

Political (1895) Department.

①

ORDINARY MS.

G.O., No. 412

Dated 27th June 1895

INDEXED.

[Despatch Abstract.]

PETITION

Declining to comply with the requests of W.P. Govindaswami, Mudaliar
late Treasurer, Travancore Residency, to be restored to his post, &c.,

46. 2/11/95
G. S. S. S.

FURTHER PAPERS					
No.	Department.	Date.	G.O.	No.	

மாநகராபி பரிசு-1

செப்பலிபுளர் பெயர்: V-9020
06/08
செப்பலிபுளதற்காக எடுத்தல்-10/08
கொள்ளப்பட்ட நான்

25/11/08.
செப்பலிபுள
முதல் பரிசு
கொள்ளப்பட்ட
செப்பலிபுள
2ம் பரிசு
கொள்ளப்பட்ட
செப்பலிபுள
உதவியுள்ள
கொள்ளப்பட்ட

2/4/02

Finance Department

Chief Secretaries

Madras

Proceedings of the Madras Government
Read the following papers
From the Resident in Travancore & Cochin
dated 30th December 1892 & 21st and from
the Accountants General dated 7th January
1893 & 21st

Regarding Travancore Treasury Defalcation
Order 22nd February 1893 & 192

X X X X X

2. The Resident should send as per order the
Treasury in the Travancore & Cochin for
check of books. Accounts should also be kept
under sections 604 and 609 of the General Code.
The Resident is authorized to engage a
local Vakil to conduct the case.

X X X X X

True Extract
(Signed) H. B. Gallon

Chief Secretary

(Travancore) (Signed) H. B. Gallon

Madras

1/11/02

3
4/2

Trinidad
15/11/92

My dear Mr. Grigg

x x x x x

I arrived here yesterday (Monday) at 11-30 A.M. and counted the Treasures at 12-30 noon. All was correct with the exception of 16 notes each of Rs 100 which were under double locks and in charge of the Treasurer. He could not find them anywhere. I tried to ascertain the numbers of the missing notes but the receipt column of the note register had not been filled in since the 18th October so it was impossible to find out their numbers. I looked into all the boxes yesterday with the Manager and the Treasurer and reported the fact to Mr. Bembly yesterday evening. He came down this morning and we examined the register but could elicit nothing further. The notes missing are apparently amongst 47 which were issued early in November and some of which have been received again by the Treasurer but of the rest of which there is no entry. I have told the Manager to endeavour to find out the numbers. The Manager and the Treasurer searched the Treasures thoroughly this morning but nothing was found.

5/11/92 Under the joint keys of the

Date			5	10	20	50	100	
			Rupers	Rupers	Rupers	Rupers	Rupers	
1899	November	12	Balance	232	235	266	116	176
		"	Issued	12	13	12	6	11
			Balance	240	222	254	110	165
		4	Balance	240	222	254	110	165
		"	Issued	"	20	10	6	3
			Balance	240	202	244	104	162
			Issued	"	"	10	16	10
			Balance	240	202	234	88	152
		7	Issued	"	"	25	8	16
			Balance	240	202	209	80	136
		8	Issued	20	20	10	"	5
			Balance	220	182	199	80	131
		10	Issued	20	10	10	4	4
			Balance	200	172	189	76	127
		11	Issued	"	"	"	"	"
			Balance	200	172	189	76	127
		11	Issued	"	"	"	"	5
			Balance	200	172	189	76	122
		14	Found less	"	"	"	"	16
			Balance	200	172	189	76	106
		15	Issued	"	"	"	6	7
			Balance	200	172	189	70	99

True Copy

A/3/

6
412

CURRENT No. 802 of 1894

To,

H. B. Grigg Esquire, M.A., C.I.E.,
The British Resident in
Travancore and Cochin



cc. cc. cc.

The humble petition of W. S.
Govindaswamy Mudaliar Esq.
Treasurer of the Residency
of Travancore and Cochin

Most Respectfully Sheweth,

That in compliance with
the requisition made in the Proceedings
of the Madras Government Order
No. 703 dated 12th October 1894,

Petitioner humbly begs leave to submit
this Memorial to that Government
itself that the final orders which
is competent to pass in this case,
may be passed, with a request

at the same may be forwarded
the Madras Government with
that remarks your Honor may
deem fit to make upon it.

For which act of grace
Petitioner shall ever pray

and drawn
March 1895

G. Govindaswami Mudaliar

7
4/10

To,

His Excellency,

The Governor in Council
of Fort St George and
its dependencies

At

At

At

The humble Memorial of
W. P. Govindaswami Mudaliar
Ex. Treasurer of the Residency
Travancore and Cochin

Reference The Proceedings of the
Madras Government Order
No. 703 dated the 12th
October 1894 with holding
a Memorial addressed to
the Government of India and
Rules therein given.

Most Respectfully Sheweth,

That the Memorial in question

appears to have been withheld mainly in conformity with two of the Petition Rules.

That the first of these Rules as set forth in the Proceedings of Government under reference is "When a petition is an appeal from a judicial decision with which the executive has no legal power of interference. The petition which was desired to be forwarded to the Government of India was no appeal from a judicial decision. It goes further deeper, it is true, and questions the competency of the Criminal Courts of the Native State of Travancore to try him a British Indian Subject for an offence committed in the capacity of a Public Servant in the service of Her Majesty the Queen Empress of India. The Executive Government of Travancore may have no right of any legal interference with the decisions of its own courts. But the case must necessarily be different

3
when the judicial courts of a Dependent Native State invade the vested rights of a British Indian Subject in contravention of the provisions of Section 188 of the Criminal Procedure Code, and tamper and dally with the personal liberty of a servant of Her Majesty in direct violation of Section 4 of the Indian Penal Code. If the British Executive Government has no legal right of interference in such cases, the Memorialist really fails to see where the remedy should be sought for.

That the second rule under which the Memorial in question appears to have been withheld is — "When a petition relates to a subject on which the local Government is competent to pass orders and no previous application for redress has been made to the Local Government." The Petitioner is fully aware of the fact, that the proper authority for him to address in the first instance, & which is competent to pass final

ders on his application for relief
the Madras Government itself.
The omission to address that
Government in the first instance,
arose from the clear and undesirable
fact in the case, that the Travancore
Courts based their palpably illegal
and irregular procedure on an
alleged waiver of jurisdiction
of the Madras Government, the
propriety of which waiver of rights
Created by Acts of the Imperial
Government of India has been like-
wise called in question by the
Said Memorial. As the Memori-
alist among other matters had to
complain against the said waiver as
well of the Madras Government, the
Memorial was addressed to the
Imperial Government of India. The
Memorialist does not, for a moment,
doubt the competency of the Govern-
ment of Fort St George to review
and modify of such Review, an
order passed by itself in connection
with such waiver. The Memorialist
therefore humbly begs leave to
submit the details of

5
of his grievances to your Excellency
with a prayer that the relief herein
sought be graciously granted.

These details are as follow:—

That on examination of the Resident
Treasury by the Asst. Resident, Lt. Andrews,
on the 14th November 1892, there was
found in the double lock box a deficiency
of 16 currency notes of Rs hundred each,
the balance with the Treasurer (Memo-
rialist) having been certified to be
correct.

That Memorialist was arrested by
the Travancore Police, the case enquired
into in the first instance by Division
First class Magistrate of Travancore,
who, in his order of committal, directed
the Memorialist to take his trial
before the Sessions Court of Travancore.

That the trial of petitioner by the
Travancore Courts was based on a

proceedings of the Madras Government
accepted by the Sessions Judge and
the committing Magistrate as a
ruler of that Government to try
Memorialist in its own courts of
British India. The trial resulted
in the conviction of the Memorialist
who was sentenced to a fine of
Rs 200, and ~~two~~ two years' imprisonment
the first two months of which was
to be simple and the rest rigorous.
(vide Sessions Judgment No 23 of 1068
judgment also herein enclosed.)

That the Local High Court, on appeal,
upheld the conviction but reduced
the sentence to one year's simple
imprisonment. (vide Sessions Appeal
No. 54. of 1068 judgment also
herein enclosed.)

That no prosecution whatever is
instituted against the Treasury
Officer - the Manager Mr. Larive

7
of the Residency and he was allowed
~~10~~
to retire on a pension notwithstanding
the patent and glaring fact that
the currency notes to the value of Rs
1600 were missing from the Double lock
chest of which he was ^{the} undoubted
custodian of one of the keys. The provisions
of the Civil Account Code which is
amply admitted to be the guide
in all matters relating to the
Treasury, as well as the Standing
Circular orders of the Board of Revenue
were rendered dead letters and
completely discarded.

That the Memorialist was on the
other hand, dismissed the Service
and another person appointed in
his place.

That these are the facts which have
transpired in connection with the
loss of the notes in the Residency
and the object of this Memorial

to place before your Excellency
the gross irregularities, illegalities,
and arbitrary character of the
procedure, ab initio resorted to,
so as seriously to prejudice the
rights and privileges of Memorialist,
a native Indian Subject, and
Public Servant, in the Service of Her
Majesty the Gracious Queen Empress
of India.

That in exposing the character
of the procedure detailed
in the last preceding para,
Memorialist humbly begs leave
to lay before your Excellency
Serially, a few remarks on—

(1) The jurisdiction of Travancore
courts to try him— a Native Indian
Subject of Her Majesty— for an
offence alleged to have been
committed in the capacity of
a public servant of Her Majesty

HPG

9
against the British Government.

$\frac{11}{412}$ (2) The Right of the British Resident
or even of the Madras Government
to waive or cancel a right
created by an Act of the Imperial
Government of India.

(3) The applicability of European
and American International
Laws to the Native States of
India; and the identity of British
Resident in Native States with
ambassadors.

(4) The provisions of the Civil
Account Code and the Standing
Circular Orders of Board of
Revenue as applied to the con-
duct of business in the Treasury
and the liabilities of Treasurer
and Treasury Officer respectively
thereunder.

(5) The vagueness of the charges laid

HPG

Memorialist and the character
of the evidence in support of it.

(6) The unsustainability character
of the conviction and the sentence
as well as the arbitrary
character of the dismissal.

That with reference to the first
of these heads, the objections
raised by the Memorialist
to the jurisdiction of the Travancore
Courts to try him were:—

(1) That he is a Native Indian
subject of Her Majesty and
that Section 188 of the Code
of Criminal Procedure Act
X of 1882 requires that
Such an one should be
tried by a competent criminal
court of British India.

(2) That as a servant of the
British Government he is in the
Service of Her Majesty the Queen

Empress of India and as such
he should be dealt with according
to the provisions of the Indian Penal
Code Act No. XLV of 1860 which
was law in Travancore, punishment
of offenders in this State being
governed by the Regulation
of 1856 M.E. which enactment is
Indian Penal Code Mutatis
Mutandis or in a State Mutatis
Mutandis.

(3) That the offence having being
committed within the premises
of the Residency, was committed
beyond the limits of Travancore
and in British India the
Residency being apart and
parcel of British India.

That the Sessions Judge and
the High Court Judges on appeal
strangely enough held that
the Memorialist is a subject

His Highness the Maha Raja of
Travancore, although there was
not a particle of evidence in
the whole case to lead them
to such a finding. The Memo-
rialist is not a subject of the
Travancore State as the Travancore
courts would require him to be.
His father is a native of Nuthra-
mallur near Coimbatore in the
District of Chingleput, Madras
Presidency. He lived in Tra-
vancore in the service of the
Paramount Power as the Residency
Treasurer. He married a lady
(Memorialist's mother) at Coimba-
tore, Madras Presidency and
sent his wife, as is the general
practice among the Hindus,
for her first confinement, to her
own house at Coimbatore where
Memorialist was born. He owned
a house at Nuthramallur

13
112
which during his tenure of office, he
occasionally visited, and Memorialist
up to this date owns the same house
where his wife and children at
present live. Neither Memorialist
nor his father, ever gave up the
idea of returning to their native
land. They never for a moment enter-
tained the idea of permanently
settling in the Native State of Travancore.
The father lived and died
a Native Indian Subject of Her
Majesty, the Memorialist both by virtue
of his birth and right inherited the
nationality of his father and to this
day continues a "Native Indian
Subject of Her Majesty." The Memorialist
entered British Service in the lifetime
of his father upon whose demise, he
succeeded to the office of Residency
Treasurer. Residence in Travancore
is but a temporary one in consequence
of entering the British Service. Memo-
rialist has therefore, a clear and
unqualified right as a Native Indian
Subject of Her Majesty to be tried by

the courts of British India, even apart from the consideration of his having taken Service under the British Government. (Vide Section 188 of the Criminal Procedure Code Act of 1882.)

That in Queen Empress versus Atwarji L.R. Bombay Vol. XVI P.P. 178 the High Court of Bombay have held that the trial and conviction of the Subject of a Native State by a Criminal court (the 1st class Magistrate of Ahmedabad) of British India, was bad in law & accordingly set aside the conviction. The vice versa of this case must exhibit the trial and conviction of the Memorialist by a criminal court of a dependent native State as at once illegal & irregular. In commenting upon the nationality of the accused in that case the Judge observes. — Even supposing his father to be domiciled at Kadal the fact does not alter his

HPGm

nationality without naturalization. ¹⁶
Here length of residence (which in the case was upwards of 50 years) does not convert alien into a Subject who outside the jurisdiction. (Vide Hall's international Law P.P. 219). If the father was a natural born British Subject, he could very well transmit British nationality to a Son born abroad under the provision of 7 Anne (cap. 12) (De Geer v. Stone L.R. XXII Chapter D 243).
The Service Register of Memorialists father styles him Muthramallur Padmanabha Mudaliar — a circumstance which indisputably establishes the fact that notwithstanding his residence in this native State, British Government recognised him as a Native Indian Subject of Her Majesty. The initial M before Petitioner's own name signifies Muthramallur. It is in the face of these potent facts that the original and Appellate Courts of Travancore declare him to be a born Subject of His Highness

HPGm

Maha Rajah of Travancore.

That according to the second
portion to jurisdiction the Memorialist
begs leave to submit that as an
employee of the Residency Treasury,
he is a public servant in the service
of Her Majesty. Section 4 of I.P.C.
requires that such servants should
be dealt with and punished
according to the provisions of the
Indian Penal Code. The Indian
Penal Code is not the law in
Travancore. Its place was supplied
by Regulation II of 1856 M.E. Officers
in Travancore are punished under
the Regulation and not under the
Indian Penal Code. It is therefore
impossible that the requisition of
Section 4 of I.P.C. can be conformable
to, if Memorialist took his trial
before one of the criminal courts of
Travancore. That Section therefore
has been equally infringed when
the trial of Memorialist was
undertaken per force by the Sessions

¹⁵/₄₁₀ Judge of Travancore and the Committee
magistrate before him

* The criminal
& civil warrants
of the Travancore
Courts have no
access thereto.
Even the B.H.
Post & Telegraph
offices in this
State are to
all intents
and purposes
reckoned
British territory

That the premises of the Residency
have all along been looked upon
as British territory. The premises are
exclusively set apart for the permanent
abode of the British Resident although
the same has been maintained at
the cost of Travancore State. It
cannot, for a moment be considered
to be the "Hotel" that is spoken
of as the International Law and
alluded to by the learned judges
of the High Court. The "Hotel" is
no doubt the temporary residence
of the Ambassadors who are sent
from one kingdom to another
independent one for the transaction
of some particular State business.
When the business shall have been
transacted, the ambassador
returns to the Power or dominion
which sent him on the mission.
The Resident
is an officer

18
power for supervision of the adminis-
tration of a dependant State.

There is no idea whatever of
permanency attaching to
Ambassadors. The Ambassadors
of one State are and have never
been known to be posted permanently
in another State, as the Resident
and his Staff have been in
Shavaneone and Cochin. There
is therefore no analogy whatever
between the "Hotel" and the
Residency or between the
Resident and the Ambassador.
The High Court will be observed
to be itself diffident about the
identity of the Hotel and the
Residency. They say simply that
the Resident's office bears the
closest resemblance to that of

preceding
establish

19
16
1102
that there is no resemblance
whatever between the Resident
and the ambassador. The Resident
has never been sent to transact any
particular State business with the
Maha Rajah of Shavaneone. There are
certain duties of permanent character
devolving upon him as upon the
collectors of British India. His
duties and liabilities in relation
to the Treasury have been amply
admitted to be analogous to those
of the "collector". The same code
and standing orders of the
Board of Revenue govern and
regulate the business in the Resi-
dency Treasury. The Resident is as
much subordinate to the Revenue
Board as the collectors are. The
Resident's Staff therefore, far from
bearing the least resemblance
to that of the ambassador, enjoy
same status, rights and privileges
as subordinates of the collectors.
Judgments

20
The principles of European and American International laws expounded by the Learned Judges of the Sessions and High Courts of Travancore to explain away the objections to the jurisdiction of the Travancore Courts, have no bearing whatever on the case in question and are totally inapplicable to the small dependent State of Travancore or to any other State in British India. Two of the ablest law authorities in the Presidency Town of Madras and Bombay whom Memorialist has consulted are decidedly of opinion ^{that if the applicability} of those International Laws to Travancore and the dependent Native States of India is once recognised by the Paramount Power, it would be productive of serious political danger to the stability of the Indian Empire itself.

That for these reasons therefore,

21
the premises of the Residency are British Territory. Even conceding that the Residency premises are in the Travancore State, (a concession which time honoured custom and practice will never warrant) Section 188 of Act X of 1882 distinctly enough states that if a European British Subject or Native Indian Subject of Her Majesty commits an offence within the limits of British India or in the dominion of a Native State in alliance with the Queen Empress he shall be considered to have committed the same offence within British India. The three objections detailed above to the jurisdiction of the Travancore Criminal Courts to try the Memorialist are one and all of them, equally valid and not admit of so easily and summarily explained away, the original and appellate courts have judgments

That the flaw to jurisdiction being what in the preceding lines they have been vividly described to be, the next point is to consider whether the trial of the Memorialist by the British or Travancore criminal court will answer the ends of justice better?

That the Madras Government would have exercised a sounder discretion of Law, and its political policy, if it had rigidly adhered to the provisions of the Penal Code and Criminal procedure Code already alluded to, and required the case to be tried by a British instead of by a Travancore Court, as the case is of a very intricate and novel nature quite unprecedented even in British India and as it involved issues, the decision of which, coming as it did, from the authority of the Courts of a dependent State reforms.

13 to introduce its judicial courts and
12 system, would seriously affect the general procedure of all the Treasuries of the Paramount Power, disturb the relation and liabilities of the Treasury Officer and Treasurer to a most invidious and injurious extent, and enunciate principles which may not, for diverse reasons, be quite acceptable to the Revenue Authorities. Hence it may be seen that on public and political grounds apart from private personal reasons it was desirable from the British Stand point of view that the case should have been tried by a British court. The advantages to the Memorialist will be equally great.

That quite unlike the ambassadors or an independent court of Europe or America to whom esteem is but shown as a matter of courtesy who must nevertheless be prepared a

24
insult or even death, itself, the
Resident in a Native State possesses
powers not limited by any
rule susceptible of exact definition.
The fear of the presiding judges
in the Native courts for the
authority of the Resident, must
in some cases, be so great as
to influence their decisions. The
Memorialists fear of an adverse
decision and miscarriage of
justice must be only too natural
and reasonable in a case in which the Resident
himself is the complainant. The
Solicitude evinced by the
Native State for the personal com-
fort and convenience of the
Resident is too well known to
need any comment. When the
Government itself is so very obliging
it need hardly be said how
accordingly more obliging its
Memorialists

25
19
412
fears were too painfully realised
as will be noticed further on.

That instances of similar objections
to jurisdiction having been taken by
the Native Indian Subjects of Her
Majesty and allowed by the
Travancore ^{Courts} ~~Courts~~ no doubt be pointed
out. The accused in a case of
murder committed in the portion
of Travancore leased out for the
Perryar project works was com-
mitted to the Sessions Court of
Alleppey which allowed the
objection to jurisdiction taken by
the accused that he was a
Native Indian British Subject,
and the case was accordingly
transferred to the Sessions Court of
British India. The same objection
was allowed in the Shottapalli
murder case. The only reason why
the Travancore Courts disallow

the case in which the Queen Empress

He was persistently held to be a Subject of the Travancore State in the face of overwhelming evidence to the contrary, is more or less perfectly clear enough. It was no other than that the Resident was the complainant in the case. These lines must amply establish the total absence of jurisdiction and the erroneous nature of the analogy drawn between the Resident of a dependent State, and the Ambassador in the independent Courts of Europe and America, between the Residency and the "Hotel" of International Law as well as the total inapplicability of the principles of European and American International Law to the Native States of India.

Items 1 and 3 are thus disposed

I leave to submit, the procedure is as illegal as the trial in Travancore &c. I have already noticed that in laying so great a stress on the right of waiver the Sessions and High Court Judges more than admit the right of the Memorialist to be tried, and of the British Courts to try him. There is ^{clearly} no necessity for the waiver of a right which had no existence at all.

The learned Judges original and appeal feel no hesitation in declaring the Memorialist a Subject of His Highness the Maha Rajah of Travancore. What then was the necessity of a waiver in the British Government. The two statements are conflicting and irreconcilable. Supposing then that the British Government

the case in which The Queen Empress

the British Courts to try him
as well as of the Memorialist
to be tried by the Court of his
own Nationality, and that
with a full consciousness of the
right the same ^{was} waived, two
questions must arise therefore
and call for determination.

They are:—

(1) What are the rights that
the Madras Government can
legitimately waive?

(2) Is the right waived in
the present case, one which may
be waived without in fraction
of a Statute Law?

That with regard to the first of
these questions the Memorialist
begs to submit that in cases
of offences committed by the
servant of the Resident's Office

27
Government above him in any law-
fully waive the right of trying
such subordinate in one of the
Courts of British India in
virtue of his being a Native
Indian Subject or a person or
a servant in the service of Her
Majesty and surrender him
to the Courts of Travancore for trial.
But this is the only case in which
the Resident or the Madras
Government can exercise a right
of waiver. The offence laid to
the Memorialist's door is one
neither against the Travancore
Government, nor against the
Travancore Subject but against
the British Government itself
which in consequence thereof
becomes a party which has to
conduct the prosecution. That
the case in which the Queen Empress

of Her Majesty should be tried
by a criminal court of a dependant
Native State must, of necessity,
look very awkward and
considering the status of the
complainant the accused must
necessarily be prejudiced
in his defence and the
chances of miscarriage of
justice and wanton conviction
must needs be at a premium.

This therefore is a case in which
The Madras Government cannot
exercise the right of waiver with-
out seriously prejudicing the
Memorialist.

That the right of the Memo-
rialist to be tried by a criminal
court of British India being one
created by section of 188 Act
X of 1882 Criminal Procedure

22
412

both of which are enactments of
the imperial Government of India.
The Madras Government cannot
waive or cancel that right without
violating the provisions of those
Sections. It is very doubtful whether
the Madras Government as being
subordinate to the imperial Govern-
ment of India is competent to
set aside or render nil and
inoperative the provisions of the
Statute laws enacted by latter
Superior Government. In no case
was a criminal court known
to act upon the waiver of one
of the parties before it. E. g. Suppose
a complaint of cheating is made
before a second class Magistrate
and the complainant to signify
his willingness that the case may
be proceeded with by that

Most assuredly not." What the Magistrate looks to is not the consent of the party nor even the waiver of the accused but the provisions of law which alone is the guide to jurisdiction. Madras Government being a party to the proceeding cannot therefore waive the right of the accused to be tried by a criminal court of British India and such waiver militating as it does with the provisions of the Statute Laws of the Government of India cannot, certainly confer any jurisdiction on the Criminal Courts of Travancore.

That the Sessions Judge, fully aware of the absence of jurisdiction, endeavours to get over

the difficulty by an assertion that the trial by the Travancore courts would be highly advantageous to the Memorialist in the very face of the objections raised to such jurisdiction. That the procedure would be highly advantageous to a person deeply affected by it cannot serve as any reason for a deviation from the Spirit of the Law and cannot be accepted as any justification of such procedure. (Vide Perin case).

That having discussed the first three items, the Petitioner begs to draw your Excellency's kind attention to the provisions of the Civil account code and the Standing Circular orders of the Board of Revenue in so far as they relate to the treasury

alters and bears upon the respective responsibilities of the Treasury Officer and Treasurer.

That it has amply come out in evidence, that the Resident (and in his absence the Asst Resident's) relation to his Treasury is identical to that of the District Officer, or Collector in British India who is stated in the civil account code, to be in the administrative charge. He may entrust the immediate executive charge to a "Treasury Officer" but cannot by such delegation, divest himself of his own charge and responsibility. (vide paras 300 & 301 p. 100)

That Para 304 distinctly enough lays down "the bulk of the treasure remains under double keys of the Treasury Officer and of the Treasurer." "This sum (held by Treasurer in his

Separate custody) together with the value of Stamps, Copien &c in his Sole custody, must not be larger than the security given by him." The trust, so far as the Treasurer is concerned, extends to no more than what is in his Separate custody, and even this is subject to the examination and verification every evening by the Treasury Officer. The same responsibility of the Treasury Officer for the bulk of the money under double locks and keys is emphatically repeated in the provisions in the Standing orders of the Board of Revenue, filed as Exhibit VIII in the case. It further holds the Treasury Officer is personally responsible for any loss arising from their neglect of duty and whatever may be

36
the confidence repose in the
Treasurer, no opportunity in the
abuse of such confidence must
be afforded." The provisions of
these sections showing as they
unmistakably and unambigu-
ously do, the relative responsibilities
of the Treasury Officer and the
Treasurer with respect to the
Treasure under single and
double locks, leave no room
for the remotest doubt that
the Treasury Officer is exclusively
responsible for the Treasure
under double locks, and keys
and that the Treasurer has
Simply to account for the
money placed in his separate
Custody or single locks. The
meaning and import of the
provision in the agreement
model given in appendix G
of the Civil Account Code that

37
"Whereas the bulk of the said property
of ~~the~~ ^{the} remains as well in the care, ~~and~~
~~the~~ ^{and} custody of the Treasury Office
for the time being — as of the said
(Treasurer) when viewed along with
the provisions of the Civil Account
Code and the Standing Orders of
the Board of Revenue already
noticed, must be accepted to be
that the Treasurer will be considered
to have satisfactorily accounted
for all the monies in the Treasury,
when he shall have shown his separate
balance correct to the last cash &
pointed out as per accounts then
the remaining money must be
under the double locks and keys.
As already pointed out the person
responsibility for the monies under
double locks & keys rests with
and devolves upon the Treasurer
Officer exclusively. The issues of
money & notes from the double
locks and keys are fully ad-

the evidence to be made by
the Treasury Officer to the Treasurer.
This is the most natural construction
which can be put on the facts
of the case. If it were otherwise,
and if the Treasurer were the
custodian of the treasure under
double locks and keys, the
idea of the Treasurer issuing
money from the double locks
to himself must look extremely
awkward and ridiculous. For
these reasons, therefore, the respon-
sibility for the bulk of the
treasure under double locks and
keys devolves upon the Treasury
Officer alone, according to
the provisions of the Civil
Account Code and of the
Standing Orders of the
Board of Revenue, notwithstanding
the possession of one of the
keys of the Double locks by the

Treasurer, whose responsibility is
²⁶₄₁₂ no further than to the money.
his exclusive or separate cus-
tody.
What then is the Signification of
the remarks made in the Session
and Appeal Judgments
that the Treasurer is jointly and
exclusively responsible for the
missing notes from the double-
locks. here. The Government of
British India cannot and will
not certainly accept unquestioned
the theories expounded by the
learned Judges of the dependent
Native State in direct militancy
with the provisions of their Civil
Account Code and the Standing
Orders of the Board of Revenue, in a
matter directly touching the
administration and conduct of
their own Treasury business. And
yet the Memorialist, poor Treas-
urer

been dragged into unnecessary
troubles and difficulties, erroneously
made a party and subjected to
unremitting prosecution, conviction
and sentence of imprisonment.

That the next point for de-
termination is whether the Memo-
rialist can be bound by the model
agreement given in appendix G,
the civil account code. Neither
nor his Sureties ever executed
bond of that description. It
must be admitted to be ex-
tremely unfair and illegal to
bind any person by a bond which
the like of which was never
executed either by himself or by
others for him. What Security
exists, has been executed
by his Sureties to the Government
of Travancore where in the terms
and conditions are as different
from the agreement model as two

things can possibly be. That agree-
ment was never brought into
the arena, but studiously
kept behind the scenes. Appen-
dix G was therefore erroneously ac-
cepted as a basis for the comments
in the judgments original and
appeal. With the flimsiness and
hollowness of the basis, the comments
themselves must fall to the ground.

That even granting that the
provisions of the model agreement
as given in the appendix G has
a binding effect on the Memorialist
neither the British Resident, nor
the Accountant General, nor the
Madras Government itself has,
for a moment, paused to consider
the nature of the Responsibility
created by that model of an
agreement - whether civil or criminal.
The second para of Article 30
p. 101 of the Civil Account Code

distinctly enough lays down that
in the case of other than District
Treasurers, the form of the agree-
ment may be modified and
in their case "no modification
can be allowed without re-
ference to the Government Solicitor."
If the least pains had been
spare d by the officers named
above to ascertain by a re-
ference to the Government Soli-
citor, whether the liability created
by the appendix G. model
agreement is one of a civil or
criminal character, they should
before long have received an
answer that it is one of a civil
nature, and all this worry,
persecution, hardships, disgrace, &c
to the Memorialist would most
certainly have been averted
and avoided. It was ^{the} duty
of the Accountant-General to.

54156m

43
have respectfully addressed the
²³/₄₁ Local Government against
passing a proceedings of the
kind that Exhibit J is, ordering
the prosecution of the Memorialist
in the courts of the dependent
Native State of Travancore.
The prosecution itself in the
peculiar circumstances detailed
above, being unsustainable, that
it should be done in the criminal
Courts of Travancore, must be,
for the reasons elaborately set
forth in the foregoing remarks on
jurisdiction, still more so.

That passing on to the next item
5, the Memorialist humbly begs
to submit that even concerning
the prosecution to be sustained
a few remarks on the nature
of the charge and of the evidence
in support of it may not be
out of place. The charge

54156m

that the Treasurer committed a criminal
breach of trust with regard to
money and notes (how much
of each it does not say) that
were entrusted to him as the
Residency Treasurer. The in-
definiteness about the charge
prepared by the committing
Magistrate is fully admitted
by the High Court in para 5
of its judgment. The High
Court says that error was
rectified by the Sessions Court
while at the same time observes

It is no doubt remarkable that
(Sessions Court) charged the
accused with misappropriation
of money also. Still the High
Court maintains that the
charge has been correctly framed
by the Sessions Court. The difficulties
that must arise to the defence
in the accused has not been
specially informed of the charge

more easily imagine a
described. In the face of such
a guess and indefiniteness
about the charge, the High Court
strangely enough comes to the
conclusion that the accused
is not prejudiced thereby.

There has been considerable sup-
pression of real facts in the Com-
plaint and prosecution. A care-
ful perusal of the Asst. Resi-
dent's Statement must show
that it is one tissue of pre-
varication. He cannot and
will not answer point-blank,
Such a simple question,—
whether the notes missed from
double or single locks? and
whether the deficiency was in
money or notes or both? The
fact (which all the accounts
and Records of the Residency
indisputably establish beyond a

from the double lock chest, was studiously kept in the background both in the complaint and examination in chief. This fact had to be elicited after a great deal of trouble and struggle in cross examination, although its disclosure should have been the very first thing to be done voluntarily both in Complaint and complainant's Statement. Can this be without a motive in the prosecution? Most assuredly not. The motive palpably was that if the admission that the notes missed from the Double locks were made, the case against the Memorialist would completely break down that the provisions of the Civil Account Code and the Standing orders of the Board of Revenue, shifting, as already

0344PGH

0344PGH

responsibility on the shoulder the Treasury Officer will effectually exculpate and exonerate the Memorialist and render the prosecution of the Treasury Officer inevitable. Three distinct entries in the Treasurer's Daily Balance Sheet of the 11th November 1892, Exhibit M, Daily Report of Receipts and disbursements for the same date Exhibit N, the Register of notes under double locks and keys Exhibit L, & above all the Assistant Resident's own report Exhibit 13 on the result of his examination, of the 15/11/92 and several other records and accounts unequivocally establish the loss of the sixteen Currency Notes from the Double lock yet it is this fact that the prosecution aimed at suppressing

0344PGH

no longer withstand the pressure
brought to bear upon the Asst
Resident and the other witnesses
for prosecution. Were the complain-
ant an ordinary private individual,
he would rather prefer losing
his case altogether than resort to
such crooked suppression of vital
truths and hideous misrepresent-
ations of facts. With all this crooked
procedure what has the pro-
secution, after all, established
against the Memorialist. In
para 9 of its judgment, the High
Court distinctly says. — There is ^{literally} no
evidence as to which of the two
officers — the accused and
the 5th witness (the Treasury Officer)
obstructed the Notes. We have
only the testimony of these two witnesses.
Mr. Larive to prove that on the

14th Nov 1912

14th Nov 1912

49
31
412
14th November the accused became
the sole custodian of the two keys.
But we cannot safely act on
his evidence. "If the only evidence
against the Memorialist (according
to the High Court's own finding)
cannot be acted upon, on what
evidence was it that they convicted
him? Such a conviction must really
be extraordinary and passing strange.

That in para 8 of its judgment,
the High Court makes an assumption
"that one of these two officers
(accused or Mr. Larive) or both
are responsible for the missing
currency notes." It being fully
admitted that the notes missing
were under "double locks and
keys, there would never have
been a necessity for an assumption
in the alternative of this kind,
if the High Court after a careful

perusal of the Civil Account Code
and the standing orders of the
Board of Revenue both filed
in the case as Exhibits A &
VII had ascertained the
respective liabilities of the
Treasurer and the Treasury
Officer with regard to the contents
of the joint lock and keys. Such
a perusal would certainly have
enabled them to lay their finger
on the Treasury Officer as the
person personally and exclusively
responsible for such treasure.

In answering the question "Does
the evidence adduced in this
case prove that either the
manager or the accused
became the sole custodian of
both the keys on any particular
day between the 1st and the
14th November last? & the most

57
important question of fact which
³⁷/₄₁ according to their own opinion
they had to decide in this case,
the same court in para 8 says
"upon a deliberate consideration
of the evidence, we have arrived
at the conclusion that our finding
on this point should be in the
negative." There is then, in the
opinion of the High Court no evidence
whatever as to (1) whether the
Memorialist or the Treasury Officer
abstracted the missing notes (2)
that the only evidence of Treasury
Officer showing that the Memorialist
was in possession of both the keys
on the 4th November is very sus-
picious and cannot be acted
upon, and (3) that "the unim-
peachable evidence of Revd.
Father Victor on the defence lies

corroborated by Treasury Officer's own admission that he borrowed money for a "purpose" but returned it in the course of a ten days" throws a strong suspicion on the Treasury Officer and establishes the pecuniary difficulties he was in, at or about the time of the defalcation. With these data before any deciding authority it cannot certainly be difficult to pronounce who the delinquent really is, or at least in whose case the probabilities which the facts of the case suggest are greater. Even supposing the same probabilities to be equal so far as complicity of the accused and the Treasury Officer is concerned (a supposition which the conclusions detailed by the High Court cannot warrant) it can at most, create a doubt

53
32
that the missing notes must have been abstracted either by the Treasurer or Treasury Officer the alternative hypothesis already adopted by the Learned Judges of the High Court. In the circumstances of such a case as well as in accordance with the well-recognized and universally adopted principles of all Law, the benefit of this admitted doubt must be given to the accused which however has not been done. We have, on the other hand, the conviction of the Memorialist on charges so vague and obscure, on evidence so flimsy and unsubstantial and in the face of the doubt recorded in favor of the accused. The Memorialist leaves it entirely to your Excellency to consider and decide whether such a finding of the original on

Similar case in which the British Resident has not come forward as the Complainant.

That the courts original and appeal lay much stress upon the Memorialists execution of the statement Exhibit A undertaking to replace the deficiency in the Treasury. The circumstances under which this statement was executed must establish coercion to such a high and satisfactory degree as not to make it worth the paper it was written on. The Asst Resident and the Treasury Officer who must certainly have been conversant with the provisions of the Civil Account Code & the Standing orders of the Board of Revenue must have known, that the responsibility for the missing notes from the Double locks and

on their own Shoulders. The Asst Resident thus set the Treasury Officer to work with the Memorialist & to persuade him both by promises of protection and threats of prosecution and dismissal to execute a statement of the kind that Exhibit A is. Memorialist was accordingly produced the next morning 15-11-92 before the Asst Resident as willing to execute the much desired statement. The anxiety of the Asst Resident was so great that no ~~longer~~ sooner was he informed of the fact, than he ran to his table brought paper and pen and wrote in his own hand the statement in question. Memorialist who was sufficiently acquainted with the English Language to write the statement in his own hand, was simply required to sign the statement, and the same was attested by the

Resident and the Treasury Officer,
 with a view to give to the statement
 an air of Voluntaryness, professed
 a complete ignorance of the
 Provisions of the Account Book
 and Standing orders of the
 Board of Revenue, which ignorance
 was strangely enough sustained
 through the enquiry before the
 Committing Magistrate and
 the trial before the Sessions Court.
 They seemed even to doubt the
 existence of such codes governing
 the conduct of business in Treasury.
 The Treasury Officer who was for
 years past the Head Accountant,
 wanted his Superiors and the
 Courts of the Native State to believe
 + more strange is that the pro-
 fessed and pretended ignor-
 ance + that he was such with-
 + a knowledge of the

^{35/2}
 professed and pretended ignorance
 of the two officers of the Residency
 Treasury, of the only laws that govern
 the conduct of Treasury business, was
 accepted by the same courts to be
 quite natural and possible. The
 Memorialist need hardly say much
 on this point. It was no other than
 a device to conceal the coercion in
 the execution of the statement A.
 as well as the self-interest which
 led them on to the practice of their
 coercion. Liabilities are created by
 Laws. They do not come and go
 as interested parties wish them.
 There are the laws of the Treasury
 before us. Your Excellency in Council
 can well interpret them and hold
 the right person or persons responsible
 according to the extent of their respo-
 sibilities.

That the trust extended only to the
 treasure in the separate custody of
 the Memorialist, that the bulk of
 Treasury in the Double locks and to

in the custody proper of the Treasury Officer who issues money and notes therefrom to the Memorialist, that notes missed from the Double lock chest to which the Memorialist's trust does not and cannot extend, that the provision of the agreement Model G. given in the Appendix must be read with those of the Civil Account Code and Standing Orders of the Board of Revenue to ascertain the precise liability of the Memorialist to the Treasury under double locks and keys that when so read, his responsibility thereto is almost nihil, have already been fully detailed. Thus in this memorable case of criminal breach of Trust, the most fundamental and essential element - Trust - has not been made out as extending to the property with regard to which the same has been alleged to be breached. With

36
41

of misappropriation the Memorialist has fully exhibited the separate balance with him, over which alone the trust legally and properly extends to be quite correct. He has shown by the accounts that the rest of the Treasury is under double locks and keys and under the custody proper (by the Treasury Laws) of the Treasury Officer or Resident. This is how the Laws of the Treasury expect him to account for. This is precisely how he has accounted for. It must in the eyes of the Laws be satisfactory accounting for treasure in the Resident's Treasury. The commentaries of Mr. Mayne to section 406 of the Indian Penal Code quoted by the learned Judges of the High Court of Travancore to prove embezzlement or misappropriation cannot therefore apply to the case in question. If the bare existence of a deficiency in the Resident's Treasury can amount to a failure of the trust account

monies in his joint and separate possession. This deficiency it is clear was discovered on the 14th of November 1892. It must certainly be absurd to base a conviction on the fact of this deficiency alone without the protracted procedure of a formal and regular trial before a competent court of criminal jurisdiction. The records & evidence adduced during the trial of the Memorialist before (as already observed) an incompetent court, at worst, according to the finding already discussed of the High Court itself, disclosed no offence whatever against the Memorialist. If the records and evidence both in his trial before the Sessions Court and in the preliminary enquiry before the committing Magistrate are to be entirely ignored

37/412
61
exclusively on the single circumstance of the deficiency without the least enquiry departmental or judicial as to who is responsible for it, there is clearly no necessity whatever for all the proceedings taken before the committing Magistrate in the first instance and later before the Sessions Court. The fact of the deficiency may as well be reported to a Sessions Court of this Native State or of British India and the same Court may be requested to convict the Memorialist for the offence of criminal breach of trust and pass a sentence of imprisonment on him even without his presence and without the hardships and tediousness of a protracted trial. The procedure the law does not & cannot certainly countenance. Therefore the inference of misadventure is that

circumstance of the deficiency which was brought to light on the 14th November 1892 on the strength of the commentary to section 406 relied on by the High Court must be palpably an unsoundable. There is therefore clearly no misappropriation. There is thus wanting in the case, the only two essentials to secure a conviction in a case of criminal breach of Trust i.e. Trust and Misappropriation. The conviction for these reasons must be hardly sustainable. The sentence must, of necessity share the fate of the conviction. Both the sentence are therefore alike unsoundable.

That it simply remains now to notice the regularity and consistency of the dismissal of the Memorialist when viewed with

1892

accorded to the Treasury Officer who according to the finding of the High Court is the real delinquent in the case. The British Resident not only screened the officer from the hardships merited prosecution but recommended him for a liberal pension. The propriety of the procedure will speak for itself. It has simply to be viewed with the preceding lines of the Memorial to be convinced of its highly erroneous and unsoundable character. The insinuations in the High Court judgment (which court when it wrote its judgment was not probably aware of the treatment proposed to be given to the Treasury Officer) regarding the further detention of the Memorialist in Service, will be discovered to be quite out of place or season. The provisions of the Civil Account Code and the Standing orders of the Board of Revenue relating

64
to the relative and respective
responsibilities of Treasurer and
Treasury Officer have been completely
lost sight of, by every one of the
authorities concerned in this case
i.e. the British Resident, the
Accountant General, and the
Criminal Courts of this Native
State. The basis they proceeded
on, has been amply shown to be
erroneous and fallacious. Instead
of holding a preliminary investi-
gation or enquiry to ascertain the
validity of the objections to the
jurisdiction of the Travancore Courts
actually raised in the case, the
Courts have summarily over-ruled
and maintained without any
foundations or data whatever, that
the Memorialist, that the
Memorialist was a subject of
His Highness the Maha Rajah of
Travancore. The decisions of the
High Courts of British India

65
cited in support of this objection
as well as to expose the fallacy
of the view that the waiver of the
Madras Government gave juris-
diction to the Travancore Courts,
were discarded with a high hand,
distorted views had been taken
of the provisions of European
and American International
Laws, and the same grossly mis-
applied to this dependent Native
State of Travancore. An analogy
was attempted to be drawn
between the relations of the
Independent Courts of Europe
and America and those of the
Paramount Power to a dependent
protected State. The permanent
Resident of Travancore and Cochin
was construed into the Ambassa-
dor (temporary) of European and
American courts. The Travancore

Residency was metamorphosed
into the "Hotel" of the Amba-
sadors in International Law,
simply to establish a false and
misleading proposition that
the rights and privileges of the
Resident Staff are of a character
that may be waived by the
Resident. If so why ^{did} the Resident
himself not waive that right?
What was the necessity for the
interpolation of the Madras
Government to waive the same
right? The waiver must necessarily
imply the existence of a Right.
When objection is taken to the Right
of the waiver itself, can it admit
of being summarily over-ruled?
That the Memorialists' contentions
Specially were: that the Right
waived was created by enact-
ments of the Government of India

(Act X of 1882 & Sec 10 of 10
that no government ^{admittedly} subordinate to
that Imperial Government was
competent either to waive or
cancel it; that it was not
created by the provisions of the
International Laws as erroneously
supposed by the Criminal Courts
of Travancore; and that such
waiver itself cannot give jurisdiction
to a court that had legally none.
The Records of the case must convince
Your Excellency that these objections
have not been properly met and
answered before proceeding to
trial. The exceedingly obscure, and
misleading character of the charge
so as seriously to prejudice the
Memorialist in his defence the
wilful suppression of many important
and vital facts, the gross misre-
presentation that money & notes were

18/11/82

from the Treasury when the
accounts and the results of the
Assistant Resident's examination as well
as the report of that officer thereon
(Exhibit 13) only shewed that notes
of 100 Rs. to the value of 1600 Rs. were
missing from the Double locks, the
wrong impleading of party in the case,
the extreme reluctance of prosecution
to give out what really was a fact
that the deficiency was all in notes
from the double locks and keys, the
admitted astonishingly false nature
of the charge, the strange averment
in the judgment that the accused
is not prejudiced thereby, the
paucity or total admitted absence
of evidence even in support of this
queer charge, the palpably un-
sustainable character of the
conviction and sentence, and
the insinuations in the High
Court judgment regarding the

11/1/54

dismissal of the Memorialist from
Service as well as the inconsistency
⁴¹/₄₁ in the treatment accorded to the
Memorialist and the Treasury
Officer the real delinquent accord-
ing to the High Court's own finding,
have already been elaborately detailed

That the Memorialist who had
ab inito been kept in custody during
the whole enquiry and trial and
subjected to unspeakable hardships,
most humbly and fervently pray
that in kind and benign consideration
of what has been set forth in the
preceding lines, Your Excellency
be graciously pleased to call for
the Records of the case, review the
whole in the light of these lines,
quash the whole proceedings
ab inito, direct the recovery of the
deficiency from the Treasury Officer

14/1/54

and laws and the restoration forth
with of Memorialist to his former
Substantive appointment of Treasurer
in the Residency with such
compensation for losses sustained
and wrongs suffered as your
Excellency may deem fit and
proper.

For which act of grace
Petitioner shall as in duty bound
Ever pray.

H. P. Govindaswamy Mudaliar

Treasury
7th February 1895.

Resident's Office, on circuit
Cochin, 22nd March 1895

From

H. B. Loring Esquire M. A. C. I. &

Resident in Travancore and Cochin,

To

The Honorable Mr. J. F. Paine C. S. I.

Chief Secretary to Government,
Fort St. George

Sir,

I have the honor to forward herewith a memorial ad-
dressed to His Excellency the Governor in Council by W. P. Govinda-
swamy Mudaliar late Treasurer of the Resident's Treasury
against his trial and conviction by the Travancore Courts and
subsequent dismissal from the British service. The memorialist
originally petitioned the Government of India but that mem-
orial was withheld under G. O. dated 12th October 1894
No. 703 Political. I have already reported on the case in my
letter disposed of in that G. O. and as the memorialist goes
over only the same ground now, I have no remarks to offer
on his present representation.

I have the honor to be

Sir

Your most obedient servant

J. W. Dando Esq.
Asst. Resident
for Resident

Page

From

To

The Resident in Travancore and Cochin
 The Chief Secretary to Government
 Fort St-George

petition mls. 1102 16. 11. 93.
 192: 22. 2. 93. ~~Final~~
 1144: 16. 11. 93. "
 628: 4. 7. 93. "
 555: 10. 6. 93. "
 1415: 24. 12. 92. "
 320: 17. 5. 94. ~~18th SC~~
 104: 17. 1. 94. ~~just~~
 1348: 10. 12. 92. ~~Final~~

For Orders

Dated 23rd March 1895
 Despatched 30th 50 50
 Recd 3/4

Ref on ltr 842/1895

Enclosure #file
 2 Ltr 1122/94

Forwarding a memorial addressed
 to His Excellency the Governor in Council
 by W. P. Govindarawan Mudaliyar
 late Treasurer of the Resident's Treasury
 against his trial, conviction
 and dismissal from service

Attention is
 invited to the notes
 A in G.O. D. 12th Octy 94,
 N^o 703. It is submitted
 that the petitioner may
 be told that the Govt
 sees no reason to interfere
 on his behalf.

CB
 314/95
 I have been through
 this lengthy petition and
 it is ~~presenting~~ a mere
 repetition of what the petitioner
 has already put forward,
 in the printed petition under
 Cover of G.O. N^o 703 dated
 12th Oct 1894 with the addition
 of comments upon that order.
 The pages in contained
 in page 69 & 70 of the
 petition: it is submitted
 that the following order
 may issue.
 The Govt declines to comply
 with the petitioner's request

P.T.O.

12/4/95

NOTE FOR THE UNDER SECRETARY

I have seen Mr with regard to these
 papers.
 The file does not appear to be complete.

V
 80 192 22. 2. 93
 written to
 Madras

These are the proceedings in which
 We waived the trial of the
 man in British Territory. I recollect
 the point being raised as to where
 he should be tried.

189. has raised the point whether
 Section 188 C.C. I. does not apply
 only to cases where British Subjects
 commit offences in Native States
 and then walk out of them and
 are caught in British Territory.
 See what is said at page 3 of the
 I do in the commentary on
 Section 4.

Got note
 Ch

The foreign jurisdiction act was
 not available before yesterday.
 I have now all the references and
 have them ready for use when
 I come to office tomorrow.

I don't feel convinced that the
 has taken originally of Section
 188. & is the right one.
 Look up this and then report
 & see whether there are any
 replies

I suppose may be must have
 some things in support of
 the view which is the important.

22/4/95

I doubt whether we can question the
 question of the validity of the Immunity
 conferred on domestic subjects as being
 British subjects who are on this
 point. They hold that the pet. was
 a subject of Travancore.

C. No 445

Note for the Chief Secretary

44
412

✓ Please see G.O. of 22. 2. 92, No 192,
and the notes therein.

The remarks on page 7 of Memo
refer to European British subjects.
Regarding Native British subjects
please see the portions marked on
pages 352 & 353 of "Protected Princes
of India"

Travancore has adopted the
Indian Penal Code with the exception
of Chapter VIII - vide Volume of Travancore
Regulations" in the file

Submitted to Mr. C.S. with reference
to his verbal instructions - with ~~two~~
books marked - to be taken to H.E.
the Governor.

✓ The papers referred to in
Mr. Butterworth's note in G.O. $\frac{192}{22. 2}$
recd. this morning from Madras
are submitted

C.S.
29. 2. 95

I have been through these
papers - & gone carefully into
the points raised by the
petitioner - & I do not think
he has ^{made out} any claim for consideration.

I w^d. simply say -

The Govt. declines to comply
with the pet^r. requests.

If he petitions India - we
shall have to set out all the
facts.

W
24 June

45
H12

Mr

As directed by the Chief Secre-
tary ^{Yesterday} ~~Gordon~~, the following is
submitted with reference to the trial
of the late Residency Treasurer by the
Travancore Courts

The Govt. waived its rights to
try the ~~Treasurer~~ in G.O. dated 23rd
February 1893, No. 193. Attention is
solicited to Mr. Butterworth's note in
that G.O., where the question of the com-
petency of the Travancore Courts to try
the case was discussed.

The view that Section 188 of
the C.P.C. applies only to cases where
British subjects commit offences in
Native States and then abscond and ~~are~~
are apprehended in British Territory,
seems to be correct.

The remarks on page 7 of Mayne's
Penal Code refer to European British
subjects. The procedure as regards Native
British subjects ~~is~~ is, as pointed out
by Mr. Butterworth in his note in G.O.
dated 23rd February 1893, No. 193,
different. This procedure is also clearly

46
412

that "care is taken to prevent the
"exercise of Residency jurisdiction from
"prejudicing the interest of the native
"State. The Political Agent is careful
"not to allow his Residency to become an
"asylum to fugitives from the local juris-
"diction."

"If the late Treasurer is a British
"subject, as he contends, his trial by
"the Travancore Courts appears to have been
"perfectly regular and to be supported
"by all authorities on the subject."

"If he is a Travancore subject - he
"says he is not but the Travancore courts
"hold otherwise - there seems to have been
"no irregularity in his trial, which calls
"for notice. Please see sections 11
"and 12 of Act XXI of 1879 and the passage
"marked on pages 368 & 369 of Tupper's
"Indian Protectorate" - "No difference is
"made for purpose of extradition, between
"the subjects of native states and the
"Native Indian subjects of Her Majesty
"The surrender of both classes is lawful."

C.S.
19/VI/95.

"I very much regret that owing to the
"press of heavy work the resubmission of
"these papers has been so long delayed. I
"intended to have written the note myself
"but was so last obliged as I could
"not find time to do this to hand them
"over to Mr. Schmidt who knows all the

references for preparation of a note.

Mr. Cunningham D.O. came after
1/4 the Gov. had spoken to me
regarding this case.

I submit that the pet^r has no
locus standi.

The Residency is not legally British
territory though by custom amounting
to an unwritten law the Resident
as the representative of the Paramount
power exercises jurisdiction within
the limits of the Residency over
his own and British public servants.
But this does not render it
incumbent upon him to try
all such of the persons named
above as may commit offences
within his jurisdiction. He enjoys
merely a privilege which can
when considered expedient be
waived for no privilege is
compulsory.

In this instance the Resident
with the consent of Government
for his good and sufficient
reason (i.e. that no man
should be judge in his own
cause) waived his privilege &
the waiver I take it distinctly
brought the petitioners within
the jurisdiction of the Paramount
Court whether he was a British
subject or not.

If he goes up to India on this
point the pet^r is very unlikely
to get anything out of it.

22/6/95.

Paramount Residency Petitioners Case

Mr. the Governor

22/6/95.

[G.]
[24.]

500-21-5-05.

Political DEPARTMENT.

Papers to be read in proceedings:—

Again G.O., dated

189 , No.

Again G.O., dated

189 , No.

Current No.

of 189 , dated from

" "

" 189 , "

" "

445 - " 1895, " 23. March, Resd. in P. & L.

ORDER. 27 June 1895, No. 412.

The Govt declines to comply
with petitioners' requests

[From Order]

C.S.
24.VI.95

27/6/95.

Petition Resd. in P. & L. (2) which

for commⁿ. to petitioners

Copy 22/6/95.

Not. for C.S.

No need to circ, it

is thought

C.S.
24.VI.95