

Ward Vs. the Queen

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Court : Chennai

Decided On : May-06-1880

Reported in : (1882)ILR5Mad33

Judge : Charles A. Turner, Kt., C.J. and ;Muttusami Ayyar, J.

Appellant : Ward

Respondent : The Queen

Judgement :

Charles A. Turner, Kt., C.J. and Muttusami Ayyar, J.

1. The powers of the Government of British India to make laws and exercise jurisdiction over British subjects outside British India but within the territories of Princes of States in India in alliance with the British Government, are declared in and regulated by English Statute Law.

2. By the Indian Council's Act 1861, power was given to the Governor-General in Council at meetings for making laws and regulations to make, inter alia, laws and regulations for European British subjects, being servants of the Government of India within the dominions of Princes and States in alliance with Her Majesty. By 28 Vic., Cap. 17, this power was enlarged so as to enable the same authority to make laws for all British subjects of Her Majesty in the places before mentioned; and the doubts which had arisen as to the power of the same authority to make laws binding on Native Indian subjects in the same places were set at rest by 32

and 33 Vic., Cap. 98.

3. The Foreign Jurisdiction and Extradition Act, 1872 (XI of , 1872), was passed in the exercise of these powers of legislature which had been conferred on the Supreme Legislature of British India by the statutes to which we have referred. Its main object was to consolidate and amend the law relating to offences committed beyond the limits of British India by such British subjects as the Indian legislature had been empowered to deal with. Section 6 authorized the Governor-General to appoint any European British subject in the dominions of Princes and States in India, in alliance with Her Majesty, a Justice of the Peace, and declared that any Justice of the Peace so appointed should have all the powers conferred on Magistrates of the first class who are Justices of the Peace and European British subjects, by any law for the time being in force in British India relating to Criminal Procedure, and it also provided that the Governor-General in Council might direct to what Court having jurisdiction over European British subjects any such Justice of the Peace was to commit for trial. Section 8.* extended the law relating to offences and to Criminal Procedure in force in India to all British subjects, European and Native, in Native States. But this provision did not operate to confer jurisdiction, directly or indirectly, on any Court; it merely introduced the laws defining offences and prescribing punishments for such offences and regulating procedure. The Foreign Jurisdiction Act, 1879, re-enacted these provisions.

4. By Statute 28 Vic., Cap. 15, the Governor-General in Council was authorised to empower any of the High Courts, established under 24 and 25 Vie., Cap. 104, to exercise all or any portion of its jurisdiction in respect of Christian subjects of Her Majesty, resident within such of the dominions of Princes and States in India in alliance with Her Majesty as the Governor-General in Council might from time to time determine. The Governor-General in Council by Notification 178 J. (F. D.), dated 23rd September 1874, in the exercise of the powers conferred on him by this statute, empowered this Court to exercise original and appellate criminal jurisdiction over Christian subjects of Her Majesty, being European British subjects, in the country of Mysore, and by Notification 179 J. (F. D)., dated 23rd September 1874, Justices of the Peace within the territory of Mysore were directed to commit for trial to this Court such European British subjects, being Christians,

as are required by Act X of 1872 to be committed to a High Court.

5. By a Notification, dated 27th August 1879, No. 236 I.--J., Foreign Department, the Governor-General declared that the Judicial Commissioner should exercise the powers of a High Court under the Code of Criminal Procedure, and empowered the Chief Commissioner to direct that the criminal jurisdiction of any Sessions Judge should be transferred to the Judicial Commissioner either wholly or in respect of a particular case or class of cases, etc. The Governor-General in Council could not by notification create the Judicial Commissioner a High Court for the trial of European British subjects; and the Chief Commissioner could not transfer from a Sessions Judge to the Judicial Commissioner any jurisdiction which the Sessions Judge did not possess. The Chief Commissioner, on the 25th September 1879, professing to act under the Notification of the 27th August 1879, transferred the criminal jurisdiction of the Sessions Judge of Nandidrug, in reference to proceedings against European British subjects, to the Judicial Commissioner. But the Sessions Judge of Nandidrug is not shown, either personally or in virtue of his office, to have enjoyed any jurisdiction over European British subjects under any law emanating from British authority.

6. Neither by the notification of the Governor-General nor by the notification of the Chief Commissioner has the Judicial Commissioner acquired jurisdiction either as a High Court or a Session Court over European British subjects, being Christians, while the committing officer is not shown to have authority to commit such persons for trial to any Court other than to this Court.

7. We must therefore declare that the petitioner cannot legally be detained under the warrant of the Judicial Commissioner, and the commitment must be set aside. The petitioner will be taken back to the Court of the Justice of the Peace by whom he was committed to be dealt with according to law. The committing officer will take account of the confinement the petitioner has already undergone, and we are bound to observe that, if nothing more be proved than the Judicial Commissioner considered was established, the offence could be more than adequately punished by the Magistrate.

8. Although this Court would have power to try, if a commitment could legally be made to it, it may be doubted whether the Justice of the Peace could commit the petitioner to this Court. The terms of the Notification 179 J., 23rd September 1874, direct him to commit to this Court such European British subjects, being Christians, as are required by Act X of 1872 to be committed to a High Court. That Act requires only that such European British subjects should be committed to a High Court as are accused of offences punishable with death or transportation for life. If we adopt this--the apparent construction of the Notification No. 179 J.--the Governor-General has not directed to what Court the Justice of the Peace is to commit in cases in which a European British subject, being a Christian, is accused of an offence not punishable with death or transportation for life. But inasmuch as this Court has been duly constituted a Court of Original Criminal Jurisdiction to take cognizance of offences committed by European British subjects, being Christians, it may be that in the absence of any special direction a commitment to this Court would be a good commitment.

* Extension of criminal law of British India to British subjects in Native States.

[Section 8 : The law relating to offences and to criminal procedure, for the time being in force in British India shall, subject as to procedure to such modifications as the Governor-General in Council from time to time directs, extend to all British subjects, European and Native, in Native States.]

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