M.R.O. 1—29,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial **DEPARTMENT.**

G.O. No. 1722-23 Press Mis.

15-20

Dated 4. 12. 1923

27/27

Not to be folded or roughly handled

1923

Read the following:—

No. 15. From the Honorable the Chief Justice of Her Majesty's High Court of Judicature at Madras, to the Honorable the Governor in Council of Fort Saint George; dated Madras, 17th November 1865.

1. The early retirement of my colleague, Mr. Justice Frere, from the Bench of the High Court, induces me to address your Excellency in Council on the subject of a change in the constitution of the Bench of Judges, with the view of bringing the subject officially under the consideration of the Right Honorable the Secretary of State for India before the appointment of Mr. Justice Frere's successor is decided upon.

2. With a Bench of five Judges, it has for some time seemed to me desirable and expedient, as regards the working of the Court in both branches of its jurisdiction, that three of the Judges should be professionally trained; and I desire to recommend for consideration that a fitly qualified member of the Bar should be selected to succeed Mr. Justice Frere.

3. Constituted as the Court is at present in point of number, the bulk of the business on the Appellate Side is necessarily left to be disposed of by my colleagues, the three Civilian Judges. They, alone, have hitherto sat to hear Appeal matters, except on the occasions when I have sat at intervals of a week, and of late longer; and the business on the Original Side and in the Insolvent Court has been heard before Sir A. Bittleston and myself.

4. This arrangement, to my mind, does not adequately give effect to that which I believe to have been the spirit and purpose of the amalgamation, and is not the most satisfactory. In the first place, I think it of importance that the Chief Justice should be able to give a large share of his time and attention to matters on the Appellate Side, and should more frequently sit in Court to hear Appeal Cases. In the next place, I am satisfied that for the determination of all ordinary appeals a professionally trained Judge and a Civilian Judge sitting together, constitute the best and most efficient tribunal, and I think that, generally, every Court on the Appellate Side should be so formed.

5. With an additional Judge selected from the Bar, the Chief Justice would be relieved from the greater portion of the work on the Original Side, and be at liberty to preside usually in the Appellate Court, and when occasion required, one or other of the Barrister Judges would take his place and sit with a Civilian Judge. All business out of Court on the Appellate Side would continue to be brought in the first instance, as it is now, under the consideration of two Civilian Judges.

6. Another consideration which influences me in making the above recommendation is, the constitution of the Special Court for the hearing of appeals from a Judge or Division Court to the High Court. The practice here has been to put down all the more important Original Suits in which issues have been framed, to be heard before Sir A. Bittleston and myself, and as yet there have been very few appeals. But there are some anomalies attending the formation of this Court which ought not to continue, especially in the instance of an appeal in one of the suits just mentioned. Either the Judge in suits heard before one Judge, and one

of the Judges in suits heard before two Judges, must sit to hear appeals from his own decision, or the Court must in the former case be constituted with the Chief Justice as the only Barrister Judge, and in the latter case exclusively of my colleagues the Civilian Judges. With the change I suggest two Barrister Judges could always be made members of the Court, and (a greater number of suits, if not all, being heard before one Judge) it would rarely if ever happen that either of them had before taken part in the decisions appealed against.

7. In the event of the appointment being made, it would no longer be necessary to continue the office of "Commissioner" on the original side. The duties of the office are the taking of accounts and making incidential investigations out of Court in all matters referred by a Division Court of one or more Judges. One of the Barrister Judges would deal with all ordinary matters of this nature at Chambers, and in any exceptional case a special referee would be named in the particular suit. It is certainly for the interest of suitors, as well as more in accordance with the new mode of Civil Procedure, that all ordinary matters of inquiry should be conducted before a Judge of the Court who can fully and effectually dispose of them.

8. I desire, further, to point out that the appointment might opportunely be followed by an extension of the ordinary original jurisdiction of the Court, which, I have no doubt, would secure additional public benefit. At present, the jurisdiction is confined within the Municipal limits of the Presidency Town, which, I believe, include a district about eight miles long and of the average width of four miles. The line of boundary has remained the same since the establishment of the Supreme Court in 1800, and it seems to have been arbitrarily drawn in the first instance. It is very probable that the controlling consideration with the Government at that time, and until a recent period, was the desire to contract as much as possible the exercise of the powers of the Supreme Court. Now, however, no such feeling can, I presume, exist in regard to the High Court, and as the *Civil* Procedure in the High Court and in the Courts in the Mofussil is regulated by one Code, and the substantive laws to be administered either are or will in a short time be the same, I think the local jurisdiction might, with considerable advantage, be enlarged so as to include neighbouring places at which Europeans reside, as well as other portions of Chingleput.

9. The important special advantages which all classes of suitors enjoy in the High Court should, it seems to me, be extended to as large a number of persons as the Judicial and Ministerial Staff will fairly permit. The alteration of the jurisdiction within reasonable limits would not render necessary any increase in the present establishment of Ministerial Officers, beyond, perhaps, one or two additional writers, or clerks.

10. I request that your Excellency in Council will do me the favor to forward this communication to the Secretary of State for India, and I shall of course be glad to learn that the views of your Excellency in Council accord in any way with my suggestions.

No. 16. MINUTE BY THE HONORABLE T. PYCROFT, dated 22nd November 1865.

The letter from the Honorable the Chief Justice should be forwarded to the Right Honorable the Secretary of State for his consideration.

2. With respect, however, to its concluding paragraph, I do not think that the Government can give his recommendation their support. On the contrary, it seems to me open to strong objection.

3. The reasons which are now advanced by Sir C. Scotland for filling the next vacancy in the Bench of the High Court with a Barrister, and thus making the number of Barrister Judges three, will equally apply on all future similar occasions, that is, on all occasions when any vacancy in the bench would leave the number of Barrister Judges less than three. The result will be that the same number of Barrister Judges, viz., three, will have to be kept up permanently. This goes beyond the terms of the Letters Patent, which lay down a certain minimum proportion of Civilian Judges and of Barrister Judges respectively, but do not prescribe the exact number of each class of whom the Court is to be composed. In fact, the adoption of the Chief Justice's proposal would virtually increase the minimum proportion of Barrister Judges specified in the Letters Patent, from one-third to more than one-half.

4. If the application be acceded to, the proportion of Civilian to Barrister Judges which has obtained since the High Court was established, will be inverted. The latter, who may be devoid of all Judicial experience in the Provinces, will form the majority in a Court, the greater and more important part of whose business lies in the exercise of Appellate functions, in the disposal of cases brought before it in appeal from the Mofussil Courts.

5. The number of Judges in the High Court who have gained practical experience in Judicial business in the Provinces by holding high Judicial offices there, should, it seems to me, bear somewhat the same proportion to that of Barrister Judges, which the Appellate does to the Original business coming before the High Court.

6. On this point I beg to cite an extract from my Minute on the revision of the High Court establishments, 14th January 1863.

"The High Court on its Appellate side exercises jurisdiction over the whole
"of the Madras Presidency, some 1,41,000 square miles in extent, with a popula-
"tion above 22,000,000. On the Original side its Jurisdiction is almost confined
"to Madras and its environs, 28 square miles, and a population, perhaps over-
"estimated at 700,000.

"The amount of business performed by the Appellate in comparison with that
"of the Original side of the High Court can hardly be represented by any mere
"figured statements showing the number of suits filed, motions made, or orders
"passed respectively. Some idea, however, of the relative extent of work in the
"two branches of the High Court may be arrived at thus:—

"The late Sudder Court, now the Appellate side of the High Court, was
"presided over by three Judges, who have always been fully occupied. Indeed,
"the office of a Sudder Judge has usually been considered a very laborious office,

"The work in the late Supreme Court—now the Original side of the High "Court—can be transacted by a single Judge. That it can be, has been conclu- "sively shown by the fact that it has been, and that for more than two years con- "secutively. From the departure from Madras of Sir C. Rawlinson on the 13th "February 1859, to that of the arrival of the present Chief Justice Sir C. Scotland "on the 23rd May 1861, or for more than two years and a quarter, the business of "the Supreme Court was practically done by the Puisne Judge, Sir A. Bittleston. "For many months out of that period the Chief Justice, Sir H. Davison, was on the "Neilgherries, and when he was at Madras his health would admit of his taking "but a very small share in the business of the Court. There is no reason to be- "lieve that during this period the work of the Court was not duly performed, or "that arrears accumulated, and although Sir A. Bittleston may have had his hands "pretty full, it may be doubted whether his work was as heavy as that of a Sud- "der Judge. It is also to be noted that "during the time referred to some addi- "tional work was thrown on the Court "by the Special Act XXX, 1858, for the Settlement of the debts of the late "Nabob of the Carnatic."

One of these cases in particular, occupied the Court for several weeks in 1860.

7. I have no reason to believe that the business on the Original side of the High Court is greater now than it was when the above remarks were written.

8. Indeed, it is notorious, that the leading practitioners in the High Court have ceased to depend much upon the business on its Original side, and find their most lucrative practice in appearing occasionally in the Courts in the interior.

9. True it is, as stated by His Honor the Chief Justice, that the amalgamation of the former Supreme and Sudder Courts has not been so fully carried out as could have been desired. The Judges of the ci-devant Supreme Court and those of the old Sudder are for the most part severally confined to the disposal of the business which would have devolved upon them had the Courts never been united. But this, I must be permitted to remark, is attributable to Sir C. Scotland himself, in whom, as Chief Justice, is vested the distribution of work among his colleagues, and who has shown no disposition either to admit the Civilian Judges to any participation in the transaction of the Court's Original business, nor, as respects himself or his Supreme Court colleague, to take any considerable share in the despatch of business on the Appellate side.

10. Sir A. Bittleston, I understand, has not had any part whatsoever in the disposal of Appellate business assigned him by the Chief Justice. He is wholly employed in original work. Sir C. Scotland, as he states in his letter, sits on the Appellate side only once a week.

11. I must be permitted to doubt whether these two Honorable Judges might not have been more largely engaged in Appellate business, had there been on the part of the Chief Justice any hearty desire to that end.

12. Further, no attempt whatsoever has been made to render the services of the three Civilian Judges available for the disposal of Original suits. It cannot be alleged that their want of professional training disqualifies for from such duty, for

—not to mention the two other Civilian Judges, Messrs. Frere and Innes, officers of ability and much judicial experience, and intimately and practically acquainted with the Code of Civil Procedure, which governs the disposal of Civil business at Madras no less than in the Provinces—it does so happen, that one Judge, Mr. Justice Holloway, is, in knowledge of English, no less than of local, law, on a par with any Judge now sitting on the Madras bench. It is well known that the study of English law and of Jurisprudence as a Science is, and has been, for many years with him a ruling passion. Yet he has not been employed either in the disposal of any Civil business on the Original side, or asked to preside at any of the Criminal Sessions, where the cases, generally speaking, are trifling compared with those with which he has been in the habit of dealing as a Sessions Judge.

13. I cannot but fear that the appointment of a third Barrister Judge would have the effect of making the separation of the two classes of Judges and of their duties wider than it is now, and thus increase the present evil. Certainly it would tend to continue the exclusion of the Civilian Judges from all share in the Original business of the Court.

14. I make no question that the office of Commissioner might well be dispensed with, and I quite agree with the Chief Justice that its duties are such as should be performed by a Judge of the Court. But the appointment of a third Barrister Judge is not necessary for that purpose. I understand that several months ago, and before Mr. Frere's retirement was contemplated, the abolition of this office and partition of its work among them, was proposed to his colleagues by the Chief Justice, who probably felt a natural reluctance to keep it up in the face of the light work of the High Court generally, but, under some circumstances of which I am not aware, no action was then taken on the proposal.

15. Nothing is said in Sir C. Scotland's letter as to what should be done with the present holder of the Commissioner-ship, in the event of that office being abolished. If it be meant to imply that he might be raised to the Bench as a Barrister Judge, I deem it my bounden duty to state, although with reluctance, and at the cost of my private feelings, "sed magis amica veritas," that although Mr. Dale is a very meritorious public servant, his physical infirmity of deafness wholly disqualifies him from from sitting as a Judge.

16. In regard to the observation of the Chief Justice, that if his suggestion be adopted, the original jurisdiction of the High Court might be extended to the adjoining Zillah of Chingleput, I would submit:—

Firstly, that this is a virtual admission—as is the proposed abolition of the Commissionership—that the High Court is not at present fully occupied.

Secondly, that if the measure be desirable, it might equally be effected, whether the next vacancy in the Bench of the High Court be filled by a Barrister or not; unless the principle is to be affirmed that a Civilian Judge is in no case to take part in the disposal of Original business in the High Court, even of such as may arise in a Zillah wherein Civil and Criminal Justice has, from our occupation of the country, been dispensed by a Civilian Judge from the general body of the service, and in many instances inferior in ability and judicial attainments to a Civilian Judge of the High Court.

Note.—The Chief Justice observes that the dispensation of Civil Justice within as without the limits of the Original jurisdiction of the High Court, is governed by the same Code of Procedure, which is correct. The remark, however, does not hold good as respects the dispensation of Criminal Justice, as the Criminal Procedure Code is not in force within the High Court's original limits. In the event, therefore, of any part of the Chingleput Zillah being brought within the original jurisdiction of the Court, either in such part the Criminal Procedure Code would have to be superseded by the English Law of Criminal Procedure, or two tracts under the Original jurisdiction of the same Court, would, as regards Criminal Procedure, be governed by different systems.

17. I continue, however, of the opinion which I some time since expressed, and which was concurred in by my then Colleague, Mr. Maltby, that the Original jurisdiction of the High Court should be contracted rather than extended; and I can see no reason why any part of the Chingleput, more than of any other Zillah, should be brought under it.*

18. In the foregoing observations I have referred only to the appointment of a mere Barrister Judge, by which I mean either one to be sent direct from England or one selected from the Indian bar, who, although he may occasionally plead in the Mofussil Courts, has yet no real up-country judicial experience, and is a stranger to the habits, feelings, and language of the people. There are, however, some† of our own Zillah Judges, who at some inconvenience and expense, and by a laudable application of their period of absence in England, have had themselves enrolled as Members of the English bar, and have even published books of some merit on English Law. If I might venture to make such a suggestion, the appointment of one of these gentlemen to a seat on the Bench of the Madras High Court, while it would meet to the full all that the Chief Justice can wish, would strengthen both sides of the Court, and powerfully further that real and thorough amalgamation which is so much to be desired.

(Signed) T. PYCROFT.

†*e. g. Mr. C. Collett, Judge of Vizagapatam.*
Mr. J. R. Kindersley, Judge of Bellary.

* "This review of the subject has, however, strongly impressed me with the conviction that, in this Presidency at least, it is a mistake to invest the High Court with original civil jurisdiction (except perhaps in cases of a very large amount) as well as with appellate jurisdiction. The consequence is, that we have judges on £6,000 and £5,000 a year trying cases, which up country are tried *under the same code of Procedure* by a zillah judge on £2,800, or indeed, as respects most of the cases, by a Principal Sudder Ameen on £600 a year. The right course, I think, would be to have at Madras a Zillah Court, the judge of which should exercise the jurisdiction of a Civil Judge, Principal Sudder Ameen, and District Moonsiff (save in cases falling under the cognizance of the Small Cause Court) within the limits of the jurisdiction of the old Supreme Court, and should hold Criminal Sessions. The judge, taking into account the nature of the business that will come before him, should be a Barrister, and allowing for the difference in the expense of living at Madras and in the Provinces, the salary might be fixed at Rupees 2,500 per mensem, or £3,000 per annum, which ought to command the services of a fit man. The judges of the High Court would then be confined to the disposal of appellate business, and it might be found that *four* judges would be enough for that purpose. The above arrangement might not be suitable for Calcutta and Bombay, where the original business is heavy and the sums at issue sometimes very large, but at Madras matters are very different."—Minute, 14th January 1863, paragraph 31.

"The recommendation to limit the High Court to appellate duties is a valuable one, and well worthy of careful consideration. The judge of first instance proposed for Madras should, I think, have a higher salary than that mentioned in this Minute, but as one of the the present judges of the High Court could then be spared, and there would be other savings, no difficulty about expense would thus arise."—Minute by Mr. Maltby, dated February 1863.

P. S.—Since the above remarks were written I have been furnished with a return of the sittings of the two Judges of the High Court on its Original side from the 1st January of the present year, to the 24th instant, or for nearly eleven months, including two months vacation.

I find that during this period, which, excluding vacation and Sundays, amounting to about 229 working days,

His Lordship the Chief Justice sat *with his colleague Sir A. Bittleston,* for the final disposal of original Suits... ... ... days	78
Singly for the Criminal Sessions... ... ... ,,	13
Do. in the Insolvent Court... ... ... ,,	7
Total days...	98

The Honorable Sir A. Bittleston sat during the same period, *with the Chief Justice* as aforesaid for the final disposal of Original Suits... ... ... days	78
Singly for settlement of issues... ... ... ,,	40
Do. Criminal Sessions... ... ... ,,	16
Do. In Insolvent Court... ... ... ,,	9
Total days...	143

It will be observed that all the Suits on the Original side of the Court were disposed of by the two former Supreme Court Judges *sitting together.*

By the rules and orders of the High Court at Madras, dated 28th August 1862, and passed by the Judges under Clauses 13, 24, 25 Victoria, Chapter 104, it is provided that "the ordinary original Civil Jurisdiction of the Court may be exercised by one Judge, or by a Division Court composed of two Judges."

It can, however, scarcely have been intended, nor is it in any way necessary that *all* such Suits, many of which are of a simple character, presenting no difficulties, should be tried by *two* Judges. In the Mofussil Civil Courts all India over, such Suits are disposed of by a single Judge, and the same is the case in England.

If the bulk of such Suits had been tried by one of the Barrister Judges sitting alone, the other would on the Original side have had very little to do, and might have taken a considerable share in the Despatch of Appellate business.

Again, one Civilian Judge might have sat for the trial of Original Suits or for the settlement of issues, in some cases singly, in others with a Barrister Judge, thereby relieving the Barrister Judges, and allowing them to devote a large portion of their time to the disposal of work on the Appellate side of the Court.

(Signed) T. PYCROFT.

No. 17. MINUTE BY THE HONORABLE H. D. PHILLIPS, Dated 27th Nov. 1865.

1. In the views of Sir C. Scotland's proposal which have been taken by the Honorable Mr. Pycroft, I am able fully to concur.

2. After laboring as a Colleague of Sir C. Scotland, from the date of the Establishment of the High Court until the 16th December 1864, a period of two years and

four months, I can safely say that it never appeared to me that there was the necessity adverted to by the Chief Justice, of leaving the bulk of the business on the appellate side to be disposed of by the three Civilian Judges. I have been under the impression, however erroneously, that the work to be done on the Original side, by the two Barrister Judges, was so extremely light, that without either public or private inconvenience, they might both have aided in causing the disappearance of the necessity now assumed by Sir C. Scotland as the ground for demanding the assistance of a third Barrister Judge.

Paragraph 3.

3. It is not clear from paragraph 2 of the Chief Justice's communication, whether he intends to advise the selection for the approaching vacancy, of a fitly qualified member of the Bar of England, or of the local Bar; should his preference be for the latter, I do not think it possible that he can have had in view Mr. Dale, whose unfortunate deafness, even now that he is rarely seen engaged in Court, causes unmistakeable embarrassment and impediment to the easy despatch of business, but apart from the physical deficiency, there still remain on Mr. Dale's hands, arrears of business belonging to his late Office as Master in the Supreme Court, which, judging from the slow rate of progress of the work done since the High Court was set in motion, should last months to come, though I believe it was understood that the Master's office would long ago have been closed. It would scarcely be consistent with the present system, newly to appoint a Master merely to work off arrears, at the rate of 10 Rupees an hour for the work done, but this, or some other plan, must be adopted if there be a change in the arrangements under which Mr. Dale has now to deal with those arrears.

4. In regard to paragraph 4 of the Chief Justice's letter, I may record my belief that as yet nothing has occurred to prevent the Chief Judge of the High Court from more frequently sitting with the unprofessional members of that Court, and it seems to me to be more than doubtful, whether it will be an improvement to have any Appeal suit heard by a Barrister and a Civilian Judge. The main bulk of cases on the File of the High Court on its Appellate side, consists of matters in which points of English law do not arise. When, however, there are law points for determination, it will be found, I apprehend, that these are mostly points of Hindu law, with which the Civilian Judges are at least as competent to deal, as would be the local Barrister, or the Barrister newly selected from the ranks of the Bar in England.

5. It would not be urged, I think, by the Chief Justice, that such ordinary litigation as reaches the High Court, on its Original side, is beyond the judicial powers of the gentlemen of the Civil Service, whom the Government have selected for the High Court Bench; much of it goes off at the disposal of issues, with which duty, Sir Adam Bittleston has, I understand, alone been concerned, the Chief Justice taking no share in it. What remains has, as yet, rarely produced a subject for judicial consideration with which a Civilian Judge, sitting with a professional colleague, could not efficiently and satisfactorily deal.

6. In respect of the difficulty adverted to as likely to arise from an appeal on the judgment of the Division Court—during the time of my service in the High Court,

only one such appeal was preferred. The original suit was disposed of by Sir C. Scotland and Sir A. Bittleston sitting together, though I am ignorant of the reason for their jointly taking up the case. The point at issue rested on the appreciation of a signature in Tamil, the vernacular language of this part of the Madras Presidency. The appeal was heard by Sir Adam Bittleston, Mr. Holloway, and myself; and referring to the point for determination by us, it may fairly enough be argued, that three Civilian Judges, acquainted with Tamil, would have settled the matter of the signature in that language, as well as the mixed Court which was formed to determine it.

7. It is not clear to me, that the change of constitution now advocated by Sir C. Scotland, positively requires a Barrister Judge to admit of the "Commissionership" of the Court being abolished, thus affecting a saving of 900 Rupees a month.

8. Much of the miscellaneous work which falls to that Officer, might be done by the Civilian Judges, if, in the exercise of the power which the law has given him, to distribute the business of the Court, the Chief Justice saw fit to call on these Judges to undertake it.

9. An arrangement of this kind *was* made about a year ago, and rules were framed accordingly, the date from which the Civilian Judges were to commence their labor in this branch being fixed. I am not aware why effect has not been given to this arrangement. It certainly, however, cannot have been because the Chief Justice mistrusted the efficiency of the Civilian Judges, for he had communicated with them on the subject, and at one time every thing in connection with the duty was settled.

10. Assuming, however, that the strength of the High Court would be improved, and its working rendered more efficient by the measure advocated by the Chief Justice, it would be difficult, I think, to select from the Bar two gentlemen more completely qualified for the vacant judgeship, than Mr. Collett and Mr. J. R. Kindersley, of the Civil Service.

11. Both these gentlemen have a high reputation as patient, pains-taking, acute, sensible judges. They have presided over important Courts, and besides having both been called to the Bar in England, where they devoted their years of furlough leave to a persevering study of the law, resting their study on the experience they had acquired by some ten years' judicial and magisterial work in this country, they have put before the public some works on law, of which those by Mr. Collett have been quoted on the Bench of the High Court, in terms of commendation.

12. I observe, from a late Official Publication, that in 1863, the work on the High Court original side, stood thus:—Arrears from 1862, cases 52. Instituted in 1863, 335. Total 387. Of these 132 were determined in Judge's Chambers on settlement of issues;—53 on final disposal;—8 went by default;—8 were withdrawn with an intention of bringing fresh suits;—110 were withdrawn absolutely, leaving 76 suits pending on the 31st December 1863. Add to this quantum of work, an Insolvent Court to be held once a quarter, and the four Criminal Sessions of the year.

(Signed) H. D. PHILLIPS.

No. 18. MINUTE BY HIS EXCELLENCY THE PRESIDENT, dated 2nd December 1865.

I am decidedly of opinion that the existing arrangement, by which the High Court is composed of two Barrister Judges, and of three Members of the Civil Service who have acted for years as Judges of the Zillah or up-country Courts, ought not to be interfered with.

2. This latter form a very valuable portion of the judicial body; through their hands a very large portion of the original suits, brought before the Courts, passes; and their judicial experience, coupled with their acquaintance with the language of the country and the habits of the people ought, in my opinion, to outweigh the advantages supposed to be derived from the mere technical knowledge of the Barrister. I think it would be unfair and unwise to deprive these Judges of a legitimate object of ambition, by reducing the number of seats allotted to them in the High Court. So strongly am I impressed with the correctness of this opinion, that it is my intention, should I be called upon to nominate a gentleman to succeed Mr. Frere, to appoint, provisionally, Mr. Collett, one of the gentlemen named by Mr. Pycroft, to the vacant seat on the bench.

W. T. DENISON.

No. 19. ORDER THEREON, 4th December 1865, No. 1722.

Ordered that copies of the foregoing letter, and of the Minutes recorded thereon by the Members of the Government be forwarded to the Right Honorable the Secretary of State.

2. Ordered, also, that the following letter be despatched.

(True Extract).

A. J. ARBUTHNOT,
Chief Secretary.

No. 20. To the Honorable the Chief Justice of the High Court of Judicature, Madras, dated Fort Saint George, 4th December 1865, No. 1723.

I am directed by His Excellency the Governor in Council, to acknowledge the receipt of your letter of the 17th instant, and to inform you, that a copy of it will be forwarded to the Secretary of State by the next Bombay Mail.

A. J. ARBUTHNOT,
Chief Secretary.

From

The Hon^ble Sir C. H. Scotland Kt.
Chief Justice of H. M's High Court
of Judicature at Madras.

To

The Hon^ble The Governor in Council
at Madras.

Hon^ble Sir,

The early retirement of my colleague M^r Justice Frere from the Bench of the High Court induced me to address Your Excellency in Council on the subject of a change in the constitution of the Bench of Judges with the view of bringing the subject officially under the consideration of the Right Hon^ble the Secretary of State for India before the appointment of M^r Justice Frere's successor is decided upon. With a Bench of five Judges it has for some time seemed to me very desirable and expedient as regards the working of the Court in both branches of its Jurisdiction that three of the Judges should be professionally trained

trained and I desire to recommend for consideration that a fully qualified member of the Bar should be selected to succeed Mr. Justice Frere.

3 Constituted as the Court is at present its point of number the bulk of the business on the Appellate Side is necessarily left to be disposed of by my colleagues the three Civilian Judges. They alone have hitherto sat to hear Appeal matters except on the occasions when I have sat at intervals of a week and of late longer: and the business on the Original Side and in the Insolvent Court has been heard before Sir C. Bittleston and myself.

4 This arrangement to my mind does not adequately give effect to that which I believe to have been the spirit and purpose of the Amalgamation, and is, not the most satisfactory. In the first place I think it of importance that the Chief Justice should be able to give a large share of his time and attention to matters on the Appellate Side, and should more frequently sit in Court to hear Appeal Cases. In the next place I am satisfied that for the determination of all ordinary Appeals a professionally trained Judge and a Civilian Judge sitting together constitute the best and most efficient tribunal, and I think that generally every Court on the Appellate Side should be so formed.

With an additional Judge selected from the Bar, the Chief Justice would be relieved from the greater portion of the work on the Original Side, and be at liberty to preside usually in the Appellate Court, and when occasion required, one or other of the Barrister Judges would take his place and sit with a Civilian Judge. All business out of Court on the Appellate Side would continue to be brought in the first instance, as it is now, under the consideration of two Civilian Judges.

Another consideration which influences me in making the above recommendations is the constitution of the Special Court for the hearing of Appeals from a Judge or Division Court to the Privy Council. The practice

practice here has been to put down all the more important Original Suits in which Issues have been framed to be heard before Sir A. Bittleston and myself, and as yet there have been very few Appeals. But there are some anomalies attending the formation of this Court which ought not to continue, especially in the instance of an Appeal in one of the Suits just mentioned. Either the Judge in Suits heard before one Judge; and one of the Judges in suits heard before two Judges, must sit to hear Appeals from his own decision: or the Court must in the former case be constituted with the Chief Justice as the only Barrister Judge, and in the latter case exclusively of my colleagues the Civilian Judges. With the change I suggest two Barrister Judges could always be made members of the Court and — (a greater number of Suits if not all being heard before one Judge) — it would rarely if ever happen that either of them had before taken part in the decisions appealed against.

In the event of the appointment being made it would no longer be necessary to continue the Office of "Commissioner" on the Original Side. The duties of the Office are the taking of accounts and making incidental investigations out of Court in all matters referred by a Division Court of one or more Judges. One of the Barrister Judges would deal with all ordinary matters of this nature at Chambers and in any exceptional case a special referee would be named in the particular suit. It is certainly for the interest of Suitors as well as more in accordance with the new mode of Civil Procedure that all ordinary matters of enquiry should be conducted before a Judge of the Court who can fully and effectually dispose of them.

I desire further to point out that the appointment might opportunely be followed by an extension of the Ordinary Original Jurisdiction of the Court which I have no doubt would secure additional public benefit. At present the jurisdiction is confined within the Municipal limits of the Presidency Town, which I believe include a district about 8 miles long and of the average width of 4 miles. The line of boundary has remained the same

[Marginal note:] This is just what it is — I should have [illegible] the distribution of work in the HC [illegible] kept all the [illegible] business in the hands of himself and Sir A Bittleston to the total exclusion of his Civilian colleagues

[Marginal note:] and are there matters of such a kind that a Civilian Judge cannot deal [illegible] ... The three questions [illegible] ... This [illegible] ... 50 [illegible]

[Marginal note:] The only appeal in which I sat with Sir Adam Bittleston [illegible] Holloway was one [illegible] Scotland [illegible] Bittleston [illegible] H[illegible]

same since the establishment of the Supreme Court in 1800, and it seems to have been arbitrarily drawn in the first instance. It is very probable that the controlling consideration with the Government at that time and until a recent period, was the desire to contract as much as possible the exercise of the powers of the Supreme Court. Now however no such feeling can I presume exist in regard to the High Court, and as the Civil Procedure in the High Court and in the Courts in the Mofussil is [illegible] and the substantive laws to be administered either are or will in a short time be the same, I think the local jurisdiction might with considerable advantage be enlarged so as to include neighbouring places at which Europeans reside, as well as other portions of Chingleput.

but with the Criminal.

The important special advantages which all classes of suitors enjoy in the High Court should it seems to me be extended to as large a number of persons as the Judicial and Ministerial

Staff

Minute by the Honorable Mr Ritchie

From the Hon'ble the Chief Justice - 17 Nov 1865

The letter from the Hon'ble the Chief Justice should be forwarded to the R. H. the Secretary of State for his consideration.

2. With respect however to its concluding paragraph I do not think that the Govt can give his recommendation their support. On the contrary it seems to me open to strong objection.

3. The reasons which are now advanced by Sir C. Scotland for filling the next vacancy in the Bench of the High Court with a Barrister, and thus ~~by~~ making the number of Barrister Judges three, well

Memorandum recording
his
I am decidedly of opinion
that his existing arrangement
by which the High court is
composed of two Barristers
Judges, and of three members
of the Civil service who have
risen from or previous to the
Bellwether country courts
ought not to be disturbed
at this
This latter forms a very valuable
& able portion of the judicial
body - through them hands
a very large portion of the orig-
inal suits brought before the
courts, papers; and their
judicial experience coupled
with their acquaintance with
the language of the country &
the habits of the people ought
in my opinion to outweigh the
advantages supposed to be der-
ived from the more technical
knowledge of the Barristers -
I think it would be unfair and
unwise to deprive these judges
of a legitimate object of ambition
by reducing the number allotted
to them in the High
Court - I say this as I am perfectly
correct in my intention
nominate a Gentleman to succeed Mr Elliott
to appoint provisionally, Mr Elliott one of the Gentlemen named
by me & recently to this vacant seat on the Bench

will equally apply on all future similar occasions, that is on all occasions when any vacancy in the Bench would leave the number of Barrister Judges at less than three. The result will be that the same number of Barrister Judges, viz. three, will have to be kept up permanently. This goes beyond the terms of the Letters Patent, which lay down a certain minimum proportion of Civilian Judges and of Barrister Judges respectively, but do not prescribe the exact number of each class of whom the Court is to be composed. In fact the adoption of the Chief Justice's proposal would virtually increase the minimum proportion of Barrister Judges specified in the Letters Patent from one

third

third to more than one half.

4. If the application be acceded to, the proportion of Civilian to Barrister Judges which has obtained since the High Court was established will be inverted. The latter, who may be devoid of all judicial experience in the Provinces, will form the majority in a Court, the greater and more important part of whose business lies in the exercise of Appellate functions, in the disposal of cases brought before it in appeal from the Provincial Courts.

5. The number of Judges in the High Court who have gained practical experience in judicial business in the Provinces by holding high judicial offices

offices there should it seems to me bear somewhat the same proportion to that of Barrister Judges, which the Appellate does to the Original business coming before the High Court.

6. On this point I beg to cite an extract from my minute on the revision of the High Court establishments 14 Jan/ 1863.

"The High Court on its Appellate side exercises jurisdiction over the whole of the Madras Presidency, some 141,000 square miles in extent, with a population above 22 millions. On the Original side its jurisdiction is almost confined to Madras and its environs, 28 square miles, and a population, perhaps over-estimated at 700,000."

"The amount of business performed by the Appellate in comparison with that of the Original side of the High Court can hardly be represented by any mere figured

"statements showing the number "of suits filed, motions made, "or orders passed respectively. "Some idea however of the "relative extent of work in the "two branches of the High Court "may be arrived at thus—

"The late Sudder Court— "now the Appellate side of the "High Court— was presided "over by three Judges, who have "always been fully occupied. "Indeed the office of a Sudder "Judge has usually been con- "sidered a very laborious office. "The work in the late Supreme "Court— now the Original side "of the High Court— can be "transacted by a single Judge. "That it can be has been "conclusively shown by the "fact, that it has been and "that for more than two "years consecutively. From the "departure from Madras of "Sir C. Rawlinson on the 5th "February 1859 to that of the "arrival of the present Chief "Justice Sir C. Scotland on "the 23d May 1861, or for "more than two years and "a quarter, the business of "the Supreme Court was

practically

"practically done by the Puisne
"Judge Sir A. Bittleston. For
"many months out of that
"period the Chief Justice Sir
"W. Dawson was on the
"Neilgherries, and when he
"was at Madras his health
"would admit of his taking
"but a very small share
"in the business of the Court.
"There is no reason to believe
"that during this period the
"work of the Court was not
"duly performed, or that
"arrears accumulated, and
"although Sir A. Bittleston
"may have had his hands
"pretty full, it may be
"doubted whether his work
"was as heavy as that of
"a Sudder judge. It is also
"to be noted that during the
"time referred to some additional
"work was thrown on the
"Court by the Special Act XXX,
"1858, for the settlement of the
"debts of the late Nabob of
"the Carnatic."

one of these cases in particular occupied the Court for several weeks in 1860.—

7. I have no reason to believe that the business on the original side of the High Court is greater now than it was when the above remarks were written.

8. Indeed, it is notorious that the leading practitioners in the High Court have ceased to depend much upon the business on its original side, and find their most lucrative practice in appearing occasionally in the Courts in the interior.

9. True it is, as stated by His Honor the Chief Justice, that the amalgamation of the former Supreme and Sudder Courts has not been so fully carried out as could have been desired. The Judges of the ci-devant Supreme Court and those of the old Sudder are for the most part severally confined to the disposal of the business which would

would have devolved upon them had the Courts never been united. But this, I must be permitted to remark, is attributable to Sir C. Scotland himself, in whom, as Chief Justice, is vested the distribution of work among his colleagues, and who has shown no disposition either to admit the Civilian Judges to any participation in the transaction of the Court's original business, nor as respects himself or his Supreme Court colleague to take any considerable share in the despatch of business on the Appellate side. -

10. Sir A. Bittleston, I understand, has not had any part whatsoever in the disposal of appellate business assigned him by the Chief Justice - He is wholly employed in original work. Sir C. Scotland as he states in his letter, sits on the Appellate side only once a week.

11. I must be permitted to doubt whether these two Honorable Judges might not have been more largely engaged in Appellate business, had there been on the part of the Chief Justice any hearty desire to that end.

12. Further no attempt whatsoever has been made to render the services of the three Civilian Judges available for the disposal of original suits. It cannot be alleged that their want of professional training disqualifies them from such duty, for — not to mention the two other

other Civilian Judges. Messrs. Frere and Innes, officers of ability and much judicial experience and intimately and practically acquainted with the Code of Civil Procedure which governs the disposal of Civil business at Madras no less than in the Provinces — it does so happen, that one Judge, Mr Justice Holloway, is in knowledge of English, no less than of local law, on a par with any Judge now sitting on the Madras Bench. It is well known that the study of English law and of Jurisprudence as a Science, is and has been for many years with him a ruling passion. — Yet he has not been employed either in the

disposal of any Civil business on the original side, or asked to preside at any of the Criminal Sessions, where the cases generally speaking are trifling compared with those with which he has been in the habit of dealing as a Sessions Judge.—

13. I cannot but fear that the appointment of a third Barrister Judge would have the effect of making the separation of the two classes of Judges and of their duties wider than it is now — and thus increase the present evil. Certainly it would tend to continue the exclusion of the Civilian Judges from all share in the Original business of the Court.

I

14. I make no question that the office of Commissioner and Taxing might well be dispensed with, and I quite agree with the Chief Justice that its duties are such as should be performed by a judge of the Court. But the appointment of a third Barrister Judge is not necessary for that purpose. I understand that several months ago, and before Mr. Frere's retirement was contemplated, the abolition of this office and partition of its work among them, was proposed to his colleagues by the Chief Justice, who probably felt a natural reluctance to keep it up in the face

face of the light work of the High Court generally, but under some circumstances of which I am not aware, no action was taken on the proposal.

15. Nothing is said in Sir C. Scotland's letter as to what should be done with the present holder of the Commissionership, in the event of that office being abolished. If it be meant to imply that he might be raised to the Bench as a Barrister Judge, I deem it my bounden duty to state — altho' with reluctance and at the cost of my private feelings "sed magis amica veritas" — that altho' Mr. Dale is a very meritorious public servant his physical infirmity

of

of deafness wholly disqualifies him from sitting as a Judge.

16. In regard to the suggestion of the Chief Justice that if his suggestion be adopted, the original jurisdiction of the High Court might be extended to the adjoining Zillah of Chingleput, I would submit,

First, that this is a virtual admission - as is the proposed abolition of the Commissionership - that the High Court is not at present fully occupied -

Secondly, that if the measure be desirable it might equally be effected whether the next vacancy in the Bench of the High Court be filled by a Barrister or not; unless the principle is to be affirmed that a Civilian Judge is in no case to take part in the disposal of original business in the High Court, even of such as may arise in a Zillah wherein Civil and Criminal Justice has from our occupation of the Country been dispensed by a Civilian judge from the general body of the Service, and in many instances inferior in ability and judicial attainments to a Civilian Judge of the High Court.

16. I continue however of the opinion which I some time since expressed and which was concurred in by my then colleague, Mr. Maltby, that the original

Note. The Chief Justice observes that the dispensation of Civil Justice within as without the limits of the Original Jurisdiction of the High Court is governed by the same Code of Procedure - which is correct - The remark however does not hold good as respects the dispensation of Criminal Justice as the Criminal Procedure Code is not in force within the High Court's original limits - In the event therefore of any part of the Chingleput Zillah being brought within the original jurisdiction of the Court, sitters in such part the

original jurisdiction of the High Court should be contracted rather than extended, and I can see no reason why any part of the Chingleput more than of any other Zillah should be brought under it.*

18 In the foregoing observations I have referred only to the appointment

superseded
have to be ~~suspended~~ by the English Law of Criminal Procedure, or two tracts under the Original Jurisdiction of the same Court would as regards Criminal Procedure be governed by different systems.

appointment of a mere Barrister Judge, by which I mean either one to be sent direct from England, or one selected from the Indian bar, who altho' he may occasionally plead in the Mofussil Courts, has yet no real up-country judicial experience, and is a stranger to the habits, feelings and language of the people. There are however some of our own Zillah Judges, who at some inconvenience and expense, and by a laudable application of their period of absence in England, have had themselves enrolled as members of the English bar and have even published

Mr. C. Collett. Judge of Vizagapatam.
Mr. J. R. Kindersley. Judge of Bellary.

*"This review of the subject has however strongly impressed me with the conviction that, in this Presidency at least, it is a mistake to invest the High Court with original Civil jurisdiction (except perhaps in cases of a very large amount) as well as with appellate jurisdiction. The consequence is that we have Judges on £6000 & £5000 a year trying cases which up-country are tried under the same Code of Procedure by a Zillah Judge on £2000, or indeed as respects most of the cases, by a Principal Sudder Ameen on £600 a year. The right course I think would be to have at Madras a Zillah Court, the Judge of which should exercise the jurisdiction of a Civil Judge, Principal Sudder Ameen, and District Moonsiff (save in cases falling under the cognizance of the Small Cause Court) within the limits of the jurisdiction of the old Supreme Court, and should hold Criminal Sessions. The Judge, taking into account the nature of the business that will come before him, should be a Barrister, and allowing for the difference in the expense of living at Madras and in the Provinces, the salary might be fixed at Rs 2500 per mensem or £3000 per annum which ought to command the services of a fit man. The Judges of the High Court would then be confined to the disposal of Appellate business, and it might be found that four Judges would be Enough for that purpose. The above arrangement might not be suitable for Calcutta and Bombay where the original business is heavy and the sums at issue sometimes very large, but at Madras matters are very different." Minute 14 January 1863 P 31

"The recommendation to limit the High Court to Appellate duties is a valuable one and well worthy of careful consideration. The Judge of 1st instance proposed for Madras should, I think, have a higher salary than that mentioned in this Minute, but as one of the present Judges of the High Court could then be spared & there would be other savings, without great additional expense would thus arise -

published books of some merits on English Law. If I might venture to make such a suggestion the appointment of one of these gentlemen to a seat on the Bench of the Madras High Court, while it would meet to the full all that the Chief Justice can wish, would strengthen both sides of the Court, and powerfully further that real and thorough amalgamation which is so much to be desired.

Rogers

Nov. 22. 1865.

P.S. Since the above remarks were written I have been furnished with a return of the sittings of the two judges of the High Court on the original side from the 1st January of the present year to the 24th instant or for nearly eleven months, including two months vacation.

I find that during this period, which excluding vacation and Sundays amounting to about 229 working days.

His Lordship the Chief Justice sat with his colleague Sir A Bittleston for the final disposal of original suits — 78 days.

Singly for the Criminal Sessions — 13.

— in the Insolvent Court — 7.

Total days 98.

The Hon'ble Sir A Bittleston

sat during the same
period.

With the Chief Justice as
aforesaid for the final days
disposal of O. Suits - 78 A
lingly for settlement of
issues — 40
do for Criminal Sessions - 16.
do in Insolvent Court - 9
Total days 143.

It will be observed that all
the Suits on the original
side of the Court were
disposed of by the two
former Supreme Court
Judges sitting together.

By the Rules and orders
of the High Court at Madras
dated 28th August 1862
and passed by the Judges
under Clause 13. 24. 25
Victoria Cap 104, it is
provided that "the ordinary
original Civil Jurisdiction
of the Court may be
exercised by one Judge
or by a Division Court
Composed

composed of two Judges".

It can however
scarcely have been
intended, nor is it in any
way necessary that all
such Suits, many of which
are of a simple character
presenting no difficulties,
should be tried by two
Judges. In the Metropolitan
Civil Courts all Suits
over such Suits are
disposed of by a Single
Judge and the same
is the case in England.

If the bulk of such
Suits had been tried by
one of the Barrister Judges
sitting alone, the other
would on the original
side have had very
little to do, and might
have taken a considerable
share in the despatch
of appellate business.

Again one Civilian

Judge

Judge might have sat for the trial of original suits or for the settlement of issues - in some cases singly, in others into a Barristers Judge - thereby relieving the Barristers Judges and allowing them to devote a large portion of their time to the disposal of work on the Appellate side of the Court.

90

Judl. Dept. Let to Engd. 5th Decr
No. 17 of 1865.

Judicial 1865 Depart.

No. 2588

Minute by the
Right Hon. T. Pycroft.

No. 590

and
His Excellency the President

Colombo 22nd Novr. 1865.

Sir C. Scotland's letter dated 17 Novr 1865.

In the event of Sir C. Scotland's proposal which have been taken by the Hon: Mr. Pycroft, I have able-fully concur.

After laboring as a Colleague of Sir C. Scotland, from the date of the establishment of the Court until the 16th Nov. by a period of two years and four months, I never appeared to me that there was the necessity adverted to by the C. Justice, of leaving the bulk of the business on the appellate side to be disposed of by the three Civilian Judges. I have been under the impression, hitherto, from observation, that the work to be done on the original side, by the two Barrister Judges, was sufficient, by itself, that without both the public & private inconvenience they might both have arisen in causing the disappearance of the necessity now apprehended by Sir C. Scotland as the ground for demanding the appointment of a third Barrister Judge.

It is not clear from para 2 of the C. J's Comm: whether he intends to advocate the selection for the above mentioned vacancy of a fully qualified member of the Bar of England, or of the local Bar. Should his purpose be for the latter, I do not think it possible that he can have had any new Law Book

whose unfortunate deafness, known that his case could be tried without causing unnecessary pain and unpleasantness to the very dignified gentleman - but apart from the physical difficulty, there still remain a good many legal points, arising out of the case, which will require to be carefully considered by the Court of Appeal before the case can be finally disposed of. Hence the adjournment of the case from the Michaelmas Sittings to the Hilary Sittings. I understood from the Counsel engaged in the case, that the Solicitors on both sides were in communication with a view to the settlement of the case, and it seems to me quite possible that the matter may be settled out of Court.

In regard to the case of Re C. Sarkies, I may record my belief that that will, so far, nothing has occurred to prevent the Chief Judge of the Island from resuming judicial functions with the exception of that Court and it seems to me quite possible that the matter may be settled out of Court.

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Second heard by a Barrister and a Civilian Judge. The main bulk of cases on the Side of the Island on the Appellate side, consists of matters in which points of English law have to arise. Whereas there are few points for determination that will be found, I daresay, that there are points of Roman law, with which the Civilian Judges are at least as competent to deal as would be the local Barristers or the Barristers newly elected from the Bar of England.

However we think, by the Civilian Judges as under the original side, in regard the powers of the Civilian Judges from the Court Bench - such as at the disposal of cases, with which duty Sir Adam Williamson, I understand, alone has carried. The C. Sarkies taking no part - what remains has yet caused a subject for judicial consideration with the Civilian Judges, sitting with the Supreme Court, could not efficiently and satisfactorily deal -

In respect of the difficulty adverted to as to Appeals from an appeal on the decision of the Division Court - there the limit of any amount the Privy Council may hear such appeal was suspended. The original suit was dismissed by Sir C. Goldsmid and Sir A. Williamson sitting together though I am ignorant of the

reason for him finally taking up the case. The point at issue rested on the interpretation of a Regulation in Council, the remainder has been of the Civil Service Procedure.—
The appeal was heard & Dr. Addison Bethune for Mr. Holloway & myself—and upon the Points for determination by us, it may fairly enough be argued that three Civil Law Judges appointed with Council would have settled the matter of the Regulations in that behalf as well as the whole Court was formed to determine it.—

It would clear some that the change of constitution now advocated by the Civil Service Reformers would be improved & its working rendered more efficient by the measure advocated by the Chancellor, & would be if with, & with, to select from the Bar two Gentlemen more completely qualified for the vacant Judgeships than the Solicitor & Mr. R. Harding of the Civil Service.

Both these Gentlemen have a high reputation as patient, pains taking, acute, sensible Judges. They have presided over important Courts and Leaders having both been called to the Bar in England, where they devoted their years of probation & assiduous study of the Law, & experience their study & the experience they had apparently some few years of judicial & professional work in their Country;— they have put before the Public some work in Law of that there by which they latest have been tested on the Bench of the High Courts in terms of commendation.

I observe from a late Official Publication that in 1863, the work on the Chancery Side stood thus:— arrears from 1862, cases 52. Instituted in 1863, 335. Total 387.
Of these 132 were determined in Judges chambers on settlement of issues;— 53 on final disposal;— 8 were struck by default;— 8 were withdrawn with an intention of bringing fresh suits;— 110 were withdrawn absolutely, leaving 76 suits pending on the 31 Dec 1863. Add to this quantum of work, an Equity Court to be held once a quarter & the four terms of the year.

27 Nov 63

Assuming however, that the strength of the High Court would be improved & its working rendered more efficient by the measure advocated by the Chancellor, it would be difficult, I think, to select from the Bar two Gentlemen more completely qualified for the vacant Judgeships than the Solicitor & Mr. R. Harding of the Civil Service.

Both these Gentlemen have a high reputation as patient, pains taking, acute, sensible Judges. They have presided over important Courts and Leaders having both been called to the Bar in England, where they devoted their years of probation & assiduous study of the Law, & experience their study & the experience they had apparently some few years of judicial & professional work in their Country;— they have put before the Public some work in Law of that there by which they latest have been tested on the Bench of the High Courts in terms of commendation.

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27 Nov 63

I would clear some that the change of constitution now advocated by the C. Exchequer [illegible] the Chief Justice of the Common Pleas & the Court being abolished, their offering a salary of £600 P. a month.—
Much of the miscellaneous work of the Civil Service might be done by the Civil Judges, if in the exercise of the powers of this Law has been given, to distribute the business of the Court, the C. Justice saw fit to call on these Judges to undertake it.
An arrangement of this kind was made about a year ago, and rules were framed [illegible] the date from which the Civil Judges were to commence their labors on the branch being fixed. I am not aware why effect has not been given to this arrangement. Hitherto however the C. Court have been because the C. Justice has not let the opening of the C. Judges for he had communicated with them on the subject and at one time they were in communication with the Duke who selected.

Speaker

Order – 4 Dec 1865. N°1722

Ordered that copies of the
foregoing letter and of the
minutes recited thereon be
sent to the Members of the Government
be forwarded to the Colonial
Secretary of State
Ordered also that the following
Extract be copied

Extract from Minutes of Executive Council
Dated 17th October 1865

Read Letter from Governor Sir
C. Darling dated 17th October
1865 No 289.

Ordered that a Copy of the
Minutes of Executive Council
dated 17th October 1865
be forwarded to the Governor
Sir C. Darling

Dated 4th December 1865.

Judicial Department

No. 1723

To
The Honorable Sir C. H. Scotland, Kt.
Chief Justice of the High Court
of Judicature.
Madras.

Honble Sir,

I am directed by His Excellency the Governor in Council to acknowledge the receipt of your letter of the 17th Instant, and to inform you that a copy of it will be forwarded to the Secretary of State by the next Bombay mail.

Fort St. Geo
4 Dec 1865

Judl. Letr. Engd. 5th Dec.
No. 17 of 1865.

Appeal to the Court
of India - Vide Letter
dated 6th Dec. 1865 No 878 Dated
Dec. 1865.

Judicial 1865 Departt
1772-23
No. 1723.

To the Chief Justice
& High Court

4th December 1865.

20

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