M.R.O. 1—38,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial **DEPARTMENT.**

G.O. No.	119	Press Mis.
188-189		
188-189. Dated	27-1-19 1864	

6/7

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JUDICIAL DEPARTMENT.

PROCEEDINGS OF THE MADRAS GOVERNMENT.

Read the following letter from the Honorable Sir C. H. SCOTLAND, Kt., Chief Justice of the High Court of Judicature at Madras; to the Honorable the Governor in Council, &c., &c., &c., Fort Saint George, dated Madras, 18th December 1863.

I have the honor to acknowledge the receipt of the Chief Secretary's letter of the 15th instant. By direction of your Excellency in Council the first paragraph informs me that a notice of the Christmas vacation, limited to the offices on the Original Side, has been sent in conformity with the practice in the late Supreme Court for publication in the Gazette, and suggests for my consideration the greater convenience and suitableness of one notice applicable to the High Court generally.

2. In courtesy to your Excellency in Council, I answer this portion of the letter. I beg to state that the suggestion of your Excellency in Council accords with my view, and I purpose directing that but one notice be sent for publication in the Gazette.

3. Referring to the second paragraph of the letter, it is made necessary for me to state distinctly in answer, that the Ministerial offices of the High Court are in no respect public offices of the Executive Government, and it cannot be permitted that they should be supposed in any way to be so. The adjournment of the Court's sittings, and the suspension of business for the purpose of holidays, rest with the Chief Justice in communication, when required, with the other Judges, and cannot take place either as regards time or extent without express permission and the order of the Court. An authoritative notification therefore from the High Court, to be given either by publication in the Gazette or in some other public way, is necessary, and can alone sanction the closing of the offices of the Court for holidays.

ORDER THEREON, 27th January 1864, No. 119.

The Registrar of the High Court, Original Side, having sent, for publication in the Gazette, a notice of the Christmas vacation, referring only to those offices which are attached to the High Court in its ordinary original jurisdiction; and as it was presumed that the vacation would be the same for the Appellate, as for the Original Side of the Court, a letter was, by order of the Governor in Council, addressed to the Chief Justice, suggesting that, if any notice were issued, one only should be published, embracing the offices of the entire Court in both its branches. It was at the same time suggested, for the consideration of the Chief Justice, whether, as the notice regarding the vacation which had been issued by Government included all public offices, it was necessary to issue any separate notice regarding the offices attached to the High Court.

2. The letter above recorded contains the reply of the Honorable the Chief Justice. On the first point, Sir Colley Scotland agrees with the Governor in Council that one notice only should be issued, and states that he has given orders accordingly. On the second point, he observes "that the Ministerial offices of the High Court are in no respect public offices of the "Executive Government, and it cannot be permitted that they should be supposed in any way "to be so. The adjournment of the Court's sittings, and the suspension of business for the pur- "pose of holidays, rest with the Chief Justice in communication, when required, with the other "Judges, and cannot take place, either as regards time or extent, without express permission "and the order of the Court. An authoritative notification therefore from the High Court, to be "given either by publication in the Gazette, or in some other public way, is necessary, and can "alone sanction the closing of the offices of the Court for holidays."

3. The Governor in Council cannot assent to the correctness of the foregoing remarks. The Ministerial Officers of the High Court are Public Officers in the employment of the Government, paid by the State, and as much servants of the Government as the Ministerial Officers in any other public office. That this is considered by the Home Government to be their position, is shown by the proviso at the end of Clause 6 of the Letters Patent, which alludes to the right of an Officer or Clerk of the High Court to avail himself of leave of absence *under any rules*

prescribed by the Governor in Council. Nor can the Governor in Council admit that the adjournment of the Court's sittings, and the suspension of business for the purpose of holidays, is a matter with which the Government have no concern. If it be not open to the Government to direct that the High Court shall be closed on certain days, it may be argued that the Government are not competent in any way to interfere with the duration of, or the period selected for, the periodical adjournments. These are matters seriously affecting the convenience of the public, and in regard to which, if the arrangements made by the Chief Justice and the Judges were deemed to be unsatisfactory, it would clearly be the duty and right of the Executive Government to interfere.

4. For instance, much public inconvenience was caused last year by the adjournment of the High Court taking place at a different time of the year from that selected for the adjournment of the Courts in the Provinces; and it is the intention of the Governor in Council to request that a different arrangement may be adopted in the present year. He cannot think that, in such a matter, it would be open to the Judges of the High Court to set aside the expressed wishes or directions (if conveyed to them in that form) of the Executive Government; and yet this is practically the power which the Chief Justice asserts for himself and his colleagues in the letter above recorded.

5. The Honorable the Governor in Council has deemed it proper to place on record his views on this subject; but he will abstain from addressing the Chief Justice with reference to it, until a case arises which shall clearly call for the interference of Government.

(True Extract.)

A. J. ARBUTHNOT,
Chief Secretary.

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Chief Secretary.

Judicial Department.

Please say whether a copy of the accompanying Order is to go to the Hon'ble the Judges of the High Court in reference to the last para of that Order - also whether it is to be printed in the Secret Department -

The, 26/11

Judicial Department.

PROCEEDINGS of the **MADRAS GOVERNMENT.**

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(Here Enter 18th Decr 1863)

Order thereon 27th January 1864 No 119—

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Judicial 1864. Department.

No. 119.

PROCEEDINGS of GOVERNMENT.

Dated 27 January 1864

Observations on the Notice issued by the Judges of the High Court respecting the closing of the Court for the Christmas Holidays.

188-189