

MADRAS RECORD OFFICE.

Government of Madras.

Political DEPARTMENT.

G.O. No. 722

Press
~~Mis.~~

Dated 6 - 12 - 1860

Not to be folded or roughly handled

*Proceedings of the Madras Government, Political Department,
6th December 1860.*

No. 25. Read the following letter from J. R. BOYSON, Esq., Government Solicitor, Madras, to T. PYCROFT, Esq., Chief Secretary to Government, Fort Saint George, dated, 29th November 1860, No. 2,034.

Proceedings of Government, in its Political Department, dated 22nd November 1860, No. 685.

1. I have the honor to acknowledge the Proceedings of Government, noted in the margin, and the papers which accompanied them.

2. I laid them before the Advocate General for his consideration, and herewith forward a copy of his opinion.

3. I likewise return the papers above noted.

COPY—OPINION.

1. The present question appears to me to be not very clear. The terms in which the charge is stated by the Magistrate, Mr. Purvis, and by His Excellency M. D'Ubraye, do not correspond, and I am not at all certain that the charge intended on each side is substantially the same.

2. Mr. Purvis, after mentioning that the French subject who had committed a robbery in French Territory, and then escaped into British Territory, had been, on the application of the French Chief, apprehended and delivered over to him, mentions that the same Chief subsequently applied to have delivered over to him six Native British subjects "accused of receiving the stolen property."

3. This may mean, and from the context of Mr. Purvis' letter, I infer that it does mean, that the charge then preferred by the French Chief of Yanam, was merely that the six British subjects had, while within British Territory, received certain property which had been stolen in French Territory. The charge does not even go on to say "knowing the same to have been so stolen."

4. In fact the charge, as above stated, specifies no offence at all:—but supposing that the French Chief meant to charge the six parties with receiving the stolen property in British Territory, knowing the same to have been stolen in French Territory, even then I am not aware that such an act comes within the provisions of any law, French or English.

5. There certainly is no English law, that I am aware of, making it penal to receive property, if the receiver knows that the same was stolen in any foreign Territory.

6. And I much doubt of His Excellency M. D'Ubraye could, in order to bring this case within Section 23 of Act VII of 1854, point to any French law making it an offence for foreigners in a foreign Territory, to receive goods if they knew them to have been stolen in French Territory. Nations legislate for their own Territories and their own subjects, not for the subjects and Territories of other States.

7. Such appears to me the state of the case with reference to the charge as stated by the Magistrate, Mr. Purvis. His Excellency M. D'Ubraye, however, charges the persons with being "accomplices by concealment in a robbery committed upon the French Territory," which may mean exactly the same thing as the charge specified by Mr. Purvis, or something very different.

8. It may mean that the British Native subjects entered French Territory as accomplices in the robbery, and so became principals in it, and afterwards aided their French accomplices by concealing the stolen property in British Territory; or, it may mean, that the British Native subjects were privy to the intention to commit the robbery, in short accessories before the fact, and waited on the verge of the British Territory to aid and abet their accomplices by receiving and concealing the stolen property.

9. If His Excellency M D'Ubraye means either of these offences, or even that the parties charged received the stolen property in French Territory, knowing the same to have been stolen in French Territory, then in my opinion the Magistrate should, under the Orders of Government, apprehend the parties charged, deal with them under Section VII, Act VII of 1854; and, if he find cause to commit them, then I am of opinion, that under Act VII of 1854, Sections I and XXI, the persons charged ought to be delivered up as requested.

and

Proceedings of the Madras Government, Political Department,
6th December 1860.

10. As to Act XVI of 1851, the whole scope and tenor of the enactment shows clearly it seems to me, that it was intended merely to give greater facilities for the application of British, Criminal law in British Territories, and that it had no reference whatever to the extradition of British subjects charged with offences against the laws of Foreign States.

11. And as to Act I of 1849, Section V. shows clearly that the extradition to Foreign Princes or States of persons charged with offences, is limited to Foreign Princes or States "administered by Officers acting under the authority of the East India Company" and in whose Territory a "Court competent to try the person charged for the offence, is established by authority of the Governor General in Council"—thus showing clearly that the extradition contemplated by this Act was not intended to apply to *European* Foreign Settlements in India.

12. When His Excellency M. D'Ubraye remarks that this "is the first time that a case of this nature presents itself in the relations with your Government" and again, that "the Officers of Police of the two Territories have *always* given up the *guilty* parties whose extradition was demanded of them without making any distinction between the principals and the accomplices, between the direct Agents in the robbery or the receivers," His Excellency either forgets the six undermentioned Cases occurring within the last twelve years, in which the French authorities have *refused* to deliver up parties charged with theft, robbery, and knowingly receiving stolen goods, or he means to draw a distinction between "*guilty* parties," and parties merely charged with guilt. If the latter be his meaning, it would seem to apply exactly to the present case, where the parties are doubtless charged with the Commission of an offence, but, it may be, on very doubtful testimony and at all events there is nothing before me that would warrant me—or Mr. Purvis so far as I can see—in considering them as "*guilty* parties."

13. On receiving the requisition Mr. Purvis, however, ought clearly either to have acted at once under Section XIX of Act VII of 1854, if the case was urgent, or else to have reported the case to Government; and, if authorized by them to apprehend the parties, then have proceeded according to Sections VII and VIII or XI, XIII, XIV and XV.

(Signed) THOMAS SYDNEY SMYTH,
Advocate General.

28th November 1860.

I request permission to keep, for future reference in my Office in similar cases, the Printed Precis sent to me with the papers in this case.

Year and date.	Purport.	Nature of the replies.
1848. 11th Oct.	The Collector in charge of the Special Agent's Department, to the French Government.—Requesting the apprehension and surrender of two Natives, one charged with having stolen some Indigo from the British Territory, and the other with having purchased the same, knowing it to have been stolen, and states that the case has been fully proved against the parties at an inquiry held by the Assistant Magistrate.	The French Government in reply forwards the thief and the stolen Indigo, but states that from inquiry made at Pondicherry it appears that the Native who purchased the Indigo is not guilty, that he is a man of good character and respectability, and declines to order his surrender.
1849. 27th Aug.	From the Collector in charge of the Special Agent's Department, to the French Government.—Requesting the apprehension and surrender of 3 individuals charged with the crime of Kidnapping and who effected their escape from the custody of Peons while crossing the French limits.	The French Government states in reply that from a report made to him it does not appear that the crime imputed was committed by the parties, and that their surrender cannot, therefore, be granted.

Proceedings of the Madras Government, Political Department,
6th December 1860. 2

Year and date.	Purport.	Nature of the replies.
1853. 29th Aug.	From the Collector in charge of the Special Agent's Department, to the French Government.—Requesting the apprehension and surrender of a Native charged with having stolen a Bullock from a British ryot.	The French Government in reply states that the Bullock was purchased by the Native from a cattle dealer, and that no blame could be attached to him.
1855. 10th Feb.	From the Collector in charge of the Special Agent's Department, to the French Government.—Requesting the apprehension and surrender of a Native charged with having stolen a Bullock from a British ryot.	The French Government in reply states that as the Bullock was purchased by the Native in whose possession it was found, no blame could be attached to him.
1855. 7th March.	From the Collector in charge of the Special Agent's Department, to the French Government.—Requesting the apprehension and surrender of certain individuals who committed an assault and robbery on the British territory and against whom Judicial Proceedings have been instituted.	The French Government in reply states that from an inquiry made at Pondicherry it appears that the complaint is a false one, and declines to order the apprehension of the parties.
1855. 29th Aug.	The Collector in charge of the Special Agent's Department, to the French Government.—Requesting the apprehension and surrender of two Natives charged with property of a British subject and against whom Judicial Proceedings have been instituted.	The French Government in reply states that from an inquiry made at Pondicherry it appears that the Jewel in question is the property of a Native of Pondicherry, and declines to order the surrender of the parties accused.

(True Copy.)

(Signed) J. R. BOYSON,
Government Solicitor.

No. 26.

ORDER THEREON, 6th December 1860, No. 723.

1. Resolved that a copy of paragraphs 1 to 11 and paragraph 13 of the Advocate General's letter, with the Order of Government 22nd ultimo, to which it replies, be furnished to the Magistrate of the Godavery District in reference to his letter of the 5th ultimo.

2. Resolved also that the Magistrate be directed, in the event of the offences charged against the six British subjects belonging to any of the three classes specified in paragraphs 8 or 9 of Mr. T. S. Smyths' letter, to proceed in the manner indicated in the last paragraph, viz., to apprehend the parties and deal with them under Section VII, Act VII, 1854. He will report to Government whatever proceedings he may take in the matter, but he will not detain the parties in custody unless the evidence adduced by the French Authorities, with whom he will communicate, be sufficient in his judgment to warrant a committal.

3. If the offence charged does not fall under any of the above three classes, the Magistrate will report to Government what is its precise nature and character.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. T. O'Connor.

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I can see — in considering them as "guilty parties."

13. On receiving the requisition Mr. Purvis however ought clearly either to have acted at once under Section XIX of Act VII of 1854, if the Case was urgent, or else to have reported the Case to Government; and, if authorized by them to apprehend the parties, then have proceeded according to Sections VII and VIII or XI, XIII, XIV and XV.

Number 28th 1860. / Signed / Tho^s Sydney Smyth
Adv: Gen^l

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is not guilty, that he is a man of good character and respectability, and declines to order his surrender.

1849
29 Aug

From the Collector in Charge of the Special Agents' Department to the French Government. Requesting the apprehension and surrender of 3 individuals charged with the crime of kidnapping and who effected their escape from the Custody of Pons while crossing the French limits.

The French Government states in reply that from a report made to him it does not appear that the crime imputed was committed by the parties and that their surrender cannot therefore be granted.

1853
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The French Government in reply states that the Bullock was purchased by the Native from a Cattle dealer, and that no blame could be attached to him.

1855
10 Feb

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The French Government in reply states that as the Bullock was purchased by the Native in whose possession it was found

Done

Political Department.

Proceedings of the Madras Government.

Read the following letter from the Government of Madras.

(Hence under 29th Nov 1860 No 2034)

Order thereon. December 1860 No 722.

I would omit para 12. it does not bear upon the immediate question and may merely put doubts in Pons' head.

W. H. G.

Resolved that a copy of paras 16th and para 13 of the Advocate General's letter, with the order of Govt. 22nd ultimo to which it replies, be furnished to the Magistrate of the Godavery District in reference to his letter of the 5th ultimo.

2. Resolved also that the Magistrate be directed, in the event of the offences charged against the six British Subjects belonging to any of the three Classes specified in paras 8 or 9 of Mr. J. S. Smyth's letter, to proceed

No. 722.

Proceedings of the Madras

Government.

Dated 6 December 1860.

Transmitting the
Magistrate of the Godavari
District with a
copy of his report and
views of the case to
Government for their
consideration and
being the continuation of
the case charged with
being received in the
Magistrate's report
from the French
Magistrate and his
views.

20th May 1860. Printed at the Government Press.

Madras

see in instructions
to him.

proceed in the manner indi-
cated in the last para viz.
to apprehend the parties and
deal with them under Sec. VII
Act VIII. 1854. - He will re-
port to Government whatever
proceedings he may take in
the matter, but he will not
detain the parties in custody
unless the evidence adduced
by the French Authorities,
with whom he will com-
municate, be sufficient
in his judgment to war-
rant a commitment.

3. If the offence charged
does not fall under any
of the above three classes
the Magistrate will report
to Government what is
its precise nature and
character.

J. P.
Boyson's L. Advocate
Gives opinion of
J.

To The Mag. Godavari District.
with copies of Mr. Smyth's
letter omitting para 12.

with Pol. 1865.

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C. J. Dean
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