

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	1082	Press ~~Mis.~~
Dated	2-8-	1918

Not to be folded or roughly handled

*Proceedings of the Madras Government, Judicial Department,
2nd August 1865.*

No. 34. Read the following letter from Captain A. D. CLAY, Judge of the Court of Small Causes, Cannanore, to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George; dated Cannanore, 24th June 1865, No. 208.

I have the honor to request you will be good enough to inform me whether, by the introduction of the new Cantonment Act, European Officers of the Army are amenable to the jurisdiction of the Cantonment Court of Small Causes for actions of debt amounting to Rupees 200.

2. I am obliged to refer this question for the orders of Government, in consequence of Brigadier General Faunce, Commanding Cannanore, having interdicted me from entertaining complaints against European Officers, as he is of opinion that European Officers are still liable to the jurisdiction of European Military Courts of Requests.

No. 35. ORDER THEREON, 2nd August 1865, No. 1082.

Referred to the Advocate General, for his opinion. Mr. Norton will be furnished with a copy of a judgment of the High Court on a referred Case, No. 14 of 1863, which appears applicable to the question submitted by Captain Clay, and with a copy of the Proceedings of Government in the Military Department, 26th June 1865, Nos. 682, 683, and 684.

REFERRED CASE NO. 14 OF 1863.

Present—The Chief Justice and Mr. Justice Phillips.

Judgment.

The question submitted for our decision is "whether, the claim being against a European Military Officer, the suit is barred by Section 6, Act XLII of 1860."

2. Before the passing of Act XLII of 1860, the Jurisdiction of Military Courts of Requests to try suits of the nature of that stated in the case, was clearly made exclusive of all other Courts, by the enactment in Section 67 of the Statute 20 and 21, Vict., Cap. 66, and the point we have to consider is whether or not the express negative words of the Section "and not elsewhere" have been impliedly repealed by Act XLII of 1860, and concurrent jurisdiction in such suits given to Courts of Small Causes throughout the country. The construction of the Act at which we have arrived, after some doubt, is that it has not the effect of altering or interfering with the jurisdiction of the peculiar Military Tribunal constituted by the Statute. The proviso in Section 6 of the Act is not simply a qualification of the enactment preceding it in the same Section and providing for exclusive jurisdiction. Its language is that nothing in the Act shall be held to take away the jurisdiction which can be exercised by Military Courts of Requests. It must, therefore, be construed with reference to the other jurisdiction Sections (Sections 3 and 4); and so construed, and considering what the object and intention of the Act was, we come to the conclusion that it leaves the provision in the Statute, for the exclusive cognizance by Military Courts of Requests of suits like that in the present case, in full force.

(True Extract).

Chief Secretary.

To the Government Solicitor, with Military Proceedings.

Exd. J. H. Burns.

h. o. 124-165.

I have to apologise for making a
reference to h. o. 1369.

But Gen. Faneuil's attention might
be drawn to the closing part of Section
VIII, Madras Act IV of 1865, the Madras
Military Cantons Act. It takes away
from Officers Comf. Stations & Canton
the power to convene Mil'y Courts of
Appeal. But this course would be
proper, if we saw from the correspond-
ence that I suppose has passed betw. Captain
Clay & General Faneuil, that
the result of B. Gen. Faneuil, stating
his objection to Captain Clay's ^{proposed} ~~or~~
Section VI Act IV of 1865 (an act consol-
idating & amending the S. Cause C^t Law)
and that Section saves the jurisdiction
of Mil'y Courts of Appeal.

Captain Clay may, however, urge that
the appointment of the Gov. General to the
Madras Mil'y Cant^y Act nullifies such
saving of jurisdiction & the objection
will be plausible enough. But

The High Court have ruled that the jurisdiction of District Courts of Appeal rests on a basis which is wholly inconsistent of with the local act. It pointed out that they were constituted under Act 20 of 1921 Victoria (No 66), that this Act declared that claims for money payable to European Contest Officers should be disposed of in such courts "and not elsewhere", that these words were still of full force effect and conveyed that claims of the kind could not be brought in a court of small causes.

Their ruling, if correct, destroys the notion of that part of the Madras law recently enacted, which took away the old power of Officers from District Courts and made District Courts of Appeal, at least it has been intended to by the G.S. and as a consequence:-

Captain Clay cannot receive on his file a suit of the kind but his letter has reference -

Under the difficulty, I think it may

be proper to intimate to Captain Clay that in order to secure a speedy determination of certain doubts which have arisen, he should receive on his file any one ^{suit} that may be presented against a body officer in the Cantonment and thence that he should adopt the course pursued in Section 22 of the last S. C. Court Act and state a case for the order & decision of the High Court. As for the future will be a case as much for himself as for Mr. Tamm.

I have no doubt that the decision of the High Court with the repeal of the former one, for the merits of the question would have been affected by our local legislation; & altho' Act 42/60 has been repealed since that decision was given, the saving clause as to suits & Courts provided has been simply copied into the new S. C. Court Act - so that the main point stands as it did -

22 July

W.D.

N^o 208.

From
Captain A. D. Clay
Judge of the Court of Small Causes
Cannanore.

To
The Honorable A. J. Arbutnot
Chief Secretary to Government
Madras

Sir,

I have the honor to request you will be good enough to inform me whether by the introduction of the new Cantonment Act European Officers of the Army are amenable to the jurisdiction of the Cantonment Court of Small Causes for actions of debt amounting to Rupees 200-/-.

I am obliged to refer this question for the Orders of Government in consequence of Brigadier General Farnce Commanding Cannanore having interdicted me from entertaining complaints against European Officers, as he is of opinion that European Officers are still liable to the jurisdiction of European Military Courts of Requests.

I have the honor to be
Sir

Your Most Obedt. Servant

A. D. Clay
Judge

Cantonment Court of Small Causes
Cannanore 24 June 1865

Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Recd. the following letter
from the Judge of the Court
of Small Causes, Cannanore.

d/21 June 1865. No 208/

Order thereon. 2nd August 1865. N^o 1082

Referred to the Advocate
General for his opinion.
Mr. Horton will be fur-
nished with a copy of a
judgment of the High Court
on a referred Case No. 11 of
1863 which appears appli-
cable to the question sub-
mitted by Captain Clay,
and with a copy of the
Proc. of Govt in the Military
Dept. ^{25 June 1865} Nos 682, 683 & 684.

HR
WOU

To the Govt. Solicitor.
with Military Proceedings despt 8/8
" July. Sept. - despt 8/8

A question regarding
new Customhouse Act

PROCEEDINGS OF GOVERNMENT.

No. 1002.

The. J. J. J.
Judicial 1865. Department.

Oct 17 29
1870.

Dated 2. August 1865.

Referring to the Advocate
General's opinion on question
whether by the introduction
of new Customhouse Act
European Officers are made
amenable to the jurisdiction of
Customhouse Court of Small
Causes for actions of Debt
amounting to \$1000.

Referred Case No. 14 of 1863.

Judgment.

The question submitted for our de-
cision is "whether the claims being against
a European Military Officer the suit is
barr'd by Section VII Act XLII of 1860."

* now, 56 Act XI of 65
WV

Before the passing of Act 42 of 1860
the jurisdiction of Military Courts of Re-
quests to try suits of the nature of
that stated in the case, was clearly
made exclusive of all other Courts by
the enactment in Section 67 of the Statute
20 and 21 Vict. Cap 66 and the point
we have to consider is whether or not
the express negative words of the Section
"and not elsewhere," have been impliedly
repealed by Act 42 of 1860, and con-
current jurisdiction in such suits given
to Courts of Small Causes throughout

Page 158.

Section 103 of the
Military Act
passed 18 March 1864
WV

the country. The construction of the Act at which we have arrived, after some doubt, is that it has not the effect of altering or interfering with the jurisdiction of the peculiar Military Tribunal constituted by the statute. The proviso in Section 6 of the Act is not simply a qualification of the enactment preceding it in the same section and providing for exclusive jurisdiction. Its language is that nothing in the Act shall be held to take away the jurisdiction which can be exercised by Military Courts of Requests. It must therefore be construed with reference to the other jurisdiction sections (Sections 3 and 4), and so construed, and considering what the object and intention of the Act was, we come to the conclusion that it leaves

the provision in the statute for the ⁷² exclusive cognizance by Military Courts of Requests of suits like that in the present case in full force.

My dear Mr. Phillips

Thank you for your

letter, the answer

you require.

The day following

I was in favor of

these things.

Yours sincerely

John C. Brown

Enclosed

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