

MADRAS RECORD OFFICE.

Government of Madras.

Political DEPARTMENT.

G.O. No. 357

Press
~~Mis~~

Dated 28-4-1918

Not to be folded or roughly handled

From Clement Dale Esquire Officiating Government Pleader
To Thomas Pycroft Esquire Chief Secretary to Government.

Madras 28th April 1857

Sir,

Para 1.

Ms 6 11th April 1857 No 289
Political Department.

I have the honor to acknowledge receipt of
the Extract from Minute of Consultation
noted in the Margin.

2.

In those Minutes my opinion is required
whether it be desirable at once to establish a District
Moonsiffs Court at Tanjore &c. Looking at the correspon-
dence which has passed I apprehend it is not the wish
of the Right Honorable the Governor in Council to have
my opinion as to the quality of Court which should be
established but that his Lordship in Council from the
Opinions offered by the Commissioner at Tanjore and
Civil Judge of Combaconum will determine that (if a
Court be there established) it shall be a District Moonsiffs
Court. I am not sufficiently acquainted with the require-
ments of the Locality to render any opinion of mine on
that part of the subject acceptable and having already
opinions of two gentlemen so eminently qualified to form
a just estimate on the subject I conclude his Lordship in
Council did not intend to call for my opinion.

3.

I beg however to offer for the Consideration of
the Right Honorable the Governor in Council as my opinion
that it is highly desirable to establish as soon as practicable
a Company Court at Tanjore or at any rate to declare the
Fort and the District which was exempted from the
Jurisdiction of the Honorable Company Courts to be hence-
forward within the Jurisdiction of the Courts at Comba-
conum I however think a Court at Tanjore would be the
most desirable.

4.

I observe by the Minute of Consultation of the
9th March 1857 it is stated that by Regulation VI, 1846
the

the Government are empowered to appoint any number of District Moonsiffs Courts of the several Zillahs of this Presidency, I think it right to state that I do not read Section 5 of that Regulation as giving such extensive powers as are stated in that Minute. I collect from the Regulation that it was prepared for the purpose of revising the rules theretofore enacted for constituting the office of Moonsiff and to extend their jurisdiction. Section 5 then provides "that the number of District Moonsiffs for each Zillah shall be fixed by Government and then proceeds the Judges of the several Zillahs shall on receipt of this Regulation prepare and submit a new Establishment of District Moonsiffs &c. In my opinion the Framers of that Regulation merely provided for the exigency then required; and did not contemplate further alteration, or additions; an omission, and a very material one no doubt; and that (with the exigency then under consideration in their minds) they prescribed terms for the jurisdiction of those Courts, which at the time were considered desirable; but which future experience proved inadequate, and further legislation became necessary, - whereupon Regulation II. 1828 was passed, empowering the Provincial Courts to modify the local jurisdiction, and the inconvenience of such limited powers having been felt, that Regulation provided it should be competent for the Courts to make such modifications from time to time.

5. I have considered it right to draw the attention of His Lordship in Council to the point, not because I consider it of any importance in this case, for as the Legislature is to be resorted to, the establishment of the new Court can be provided for in the proposed Act; but as a question to which the attention of the Legislature may be directed, should His Lordship in Council deem it worthy of such consideration.

6. Reverting, however to the subject more immediately under consideration, I beg to recommend that the present Judges of the late Rajah's Courts be forthwith suspended by Government. This would virtually abolish those Courts.

7. I also beg to state as my opinion that before the proposed new Court at Tanjore is established, it

is desirable that the authority of the Governor General in Council should be first obtained under Act VII of 1843 Section 53. for the extension of the limits of the jurisdiction of the Zillah Court of Combacorum to the Fort and Exempted District, because over those localities that Zillah Court has never as yet had jurisdiction, and the District Moonsiffs Courts being subordinate to the Zillah Court I apprehend the preliminary step must be to vest a local jurisdiction in the Zillah Court.

8. Upon that authority being granted I would recommend that His Lordship in Council should immediately under the provisions of Act VII of 1843 change the limits of the local jurisdiction of the Zillah Court of Combacorum by including in such limits the Fort of Tanjore and the Exempted District.

9. I believe it is competent ^{to the} Government to establish a new Court (independently of Regulation VI. 1816) and if His Lordship in Council deemed it desirable to exercise that power immediately without waiting till the proposed Act was passed, I apprehend no difficulty would ensue and the Act could confirm the establishment of such Court.

10. But if His Lordship in Council should deem it more desirable to await the passing of the proposed Act I would suggest that the local jurisdiction of a neighbouring District Moonsiff might be extended to include the Fort &c. as a temporary measure.

11. Such a course would only have reference to new Suits.

12. As regards the question of the legality or illegality of the proceedings taken in the Durbar Courts since the death of the late Rajah, I apprehend that no doubt can reasonably exist. I do not agree with the views taken by the Honorable Company's Solicitor that those Courts necessarily ceased with the Rajah's death and the extinction of the Raj. but I am of opinion that the power and functions of Judges appointed by the late Rajah ceased with his death, and that to have given legality to their proceedings, the Judges should have been reappointed on the Rajah's death by the then ruling Power. This opinion is strengthened by the

Evidence

evidence given by the former Dewan of the late Nabob in the Supreme Court during the last term: such was formerly the case with Judges of the British Crown whose Seats were held to be vacated by the Demise of the Crown, until the Accession of His late Majesty George the 3rd, when an Act was passed for the purpose of preventing such lapse.

13. I apprehend that the style or Title under which the Courts have been continued is perfectly immaterial.

14. The serious question for consideration however appears to me, to be is to decide what is to be done with regard to the decisions passed in those Courts since the Rajah's death.

15. I do not think it necessary to provide for any decisions passed immediately preceding the Rajah's death by the 2 lower Courts, in which no application may be made for execution of the Decree, because if the unsuccessful parties have not appealed from such decisions to the Higher Court, it may be fairly inferred that at the time they were satisfied with the decisions, and it cannot be supposed that the suitors were aware of any illegality or defect in the Constitution of the Courts, or in the appointment of the Judges, or of their proceedings; and I consider it undesirable to open litigation under such circumstances.

16. Similar observations would apply equally to ^{all original suits, passed since the Rajah's death, & where} ~~as also to appeals decided in the first Court of Appeal~~ ^{as also to appeals decided in the first Court of Appeal} and against which no 2nd Appeal has been preferred.

17. But as regards all cases decided in the Higher Court since the Rajah's death it appears to me that the unsuccessful Party ought in fairness to have an appeal under certain restrictions.

18. A difficulty may arise where such decisions have been executed either partially or entirely; on this point further information is requisite to enable me to frame a Section which would meet such cases. The Commissioner can readily furnish information how the cases which would come within the provision of Section

XVI are circumstanced in that respect.

19. With these preliminary observations I will proceed to refer to a Sketch of a Bill which I have prepared and send herewith for the consideration of His Lordship in Council.

20. In preparing this Sketch I have introduced all that has occurred to me as likely to be useful, should the Legislature consider any of the provisions unnecessary, they can be readily struck out.

21. The blanks for the names of the several Courts will require to be filled up.

22. In Para 5 of the Commissioner's Letter he states "at present there are but 2 Prisoners under sentence of imprisonment by the Criminal Court" - The Commissioner does not state when these 2 Prisoners were sentenced, whether before or since the Rajah's death - In Sections 6 & 8 & 9 of the Sketch of Bill I have made provisions for the removal of Prisoners. To these I solicit attention at the same time I would respectfully beg to suggest for the consideration of His Lordship in Council whether if those men were sentenced since the Rajah's death and their offences were not of a heinous character they might not be pardoned and released.

23. To the proviso in Section 8 I solicit His Lordship's attention. If a Prisoner has been once tried and sentenced it is contrary to the spirit of our laws that he should be tried again and it is in accordance with that feeling I have introduced that provision for consideration.

24. In Section 21 I have provided that the proceedings in the transferred suits shall not require to be engrossed on Stamped Paper. To this I would request attention - I had not ~~to~~ ^{when} imagined that in the Durbar Courts stamps were used but I observe in the 3rd Para of the Motion presented to the Durbar Court by Kristnagar Cusoe Pandit he refers to some new Rules having reference to stamps having been introduced into the Courts since the Rajah's death. Without further information I am unable to form any opinion as to the proper course to be pursued.

I have however framed Section 21 with the view
of bringing the subject in a tangible form for
consideration.

25. I have not made any provision for the Costs
of Suits transferred, it is so difficult to lay down any
General Rule without the risk of doing great injustice,
and in some instances the Costs in the Durbar Courts
may have been usefully occasioned, owing to the
present Judges having been permitted to exercise their
functions since the Rajah's death. If however it be
thought desirable a Section could be readily added
leaving it to the Judge by whom the Case may be
tried to exercise his Judgment on the subject of Costs.

26. I would suggest that this Sketch be forwarded
to the Commissioner at Tanjore with a request that
he would confer with the Civil Judge at Kumbakonam,
and on receipt of their Observations this Sketch
should be returned to me with the views of His
Lordship in Council when I would revise the Sketch.

27. I return all the papers received with
the Minute of Consultation.

I have the honor to be
Sir,

Your Most Obedient Servant

Wm. L. L.

Offs. Govt. Pleader

The present time - if the
 two points are established before
 the passing of the Act - must
 be decided on the points
 sanctioned by the King. I
 should wish to determine from
 the last Phader. Whether diffi-
 culties will not arise - respecting
 the rights which may have been
 secured in the Regal's Courts
 before the period of his death
 when the period of his death
 is the present time - if the
 two points are established before
 the passing of the Act - must

Copy to Eng. 11th Aug 5
 No 13 of 1859 Aug 23

Copy with orig. & Bill
 sent to the Commisfrs
 of Bangalore - 6th May 1859
 No 359.

Copy to
 1280th
 22 May
 1859

13/12/1859
 Political 1857 Department

from the Department of
 Government of Bangalore
 dated 28th 9
 Recd 29th April 1857

No 363.
 28/1/1859
 S. C. No 359

Submitting his opinion
 on the question as to whether
 it is desirable or not to
 attach a District Munsiff's
 Court at Bangalore - and for
 creating a total of a side
 for abolishing the District
 Courts at Bangalore & establish-
 ing a District Munsiff's
 Court.

1730
22 May

For instance - the having further
in my book built with by measures
of appointing immediately to the Court
of Enquiry the validity of the Royal
Court - since his decease - the act of
taking such questions - with not have
impact - & measure may be given directly
contrary to the views of Govt - & perhaps
of procedure adopted different from
those which Mr Dalrymple would
propose -
Much measure might have
been - & there would however be

an appearance of tardy haste in the
act of Govt - as if it had not been
that it was in error.

I do not think so - & am not prepared
to acknowledge it with a view to be corrected
by Govt in act - the ~~fact~~ that
Mr Dalrymple can make out of the point
is a light question about the matter
of form - in sanctioning the
views of the Court instead of the
the judges - as with which this Govt
it will take upon itself to profess
until it was approved of the policy

which would be adopted by the
authorities.
This fact is entirely ignored by the
lawyers.
I am disposed to postpone any further
proceedings until the Act is passed. The
law at Tanjore has already been shown
a vacation - which shall continue.
The subject shall be referred to the
Judges for immediate legislative action.
If however the Judge thinks that no difficulties
of the nature mentioned by me will arise.
There would be no objection to determining
Tanjore to be within the limits of the Combe
District - & transferring the District Court
at Tanjore.
H. L.

7
The Govt Pleader refers to the reference
made to him relative to the Tanjore
Court —

He considers it highly
in the best interests as
soon as practicable to
remove the Court at
Tanjore, or at any rate
decide the Fort and
the district to which it belongs
to be removed within
the jurisdiction of the Combe
District Court - but the
Court at Tanjore would
be the most desirable.

He recommends that the
Presume Judge of the Late Rajah's
Court be forthwith suspended
from duty - This would virtually
abolish the Court —

3 He advises that immediately

on authority of that effecting
passed by the Gov Gen in C
under S LIII Act VII. 1843
this Govt should change the
limits of the local jurisdic-
-tion of the Jilal Court of
Combarman by including
in such limits the Fort of
Tanjore and the exempted
District —

4 This authority has been
already passed at the M
Dah does not appear to be
swamped —

5 A question arises whether
Govt can establish a new
Dharmasik Court at Tanjore

6 The Govt Reader does not
think that Reg VI. 1816 S 5
confers that power generally.
It was intended only to

must be the a conjuncture —
Reg II. 1828 is intended to be
that Reg: only empowers the
Provincial Courts to modify
the local Jurisdiction wh
done at in order the creation
of new Courts — the reason
of the 'by Act VII. 1843 S 17
the functions vested in the
Pro. Courts by Reg VI. 1816
are transferred to the Sudder
Adawlat — the same is not
done as regards their func-
-tions under Reg II/28
The Dah however believes

+ under what Reg: that it is competent to this
he does not say — the Govt to establish a new
probably under the Court — of what class he
general prerogative. does not say but I presume
-tive. that it is the prerogative of
Reg VI. 1816 — and if it
be thought desirable to

Exercise that power immediately
- by without waiting till the
proposed Act was passed,

be apprehended as difficultly
would be true - and the
Act could confirm the est.
of such Court —

7 Be the local Jurisdiction
of a High Court of the Court
might be extended to it.
- that it took as a term.
- for any measure —

8 Orders that be seen pieces.
- say on the following points

1. Shall the limits of the
Jillak Court of Combr.
- court be extended
immediately so as
to embrace the Fort &c -

2. Shall a D. M. Court
be at once estab.
- at Tanjore

subject to confirmation
if necessary hereafter
by an Act. —

3. Shall the jurisdiction
of a High Court of
Moores Court be
extended for the present
so as to take in the land
how ever —

9 With reference to P 22
in giving should be made
of the Commission
how many men are
at the Jail - for what
purpose - & what is his
opinion of this case -

10 The Commission
should also be reported.
- at consultation
with the Civil Judge of
Combr. Court to go
on the draft Act &
make any remarks on

it that may occur to him -

12. As to the power of the
local juries to create
new District Courts -
this has been repeatedly
discussed and then
as far as I know
mentioned - and it
does not appear what
function of Govt they
can wield if not
this - but when the
matter is laid before
the Govt of India, the
doubt may be noticed
to the extent that the
question may be
officially set at rest.

J.P.

It is not necessary
to make proof of
the propriety of the Act.
I don't anticipate
any difficulty of passing
the Bill.

H.B. 3 Sec 1 + V every decree
judgment and order passed
by the lower Courts within 6 months
prior to the passing of the Act is to be
to appeal -
And the Act may and pass for 6
months hence
as the Courts are henceforth
to be overhauled the number
of decrees or orders passed in
a period of 6 months
Some other date must
be fixed - say 6
months ago - 1st
last

Polit. Dep.

No 359

Ex. Miss of Cons. Dated 6 May 1857
From J. R. P. 28 April 1857

The R. H. G. C. has
attentively considered
the above letter from the
J. R. P. and the
draft which ac-
companied it, but
he is not prepared
to bring the J. R. P.
- for a territory now
except, within the
jurisdiction of the
J. R. C. of London.
- common, or to be ca-
- bled a J. R. C. of
Cons. at J. R. P. until

A
G
H

Political 1857 (Report)

No 359

Abstract: Miss. Cons.

3 Abk
23

September

an Act for the recon-
-stitution of the
Court has been passed
by the Legislative Council.
Such a course the
Government might
have attended with
inconvenience. His
Lordship is of course
also not adverse to the
opinion already ex-
-pressed that the Rajah's
Courts must of neces-
-sity be abolished
and have jurisdiction
superseded by the
Company's Courts
established by due
course of law.

2 It is however very
desirable that no time

To be returned

From the Pleader
218-21-22-24
25.

should be lost in ter-
-minating the exis-
-ting state of things
by Legislative Act.
The Govt. have pre-
-ceded to forward
copy of the Duke's letter
and the bill that ac-
-companied it to
the Commissioners at
Tanjore, and to con-
-sult him in con-
-sultation with the
Johor Judge of Com.
-mission or to offer any
objections that may
be called for in
the draft, as also to
supply full informa-
-tion on the various
points on which it is

expressed by the for.
Pleas.

3. It is remarked that
by Section XV of the
draft not every decree
judgment and order
of the two lower courts
is to be open to appeal,
^{it had been}
if made or passed
within 6 months
prior to the passing
of the Act - as also
that all decrees judgments
and orders
made and passed
by the third or higher
Court since the English
deaths are to be open
- only subject to
appeal -

4 With respect to the
first of these points

13
it is to be noted that
in E.M. II also. it was
intimated that in
- the present circumstances
the operation of the
- ^{stances} should be
limited as far as
possible - Some time
must yet elapse be.
- for the desired Act
can be obtained - In
place thereof of res.
- restricting the right of
appeal from decrees
or judgments of the
lower Courts, to such
as may have been
given within 6 months
prior to the new Enact-
- ment in which ^{case} there
would probably be but
few to be appealed
from, the first would

preparing some
more distant date
as say ~~from~~ the 10th
October last.

5 With regard to
appeals from the
third
highest Court it
will ^{be} submitted for
the consideration

of the Legislative
Council how far
the admission of
appeals at all from
that the highest Court
known in the time
of the British, would
militate against
the position taken
by this Govt that ~~there~~
the Court of the Rajah

continued to be of
~~competent~~ competent
jurisdiction notwithstanding
standing in death,
until superseded
in ~~the~~ course of time
by other Courts ^{duly & legally} crea.
-led

JF

Ref for Govt - Plea on Dispe b^t

Commissioner of
Tanjore with copy
of Mr Dalis letter
& original bill &
returned.

Dispe b^t

known for office
The sanction of the Govt of India for
being the Govt of Tanjore within the
jurisdiction of the Commission C^t
has been given - altho it is
not necessary to say
so in this draft

12 May
Political 1859 (Copy 14)

No 359.

Edwards. Minn. Dec.

16th May 1857

N 1501

To forwarding copy of
Mr. Butler's letter, with the
other side which accom-
panied it, to the Comd'g
General with a request
that he will, in answer-
ing to the said Judge
of the Court, offer any
observations that may be
made for, & supply full
information on the various

Copy to Mr. Butler
August 13 1857
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1925/10/10

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Governor of New