

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	529-20	Press
and its and economical and have the benefit of their the Supreme Court.	15-47	~~Mis~~
Dated	27-11-46	11:15 P

Not to be folded or roughly handled

No. 43. Read Minutes by the Honorable the President, dated 25th April 1859

The question relating to the establishment of a proper system of judicature for India has reached a point which renders immediate action necessary.

The key to the settlement of this question is the consolidation of the Supreme and Sudder Courts into a single High Court and the establishment of Provincial Courts of sufficient authority to protect the Natives on the one hand, and, on the other, to secure European settlers, Europeans in criminal proceedings, against the consequences of the prejudice and fraud which are unfortunately too often the result. All our hopes of improvement for India depend upon the satisfactory settlement of this subject. All however were the East India Company's Courts are now as much His Majesty's Courts as the Supreme Court itself, the two antagonisms arising from the separation of the judicial and administrative functions, instead of the learning and independence and honorable service in the discharge of a judicial duty, of the English Bench, and thus being brought to the aid of the ultimate appeal, stand in a local interest promoted by the Officers of the Indian Government, the powers of both are estimated in mutual disparagement. While a combined homogeneous system shall ever be established, every portion of the community, European and Native, will be equally interested in its improvement.

The Legislative Council at Calcutta has lately passed a Bill to simplify the procedure in the Sudder and the subordinate Courts without touching any provision for uniting the Supreme and Sudder Courts or for extending the improved procedure to the Supreme Courts. It is to be hoped that His Majesty will be induced to dissolve this Act, the confirmation of which would be a practical adoption of the old divided jurisdiction into the new system and would thereby prevent the establishment of an united system of judicature. It is, indeed, desirable that an efficient system of justice should be constituted good enough for the great majority of His Majesty's subjects in this country which falls short of the standard required upon the one hand, and that if the proposed alterations in the Code of Procedure are concluded to expedite and economize justice, which I believe they will, the authorities of the Presidency should not wait the result of them as one of the present antiquated and expensive procedure in use in the Supreme Courts.

In the Madras Presidency we have some advantages for the early establishment of an united judicature which do not exist elsewhere. The controversies arising out of the divided jurisdiction that have more than in the same height here as they have in the other Presidencies. In the Neddiestery and the Wyand as well as at Madras, there is a well constituted European Society having an amicable intercourse with the European Officers of the Government and with the Sudder Court, and there is no antiquated obstruction for the large and expensive establishment of the Sudder Court within the limits of the Presidency town. If the Supreme Court were consolidated with the Sudder into a single High Court the Judges and the greater part of the administrative and judicial business would have ample employment.

I have lately conferred on this subject with Sir A. H. Pitt Rivers, Mr. Colclough, Mr. Macleod, Mr. Barrington of the Sudder Court, the Attorney General and Mr. Norton, and we are agreed that the best practical measure to be taken is to appoint a select Committee composed partly of representative judicial Officers of the Madras Presidency and partly of Officers of the Supreme Court, to prepare a statement of the arrangements under which the members of the Supreme and Sudder Courts and the re-constituting of the Provincial Courts may with the greatest prospect of profit advantage be effected, and to send this statement with the opinions of the Madras Government and of the Judges of the Supreme Court, upon it, to the Secretary of State for India, to whom the project should be approved by His Majesty's Government, may be introduced in an Act of Parliament.

Mr. Macleod who is universally esteemed to be one of the ablest and most experienced of the judicial Officers of the Madras Presidency, has been requested to act on the Committee, and I believe that the other members of it should be Mr. T. L. Strange one of the Principal Judges of the Sudder Court, the Attorney General and Mr. John Bruce Norton.

A copy of this Minute should be sent to the Judges of the Supreme Court, and if they concur, the Committee may be at once appointed.

(Signed) C. E. TRAVELLYAN.

Fort St. George, Judicial Consultation, 29th April 1859

No. 65. *Resolved* by the Honourable the Governor, dated 25th April 1859

The question relating to the establishment of a proper system of judicature for India has produced a great and immediate interest.

The object of the question is the consolidation of the Supreme and Sudder Courts into a single High Court and the establishment of Provincial Courts of sufficient authority to protect the Natives on the one hand, and, on the other, to secure European affairs, require justice in all proceedings, against the consequences of the perjury and fraud which are so unfortunately too prevalent in this country. All our hopes of improvement for India depend upon the successful attainment of this object. At present, even the best Indian Company's Courts are not so much Her Majesty's Courts as the Supreme Court itself, too much influenced by the local prejudices and influence of the native population, instead of the learning and order, and the high and honorable nature of the discharge of a judicial duty, of the High Court Bench, and the being brought to the aid of the native administration of a local interest possessed by the Officers of the Indian Government, the powers of both are exhausted in mutual disagreement. With a consolidated homogeneous system such can be established every portion of the community, European and Native, will be equally interested in its improvement.

The Legislative Council at Calcutta has lately passed a Bill to simplify the procedure in the Sudder and the Subordinate Courts without making any provision for uniting the Supreme and Sudder Courts or for extending the improved procedure to the Sudder Courts. It is to be hoped that Her Majesty will be advised to dissolve this Act, the consolidation of which would be a practical adoption of the well devised judicial system into the new regime and would thereby promote the establishment of an united system of judicature. It is, however, unfortunate that an administration of justice should be some times good enough for the great majority of Her Majesty's subjects in this country which falls short of the standard insisted upon for the minority, and that if the proposed alterations in the Code of Procedure are confined to speedily and economically passing which I believe they are, the substantial of the Presidency Court should not have the benefit of them in case of the present antiquated and expensive procedure in use in the Sudder Courts.

In the Madras Presidency we have some advantages for the early establishment of an united judicature which do not exist elsewhere. The correspondence arising out of the divided jurisdiction between the Sudder and the Sudder Courts is the same as that between the Sudder and the Sudder Courts in the Madras Presidency and the Madras Presidency. In the Madras Presidency there is a well constituted European Society living on friendly terms with the European Officers of the Government, and with the Sudder Courts, and there is no adequate compensation for the large and expensive establishment of the Sudder Courts within the limits of the Presidency Court. If the Sudder Court were consolidated with the Sudder into a single High Court the Judges and the greater part of the administration of the Sudder Court would be superfluous.

I have been considered on this subject with Sir Adam Sedgwick, and Colonel Mr. Macleod, Mr. Barrington of the Sudder Court, the Advocate General and Mr. Norton, and we are agreed that the best practical measure would be to appoint a small Commission composed partly of European and Indian Officers of the Madras Presidency and partly of Officers of the Sudder Court, to prepare a statement of the arrangements under which the Sudder of the Sudder and Sudder Courts and the re-structuring of the Presidency Court may with the greatest prospect of profit advantage be effected, and to send this statement with the opinion of the Madras Commission and of the Judges of the Sudder Court, upon it to the Secretary of State for India, so that the plan, if it shall be approved by Her Majesty's Government, may be submitted to the House of Parliament.

Mr. Macleod who is generally allowed to be one of the ablest and most experienced of the Indian Officers of the Madras Presidency has been requested to act on the Commission and I presume that the other members of it should be Mr. J. E. Barrington one of the Madras Judges of the Sudder Court, the Advocate General and Mr. John Bruce Norton.

A copy of this Minute should be sent to the Judges of the Sudder Court, and if they concur, the Commission may be at once appointed.

(Signed) C. E. TRILLIAN.

Fort St. George, Judicial Consultation, 29th April 1859.

No. 46. Order thereon, No. 50; dated 27th April 1859.

Resolved that a copy of the above Minute be forwarded to the Right Honourable the Secretary of State for India, and to the Honorable the Judges of Her Majesty's Supreme Court.

(Signed) T. PYCROFT,
Chief Secretary

Ordered that the following letter be despatched.

No. 47. To the Judges of Her Majesty's Supreme Court, dated 27th April 1859. No. 129.

We do ourselves the honor to forward to you the accompanying copy of a Minute resolved by our President on the subject of the consolidation of the Supreme and Sadar Courts into a single High Court and on the remodeling of the Provincial Courts.

2. We have further the honor to inform you that, with your concurrence, the Commission alluded to in the concluding paragraph of the Minute will be at once appointed.

We have, &c.,

(Signed) C. E. TRAVELLON,
() PAT. GRANT,
() WALTER FLEET,
() W. A. MOLLERAD.

Handwritten: To the Judges of Her Majesty's Supreme Court

Handwritten: We do ourselves the honor to forward to you the accompanying copy of a Minute resolved by our President on the subject of the consolidation of the Supreme and Sadar Courts into a single High Court and on the remodeling of the Provincial Courts. 2. We have further the honor to inform you that, with your concurrence, the Commission alluded to in the concluding paragraph of the Minute will be at once appointed.

to the Secretary
of the Treasury

of the Treasury
Washington D.C.

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This letter is to be
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