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MADRAS RECORD 01

Government of Madras.

DEPARTMENT.

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Dated 30.1.1918

Not to be folded or roughly handled

I concur with our Commissioners in preferring stamps to fees; but I cannot agree with them that either operates favorably, even in this country, as a bar to vexatious litigation. The loss of time and money necessarily attending the prosecution of a suit, combined with the liability to pay the defendant's costs, is penalty enough; but the real check to vexatious litigation, is the suppression of professional perjury. I strongly advise that the Courts, before which such evidence is delivered, should have the power of awarding a moderate, but effectual punishment, as recommended by the Commissioners. Subject to these conditions, the Courts should be made as accessible as possible to all. Taxes upon justice are, in the present state of the finances, a painful necessity. If one class is more fairly chargeable with the expense of the Courts than another, it is those who are maintained in their rights by means of them, rather than those who are obliged to incur the expense and trouble of litigation; and in this country, the body of the

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people are so poor, and their transactions are of such small amount, that a very slight charge often amounts to a denial of justice.

The Commissioners are divided in opinion in regard to the eligibility of persons to be practitioners of the High Court. At present, Barristers, Attornies and Vakils, plead before the Sadr Court, while Barristers have exclusive audience before the Supreme Court. The question is, which practice shall be adopted in the High Court. It is quite true that, as a general rule, business is better done by a division of labor; and I hold, in the strongest manner the opinion that the resort of competent men from England, willing to devote their lives to the practice of the legal profession in this country, is a great public advantage. But, on the other hand, it would be hard to deprive the natives of the privilege which they have long enjoyed, of employing a cheap and rapidly improving, though still generally less efficient description of agency; and I am confident that English Barristers do not require exclusive privileges, to enable them to maintain their position. They are employed now by all who can afford it, and will continue to be so. The same objections exist to this limitation, as to that proposed in reference to eligibility for the Bench. We cannot afford the weakness consequent upon social heart-burnings. We want, for the improvement of all, the wholesome influence of competition. A Native Bar will be gradually formed, but it will be by following the lead and imitating the example of our English Barristers.

In one pervading principle of the Report I heartily concur; namely, in the importance of giving a special professional training for the Judges, both European and Native. A foundation has been laid at Home by the Civil Service Commissioners, who now require the selected candidates to pass a special examination in Jurisprudence and to attend to see the practice of Courts. The Madras Commissioners recommend that the office of Registrar of the Zilla Courts be re-established, with the view of affording to the Judicial branch of the Covenanted Civil Service, that training which they cannot obtain by practice at the Bar, and also of relieving the Courts from the mass of merely ministerial work, which the Judges are now called upon to perform; and they consider that the young Civilians, who wish to qualify themselves for the Judicial line, should attend the lectures of the Law Professor, and pass the examination for a B. A. Degree at the Madras University, and attend the practice of the High Court,* after which they should serve for three years in the Revenue Department, where they would obtain useful knowledge of systems of tenure, and of the manners, habits and feelings of the people, together with an insight into Magisterial duties. On the other hand, the Commissioners justly observe that the Members of the home Bar, who seek employment in this country, ought to make themselves acquainted with the language, manners and feelings of the people.

My experience has given me a strong impression of the importance of an independent, professionally educated Bar. To my mind, it is as essential an element of a well constituted Judicial system as the Bench itself. The Bench cannot be efficient without it. Judges require to be stimulated and instructed like other men. I have seen much of the class of young English Barristers; and I do not go too far when I say that English Society owes much of its present vitality to their energy and intelligence, their high spirit and their various accomplishments. One of the best results of the union of the jurisdictions will be that the interior of India will be opened to this class. There will be no effectual application of English character to the improvement of the Indian Judicial system so long as English agency is limited to the Bench. The Bar, which is a stronger motive power, must come to our aid, and the Barristers must be encouraged by a fair share of appointments to the most deserving.

I shall not record my opinion upon the plan proposed by the Commission for the re-constitution of the Mufassal Courts, upon the system of pleading recommended by them, or upon the suggestion that suits under 20 Rupees should be decided by Panchayats in the nature of Juries, until I have tested the correctness of my views by consulting many experienced Officers whom I shall see during the tour I am about to make of the Southern and Western Districts of the Presidency, besides the Judges of the Sadr, and others to whom reference will be made.

* NOTE.—Many Civilians have, of late years, employed their leisure during their furlough in attending the Lectures at the Inns of Court, after which they have been called to the Bar. Every encouragement should be given to this practice.

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In any proceedings which may be taken to give effect to the recommendations of the Commission, the prevailing fallacy, that there must be one system for the whole of India, in form as well as in substance, to which so much has already been sacrificed, will, I hope, be avoided. The principles should, of course, be the same; but there is positive advantage in varying their application according to the circumstances and habits of the different Presidencies. It allows of a more exact adaptation to the wants of the different parts of India, and gives a diversity of experience by which all may profit. Would Europe be the better for being conformed to a single model? and the difference between Germany, France and Italy, is not greater than that between Madras, Bengal and the North Western Provinces.

(Signed) C. E. TREVELYAN.

No. 43. MINUTE by the Honorable E. MALTBY, dated 23rd January 1860.

The thanks of Government are eminently due, as observed by the President, to the gentlemen who have drawn up this valuable report.

The system of judicature which the report proposes for adoption is to be viewed under 2 aspects: I, its expense to the State or in other words its practicability in a financial point of view, and II, its suitability for the administration of Civil and Criminal Justice throughout this Presidency.

On the 1st point no difficulty appears to exist. The arrangements for the Mofussil Courts would entail an additional monthly expense of Rupees 4,054, but this sum, which in itself is unimportant when the great object in view is considered, would be more than counterbalanced by the saving to be effected by the amalgamation of the Supreme and Sudr Courts, and the re-constitution of the Madras Court of Small Causes.

The 2nd point calls for more detailed notice, but I shall purposely confine myself to some leading principles and to a few questions on which the Commissioners differ in opinion from Her Majesty's Commissioners in London. The purely Judicial questions and arrangements seem to require no remarks on my part, as the present Report, the Reports of Her Majesty's Commissioners in London, and the Civil and Criminal Codes of Law and Procedure prepared by the Legislative Council at Calcutta, sufficiently shew the views of the most experienced and able Judicial Officers on such points.

The first subject to which I shall advert is the constitution of the High Court. The Commissioners, coinciding with Mr. J. M. Macleod, propose that the Judges be taken entirely from the Home Bar and the Covenanted Civil Service, and in this view I feel bound to express my concurrence. The efficiency and character of this Court, which is to watch over all the other tribunals and is to be entrusted in the last resort with the lives and property of every class of the community throughout the Presidency, is a consideration which outweighs all others, and in my opinion not only a long professional training but an education in England and among English competitors are necessary to give the requisite qualifications for a seat on its bench. Without such guarantees for the efficiency and independent character of the Judges, I believe that the Court would fail to gain the public confidence, and this would be a most serious evil. In the course proposed by the Commissioners I see too no depreciation or exclusion of any particular class. The Covenanted Civil Service, and the Home Bar also, if I am rightly informed, are open to all Her Majesty's subjects. Let those therefore who aspire to a seat on the Bench of the High Court, and feel that they have the requisite ability, industry and strength of character, seek their object through those channels which have been laid down by law, even for British born subjects, with a view to ensure the appointment of properly educated Judges.

Paragraph 36. I am not however able to concur with the Madras Commissioners that the Judges of the High Court should be removeable by the Crown only. To allow the executive Local Governments no power of interference in cases of necessity would lower their authority and dignity, and virtually render them irresponsible for the right administration of the country. I agree with the London Commissioners that the Local Government should have the power of suspending "any Judge of the High Court until the pleasure of Her Majesty be known" and with the prompt checks which now exist on any improper exercise of authority, I could not view this power being vested in the Local Governments with any apprehension.

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The mode of pleading before the high Court is a question of some difficulty, regarding which the Commissioners are not unanimous. I concur with the Honorable Mr. Morehead and Mr. J. B. Norton that in appeal suits any Advocate should be allowed to plead, as otherwise the present practice of the Sudr Udawlut would be set aside to the detriment of the Native community and the Native pleaders, (Vakeels). In *original* suits which must always be for property of large value, the distinction observed at the English Bar of Barrister and Solicitor might be retained as a useful division of labor.

The next subject to which I shall advert is the construction of the Zillah Courts. They are to consist of three Judges, and the Commissioners propose that the first Judge should in all cases be an European. I have always advocated the advancement of the Native servants of Government and shall gladly see them on the bench of the Zillah Courts co-operating with European Judges in the administration of Justice, but I do not consider that the Members of the Uncovenanted Service in this country are qualified to be placed over English Barristers, and the Covenanted Judicial servants of Government. I doubt whether the general community would desire such an arrangement and it would not tend to render these Courts more strong in the confidence of the public and more efficient for the discharge of those duties which the Zillah Courts have now to perform. But when it is considered that one great end in view is the establishment of Courts which are to administer hereafter Criminal and Civil Justice throughout the interior to *all* classes of the community, including British born subjects, the arrangement proposed by the Commissioners seems to me manifestly indispensable. The point at issue, it must be remembered, is not merely a Judicial arrangement but has a high political importance, and unless the rule laid down by the Commissioners is carried out, I should hardly expect to see Members of the Home Bar seek employment in the public service of this country, while the influx of English Capital and Colonists would be seriously checked. Real progress would thus be endangered, but the Minute India have found it necessary to adopt on this general question, renders additional remarks on my part unnecessary.

The restoration of the office of Registrar of the Zillah Courts is a measure which is highly desirable for the reasons assigned.

The Commissioners propose to remodel the Courts of the District Munsiffs which are to be styled District Courts by diminishing their number to 64, and arranging for each Court to be presided over by two Judges instead of by a single one as at present. It is argued that these Courts will thus gain in efficiency, and that a smaller number of them will suffice under the proposed plan of settling all petty suits by Punchayet or Arbitration. This part of the scheme causes some considerable doubt. Sixty-four District Courts do not appear sufficient for this extensive Presidency with its 21 large Provinces, and although I offer an opinion on the subject with hesitation, I do not consider that the advantage gained by having 2 Judges on the Bench of these Courts would compensate for the inconvenience of placing justice at a distance from large masses of the people.

My experience in this country both in the Judicial and other Departments satisfies me that an Institution fee on filing a suit is, as the Commissioners observe, a check on vexatious litigation. I concur in the arrangements proposed by the Commissioners on this head, and especially in the preference given to stamps over fees.

I also concur in the proposed arrangements regarding *written* pleadings, (paragraph 68) regarding the mode of recording evidence, (paragraph 124) and regarding the exemption from attendance as witnesses in Civil suits assigned to women of rank, (paragraph 65.)

(Signed) E. MALTBY.

No. 44.

ORDER THEREON, 30th January 1860, No. 109.

Resolved that the Judges of the Sadr Adalat be furnished with copies of the Report and Code referred to, for any remarks that they may wish to offer upon it.

(Signed) T. PYCROFT,
Chief Secretary.

Proceedings of the

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Proceedings of the

Madras Government

Dated 30th January

1860

T. Pycroft

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Adalat with Report of the (D.A. 31)

Judicial.

Proceedings of the Madras Court.
Read the following—

Report of the Judicial

Commission—Printed separately.

Minute by the Honble

the President—Inter 31st Decemr. 1859.

Do. by the Honble C.

Metty—23rd January 1860

Order. 30 January 1860. No 109

Resolved that the Judges
of the Sadar Adalat be
furnished with copies of
the Report referred to,
for ~~their~~ ^{their} ~~reference~~ ^{reference}
requested to favour the
Court with their opinion there
to offer up on it

and Code

J.P.

The Judges of the Sadar
Adalat with Report of the } Supd 31st

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Proceedings of Court

Dated 30 January 1871

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