

Public (1899) Department.

ORDINARY MS.

G.O., No. 70-71

Dated 18-1-88

INDEXED.

[Despatch Abstract.]

Forw^dg to the Secy, with remarks,
a copy of the opinion of the Joint Solicitor,
Madras, as to the power of this Govt to dismiss
Mr A. Craig Hunter, one of the temporary
doctors, under the terms of his agreement
with the Secy of State.

T
18-1-88

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

Public (1899) Department.

CURRENT No. 57

From the Govt. solicitor

Order

No. 8

Dated 4
 Received 5 } -1-99
 Registered 5
 Enclosures one (encl. 3933, 45)
 Spare copies

SUBJECT.

Giving his opinion on
 the Craig Hunter's case.

BACK PAPERS.

G.O.	No.	Department.	Date.
	3	Pub	2.1.99.
	1315-6	"	15.12.98R
	1511-2	"	13.12.98
	1497-8	"	12.12.98
	1394-5	"	18.11.98
	1376	"	11.10.98

FURTHER PAPERS.

G.O.	No.	Department.	Date.

Confidential

No. 8.

Madras 4th January 1899.

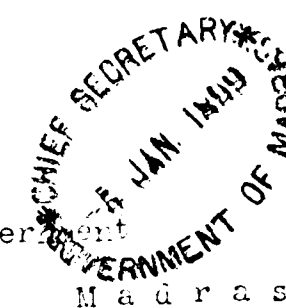
From,

Ernest Barclay
Government Solicitor
M A D R A S.

To,

The Chief Secretary to Government

Madras.



Sir,

I beg to acknowledge receipt of the Order of Government Public Department dated 2nd instant No.3, with file of papers relating to the case of Mr. Craig Hunter.

Referring again to the Agreement, Clause 2 thereof provides that, on arriving in Bombay, Mr. Craig Hunter will report himself to the Surgeon General to the Government of Bombay and will, thenceforth, faithfully discharge such duties as the Government of Bombay or the Government of India or the Superior Medical Officers of those Governments shall, from time to time, assign to or require of him.

Clause 4 of the agreement provides that Mr. Craig Hunter will continue in the service of Government as aforesaid until the expiration of the period of three months at least and until such service shall be terminated by a fifteen days' notice in writing signed on behalf of the Government.

The question is whether Mr. Craig Hunter has committed such a breach of his agreement as would justify Government in treating the agreement as at an end, notwithstanding that the period of three months mentioned in clause 4 may not have expired. The agreement was apparently dated more than three months ago, for the misconduct with which Mr. Craig Hunter is charged took place on the 22nd October last (See Major Hakim's letter of 23rd idem to the Secretary to the Surgeon General) and, as the agreement was signed in England it must have been dated quite three months ago. But it might be a question whether, with reference to Clause 4 of the agreement, Mr. Craig Hunter has, within the meaning of the clause, continued in the service of Government as

aforesaid (i.e as provided in Clause 2) until the expiration of -
the period of three months and I am inclined to think that he has
not and that such period of three months must be calculated from
the date of his reporting his arrival to the Surgeon General to -
the Government of Bombay.

5. Reverting to the question whether the misconduct charged -
against Mr. Craig Hunter amounts to a breach of his agreement, I
am of opinion that it does not. What he is charged with is that, -
when Major Hakim asked Mr. Craig Hunter to be allowed to feel his
pulse, Mr. Craig Hunter replied (it is said in a dictatorial tone,
but this is immaterial) that he would not allow his pulse to be -
felt until Major Hakim had washed his hands, as he, Mr. Craig -
Hunter, did not wish to go to Madras infected with plague. Whether
this was a reasonable precaution on the part of Mr. Craig Hunter
is not for me to say, but his conditional refusal was clearly not
a failure to discharge a duty imposed upon him within the meaning
of clause 2 of the agreement. It may have been a breach of the -
Rules passed under the Epidemic Diseases Act 1897 which would have
justified Mr. Craig Hunter's prosecution, but that is another -
question and one which I need not consider.

6. The next act of misconduct with which Mr. Craig Hunter is -
charged is that, when called upon by the Surgeon General with the
Government of Madras to apologise to Major Hakim for, as the Sur-
geon General says in his letter of 26th October last to Mr. Craig
Hunter, attempting to teach a senior Medical Officer how he should
perform his duty and obstructing him in the performance of his -
duties, Mr. Craig Hunter refused to do so; but, on the ground that
his action was due to a conscientious principle. Mr. Craig Hunter
was not bound by his agreement to carry out every order of the -
Superior Medical Officers of Government but to discharge such -
duties as (inter alia) such Superior Medical Officers should, from
time to time, assign to or require of him. This clearly relates -
to duties for which Mr. Craig Hunter was engaged i.e plague duty
and, in my opinion, it is extremely doubtful whether the Surgeon
General had any authority to call upon Mr. Craig Hunter to apolo-
gise to Major Hakim.

7. On the whole therefore I am of opinion that Mr. Craig Hunter has
not been guilty of misconduct such as would amount to a breach of his
agreement and that therefore Government would not be justified in
dispensing with his services except in the terms of that agreement.

8. I return the papers sent me and

I have the honor to be

Sir

Your Obedient Servant

Ernest Barker

Government Solicitor.

C. 7. 1. 99 C. 10. 1. 99
27. 1. 99 2. 14. 1. 99

Public DEPARTMENT.

Papers to be read in Proceedings:—

Case

Again G.O., No.	, dated	189
Again G.O., No.	, dated	189
Current No.	5-6 of 1899, dated	4. 1. 99, from the Govt. Solicitor
" "	" 189 "	" "
" "	" 189 "	" "

Please see

CS

ORDER.

H. In rem.

The Govt. Solicitor's opinion will be forwarded to the Govt. of India.

I think the Govt. is wrong. I agree that D. Kumar did not commit an act warranting the cancellation of his agreement. but it seems to me clear that the period of his agreement was 3 months from the date of embarkation - see preamble - and not from date of arrival in Bombay. and his services were dishonoured with from the end of the 3 months. The Govt. of India shows that he had then entered the service of the Govt. of India. Article 3 seems to have

Cy *Mr*
6. 1. 99 8/1/99 6. 1. 99

Lettin -
2.

The Secy. to the Govt. of India Home Dept.

acknowledge the receipt of Mr. Kumar's letter no 1709, Medical, dated 8th December 1898, and in compliance with the suggestion in para 2, to

* Letter to 8 27 4 June 1882

under, as to the power of
the Government to
dismiss Mr Craig Hunter
under the terms of his
agreement.

2. I am to say that
H3. the Govt in Council
agrees with the Govt. Solicitor
^{in holding} ~~as to the~~ that Dr Hunter
did not commit an act
warranting the cancellation
of his agreement, but
with respect to the defendant
question, which by the
Govt. Solicitor, ^{in para 4 of his opinion,} as to the
date from which the
period of three months
engagement should be
held to have commenced,
it seems clear to the Govt,
from the preamble to the
agreement, that the period
of the temporary doctor's
engagement was three
months from the date of
embarkation for, and
not from the date of
arrival at, Bombay.
Mr Hunter drew salary

* the words are "for the
period of three months at
least from the date of his
embarkation for Bombay".

from the date of his
embarkation, and that
fact alone shows that
he had then entered
the service of the Govt. of
India. Article 3 of the
agreement appears to have
been ~~based~~ framed on
the same assumption: ~~the~~
his words: "From the date of his
embarkation for Bombay
and so long as he shall
remain in the said
service in India, - ^{indicating} that he had
commenced the service
under the agreement began
out of India."

3. I am to add that
it was on this construction
that of the agreement
that this Govt. dispensed
with Mr Hunter's services
at the end of three months
from the date of his
embarkation for Bombay
& that it appears to
this Govt. that its action
was quite within the

Provisions of the agreement

Cy (Gumindia)

14.1.99

18/1/99

[Faint handwritten text, mostly illegible]

When given for copying
When copied
When examined
When signed

189

READ AGAIN G.O., No. , DATED
189

CURRENT No.

ENCLOSURES TO C. No.

ORDER OF GOVERNMENT A A A A A A A

LETTER OF GOVERNMENT.

STATEMENT WITH DETTO.

PAPERS NOT FILED UP, BEING MEANT FOR DESPATCH
IN ORIGINAL.

N.B.—
A = Copy in full.
B = Not to be copied.
P = Copy abstract only.
Q = Copy heading only.