M. R. O. 1—80,000—19-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 1672 Press Mis.

-18-

Dated 22 — 11 — 1865

5/6

Not to be folded or roughly handled

JUDICIAL DEPARTMENT.

No. 1672.

FROM

A. J. ARBUTHNOT, Esq.,
Chief Secretary to the Government of Fort Saint George,

To

THE SECRETARY TO THE GOVERNMENT OF INDIA,
HOME DEPARTMENT.

SIR,

In my letter of the 23rd August last, No. 1163, the attention of the Government of India was drawn to the report of the trial at the Sessions of the High Court of Madras, held in that month, of one Alexander Bain, for an offence committed by him in Coorg, and of his acquittal, on the ground that the Court had no jurisdiction to try the case, and it was then suggested that, in order to legalize committals from that territory as well as from Mysore, the Letters Patent of the Madras High Court should be amended so as to bring those territories within its jurisdiction.

2. I am now directed to transmit, for the information of His Excellency the Governor General in Council, the annexed extract of a letter, dated the 6th instant, from the Advocate General, reporting upon the case of Regina *versus* Watkins tried at the last Sessions of the High Court, for an offence committed at Bangalore, in the Mysore territory, from which it will be seen that it has been determined by the Chief Justice that the Madras High Court has jurisdiction to try criminal offences committed by European British subjects in the kingdom of Mysore.

Paragraphs 15 to 18 inclusive.

I have the honor to be,
Sir,
Your most obedient Servant,

FORT SAINT GEORGE,
22nd November 1865.

Chief Secretary.

Extract from a letter from the Advocate General, to the Chief Secretary to Government, Fort Saint George; dated Madras, 6th November 1865.

15. I would also desire to mention the case of *Reg. v. Watkins*, charged with having committed criminal house trespass having made preparation to cause hurt, having used criminal force, and caused hurt, at Bangalore. I did not appear to prosecute in this case, as I did not conceive it was one on which the Government was concerned. But as in my letter to you of the 10th August last, in observing on the case of Mr. Bain, which occured in Coorg, I remarked, incidentally, that offences committed in *Mysore* would now have to be committed to *Calcutta* (vide paragraph 16), His Excellency may desire to know what decision the High Court has come to on the point. At the conclusion of the case for the prosecution, Mr. Miller, the Prisoner's Counsel, argued that the Court had no jurisdiction. I need not trouble His Excellency in Council with Mr. Miller's argument. His point amounted to this that inasmuch as the Treaty with the Rajah of Mysore was made with the *Governor General*, the Rajah could not be considered to be a Native Prince in alliance with the Government of *Madras*, so as to bring the prisoner within that criminal jurisdiction of the late Supreme Court which has now devolved upon the present High Court in its original Criminal Side.

16. The Chief Justice remarked as follows :—

"I anticipated that this objection would be taken, and I have therefore looked at the authorities, so that I am able to express a clear opinion. If the objection had prevailed, it would have been of no utility to the prisoner. The late Supreme Court Charter governs me as to the original criminal jurisdiction of the present High Court.

"This case would clearly have fallen within the late Supreme Court's Criminal jurisdiction. It does not fall within the earlier words of the Section. This is not a case in which jurisdiction arises because the offence was committed within the factories subordinate to *Fort Saint George*, or within the territories 'subject to, or dependent on, the Government of Madras,' but then follow these words 'or within any of the dominions of the Native Princes of India in alliance with the said Government.'

"These words are not to be found on the Charter of the Supreme Court of Calcutta, though they are in the Charter of the Supreme Court of Bombay as well as of Madras.

"Let us look at history:—When the Charter of 1800 was granted, neither the Government of Madras nor Bombay had, save in the excepted case of imminent danger, power to make treaties with Native Princes. Even in such case Ch. 52 of 33 Geo. III required the subordinate Government to report the fact to the Supreme Government or the Home Government, in order that it might be ratified. Mysore was in Hyder Aly's and afterwards in Tippoo's possession. In 1799, Seringapatam fell. Two Treaties were thereupon made. One between the Governor General, the Peishwar, and Nizam, called the Partition Treaty. The Rajah was no party to that Treaty. It divided Mysore into four parts between the parties to the Treaty. One share the Peishwar declined, and this was then divided between the Company and the Nizam. Mysore was made an independent kingdom; the present Rajah, then an infant four years old, was placed on the Musund, and a Subsidiary Treaty was made between the Rajah and the Company. Under that Treaty all has been regulated up to the present time. The Treaty was made by the Rajah as an independent Sovereign with the East India Company. Mr. Acheson's valuable collection of Treaties sets it out. It is 'for, and on behalf of, the East India Company,' though executed by the Governor General. When the Treaty was ratified, the Rajah became in alliance with the East India Company. It can make no difference whether the Treaty was effected by the Agency of the Madras Government or the Bombay Government, or the Governor General. They would all equally be the Agents of the East India Company, binding every branch of the Company's Government. The Rajah was in alliance with the Government of Madras as much as any other British Government in India.

"There is a point which I had expected to have heard urged—in fact it is the only point which could be urged—has any thing occurred since the Treaty to alter the Rajah's position with relation to the British Government? In 1832, in consequence of the disordered state of the Rajah's Government, and his revenues having been squandered, the Government called on the Rajah to give them over his country for their administration. This was done under the Treaty of 1799. It contained two stipulations. One by which the East India Company undertook to support troops and protect the Rajah, in consideration of which the Rajah stipulated that if the revenues should be endangered so as not to afford sufficient payment, the Government might call on the Rajah to hand over his Kingdom for their administration on 10 days' notice. In pursuance of this in 1852, the British Government took possession of the country and administered it by a Commissioner. But the Rajah still has an independent existence; for the Government has to render accounts to him. The alteration of 1832 did not affect the political relationships of the Rajah and the Government. His territories are still in alliance with the Madras Government.

"If it were necessary to go beyond the Supreme Charter, it would perhaps be found that 33 Geo. 3 Ch. 52, Section 67, would have given jurisdiction."

17. The result is that, as regards Criminal offences committed by European British subjects in the Kingdom of Mysore, the High Court of Madras has jurisdiction to try them.

18. What purports to be a report of the Chief Justice's decision appears in this morning's Athenæum. It is a tissue of nonsense. The "Reporters" did not, so far as I observed, make any attempt to take a note of what His Lordship stated; nor could they have understood it, had they tried.

Exd. J. H. Burns.

Despatch from the Resident of the Nilgiris

Judicial Department.

No. 1672.

To

The Secretary to the Government

of India.

Home Department.

Sir,

In my letter of the 23rd August last No. 1163, the attention of the Government of India was drawn to the point of law that arose at the session of the High Court of Madras held in that month of one Alexander Bain, for an offence committed by him in Coorg, and of his acquittal on the ground that the Court had no jurisdiction to try the case - and it was then suggested that in order to legalize commitals from that territory as well as from Mysore, the Letters Patent of the Madras High Court should be amended so as to bring those territories within its jurisdiction.

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~~there~~ ~~that in the opinion of~~
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subjects in the kingdom of
Mysore

Cases 15 to 18 inclusive.

Fort St. George
22d November 1865

1854

1/1 Board of Revenue

Judicial 1865 Departt.

No. 1672

To

The Secy. to the Govt.

of India

Dated 22nd November 1865