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MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 870-871. Press Mis. 61-63

Dated 12-7- 1860

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Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department, 12th July 1860.

No. 61. Read the following letter from C. F. CHAMIER, Esq., Registrar of the Sudder Court, to T. PYCROFT, Esq., Chief Secretary to Government, Fort Saint George, dated 2nd July 1860, No. 61.

With reference to the Proceedings of Government dated the 30th January last, No. 109, I am directed by the Judges of the Sudder Court to forward copies of the remarks recorded by Messrs. Frere and Beauchamp on the report of the Commissioners appointed to enquire into the evils existing in the present system of judicature, and the best means of remedying the same. The remarks of Mr. Strange are already before the Government, in his letter upon Judicial Reform.

Remarks by H. FRERE, Esq., Puisne Judge.

We may consider I think that the general question, whether the amalgamation or union of the Supreme and Sudder Courts is desirable or otherwise, has been already decided in favor of the proposed change, as observed by Mr. Sydney Smyth in paragraph 7 of his Minute; and that it remains only to consider the manner in which that union should be carried out, together with other reforms rendered necessary by the defects apparent in the present system, which are patent to all who have any practical experience of its operation.

I have no occasion to remark in detail upon the proposal of the Commissioners as respects the constitution of the High Court. Their plan appears to me the best which can be adopted at present. But in lieu of committing to the Chief Judge the office of arranging the business of the Court, and allotting it at his discretion to the several Puisne Judges, I would leave this duty to the Collective Court, in accordance with the present practice in the Sudder Court. I will proceed now to the consideration of other points which appear to me to require notice.

The Commissioners justly observe that one of the chief evils requiring a remedy is the want of legal knowledge among the Judges presiding over the Courts in the interior. With the view of supplying this defect, they propose to introduce professional Barristers from the English bar, and to declare them eligible for the bench in the interior, provided they have served for three years at the bar in India, and have passed a sufficient test in the Vernacular languages. Professional gentlemen, thus qualified, may, according to the plan of the Commissioners, be appointed to the Courts in the interior at the option of the Government for the time being, and concurrently with Members of the Civil Service to whom the selection is now confined.

I cannot but apprehend that this scheme would in practice be found liable to much objection and lead to considerable injustice. The Member of the bar of the High Court at the Presidency, placed under the immediate eye of the Government, possessed perhaps of Parliamentary influences in England, and in a position enabling him to press his own claims personally on the Government, would evidently, on a vacancy occurring in the Courts of the interior, possess many advantages over his competitor of the Civil Service, labouring in a remote locality, and, as would often be the case, personally unknown to the Government. It is no imputation on the character of the professional bar to suppose that the ordinary rules of human conduct would operate in such a case both as respects the candidates and the Government, and that the Barrister would often be selected in preference to the Civil Servant though the latter might in point of general fitness, be at least equally qualified for the office, such a system would I think create a class rivalry which is much to be deprecated.

On these grounds it appears to me that if Barrister Judges are to be admitted to the Courts in the interior, it would be better to confine the selection wholly to candidates of that description, and to exclude the Civil Service altogether. But here a much wider question presents itself, involving, if not the existence, at least the efficiency, of the Civil Service as at present constituted. The attention of the Home Government has of late years been earnestly directed to the improvement of this service. Elaborate rules have been framed for the examination and admission of candidates, and every inducement held out with the view of securing a fair proportion of the élite of the educated youth of England for Civil employment in India; still, notwithstanding these efforts, it is found that complete success in this respect has not yet been obtained,

and it is a general subject of complaint on the part of the acknowledged organs of public opinion in England that the advantages of the Indian service are not fully appreciated. What then would be the result were we now to take a retrogade step, and exclude from the list of prizes to which such Candidates aspire, so large a portion as is composed of the higher Judicial appointments in the interior?

I am therefore induced to prefer the scheme which has of late been so ably advocated by Mr. Howard at Bombay, and to think that the object in view will be best secured by retaining the present system as respects appointments to the Office of District Judges, insisting however, upon a competent knowledge of law on the part of candidates for Judicial employ, and providing at the same time the requisite facilities for obtaining such knowledge. This subject has been well and fully treated by Mr. Strange in paragraph 49 of his letter to the Madras Government on Judicial Reform, and in an article which appeared in the Friend of India of 17th May 1860. I would add that the Civilian candidate for Judicial office would derive much benefit from attending Law lectures at the Inns of Court while on furlough in England, and it would be desirable that the Government should in every way encourage him in thus employing that period of leisure.

As respects other points to which the Commissioners have adverted, I fully concur with them in attaching much importance to the repression of perjury, a crime which at present prevails to so lamentable an extent in our Courts, as also in the measures which they propose in order to effect this object. Their proposal that the notes of the Judge presiding at the trial of a cause should constitute the record in cases of appeal, is also in accordance with an opinion which I had long ago formed on this subject.

I would briefly add, however, that I am opposed to their views as respects any reconstruction or material alteration, at present, of the Code of Civil Procedure, and of the law of limitation. The Indian Legislature has, after much deliberation and perhaps necessary delay, only recently passed enactments on both these subjects. These new laws have, I am informed, been found generally to work well, and it seems to me desirable therefore that their operation should be watched for some further time before we determine upon any amendments which are found necessary. Much more should we pause before, as recommended by the Commissioners in the case of the Code of Civil Procedure, we substitute for either of these enactments any rules essentially differing from those now in force.

14*th June* 1860.

(Signed) H. FRERE,
Puisne Judge.

Remarks by G. T. BEAUCHAMP, Esq., Puisne Judge.

The announcement by the Secretary of State for India of his intention to bring in a Bill for the amalgamation of the Supreme and Sudder Courts, makes it useless now to consider the suggestions of the Commissioners so far as they respect the Constitution, Jurisdiction and Procedure of the amalgamated Court, and the status of the Practitioners before it, as these are points which in all probability have been legislated for; but a few brief remarks on the proposed constitution of the Subordinate Courts may not be out of place.

The suggestion of throwing upon the people themselves all litigation for personalty below 20 Rupees, even if feasible, cannot be adopted without causing great discontent. I do not however believe that it is possible to constitute a tribunal such as the Commissioners refer to, that shall have the confidence of the people; and am satisfied that to drive parties to seek redress from neighbours, drawn from their own avocations unwillingly, would have the same effect in India as the closing of the Country Courts against claims below 5 £, which, taking the relative value of money in the two Countries into consideration, is about equal to 20 Rupees, and referring them to a Jury similarly constituted, would have in England: and it certainly cannot be said that the Englishman is less competent to deal with his neighbours' interests, or has less of his neighbours' confidence, than the Hindoo.

Proceedings of the Madras Government, Judicial Department,
12th July 1860.

It seems then to me necessary that, in determining the number of Courts of first instance, this class of claimants must be considered, and that the 64 Courts of this grade proposed by the Commissioners is insufficient.

Unless a much larger sum than is now spent can be allotted to the Judicial Department, I think the Courts proposed by the Commissioners the best that can be devised. The salaries however of the Judges in the District Courts are, with reference to those paid in the Revenue and other Departments, too low, and there is too great a disproportion between the salaries of the 1st and 2nd Judges in the Zillah Courts of the first class.

I do not think that the establishment for the District Court is on a sufficiently liberal scale. With a poorly paid insufficient establishment much of the Judges' time must necessarily be occupied in supervising the commonest details, and I am satisfied that it will be good economy to give this Court a responsible Officer corresponding to the Register in the Zillah Court.

I am further of opinion that the time that the Commissioners require the Covenanted Candidate for the Bench to spend in the Zillah Court as Register would be better employed in studying in England, as recommended in the Court's letter to Government of the 21st May 1860. A Native Officer would suffice for the first as well as for the second class Zillah Court, and in fact would be more efficient than the European Register could on first entering the office be expected to be.

There can be no doubt that if the Mufassal Bench be opened to others than Covenanted Officers, the prospects of Civilians attached to the Judicial Bench will be so much more uncertain than in any other branches of the service that many who would otherwise readily do so, will hesitate to enter it. There can be no doubt also that the Civilian, gaining as he now does his position originally by competition, with the training recommended in the letter above referred to, will be at least as well qualified as the Barrister, and it may be questioned, whether there is less reason for subjecting the Judicial than other branches of the service, a footing in which is gained in the same manner, to after competition; for it cannot be pretended that there is greater difficulty in qualifying for the Bar than for other professions, and on the whole, I am disposed to deprecate any change in this respect: but if change be made, I see no reason why the Advocate in the High Court should not equally with the Barrister be eligible to the 1st seat in the 2nd class, and the 1st and 2nd seats in the 1st class Courts. I need not fear contradiction when I say that the Advocate is likely to be in professional knowledge the equal of the Barrister of 3 years' practice in the High Court, and in other qualifications for the Mufassal Bench his superior.

I quite agree with Mr. Frere in thinking that fresh legislation for procedure is to be deprecated. Act VIII of 1859 is working satisfactorily, and though I should wish to see some of its provisions, *e. g.* that which casts the framing of the issues upon the Court, &c., &c., modified, I should regret to see it at this early date superseded.

I would here remark that the expediency of allowing all details of pleading and procedure to be prescribed by the High Court seems to me very questionable. It is the general impression that the preponderance of the professional element in that Court is calculated to introduce into the practice of the Courts in India the technicalities and intricacies of the Law as practised in England; and if, as I consider, there are grounds for this impression, simplicity of procedure will be best secured by leaving as little as possible to the discretion of the High Court.

(Signed) G. T. BEAUCHAMP,
Puisne Judge.

(True Copies.)

(Signed) C. F. CHAMIER,
Registrar.

Proceedings of the Madras Government, Judicial Department,
12th July 1860.

No. 62. ORDER THEREON, 12th July 1860, No. 870.

Copies of the papers submitted with this letter, will be forwarded to the Government of India and to the Secretary of State.

(Signed) T. PYCROFT,
Chief Secretary.

No. 63. To the Secretary to the Government of India, dated Fort Saint George, 12th July 1860, No. 871.

I am directed to forward, for submission to the Government of India, copies of the remarks, recorded by Messrs. Frere and Beauchamp, Puisne Judges of the Sudder Adálat, on the Report of the Commissioners appointed to consider the defects of the present system of judicature in the Madras Presidency, and their remedies.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. F. Cartledge.

No. 870 — 12th July 1860 —

Copies of the papers submitted with this letter, will be forwarded to the Govt. of India & to the Secretary of State.

The Sudder Adalat: Supt. 10

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No. 871

To Secretary to the Govt. of India.

Sir-

I am directed to forward, for submission to the Govt. of India, copies of the remarks, recorded by Mess.rs Frere & Beauchamp Prinsep Judges of the Sudder Adalat, on the Report of the Commissioners appointed to consider the defects of the present system of Judicature in the Madras Presidency & their remedies.

I have &c.

Prov: 31st January 1860 Act 26 th

~~Judl. Lr. to Govt. 19th~~
Ex. 25 of 1860.
Resp. to No. 38 of 1860.
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