M.R.O. 1—32,000—16-10-23.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 1487-1489 Press —Mis.—

27-30

Dated 4 —11— 1859

Not to be folded or roughly handled

1857

12

Proceedings of the Madras Government, Judicial Department, for the month of November 1859.

No. 27. Read the following letter from W. HOLLOWAY, Esq., Secretary to the Judicial Commission; to the Chief Secretary to Government, dated 25th October 1859.

I am directed by the Judicial Commissioners to convey their opinion, that it is desirable to prevent Act VIII of 1859, "an Act for simplifying the Procedure of Courts of Civil Judicature not established by Royal Charter" from coming into operation in the territories of Madras on the 1st January 1860.

II. It appears to them eminently desirable, that the questions of the amalgamation of the Courts and of the remedying of the evils at present existing, which are now under the consideration of the Commission, should be determined before any changes are made in the Judicial Procedure of the existing Courts. It seems to them further to introduce the complex provisions of one Code with the probability pending that this will speedily be superseded by another. The present Code is studiously framed with a view to the exclusion of the Courts established by Royal Charter from its operation, while the Commissioners are occupied in arranging a scheme whereby the distinction of Courts at Madras under Royal Charter and those not so, will cease to exist.

III. Strongly as the Commissioners feel the desirability of an uniform system of Procedure governing all Courts of whatever denomination, they would have some hesitation in urging this matter upon the Honorable the Governor in Council were it not that the very strong expressions of opinion from successive Secretaries of State, representing the views of both the great political parties seem to render it almost certain that at no distant date, the amalgamation of the Supreme and Sudder Courts will be carried out.

IV. The necessity of this measure was strongly urged by Sir C. Wood, the present Secretary of State, in introducing the India Bill of 1853, and the late Secretary of State, Lord Stanley, in his Despatch to the Right Honorable the Governor General, dated 12th May 1859, shows that time has only strengthened the views of the Home Government upon this subject. After stating that the object proposed in the Act of 1853, was to bring under one system of Judicial Procedure, the Courts established by Royal Charter and all the Courts of which the Procedures originated in Codes of Regulations passed by the Legislatures of the several Presidencies of India, His Lordship proceeds:—"To the attainment of this object, it is the desire of Her Majesty's Government, that your attention should now be directed, and they request that it may be steadily kept in view in future proceedings of the Legislative Council in matters connected with the administration of justice in the Courts established by Royal Charter and those Courts in the Regulation Provinces which are subject to the authority of the Sudder Courts," and again "to the framing of a separate Code for the Courts of the Provinces, there can be no objection, but Her Majesty's Government think it desirable, that it should be preceded or at least accompanied by a similar measure for the Supreme Courts."

V. Again adverting to the circumstance, that the Code of which the Commissioners now ask the suspension, applies only to the Courts not established by Royal Charter, His Lordship observes:—"In the prospect of an early amalgamation of the Supreme and Sudder Courts, the enactment of a new Code of Procedure for the Mofussil Courts should not take precedence in point of time of a similar measure for the Courts established by Royal Charter," and still further with reference to this very enactment, His Lordship adds, "they would further wish you to consider the expediency of postponing for the present the passing of the Bill for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter, so that the two Codes may come simultaneously into operation."

VI. Had the new Act not passed the Legislative Council at the period of the receipt of this Despatch, the Commissioners have no doubt that these recommendations would have been followed; and it seems to them that the opinions of successive Governments so strongly expressed, point so clearly to the amalgamation of the Supreme and Sudder Courts, that during the pendency of a measure, in their judgment, clearly inevitable, it would be most inexpedient to subject the Courts and the people to embarrassment by needlessly disturbing the present system, and subjecting them to the operation of a measure most probably, of a temporary nature.

VII. I am directed, therefore, to urge upon His Excellency in Council, the propriety of moving the Legislative Council to cancel that provision of Act VIII of 1859, which brings it

compulsorily into operation in the territories under the Madras Presidency on the 1st January 1860.

VIII. For the same, and for the additional reason, that the provisions of the Madras Police Code render the new Criminal Procedure Bill inapplicable to Madras, I am instructed to express the opinion of the Commissioners, that in the event of this Bill passing the Legislative Council, its operation should not be extended to this Presidency.

No. 28. ORDER THEREON, 4th November 1859, No. 1487.

The Judicial Commissioners submit their opinion, that it is desirable to prevent Act VIII of 1859, "or an Act for simplifying the Procedure of Courts of Civil Judicature not established by Royal Charter" from coming into operation in the territories of Madras on the 1st January 1860. It appears to them eminently desirable, that the questions of the amalgamation of the Courts and of the remedying of the evils at present existing, which are now under the consideration of the Commission, should be determined before any changes are made in the Judicial Procedure of the existing Courts. It seems to them fruitless to introduce the complex provisions of one Code with the probability pending that this will speedily be superseded by another. The present Code is studiously framed with a view to the exclusion of the Courts established by Royal Charter from its operation, while the Commissioners are occupied in arranging a scheme whereby the distinction of Courts at Madras under Royal Charter and those not so, will cease to exist.

2. The Commission observe, that the necessity for amalgamating the Supreme and Sudr Courts was strongly urged by the Right Honorable Sir C. Wood, the present Secretary of State for India, in introducing the India Bill of 1853, and they cite several passages from a Despatch of the late Secretary of State Lord Stanley, to the Governor General, dated 12th May last, showing that time has only strengthened the views of the Home Government upon this subject.

3. The Commission believe, that if the new Act VIII, 1859, had not passed the Legislative Council when this Despatch was received, it would have been suspended ; and it seems to them that the opinions of successive Governments, so strongly expressed, point so clearly to the amalgamation of the Supreme and Sudr Courts, that during the pendency of a measure, in their judgment clearly inevitable, it would be most inexpedient to subject the Courts and the people to embarrassment by needlessly disturbing the present system, and subjecting them to the operation of a measure, most probably, of a temporary nature.

4. On these considerations, they urge the propriety of moving the Legislative Council to cancel that provision of Act VIII of 1859, which brings it compulsorily into operation in the territories under the Madras Presidency on the 1st January 1860. For the same, and for the additional reason, that the provisions of the Madras Police Code render the new Criminal Procedure Bill inapplicable to Madras, they are of opinion, that, in the event of this Bill passing the Legislative Council, its operation should not be extended to this Presidency.

5. The Honorable the Governor in Council has carefully considered this letter of the Commissioners. He entirely concurs with them, that it would be most inexpedient, that the public mind should be disturbed, and the Judicial authorities embarrassed by the introduction of a system, which would probably have ere long to be superseded by another. He understands that the labors of the Commissioners are well advanced, and that the scheme which they have matured for that eminently important object, the amalgamation of the Supreme and Sudr Courts at Madras, will shortly be laid before Government. In the near prospect of that desirable measure, he would certainly deprecate any change being made in the existing Law, which would not be a final change and would not establish one Code of Judicial Procedure, and one system of Judicial tribunals for the whole of the Madras Presidency.

6. Under these circumstances, the Government resolve to forward a copy of Mr. Holloway's letter and of these proceedings to their Member of the Legislative Council, and to request him, on the grounds assigned by the Commission, to bring into the Council a short Act suspending,

Proceedings of the Madras Government, Judicial Department, for the month of November 1859.

until such time as may be appointed by the Government of Madras, the introduction of Act VIII, 1859, into the territories under the Presidency of Fort Saint George.

7. Mr. Forbes will likewise be instructed to object to the immediate extension of the new Criminal Code Procedure Bill to the Madras Presidency.

8. Copies of the letter from the Judicial Commissioners and of the Orders passed upon it, will be forwarded to the Supreme Government for their information.

(Signed) T. PYCROFT,
Chief Secretarg.

No. 29. To H. FORBES, Esq., Member for Madras of the Legislative Council of India, dated Fort Saint George, 4th November 1859, No. 1488.

I am directed by the Honorable the Governor in Council to forward to you, copy of a letter from the Secretary to the Judicial Commission in this Presidency, and of the Order of Government thereon, and to request you, on the grounds assigned by the Commission, to bring into the Council a short Act, suspending, until such time as may be appointed by the Government of Madras, the introduction of Act VIII, 1859, into the territories under the Presidency of Fort Saint George.

Letter, 25th Octr. 1859.
Order, 4th Novr. 1859, No. 1487.

2. You are likewise instructed to object to the immediate extension to this Presidency of the new Code of Criminal Procedure.

(Signed) T. PYCROFT,
Chief Secretary.

No. 30. To the Secretary to the Government of India in the Home Department, dated Fort Saint George, 4th November 1859, No. 1489.

I am directed to transmit, for the information of the Government of India, copies of a letter from the Judicial Commission and of the Orders of Government passed on it, relative to the introduction of Act VIII, 1859, into this Presidency, and the extension to it of the new Criminal Procedure Code.

Letter, 25th Octr. 1859.
Order, 4th Novr. 1859, No. 1487.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. F. Cartledge.

Presidency of the new

3D

Reprint

JUDICIAL DEPARTMENT.

No. 1489.

FROM

T. PYCROFT, Esq.,
Chief Secretary to the Government of Fort St. George,

To

THE SECRETARY TO THE GOVERNMENT OF INDIA,
IN THE HOME DEPARTMENT.

Dated 4th November 1859.

SIR,

I am directed to transmit, for the information of the Government of India, copies of a letter from the Judicial Commission and of the Orders of Government passed on it, relative to the introduction of Act VIII, 1859, and the extension of the new Criminal Procedure Code ~~in this Presidency~~ to this †

Letter, 25th Octr. 1859.
Order, 4th Novr. 1859,
No. 1487.

I have the honor to be,
Sir,
Your most obedient Servant,

Fort St. George,
4th November 1859.

Chief Secretary,

† within this Presidency

Exd. F. Cartledge.

Presidency of the new

Desp.d 4.
Cr. No. 1

Judicial -

No. 1488 -

H.C. Forbes Esq.re
Member for Madras of the Legislative Council of India -

Sir

Letter, 25th October, 1859.
Order, 1st November, 1859
No. 1487.

I am directed by the Honble the Governor in Council to forward to you copy of a letter from the Secretary to the Judicial Commission in this Presidency, & of the order of Govt. thereon, & to request you, on the grounds assigned by the Commission, to bring into the Council a short Act, suspending, until such time as may be appointed by the Govt. of Madras, the introduction of Act VIII - 1859 into the Territories under the Presidency of Fort St. George.

2 You are likewise instructed to object to the immediate extension to this Presidency of the new Code.

Judicial.

No. 1489.

The Secretary to the Govt. of India.
Home Department

Sir—

I am directed to transmit, for the information of the Govt. of India, copies of a letter from the Judicial Commissioner & of the orders of Govt. passed on it, relative to the introduction of Act VIII 1859 & the extension of the new Criminal Procedure Code in this Presidency.

Letter, 25th Octr. 1859.
Orders, 4th Novr. 1859—
No. 1487.

Fort St. George,
4th November 1859.

J. P.

Copy of Govt. No. 1489
Judicial 1859 dd 4th Nov.

No. 1488.

To H. Forbes Esqr. &c.
Member for Madras
of the Legislature Council
of India

Sir

Code of Criminal Procedure.

Fort St. George,
4th November 1859.

J. P.

Receipt of 111 Roon
Published in Fort St. Geo. Gaz. 12th Nov. Pge 3 of 1859.

29

Encl: of Letter to Govt
Judicial 1859 Despatch

No 1489

To
The Secretary to the
Government of India

Dated 4th Novr/59

Encl 1 to Govt
Jud Dept Letter to India 12th
Nov 2nd No 43 of 1859
Rep to Letter No 2 of 1860

27 @ 30

P.T.O.