M.R. O. 1—30,000—16-10-28.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 545-46 Press ~~Mis.~~

45-47

Dated 14 — 5 — ~~19~~ 1857

Not to be folded or roughly handled

Fort St. George, Judicial Consultation, 12th May 1857.

No. 45. Read the following letter from GEORGE ELLIS, Esq., Register to the Court of Sudder Udalut; to the Chief Secretary to Government, dated 28th April 1857, No. 44.

Sir,

I have the honor by direction of the Judges of the Court of Sudder Udalut to forward copies of the letters mentioned in the margin, for the consideration of the Right Honorable the Governor, and to request that the course suggested by Mr. Dale in para: 6 of his letter, may be adopted in order to compel Captain Griffin to satisfy the just demand of his Creditor.

From the Civil Judge of Bellary.
,, Register Court of Sudder Udalut to Govt. Pleader.
,, Government Pleader.

2. Should however this be considered inexpedient, the Judges desire me to state, that in their opinion it would be advisable that such arrangements should be entered into between the Government of India and Native States as would facilitate the execution of the decrees of our Courts within a foreign jurisdiction.

(Signed) GEORGE ELLIS,
Register.

From P. IRVINE, Esq., Civil Judge of Bellary; to G. ELLIS, Esq., Register to the Court of Sudder Udalut, dated 16th January 1857, No. 4.

Sir,

1. I have the honor to request that you will be so good as to obtain for me the opinion and orders of the Judges on the following subject.

2. A suit was filed in the Moofty Sudder Ameen's Court of this Zillah against Captain Griffin of the 3rd European Regiment, now residing at Hyderabad, for Rupees 1,182-9 due on a bond. The Officer Commanding Hyderabad having declined to serve the notice on the Defendant, a reference was made to the Court of Sudder Udalut, who in their Proceedings of the 30th August 1856, expressed their opinion that, as the cause of action arose in this District, the suit was cognizable in the Moofty Sudder Ameen's Court, and that as the Defendant is a Military Officer, there was no objection to the notice being served on him at Hyderabad.

3. The notice was accordingly served on the Defendant, and an exparte decree was passed against him by the Moofty Sudder Ameen.

4. Subsequently copy of the decree, motion, &c. were forwarded to the Officer Commanding Hyderabad, with a request that it may be executed on the Plaintiff applying for it under Act XXXIII of 1852. But that Officer has declined to accede to the said request, on the ground that he he is "not aware by what regulation a decree passed in the Zillah of Bellary can be sent into the dominions of His Highness the Nizam to be carried into execution, such a practice having never yet been attempted to be introduced here."

5. Since the Courts of this District have power to take cognizance of suits against Officers residing at Hyderabad, and serve notices and pass decrees against them, I can see nothing which would prevent such decrees from being executed at that place, particularly as Act XXXIII of 1852, authorizes the enforcement of judgments beyond the jurisdiction of the Courts pronouncing the same.

(Signed) P. IRVINE,
Civil Judge.

From GEORGE ELLIS, Esq., Register to the Court of Sudder Udalut; to CLEMENT DALE, Esq., Officiating Government Pleader, dated 5th February 1857.

Sir,

1. I am directed by the Judges of the Court of Sudder Udalut to forward copy of a letter from the Civil Judge of Bellary, and to request your opinion as to the manner in which the decree therein referred to may be executed.

2. The Officer Commanding Hydrabad declines to execute the decree, as he has no precedent for such course, and the Court consider that a case like the present is one that calls for remedy at the hands of the Legislature.

3. You will perceive that by the 66th Section of the 12th and 13th Victoria, Chapter 43, actions for debt not exceeding 400 Rupees are cognizable before a Military Court of Requests. In the present instance the sum claimed is far beyond that amount, so that the Plaintiff cannot bring his action before such a tribunal, and in consequence, so long as the Defendant resides beyond the limits of the Company's territory, he can set his Creditor at defiance.

4. Before therefore addressing Government on this subject, the Judges are desirous of ascertaining whether a Court of Requests has the power to direct execution (though they could not take cognizance of the suit) of a decree of one of the Zillah Courts (when the amount exceeds 400 Rupees) or whether they are prohibited by the Act of Parliament from taking any such step in consideration of the amount claimed being in excess of the sum for which suits are cognizable by them.

(Signed) G. ELLIS,
Register.

From CLEMENT DALE, Esq., Officiating Government Pleader; to GEORGE ELLIS, Esq., Register to the Court of Sudder Udalut, dated 7th April 1857, No. 35.

Sir,

Para 1. I have the honor to acknowledge the receipt of your letter to my address noted in the margin, and in reply to inform you that I am not aware of any Regulation or Act which authorizes the execution of a decree of a Mofussil Court within the Territories of His Highness the Nizam.

Letter from Register of Sudder Udalut to Officiating Govt. Pleader, 5th Feby. 1857.

2. The 12th and 13th Victoria, Chapter 43, Section 66, does not authorize the execution by a Military Court of Requests of a decree pronounced by any other Court, whatever might be the amount of the Judgment.

3. Act No. 33 of 1852, referred to by Mr. Irvine, does not apply to the case in question, it appears to authorise the execution in any part of the Territories under the Government of the East India Company of a Judgment obtained in any Court of Her Majesty or of the Honorable Company, as also in any Court established by authority of the Governor General in the Territory of any foreign Prince or State, but there does not appear to be any reciprocity for the execution of Judgments of Her Majesty and the Honorable Company's Courts in any foreign State and in like manner Section 8 authorises the execution of Decrees of Military Courts of Requests.

4. The C. O. 28th December 1829, B. appears to point out the only course to be pursued.

5. I am therefore of opinion that Legislation is necessary to provide for such cases. How far the legislature may feel authorized to legislate for the execution of process in a foreign State is not within my province to touch upon, I believe that now, English Judgments against British subjects, resident in France, are enforced in that country by the French authorities, so far as proceeding to sell personal property belonging to the debtor within the French Territory. Doubtless (if I be correct) such an arrangement was brought about by convention. Should it be decided to apply to the Legislative Council, probably provisions similar to those contained in Act 23 of 1840, might be found applicable.

6. I have understood that in some instances the Military authorities have interposed by intimating that if the Defendant did not make a proper arrangement he would be ordered within the Jurisdiction of the Court. I was however informed that such a course being enforced was rendered unnecessary in consequence of the Defendants making arrangements with their Plaintiffs.

(Signed) CLEMENT DALE,
Officiating Government Pleader.

(True Copies.)
(Signed) GEORGE ELLIS,
Register.

No. 46. Order thereon, No. 545; dated 11th May 1857.

The Right Honorable the Governor in Council resolves to refer the above papers through the Military Department to His Excellency the Commander in Chief in view to the course suggested by the Government Pleader in para: 6 of his letter of the 7th Ultimo, being carried out.

2. He also resolves to furnish copies of these papers to the Government of India for such notice of the general question raised in them as may seem to be called for.

(Signed) E. MALTBY,
Acting Chief Secretary.

Ordered that the following letter be despatched.

No. 47. From E. MALTBY, Esq., Acting Chief Secretary to the Government of Fort St. George; to the Secretary to the Government of India, dated 11th May 1857, No. 546.

Sir,

I am directed by the Right Honorable the Governor in Council to forward, for submission to the Government of India, the accompanying copy of a correspondence which has been laid before this Government by the Court of Sudder Adawlut.

2. It will be seen, that on a decree passed by the Zillah Court of Bellary against an Officer residing at Hyderabad having been sent for execution to the Officer Commanding the Station, the latter has declined to comply with the application. It would seem also from the opinion of the Government Pleader that there are no legal means whereby decrees of Her Majesty's or the Honorable Company's Court can be executed under such circumstances.

3. The case immediately under reference will be disposed of in the manner suggested in para: 6 of Mr. Dale's letter of the 7th Ultimo, and the papers have been made over through the Military Department, to His Excellency the Commander in Chief for the purpose. The general question involved is however one of some importance, and I have therefore been instructed to bring it under the consideration of the Supreme Government for such notice as is may appear to require.

(Signed) E. MALTBY,
Acting Chief Secretary.

or act which authorizes the execution of a decree of a Mofussil Court within the Territories of His Highness the Nizam.

2 The 12th and 13th Victoria, Chapt. 43, Section 66, does not authorize the execution by a Military Court of Requests of a Decree pronounced by any other Court, whatever might be the amount of the Judgment.

3 Act No. 33 of 1852 referred to by Mr. Irvine does not apply to the case in question, it appears to authorize the execution in any part of the Territories under the Government of the East India Company of a Judgment obtained in any Court of Her Majesty or of the Honorable Company, as also in any Court established by authority of the Governor General in the Territory of any foreign Prin or State, but there does not appear to be any reciprocity for the execution of Judgments of Her Majesty and

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the Honorable Company's Courts in any foreign state and in like manner Section 8 authorises the execution of Decrees of Military Courts of Requests.

4 The C.O. 28th December 1829 B appears to point out the only course to be pursued.

5 I am therefore of opinion that legislation is necessary to provide for such cases. How far the legislature may feel authorized to legislate for the execution of process in a foreign state is not within my province to touch upon. I believe that now, English judgments against British subjects, resident in France, are enforced in that country by the French authorities, so far as proceeding to sell personal property belonging to the debtor within the French Territory. Doubtless (if I be correct) such an arrangement was brought about by

Convention

[illegible]

Municipal Legislation thought to apply to a Foreign State!!!
D

Jud^l Depart^t

No 715

From the Register of the Sudr Udalut
Dated 28th April 1857

For Orders.

Para 6 of Mr Dale's letter may be referred to the Adv. Gen^l for his consideration unless the practice has proved or is likely to prove seriously inconvenient in a Gov^t point of view.

A reciprocal convention should be made by the Gov^t of India on this subject with all native States.

I can see no objection whatever to the course alluded to in para 6 of Mr. Dalis letter being pursued in this & every similar case.

It will afford substantial justice — But I think it would be preferable hereafter to enter into conventions with all Native States for the mutual execution of Civil Decrees

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Judicial Depart't

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No. 545

Extract Mins: of Cons: Dated 11 May 1857

From S Udalut 28 April /57

The Rt Hon the Govr in C resolves to refer the above papers thro' the Military Dept to HE the C in C in view to the course suggested by the Govt Pleader in para 6 of his letter of the 7 Ulto. being carried out —

2. He also resolves to furnish copies of these papers to the Govt of India for such notice of the general question raised in these as

Copy to Military Depart.
Sudr Adawlut } Desp'd 15th

may seem to be called for
(Sigd) E. Maltby
Ag Chief Secy

Ordered that the following letter be despatched.

Desp'd 16th

No. 546

To
Govt of India

I am desired to forward for submission to the Govt of India the accompanying copy of a correspondence which has been laid before this Govt by the Court of Sudr Adawlut.

2. It will be seen, that, on a decree passed by the Zillah Court of Bellary against an Officer residing at Hyderabad having been sent for execution to the Officer commanding the Station, the latter has declined to comply with the application. It would seem also from the opinion of the Govt Pleader that there are no legal means whereby decrees of the H M or the Hble Compy's Courts can be executed under such circumstances ——

3. The case immediately under reference will be disposed

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of in the manner sug-
-gested in para 6 of
Mr Dale's letter of the
7 ultmo. and the papers
have been made over
thro' the Military
Dept. to H.E. the C in C
for the purpose — The
general question
involved is however
one of some impor-
-tance and I have
therefore been instruct-
-ed to bring it under
the consideration of
the Supreme Govt.
for such action
as it may appear
to require

See Mily Cons: 12 Decr

546 / 4 / 547

45 @ 47

Fort St. George
11 May 1857

J.P.

Sigd C. Maltby
Actg Chief Secy

[illegible]

Ind.y to Cons: 12th May

Judicial 1857 Dept

No. 546.

To the Secretary to the Government of India

Dated 11th May 1857.

Nos. 45 @ 47.

Ind.y to Cons: 12th May

Judicial 1857 Dept.

No. 545.

Extract from the Minutes of Consultation. –

Dated 11th May 1857.

F. No. 987.

Direct that the correspondence from the Sudr Adalut relative to the execution of a Decree of the Moofty Sudr Ameen of Bellary within the Territories of H. H. the Nizam, be referred, through the Mily Dept. to H.E. the Comdr in Chief in view to the course suggested by the Govt. Pleader being carried out, also resolve to furnish copies of these papers to the Govt. of India for consideration