth an Rickards