

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	567	Press
238-239		~~Mis~~
Dated	22.4.1864	19

6/6

Not to be folded or roughly handled

File

2-8-20

Proceedings of the Madras Government, Judicial Department,

22nd April 1864.

No. 238. Read the following letter from the Honorable Sir C. H. SCOTLAND, Knight, Chief Justice; to His Excellency Sir W. T. DENISON, K. C. B., Governor in Council, Fort Saint George, dated Madras, 14th April 1864.

I have the honor to acknowledge receipt of the Chief Secretary's letter, dated the 22nd ultimo.

2. In reply I feel called upon to observe that the views of the Judges expressed in the Registrar's letter under date 15th January last, seem to have been misunderstood. No unwillingness has ever been shown by the Judges to give their opinions on matters of pending legislation, when asked by the Government, and their readiness to do so is distinctly expressed in the letter of the 15th January. Further, with reference to the particular subject which has led to this correspondence, the Whipping Bill, the Judges had not withheld their opinion from the Government; but upon a general reference had expressed it in general terms in favor of the Bill, though they certainly had not thought it requisite to write at length a statement of reasons on the well worn subject of corporal punishment. It is needless therefore, and my honorable colleagues and myself certainly have no disposition to discuss with the Government the nature or extent of the "moral obligation" alluded to in the Chief Secretary's letter. The force of any such obligation must depend to some extent at all events on the matter, and the manner of the reference made to the Judges.

3. But whatever the case may be in this respect, the Judges of the High Court are not subordinate officers responsible to the Madras Government for the discharge of their duties, and are not amenable to its censure. No doubt their judicial conduct is open to public criticism: and if the Order of Government under date 18th November, when published in the Madras newspapers, could be regarded as merely a public expression of individual opinion by the several members of the Government in exercise of the undoubted right which all persons have to discuss and censure freely the public conduct of the Judges, they certainly would have no right nor any inclination to complain of it, but when regarded as an official act of the Government, the objection arises that the censure it implies is unauthorized as respects the Judges themselves, and prejudicial in its effect upon the character and authority of the Court.

4. An application in the usual manner to the Judges for a further or more detailed expression of their opinions upon any question would of course always meet with attention; but the previous publication of a Government order, implying and plainly intended to imply censure of the Judges as for a neglect of duty, is calculated to embarrass the Judges in responding to the application.

5. My honorable colleagues and myself, however, feel entire confidence that the Government have no disposition to show any want of courtesy or consideration; and that being always willing to render to the Government assistance and advice, no further question on this subject will arise between the Government and the Judges.

No. 239.

ORDER THEREON, 22nd April 1864, No. 567.

To be recorded.

(True Extract.)

A. J. ARBUTHNOT,
Chief Secretary.

Exd. J. Tulloch.

From
The Hon^{ble} Sir C. A. Scotland, K^t
Chief Justice.
To His Excellency
Sir William V. Denison, K^t
Governor in Council
Fort St George.

Honorable Sir

1. I have the honor to acknowledge receipt of the Chief Secretary's letter dated the 22^d ultimo.

2. In reply I feel called upon to observe that the views of the judges expressed in the Registrar's letter under date 15th January last seem to have been misunderstood. No unwillingness has ever been shown by the judges to give their opinions on matters of pending legislation, when asked by the Government, and their readiness to do so is distinctly expressed in the letter of the 15th January.

Pro: 22nd March 1864. Ackd: 4th April
— 18th Nov 1868. At 10/6 1/11

Aug^o 1864. Defalt.

Jud^l. L^y to Cong^l. 3^d Sept^r.
2^d. 16 of 1864

From
The Honorable Chief Justice

To His Excellency
the Governor in Council
Fort St. George.

Dated 14th April 1864.
Recd 15th 1864 No 93

Observing, that the views of the High Court expressed in the Registrar's letter of the 15th January last, seem to have been mis understood pointing out the position of the High Court in reference to Government, and stating that the Judges are always willing to render to the Government their assistance and advice.

223 April 1864. N: 567

Recorded

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