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MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 19-20 Press
31-32 ~~Mis.~~

Dated 5. 1. 1861 19 .

25/26

Not to be folded or roughly handled

முன் கோப்புகள்.

...வு.	எண்.	தூரை. / வரிசை.	தேதி.	முடிவு.	எண்.	தூரை. / வரிசை.	தேதி.

பின் கோப்புகள்.

...வு.	எண்.	தூரை. / வரிசை.	தேதி.	முடிவு.	எண்.	தூரை. / வரிசை.	தேதி.

Proceedings of the Madras Government, Judicial Department, 5th January 1861.

Read again letter from the Under Secretary to the Government of India, dated 25th February 1860, No. 403, and recorded in Proceedings, 16th March, No. 328.

Read also the following papers.

No. 31. From C. F. CHAMIER, Esq., Registrar of the Sudder Court, to T. PYCROFT, Esq., Chief Secretary to Government, Fort Saint George, dated 21st May 1860, No. 45.

1. Adverting to the Proceedings of Government, dated the 16th March last, I am directed to communicate the opinions of the Judges upon the proposal to provide a course of legal study for Civilians designed for the Judicial branch of the service.

2. The Judges fully agree with the Bombay Authorities in thinking that some kind of legal training is now more than ever requisite for those who are to be appointed to the Judicial Office; and that measures to attain this object ought not to be any longer deferred.

3. Owing, however, to the peculiar constitution of the Civil Service, the early age at which he members are appointed, and the constant requisitions upon their services from the time of heir being qualified for public employment, it becomes a question of much difficulty to deter- ine the period at which they may best be called upon to acquire the legal knowledge necessary o fit them for the Bench.

4. On this point the Judges differ from Mr. Howard. They do not think it desirable that ie Civilian should, immediately upon his appointment to the service, be detained in England for ie purpose of prosecuting the study of Law. They consider that the knowledge of Roman Civil aw and General Jurisprudence which Mr. Howard aims at securing for the Civilian before he ters upon his public career, would be better acquired at a later period in life.

5. The proposition of Mr. Strange, in the 49th paragraph of his letter to the Government Judicial Reform, fully meets Mr. Beauchamp's views in this respect. After stating that the ung Civilian should be employed during the first seven years of his service under a Collector d Magistrate, Mr. Strange remarks: "He should then make his election for the Judicial branch, or the general administration; or, as the necessities of the service may demand, the Government should make the decision for him. The Judicial member should then be required to proceed to England for special training for his profession. It is the period when the first portion of the furlough to England may be taken, and I would make the time to be thus employed, two years. In England he should pursue his studies in those branches of Law which may prove of utility to him in India; that is, in Civil and Equity Jurisprudence; the Laws of Contracts and of Torts; the Law of Evidence; the principles of Criminal Law; legal maxims; and procedure. He should attend those Magisterial and Law Courts that may assist him in actual procedure. These studies I would allow him to prosecute any where in the parent country that might appear fitting to him. There should be a Board of Examiners to whom he might at any time apply to direct him in the course of his studies. Before them he should appear for examination at the close of the period assigned to him for his course of training, or at any prior time he may elect. Should he, within the prescribed period, pass a creditable examination in the required branches of knowledge, he should be entered as a member of the Judicial Administration of his Presidency. His two years of resi- dence in the parent country should count towards entitling him to pension, but only one year thereof should be reckoned against him for extinguishing furlough or service. He will have had the furlough allowance to maintain him. His passage money, out and back, should be provided him, and a suitable appointment should be secured him on his arrival in India. There, a Judicial post should be conferred upon him as soon as practicable, and no other manner of admission into this line should be permissible. I would not object to the Judicial member being transferred to any other branch of service for which he might be required, but if so transferred he should forfeit his place altogether upon the Judicial establishment. Other- wise, there will be evasions of the rule proposed to secure efficiency, by the transfer to the Bench of one who may have been long absent from it. Such are the advantages I propose for the successful candidate. They would be of considerable importance to the individual, and not costly to the Government. The unsuccessful candidate should have none of these

"advantages. His two years in Europe should count against him for extinguishing furlough "and service, he should not be assisted with passage money, and should run the ordinary risks "of obtaining employment on his return to India." Mr. Beauchamp would give the successful candidate time for total relaxation by extending his leave for a clear period of six months from the date of passing, independently of the time required for his passage; and would during this period secure to him his furlough allowance.

6. Mr. Frere thinks that those Civilians who select the Judicial branch of the service might be encouraged to employ a portion of their furlough to England in pursuing a course of legal study at any of the Inns of Court, and in attending occasionally Nisi Prius trials on Circuit, for which he is confident every facility would be afforded them by the English Bar. A residence in London for a part of each year is, he observes, rather favorable to health than otherwise; and a call to the Bar may be obtained, if desired, after the lapse of about three years.

7. The Judges concur in opinion with Mr. Howard that such legal studies as are now generally pursued in this country by young Civilians after passing in the Vernaculars, might advantageously be carried on simultaneously with the study of the Native languages. The works to be read should comprise Norton's Law of Evidence, Mayne's Principles of Criminal Law, some portions of Broom's Commentaries on the Common Law, and all the Revenue and Criminal Enactments. Mr. Frere does not consider it either necessary or desirable that these studies should be carried on at the Presidency. Mr. Beauchamp would place the young Civilian under the Law Professor, as he would then have the advantage of being directed to that which he must, master, and of being told what he might for the time pass over in the books in question; and would at once be put in the way of studying on a system, the want of which has proved a serious hinderance to many of the present junior members of the service.

No. 32. Despatch from the Right Honorable Sir C. WOOD, Bart., Secretary of State for India, to His Excellency the Honorable the Governor in Council, Fort Saint George, dated London, 25th May 1860, No. 17.

**Letter from the Government of Bombay with enclosures, dated 26th November (No 30) 1859.*
Letter to the Secretary Civil Service Commission, 30th January 1860.
Do. from do. 13th April 1860, *with enclosures.*
Do. to the Government of Bombay, dated 25th May 1860, *No.* 15.

1. I herewith transmit a copy of correspondence as per margin,* on the subject of the legal education of Civil Servants in the Judicial Branch of the public service in India.

2. Her Majesty's Government are very desirous that every facility should be afforded to the young Civilian, on his arrival in India, for carrying on, simultaneously with his studies in the Native languages, the course of legal education which he has commenced in England; and they request that you will take the subject into your early consideration, with a view to the adoption of such measures as may, in your judgment, be the best calculated to promote that important object, reporting the same for the information of Her Majesty's Government.

BOMBAY.—CIVIL SERVANTS.

Legal Education for Officers in the Judicial Branch of the Civil Service.

From J. A. F. HAWKINS, Esq., Secretary, Judicial Department, to JOHN G. MAITLAND, Esq., Secretary, Civil Service Commission, 1, Deane's Yard, Westminster, dated 30th January 1860.

I am directed by the Secretary of State for India in Council to request that you will lay before the Civil Service Commissioners the accompanying correspondence* which has been received from the Government of Bombay, on the subject of the Legal Education of Civil Servants in the Judicial Branch of the public service in India.

* Letter from Bombay dated 26th November (No. 30) 1859 with enclosures.

Proceedings of the Madras Government, Judicial Department,
5th January 1861.

It will be seen that the Government of Bombay, acting on the recommendation of Mr. Howard, a Barrister of the Supreme Court and Director of Public Instruction at that Presidency, propose to give their Civil Servants, on their arrival in India, a certain amount of legal training, preparatory to their entering upon the more important functions of the judicial office. The point at which that training should commence in India must depend, in a great measure, upon the extent of proficiency which candidates for the Indian Civil Service are required to attain in this country to qualify them for passing the examination, prescribed by existing rules, in the general principles of jurisprudence and in the elements of Hindu and Mahomedan law.

Under these circumstances, Sir C. Wood desires me to request that you will move the Commissioners to favour him with the requisite information in regard to the general nature of the examination which candidates will be required to pass in the above-mentioned subjects, and he will be glad to be furnished, at the same time, with the views of the Commissioners on the recommendations of Mr. Howard as to the nature and extent of legal training necessary for Civil servants intended for employment in the Judicial Branch of the Indian Service.

I am instructed to enclose, for the information of the Commissioners, a copy of the rules prescribing and regulating the examination to be passed by junior Civil Servants under the Government of Bengal, to qualify them for promotion to the more advanced grades of service. Rules similar in substance are in operation in all the Presidencies of India.

From J. G. MAITLAND, Esq., Secretary, Judicial Department, to J. A. F. HAWKINS, Esq., &c., &c., dated 13th April 1860.

I am directed by the Civil Service Commissioners to acknowledge the receipt of your letter of the 30th January, enclosing copy of correspondence received from the Government of Bombay, on the subject of the Legal Education of Civil Servants in the Judicial Branch of the public service in India, together with copy of the rules regulating the examination to be passed by junior Civil Servants under the Government of Bengal, to qualify them for promotion to the more advanced grades of service, and requesting information in regard to the general nature of the examination which candidates will be required to pass in the principles of jurisprudence and the elements of Hindu and Mahomedan law, with the opinion of the Civil Service Commissioners upon Mr Howard's recommendations, as contained in the correspondence above mentioned.

In reply, the Commissioners propose to state, in the first place, the course which has, in fact, been pursued. The extent to which Mr. Howard's views, so far as they relate to legal training in this country, are being carried out will then be apparent, and it will only be necessary for the Commissioners to explain very shortly the reasons which prevent them from giving an entire assent to his proposals.

The intention of Lord Macaulay and his colleagues was, as Secretary Sir Charles Wood will be aware, to frame for the first examination (that by which admission to the service was to be obtained) a scheme embracing the ordinary subjects of a liberal English education, and, at the same time (with exceptions for which reasons were assigned,) not going beyond those subjects. Law and jurisprudence, therefore, as well as the Vernacular languages of India and the History and Geography of that country, were necessarily excluded, and were to constitute (with political economy) the subjects of the further examination, by which, after an interval of one or two years, seniority in the service was to be determined.

Circumstances, which it is unnecessary to mention, led to the suspension of that part of the original plan which related to the further examination, and the candidates selected by open competition in 1855, 1856 and 1857 probably left this country, as Mr. Howard states, without having had the benefit of any legal education.

The examination of July 1858 was conducted by the Civil Service Commissioners, at the request of the Earl of Ellenborough, and, by the Regulations for that year, provision was made for a further examination of the selected candidates. As, however, it was considered desirable not to delay their departure beyond the close of the year, the further examination was confined to the elements of Hindustani and the History and Geography of India.

The Regulations of 1859 were framed after a correspondence between the India Office and the Civil Service Commissioners, which will be found in the Appendix to the fourth Report of the Commissioners. By these Regulations, the further examination of July next is to include Sanskrit and the Vernacular languages (each candidate being required to take one oriental language, and permitted to take two,) the History and Geography of India, political economy, and "the general principles of jurisprudence, together with the elements of Hindu and Mahomedan law." For the legal subjects 1,000 marks are assigned; to the others 1,850 in the whole, and of the last-mentioned aggregate, 850 are appropriated to oriental languages. On the authority of persons eminently well qualified to judge, whose opinions are cited at length in the correspondence last referred to, the Commissioners regard it as extremely desirable that the study of those languages should be commenced in this country, and they cannot wish that it should be considered as subordinate even to the acquisition of legal knowledge; but, with respect to the other subjects (the History and Geography of India and political economy), they have no hesitation in saying that a moderate acquaintance with them should be accepted as sufficient.

Reverting to the legal portion of the further examination, the Commissioners have to add that the following works have been mentioned to the selected candidates as likely to prove useful to them:—

Strange's Hindu Law.
Macnaghten's Hindu Law.
" Mahommedan Law.
Macpherson's Procedure.
Sandar's Institutes.
Morley's Digest.
Blackstone's Commentaries.
Elphinstone's History.
Mill's History, with Wilson's Continuation.
Kaye's Afghan War.
Thornton's Geography and good Maps.
Reprint of part of Macnaghten by Wilson.

The candidates were, at the same time, warned that the examination would not necessarily be limited to the particular books which were recommended.

Another step, from which the Commissioners venture to hope for good results, has since been taken. In their letter of 1st September 1858, the Commissioners quoted a passage containing Sir Charles Wood's opinion as to the species of legal education which it would be desirable that Indian Civil Servants should receive. "No qualification," he said, "is so necessary to them, "whether they be employed in the Judicial Branch of the Service or in the combined duties of "Collector and Magistrate, as a thorough knowledge of the principles of law, combined with a "practical acquaintance with the mode of conducting Civil and Criminal suits." Fully concurring in this view, and believing that the practical acquaintance referred to could not be acquired without attendance in Courts of Justice, the Commissioners addressed to the selected candidates the enclosed circular marked No. 1. The notes of cases which were sent in as required at the close of January were placed in the hands of Mr. Macpherson, whose name is no doubt known to the Secretary of State for India as that of the author of an able treatise, entitled, "The New Procedure of the Civil Courts in British India not established by Royal Charter."

From the Reports which Mr. Macpherson was good enough to make, the Commissioners were able to send to each candidate a short comment upon the mode in which he had executed the task imposed upon him, and all have been instructed (by Circular No. 3) to send additional notes before the close of the present month. How much has been gained in each case the Commissioners will be unable to judge until the *viva voce* examination announced in the first circular has taken place; but, although it would be unwise to form any very high expectations from the limited amount of attendance which has been required, they are convinced that the plan is a good one, and they hope that it may be practicable to carry it out hereafter on a more extended scale.

Passing next to the consideration of Mr. Howard's valuable suggestion, the Commissioners observe that, in his third paragraph, he states his opinion that two years ought to be spent by gentlemen designed for the Judicial Branch of the Service in the study of law as a science. Of these two years, one it is proposed should be passed in England, in the study of general jurisprudence, the candidates being allowed during that period a moderate sum for their maintenance, &c., and being required to pass an examination at its close. An exception to the rule requiring the year's study in this country is subsequently proposed in favour of those whose answers at the examination for appointments show that they have attained the requisite proficiency in jurisprudence, as well as of those who have obtained university honours in law or jurisprudence. Mr. Howard then proceeds to consider the sense in which the term jurisprudence is to be understood, and, after stating the objections which exist to other systems, he arrives at the conclusion that the Roman Civil Law, as a branch of general jurisprudence, must be adopted as the basis of juristic study. In later paragraphs, he shows the extent to which his requirements would go, suggesting for a general view of English law Blackstone's Commentaries, and for jurisprudence and Civil law the Institutes of Justinian, with some selected portions of the Pandects, to be studied with the aid of a commentary. An acquaintance with some recognized treatise on modern Civil Law, with some of the principal divergences between Civil and English law, and with the fundamental principles of the conflict of laws and of legal hermeneutics, is also to be required; and it is added, that the examination should not be based on any particular treatise or commentary, save of course the prescribed texts of Roman law, but on Civil Law and jurisprudence as a subject.

Upon this portion of Mr. Howard's plan the Commissioners have to offer the following remarks:—

In the first place, they are glad to observe the great extent to which Mr. Howard's suggestions have been anticipated. The study of law and jurisprudence has been made obligatory, two of the works recommended have been mentioned to the candidates, provision has been made for their expenses while prosecuting their studies, and a test examination is to take place at the interval of a year after that by which the candidates were originally selected.

The principal points on which the Commissioners are unable to agree with Mr. Howard are the following:—

1. The Commissioners do not think that, in the present state of general education, it would be desirable to include law among the subjects of the first examination. They have already referred to the principle by which Lord Macaulay and his Colleagues were guided in framing their scheme, and the maintenance of that principle appears to them important.

2. From their general experience, the Commissioners would be reluctant to take, in lieu of an examination conducted under their own directions, any record or certificate of honours obtained under other circumstances. It will be unnecessary for them to express the sincere respect which they entertain for the learned bodies entrusted with the duty of granting such certificates; but any attempt to distinguish those which should, from those which should not be regarded as satisfactory substitutes for examination would be so difficult and so invidious that they have thought it necessary to adopt for their own guidance the general rule indicated above. They are also of opinion that university honours, though proving the scientific knowledge of law possessed by the candidate, could not be taken as guarantees that he has had that practical training which they regard as at least equally important, under the special circumstances of the case.

3. Entertaining this opinion as to the value of practical training, the Commissioners are disposed to think that Mr. Howard requires too much of scientific knowledge. Undoubtedly, the authorities which he cites support him in his view as to the general importance of a thorough acquaintance with the Civil Law; but the very peculiar position of a member of the Judicial Service in India, where, as Mr. Reeves observes in his Memorandum, "the law is of the "simplest kind, the state of society wholly inartificial, and there are no legal details of any "difficulty to overcome," appears to the Commissioners to require a special and somewhat different preparation. As to the elements of the Civil Law there is no question, and the Insti-

tutes of Justinian have been, as above mentioned, recommended by the Commissioners; but the further time which the candidate may be able to devote to his legal education should, they think, be divided between the study of works relating either to the law of England, as Blackstone's Commentaries, or to the systems with which he will be brought into contact on his arrival in India, and a careful observation of the actual proceedings, Civil and Criminal, in our Courts of law.

Upon the portion of Mr. Howard's plan which relates to the course of study which should be pursued in India, the Commissioners feel it less necessary, that they sould give an opinion. They notice, however, in his paper, as well as in those of members of the Government who have commented upon it, complaints of the amount of time wasted by the younger Civil Servants after their arrival in India. It is to be inferred that the knowledge of oriental languages, and the "slight tincture of legal education" acquired by the civil servant under the system which preceded that now established, were neither sufficient to qualify him for immediate employment, nor to give him an interest in his studies sufficient to counteract the temptations to idleness by which he was assailed. If, as may reasonably be hoped, this should not hereafter be the case, the civil servant will, in fact, enter upon his duties almost as early as heretofore; and he will enter upon them with a better prospect of success, because his time, instead of having been, according to Mr. Howard's phrase, "loitered away" in India, will have been spent in completing his education at home.

Upon the Regulations for the Examination of Junior Civil Servants in Bengal, on promotion to the more advanced grades of service, the Commissioners have only to observe, that they appear to be exceedingly well adapted for their purpose, and that one of the tests enjoined, that of framing judgments upon cases actually decided, and placed before the assistant when under examination, is evidently a test of legal training,—of the power of appreciating and comparing evidence, and of other similar qualifications,—more than of the theoretical knowledge possessed by the candidate. The Regulations, therefore, may be appealed to in support of the view taken by the Commissioners.

The Commissioners have to repeat, in conclusion, that they trust it will not be understood that they consider what has already been done as sufficient. They will give their best attention to any suggestions of improvements, and they will be glad to consider the plan referred to in the correspondence as in course of preparation by Mr. Le Geyt, if communicated to them. In any event, they hope, as soon as the results of the further examination are known, to place the Secretary of State for India in Council in a position to estimate, as accurately as the nature of the case will allow, the results of the measures which have already been adopted.

CIVIL SERVICE COMMISSION,
GATEWAY, DEAN'S YARD, WESTMINSTER,
November 3rd, 1859.

Sir,

When you attended at this Office in the month of August last, it was intimated to you that the Commissioners considered it very desirable that, in addition to the knowledge of the general principles of Jurisprudence required by the Regulations, you should obtain some practical acquaintance with the mode of conducting legal proceedings in this country.

2. The Commissioners now proceed to explain their wishes on the subject, observing in the first place, that the practical knowledge which they are recommending you to acquire cannot fail to assist you in apprehending "the general principles of Jurisprudence," and thus to aid you in your examination. They have also to acquaint you that success in the attainment of this practical knowledge will be brought under the notice of the Secretary of State by a special certificate or otherwise.

3. Thus much having been premised, the Commissioners have to request that before the end of January next you will devote a few mornings to attendance on the Courts of Justice which may be most accessible to you; and that at the time above mentioned you will send to me for their inspection notes of the cases which you have heard. The notes should contain the title of

Proceedings of the Madras Government, Judicial Department,
5th January 1861.

the Court, the names of the Judge and the parties, and the place and time of trial. They should also state clearly and concisely the substance of evidence given, the objections made to evidence (whether oral or documentary), the points on which a conflict of evidence may have arisen, the arguments of counsel, the decision of the Judge, and the ultimate result, with any other details which may have struck you as worthy of remark.

4. If, as may probably be the case, you have never had occasion to attempt the task now proposed, you may possibly form an exaggerated estimate as to what is expected from you. The Commissioners, therefore, wish that you should at once understand that they do no expect that from an attendance such as that contemplated you will acquire any great knowledge of law, or of the technicalities of legal practice. They would for this reason recommend you to avoid rather than to select cases which involve abstruse legal questions, difficulties on the construction of Statutes, &c. Cases of assault, debt, theft, and the like are most likely (at least until you have acquired some familiarity with legal proceedings) to give you clear ideas as to the way in which a trial is conducted; and this, it may be repeated, is the real object in view. Such cases as those above mentioned you will be able to hear at the Police Court, the County Court, the Quarter Sessions and the Assizes, or at the corresponding Courts in Scotland.

5. Undoubtedly the benefit of the proposed course will be much increased if you can attend in company with some person competent to give you the explanations of which you will often stand in need; and the Commissioners hope you may be able to find among your friends some one capable of assisting you. They have no doubt that (at least as far as admission and accommodation are concerned) the authorities of the Courts which you may desire to attend will be willing to give you every advantage in their power.

6. It may be well to add, that although it is desirable that you should obtain explanation and information from those who may be able and willing to assist you, the Commissioners must require that the notes should be *bond fide* your own composition, and that they should be derived exclusively from your personal attendance in Court. You will, therefore, be good enough to append a declaration to that effect with your signature.

7. When the notes now asked for have been received and inspected, any observations or suggestions for improvement which may be considered necessary will be sent to you, and a time will be named at which further notes will be expected.

8. You will be examined *vivâ voce* upon the notes which you have sent in when you attend for further examination in July, and proficiency shown in that examination will, as above stated, be brought under the notice of the Secretary of State; but the marks which may be given will not be included in the general total.

9. The preceding remarks relate to a species of knowledge which, as is evident, can be best acquired in this country. The Commissioners are anxious that you should combine with it an elementary acquaintance with the mode in which law is administered in India. They think that you will then be enabled to compare to some extent what you read as to the system existing in the country to which you are hoping to proceed with that which you see and hear while at home. For this purpose they recommend you to procure "The First report of the Commissioners on India Law Reform" presented to Her Majesty in 1855, and obtainable by order through any bookseller. The portions of the Report and Appendix to which your attention should especially be directed are referred to in the subjoined Memorandum. And with reference to the Code of Civil and Criminal Procedure recommended by the Commissioners, it should be understood that the former has been, with some modifications, adopted by the Indian Legislature, and that the latter may probably be in force before your arrival. The Civil Code is being reprinted, and a copy will shortly be sent to you, in order that you may see in what respects the statements made in the specified portions of the Appendix, as to the method of Civil Procedure, do not accurately describe the system now in force.

10. It is probable that questions on the specified portions of the Report and Appendix will be included among those relating to the general principles of Jurisprudence in the further Examination; but you will not be examined in the Code of Civil Procedure except as to the

system of written pleadings and the settling of issues, referred to in the notes to pages 31 and 32 and 29 and 51 of the Report.

11. Before closing this communication, I am to add that Professor Wilson's edition of Macnaghten's Treatises on Hindoo and Mahommedan Law has not yet appeared, but will probably be published before Christmas. You are aware that the Commissioners do not limit their examination to specific works, but they think it right to repeat what has already been mentioned to you, that the works are of very high authority, and that the forthcoming volume, edited as it no doubt will be, cannot fail to be of the greatest service to you in your studies.

P. S.—You are requested to acknowledge the receipt of this letter.

Portions of the First Report of the Commissioners on India Law Reform and Appendix, especially recommended to Candidates.

Reference.	Subject.
Appendix B. No. 1, p. 210 ...	Outline of the Constitution and Procedure of H. M. Supreme Courts of Judicature at Calcutta, Madras, and Bombay.
Appendix B. No. 2, p. 215 ...	Outline of the Constitution and Powers of Justices of the Peace and Magistrates of the Presidency Towns of India.
Appendix B. No. 3, p. 222 ...	Outline of the Constitution and Procedure of the E. I. Company's Courts of Civil Judicature in the Presidency of Bengal.
Appendix B. No. 4, p. 234 ...	Outline of the Constitution and Procedure of the E. I. Company's Courts of Criminal Judicature in the Presidency of Bengal.
Appendix B. No. 5, p. 240 ...	Outline of the Constitution and Procedure of the E. I. Company's Courts of Civil Judicature in the Presidency of Madras.
Appendix B. No. 6, p. 246 ...	Outline of the Constitution and Procedure of the E. I. Company's Courts of Criminal Judicature in the Presidency of Madras.
Appendix B. No. 7, p. 252 ...	Outline of the Constitution and Procedure of the E. I. Company's Courts of Civil Judicature in the Presidency of Bombay.
Appendix B. No. 8, p. 259 ...	Outline of the Constitution and Procedure of the E. I. Company's Courts of Criminal Judicature in the Presidency of Bombay.
Note on pp. 29 and 51	As to settling Issues.
Note on pp. 31 and 32	As to system of written Pleadings.
Note on p. 57	As to abolition of Oaths.
Note on p. 103	As to Code of Criminal Procedure.
Note on p. 135	As to abolition of Indictments and all Criminal Pleading.
Note on p. 150	As to Juries in Criminal Cases.

CIVIL SERVICE COMMISSION,
DEAN'S YARD, WESTMINSTER, S. W.
25th November 1859.

SIR,

Referring to my circular letter of the 3rd instant, I am to enclose a copy of the New Code of Civil Procedure in India, acquainting you at the same time that Mr. Macpherson has just published a work entitled "The New Procedure of the Civil Courts in British India not "established by Royal Charter,"* being the fourth edition of the Treatise on Procedure mentioned to you on your attendance at this office in August last. The work is throughout adapted to the new Code, to which it is intended to be "an introduction or companion;" and the author expresses his hope "that as such it may be found useful in Madras and Bombay as well "as in Bengal, although the illustrations are drawn chiefly from cases decided in the latter "Presidency."

The Commissioners take the opportunity of stating that they have been able to make arrangements for facilitating the attendance of selected Candidates in certain of the Courts of Justice in London. If therefore you do not find in your present neighbourhood Courts which you can attend with convenience to yourself, and also with advantage, you will do well to spend a portion of the time still at your disposal in London. The Commissioners mention the matter at this

* London: R. C. Lepage and Co., 1, Whitefriars-street, Fleet-street.

Proceedings of the Madras Government, Judicial Department, 5th January 1861.

ly period, not with the view of interfering at present with your discretion, but only in order t you may not hereafter feel that you have been under a disadvantage as compared with other ldidates. It is possible that when the notes to be received in January next have been pected, a more definite rule on the subject may be found necessary.

If in the mean time you have reason to believe that an application from this office to the horities of any of the Courts in your neighbourhood would procure you additional facilities, u will do well to communicate with me.

You will have the goodness to acknowledge at once the receipt of the Code herewith losed.

CIVIL SERVICE COMMISSION,
22nd February 1860.

SIR,

Referring to my Circular letter of 3rd November 1859, which informed you that after the eipt of the Legal Notes requested in that letter a time would be named at which further tes would be expected.

I am now to request that such further Notes may be sent by the 1st of May at the latest.

I am at the same time to request your attention to the following instructions:—

1.—The cases reported must be at least fifteen in number, and must be cases tried before a Jury, or in a Court in which a Barrister presides. If you are resident in or near a Town in which Assizes are held, you will do well to attend regularly, selecting for your Notes the most important cases.

2.—In addition to the more extended report, a very short analytical statement of each case is to be given, showing, in Criminal cases, the facts necessary to constitute the offence charged, and how these facts were proved, and, in Civil cases, the exact points in issue, with the bearing of the evidence upon them.

3.—The declaration required by the letter of 3rd November 1859 is to be *appended* to the Notes, and the instructions contained in the third paragraph of that letter should be borne in mind.

4.—Foolscap paper should be used.

(Signed) J. G. MAITLAND.

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espatch from the Right Honorable Sir C. WOOD, Bart., Secretary of State for India, to His Excellency the Right Honorable the Governor in Council, Bombay, dated London, 25th May 1860, No. 15.

1. Having referred your letter dated 26th November (No. 30) 1859 and its several enclores relative to the legal education of Civil Servants designed for the Judicial branch of the lic service in India for the consideration and report of the Commissioners to whom the ination of all Candidates for the Civil Service in India is committed by the Act 21 and 22 toria, Cap. 106, Section 32, I have now to communicate to you the reply of the Comissioners under date the 13th April and to express my entire concurrence in their views on at important subject.

2. I approve of your proposal to provide a course of legal study at Bombay for Civilians tended for the Judicial branch of the service and request that the regulations which you may y down for the attainment of that object may be so framed as to harmonize with those followed the Commissioners and to promote the advancement of the students in that course of legal udy, the foundation of which has been laid in England.

3. In framing these regulations you will carefully attend to the remarks of the Commissioners to the practical tendency of the training to be given to young Civilians whose duty it will be dispense justice to a people, the introduction among whom of a complicated system of Judicial

administration is specially to be avoided, you will submit the regulations when prepared for the information of Her Majesty's Government.

4. You are requested to convey to Mr. Howard the acknowledgments of the Secretary of State for India in Council for his valuable reports of the 6th September and 17th October last.

No. 33. MINUTE BY THE HONORABLE THE PRESIDENT.

The question of Judicial training of Indian Civil Servants has of late acquired more than even its former importance owing to the measures in progress for opening the Judicial line of the service to Members of the Uncovenanted Service and to the English Bar.

After the young men have been selected for the Civil Service and before they leave England, they ought to pass an Examination in the Elements of General Jurisprudence and of Hindu and Mahomedan Law. This was provided for in the Haileybury system; and the happy influence of Mackintosh's and Empson's Lectures may be traced in the superior qualifications of many Officers who have adorned the service. It was also provided for in the scheme for the Preliminary Training of Passed Candidates prepared by Lord Macaulay and his Colleagues after the abolition of Haileybury College; and arrangements were proposed by them, in addition, for making the candidates acquainted with the mode of administering the Law in England. Practical effect is now being given by the Civil Service Commissioners to the plan of Lord Macaulay's Committee. The Chairman, Sir Edward Ryan, in a letter to me dated the 18th of February last, says: "We are preparing a full answer to the inquiry made of us (from the India House in "reference to this same Bombay correspondence); but before we send our answer, we shall "test the result of an experiment we have made upon the candidates who passed last July their "*first* Examination. These candidates have, by our desire, attended different Courts of Justice "and have made reports to us of the trials they have heard, which reports we are now examining. "*The art of administering the law*—not the knowledge of law—is where the Indian Civil Service "fail so much. This we are endeavoring to meet." This part of the subject is now in safe hands, and full justice will be done to it.

Neither do I feel any doubt as to the course which ought to be adopted in reference to the next stage of a Civilian's progress. It would be very unadvisable to detain the young men at the Presidency in order to pass an Examination in Law. They have had quite enough of a life of mere studentship and examinations; and it is high time that they should enter upon the practical business of their Indian career. My sentiments in this respect are exactly expressed by the Honorable Mr. Reeves in the following passage of his Minute, dated the 4th of November last. "Our Law is of the simplest kind; the state of society is wholly inartificial; there are no legal "details of any difficulty to overcome; but it is of vital importance that a candidate for public "employment, whether he wishes to be a Judge, Collector and Magistrate, or Political Agent, "should become thoroughly well acquainted with the manners and customs of the people, as well "as with our Revenue and Police systems, and I contend with much confidence, that this cannot "be effected in any manner so well as by active service as Assistant Collector and Magistrate, or "of a Political Agent. I may indeed assert that the object cannot possibly be effected in any "other manner; as Assistant Collector and Magistrate the young Civilian will have his time well "occupied in deciding numerous cases of a simple kind, both Civil and Criminal, and in preparing "others of a grave and important character for the judgment of higher authority, and his "powers, discretionary and legal, will be increased with his experience. This affords all the "judicial practice that is necessary in this country, while the acquirement of that knowledge of "the Native character and the institutions of the country which is essential to the formation of "a good Judge or a good Magistrate, is secured in the fullest possible degree."

It may be desirable to add an acquaintance with certain legal text books to the examinations which Junior Civil Servants have to pass to qualify them for promotion to the more advanced grades of the service. This knowledge might be acquired (as all diligent young men do now acquire it) by private reading in the provinces, without staying at the Presidency for Lectures. The Code of Procedure and any portions of the Substantive Law which may hereafter be codified, should also enter into the scheme of these examinations.

I cannot, for obvious reasons, support the proposal that, after seven years, Civil Servants should be allowed two years of special furlough to study Law in England; but Mr. Frere's suggestion that Civilians who select the Judicial Branch of the service might be encouraged to employ a portion of their existing furlough in pursuing a course of legal study at any of the Inns of Court, and in attending the Courts of Law, is deserving of attention. The facilities for studying Law at home have of late been much increased by the institution of Lectures and examinations in connection with the Inns of Court; and Civil Servants who furnish proof on their return to India that they have made good use of their time in this respect, should be rewarded by early promotion.

The sum of my opinions, therefore, is, that the young men should be trained in common until they arrive at that period of their service when they have to make their election between the Revenue and Magisterial, and the Judicial Branches of the service, by being appointed to the office of Sub-Collector and Joint Magistrate or to that of Sub-Judge; and that this training should be chiefly of a practical kind, but should combine as much positive knowledge of Law and of the art of administering it as may be consistent with other objects. All the functions of this class of public servants partake so largely of the Judicial character, that the legal knowledge acquired would always be turned to good account; while those who enter the Judicial line, could, I am persuaded, have no better preparation for it. Those who have an inclination for this line and intend to enter it would naturally give more attention to their legal studies.

MADRAS, *4th June* 1860. (Signed) C. E. TREVELYAN.

No. 34. MINUTE BY THE HONORABLE W. MOREHEAD, dated 31st December 1860.

I think the views expressed in this Minute are correct.

The home part of the question is certainly, as observed by Sir C. Trevelyan, in good keeping. And I have no doubt an efficient and practical scheme will be devised.

In respect to India nothing can in my opinion be added with advantage to the course at present observed.

(Signed) W. MOREHEAD.

No. 35. ORDER THEREON, 5th January 1861, No. 19.

Ordered that the following letter be despatched.

(Signed) T. PYCROFT,
Chief Secretary.

No. 36. To the Secretary to the Government of India, dated Fort Saint George, 5th January 1861, No. 20.

I am directed by the Honorable the Governor in Council to acknowledge the receipt of Mr. Under Secretary Chapman's letter of the 25th February last, No. 403, Home Department, transmitting a copy of a letter from the Government of Bombay, dated 26th November 1859 and its enclosures, on the subject of a proposal to provide a course of legal study for Civilians designed for the Judicial branch of the Service, and requesting the opinion of this Government thereon.

2. In reply I am desired to state that the papers which accompanied Mr. Chapman's letter were, on its receipt, forwarded to the Judges of the Court of Sudder Adawlut, who were requested to submit their views on the subject. I am directed to forward the enclosed copy of a letter from their Registrar embodying the sentiments of the three Judges on the question referred to them.

Proceedings of the Madras Government, Judicial Department,
5th January 1861.

3. On this reply being returned, the whole subject was considered by the then Governor Sir C. Trevelyan, and a Minute recorded by him under date 4th June last, expressive of his views upon it. In transmitting a copy of that Minute, I am instructed to state that the present Government concur in the suggestions and sentiments which it contains, and that they have nothing to add to them.

(Signed) T. PYCROFT,
Chief Secretary.

Correspondence relative to the Necessity of supplying the want of Legal Knowledge in the Judicial Branch of the Civil Service.

The Governor in Council of Bombay to the Secretary of State for India.

26th Nov. 1859, No. 30. (Judicial).

We have the honour to submit, for your consideration and decision, an extract of the proceedings of this Government, containing a proposal to provide a course of legal study for civilians designed for the Judicial branch of the service.

2. For our opinion on this important question, we beg to refer you to the several Minutes which accompany the proceedings.

3. We beg to add, in conclusion, that copies of these papers have also been forwarded for the consideration of the Government of India.

We have, &c,
ELPHINSTONE.
A. MALET.
HENRY W. REEVES.

EXTRACT FROM THE PROCEEDINGS OF GOVERNMENT IN THE JUDICIAL DEPARTMENT.

From the Director of Public Instruction.

Jud. Cons., 1859.—No. 8030.

Poonah, 6th September 1859. No. 1904.

Sir,

I hope I shall not be considered as going beyond my province in addressing Government on a subject which seems to me to deserve their most serious attention.

2. There is a system of legal instruction in this Presidency carried on by competent professional men at the expense of Government, and which, as the recent examination shows, is diligently and profitably attended by native students, and by them only.

3. Government have acknowledged the claims of these young men to judicial promotion, and two of them have already been entrusted with the responsible office of Moonsiff.

4. On the other hand, all the superior judicial offices are exclusively reserved for covenanted civilians. The young gentlemen of this service educated at Haileybury have had some slight tincture of legal education in England. You will correct me if I am wrong, but my impression is, that that legal instruction was very slender, and quite inadequate to supply even the foundation of really practical legal knowledge.

5. As regards the new order of covenanted civilians, I am probably right in supposing that not one of them has ever had even the slightest instruction in law or jurisprudence, though their education has been admirably adopted as a basis for such instruction.

6. In these facts I see the possibility of grave complications at no very distant period.

7th. The "Company's Courts," as they are called, offer the most favourite mark to European and native agitators against the Indian Government. Few know anything about the real working; but the broad fact that they are presided over by judges without law, is easily worked up as an effective rhetorical topic.

8. I shall not be suspected of wishing to sneer at my own profession, when I mention that, as the agitators to whom I allude either are, or employ as their mouthpieces, English lawyers, the remedy they naturally propose for the evil is the importation from England of a number of lawyers to fill the judgment seats of the Mofussil.

9. The obvious answer always made to this proposal is, that these imported barristers would probably be "briefless" young men of no great learning and ability, and would certainly know nothing of the country, the system of administration, the people, their languages, habits, usages, and feelings. And the strength of this answer is such, that the project has never seriously been pressed by any statesman of weight.

10. But I would earnestly beg Government to look forward a few years, to a time when the project will be revived in a form to which that answer will not be applicable. The Bombay Native Association, four years ago, in a memorial to the Government, which I quote from memory, prayed that Indian courts might be presided over by lawyers "trained either in England *or in this country*."

11. The time is fast approaching when lawyers "trained in this country" will be procurable in such numbers, and possessed of such professional attainments and practical experience, as to constitute a formidable body of rivals to the untrained judges of the Civil Service. Whatever agitation has been carried on in the interests of English barristers will be renewed with tenfold force of reasoning in favour of a class of men professionally trained, to whom none of the objections can be made that I have mentioned in my ninth paragraph.

12. All the usual misrepresentations and exaggerations, all the practised calumnies of faction, will be brought to bear in support of a cause which in the main would be a true and just cause, and to the English Parliament, unacquainted with this country and its people, would seem even more true and just than it is.

13. I am well aware that many members of the Civil Service believe that a judge in this country need have no law, that "common sense" is enough for him, illuminated by practice and a knowledge of the people. To this it would certainly be replied with unanswerable force, that the question is not between knowledge of law on the one hand, and practical experience on the other, but between law and no law, practical knowledge being equal on both sides.

14. There are indeed those, but it is hardly worth while to argue with them, who maintain that legal knowledge would be positively injurious to the usefulness of a Mofussil judge, as likely to make him the slave of technicalities, instead of a dispenser of justice.

15. Government have deliberately decided the contrary by establishing institutions for legal education. Law was mentioned in the celebrated Educational Despatch of the late Court of Directors, as one of the most important branches of instruction to be given to natives; and the paradox that a judge is all the better for ignorance of law, has only been maintained by anonymous writers in Indian newspapers.

16. The question then will present itself before many years, "Can Government "continue to exclude from the highest judicial offices the only men who are specially "educated and competent to fill them?" and, if the answer is in the negative, the result will be literally, sooner or later, to give natives a monopoly of the judicial bench.

17. If this consummation is agreeable to the policy of Government, all is well; but, if they design to keep the higher judicial offices in the hands of Englishmen, something must be done to supply Englishmen qualified to hold such offices.

18. The preference given to Europeans in India, as I understand, is not given to their blood, but their presumed merit; this merit, it is true, is not thought to be founded solely in their intellectual qualities or acquired knowledge. Government have an assurance that an English gentleman has been bred up under the motives and restraints of a Christian home, that he has lived without stain among men of honour (according to English notions of honour), and, finally, that he is, and even to death will be, a true and loyal servant of the Queen. Without wishing to say anything offensive against our native fellow subjects, it is certain that an English Government cannot repose the same kind, or at least the same amount, of trust in its native servants, whose life and antecedents are hidden, as it were, behind a veil from English eyes.

19. Still, a native student, who has passed through college and the law classes with a good character, who has spent some years in practice as a Vakeel, or in the

office of Sheristadar, and afterwards served with credit as a Moonsiff and Sudder Ameen, has a right to be considered as trustworthy for yet higher office, and certainly his claims would appear strong against those of an English civil servant who had never opened a law book, or mastered a principle of jurisprudence.

20. The practical truth which I am endeavouring to enforce, has already, to some extent, been recognized by the Government; junior civil servants have been invited to attend the law lectures at Bombay and Poona, and Norton's Law of Evidence has been introduced as a text-book into the departmental examinations. But I am humbly of opinion that this is not enough; few will attend the lectures, and few will really prepare the text-book. And, even if every candidate for the judicial branch did both, how slender his attainments would be, compared with those of a regular attendant for four years at the Law School, whose knowledge has been tested annually by such examinations as those which for the last two years have been conducted by Mr. White and the Director of Public Instruction.

21. When the University grants its degrees in law, the contrast will be made still more striking.

22. I am, therefore, humbly of opinion that, if it is intended to reserve the higher judicial offices to Europeans, no time should be lost in laying down a course of legal study to be passed by all civilians designed for that branch of the public service.

I have, &c.,
E. J. Howard,
Director of Public Instruction

No. 8031.—Memorandum by the Chief Secretary to Government.

9th September 1859.

Mr. Howard is no doubt right in his supposition that the knowledge of law possessed by most civilians on leaving Haileybury is very slight, and there is no security that the young men who have gained their appointments by competition have acquired even the first rudiments of legal knowledge.

Nor can it be denied that, under the recently established educational institutions of this country, a class of young men are being rapidly perfected in a sound knowledge of law and jurisprudence, which must call for far greater technical attainments in those who occupy the judicial bench, than has hitherto sufficed to command the respect of the pleaders in our Courts of Justice. The subject is one which demands early attention; but, as it is one which affects the whole of India, perhaps the best course would be to forward Mr. Howard's letter to the Secretary of State, for such consideration as he may consider called for.

H. Young,
Chief Secretary.

No. 8032.—Minute by the Governor.

10th September 1859.

I think Mr. Howard deserves the thanks of Government for calling its attention to a point of great importance. I have no doubt that, in a very few years, we shall have numbers of natives who are perfectly qualified by legal knowledge and practice for the highest judicial offices, and I have no desire to exclude them from these; but, at the same time, I should think it a misfortune if these offices were either filled exclusively by natives, or if a contrast unfavourable to the European judges could be drawn between them and their native colleagues.

I think it is indispensably necessary that the European candidates for the judicial office should have a legal education. It is very difficult to say how this is to be effected; but the subject, as remarked by the Chief Secretary in his Memo., is one which concerns not this Presidency only, but the whole of India. It should, therefore, be brought to the consideration of the Government of India, and of Her Majesty's Secretary of State, and the Council of India.

Elphinstone.

No. 8033.—Minute by Mr. Malet.

13th September 1859.

I concur in the view of this subject taken by the Right Honourable the President, and I have no doubt that a legal education is daily becoming more necessary for the civil officers employed in judicial office. Hitherto, the whole of the members of the

department have alike educated themselves in the practice of their profession; but the admirable legal education which is now open to all in this country, and of which intelligent natives are taking the earliest advantage, will make a most material change, and it becomes absolutely necessary to provide that the European employés shall not lack that knowledge which the natives are so rapidly acquiring.

A. Malet.

No. 8034.—Minute by Mr. Reeves.

19th September 1859.

We shall now find the inconvenience of the abolition of Haileybury, and be convinced, if ever we doubted it, that it would have been far better to have supported and perfected that institution, than to have done away with it, owing to some acknowledged imperfection.

I have frequently felt the importance of what Mr. Howard has so well put in his letter, and more especially was I so impressed after reading the last examination papers very recently sent in for the information of Government. I concur in opinion that something must be done towards supplying that want of legal knowledge in the judicial branch of the Civil Service, which will now very soon become a most serious difficulty in more ways than one. I agree also, that the subject must go before the Government of India; but I venture to suggest that, in submitting it for the consideration of his Excellency the Governor-General in Council, it would greatly facilitate a decision, if we were to accompany our reference with a plan for giving young civilians that particular knowledge which it is clearly perceived that they must possess; and I believe that we could not do better than ask Mr. Howard himself for advice on this head. I have ascertained that he is willing to give it, provided sufficient time be afforded him for consideration.

H. W. Reeves.

No. 8035.—Further Minute by the Governor, subscribed to by the Board.

23rd September 1859.

I agree with my honourable colleague that our reference should be accompanied by a proposal for giving young civilians the required legal instruction, and that Mr. Howard would be the best person to offer advice upon this important point. I would therefore, before submitting the matter for the consideration and orders of the Government of India, request Mr. Howard to favour us with his views as to the best mode of securing this most desirable object.

Elphinstone.
A. Malet.
H. W. Reeves.

No. 8036.—The Secretary to Government to the Director of Public Instruction.

Sir, 29th September 1859. No. 2302.

I am directed to acknowledge the receipt of your letter (No. 1904), dated 6th instant, directing the attention of Government to the necessity of supplying the want of legal knowledge in the judicial branch of the Civil Service, and suggesting that a course of legal study be laid down, to be passed by all civilians designed for that branch of the public service.

2. In reply, I am desired by the Right Honourable the Governor in Council to convey to you the thanks of Government for calling their attention to a point of such great importance, and to inform you that, as the subject is one which concerns not this Presidency only, but the whole of India, it will be brought under the consideration of the Government of India, and of Her Majesty's Principal Secretary of State, and the Council of India.

3. The Right Honourable the Governor in Council is of opinion, however, that it would greatly facilitate, if the proposed reference were accompanied by a plan for giving young civilians the required legal instruction; and I am directed to request that you will be so good as to favour Government with your views as to the best mode of securing this most desirable object.

I have, &c.,
H. Young, Chief Secretary.

No. 8037.—The Director of Public Instruction to the Secretary to Government.

17th October 1859. No. 2394.

Sir,

I have the honour to acknowledge the receipt of the Government letter, No. 2302, dated 29th September 1859.

2. With very great diffidence, I submit such a plan as is called for by the Government.

3. Considering the powers of application, general abilities, and high education, which are presumably possessed by successful competitors for the Indian Civil Service under present rules, and considering what are the requirements of a Provincial Indian Judge in respect of positive legal knowledge, I think that two years ought to be spent by gentlemen designed for the judicial branch of the service, in the study of law as a science.

4. Of these two years, I would have one passed in England in the study of general jurisprudence; and I would extend this rule to *all* young civilians after appointment, for a tincture of such knowledge will certainly be of the greatest practical use to them in all the duties, magisterial, revenue, diplomatic, or financial, as well as judicial, that they may have to perform in this country.

5. In order to ensure that this first year's study shall be conscientiously performed, I would institute an examination at the end of it, to be passed satisfactorily before the civilian can obtain leave to proceed to India.

6. During the year, a reasonable subsistence allowance should be made to the civil servant, with a further small allowance for the purchase of law books.

7. This year's study, however, need not be required of young men whose answers at the examination for appointments show that they have attained the requisite proficiency in jurisprudence (for the standard, *vide post*, para. 52, seq.), or who have obtained University honours in law or jurisprudence.

8. Facilities exist for the study of jurisprudence at Oxford, Cambridge, the Inns of Court, and, I believe, at Edinburgh, and the Irish Colleges. I should leave the civilian to acquire the necessary knowledge wherever he may think proper; but the examination should, I think, be held in London. Possibly, the Council for Legal Education of the Inns of Court would allow their examining machinery to be made use of for the Indian Civil Service. If not, separate examiners, of which there should be at least two, must be engaged specially by the Home Government.

9. I think it likely that there will be some difficulty in arranging this part of the scheme, though not, perhaps, so much now as there was a few years ago, legal education having been of late more completely organized by the Inns of Court. But, writing in India, I am unable to do more than indicate what I think necessary or fitting to be done in England, without showing how it is to be done.

10. No young civilian should be appointed to the judicial branch of the service without at least a year's study of law in India, and passing an examination for which facilities are already provided in the Law Schools established by Government at the several Presidencies, (for standard, *vide post*, para. 68, seq.)

11. After passing the law examination in India satisfactorily, I propose that the young civilian should be attached to the office of some judge, for the purpose of learning the practical exercise of his profession. (*Vide post*, para. 73.)

12. My plan would thus embrace one year's study in England, tested by an examination, a second year's study similarly proved in India, and a further period (of which the duration cannot be defined) of practical training under a judge. I now proceed to fill up portions of this outline.

13. *Study in England.*—I have already stated that I would not dictate to the student where he is to acquire his knowledge of jurisprudence. But, in that case, the final examination must be very carefully devised and firmly conducted, so as to ensure a year's genuine study without any possibility of evasion, and to guard effectually against "cramming."

14. *Jurisprudence.*—The next point is to define the sense in which the term jurisprudence is to be understood as a subject proposed for the study of candidates for the Indian Provincial Bench.

15. I am so sensible of the difficulty of determining this question without the opportunity of conference with qualified advisers, that I must beg to be understood as only offering suggestions which may constitute a provisional basis for discussion. I suggest that the point should be decided in England, where eminent persons have

for some years past been engaged in considering the principles of legal education; and I would respectfully point to Sir Richard Bethell, Her Majesty's Attorney-General, and now, or late, the Chairman of the Council of Legal Education in the Inns of Court, as the authority to whose judgment I would most confidently appeal, on the recommendation which I shall now have the honour to submit.

16. By jurisprudence I understand the principle of right and duty, which lie at the bottom of all positive laws among all civilized nations.

17. How can these principles best be investigated for the purposes of an Indian Judge?

18. Some would recommend an abstract course of study, such as might be comprised in the several works of Bentham and Austin, in which questions of law are raised and decided on philosophical grounds, without reference to the positive institutions of any country.

19. With great deference, I think that such a course of study, however useful and elevating to a practising lawyer or a legislator, would not be the best for a young student, who, in the pursuit of metaphysical trains of thought, would be apt to lose sight of the practical bearing of legal principles.

20. It seems to me that the theory of law would, for the purposes of a future Judge, be more usefully studied in the concrete, that is, as embodied in positive legal institutions which have stood the test of experience, and have been developed to meet the actual wants of mankind.

21. No legal system existing in India can be advantageously selected as the basis of scientific legal study.

22. The Hindoo and Mahomedan codes are unsystematic, and are bound up with religious dogmas in such a manner, and to such an extent, as to render them quite unsuitable for the purpose required.

23. The English Statute Law of India prevailing beyond the local jurisdiction of the Supreme Courts is too fragmentary and incomplete to constitute the groundwork of jural study. And, even when the several contemplated codes are promulgated, they will not supersede the necessity of a previous scientific training in the principles of law, any more than the Code Napoléon has done in France.

24. The Common Law of England (in its widest sense) is not open to the objections above mentioned; but, as I humbly think, it is almost equally unsuitable as the basis of an Indian Judge's education.

25. The English law is vast in extent, highly artificial, and unsystematic.

26. It retains many feudal and other technical doctrines which must be investigated historically before they can be understood, and thus inflicts upon the student much labour which, for the training of an Indian Judge, would be almost or quite useless. I would refer, as an illustration, to the highly abstruse doctrines relating to interests in land, technically called the law of real property, which are totally inapplicable to India. Again, in the less peculiar and more scientific law of contracts as enforced in English Courts of Justice, there are fundamental rules (such as the division into contracts of record, specialities, and simple contracts), and the distinction between defences at law and equity, which are in their nature arbitrary, and, *pro tanto*, inapplicable to a Provincial Court of Justice in India, either for direct use or scientific reference.

27. Probably the rules which make up what is called the law of evidence are the only portion of the English law which could with advantage be minutely studied by the ordinary candidate for an Indian judicial appointment.

28. Furthermore, and this is the main consideration, English law is founded on precedents and not on principles; though English lawyers are in the habit of using the word "principle" as applied to legal doctrines, it is still nevertheless certain that there are no principles, properly so called, in the English system. General formulæ may indeed be eliminated by comparing the language of learned judges in their reported decisions, and the generalizations of text-book writers are occasionally recognized by Courts of Justice as correct statements of the law; but there is no systematic development of legal doctrine by deduction from fundamental maxims recognized by the English law, and in this sense it has no principles or scientific method.

29. The time and labour required for the thorough study of the English law in consequence of its unsystematic character are very great, and far more than a young

civil servant could devote to it, and a superficial study of so vast a fabric of doctrine would, in the majority of cases, be positively mischievous to him.

It seems to me to remain that the Roman Civil Law as a branch of general rudence must be adopted as the basis of juristic study.

The prejudices of English lawyers against the Roman law are historical, and among barristers and attorneys, a common impression that there is something tially impractical in that learning; but I am prepared to show that those dices are not shared by the leading members of the legal profession in England, have devoted themselves to the subject of legal education, and I am quite ng that the suggestion should be judged of by those whose educational authority ost universally recognized.

2. The Committee on Legal Education of the Middle Temple Society reported, 845, that the study of jurisprudence and the civil law would "supply a long dmitted deficiency in the education of English lawyers;" and, to illustrate the efit which, in the view of the Committee, would result to the students from the ointment of a reader on those branches of learning, they defined the sense in ch they used the terms civil law and jurisprudence as follows:—

'By the term 'jurisprudence,' the Committee mean to indicate general juris- dence as distinguished from the particular jurisprudence of any individual nation, which, in further explanation of their meaning, they would divide into positive isprudence, or the philosophy of positive law, and comparative jurisprudence, or nibition of the principles of positive law in an embodied form by a comparison of jurisprudence of modern nations. In the first, they would have the lecturer also lude the important subject of the 'interpretation of laws;' and under the latter d of comparative jurisprudence, the 'conflict of law' may, with propriety, be mprised.

"By the term 'civil law,' the Committee wish to indicate what may be called odern Roman law,' that is to say, those portions of the civil law which, being of universal character, and applicable to the relations of modern society, have formed basis of the jurisprudence of many continental nations, and entered so largely o our own.

"The Committee are of opinion, that this study of the theory of the civil law y be most advantageously combined with the study of jurisprudence, and that two united will furnish the best means of preparatory legal culture, and the mation of an enlarged and comprehensive legal mind."

33. The Commissioners appointed by Her Majesty to inquire into the arrange- nts of the Inns of Court for the promotion of the study of Law and Jurisprudence, their Report, dated 10th August 1855, after stating that the present system of idying in the chambers of a practising lawyer affords no facilities for the study of e "scientific branches of legal knowledge, including under that term constitutional law and legal history, and *civil law* and jurisprudence," proceed to say that some knowledge of these subjects must be useful to the barrister, not only as an advocate, but as a judge, and *especially if he should be appointed to any judicial office in India*."

34. It will be observed that the Commissioners had not then before them the case Indian civilians, but of barristers, who, from the vast extent of the municipal nglish law, certainly have neither as much leisure as the former nor as much visible ed for preliminary studies such as civil law and jurisprudence. Any recom- endation of the study of civil law to an English barrister would obviously apply ith much greater force to a candidate for the Mofussil Bench in India.

35. In the Appendix to the Report of Commissioners is an extract from a Report y the Committee of the Faculty of Advocates (Edinburgh, 1854), from which quote the following:—

"The Civil Law constitutes the basis of nearly all the law of Europe, and is the best ubstitute for lectures on general jurisprudence. The circumstances of the present imes prove the truth of Lord Stair's opinion, that no man can be a knowing lawyer n any nation who hath not well pondered and digested in his mind the common law f the world.

"In requiring the civil law as an essential branch of the legal education of a Scottish advocate, the Committee are only enforcing the rule sanctioned by the prescription of three centuries. They are by no means desirous of attaching an undue degree of importance to its study, or to claim for it the undistinguishing veneration with which the faculty were in former days asked to regard it. They claim for it only such a degree of attention as it is entitled to from its merits; merits

which have been acknowledged by men whose partiality for their own common law gives weight to their testimony.*

"A system which has contributed to give form and consistency to the law of Scotland could not be overlooked in an enlightened system of legal education. But, independently of its special claims on the notice of a Scottish lawyer, the jurisprudence of the greatest nation of antiquity must possess an imperishable interest in the eyes of those who regard law as a science; every step in the development of which has its value and importance, as tending to accomplish the establishment of sound principles of legislation and the correct administration of justice. Accordingly, it has been nearly the universal rule of all the States of Europe to enforce upon the Advocate of the Supreme Courts the study, not merely of the jurisprudence of the locality, but also that of the Civil Law; not so much for its immediate use in practice, as because its study humanizes the mind, gives a larger and more comprehensive view of jurisprudence, and furnishes at the same time the many informing aids that are to be derived from the history of other times."

36. Such are the collective resolutions of three learned bodies of lawyers recently engaged in devising schemes of legal education.

37. The Commissioners appointed to inquire into the Inns of Court examined several distinguished persons on the subject of the study of the Roman Civil Law, and there was a remarkable, if not an absolutely complete, concurrence in their views as to its great utility in furnishing a scientific foundation of legal study for an English barrister.

38. Mr. Hastings gave the following evidence:—"(1629.) Do you think the "study of the civil law and of general law would be a means of effecting an "improvement in the minds of the practitioners at the bar generally?—I think it "would. (1630.) Notwithstanding the different basis upon which the two laws "rest?—I think our law rests to a great extent upon the Roman law. I think the "study of the broad principles of the Roman law tends to enlarge a man's mind, and "makes him regard the science in a way that is very desirable. (1631.) With "respect to the law of contract, would not the principles of the Roman law be of "considerable use in directing the judgment of the bar as applied to the English "law?—Yes, I have studied the Roman law a good number of years myself, and I "think I have derived great benefit from it."

39. I would refer to almost the whole of Mr. J. G. Phillimore's evidence as to the defective education (in his judgment) of English lawyers, and the supposed inferiority of the English to the French bar as jurists, which he attributes to the absence in England of the study of the Roman law, and the theory of jurisprudence. "General jurisprudence," he states, "includes the study of the Roman law "and the Pandects (that is to say, parts of the Pandects)."

40. Sir Hugh Cairns prescribes (1652), as a fundamental course of legal study, "mainly the general system of jurisprudence as a system of ethics, and the know-"ledge of civil law as connected with classical and historical learning."

41. I beg leave to refer more particularly to the opinions of the eminent German civilians consulted by Mr. Greenwood, and recorded in his special "Report upon "the systems of Legal Education pursued in the different States of Germany," appended to the Commissioners' Report.

42. Dr. Guest, of Berlin, says, "I think the study of the Roman law *essential "to a systematic legal education.*" Upon subjects relating to private rights and personal contracts, and the duties which flow from them, there is no system of law in which principles are investigated with more good sense, or declared and enforced with more accurate and impartial justice.

43. To the same effect is the emphatic testimony of Dr. Wangerow, Dr. Mittemaier, and Dr. Wahloff.

44. The first-named says, "In my estimation there is no better mode of culti-"vating the science of legal thinking, and the interpretation of laws, than the study "of their (the Roman jurists') works."

45. All these opinions, I repeat, have reference to the training of an English

* The Roman law forms no rule binding in itself on the subject of these realms; but in deciding a case upon principle, where no direct authority can be cited from our books, it affords no small evidence of the soundness of the conclusion at which we have arrived, if it prove to be supported by the law, the fruit of the researches of the most learned men, the collective wisdom of ages, and the groundwork of the municipal law of most of the countries of Europe. (Per Chief Justice Tindal, Acton and Blundell, 12, Meeson and Welsby, page 324.)

barrister, who has to master a vast and highly complicated structure of national jurisprudence, which might well be throught to demand his whole time.

46. The amount of positive law to be acquired by an Indian Mofussil Judge is extremely limited, and, therefore, in his case, a broad basis of jural study, such as is provided by the Civil Law, is more easily laid, and is more necessary for the purpose of enabling him to adjudicate with readiness and certainty the thousand questions arising in daily life, and to unfold the reasons for his decisions with clearness and persuasiveness.

47. I will close my appeal to authorities by the very pointed testimony of Sir Erskine Perry, who sat on the Inns of Court Commission, and who, eleven years ago, when he was Chief Justice in Bombay, published a translation of Savigny's celebrated treatise on "Possession," (the *Jus Possessionis* of the Roman law,) dedicated to the Indian Covenanted Civil Service, and intended for their use.

48. I will say, in passing, that this treatise is exceedingly abstruse in the translation, and could hardly, I suppose, be understood by any one who had not already acquired some knowledge of the Civil Law; hence, I believe, Sir Erskine Perry's public-spirited design has been as yet unsuccessful.

49. The translator, addressing the Civil Service, whom he compliments for their impartiality and earnestness in the administration of justice, says, "Although the "subject of this work is treated very technically, and solely with reference to civil "law, an accurate knowledge of the distinction between possession and property, "and of the legal protection afforded to the former, in order to repress violence and "breaches of the public peace, is essential in all systems of jurisprudence, and will "be found, I apprehend, most valuable to Indian practitioners."

50. Independently of this feature of the work (he continues), "it affords the most "admirable model of strict legal reasoning, of interpretation of the language of the "law, and of that practical good sense in the treatment of legal questions, which the "study of the Roman classical jurists seems to engender, that I have met in any "modern treatise, and as such it seems to commend itself with peculiar propriety "to your distinguished service."

51. *Course of Study.*—The arrangements sanctioned by the Council of Legal Education in the Inns of Court comprise the following courses of study:—

1. Constitutional law and legal history.
2. Equity.
3. Real property law.
4. Jurisprudence and the civil law.
5. Common law.

52. Of these, the first and fourth branches might, with advantage, be studied by the candidate for judicial appointment in India. And I would add, a general view of English law, such as is given in Blackstone's Commentaries.

53. I suggest that the weight of the examination should be thrown on the jurisprudence and civil law branch.

54. That the student should be called upon to show that he has studied the Institutes of Justinian, with some selected portions of the Pandects, by the aid of a commentary.

55. He should also have studied some recognized treatise on modern civil law, and show an acquaintance with some of the principal divergences between civil and English law, and the fundamental principles of the conflict of laws, and of legal hermeneutics.

56. It should, however, be distinctly understood, that the examination will not be based on any particular treatise or commentary (save, of course, the prescribed texts of Roman laws), but on civil law and jurisprudence, *as a subject.*

57. As regards constitutional law and legal history, a fair knowledge of Mr. Hallam's History might be accepted; and, for the Encyclopædia of English law, a modern edition of Blackstone might be taken as a basis of examination.

58. The course of study might, perhaps, be most conveniently indicated by the compilation of a large number of examination questions on each branch of learning.

59. *Study in India.*—The young civilian, arrived in India, will be subject to the general rules relating to the Civil Service; his attention will be directed to the acquisition of native languages and of administrative knowledge; and I have no intention of proposing any such change of system as would interfere with objects of such commanding importance.

60. But I must distinctly express my opinion that it is too common to find young civil servants loitering away their time for the first year or two after their arrival;

and, from personal observation, I believe that a bad effect is produced among the native servants of Government by witnessing such waste of time on the part of young men who are paid, what a native considers, a handsome salary.

61. I therefore, without hesitation, recommend that young civil servants should be called upon to do more work than they are required to do at present.

62. I see no reason at all why law studies should not be pursued at the same time with linguistic, if not administrative studies.

63. A language cannot be *crammed*. A certain efflux of time is required for the acquisition of a new vocabulary and mode of speech. Two hours a day for a year would probably do more for a student than more than twice two hours a day for six months.

64. I have no certain knowledge of the average daily time spent by young civilians in learning the native languages. Immediately before the examination, no doubt there is a good deal of cramming, and the candidate's whole working day is consumed in reading and conversation with the Moonshee. But, probably, any young man, who resolutely, from the day of his arrival, devoted not more than two or three hours a day to learning one of the vernacular dialects, would attain the appointed standard as quickly as it is now reached by the average of young civil servants.

65. At any rate, I have no doubt that junior civil servants might be fairly required to pursue legal and lingual studies *pari passu*.

66. All young civilians might, perhaps, be permitted and invited to attend the Law School at Bombay; but those who select the judicial branch, with the assent of Government, should be compelled to do so.

67. The course of study laid down for them should, I think, be confined to a few branches of law of very great practical importance, and which most demand the assistance of a teacher.

68. I would select the elements of property law, the law of contracts, the law of evidence, which should be treated with as little technicality and as much reference to general principle as possible.

69. I would recommend such text books as Savigny on Possession, Smith on Contracts, Pothier on Obligations, and Mr. Justice Story's popular works; Mr. Norton's Treatise on Evidence is, I believe, well adapted for an Indian law student.

70. Besides these subjects, the professor should give, in lectures, a general outline of the several systems of law prevailing in India, to be filled up by the student for himself. And I would strongly recommend *Lex loci* Report of the Indian Law Commission, as a subject for private study.

71. It cannot be too often repeated that the professor would be prudent to abstain as much as possible from the ultra-technical language of English law, and to bear in mind, as a constant warning against that besetting tendency of English lawyers, that every Provincial Judge's decision will have to be recorded in a semi-barbarous native language, which has no equivalents to English law terms, and is incapable of expressing scholastic subtleties.

72. After a year or eighteen months, an examination should be held (not by the law professors), and the students passed for the judicial branch, or sent back for further study.

73. The passed men should be assigned each to a judge, for the purpose of practical training on a system nearly the same as that which is described as prevailing in Germany, in an Appendix to the Inns of Court Report before quoted.

74. Mr. Greenwood, in his report, states (sec. 30) with reference to the passed law student in Prussia, "When successful, the candidate is sworn in as auscultator "(hearer or apprentice to the law) at one of the inferior tribunals (tribunals of first "instance, Kreis and Amto-Gerichte); here, under the instruction of some member "of the College of Judges, to whom he is assigned as a pupil, he familiarises himself "with the whole course of judicial business, from the office of simple clerk or writer in "the several bureaus up to that of the Judge. He makes digests of the cases before "the Court, with detailed augmentations, and his own conclusions thereupon, for the "opinion of the Judges. He makes reports and protocols, and takes down evidence, "draws up and registers proceedings for the use of the Court. He acts as clerk to "the magistrates in criminal proceedings, and learns to draw judgments and decrees "both in civil and criminal matters. During the whole of the period thus spent, the "'hearer of law' is required not to discontinue his theoretical studies, more especially "directing his attention to the divergences of the Roman, the Prussian, and the "Germanic systems of law. Every quarter, the 'hearer' is required to make a

"report, in writing, to the Court, of his studies and occupations during that period, "and must apply for, and receive from the members of the tribunal, attestations as to "the duration of his several occupations, the activity, diligence, and ability exhibited "in the course of them. These certificates must be exhibited when he applies to be "admitted to his second examination."

75. I think it unnecessary to pursue this branch of my recommendations into greater detail. I may add, however, that it is during this period of "auscultation," and not before, that the civilian would be expected to master the written law which he will have to administer, the system of judicial procedure, and the salient points of Hindoo and Mahomedan law, tacitly or expressly recognized by the provincial tribunals.

76. The expense of my recommendations cannot be exactly estimated. The allowances paid in England to civilians and examiners (if any) would be inconsiderable. Some extra remuneration to the law professors, or an extra professorship, would be necessary, if the civilian students formed a separate class, as I think they ought.

77. A small expense would be advisable for the purpose of providing a selection of law books for each Court, and a complete law library ought certainly to be founded in Bombay for the use of the Law Schools. This last would be an expense properly belonging to the University.

78. It remains to consider the case of young civilians now in the country, or presently to arrive. I believe that there are several young men who could be spared without inconvenience for a course of, at least, six months' legal study. I think in that time they might acquire such an insight into the leading principles of the law of contracts and evidence, as would enable them to pursue their studies unassisted.

79. There is the Law School at Bombay, in which such instruction is now being given, and I should be happy if my services could in any way be made use of by Government.

80. If desired, I shall be happy to write further on the subject of the two last paragraphs.

I have, &c.,
E. J. Howard.
Director of Public Instruction.

No. 8038.—Memorandum by the Chief Secretary.

20th October 1859.

The Chief Secretary believes that the soundness of the conclusions at which Mr. Howard has arrived, and on which he has brought to bear a valuable store of professional learning and experience, will be generally admitted. It is certain that a foundation of legal knowledge should be laid in England; but it seems to the Chief Secretary that the acquirement of such fundamental knowledge might be tested at the general examination for admitting candidates for the Indian Civil Service, and that the great inconvenience of detaining young men already admitted to the service, for a year in England, to prosecute legal studies (as proposed by Mr. Howard), might be thus avoided. But the year's study in this country cannot, as it seems to the Chief Secretary, be dispensed with. Mr. Howard points out that it could be carried out simultaneously with the study of the vernacular languages, and in this opinion the Chief Secretary fully concurs.

There is no doubt that the first year or two of a young civilian's residence in this country is not, generally speaking, sufficiently utilized. Much time is wasted, for, however studious a young man may be, he finds application to one subject exclusively, and that by no means an inviting one, for more than three or four hours a day, not only repulsive but unprofitable. There is no doubt that young civilians have more than ample leisure to work at general jurisprudence, and Mr. Howard's observations as to the subjects which should be selected, and the mode in which their studies should be carried out, seem exceedingly judicious.

The Chief Secretary has reason to believe that Mr. LeGeyt, the Bombay Member of the Legislative Council, is at present engaged in the consideration of a scheme for attaining this very object, which Government had in view when they called for this report from Mr. Howard, namely, the securing a more certain and a more scientific legal education to those civilians who are intended to fill judicial offices in India. He begs, therefore, to suggest that this Report, with the former proceedings on the subject, be sent to Mr. LeGeyt, for any observations with which he may be good enough to favour Government.

H. Young,
Chief Secretary.

No. 8039.—Minute by the Governor, subscribed to by Mr. Malet.

21st October 1859.

Mr. Howard has favoured us with a very interesting and valuable paper, in answer to our inquiry what is the best mode of securing to our young civilians such an amount of legal instruction as shall qualify them for the Judicial Bench, under the altered circumstances in which our Mofussil Judges will be placed by the spread of legal education, and by the formation of a highly educated native bar.

I certainly do not feel myself competent to review the whole of Mr. Howard's recommendations, especially those which relate to the studies to be pursued in England. I agree with him that the course of study should be submitted to Sir Richard Bethell, or to some other high legal authority in England, who may be willing to give his attention to it, and in whom Her Majesty's Government place entire confidence.

I may venture also to express my entire concurrence in Mr. Howard's remarks upon the insufficiency of any legal system existing in India as the basis of scientific legal study, and in his preference for the study of the Roman Civil Law over that of England. I think there can be no doubt that "the time and labour required for the "thorough study of the English law, in consequence of its unsystematic character, "are very great, far more than a young Indian civil servant could devote to it, and "a superficial study of so vast a fabric of legal doctrine would, in the majority of "cases, be positively mischievous to him." Equally true is it (as observed by the Committee of the Council of Advocates, Edinburgh, 1854, quoted by Mr. Howard,) that "the (Roman) Civil Law constitutes the basis of nearly all the law of Europe;" a code of which this can be said, and which has maintained its authority through so many centuries, and through so many revolutions and vicissitudes, and among people so different in character and in civilization from each other and from the Roman world in the days of Justinian, must surely be a fitter subject of study in the abstract than a system which, whatever its excellencies in the eyes of Englishmen, is confessedly founded upon precedents, and not upon principles, and which, to quote again from Mr. Howard's letter, "retains many feudal and other technical doctrines, "which must be investigated historically before they can be understood, and thus "inflicts upon the student much labour, which for the training of an Indian judge "would be almost or quite useless."

With regard to the studies and judicial training which are to be carried on in India, I may be permitted to express my general concurrence in Mr. Howard's remarks.

I do not see why *all* young civilians should not be compelled to attend the Law School at Bombay, especially if a separate class is instituted for them. The only drawback that I see to this arrangement is, that it will necessitate the residence of a number of young men at Bombay, where they will be apt to encourage each other in habits of extravagance.

I have no doubt that the course of study, choice of books, &c., recommended by Mr. Howard, are well calculated for the object in view; his warning against *ultra technical* phraseology will, I hope, not be thrown away upon our law professors.

The Prussian system of attaching passed students to one of the inferior tribunals could hardly be carried out in its integrity in this country. It is, moreover, desirable that all young civilians should go for a year or two (at least) into the Revenue Department, where they become familiarized with the people and with a state of society so different from that which they have been accustomed to at home. This I should consider a more essential part of the training of a future Judge, than the knowledge of forms and of the actual working of a Court which is acquired by the Prussian *auscultators*. These, however, are not wholly to be neglected, and, after a year or two's probation under the collector and magistrate, I think it would be a good plan if the candidate for judicial employment were promoted to the now abolished office of registrar to a civil and sessions judge.

The experiment of collecting the young civilians at the Presidency with a view to their attending law classes, may be tried at first upon a limited scale. It may be notified that any young gentlemen who are anxious to qualify themselves for judicial employment may apply to be stationed at the Presidency for the purpose of attending law classes, and that those who produce satisfactory certificates shall have a preferential claim to be employed in the judicial branch.

Mr. Howard's very handsome offer to afford every assistance in his power in carrying out this experiment may be accepted, and the thanks of Government conveyed to him for it.

The foundations of a complete law library for the use of the Law School should be laid at once. Mr. Howard may be requested to favour us with a list of such books as would be required in the first instance. The library would be increased, as the want of additional books of reference &c. was felt.

The Chief Secretary has suggested that Mr. Howard's Report should be sent to Mr. LeGeyt, the Bombay Member of the Legislative Council, for such observations as he may desire to make. This course appears the more advisable, as Mr. LeGeyt is stated to be engaged in maturing a scheme for the same purpose. His experience of the working of the judicial system in this Presidency will no doubt assist him in this, and he will also remember that the legal education which is now attainable by natives at this Presidency, and which will soon produce a great change in the character of the native bar, requires that a corresponding improvement should take place in the training of our Mofussil Judges.

Elphinstone.
A. Malet.

No. 8040.—Minute by Mr. Reeves.

4th November 1859.

I fear I may be thought to have detained these papers somewhat longer than necessary, but, as my sole desire has been to give them due consideration, I trust that no inconvenience will result.

Mr. Howard's proposals are the following:—

Two years' study of law are to be required from young men designed for the Judicial branch of the Civil Service, of which one year is to be passed in England after appointment consequent on the competitive examination; and no young man is to be permitted to come out to India until he has passed a strict examination, to which he should be subjected at the end of the year.

Mr. Howard would excuse a candidate for the Judicial Department from this year's study, provided he can pass the required examination without it.

The examination is to be held in London.

The other year, or a longer period of study, is to be spent in India, and is to be followed again by examination.

And, after this, the judicial candidate is to be attached to the office of a Judge, for the purpose of acquiring a practical knowledge of his duty.

2. Concurring generally in these proposals, I am of opinion that the course of legal study should be made compulsory on all candidates for civil employment in this country. I would point to the great extent of judicial work performed by Magistrates, Collectors, and Political Agents; to all these officers, the knowledge of sound principles of law, insisted on by Mr. Howard, appears to me to be essentially necessary to ensure the satisfactory performance of their duty, in addition to which it will afford to young civilians the most admirable mental discipline, it will furnish them with a power of self-improvement, that cannot fail to produce men capable of coping with questions of any kind.

3. I agree with the Right Honourable President in considering that Mr. Howard's views on the nature and course of legal study to be pursued in England should, as suggested by that gentleman himself, be submitted to Sir Richard Bethell. In discussing this part of the subject, Mr. Howard seems to me to reason with great force as well as with characteristic zeal.

4. I have received from Mr. Anderson, the Judicial Secretary, a suggestion which I consider of great practical value. He remarked that Lord Macaulay's scheme for the preparation of civilians for India was not adopted in its integrity by the Home Government, and that it may now be taken advantage of to a further extent. His Lordship, it will be remembered, intended 1st, a competitive examination; 2ndly, a two years' course of study, with an examination at the end of it, which was to determine the rank of the candidates for employment. Mr. Anderson's opinion, and I concur in it, is this,—that, although it would be unfair and undesirable to rank the students, even supposing them to be specially designed for judicial duties, according to the result of the examination in law, yet there ought to be some incentive to the acquisition of something more than a minimum of legal knowledge; he therefore proposes that the marks obtained in the competitive examination should be carried on to the one in law, and that the aggregate result should decide the rank of future civilians.

5. Mr. Howard's remarks at paragraph 60 of his letter are perfectly true. Young

civilians too generally loiter away their time for the first year or two after arriving in this country; we are not allowed to make any official use of them, and the study of the vernacular languages is effected by a few months' cramming. The present proposals will at once terminate this evil; for newly arrived civilians will, under Mr. Howard's recommendation, find their time well and fully occupied. They will be required to study the Indian languages and jurisprudence "*pari passu*."

6. The course of study in this country should embrace such branches of law as are likely to be of the most practical service, and the elements of property law, the law of contracts, and the law of evidence, appear judiciously recommended by Mr. Howard. The lectures also on systems of Indian law, as well as the private study which he proposes, are, I conceive, equally well chosen, as already remarked. I would make these studies compulsory on all young civilians who may be hereafter appointed. I quite approve of the examination which Mr. Howard would hold in this country, as a test of the civilian's fitness for entering upon the active duties of his profession. This test may be usefully combined with our departmental examinations, which are susceptible of much improvement; it would, in fact, supersede a great portion of them.

7. I differ from Mr. Howard as to the employment of civilians at the conclusion of the course of study in India. Practice as "auscultators," I cannot conceive to be advisable. Where a system of law full of technicalities and difficulties has to be encountered, and a highly artificial state of society exists, such practice, I can easily suppose to be necessary, but that is not the case here; our law is of the simplest kind, the state of society is wholly inartificial, there are no legal details of any difficulty to overcome; but it is of vital importance that a candidate for public employment, whether he wishes to be a judge, collector and magistrate, or political agent, should become thoroughly well acquainted with the manners and customs of the people, as well as with our revenue and police systems; and I contend, with much confidence, that this cannot be effected in any manner so well as by active service, as assistant collector and magistrate, or of a political agent. I may indeed assert, that the object cannot possibly be effected in any other manner. As assistant collector and magistrate, the young civilian will have his time well occupied in deciding numerous cases of a simple kind, both civil and criminal, and in preparing others of a grave and important character for the judgment of higher authority; and his powers, discretionary and legal, will be increased with his experience. This affords all the judicial practice that is necessary in this country, while the acquirement of that knowledge of the native character, and the institutions of the country, which is essential to the formation of a good judge or a good magistrate, is secured in the fullest possible degree.

8. Another consideration which must have weight is this, that we cannot afford to throw away a well-qualified available civilian; and the employment of our young men as "auscultators" would virtually amount to the loss of their services for a given time.

9. After serving for a given number of years, say five, as an assistant collector and magistrate, I would appoint any young civilian who might deliberately make choice of the Judicial Department, as assistant judge. I observe that the Right Honourable President is disposed to revive the office of registrar, and I see that Mr. LeGeyt has included that office in his bill for the judicial machinery of this Presidency; but I regard this as a step backwards. The very name of this abolished office is fanciful and unmeaning. No one unacquainted with the secret would have supposed that the registrars formerly held any judicial powers, or that they did anything but register deeds and draw fees for so doing. I think it far better to retain the intelligible and appropriate name of assistant judge. There can be no question that a young man who has passed the competitive examination in England, and gone through the course of two years or two years and a half study chalked out by Mr. Howard, and additionally employed himself as assistant collector and magistrate for five years, will be amply qualified to take his seat as a Judge, and that he will do credit to Government; such an officer should be made the most of; he should be employed as a Judge, and with this office he should receive the title and dignity of Judge, and not be designated by a title which conveys no meaning but that of an amateur.

10. I fully concur in the proposal of the Right Honourable the President for giving immediate effect to Mr. Howard's offer to aid some of our junior civilians in the study of law; but I venture to suggest that the study should be made compulsory on all those who can be spared, and I believe these are not a few. A course of six months' application, or longer, if possible, with some stimulus to exertion in the way

of promise of promotion in the event of industry and proficiency, could not fail to be of immense benefit to those young men.

11. I further coincide in his Lordship's desire that a complete law library should be provided without loss of time.

12. I have only one remark more to make; the Chief Secretary has suggested that he has reason to believe that Mr. LeGeyt, Member of the Legislative Council, is engaged in the consideration of a scheme for attaining the object which this Government had in view in referring to Mr. Howard; and, therefore, that the report from Mr. Howard and former proceedings should be handed over to Mr. LeGeyt for his remarks; and the Right Honourable President is disposed to adopt this course. I trust, however, I shall be pardoned for objecting to anything calculated to delay the transmission of Mr. Howard's very able and excellent report to Her Majesty's Secretary of State for consideration. Mr. Howard's report is complete and convincing; and, without meaning the slightest disrespect to Mr. LeGeyt, I feel assured that no information can be expected from him that will add anything to the opinions of that gentleman and Sir Richard Bethell, on the all-important point of the legal study. It is manifest that a part of the study must be in England, and a part in India. And it is equally clear that the Secretary of State will, with the report of Mr. Howard before him, and the further opinion of Sir Richard Bethell, be placed in possession of information that will go far to enable him to come to an early decision on the question of English study, if not on the whole question. Any young men who come out to this country without the qualifications which it is now desired to give them, must enter this country at a great disadvantage; the sooner, therefore, the Secretary of State can be induced to prevent their coming out under such disqualification the better.

I think, therefore, that the proceedings should be sent home at once.

Copies of the papers can be sent to Mr. LeGeyt for his remarks, which, as they will only affect the employment of young men in this country, may very safely be left for future consideration.

H. W. Reeves.

No. 8041.—Minute by the Governor.

I am glad to find that there is so much coincidence of opinion between my honourable colleagues and myself on the subject of Mr. Howard's valuable memorandum.

I did not intend that its transmission to the Secretary of State should be delayed; but, as I understood that a Bill for providing that young civilians intended for judicial employment should have some legal training, (*sic*) and as this Bill might be brought forward before we could receive an answer from the Secretary of State, I thought it was desirable that the Member of the Legislative Council for Bombay should be placed in possession of Mr. Howard's plan, and I thought it also desirable that it should be canvassed, and that we should be placed in possession of any objections which may be urged against it by those who are about to legislate on the subject.

The only points upon which there is any degree of difference of opinion between my honourable colleague, Mr. Reeves, and myself, are upon the revival of the office of registrar, and the immediate compulsory attendance of all junior civilians at the proposed law classes.

With respect to the first, I think it is of no great consequence whether a young judicial officer is called a registrar or an assistant judge. There are already two grades of assistant judges; those at detached stations, and those who are at the Zillah Adawlut. If the judicial service is to be in future more separated from the Revenue and magisterial branch than it has hitherto been, it will be necessary to multiply the latter class of assistant judges, and to have one attached to every Zillah Court. This would be reverting to the old practice; and it seemed to me that it would be as well to revert to the old designation, which marked the difference of rank between the apprentice judge and the master more clearly than the present one; but, as I said before, I attach no particular importance to the name.

With regard to the compulsory attendance of junior civil servants upon the law lectures, I think that it will be advisable to wait until we know that the proposed course of study is approved by the Secretary of State. We must also consider how far this arrangement is to have retrospective effect. It is not desirable that a large number of young men should be brought down to the Presidency at the same time.

The effect of ordering all young civilians who have not passed their first departmental examination, for instance, to attend the law classes, would be to congregate a large number of them at the Presidency. By making it optional in the first instance (not restricting it to those who have not passed the first departmental examination), we shall probably secure the attendance of all those who are likely to take an interest in the study of law, while we avoid the dangers which are to be apprehended from the other course. If, however, a sufficient number of volunteers to form a law class is not forthcoming, I should not object to order a certain number of young men, say a dozen at a time, to attend a course of legal study.

ELPHINSTONE.

No. 8042.—MINUTE by Mr. MALET.

5th November 1859.

THE only important difference of opinion that appears at present to exist is, whether it would be better to revert to the old appointment of registrars, or to continue that of assistant judge. I believe that the exigencies of business led to the supercession of the old appointment by that which at present exists. Young men who have been some time in the country are appointed assistant judges, and are immediately able to relieve the Judge of an important portion of the work of the Zillah; at first, of course, they take the minor cases, gradually progressing, until, as assistant judges for detached stations, they become practically independent Judges. It seems to me that, with the education now contemplated, this course is better calculated to train men for the highest judicial functions than that of appointing them registrars, where their judicial talent would not be practically exercised to the same extent, and where, from having less to do, they would probably become the personal assistants of the Judges, or be made prosecutors, or be employed in some other mode, not so practically useful as at present.

I quite concur with the Right Honourable President, that these papers should be sent to the Legislative Member for Bombay for the reasons stated; but I hope that they may be sent to the Secretary of State for India without loss of time, as the matter is of great importance, and of very urgent pressure.

A. MALET.

No. 8043.—MINUTE by Mr. REEVES.

5th November 1859.

THE question of the office of registrar and assistant judge will, I doubt not, receive full consideration when it again comes before this Government.

I think the Judicial and Revenue Secretaries should ascertain what young civilians are available, for taking advantage of Mr. Howard's proposal for giving them legal instruction in Bombay.

I have only to add my hope that these proceedings may be forwarded to the Right Honourable the Secretary of State by the next mail.

The Right Honourable President has, I observe, addressed the envelope containing these papers to Mr. Anderson, and I am under the impression that, as the discussion belongs to the Judicial Department, a transfer ought to have been made accordingly at the outset. I propose that a transfer be made now.

H. W. REEVES.

No. 8044.—FURTHER MINUTE by the GOVERNOR, subscribed to by Mr. REEVES.

7th November 1859.

I HAVE already said that I think it is not important whether young gentlemen, on their first appointment to the judicial department, are called Registrars or Assistant Judges. I preferred the former as the less pretentious designation, and because there are already two classes of Assistant Judges, those who are at detached stations, and those who are at the same station as the Judge. I do not think that any amount of study can absolutely qualify a young man for high judicial functions; some experience must be gained in subordinate capacity. The designation of this probationary grade is of comparatively little consequence. Registrar is something between *Auscultator* and Assistant Judge.

I entirely agree that the papers should be sent home by the next mail. They should be transferred, as proposed, to the Judicial Department.

ELPHINSTONE.
H. W. REEVES.

No. 8045.—The SECRETARY TO THE GOVERNMENT OF BOMBAY to the SECRETARY TO THE GOVERNMENT OF INDIA.

Nov. 26, 1859. No. 76 (Judicial).

SIR,

I AM directed by the Right Honourable the Governor in Council to forward to you, for submission to the Government of India, copies of the proceedings quoted in the margin, on the subject of a proposal to provide a course of legal study for civilians designed for the judicial branch of the service.

2. The opinion of the Bombay Government on this important question will be found recorded in the several minutes which accompany the proceedings.

3. These papers have also been forwarded for the consideration of Her Majesty's Secretary of State for India.

I have, &c.,
H. L. ANDERSON,
Secretary to Government.

From the Director of Public Instruction, 6th September, No. 1994.
Memorandum by the Chief Secretary, 9th September 1859.
Minute by the Governor, 10th September.
Ditto by Mr. Malet, 13th September.
Ditto by Mr. Reeves, 19th September.
Further Minute by the Governor, subscribed to by the Board, 23rd September.
Letter to the Director of Public Instruction, No. 2302, 29th September.
From the Director of Public Instruction, 17th October, No. 2394.
Memorandum by the Chief Secretary, 20th October.
Minute by the Governor, subscribed to by Mr. Malet, 21st October.
Ditto by Mr. Reeves, 4th November.
Further Minute by the Governor, without date.
Further Minute by Mr. Malet, 5th November.
Ditto by Mr. Reeves, 5th November.
Ditto by the Governor, 7th November; subscribed to by Mr. Reeves.

LONDON:
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For Her Majesty's Stationery Office.

1069

Judicial
No 17

India Office
London 25th May 1860

Sir,

1. I herewith transmit a copy of correspondence as per margin on the subject of the legal Education of Civil Servants in the Judicial Branch of the Public Service in India.

2. Her Majesty's Government are very desirous that every facility should be afforded to the young civilian

His Excellency
The Honorable
The Governor in Council
at Fort St George.

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Letter from the Government of Bombay with enclosures dated 26th November (No 30) 1859.
Letter to the Secy Civil Service Commission. 30th January 1860.
Do from Do 13th April 1860 with enclosures.
Do to the Government of Bombay dated 25 May 1860 No 15.

civilian, on his arrival in India; for carrying on, simultaneously with his studies in the Native languages, the course of legal Education which he has commenced in England; and they request that you will take the subject into your early consideration, with a view to the adoption of such measures as may, in your judgment be the best calculated to promote that important object, reporting the same for the information of Her Majesty's Government.

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

Cowper

No 15

Judicial

25 May 1860

The

Letter to Fort St George

No 17.

Minute by the Honorable the President

The question of Judicial training of Indian Civil Servants has of late acquired more than even its former importance owing to the measures in progress for opening the Judicial line of the service to members of the Uncovenanted service and to the English Bar.

After the young men have been selected for the Civil Service and before they leave England, they ought to pass an Examination in the Elements of General Jurisprudence and of Hindu and Mahomedan Law. This was provided for in the Haileybury system: and the happy influence of Mackintosh's and Simpson's Lectures may be traced in the superior qualifications of many Officers who have adorned the service. It was also provided for in the scheme for the Preliminary Training of Paper Candidates prepared by Lord Macaulay and his Colleagues after the abolition of Haileybury College; and arrangements were proposed by them, in addition, for making the

Candidates

Follow

Candidates acquainted with the mode of
administering the Law in England - Practical
effect is now being given by the Civil Service
Commissioners to the Plan of Lord Macaulay's
Committee. The Chairman, Sir Edward
Ryan, in a Letter to me dated the 18th.
of February last, says; "We are preparing a
"full answer to the inquiry made of us
"from the India House in reference to this
"same Hornby Correspondence); but before we
"send our Answer, we shall test the result
"of an Experiment we have made upon the
"Candidates who passed last July their first
"Examination - These Candidates have,
"by our desire, attended different Courts
"of Justice and have made reports to us
"of the trials they have heard, which
"Reports we are now examining - The
"Art of administering the Law - not the
"knowledge of Law - is there the Indian
"Civil Service fail so much - this we are
"endeavouring to meet." This part of the
subject is now in safe hands, and full

justice will be done to it.-

Neither do I feel any doubt as to
the course which ought to be adopted in re-
ference to the next stage of a Civilian's progress.
It would be very undesirable to detain the
young men at the Presidency in order to pass
an Examination in Law - They have had
quite enough of a life of mere Studentship
and Examination; and it is high time that
they should enter upon the practical business
of their Indian Career. My Sentiments in this
respect are exactly expressed by the Honorable
Mr. Reeves in the following Passage of his
Minute dated the 4th of September last-
"Our Law is of the simplest kind; the state
"of society is wholly unartificial; there are no
"legal details of any difficulty to overcome; but
"it is of vital importance that a candidate
"for public employment, whether he wishes to be
"a Judge, Collector and Magistrate, or Political
"Agent, should become thoroughly well acquainted
"with the manners and customs of the people,
"as well as with our Revenue and Police
"Systems, and I contend with much confidence
that

follow

That this cannot be effected in any manner
"so well as by active service as Assistant
"Collector and Magistrate, or of a Political Agent.
"& may indeed apart that the object cannot
"possibly be effected in any other manner; as
"Assistant Collector and Magistrate the young
"Civilian will have his time well occupied in
"deciding numerous cases of a simple kind, both
"Civil and Criminal, and in preparing others of
"a grave and important character for the
"judgment of higher authority and his powers,
"discretionary and legal, will be increased with
"his experience. This affords all the judicial
practice that is necessary in this country, while
the acquirement of that knowledge of the Natives
character and the institutions of the country
which is essential to the formation of a good Judge
& a good Magistrate, is secured in the fullest
possible degree".-

It may be desirable to add
acquaintance with certain Legal
Text Books to the examinations which Civil
Servants have to pass to qualify them
for

for promotion to the more advanced grades
of the service.- This knowledge might be
acquired (as all diligent young men do now
acquire it) by private reading in the Provinces,
without staying at the Presidency for Lectures.
The Code of Procedure and any portions of
the substantive Law which may hereafter
be codified, should also enter into the scheme
of these examinations.-

I cannot, for obvious reasons, support
the proposal that, after seven years, Civil
servants should be allowed two years of Special
Furlough to study Law in England; but Mr.
Freres suggestion that Civilians who select
the Judicial Branch of the service might
be encouraged to employ a portion of their ex-
isting Furlough in pursuing a Course of
Legal Study at one of the Inns of Court, and
in attending the Courts of Law, is deserving
of attention. The facilities for study of Law
at home have of late been much increased
by the institution of Lectures and Examinations
in connection with the Inns of Court; and

Civil

Civil servants who furnish proof on their return to India that they have made good use of their time in this respect, should be rewarded by early promotion.--

The sum of my opinions, therefore is, that the young men should be trained in common until they arrive at that period of their service when they have to make their election between the Revenue and Magisterial, and the Judicial Branches of the service, by being appointed to the office of Sub Collector and Joint Magistrate or to that of Sub Judge, and that this training should be chiefly of a practical kind, but should combine as much positive knowledge of Law and of the art of administering it as may be consistent with other objects. All the functions of this class of Public Servants partake so largely of the Judicial character, that the legal knowledge acquired would always be turned to good account; while those who enter the Judicial line, such, I am persuaded, have no better preparation for it.- Those who have an inclination for this line and intend to enter it would naturally give more attention to their legal studies.--

E. Thurlow

Madras,
6th June 1860.

I beg to be excused
in this instance as correct-
ness of the Quarters
is certainly abandoned by this C.J.
in Council Meeting.- And I
have no doubt an Official
practical reason will be
decided.-
It is best to decided not they
can in my opinion be avoided
with advantage to the course
at present steered.-

Yrs.

H. Deane
60

Judicial Depart.t

Proceedings of the Madras Government

Read again letter from the Under Secretary to the Govt. of India dated 25th Febry 1860. No. 403, and recorded in Proceedings, 16th March, No. 328.

Read also the fol. lowing papers.

From the Judges of the Sadr Court — Here enter. 21st May /60 No. 46

From the Right Honble the Secretary of State — Here enter. 25th " " No. 17

Minute by H.E. Sir C. Trevelyan — " 4th June " No. —

Minute by the Honble W. A. Morehead — " 31st Dec. " No.

5 Order thereon. 5th January 1861 – No. 19.

Ordered that the

follow

following letter be despatched to the Secretary to the Government of India

Here enter Jan.y 1867. No.

Jud.t Lr to Govr St. Jones
No 3 of 1861.

Prov.l Secy.
Judicial 18th Depart.th

No 19.

Proceedings of Govt

of 5 January 1861.

31@36

31@36

Judicial Dep.t

No 20.

18

Govt of Jamaica.

I am L.d L.s Instruction with the receipt of Her Majesty's Secretary Chapman's Letter of the 15th July last No 403. Home Dep.t transmitting a copy of a Letter from the Post Office from Bermuda dated 26th Nov.r 1859 and its enclosures on the subject of a proposal to provide a convenient Depot Stamp for Circulating designed for the Judicial branch of the Service, and expressing the opinion of the Secretary thereon.—

2.— In reply I do decide and direct that the stamp which

accompanied the Chaplain's letter, soon on its receipt, forwarded to the Judges of the Court of Sudder Adawlut who were requested to submit their views to the Govt - I am directed to forward the enclosed copy of a letter from their Registrar - containing the sentiments of the three Judges on the question referred to them.

3 - On this reply being returned, which the Govt was considering by the three Judges of Sir C Lewellyn's minute recorded by him under date the 2nd Inst, explaining

his views upon it. In transmitting a copy of that document I am instructed to state that the present Govt concur in the suggestions and sentiments which it contains, and that they have nothing to add to them.

Fort St George
The 7th January 1861.

J.P.

Judt. Letters Rec'd 6 June
No. 3 of 1867.

19

artment of

OFFICE

STATION

No.

Dated

Pages in the file

SUBJECT