

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	1751	Press
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Dated	6-11-19	1886

53-54

Not to be folded or roughly handled

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Proceedings of the Madras Government, Judicial Department,
6th November 1866.

No. 53. Read the following Extract from the Proceedings of the Government of India in the Foreign (Judicial) Department ; dated Simla, the 26th September 1866, No. 237.

Read the following replies to the inquiries issued from the Foreign Office, on the 6th July last, as to the territorial distribution of jurisdiction between the High Courts at Fort William, Madras, Bombay, and in the North-Western Provinces, over Christian Subjects of Her Majesty, resident in Native States:—

Letter from the Agent, Governor Genl., in Central India, No. 9-209, dated 12th July.
 " " " " " " 11-227, " 27th "
 " " " " in Rajpootana, " 924-5J, " 16th "
 " " " " " " 1044-6J, " 7th Aug.
 " Government of the Punjab, No. 319-693, dated 16th July.
 " " " Bengal, " 3831, " 18th "
 Docket from the Home Department, " 3059, " 24th "
 Letter " Resident at Hyderabad, " 14, " 4th August.
 " " Government of Bombay, " 2480, " 6th "
 " " Commissioner of Mysore, " 2090-59, " 9th "

RESOLUTION.—The Governor General in Council observes that the opinion of the Madras Government, in respect of those territories which it is proposed to apportion to the action of the High Court at Madras, was inadvertently omitted to be asked for, when the general inquiry of the 6th July last was issued. This omission should now be rectified.

2. The Commissioner of Mysore concurs in the Home Department's proposal that Mysore should be allotted to the Madras High Court.

3. The Government of Bengal would transfer Nepal from its proposed attachment to the High Court of the North-Western Provinces, and range it under the High Court at Fort William. The Lieutenant Governor further recommends the appellation of Independent Tipperah being altered to that of Hill Tipperah, as the latter more correctly indicates the political position of the State. To both these recommendations the Governor General in Council agrees.

4. The Resident at Hyderabad very properly takes exception to the terms Hyderabad Ceded Districts, and Hyderabad Non-Ceded Districts, as denoting Berar and the Nizam's independent possessions respectively. The terms should be the "Assigned Districts of Hyderabad," and "Hyderabad excepting the Assigned Districts." The Resident also represents that, instead of assigning the former to the Bombay High Court, and the latter to the Madras High Court, it would, for the present at any rate, be more convenient if both were indifferently assigned to Bombay. His Excellency in Council accepts this recommendation.

If hereafter the development of Railway communication may render it advisable, the question of introducing partially the Madras High Court's jurisdiction can then be re-considered, and an alteration, if necessary, made in the arrangement now sanctioned.

5. The Lieutenant Governor of the Punjab suggests, that a similar declaration to that contemplated in regard to the several High Courts, might be published for the Chief Court of the Punjab, rendering Christian Subjects of Her Majesty

in States, politically related to the Punjab Government amenable to the Chief Court. On this point, His Excellency in Council remarks, that the measure suggested by the Lieutenant Governor is not necessary, because the Indian Legislature, by Act IV of 1866, has already made provision that European British Subjects shall be amenable to the law in the Punjab for offences committed in foreign territory.

6. The Governor General's Agent in Central India gives cogent reasons why some other line than that of the Parbatty and Chambul Rivers, should be selected for the separation of the Bombay High Court's jurisdiction, from the jurisdiction of the Court of the North-Western Provinces. He recommends that the action of the Bombay High Court should embrace all the Chiefships under the political superintendence of the several Agencies named

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in the margin, and that the action of the High Court in the North-Western Provinces should extend to the territories

under the Gwalior and Bundelcund Agencies respectively. Viewed practically, this demarcation has the assent of the Governor General in Council; but, inasmuch as the terms of the Act of Parliament appear to require a specific geographical boundary of some kind, it will not suffice to define the limits of native territory by reference to the limits of the several Agencies, and Colonel Meade's recommendations must, therefore, be cast into a different form. Colonel Meade will be requested to draw up a detailed list of the States and Chiefships, or portions of Chiefships, falling under the Bombay and North-Western Provinces High Courts respectively. And with reference to the circumstance that some Districts of Rajpootana are politically superintended by Officers of the Central India Agency, it will probably be desirable that he should communicate with the Governor General's Agent in Rajpootana on the subject.

7. Colonel Eden in Rajpootana has submitted an opinion that it would be more convenient to bring all the Native States in Rajpootana under the action of the High Court of the North-Western Provinces exclusively. His Excellency in Council, however, prefers to decide the question by reference to the comparative facilities of communication which the several States may have with Agra and Bombay respectively. Those which are nearer to Agra should come under the High Court of the North-Western Provinces, and those nearer to Bombay under the High Court of Bombay. In doubtful cases the allotment should be to the former Court, because the people of Rajpootana assimilate in every respect more to the inhabitants of the North-Western Provinces than to those of the Western Presidency. Colonel Eden will be desired to remodel his proposals in accordance with this decision, and with the principles laid down in the preceding paragraph.

8. The suggestion made in Colonel Eden's second letter that in certain States of Rajpootana, concurrent jurisdiction should be given to the High Courts of the North-Western Provinces and of Bombay, is inadmissible. The whole tenor of Section 3 of 28 Vic., cap. 15, suggests that each High Court is under its operation to obtain a separate jurisdiction.

9. The Government of Bombay is of opinion that Bahawulpore should fall under the High Court of Bombay. But seeing that our political relations with that

State are entirely conducted through the Government of the Punjab, the Governor General in Council thinks it will be more appropriately attached to the jurisdiction of the Chief Court of the Punjab. It has been above explained that no declaratory Notification is needed in respect of the Chief Court's action: Bahawulpore therefore may be altogether excluded from consideration on the present occasion.

10. The Bombay Government further remarks that the inclusion of any State in the second part of the proposed Notification, will have the effect of an authoritative announcement that such State is not a portion of the Queen's dominions, and that it is in alliance with Her Majesty. The Governor General in Council considers that no difficulty need arise out of the term "Native Princes and States in alliance with Her Majesty." It is a very old expression in the Acts of Parliament relating to India, and is obviously intended to include every form of Native government. But the question connected with the extent of the Queen's sovereignty is a more important one. There are certain Provinces the status of which—whether foreign territory or a part of British India—is doubtful. With a view to obviate any misconception on this head, it will be suggested to the Home Department that the marked distinction which the draft Notification draws between British Provinces and the dominions of allied States, should be omitted; that in the preamble there should be a mere reference to the section of the Statute authorizing the measure without any quotation of its language; and that the second part of the Notification should be worded as applicable to Christian subjects of Her Majesty "resident in the Native States and Chiefships below named." By this means the desired object of attaching the several Chiefships to the jurisdiction of a specific High Court would be attained, without reference to the political status of any of the territories enumerated.

11. It will further be suggested to the Home Department that the proviso shown at the end of the draft Notification, may be omitted as unnecessary.

12. The attention of all political Officers throughout India will be called to the nature of the measure in contemplation, so that upon the appearance of the Notification as finally approved, they may be prepared immediately to explain to any Chief who may fail to perceive its true object, that it has no international bearing, that it in no respect affects the authority or rights of Native States, and that it is solely designed to confer jurisdiction in the respective High Courts for the trial of Christian subjects of Her Majesty when brought to the bar for offences committed in foreign territory. In the case of Nepal the Resident will be instructed to anticipate any inquiries from the Durbar, by making a special representation to Maharajah Jung Bahadoor explanatory of the limited purport of the Notification.

No. 238.

Ordered that a copy of the above Resolution be forwarded to the Government of Madras for information and guidance, with reference to the communication from the Home Department, dated 30th June last.

No. 239.

Ordered also, that a copy be furnished to the Governments of Bombay, Bengal, the North-Western Provinces, and the Punjab; to the Governor General's Agents in Central India and Rajpootana; to the Residents at Hyderabad and in Nepal, and

*Proceedings of the Madras Government, Judicial Department,
6th November 1866.*

to the Political Agent in Mannipore, with a request that the various points in the Resolution which concern these Administrations severally may obtain early attention.

No. 240-41.

Copy also forwarded to the Home Department, and the Commissioner of Mysore, for information.

(True Extract.)

(Signed) W. MUIR,
Secy. to the Govt. of India.

No. 51. ORDER THEREON, 6th November 1866, No. 1751.

Ordered to be communicated to the Honorable the Judges of the High Court, for their information.

(True Extract.)

J. D. SIM,
Secretary to Government.

To the Honorable the Judges of the High Court.

Ed. T. Carledge.

No. 237.

Extract from the Proceedings of the Government of India in the Foreign [Judicial] Department,—Simla, under date the 26th September 1866.

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Admission of the opinion of the Madras Government in respect of those territories which it is proposed to apportion to the action of the High Court at Madras, was inadvertently omitted to be asked for when the general enquiry of the 6th July last was issued.

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Sept. 1866-1867

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No. 1451-6 Nov. 1866.

Ordered to be com-

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the judges of the High
Courts for their info-

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Indore Residency

24/7/11

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