

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	1709	Press ~~Mis.~~
²⁵¹³⁵³ Dated	29-11-19	1864

3/3

Not to be folded or roughly handled

*Proceedings of the Madras Government, Judicial Department,
29th November 1864.*

Read the following papers:—

No. 351. From Lieutenant Colonel C. COOKE, Deputy Adjutant General; to the Secretary to Government, Judicial Department, dated 10th November 1864, No. 599.

With reference to the Proceedings of Government in the Judicial Department, and Order thereon, dated 26th August

Sitting that reference to points of Hindu and Mahomedan Law may, in future, be made to Government in the Judicial Department.

1864, No. 1283, I have the honor, by order of the Commander-in-Chief, to forward

the accompanying letter from the Officer Commanding 21st Regiment N. I., dated the 5th instant, No. 321, and to request you will be good enough to favor this Department with the opinion of the Law Officers on the subject submitted.

From Major G. SMART, Commanding 21st Regiment N. I.; to the Adjutant General, Fort Saint George, dated Vellore, 5th November 1864, No. 321.

I have the honor to request you will be good enough to favor me with replies to the following questions, to enable me to complete the Marriage Register of the individual whose name appears below.

Shekh Maleenah is married to his first wife by Shader; while the latter is still alive he marries a second wife by Nickah, but prior to wedlock the Nickah wife has a male child born, of which he (Shekh Maleenah) acknowledges himself to be the father. Is the child of the second wife so born legitimate? If not, should his (the child's) name be entered in the Marriage Register in the same way as the children by the first wife? If entered, how or where should it be shown or recorded that the child is illegitimate.

Referred for the opinion of the Advocate General.

Fort Saint George,
15th November 1864.

(Signed) A. J. ARBUTHNOT,
Chief Secretary.

No. 352. From J. R. BOYSON, Esq., Government Solicitor, Madras; to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Madras, dated 24th November 1864, No. 612.

I have the honor to acknowledge the order of Government noted in the margin (with its enclosures), relative to the

Dated 15th November 1864, and made on letter from the Deputy Adjutant General to Government of 10th Nov. No. 599.

legitimacy of the child of a Mahomedan by a woman who, after the birth of such child, became his Nickah wife.

2. Having obtained further information from the Adjutant General's Department as to the nature and object of the register adverted to in the reference, I submitted the papers for the consideration of the Advocate General, with whom I have also conferred; and,

3. I now forward a copy of his Opinion, and return the order and enclosures above noted.

COPY—OPINION.

Subsequent marriage, according to the Mahomedan law, does not legitimize the offspring born previous to wedlock.

2. Nor in such a case as that before me does the acknowledgment by the father, that the child is his, have that effect.

Proceedings of the Madras Government, Judicial Department

29th November 1864.

3. According to the Mahomedan law marriage may be presumed from cohabitation, although it may not be shown that any actual marriage ceremony has taken place; and where a Mahomedan cohabiting with a woman acknowledges her child to be his, there is a still stronger presumption in favor of marriage.

4. But it is manifest that no such presumption can arise where the facts of the case are directly opposed to it. So in the present case the child was actually born before wedlock; and the presumption that he was born in wedlock would be absurd.

5. The Mahomedan law like our own recognizes as legitimate any child born subsequent to marriage, although the birth takes place before the ordinary period of gestation. And with a somewhat questionable liberality the same law recognizes as legitimate a child born within two years after the husband's death; but as I have above remarked the Mahomedan law does not, like the laws of some European nations, make illegitimate children legitimate by subsequent marriage of the parents.

6. I was somewhat puzzled by the wording of the letter out of which this reference arose; for it spoke of entering the name of the child in the Marriage Register in the same way as the children of the first wife. How the name of children could appear on a Marriage Register I could not understand. But from the further information, which I requested might be obtained, I find that the register is one of families, not simply of marriage. The object of this register appears to be to record information with reference to the inheritance of pensions. I am of opinion that the name of the illegitimate son should be inserted in the register according to the fact, that is to say, he should be entered as having been born previous to the marriage.

7. This will suffice; as illegitimate children, according to the Mahomedan law, do not inherit *ex parte paterna*, they can only be heirs to their mother and her relations.

(Signed) J. B. NORTON,
Advocate General.

22nd November 1864.

(True Copy.)

(Signed) J. B. BOYSON,
Government Solicitor.

No. 231.

ORDER THEREON, 29th November 1864, No. 1709.

Ordered that the Advocate General's Opinion be communicated to the Adjutant General.

(True Extract.)

Chief Secretary.

To the Adjutant General.

Encl. 2. Taluk.

Proceedings of the Madras Govt.
Read the following letters—

From the Adjutant General—Letter 10. Nov. '64 N^o 599.
the Govt. Solicitor—24 do—612.

Order—29 November 1864, N^o 1709.

Ordered that the Advocate General's Opinion be communicated to the Adjutant General.

The Adjutant General. Recd 23/11.
Military Report & despatch 12/11.