

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	1070	Press Mis.
29-39		
Dated	3.7.1863	49

5/6

Not to be folded or roughly handled

1070

Proceedings of the Madras Government, Judicial Department,

3rd July 1863.

No. 29. Read the following letter from G. R. SHARPE, Esq., Acting Registrar of the High Court of Judicature at Madras; to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George, dated Madras, 25th June 1863, No. 66.

1. I am directed by the Chief Justice and Judges to acknowledge the receipt of Proceedings of Government, dated 21st May, embodying a letter of the Secretary to the Government of India, No. 2,912, dated 6th May 1863, and requesting that the Judges will communicate the letter to the several Session Courts.

2. Paragraph 5 of Mr. Bayley's letter in effect very distinctly expresses the opinion of the Supreme Government that in cases in which imprisonment for seven years and upwards is awardable, transportation is a more appropriate punishment than imprisonment.

3. It appears to the Judges that by the circulation of these Proceedings they would be virtually endorsing with their approval the opinion so expressed and thereby unduly governing the measure of punishment.

4. The proper amount and nature of punishment are peculiarly matters for the discretion of the Judge who tries a particular case, because he is the only person in a position correctly to estimate the very varied considerations on which they should be determined, and the Judges do not feel justified in striving to narrow that discretion which the legislature has designedly, and as the Judges think wisely, reposed in the Courts of Session.

5. The Judges have no reason to believe that in this Presidency the Courts of Session have either shown any unwillingness to resort to the punishment of transportation or that they have been in any way influenced by a consideration of the extent of accommodation of Port Blair.

6. Even if, however, it is considered desirable that these Proceedings be circulated to the lower Courts, the Judges do not doubt that Government will agree in the opinion, which I have been directed to express, that they ought not to be circulated under the judicial sanction and weight of the controlling authority of the High Court.

7. The return called for by the Government of India will be duly submitted.

8. I am directed to state that paragraphs 3 to 6 of this letter embody the views of the Chief Justice and others of the Judges.

No. 30. ORDER THEREON, 3rd July 1863, No. 1,070.

The Governor in Council, deferring to the objections urged by the Honorable the Judges of the High Court against their being made the medium of communicating the letter from the Government of India, dated 6th May 1863, No. 2,912, resolves to direct that the instructions conveyed in that letter be communicated direct to the several Sessions Courts.

2. The several Judges will be requested to send the Returns called for, in the prescribed form, to the High Court, for incorporation in their General Return.

(Signed) J. D. SIM,
Secretary to Government.

Exd. T. McMootry.

Go-1070:3-7-1863

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JUDICIAL DEPARTMENT.

PROCEEDINGS OF THE MADRAS GOVERNMENT.

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2. The several Judges will be requested to send the Returns called for, in the prescribed form, to the High Court, for incorporation in their General Return.

(True Extract.)

Secretary to Government.

To the Honorable the Judges of the High Court.
Civil and Sessions Judge of
(with G. O., No. 783.)

Exd. T. McMootry.

X This objection is
nearly every possible. The
High Court are not
asked to give any judgment
on the propriety of the
proceedings of the
Government of India.

not enough to justify the
High Court has other than purely
judicial functions. It is like
a High Court of Appeal, but
is entrusted to deal with the
superintending of the judicial
system.

the junction of a mountain (peak)
is the base of a (mountain)
peak. Base is not in the
junction of a mountain (peak) but
the point of a channel of water
junction between the mountain
& the base (peak) is the point of
junction of the mountain (peak) and the base (peak).

was in need of the same. It is
the purpose of the board (and the
fact that which the funds are over-
burdened, then a plenty of room for
provision at Fort Verde and
therefore, it would be desirable to
transport instead of a transport.

If I'm informed that the High Court
has given the petitioners a hearing
it is surely beyond question that I
should do so. It can hardly be
that the "weight of the authorities"
against it of the High Court is
more than of the Government.

From the Acting Registrar of the High Court of Judicature
at Madras.
Dated 25th June 1863.

I have not yet seen the order. -
 It seems to me to be some force
 in the objection, especially the High
 Court against their being made the
 medium through which the letter from
 the Supreme Court is to be communicated
 to the Circuit Judges. I would tell
 the High Court Judges that depending
 on their views on the subject the Court
 would make the necessary commun-
 ication to the Circuit Court Judges
 direct. The Judges should be instructed
 to send their returns to the High Court

for incorporation in the general
 return. To this I conclude it might
 be done but it is not
 worth the trouble. J.P.

The judges objections seem to be mentioned
 but the course recommended by them
 may be followed. The point is not worth
 further discussion. J.P.

If it is proper that the High
 Court should be so. It can be seen
 that the "warrant" of the High Court
 is not that of the Government.

25 June

Judicial Department. 4a

PROCEEDINGS of the MADRAS GOVERNMENT.

Read letter from the Acting
 Registrar of the High Court of Judicature
 (Dated 25 June 1863. No 66)

Order. 3rd July 1863. No 1070.

The Governor in Council, deferring
 to the objections urged by the Honorable the
 Judges of the High Court against their being
 made the medium of communicating the
 letter from the Government of India, dated
 6th May 1863, No 2912, resolves to direct that the
 instructions conveyed in that letter be
 communicated direct to the several,
 Sessions Courts.

2. The several Judges will be
 requested to send the Returns called for, in
 the prescribed form, to the High Court, for
 incorporation in their general Return.

To be done by the Judges of the High Court.
 " Civil & Sessions Judge of _____ } depd. 7
 with S.O. No 783 =
 Report to the Govt of Madras in Mysore } depd. 7
 by _____ }
 _____ }
 _____ }

Mr. Child

Patrol 1863. Department.

No. 1070.

PROCEEDINGS OF GOVERNMENT.

Dated 3 July/83.

Objections urged by the
Right Gent against the
being made the medium of
communicating to the officers
of the the establishment of the
Department of the in regard
to the small number of
persons sentenced to
transportation.

dict of Mr. Child.

27 July/83
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