

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 1261

Press
~~Mis.~~

19-20

Dated

15-7-1918

Not to be folded or roughly handled

Fort St. George, Judicial Consultation, 21st September 1858.

No. 19. Read the following letter from CLEMENT DALE, Esq., Government Pleader, Sudr Udalut; to THOMAS PYCROFT, Esq., Chief Secretary to Government, dated 2nd September 1858, No. 103.

SIR,

M. C., 19th March 1858, No. 356, Revenue Department.

Para. 1. With reference to the Extract from the Minute of Consultation noted in the margin, para. 1, I have the honor to enclose you, extracts from a correspondence which has passed between myself and the Acting Collector of Malabar, on the subject of the fee payable to me as Government Pleader. The several dates, &c., are marginally noted.

2. It is not regarding the amount of fee that I purpose to solicit attention, for that of course is settled by the Sudr Udalut, and in cases where any doubt is suggested, I apply to the Officers of that Court, on whom devolves the duty of calculating the amounts of costs.

3. But it is regarding the time at which the fee should be paid to the Government Pleader, that I now solicit the orders of the Right Honorable the Governor in Council, in plain words, whether in cases where Government direct their Pleader in the Sudr Udalut to prosecute or defend any Appeal in that Court, such fee as he may be entitled to, is to be paid to him in accordance with the ordinary practice pursued in private cases in the Sudr Udalut, and universally adopted in the Supreme Courts; or whether in Government cases an exception is to be made, and the Government Pleader is to await the result of the suit before he receives his fee.

4. As regards the practice pursued in the Calicut district, alluded to by Mr. Grant, I submit that because a pernicious system has been adopted in that district (or even in every district throughout the Presidency) that is no substantial reason for the more correct practice pursued in the Sudr Udalut being set aside, and in explanation of what that practice has been, I have the honor to solicit attention to the 4th para. of my letter to the Acting Collector, dated the 2nd July 1858.

5. It will be observed that Mr. Grant takes upon himself to put a construction upon the Circular Order of the Sudr Udalut, No. 129 A. I will not engage the time of Government in discussing how far Mr. Grant's construction can be borne out by a very critical interpretation of the language used in that Circular Order, I may however remark, that previously to its being promulgated, I was consulted by one, if not more, of the then Judges, and it was the intention of the Court, as far as they could effect the object, to place the Pleaders and Vakeels of the Company's Courts, on a similar footing to that of Barristers engaged in advocating cases in English Courts, the great leading principle being that a Barrister receives his fee before he pleads, and is thus rendered free from any *personal interest* in the result. The Regulations appear to contemplate such a course, and as I submit it is the true position in which a Pleader should be placed; if it were otherwise, a conscientious or timid man, might be deterred from putting forward and supporting many arguments, from the fear that he might be suspected of being actuated by personal interest; while on the other hand, an unscrupulous advocate might be induced to advance arguments and pursue a course not altogether desirable, because his own fee depended on the result, in either case the Court would be deprived of that free and unbiassed assistance, which it has a right to expect at the hands of every advocate.

6. I imagine the foregoing principle will not be controverted, and I submit that if applicable to private suits, it applies with much greater force to Government and its officers.

7. It may be proper I should state, that Mr. Knox, the Acting Collector of Masulipatam has stated that a practice similar to that mentioned by Mr. Grant, prevailed in his District. On explanation however, he withdrew his objection.

8. I have the honor to solicit the instructions of His Lordship in Council, as I submit it is desirable that an uniform practice should be established, and lengthened correspondence saved between the Government Pleader and Collectors.

Fort St. George, Judicial Consultation, 21st September 1858.

Extract from letter from Government Pleader, Sudr Udalut; to W. ROBINSON, Esq., Acting Collector of Malabar, dated 2nd June 1858, No. 51.

Para. 5. With reference to Regulation 14 of 1816, Section 37, Clause the 5th, I have the honor to request that at your earliest convenience you will forward to me a Bill on the Accountant General for Rupees 390, the amount of the fee payable thereunder to the Government Pleader.

From P. GRANT, Esq., Acting Collector; to C. DALE, Esq., Government Pleader, dated Calicut, 18th June 1858, No. 1780.

SIR,

With reference to the last para. of your letter, dated 2nd Instant, requesting that an Accountant General's Bill for Rupees 390 may be remitted to you as the amount of the fee payable to the Government Pleader, in the suit noted in the margin, I have the honor to observe that this amount appears to have been calculated on the sum of damages (Rs. 12,000) for which the original suit was instituted; whereas I would beg to submit that the calculation of the fee should be made only on the costs which have been awarded against the Tahsildar, amounting to Rupees 1,327-4-2, and against which decision he has appealed.

I have further to observe that the practice in this District regarding the payment of the Pleader's fee is to await the disposal of the case by the Court previous to disbursing it.

I beg you will inform me whether there is any objection to adhering in this case also to the practice adverted to, as well as favor me with your opinion as to the amount of the fee which ought really to be charged.

From CLEMENT DALE, Esq., Government Pleader, Sudr Udalut; to P. GRANT, Esq., Acting Collector of Malabar, dated 2nd July 1858, No. 71.

SIR,

18th June 1858. No. 1780.

Para. 1. I have the honor to acknowledge the receipt of your letter to my address of date and number noted in the margin.

2. The amount of fee mentioned in my letter, dated the 2nd June 1858, No. 51, was taken from the decree passed in the O. S. No. 2 of 1856, as the amount paid in the Civil Court. In preferring a regular appeal, the entire merits of the case are brought before the Court and my impression was, that in calculating the amount of the fees payable to the Pleaders, the calculation was based on the amount sued for in the O. S. On shewing your letter now under acknowledgment to the Manager of the Sudr Udalut, he informed me it was his impression that under the circumstances stated by you (if there were no other grounds for appeal) the fee should be calculated on the amount of the costs, regarding which the appeal was made, but not so if any objections going to the merits of the suit were put forward; I understood from him that there is no decision or Circular Order on the subject, and that he admitted if the appeal were preferred only in respect of the smaller sum, and the Sudr Udalut on the case coming on went into the merits, and decided the case thereon, the successful party would be entitled to recover from his opponent the full amount of Pleader's fees.

3. I do myself the honor of enclosing you copy of a letter I have had the honor of addressing to Government on the subject of the contemplated appeal, from which you will observe (paras. 3 and 4) that I have proposed to Government that an appeal should be preferred on 2 grounds, one of which involves the question of whether the suit was sustainable after the death of the original plaintiff, and therefore under the opinion referred to in para. 2, the whole fee is payable.

4. With reference to the 3rd para. of your letter now under acknowledgment, I have the honor to solicit your attention to the Circular Order of the Sudr Udalut, No. 129 A, and to inform you it was framed by the Judges, for the purpose of putting a stop to the objectionable

Fort St. George, Judicial Consultation, 21st September 1858.

practice that had sprung up amongst some of the Practitioners in private suits, which is there referred to. The Judges considering that a Pleader should not have a personal interest in the result of suits he might undertake to advocate, and therefore that (similar to the practice pursued towards Barristers of the English Bar) a Pleader should receive his fee before he undertakes the suit. The practice referred to in the Circular Order (although then increasing and felt by the Court to be most objectionable) was not, I am happy to say, generally adopted by the Pleaders; and as I have been informed by Ghoolam Moortoozah, who was Government Pleader in the Sudr Udalut for many years, had not been pursued in Government cases, but on the contrary, that the practice in Government cases during his tenure of office, had been for the fee payable to the Government Pleader in Appeal Suits which it was determined should be conducted or defended at the public expense, being remitted to the Government Pleader, as soon as it was so determined. Such has been the practice since I have had the honor to hold the appointment, and such on principle is the correct course; moreover I feel perfectly satisfied, that the Judges of the Sudr Udalut will expect me, as the Government Law Officer to that Court, not to be a party to the infringement of their Circular Order, I have therefore the honor to solicit that you will comply with the request contained in the 5th para. of my letter dated the 2nd June 1858, No. 51, at your earliest convenience

From P. GRANT, Esq., Acting Collector of Malabar; to C. DALE, Esq., Government Pleader, Sudr Udalut, dated Calicut, 21st July 1858, No. 2093.

SIR,

In acknowledging the receipt of your letter, dated 2nd Instant, No. 71, with its enclosure, I have the honor to state that the Pleader's fee in the Appeal Suit in question cannot, in my humble opinion, be calculated on the amount or value of the Original Suit, without an infringement of the spirit of the Regulations in force, in accordance with which, the calculation of the fee should, as it seems to me, be based on the amount at issue in the Appeal. In proof of the correctness of my view on this point, I would refer to the Circular Order of the Sudr Udalut, dated 5th November 1829, in which it is enjoined that "as in an Original Suit the plaint is to state* according to the nearest estimate the exact sum of money or the amount in which the plaintiff may be endamaged upon which the institution fee is to be calculated,† so, by parity of reasoning, the value of the stamp in an appeal ought of course to be calculated on the amount in which the appellant may consider himself endamaged by the Decree he appeals against, whether adjudged or disallowed, or in other words, the amount actually at issue in the appeal" so far as I can see, the principle here laid down for the calculation of stamps applies, with equal force, to the calculation of the Pleader's fee, in an Appeal, especially as in the 3rd para. of the order just quoted, an instance is shewn in which the Vakeel's fee in Appeal was calculated on the amount decreed and not on that originally claimed.

2. With reference to para. 4 of your letter under acknowledgment, I beg to remark that the Circular Order quoted does not, to my mind, bear the construction put upon it, viz., that a Pleader should receive his fee before he undertakes the suit.

3. My object in deferring the payment of the fee until a decision is passed, is to enable me to obtain the required sanction of Government for the disbursement, by submitting as usual the Decree of the Court, which is essential as a voucher to support any expenses of this nature. It has moreover been an invariable practice in this district, as stated in my previous letter, of making such payments after the disposal of the suit, and I do not think I shall be justified in departing from it in the present instance.

(True Extract and Copies.)

(Signed) CLEMENT DALE,
Government Pleader.

Fort St. George, Judicial Consultation, 21st September 1858.

No. 20. ORDER THEREON, No. 1261; dated 15th September 1858.

In Extract Minutes Consultation, Revenue Department, No. 356, dated 19th March last, Government authorized *Mr. Dale* to institute an Appeal in the Sudder Court against a Decree of the Civil Judge of Calicut. This was done, and *Mr. Dale* on the 2nd June last, applied to the Acting Collector of the District for Rs. 390, the fee payable to him, as he calculated it, under Clause fifth, Section XXXVII, Regulation XIV of 1816. The Suit in the Civil Court was an original one; the Appeal consequently was a "Regular" Appeal, and *Mr. Dale*, being of opinion that the "merits" of the question would be involved in the decision thereof, estimated the amount payable to him as Pleader accordingly, under the Rules contained in the Regulation* of the "Madras Code," adverted to in Section VII of Act No. I of 1846; and further requested that it should be paid to him at once.

2. The Acting Collector considers that the fee is payable on the costs awarded against the Defendant in the O. S., and not on the sum sued for—and objects, secondly, to disburse the amount of fee until the result of the Appeal is known, observing that the "Decree (of the Sudder Court) is essential as a voucher to support any expenses of this nature."

3. *Mr. Dale* now asks Government to decide on the second objection taken. In regard to the first, that involves a technical point, the duty of determining which devolves on the Officers of the Sudder Court. He refers to C. O. of the Sudder Court, No. 129 A and shews cause generally against the practice of disbursing fees to Pleaders only after the result of the Suit in which they are engaged.

4. The Government observe that that C. O. prohibited the practice among *Vakeels* of entering into conditional agreements with their Clients, which had sprung up since the enactment of Act No. I of 1846; and cannot therefore apply to the present case, where the fee is calculated by the terms of a specific Regulation, and where both Client and Pleader are responsible to Government. They agree however with *Mr. Dale*, that it is important to regard the "great leading principle, that a Barrister should receive his fee before he pleads." The Acting Collector will therefore pay to *Mr. Dale* the fee that may be ultimately pronounced the correct one, without waiting the result of the Appeal. As to what is said about the necessity of a 'voucher,' it is observed, that the Government are kept informed direct of the official acts of their Pleader.

(Signed) T. PYCROFT,
Chief Secretary.

Judicial Sept

No 1261

Ordg. 5/15 September 58.

Read following letter } here enter
from the Govt Pleader, Sudder Court } No 103
2/2 Sept 58.

In Ordg. Rev. Sept. No 356
d/19th March last, Govt authorised
Mr Dale to institute an appeal
in the Sudder Ct against a decree of
the Civil Judge of Calicut. This was
done & *Mr Dale* on the 2^d June last
applied to the Actg Collector of the dis-
trict for Rs 390 the fee payable
to him, as he calculated it, under
Clause fifth, Sect XXXVII, Regn
XIV of 1816. The suit in the Civil
Court was an original one; the
appeal consequently was a "Regular"
appeal, & *Mr Dale*, being of opinion
that the "merits" of the question
were involved in the decision here-
of, estimated the amount paya-
ble to him as Pleader accordingly,
under the Rules contained in
the Regn of the "Madras Code",
adverted to in Sect VII of act
No I of 1846; and further reques-
ted that it shd be paid to him at
once.

2. The Actg Collr considers that the
fee is payable on the costs awarded

Ref= XII/56
Sect XXV.

that might be a
misapprehension
of the Court
J.P.

ago he left in the O.S. & not
on the sum sued for - and objects,
secondly, to disburse the amount of
fee until the result of the appeal
is known, observing that the "Deere"
" (of the Sudder Ct.) is essential as a
"voucher to support any expenses of
" his nature "

3. Mr. Dale now asks Gort to decide on
the second objection to him. In regard
to the first, that involves a technical
point, the duty of determining who de-
-volves on the officers of the Sudder Ct.
He refers to C.O. of the Sudder Ct.,
No 129 A & shews cause generally
ago the practice of discharging fees to
pleaders only after the result of the
suit is when they are engaged.

4. The Gort observe that that C.O. pro-
-hibited the practice among Vakils
of entering into conditional agreements
with their clients, which had sprung
up since the enactment of Act No I
of 1846; & cannot therefore apply to
the present case, where the fee is calculated
by the terms of a specific Regn, &
where both client & pleader are respon-
-sible to Gort. They agree however with Mr.
Dale that it is important to regard the
"great leading principle, that a Pleas-
-er sh^d receive his fee before he pleads".
The Act Comm will therefore pay to Mr.
Dale the fee that may be ultimately pro-
-nounced the correct one, without waiting
the result of the Appeal. As to what is said
about the necessity of a "voucher", it is observed that the Gort
are kept informed directly of the official acts of their Pleaders.

Disptd 18th
to Gort Pleaders
to be of the Court (now, but not
for some time to all Pleaders.)

20th
J.P.

in 1846 was 21 July -
Judicial - 1858. Defunct

No 1261.

Abstract from 1 of 10000.

at 15 September 1858 -

Feb 20 07.

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