M.R.O. 1—38,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Political DEPARTMENT.

G.O. No.	819	Press ~~Mis.~~	
Dated	25. 2	19	187

Not to be folded or roughly handled

No. 19. From CLEMENT DALE, Esq., Government Pleader, Sudr Udalut; to EDWARD MALTBY, Esq., Acting Chief Secretary to Government, dated Madras, 8th September 1857, No. 94.

SIR,

Minutes of Consultation, 15th July 1857, No. 547. *Political Department.*

Para: 1. I do myself the honor of acknowledging receipt of an Extract from Minutes of Consultation as noted in the margin.

2. I have the honor to report, for the information of the Right Honorable the Governor in Council, that I have since been through the Sketch Bill, and made the several alterations required by such Minutes of Consultation, with the exception of striking out Original Section 13 and remodeling Section 22.

3. With respect to retaining the former Section, I beg to submit the following observations for His Lordship's consideration.

4. I collect from the 12th para: of Mr. Commissioner Phillips' letter of the 9th June 1857, No. 182, that the mode of carrying out Mr. Beauchamp's suggestion, for the incorporation of the 12th and 13th Sections of the proposed Act, with the 5th Section, is exemplified in that 12th para: Government having approved of the substitution of the language, proposed by Mr. Beauchamp in preference to that used in the Original preparation of Section 5, I have felt bound to introduce it. If however I understand Mr. Beauchamp's suggestion correctly, he proposes, on the introduction of the sentence set out in para: 12th of Mr. Phillips' letter, to omit Sections 12 and 13 of the Act, as originally framed. If this suggestion be followed, the effect will be, that the records will be transferred to the lower Courts, but there will be no power given by the Act, to transfer to those Courts the Cases and Suits to which those Records relate; the pronoun "they" relates to "such of the said records;" and it is those words that govern the verb "shall be transferred," and not the words "Cases or Suits."

5. I return the Sketch Bill for His Lordship's further consideration, and would suggest that the Original Section 13 (now Section 11) as altered in blue Ink be permitted to stand, as being clearer, and rendering the Act more methodical and artistic.

6. Section 5 refers to all the Records of the 4 Courts, whether relating to Criminal Cases, or Civil Suits. The Criminal Court is first mentioned in the Preamble, therefore Sections 6, 7, 8, 9 and 10 treat of Criminal Cases; while the succeeding Sections proceed to provide for Civil Suits; by Mr. Beauchamp's plan, Section 5 would (if properly framed) refer to all the Records indiscriminately, and then proceed to provide for the transfer of Civil Suits; Sections 6 to 10 would still relate to Criminal Cases; while the 11th and following Sections would resume the Enactments for the disposal of Civil Suits; thus separating the provisions relating to the disposal of Civil Suits; such a mode of preparing an Act is inconvenient.

7. I beg however to state, that the arrangement of the several provisions will not in any manner affect the validity of the Act, if such provisions be properly framed.

8. As regards the concluding part of para: 13 of Mr. Phillips' letter, I apprehend, it was not intended by Messrs. Beauchamp and Phillips, that special Respondents who had not appeared in the third Court, or having appeared, had demurred to the Jurisdiction of that Court, should be placed on the same terms as parties enumerated in the old Section 14 (now Section 12) inasmuch as from that 3rd Court there was no appeal; consequently the unsuccessful party could not be guilty of laches in that respect.

9. Referring to the concluding sentence of para: 18 of Mr. Phillips' letter, I submit no alteration of the Draft Act is needed to meet Messrs. Beauchamp's and Phillips' views; under Section 15 (old Section 16) all Petitions of Appeal are to be preferred to the Civil Judge; and it is discretionary with that Functionary, to retain those cases, or to refer them to the Assistant Judge, as he may think proper.

10. As regards para: 19 of Mr. Phillips' letter, and having reference to Section 10 of the Minute Consultation, I collect that His Lordship has not decided that Section 21 (formerly Section 22) should be remodeled to meet Messrs. Beauchamp's and Phillips' suggestions; but that it is

left for consideration. I had thought of some such arrangement as that suggested, but on looking at the subject in all its bearings, I came to the conclusion that the provision made in Section 21 was the most easy of accomplishment. The only objection appear to be, that the Decree holder would have to instruct a Vakeel of the Combaconum Court, to Petition for execution; under Section 5 all Records are to be in the first instance transferred to the Zillah Court. If the proposed modification in Section 21 were to be carred out, provision must be made for transferring the records of such Suits to the Court that would then have Jurisdiction; and for this purpose the Decree holder must Petition the Zillah Court; so whether he petitions for one purpose, or another, the inconvenence to him would be very much the same; under the existing law the Zillah Judges may refer the enforcement of Decree of their own Courts to the lower Courts within their Zillahs; therefore in a case under this Act, as soon as execution was ordered, the carrying out of that order might be referred to any of the lower Courts within the Zillah. But if such Decree had to be executed out of the Zillah of Combaconum, the provisions of Act, No. 33 of 1852, would have to be attended to, unless express enactments were introduced into this Act, for the purpose of meeting the few, (if any) Cases, in which execution would be required under Decrees passed in the Rajah's Courts. The various contingencies which it is now considered as likely to arise, can be provided for; but it would necessarily lengthen the proposed Act; and after all some contingency might not be foreseen, and for which provision might not be made, that I would submit for the decision of His Lordship in Council that Section 21 should remain as now framed; if however, His Lordship should deem it desirable that that Section should be remodeled, I will do what appears necessary on the Draft being returned to me for the purpose.

11. With reference to the 18th and 19th paras: of my letter to Government under date the 28th April 1857, No 40; and paras: 2, 3 and 4 of Mr. Commissioner Phillips' letter to your address under date the 9th June 1857, No. 182, I have the honor to report for the information of the Right Honorable the Governor in Council that I have placed myself in communication with Mr. Phillips; and I now do myself the honor of enclosing a copy of the correspondence for His Lordship's consideration. From Mr. Phillips' Statement I submit to his Lordship that it is not necessary to make any further provision in this Draft Bill, for the purposes there alluded to.

(Signed) CLEMENT DALE,
Government Pleader.

From CLEMENT DALE, Esq., Government Pleader, Sudr Udalut; to H. D. PHILLIPS, Esq., Commissioner of Tanjore, dated Madras, 15th August 1857, No. 82.

Sir,

Minutes of Consultation 15th July 1857, No. 547, Political Department, on letter from Commissioner of Tanjore to Government, 9th June 1857, No. 182.

Para. 1. With reference to the Minutes of Consultation, noted in the margin, and 17th and 18th paras: of my letter to Government, under date the 28th April 1857, No. 40, I have the honor to request that you will inform me whether any Appeal Suits have been decided, since the death of the late Rajah, by the Court styled Nayadeesa Sabhay, in which the Respondents have not appeared, or having appeared have demurred to the Jurisdiction of that Court, if any, how many; also whether in any of such Suits, and which, the Judgments have been executed, either partially or entirely, if partially to what extent; if any such Judgments have been executed (partially or entirely) it would be desirable that I should be informed, in what manner they have been so executed; whether by taking the unsuccessful party in execution; and if so, whether such party is still in confinement; or if released, under what circumstances; or whether such Judgment has been satisfied (partially or entirely) by the seizure of Property; and if so, its character, and what has been the result.

2. Government has now determined, that no Suit or shall have an Appeal from a Decree of the Nayadeesa Sabhay Court, except Respondents who did not appear in that Court, or having appeared demurred to its Jurisdiction, the object of the present enquiry is to ascertain, whether it will be necessary to make a provision in respect of any such party's liberty, or Property seized pending Appeal.

3. I apprehend that limited as it is now proposed to make the right of Appeal, no cases will arise in which that right can be exercised, and if I be correct in that supposition, it will not be necessary to make any further provision on the subject.

(Signed) CLEMENT DALE,
Government Pleader.

From H. D. PHILLIPS, Esq., Commissioner of Tanjore; to CLEMENT DALE, Esq., Government Pleader, Sudr Udalut, Madras, dated 4th September 1857, No. 216.

Sir,

In reply to your letter, dated the 15th Ultimo, No. 82, I have the honor to state, that since the demise of the late Rajah of Tanjore, no Appeal Suits have been decided in His Highness' highest or Nayadeesa Sabhay Court, in which the Respondents have appeared and demurred to the Jurisdiction of that tribunal.

2. As respects the question, whether during that period any Respondents "have not appeared," I beg to mention that it is not the practice of the Nayadeesa Sahbay, to require Respondents to appear and put in answers; though, if a further investigation of any point should be deemed necessary, the Court would cite and examine them personally or through their Vakeel.

3. The several other questions, which your letter propounds, seem to depend on the reply to the first one being in the affirmative: as however, it is negative, I believe that I have now furnished all the information you desire.

4. Your questions were in the first instance read in a different sense; otherwise, I should have earlier replied to the communication now under acknowledgment.

(Signed) H. D. PHILLIPS,
Commissioner.

(True Copies.)
(Signed) CLEMENT DALE,
Government Pleader.

No. 20. ORDER THEREON, No. 819; dated 25th September 1857.

In Extract Minutes Consultation, No. 547, dated 15th July last, the Government reviewed the remarks offered by the Acting Commissioner of Tanjore and the Civil Judge of Combaconum on the Sketch of a Bill prepared by the Government Pleader for abolishing the Durbar Courts at Tanjore, &c., and the Bill was remitted to Mr. Dale, in view to its being put into a finished state.

2. The Government Pleader now reports that he has made the several alterations required or suggested for his consideration in the above Order, with the exception of striking out the original Section XIII and re-wording Section XXII.

3. Mr. Beauchamp's opinion was, that, Sections XII and XIII should be incorporated with Section V, Mr. Dale however shows that some inconvenience would thereby arise to the ready interpretation of the Act, which, by the retention of Section XIII, would be rendered more methodical and artistic. The Government observe that due weight must be given to a professional opinion on such points, and they therefore resolve to allow the Government Pleader to follow his own course.

4. In regard, secondly, to the remodeling of Section XXI, (formerly Section XXII) which was recommended by Messrs. Phillips and Beauchamp on the ground that it would be a hardship to force a Decreeholder to proceed to Combaconum, to the Court of the Civil Judge, in order to sue out execution, in lieu of permitting him to make application for that purpose to such Court at Tanjore as would have had jurisdiction, had the Suit been instituted subsequently to the passing of the proposed Act. Mr. Dale observes that, as the records in every case are by Section V to be in the first instance transferred to the Custody of the Zillah Court, the Decreeholder, even if he is released from the necessity of Petitioning at Combaconum for execution, will at any rate have to Petition there for a transfer of the records of his Suit; so that in the end the remodeling of the Clauses referred to would not benefit him.

to the ready interpretation of the
Act, which, by the retention of

* *And the enclosure to which it refers.*

5. From the last para: of Mr. Dale's letter* the Government learn, that, subsequently to the late Rajah's demise, no appeal Suits have been decided in the highest Appellate Court (the Nayadeesa Sabbay) in which the Respondents have appeared and demurred to the jurisdiction of that tribunal. No provision for this contingency need now therefore be made.

6. Resolved to return the Sketch Bill to the Government Pleader, in order that it may be drawn up in due style for presentation to the Legislative Council.

Exd. J. A. Wilson.

Political Dept

No 819

E M C. 24/25 September 1857.

Read the following letter from the Govt Pleader. } Here entered 8th Sept/57.

In E. M. C. No 567. dy 15th July last, the Govt received the remarks offered by the acting Commissioner of Tanjore and the Civil Judge of Combaconum on the Sketch of a Bill prepared by the Govt Pleader for abolishing the Amban Courts at Tanjore &c, and the Bill was remitted to Mr Dale, in view to its being put into a finished state.

2. The Govt Pleader now reports that he has made the several alterations required or suggested for his consideration in the above orders, with the exception of striking out the original Sect XIII and rewording Section XXII.

3. Mr Beauchamp's opinion was, that, Sections XII and XIII should be incorporated with Section V. Mr Dale however shows that some inconvenience would thereby arise to the ready interpretation of the Act, which, by the retention of

Section XIII, would be rendered more methodical and artistic. The Govt observe that due weight must be given to ~~the opinion of~~ the professional opinion on such points, and they therefore resolve to allow the Govt Pleader to follow his own course.

4. In regard, secondly, to the remodeling of Section XV, (formerly Section XXII) which was recommended by Messrs Phillips and Beauchamp on the ground that it would be a hardship to force a decree holder to present to Cuddalore, to the Court of the Civil Judge, in order to have out execution, in lieu of permitting him to make application for that purpose to such Court at Tanjore as would have had jurisdiction, had the suit been instituted subsequently to the passing of the proposed Act — Mr. Dale observes that, as the records in every case are by Section V to be in the first instance transferred to the custody of the Zillah Court, the decree holder, even if he is relieved from the necessity of proceeding at Cuddalore for execution, will at any rate have to petition there for a transfer of the records of his suit; so that in the end the remodeling of the clauses referred to would not benefit him.

5. From the last Para of Mr. Dale's letter the Govt learns, that, subsequently to the late Prefect's demise, no appeal suits have been decided in the highest appellate Court (the Nayadeeta Sabhay) in which the Respondents have appeared & demurred to the jurisdiction of that tribunal. As provision for this contingency need now therefore be made.

6. Resolved to return the Sketch Bill to the Govt Pleader, in order that it may be drawn up in due couple for presentation to the Legislative Council.

Copy to Govt Pleader - with the Sketch Bill - to Agt Collr of Tanjore for his information & for communn to the Civil Judge of Cuddalore

14-9-57.

Despd 20th

* and the enclosure to which it refers,

Political Letter to England
22. Mch No 5 of 1858
Paras 8 & 9

5

Sub Dr to Com. 29 Sept.
Political - 1857 Separate

No. 819

Extracts & Mins. of Cons

D/25 Sept. 57

19—20