M.R.O. 1—38,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Political DEPARTMENT.

G.O. No. 359 Press Mis.

Dated 28-4-1887

Not to be folded or roughly handled

№ 40

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

Madras 28th April 1857

Sir,

Para 1. I have the honor to acknowledge receipt of
M/S/C 11th April 1857 № 289 the Extract from Minute of Consultation
Political Department. 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 &ca. Looking at the Correspondence 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 Requirements 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's Court at Tanjore or at any rate to declare the Fort and the District which was Exempted from the Jurisdiction of the Honorable Company's Courts to be henceforward within the Jurisdiction of the Courts at Combaconum 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, 1816

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 limitted 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 Combaconum to the Fort and Exempted District, because over those localities that Zillah Court has never as yet had Jurisdiction, and the District Moonsiffs Court 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 Combaconum 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 Moonsiffs 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

evadence 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; 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 decrees in all original Suits, passed since the Rajah's death, where more than the period within which an appeal was allowed by the Durbar Courts, has expired 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 Commissioners Letter he states "at present there are but 2 Prisoners under Sentence of imprisonment by the Criminal Court" The Commissioner does not state when those 2 Prisoners were sentenced, whether before or since the Rajahs death. In Sections 6 7 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 ~~a w~~ 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 Krishnaje Cusoe Pundit he refers to "some new Rules" having Reference to Stamps having been introduced into the Courts since the Rajahs death. Without further information I am unable to form any opinion as to the proper Course to be pursued.

I

I have however framed Section 24 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 uselessly occasioned, owing to the present Judges having been permitted to exercise their functions since the Rajahs 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 Combaconum, 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. Dale

Offg. Govt. Pleader

The pre deeding on the points
Enumerated by the Chief Sec.
should wish to distinguish from
the last Pleader - whether defe
ctives will not arise - respecting
limits - which may have been
decided in the Magistrates Courts
between the Period of this Make
the present time - if the
Said Points are established upon
the passing of the Act -

11 30
E 2 Gray

For instance - the bearing Parties
in any such suit will be desirous
of appearing immediately after the 6th June
& of maintaining the validity of the Policy
Anti-date his decease - they act upon
taking such precautions - which not have
impact - & measures may be given thereby
Contrary to the nature of such - & which
of procedure adopted disappointment from
those which the Policy-holder would
encounter -

Such measures might
would have
occur - & time would hereupon be

an appearance of Loyalty hastily assumed
at last of last - as if it had at last found
out - that it was in error.

I do not think so - I am not prepared
to acknowledge it as a duty to be inspired
by worst or act - the [illegible] that
the Public can make out of the fact
is a light scribble about a matter
of form - in sanctioning the marriage
of the Queen's husband of the appli-
cation judges - am not what this Court
would give upon itself to suppose
until it was apprised of the policy

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which would be adopted by superior
~~authority~~.

This fact is entirely ignored by the
lawyers.

I am disposed to postpone any further
proceedings until the Act is passed – the
~~Courts at Tanjore~~ have already been [illegible]
a vacation – which should be continued –
the subject should prepare the highest
of India for immediate legislative action.

If ... Goodale thinks that no difficulties
of the nature mentioned by me wd arise –
there would be no objection to detaching
Tanjore ... within the limits of the Combaconum
Zillah – & establishing the Dt Moonsiff's Court
at Tanjore –

The Govt Pleader replies to the reference
made to him relative to the Tanjore
Courts ——

He considers it highly
desirable to establish as
soon as practicable a
Company's Court at
Tanjore, or at any rate
to declare the Fort and
the district hitherto exempt
to be henceforward within
the Jurisdiction of the Combaconum
Courts – but thinks
a Court at Tanjore would
be the most desirable –

He recommends that the
present Judges of the late Rajah's
Courts be forthwith suspended
& put – This would virtually
abolish those Courts ——

3 He advises that immediately

authority to that effect being granted by the Govt in Council under S 4 Act VII. 1843 the Govt should change the limits of the local jurisdiction of the Zillah Courts Commissioners by declaring in such limits the Fort of Tanjore and the exempted District—

4 This authority has been already granted at this Station does not appear to have been put in force ——

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

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

* under what Reg? he does not say—probably under general power. Vide

meet the case contemplated by Reg II. 1828 is altered by that Reg: only empowers the Provincial Courts to modify the local Jurisdiction of any Court in order the creation of new Courts — however altho' by Act VII. 1843 S 17 the functions vested in the Prov. Courts by Reg VI. 1816 are transferred to the Sudder Adawlut — the Sudder Court does not appear to have exercised the power conferred by Reg II/28

The Govt however believes that it is competent* to the Govt to establish a new Court — of what class he does not say but I presume Dist — with the authority of Reg VI. 1816 — and if it is thought desirable to

Exercise that power immediately
-by without waiting till the
proposed Act is passed,
to apprehend as difficulty
would arise - and the
Act could confirm what
of such Court —
of the Local Jurisdiction
of a neighbouring Dh Court
might be extended to
-such Fort & Station.
-pray direction —

8 Or other than persons.
-say on the following point

1. Shall the limits of the
Zillah Court of Combr. 14
-comm be extended
immediately to the
Cantonment Fort &c -
2. Shall a Dhoomitt
Court be at once esta-
-blished at Tanjore

subject to confirmation
if necessary hereafter
by an Act — or
3_ Shall the jurisdiction
of a neighbouring Dhoomitt Court be
extended for the present
so as to take in the said
Fort except —
which expression to be
in giving thereof to be made
of the Commissioners
how many men are
in the Jail - for what
offence - & what is their
opinion of their cate-
10 The Commissioners
should also be required
-to consultation
with the Civil Judge of
Combaconum & to
on the Receipt of the
Order any remarks or

it that may occur to him—
12. And the power of the
Court for to create
new Districts (Congress
this has been repeatedly
exercised and been
as far as I know
questioned—and it
does not appear what
question of Law they
can decide if not
this—but when the
matter is laid before
the Court of India, the
doubt may be resolved
& it is clear that the
question may be
finally set at rest.

JP

10

H.B. is sei+v com decree
Judgment and order passed
by the Court in the 6 months
prior to the passing of the Act is to be
appeal—
but the Act must be read
months hence
as been Courts or have full
the suspension of the
and passing of some other
or Officers
of time
Some of the
first
months
Court

Political Dep.
No 359
Ex. Mins of Cons. Dated 6 May 1857
Read the following letter
From Jnt Pleas. 28 April 1857

To the Rt Hon the Gov & Coms
&c &c &c
Right Hon
I have the honor to transmit herewith a letter from the Jnt Pleas and the Map which accompanied it, but I am not prepared to bring the Police Jurisdiction & Territory now exempt, within the jurisdiction of the Police Court of Lombardy, or to establish a Police Court at Tanjore until

Political Dep.
No 359
Extract. Mins. Cons.

3 Oct
28
Sept

an Act for the accomplishment of that object has been passed by the Legislature (Council) such a course the Company apprehends might be attended with inconvenience - His Lordship is (cannot also but admit the opinion already expressed that the Supreme Courts must from the Company's Courts and have jurisdiction until it ceases to exist - superseded by the Company's Courts established by due course of Law -

2 It is known to my Colleagues that at the time

It is observed

from four Pleaders
218-21-22-24
25.

Honble Lord in Council.
- mentioning the existing State of things by Legislative Authority (Copies of the Petitions and Copy of the Bills that accompanied the Communications from the Company, and the Petition which is

required by the Act for
Plaintiff.

3. It is remarked that
by Section XV of the
Act that any decree
judgment and order
of the two lower Courts
is by the appeal,
if made or passed
within 6 months
prior to the passing
of the Act - as also
that all decrees judg
-ments and orders
made and passed
by the Court a higher
Court since the Englis
dents are to be dismi
-sed by subject to
appeal -
4 hit respect to the
first of these points

13

it is to be noted that
in Equity it was
ascertained that un-
-der pressure of cum-
-stances, the operation of the
Regulations
limited as far as
possible - Some time
must not elapse be-
-fore desired Act
can be obtained - In
place thereof re-
-stricting 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
would probably be but
few to be appealed
from, the Court would

purpose fixing some
more distant date
as may ~~from~~ the 1st
October last.

5 Will regard to
appeals from the
~~highest~~ third Court it
will be submitted for
the consideration
of the Legislature
Council how far
the admission of
appeals at all from
that the highest Court
known in the Cases
of the Sicca, would
militate against
the position taken
by this Govt that ~~the~~
the Court of the Rajah

continued to be of
~~Kingdom~~ competent
jurisdiction notwith-
standing his death,
until superseded
in the course of time
duly & legally
by other Courts.
&c &c

Dispd 6th

Desp Govt Sarawak Dispd 6th

Commissioners
Tanjore with copy
of the Dacoity Act
& original bill &
enclosures.

Dispd 6th

Answer to Office
The sanction of the Govt of India for
bringing the Govt of Tanjore within the
jurisdiction of the Courts here &c
has been given - & this is
what I have to say to you
in this case

Pol. Dept. to Engt. 11th
Augt. No. 13 of 1857
Para 22

12 Mar
Political 1857 Depart.

No. 359.

Extract: Mins: Cons:

4/6th May 1857.

A.1501

Forwarding copy of
Mr Bell's letter, with the
Sketch Bill which accom-
panies it, to the Council.
To inform with a request
that he will, in consulta-
tion with the Tillak Judge
& such assessors, offer any
observations that may be
called for, & supply full
information on the various

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Joint required by the
Government Resolt