

Judicial (1895) Department.

ORDINARY MS.

G.O., No. 225

DATED 2nd Feb. 1898.

INDEXED.

[Despatch Abstract.]

RETURN OF PERSONS BROUGHT TO TRIAL ON CAPITAL CHARGES

Communicating to the Honourable the Judges of the High Court letter from the Government of India forwarding copy of despatch (and enclosures) from the Secretary of State on the subject of a --, and requesting that the High Court may be moved to submit the required return in the form of Mr Caine's notice as proposed to be amended.

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INDIA OFFICE;
London, the 20th December 1894.

Judicial.
No. 53.

To His Excellency the Right Honourable the Governor General of India in Council.

MY LORD,

I ENCLOSE a copy of correspondence* which has taken place between Mr. Caine, M.P., and this office in regard to the subject of your Government's letter No. 30, dated 17th July 1894.

* To Mr. Caine, 3rd December 1894,
and enclosure.
From Mr. Caine, 5th December 1894.

2. I request that your Excellency in Council will take immediate steps to ensure my receiving as soon as possible a statement in the form of Mr. Caine's notice as proposed to be amended. The returns of the several High Courts should distinguish between European British subjects and others, but this will not be necessary in regard to the Courts of Session, as Sessions Judges cannot take cognizance of such charges as are now in question when made against European British subjects.

I have the honour to be,

MY LORD,

Your Lordship's most obedient, humble Servant,

HENRY H. FOWLER.

No. J. & P. 1376, dated India Office, London, the 3rd December 1894.

From—The Right Honourable Lord REAY, Under-Secretary of State for India,
To—W. S. CAINE, Esq., M.P.

You will remember that early in the year you gave notice of motion for an address for a return of persons brought to trial in India on charges of offences for which capital sentences might be inflicted. It was not possible to compile the desired information in this country, and, as it appeared to be doubtful whether all the particulars asked for would be readily available in India, Lord Kimberley directed that a copy of your motion should be sent to the Government of India, with a request that they would report how far they would be able to meet your wishes without imposing an unreasonable burden on the Courts and their establishments.

A reply has now been received to the effect "that in the larger provinces the chief judicial authorities are of opinion that the information asked for under heads 4, 5, and 6 of Mr. Caine's notice could only be furnished in a complete form by disproportionate labour, and at considerable expense. It would apparently be necessary to examine the record of each case tried during the ten years specified, and it is not certain that all the information would in any event be obtainable. As regards the other heads, it is generally reported that the particulars mentioned could be given without much difficulty; but in the North-Western Provinces a great part even of this information could not be supplied without undue labour and expense, and in Burma (as will be seen) little of it could be obtained at all." The Government of India further point out that several of the High Courts consulted consider that the proposed return might probably be found to be in some respects misleading. In particular it is not possible that information can be given as to nationality, beyond distinguishing between European British subjects, who are invariably tried by the High Courts on such charges as are now in question, and others, except so far as names may afford some indication of race and origin. It is well known that many Eurasians, and even Natives, bear European names, and instances are not unknown in which Europeans have assumed Indian appellations.

In these circumstances, Mr. Fowler desires me to say that he regrets he cannot undertake to furnish all the information which you desired, but that, if you can see your way to modifying the terms of your motion as shown below, he will have great pleasure in requiring the Government of India to submit a return before the meeting of Parliament, or as soon after it re-assembles as possible.

I am to say that Mr. Fowler cannot undertake that even the modified statement shall be complete in all respects and for all provinces, but it shall be made as complete as practicable.

Notice of Motion as proposed to be amended.

1. Mr. Caine.—East India (Persons brought to Trial).—Address for return of the number of persons (1) brought to trial in each province of British India in each year from 1883 to 1892, inclusive, for offences for which capital sentences might be inflicted, specifying those originally tried by the High Court in each Presidency town, and those originally tried by the Mofussil Sessions Courts; (2) the number of persons sentenced to death for each offence by the High Courts originally, and by the Sessions Courts, also the number of instances in which the capital sentences of the Sessions Judges were upheld, reversed, or commuted by the High Court as an appellate or confirming Court; (3) the number of persons who received other sentences than death, or were acquitted; and (4) the number of persons reprieved.

Dated 33, North Side, Clapham Common, S. W., the 5th December 1894.

From—W. S. CAINE, Esq., M.P.,

To—The Right Honourable Lord REAY, Under Secretary of State for India.

I have to acknowledge your letter No. J. & P. 1376. I shall be very glad to have even the greatly restricted information granted by the proposed notice of motion appended to your letter, and I will put it down for an early day when the session meets.

The main object of my original notice of motion is obvious. There can be no doubt (as the result mainly of the Balladun and Guntakal murder cases as notable examples) that a large and influential section of Indian society is deeply impressed with the belief that uneven justice is meted out as between Europeans and Natives of India. This is a very deplorable condition of public opinion, and I believe such a return as that originally proposed by me would have gone far to dissipate it.

If it be possible to include in the promised return figures distinguishing between European British subjects and others, it will add strength and value. I gather from your letter that this is possible.

If I am able to find suitable opportunity next session, I hope by a motion in favour of the separation of the judicial and executive functions, to call public attention to this matter generally. Your Lordship's attention has no doubt been drawn to the moderate and weighty remarks of Mr. Justice Banerji, in the judgment of the Calcutta High Court in the case of Dey Ishwari Prasad, of Patna, decided in October last, on the subject.

May I take this opportunity of thanking you for sending me from time to time the various Abkari reports of the different provinces of India.

No. ^{1 Jan} 95.

FROM

J. P. HEWETT, Esq., C.I.E.,

Offg. Secretary to the Government of India,

TO

*The Chief Secretary to the Govt.
of Madras*

Home Department.
Judicial.

Calcutta, the 23 January 1895.

SIR,

WITH reference to the correspondence ending with your letter No. 1156 (Judicial) dated the 16th May 1894.

I am directed to forward a copy of a Despatch* (and enclosures) from the Secretary of State on the subject of a return of persons brought to trial on capital charges, and to request that, with the permission of His Excellency the Governor in Council, the Honorable the Chief Justice and Judges of the High Court at Madras may be moved to submit, with as little delay as possible, the required return in the form of Mr. Caine's notice as proposed to be amended. The returns of the High Court at Madras should, as directed by the Secretary of State, distinguish between European British subjects and others.

2. With reference to item 4 of the proposed return, viz., the number of prisoners reprieved, I am to ask that the information supplied by the Courts upon this point may be verified by a search in the registers of the local Secretariat of the record of petitions from prisoners condemned to death who have moved the Local Government or the Governor General in Council for clemency.

I have the honour to be,

SIR,

Your most obedient Servant,

J. P. Hewett

Offg. Secretary to the Govt. of India.

7 s.c. 7 letters enclosed
7 s.c. 7 letters enclosed

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READ AGAIN G.O., No.
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CURRENT No.

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PAPERS NOT FILED UP, BEING MEANT FOR DESPATCH
IN ORIGINAL.

N.B.—

A = Copy in full.
B = Not to be copied
P = Copy abstract only.
Q = Copy heading only