

MADRAS RECORD OFFICE.

Government of Madras.

Jurisdiction DEPARTMENT.

G.O. Nos. <i>706</i>	Press <i>Mis.</i>
<i>25-</i> Dated <i>1-5-</i>	<i>191867</i>

W/4

Not to be folded or roughly handled

Sk.
15-10-30

Proceedings of the Madras Government, Judicial Department.

1st May 1867.

No. 23. Read the following letter from the Officiating Under Secretary to the Government of India, to the Secretary to the Government, Fort Saint George; dated Fort William, 10th April 1867, No. 75.

Foreign Department,
Judicial.

I am directed by the Governor General in Council to forward, herewith, copy of a circular letter, this day issued to Political Officers, on the subject of the execution of the decrees of British Courts in Foreign States.

2. His Excellency in Council will be glad to receive, and give due consideration to, any remarks which His Lordship in Council may favor the Government of India with, on the question.

CIRCULAR.

From the Secretary to the Government of India, to the Chief Commissioners of Oudh and British Burmah; to the Commissioners of Mysore and Coorg; to the Residents at Hyderabad and Nipal; to the Agents G. G., Central India and Rajpootana; and to the Political Agent, Munnipore;—dated Fort William, 10th April 1867, No. 74.

Foreign Department,
Judicial.

Letters from certain Political Officers

_____ have been laid before the Governor General in Council, objecting to the Resolution, No. 23, dated 31st January last, on the execution of the decrees of British Courts in Foreign States, and the subject having been under further consideration, I am now directed to communicate to you the following observations of His Excellency in Council on this important matter.

2. The principle on which the decrees of one country are recognized by the Courts of another country rests on the following broad consideration:—

"It is the province of every sovereignty to administer justice in all places within its own territory and under its own jurisdiction, to take cognizance of the controversies that arise within it. Other nations ought to respect this right; and as the administration of justice necessarily requires that every definitive sentence, regularly pronounced, be esteemed just and executed as such, when once a cause in which foreigners are interested has been decided in form, the sovereign of the defendants ought not to hear their complaints In consequence of this right of jurisdiction, a decision made by the Judge of the place, within the extent of his authority, ought to be respected, and to take effect, even in foreign countries."*

3. Execution must, of course, be sought under the judicial procedure of the country where the decree is desired to be enforced, and it is open to the Court in which application is made to question the judgment, and to admit evidence impeaching it, on the ground of want of jurisdiction, of imperfect notice, or of any patent fraud or false statement affecting the decree; but where there is no such impeachment, a decree, if founded upon regular judicial proceedings, should be recognized as conclusive by the Courts of all other countries.

4. The Governor General in Council thinks that there is no just reason why this equitable principle should not be recognized throughout India. The difficulty consists in the great variety of judicial practice prevailing in the Governments and Chiefships of the country, and the entire absence frequently of any regular Courts or system of legal procedure.

5. Wherever there are regular Courts, His Excellency the Viceroy and Governor General in Council would leave the decree-holder himself to apply for execution through them. But in many Indian States there are no regular Courts of civil justice, and no recognized distinction between the Government in its executive and in its judicial capacity. In such cases, all that can be done is to provide that the decree shall be brought to the notice of the Native Government, in order to its being recognized and put into execution, so far as the system in force under the administration will permit. This can best be done by the decree-holder submitting his application to the political representative of the British Government, who should transmit the application to

* See Story's Conflict of Laws, Chapter XV, Section 585.

*Proceedings of the Madras Government, Judicial Department,
1st May 1867.*

the Native Court, with the recommendation that the decree be recognized, and effect given to it in whatever way the system of administration will permit. The degree and the mode in which the application should be pressed must depend on considerations relating to the particular administration prevalent in the country, and to the merits of each case, on which points the political authority will be the best judge.

6. Lastly, on the question of reciprocity, His Excellency in Council quite admits that the practice should, as far as possible, be reciprocal. But here a difficulty arises. Under the British Government, as under all civilized Governments, the Civil Courts are separate from the Executive Government, and exercise their functions independently. The Government can act on them only through the Legislature. It might be reasonable to expect that the decree of a Court in a Native State, bearing on it the marks of having been passed after regular investigation and under the generally recognized principles of Judicial procedure, if presented for execution in a British Court, would be received and recognized in the manner explained at the beginning of this letter. At any rate, it has yet to be shown that our Courts would offer objection; and it will then be time enough to consider the point.

7. In respect of States possessed of no regular Courts and judicial system, it is evidently impossible for our Courts to take cognizance of informal requisitions, resting upon no legal guarantees. And if here we cannot offer reciprocity, it is only because, under the conditions of the case reciprocity is impossible. But the defect subsists simply in consequence of the backward condition of the Native Governments, and may, at any time, be cured by the establishment of regular Courts, guided by the judicial principles recognized by all civilized States; and this being the case, His Excellency in Council conceives that the complaint of want of reciprocity falls to the ground.

8. Such are the instructions which the Viceroy and Governor General in Council purposes to issue on this subject. But, before doing so, His Excellency in Council will be glad to consider any modifications which you may think proper to suggest.

No. 24. ORDER THEREON, 1st May 1867, No. 705.

The foregoing letter and its enclosure will be communicated to the Resident in Travancore and Cochin, and to the Political Agent, Poodocottah, with a request that they will furnish Government with an expression of their views on the question referred to.

2. Ordered, also, that the following letter be sent to the Honorable the Chief Justice of the High Court.

(Signed) A. J. ARBUTHNOT,
Chief Secretary.

No. 25. To the Honorable Sir C. H. SCOTLAND, Kt., Chief Justice of the High Court of Judicature, Madras; dated Fort Saint George, 1st May 1867, No. 706.

I am directed to forward copy of a letter,* and of its enclosure, from the Government of India, on the subject of the execution of the decrees of British Courts in Foreign States, and to request that

* No. 75, dated 10th April 1867.

you will be good enough to favor the Governor in Council with any remarks or suggestions which the Honorable the Judges of the High Court may have to make on the subject.

(Signed) A. J. ARBUTHNOT,
Chief Secretary.

Ed. J. H. Burns.

despatch

No. 706. Judicial Department

*The Honorable Sir Colley Harman Scotland Kt.
Chief Justice of the High Court of Judicature
Madras.*

Write Sir,

No. 75 dated 10 April 1867

I am directed to forward copy of a letter and of its enclosure from the Government of India on the subject of the execution of the decrees of British Courts in Foreign States, and to request that you will be good enough to favor the Governor in Council with any remarks or suggestions which the Honorable the Judges of the High Court may have to make on the subject.

*Fort St. George
1st May 1867*

From 19th to 24th 1859 at 1122/3

20/3/59

From 19th to 24th 1859 at 1122/3

Endeavour 1867-1871

1870-71

1871-72

1872-73

1873-74

1874-75

1875-76

1876-77

2