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TAMIL NADU ARCHIVES

GOVERNMENT OF TAMIL NADU

Judicial — DEPARTMENT

G.O. No. 508	Press.
B.P. No. 508	Mis.
Dated <i>24th</i> March 1868 <i>19</i> .	

Not to be folded or roughly handled

D.A.

508

*Proceedings of the Madras Government, Judicial Department,
24th March 1868.*

No. 245. Read the following letter from the Officiating Secretary to the Government of India, to the Chief Secretary to Government, Fort Saint George; dated Fort William, 29th February 1868, No. 70.

Foreign Department.

The correspondence regarding the cognizance in Secunderabad of suits above Rupees 1000, transmitted with your letter, No. 456, dated 18th March last, to the Secretary to Government in the Home Department, having been transferred to this Office, I am to remark that the recent action of the Resident in committing the trial of such suits to the Officer already exercising the functions of Judge of the Small Cause Court with an appeal to himself, has practically met the difficulty raised in these papers.

2. In connection with this question, I am desired to forward, for information, copy of Resolution, No. 66, dated 26th February 1868.

Extract from the Proceedings of the Government of India, in the Foreign Department (Judicial), dated Fort William, 26th February 1868, No. 66.

Read Docket from the Military Department enclosing the following papers:—

From the Secretary to the Government of Fort Saint George, dated 9th October 1867, No. 3891B.

From " " to " " 21st " " " 4078.

From the Advocate General, dated 16th December 1867.

OBSERVATIONS.—The Governor General in Council observes that in the Cantonment of Secunderabad, which is not British territory, but is, with the consent of His Highness the Nizam, managed by British Officers, Civil Suits of all amounts were formerly heard by Courts of Requests under Section 17, Act XI., 1841, under which, in all cases above Rupees 200, an appeal lay to what is now the Madras High Court.

2. By G. O., No. 179, dated 20th July 1864, Act XXII., 1864, was introduced, and a Court of Small Causes was established with jurisdiction up to Rupees 500.

3. By Act XI., 1865, the jurisdiction might be extended to Rupees 1000. This extended jurisdiction was not distinctly conferred by Government on the Small Cause Court of Secunderabad. But as a matter of fact, it appears from these papers that the Small Cause Court did and does take cognizance of suits up to Rupees 1000 in value, suits above that value remaining cognizable by Military (Monthly) Courts of Requests alone.

4. It appeared, however, both to the Resident and to the Military Authorities in Secunderabad advisable to abolish the jurisdiction of these Military Monthly Courts of Requests altogether. In the Small Cause Court Judge there was an Officer fitted by special training to try the suits which, under existing arrangements, were heard by Officers necessarily untrained in law; and though disappointed suitors possessed the remedy of an appeal to the High Court of Madras, yet it was felt exceedingly undesirable that the inhabitants of Secunderabad, the Nizam's undoubted subjects, should be encouraged to seek redress in Madras.

5. The cognizance of all suits, (excepting those for value below Rupees 400 against persons amenable to the English Mutiny Act, heard by Military Courts of Requests established under Section 99 of that Act,) was accordingly transferred to the trained Officer already in existence as Small Cause Court Judge. And the Governor General in Council is disposed to concur in the expediency of the change.

6. Doubts, however, have arisen whether the measure was not barred by the terms of Section 48, Act XI., 1865, which maintains the jurisdiction of Military Courts of Requests under Section 17, Act XI., 1841, in places beyond the British frontier, even though in such places a Court of Small Causes has been established.

*Proceedings of the Madras Government, Judicial Department,
24th March 1863.*

7. It appears, therefore, advisable that the papers in this case should be transferred to the Legislative Department, in order that, in amendment of the above Section of Act XI. of 1865, Section 17, Act XI. of 1841, might be repealed in all Cantonments, in which the Governor General in Council shall notify its non-operation.

8. The Government of India, with or without the consent of the Native States, according as the Cantonment was or was not situated on British soil, would then arrange for the trial of cases above the value cognizable by Small Cause Courts.

9. Even then there would be an undesirable multiplicity of Courts for the trial of Civil Suits, for besides the Courts to be established for the above-mentioned purpose there would be—

(1.) For the trial of suits up to Rupees 400 against persons amenable to the English Mutiny Act, the Military Courts of Requests established under Section 99 of that Act, which cannot be altered by the action of the Indian Legislature.

(2.) Small Cause Courts for persons just mentioned as respects demands between Rupees 400 and 1000, and for all other persons from the smallest sum up to Rupees 1000.

10. With the view of reducing to as small dimensions as possible the inconvenience to be apprehended from the above-mentioned multiplicity of Courts, it seems to the Governor General in Council desirable that the matter should be represented to the Secretary of State, in order that the War Department may be moved to exclude the jurisdiction of Military Courts of Requests established under Section 99 of the Mutiny Act in all stations in which, or in the towns near which, Small Cause Courts are or may be established.

ORDER.—Ordered, therefore, that copies of the above Resolution be forwarded to the Home Department (Legislative Branch,) and to the Military Department, for the purpose indicated in Sections 7 and 10, respectively.

(True Extract).

(Signed) R. TEMPLE,
Offy. Secy. to the Govt. of India.

No. 246. ORDER THEREON, 24th March 1863, No. 508.

Ordered that a copy of the foregoing letter, and of its enclosure, be furnished to the Military Department, and to Messrs. Arbuthnot & Co., in reference to their letter, dated the 17th November 1866.

(True Extract).

Chief Secretary.

To the Military Department.
To Messrs. Arbuthnot & Co., Madras.
To the Government Solicitor.

Ed. F. R. Eastman.

508/3

MILITARY DEPARTMENT.

No. 3891 B.

To

The Secretary to the Government of India, Military Department.

Sir,

I am directed to refer, for the early consideration and orders of the Right Honorable the Governor General in Council, the accompanying correspondence relative to the transfer, under the authority of the Resident at Hyderabad, of the jurisdiction of the monthly (Native) Courts of Requests held at Secunderabad, under Act XI of 1841, to the Local Cantonment Magistrate.

2. The Commander-in-Chief having so fully discussed the subject in the annexed copy of letter from the Adjutant General, it only remains for His Lordship in Council to add that, if such transfer of jurisdiction be really considered expedient, it can apparently only be legally affected under legislative enactment by the Supreme Government.

FORT SAINT GEORGE,
9th October 1867.

I have the honor to be,

Sir,
Your most obedient servant,

Major General,

Secretary to Government.

Ed. J. E. Cashart.

508
11

MILITARY DEPARTMENT.

PROCEEDINGS OF THE MADRAS GOVERNMENT.

Read the following papers:—

From the Adjutant General, Head Quarters, Ootacamund, 26th September 1867, No. 685; to the Secretary to Government, Military Department.

I have the honor, by order of the Commander-in-Chief, to forward for submission to Government, the correspondence*

* Letter from Officer Commanding Hyderabad Subsidiary Force, dated 6th August 1867, No. 113, with enclosures.
Do. 4th September 1867, No. 122, do.

noted in the margin, received from the Officer Commanding Hyderabad Subsidiary Force, relative to the transfer of

the jurisdiction of monthly (Native) Courts of Requests to the Cantonment Magistrate, under the operation of Act XXII of 1864.

2. These papers do not shew that any authority has been obtained from the

†Gazette of India Notification, No. 179 of 20th July 1864.

and
No. 266 of 14th November 1864.

Government of India, to make this transfer, or to cancel its Orders† extending Act 22 of 1864, to the Cantonment of

Secunderabad, and appointing an Officer to be Cantonment Magistrate and Judge of the Small Cause Court there, with a limited jurisdiction.

3. Until this authority is duly notified, it does not appear that either the Resident at Hyderabad or the Officer Commanding the Force, can legally set aside any of the Acts in force for trying and determining suits by the Small Cause Court at the Cantonment, and Courts of Requests, under Section 17 of Act XI of 1841.

4. Neither does it appear that the Resident is empowered to extend the jurisdiction of the Cantonment Magistrate in his capacity as such, or as Judge of the Small Cause Court.

5. The jurisdiction of that Court was limited by the Government of India, to suits not exceeding Rupees 1,000, and all suits beyond that amount are made cognizable by Military Courts of Requests, under Section 17, Act XI of 1841, specially exempted from the operation of Act XXII of 1864 for this purpose, by Section 48 of Act XI of 1865.

6. Suitors before such Military Courts of Requests have the right of appeal to the High Court of the nearest Presidency; but no mention whatever is made in the correspondence submitted, to what Court, or authority, any such appeal shall hereafter be, under this extended jurisdiction: and suitors may not feel disposed to waive this right.

7. A distinction is also drawn between "Courts of Requests" and "Military Courts of Requests" held in the Cantonment of Secunderabad: but all so held are Military Courts of Requests, whether convened under Section 99 of the Mutiny Act, or Section 17 of Act XI of 1841, and are composed of European Commissioned Officers.

8. It will be observed that on the 30th July last, the day after the issue of the Division Order that the jurisdiction of Courts of Requests for Natives would cease, the Officer Commanding addressed the Resident on the subject of the limited jurisdiction, Rupees 1,000, of the Court of Small Causes at Secunderabad under Act XXII of 1864, and the extended jurisdiction to any amount under Section 17 of Act XI of 1841, with right of appeal to the High Court, wishing to be informed if

he had power legally to extend the jurisdiction of the Small Cause Court without reference to the Government of India, as he considered reference was necessary, though he knew not how far being in Foreign Territory might affect the question.

9. He was informed in reply that the transfer of the suits from the Military Courts of Requests under Section 17 of Act 1841, was made to the Cantonment Magistrate, "not in his capacity of Small Cause Court Judge," "but in his capacity of Cantonment Magistrate." It is also urged that "Act XI of 1841, certainly empowers Military Courts to take up cases of the class, but does not necessitate their agency if we have any other agency which we prefer to exercise for the same purpose. By the authority for general management of such matters in Secunderabad, delegated to the Resident by his Highness' Government, it would seem to be decidedly in the Resident's power to vest the Cantonment Magistrate with what Civil powers may appear to be desirable."

10. With regard to the objection that either Act "XXII of 1864, or Act XI of 1865, has been interfered with, or that the powers of the Small Cause Court have been extended without sufficient authority, the answer simply would be, that the measure is one beside these Acts altogether. Their applicability to Foreign Territory is not now disputed: though it might well be doubted whether their operation can be extended to the Hyderabad Territory by any authority whatever, except His Highness' Government. But of course they can be prescribed for our guidance."

11. And in reply to any objection that might be raised as regards Act XI of 1841, the answer would be that we had a choice of jurisdiction before us, and chose the one which we concurred in considering would be best. It also follows from the change, that appeals from the "decisions now passed in these cases will be not to the Madras High Court but to the Resident."

12. His Excellency, under the circumstances above detailed, would draw attention to Act XXII of 1864, Sections 39-42-44, the first providing that the Act may be extended by order of the Governor General in Council to any place in India, but places the same power may direct by what authority appeals from the sentences and orders passed in Criminal cases by the Cantonment Magistrate shall be heard and determined. The third, that in such places when a Small Cause Court is established the same power shall declare what authority is to exercise the powers vested in the Sudder Court—now High Court—under Act XI of 1865. These Sections clearly establish that the Act was intended to have legal effect in Secunderabad where British Troops are cantoned, although situated in Foreign Territory.

13. Also to Act XI of 1865, Section 48, specially saving the jurisdiction of Military Courts of Requests held under Section 17 of Act XI of 1841, in places beyond the frontier of British India. Over actions for debt and other personal actions for any amount of demand against persons made amenable to it. From the provisions of Act XXII of 1864, Sections 6, 7 and 8. The classes so affected being all persons amenable to the Articles of War for the Native Forces, or those residing in any Cantonment and carrying on any trade or business in a Military Bazar: of which latter the greater portion of the inhabitants of the Secunderabad Bazar consist:—or in other words, establishing a Court to take cognizance of all suits exceeding Rupees 1,000,—the limited extent of the jurisdiction of the Cantonment Court of Small Causes,—occurring amongst the classes above specified.

14. It further appears from the correspondence, that on the 1st August last, the Cantonment Magistrate, with reference to the Orders mentioned, called on the Assistant Adjutant General of the Force to deliver over to him all the records of former Courts of Requests, any balance of money, and the accounts connected with them, and which was complied with from January 1860 to July 1867, inclusive.

15. No authority is stated to have been obtained for this delivery—Act XI of 1841, requires that the record of the Proceedings in every case shall be kept, and the General Regulations of the Army appoint the Station Staff Officer to take custody of such records: but he is not empowered, nor the Commanding Officer, to deliver them up of their own accord.

16. Under these circumstances, I am directed to solicit the orders of Government, and to state that the Officer Commanding Hyderabad Subsidiary Force has been informed that he had no authority to issue such an Order as that dated 29th July last, or to alter any of the Rules and Regulations in force for the Cantonment of Secunderabad. That any changes proposed with his explanation and suggestions must be submitted to the Commander-in-Chief for decision and orders of Government.

From the Officer Commanding Hyderabad Subsidiary Force, Head Quarters, Secunderabad, 6th August 1867, No. 113; to the Adjutant General, Head Quarters, Ootacamund.

I have the honor, with reference to your letter of the 23rd March 1865, number and subject

Directs that copies of all correspondence of whatever kind connected with the operation of Act XXII of 1864, should be transmitted to the Adjutant General, Ootacamund. as per margin, to forward herewith, copy of a correspondence arising out of a communication received by me from the Resident at Hyderabad, having for its object the transfer of the jurisdiction of monthly (Native) Courts of Requests to the Cantonment Magistrate, under the operation of Act XXII of 1864.

2. I fully concur in the views of the Resident on this subject, and hope that the measure may meet with the approval of His Excellency the Commander-in-Chief and Government.

From the Resident at Hyderabad, 3rd July 1867, No. 1496; to the Officer Commanding Hyderabad Subsidiary Force, Secunderabad.

I find on examination of the Judicial Records, that the average monthly value of the suits decided during the past year by the monthly Courts of Requests exceeded 13,000 Rupees; and I would solicit the expression of your opinion regarding the practical working of that Court, the general character of its decisions, and the advisability of transferring this, very considerable, jurisdiction to the hands of some other Court, more specially trained to judicial work, and more regularly constituted; especially as the business appears to be of a purely civil character, for the most part connected with the disputes of natives among themselves with which it ought hardly to be necessary to trouble the Military Authorities.

From the Officer Commanding Hyderabad Subsidiary Force, Head Quarters, Secunderabad, 8th July 1867, No. 43; to the British Resident, Hyderabad.

I beg to acknowledge the receipt of your letter, No. 1496 of the 3rd instant, soliciting the expression of my opinion regarding the working of the Military Courts of Requests for the trial of civil suits at this station.

2. I have been long of opinion that it would be advisable to transfer to some other Court, the duties at present devolving upon the monthly Court, from the fact of the business being of a purely civil nature and confined solely to natives.

3. Although the working of the Court and the general character of its decisions have, as far as I am aware, given satisfaction, yet, I hold that the duty is unfairly imposed on the Military Officers of this Force, and I agree with you in thinking that it should be deputed to those more specially trained to judicial work.

From the Resident at Hyderabad, 17th July 1867, No. 1006; to the Officer Commanding Hyderabad Subsidiary Force, Secunderabad.

In reply to your letter No. 43 of the 8th instant, I have the honor to state that I entirely concur with your opinion respecting the advisability of transferring the jurisdiction of the present monthly Military Court to the charge of an officer in more directly civil employ.

2. Although the value of the suits so tried is very considerable, yet their number, as it appears from the statistics with which I have been favored by the Assistant Adjutant General, is not excessive.

3. I would therefore propose, if you should concur, to request the Cantonment Magistrate to notify, through the bazzars, that from the 1st proximo such suits will be entertained and decided in his Court and subjected to the legal stamp duty.

4. Though Act XXII of 1864, has of course no legal operation in His Highness the Nizam's dominions, it will be seen that this measure is only in strict analogy with that prescribed in Section XIII of that Act; and it would seem therefore that there is no necessity for any further reference on the subject: and that your concurrence with me would be sufficient.

EXTRACT from Division Orders by Brigadier General J. T. GRANT, C. B., Commanding Hyderabad Subsidiary Force, dated Head Quarters, Secunderabad, 29th July 1867.

The Resident at Hyderabad having extended the jurisdiction of the Cantonment Magistrate to all suits hitherto triable by monthly (Native) Courts of Requests it is hereby notified for general information, that the jurisdiction of such Courts, in this Cantonment, will cease, and that from and after the 1st proximo, no claims will be registered or filed in the Assistant Adjutant General's office; and that all plaints already filed for trial next month have been transferred to the Cantonment Magistrate.

(By order,)

(Signed) A. SAUNDERS, Captain,

Ag. Asst. Adj. Genl. Hyderabad Subsidiary Force
No. 567.

MEMORANDUM.

Referred for the observations of the Judge Advocate General. (To be returned.)

(By order,)

ADJT. GENL.'S OFFICE, HEAD QRS.,
OOTACAMUND, 14th August 1867.

(Signed) J. M. PRIMROSE, Colonel,
Adjutant General.

From the Officer Commanding Hyderabad Subsidiary Force, Head Quarters, Secunderabad, 4th September 1867, No. 122; to the Adjutant General, Head Quarters, Ootacamund.

No. 566.

With reference to previous correspondence, calls for a return of the number of suits before Courts of Requests, under Act XI of 1841, tried since the Court of Small Cause came into operation; specifying the amount of each.

I have the honor to acknowledge the receipt of your letter, dated 23rd August 1867, number and subject as per margin, and to forward the returns therein called for, with copies of additional correspondence, official and demi-official, connected therewith.

5
RETURN of the number of suits before Courts of Requests under Section 17 of Act XI of 1841, tried since the Court of Small Causes under Section XXII of 1864, came into operation, the amount of each being duly specified.

Number of suits.	Month and year.	Value of suits.	
		RS.	A. P.
1	June 1865	3,100	0 0
2	"	3,610	0 0
3	"	5,340	0 0
1	July 1865	71,100	0 0
2	"	2,311	0 0
3	"	6,259	0 0
4	"	5,660	0 0
1	August 1865	14,101	0 0
2	"	1,815	0 0
1	September 1865	58,657	0 0
2	"	1,760	0 0
3	"	23,531	0 0
4	"	62,526	0 0
5	"	1,337	0 0
1	October 1865	16,725	0 0
2	"	30,000	0 0
3	"	2,389	0 0
4	"	1,650	0 0
1	November 1865	9,826	0 0
2	"	1,897	0 0
3	"	5,642	0 0
1	December 1865	1,651	0 0
2	January 1866	1,257	0 0
3	February 1866	71,000	0 0
1	March 1866	2,598	0 0
2	"	1,570	0 0
1	April 1866	1,480	0 0
2	May 1866	1,650	0 0
3	June 1866	1,651	0 0
4	July 1866	1,259	0 0
5	August 1866	1,549	0 0
6	"	1,439	0 0
1	September 1866	5,000	0 0
2	"	1,204	0 0
3	"	16,000	0 0
4	"	3,410	0 0
5	"	1,600	0 0
6	"	2,419	0 0
1	November 1866	5,484	0 0

Return of the number of suits before Courts of Requests, &c.—(Continued.)

Number of suits.	Month and year.					Value of suits.		
						RS.	A.	P.
1	December 1866					8,229	0	0
2	"					22,007	0	0
1	January 1867					3,100	0	0
2	"					2,578	0	0
3	"					5,151	0	0
4	"					8,054	0	0
5	"					50,800	0	0
6	"					10,562	0	0
7	"					8,224	0	0
8	"					1,483	0	0
	February 1867							
	March 1867							
1	April 1867					3,008	0	0
1	May 1867					33,205	0	0
1	June 1867					1,540	0	0
	"							
	Total...					6,09,831	0	0

(Signed) A. SAUNDERS Captain,
Ag. Asst. Adj. Genl., H. S. Force

No. 707.

MEMORANDUM.

Forwarded for report, with reference to previous correspondence on the subject, herewith sent.
(To be returned.)

(By order,)

(Signed) J. M. PRIMROSE, Colonel,
Adjutant General.

13th September 1867.

To the Judge Advocate General.

From the First Assistant Resident, Hyderabad, 8th July 1867, No. 1544; to the Assistant Adjutant General, Hyderabad Subsidiary Force.

Requests that a return of the Judicial work performed at Secunderabad by Courts of Requests, and Military Courts of Requests during the year 1866, may be forwarded as early as practicable to this office for embodiment in the Resident's administration report.

No. 123.

MEMORANDUM.

Return of suits adjudicated by Courts of Requests at Secunderabad, during the year 1866.

The undersigned has the honor, by order, to enclose herewith the returns noted in the margin, as requested in docket No. 1544 of 1867, dated 8th instant.

Secunderabad, }
10th July 1867.

(Signed) A. SAUNDERS, Captain,
Ag. Asst. Adjutant Genl., H. S. Force.

To the 1st Assistant Resident, Hyderabad.

Return showing the number and value of suits adjudicated by a Military Court of Requests held at Secunderabad, under clause 99 of the Mutiny Act, during the year 1866.

No. of suits.	Month and year.					Value of suits.		
						RS.	A.	P.
4	January 1866					562	0	0
4	February					439	0	0
4	March					333	0	0
6	April					544	0	0
4	May 1867					446	0	0
5	June					999	0	0
5	July					604	0	0
21	August 1867					2,800	0	0
9	September 1866					910	0	0
6	October					617	0	0
5	November					65	0	0
7	December					1,136	0	0
	Total...					10,035	0	0

Secunderabad, }
10th July 1867. } (Signed) A. SAUNDERS, Captain,
Ag. Asst. Adjutant General, H. S. Force.

Return showing the number and value of suits adjudicated by the monthly Court of Requests held at Secunderabad under Act XI of 1841, during the year 1866.

No. of suits.	Month and year.					Value of suits.		
						RS.	A.	P.
0	January 1866					2,903	0	0
2	February					73,508	0	0
2	March					4,570	0	0
1	April							
0	May							
0	June							
1	July					1,480	0	0
2	August					3,301	0	0
3	September					4,229	0	0
6	October					29,633	0	0
1	November					5,431	0	0
2	December					30,896	0	0
	Total...					1,53,799	0	0

From Lieutenant Colonel R. G. JONES, Judge, Court of Small Causes, Secunderabad, 27th July 1867, No. 1291; to General GRANT C. B., Commanding Hyderabad Subsidiary Force.

Having been informed by the Resident that in communication with you he has extended my jurisdiction to all the suits which, till now, have remained triable by monthly (Native) Courts of Requests, I have the honor to request you will direct the Adjutant General, Hyderabad Subsidiary Force, no longer to receive or file any plaints as hitherto for submission to such Courts, but to refer all parties so applying to my Court.

The Resident's letter dated 10th July 1867, states the jurisdiction of the said Courts of Requests will cease from the 1st proximo, all plaints filed for trial next month should be transferred to this Government.

SECUNDERABAD,)
29th July 1867)

(Signed) A. SAUNDERS, Captain,
Adj. Asst. Adj. Genl., U. S. Force.

To the Cantonment Magistrate, Hyderabad I S. Military Force, Secunderabad.

Division Orders by Brigadier General J. T. Guler, c. n., Commanding Hyderabad Subsidiary Force, dated Head Quarters, Secunderabad, 29th July 1967.

The Resident at Hyderabad having extended the jurisdiction of the Cantonment Magistrate to all suits hitherto triable by monthly (Native) Courts of Requests: it is hereby notified for general information, that the Jurisdiction of such Courts, in this Cantonment, will cease, and that from and after the 1st proximo, no claims will be registered or filed in the Assistant Adjutant General's Office: and that all plaints already filed for trial next month have been transferred to the Cantonment Magistrate.

(By order.)

(Signed) A. SAUNDERS, Captain,
Adj. Asst. Adjt. Genl., H. S. Force.

MY DEAR SIR RICHARD,

I have had a conversation with Colonel Mardall, the Judge Advocate General, respecting the transfer to the Small Cause Court of suits hitherto tried by the Military Court of Requests, and which has been ordered to take effect from the 1st proximo.

It appears to Marshall that we have overlooked the provisions of Clause 7 Act XI of 1865, which clearly limits the extent of jurisdiction of Small Cause Court to Rupees 1,000, whereas the Military Court of Requests, under the same Act, has the power to entertain suits to any amount, and, moreover admits of an appeal to the High Court of the Presidency, whereas the decision of the Judge of the Small Cause Court is final. Much as I wish to relieve the Military from this duty, if it can be done legally, the question is, Have you the power thus to extend the jurisdiction of the Small Cause Court without reference to the Supreme Government. Having looked well at the Act, I am of opinion that reference will be necessary. Of course I do not know how far our being in a Foreign Territory will affect the question, but you will be able to decide this point.

SECUNDERABAD, 30th July 1867.

Believe me, &c. &c.

(Signed) J. T. GRANT.

MY DEAR GENERAL.

Sir Richard spoke to me about answering your note of yesterday's date, relating to the transfer of civil suits from the monthly Military Courts to the jurisdiction of the Cantonment Joint Magistrate. He is on a visit to the minister at Seranggur: and as it is just the end of the month and I know there is no time to spare, I venture to send you the draft of what I know he intended to send to you himself.

Colonel Jones raised a somewhat similar objection to the change, and it was pointed out to him in official reply, that it was not in his capacity of Small Cause Court Judge, that the trial of these cases had been made over to him, but in his capacity of Cantonment Magistrate.

Act XI of 1841, certainly *empowers* Military Courts to take up cases of the class, but it does not *necessitate* their agency, if we have any other agency which we prefer to exercise for the same purpose. By the authority, for general management of such matters in Secunderabad delegated to the Resident by His Highness' Government it would seem to be decidedly in the Resident's power to vest the Cantonment Magistrate with what civil powers may appear to be desirable.

The undersigned has the honor, by order, with reference to the accompanying Division Order, dated 26th July 1867, to transfer the two plaints noted in the margin* to the Continent Magistrate as therein directed.

In reply therefore to the objection, that either Act XXII of 1864, or Act XI of 1841, has been interfered with, or that the powers of the Small Cause Court have been extended without sufficient authority, the answer simply would be, that the measure is one beside these Acts altogether. Their applicability to Foreign Territory is not now disputed: though it might well be doubted whether their operation can be so extended to Hyderabad Territory by any authority whatever, except His Highness' Government.

But of course they can be prescribed for *our* guidance.

And in reply to any objection that might be raised as regards Act XI of 1841, the answer would be that we had a choice of jurisdiction before us and chose the one which we concurred in considering would be most capable of doing justice to the cases.

It also follows from the change that appeals from the decision now passed in these cases will be not to the Madras High Court, but to the Resident.

I hope I have put Sir Richard's view clearly, I dare say he will supplement this with some thing of his own, but remembering that the Courts are convened at the beginning of the month, I think it better to send this off to you at once.

Sincerely yours,

(Signed) J. G. CORDERY,

30th July 1867.

From the Cantonment Magistrate, Secunderabad, 31st July 1867, General No. 1213; to the Assistant Adjutant General, Hyderabad Subsidiary Force.

Returns the demi official from the 1st Assistant Resident to the General Commanding, on the subject of the transfer of jurisdiction in certain cases to the Cantonment Magistrate.

An official communication therein alluded to, and much to the same effect, was received by the Contonment Magistrate this morning. It had probably been delayed inadvertently.

From the Cantonment Magistrate, Secunderabad, 1st August 1867, General No. 1222; to the Assistant Adjutant General, Hyderabad Subsidiary Force:

Requests that all the records of the old Courts may be sent to this Court.

And also the balance of money received for copies with any accounts connected with this fund. The last monthly account would suffice.

No. 144.

MEMORANDUM.

The undersigned, as the honor, by order, to forward the records of monthly Courts of Requests, (Native) from January 1860 to July 1867, inclusive, as requested in docket No 1222 of 1st instant, and also the sum of 4 Company's Annas registering fee received for case No. 1 filed in this office, and transferred to the Cantonment Magistrate's Office on the 29th ultimo.

SFOUNT LRAVAD,
6th August 1857.

(Signed) A. SAUNDERS, Captain,
Adj. A. A. Genl., H. S. F.

To the Cantonment Magistrate, Hyderabad Subsidiary Force, Secunderabad.

From the Cantonment Magistrate, Secunderabad, 7th August 1867, General No. 1269; to the Assistant Adjutant General, Hyderabad Subsidiary Force.

Acknowledges the receipt of Government Annas (4) four, together with the records forwarded with despatch No. 144 of the 6th instant, and its enclosures.

From the Cantonment Magistrate, Secunderabad, 9th August 1867, No. 1276; to the Assistant Adjutant General, Hyderabad Subsidiary Force.

With reference to the late transfer of the trials of Native Courts of Requests, I have the honor to request information on the following points.

1. What fees were charged in your office on the registration of plaints for submission to the Native Courts of Requests.
2. What was charged for copies of Decrees.
3. At what rate copies of Proceedings were furnished.
4. And if any copyists were specially employed, and if so, how many.

From the Acting Assistant Adjutant General, Hyderabad Subsidiary Force, Secunderabad, 9th August 1867, No. 147; to the Cantonment Magistrate, Hyderabad Subsidiary Force, Secunderabad.

In reply to your letter, No. 1276 of this day's date, I have the honor to inform you, that a fee of 4 Company's Annas was charged for each plaint registered in this Office, and the same for extracts of awards as authorized in Division Order of the 21st February 1866—an extract of which is enclosed.

The fee charged for copy of Proceedings was (1) one Anna for 50 words, as sanctioned in paragraph 20, page 475, General Regulations.

Formerly a copyist was specially employed for the work but not since the opening of the Court of Small Causes.

ORDER, No. 3891A, 9th October 1867.

Ordered that the correspondence submitted with the foregoing letter, be referred for the consideration and orders of the Government of India.

2. The Government observe that the Assistant Adjutant General at Secunderabad ought not to have given up the records of the Courts of Requests on the requisition of the Cantonment Magistrate, without previous sanction from Army Head Quarters; and His Lordship in Council considers that the Officer Commanding Hyderabad Subsidiary Force, should be restrained by the Commander-in-Chief from acting on any suggestions involving changes in the law or regulations of the service, without receiving the previous authority of His Excellency.

(True Copies.)

Major General,

Secretary to Government.

Ed. J. E. Cashart.

MILITARY DEPARTMENT.

No. 4078.

To

The Secretary to the Government of India, Military Department.

Sir,

With advertence to my letter No. 3891B, dated 9th October 1867, forwarding for the orders of the Government of India, correspondence relating to certain changes recently made in the Civil jurisdictions at Secunderabad, I am directed to transmit herewith, for the consideration of the Right Honorable the Governor

No. 2571, 6th October 1867.

„ 2622, 10th „ „

General in Council, in connection with that reference, copies of the annexed communications on the subject from the Resident at Hyderabad.

2. It appears to the Governor in Council that Sir R. Temple has overlooked an important objection to the transfer of the jurisdiction of Native Courts of Requests which he advocates, viz., the deprivation of the right of appeal to the nearest British High Court which litigants possess under Act XI of 1841 in suits for claims above Rupees 200-0-0, a privilege believed to be highly valued by the Native community at Secunderabad, and offering a powerful inducement to tradesmen to resort to and settle within the Military limits of that station.

Four Sheets Given,
21st October 1867.

I have the honor to be.

Sir,

Your most obedient servant,

Major General,

Secretary to Government.

Ed. J. E. Cashart.

MILITARY DEPARTMENT.

PROCEEDINGS OF THE MADRAS GOVERNMENT.

Read the following papers:—

From the First Asst. Resident Hyderabad... Here enter 6th October 1867, No. 2571.

From do. do. do. " 10th " " No. 2622.

From the First Assistant Resident Hyderabad, 6th October 1867, No. 2571; to the Secretary to Government, Military Department, Fort Saint George.

With reference to the accompanying copy of a letter* addressed to the Brigadier General Commanding the Hyderabad Subsidiary Force, and giving expression to the view taken by His Excellency

* No. 632, dated 26th September 1867.

the Commander-in-Chief of Madras, concerning certain changes recently made in the Civil jurisdictions of Secunderabad, I have the honor, under instructions from the Resident, to whom that letter has been forwarded for perusal, to lay before you, for the consideration of the Government of Madras, the motives and reasons that actuated him in directing, with the concurrence of the local Military Authorities, the change alluded to.

2. Originally, and when Secunderabad consisted mainly or entirely of the camp followers, who naturally attached themselves to so large a Force, it was undoubtedly most desirable, that the disputes that might arise amongst those followers should be settled before a tribunal of officers. But Secunderabad is now a large town, believed to be as thickly populated as Hyderabad itself; the average monthly value of the suits tried by the monthly Courts, assembled under Act XI of 1811, amounted during the year 1866, to Rupees 13,300, or to Rupees 1,59,600 per annum. This litigation is entirely between native and native, or trader and trader, not between officer and trader. In the interests of trade and of the introduction of more strictly judicial procedure into so thriving a place, and waiving for a moment the question of legality, the Resident is confident that he will obtain the concurrence of the Madras Government in his opinion, that it was advisable to transfer a litigation, that had grown to such dimensions, to the jurisdiction of a trained officer, instead of continuing it to Courts which, though composed of officers anxious to effect justice, were called to a difficult task, for which they could have had no peculiar aptitude or previous training.

3. The Cantonment Civil Magistrate having been recently relieved of the more petty part of his judicial work by the appointment of an Assistant Judge, the Resident was enabled to effect this change without overburdening that officer—and, so far as concerns the result, the work has since been disposed of smoothly and without interruption.

4. As regards the legal aspect of the measure, the Resident would urge as a point, which appears to have been hardly dwelt upon with sufficient force by the Military Department in Madras, that no part of the town of Secunderabad or its environs has been ceded to us by the Government of His Highness the Nizam. With the exception of our own troops and their immediate camp followers, the whole of the large and increasing population of the place must be looked upon as the subjects of His Highness, not of the British Government. Whatever authority we exercise there, we exercise by delegation only, and not in our own right. We are not the owners of an inch of ground. But the Government has made over the management and superintendence of the inhabitants within certain limits adjoining the troops, to the Supreme Government, or to its representative at Hyderabad.

5. Under these circumstances, it was apparently within the competence of the Resident, when he had the option between more than one mode of disposing of the civil suits pertaining to this population, to choose that which, on grounds stated in preceding paragraphs, he deemed so far the preferable alternative. Although Act XI of 1841 provides *one* remedy for civil injuries, it by no means *necessitates* that mode of remedying them, nor does it preclude the adoption of any more regular system of civil procedure. When a Cantonment Magistrate appears to be fitted for the powers recently accorded to the Magistrate at Secunderabad, it is customary for local Governments to invest him with them, if they appear to be needed by local circumstances. I have already laid before you the reasons which induced the Resident in this instance to invest him with them, as it seemed to him also that Colonel Jones was in every way capable of their exercise.

6. On the other hand, it may be true, though it is hardly certain, that some litigant may *claim* the assembly of the monthly Court, which the investiture of the Cantonment Magistrate with civil powers has practically abolished. The Resident believes that he might leave the decision of such a question, if it ever arose, to the time at which it came. He is sanguine that the change will be a beneficial one, and that the Government of Madras will also recognize it as one likely to conduce, in a city of not less than 40,000 inhabitants and of large trade, to the administration of civil justice.

7. But if, in the view of the Government of Madras, any legal or legislative difficulties still appear to stand in the way of the change, I am to request of that Government to allow the present arrangement (the working of which appears to be practically excellent) to remain, as it is, until any obstructions that may be pointed out can be represented to the Supreme Government, and till they can be removed, should His Excellency the Governor General in Council concur in the view now taken, by legislative enactment. But the position of Secunderabad is, in several respects to which allusion has been made in this letter, so peculiar, that the Resident would express his doubts as to whether there exists any necessity for such legislative action at all.

From the Adjutant General, Head Quarters, Ootacamund, 26th September 1867, No. 682, to the Officer Commanding, Hyderabad Subsidiary Force.

With reference to your letter No. 122 of 4th instant, and previous correspondence, I have the honor, by order, to inform you that the Commander-in-Chief is not aware of any authority having been obtained from the Supreme Government to cancel its Order which extends to Secunderabad, Cantonment Act 22 of 1861, and His Excellency therefore considers that you have exceeded your authority in issuing your Division Order of 29th July last, and in fact that you have no power to alter any Rule or Regulation in force in the Cantonment of Secunderabad, without permission from higher authority.

2. In cases of this sort, I am desirous to point out that the proper course would be to submit, with any suggestions you may wish to offer, the circumstances for the decision and orders of the Commander-in-Chief.

3. In the present instance, the correspondence has been submitted to Government for instructions.

From the First Assistant Resident Hyderabad, 10th October 1867, No. 2622; to the Secretary to Government, Military Department, Fort Saint George.

In continuation of my letter No. 2571 of the 6th instant, relating to recent changes in the Civil jurisdictions of Secunderabad, I have the honor, by desire of No. 697, dated 20th September 1867. the Resident, to forward a copy of a further letter addressed by the Adjutant General, to the Brigadier General Commanding the Hyderabad Subsidiary Force,

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regarding another measure of a similar character, the transfer of such Courts of Inquests as may be held upon Natives, unconnected with the Military Troops or their followers, from Courts consisting of Military Officers to the Civil Department.

2. The Resident having so recently laid before the Government of Madras the considerations that led him to take these steps, believes that it will be only necessary for him, in the present instance, to point out that as in the very terms of the Order, it was confined in its operation only to the Native subjects of His Highness the Nizam, unconnected with the troops or their followers, the previous reference, which the Military Department censures the Brigadier General for having omitted to make, would have been on a subject, of which he doubts whether they would have had any cognizance, and that whatever responsibility attaches to the measure would seem to appertain to himself only.

From the Adjutant General, Head Quarters, Ootacamund, 28th September 1867, No. 697; to the Officer Commanding Hyderabad Subsidiary Force.

I have the honor, by order of the Commander-in-Chief, to acknowledge the receipt of your letter of 4th instant, No. 121, with enclosures, and to observe as follows.

2. Without entering into the merits of the question to which it refers, the Commander-in-Chief is concerned to find that this is the second instance, within a short time, of your having set aside the regulations of the service, instead of submitting any alterations or amendments you may consider advisable, for the consideration of the Commander-in-Chief and the sanction of Government.

3. The general regulations of this Army, authorized by the Governor in Council, Fort Saint George, on page 461, contain certain rules for convening Courts of Inquests at Secunderabad (all Stations beyond the frontier) and all persons there found dead under suspicious circumstances must be dealt with accordingly, until the authority of the Governor in Council is obtained to amend these regulations.

ORDER, No. 4077, 21st October 1867.

Ordered that the foregoing letters be forwarded for the consideration of the Government of India, in connection with the reference made in Proceedings of Government No. 3391A, dated 9th October 1867, and the following letters despatched:

To the Secretary to the Govt. of India, M. D. | Here enter 21st October 1867, No. 4078.

To the First Asst. Resident Hyderabad, | " 21st " " No. 4079.

(True Copies.)

Major General,

Secretary to Government.

Exd. J. E. Cashart.

86



[illegible]

3. On Dec 11, 1853, the person who was
be intimate to George. This information was
was not distinctly given in the letter.
Small house (and) the information was
as a matter of fact, it was given.

judges that the Small Cause Court did not
does take cognizance of suits up to Rs. 1000
in value, suits above that value remaining
cognizable by Military (Monthly) Courts of
Requests alone.

4. It appeared however both to the
Resident and to the Military Authorities in
Secunderabad advisable to abolish the juris-
diction of these Military Monthly Courts of
Requests altogether. In the Small Cause
Court judge there was an Officer fit for
Officer's training to try the suits which, under
existing arrangements, were heard by Officers
unfamiliar with law; and through
disappointed suitors seeking the remedy
of an appeal to the High Court of Madras.
Yet it was felt extremely undesirable that
the inhabitants of Secunderabad, the Nizam's
uncontested subjects should be encouraged
to seek redress in Madras.

5. The cognizance of all suits, (excepting
those for value below Rs. 400 against persons
amenable to the English Winding Act heard
by Military Courts of Requests established
under Section 99 of that Act) was accordingly
transferred to the trained Officer already in
existence as Small Cause Court Judge. And
the Governor General in Council is disposed to
concur in the expediency of the change.

6. Doubts however have arisen whether
the measure was not barred by the terms of

that it was
not legal.

There was no
objection to
the measure.

Section 48 Act XI, 1865, which maintains the
jurisdiction of Military Courts of Requests
under Section 17 Act XI, 1841, in places be-
yond the British frontier, even though in such
places a Court of Small Causes has been
established.

7. It appears therefore advisable that
the papers in this case should be transferred
to the Legislative Department in order that,
in amendment of the above Section of Act XI
of 1865, Section 17 Act XI of 1841 might be
repealed in all Provinces, in which the
Governor General in Council shall notify
its non-operation.

8. The Government of India with or
without the consent of the Native States,
according as the Controversy was or was
not situated on British soil, would then
arrange for the trial of cases above the
value cognizable by Small Cause Courts.

9. Even then there would be an
undesirable multiplicity of Courts for the
trial of Civil suits, for besides the Courts
to be established for the abovementioned
purpose there would be.

- (1) For the trial of suits up to Rs. 400 against
persons amenable to the English Winding Act,
the Military Courts of Requests established
under Section 99 of that Act, which cannot
be altered by the action of the Indian Legislature.
- (2) Small Cause Courts for suits just men-
tioned as respects demands between Rs. 400 and
1000, and for all other persons from the
smallest sum up to Rs. 1000.

It was pointed out

10 With the view of reducing to as small dimensions as possible the inconvenience to be apprehended from the aforementioned multiplicity of Courts it seems to the Governor-General in Council desirable that the matter should be referred to the Secretary of State in order that the War Department may be moved to exclude the jurisdiction of Military Courts of Requests established under Section 99 of the Mutiny Act in all Stations in which, or in the towns near which, Small Cause Courts are or may be established.

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Ordered therefore that copies of the
in Resolution No. 66, dated 26th February 1868.
Department (Legislative Branch) and to the
Military Department for the purpose indicated
in Sections 7 and 10 respectively:—

(True Extract)
(Sd) R. Temple
Offy Secy to the Govt of India.

(True Copy)
Martin
Offy Registrar, Foreign Dept.

503
1868
No. 70
From Sir Richard Temple, K.C.S.I.
Offy Secretary to the Govt of India,
To Honble R. S. Ellis, C.B.
Chief Secretary to the Govt. of
Port St George,
Port William the 29th February 1868.

Foreign Dept
Judicial

Sir, The correspondence regarding the cognizance in Secunderabad of suits above Rs. 1000 has been with your letter No. 456, dated 18th March 1868, to the Secretary to Government in the Home Department, having been transmitted to last year, I am to remark that the want of action of the President in committing the trial of such suits to the Officer already exercising the functions of Judge of the Small Cause Court with an appeal to himself, has practically not the difficulty raised in these papers.

In connection with this question, I am desired to forward for information Copy of Resolution No. 66, dated 26th February 1868.

Port William
The 29th Feb 1868

I have the honor to be

Sir
Your most Obedt Servant.

R. Temple
Offy Secretary to the Govt of India

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