

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O No. 309	Press
57-58	Mis.
Dated P. 3-1861 10	

8/9

Not to be folded or roughly handled

*Proceedings of the Madras Government, Judicial Department,
8th March 1861.*

No. 57. Read the following letter from W. WATERFIELD, Esq., Officiating Civil Auditor, to T. PYCROFT, Esq., Chief Secretary to Government, Fort Saint George, dated 16th February 1861, No. 61.

Contingent Department.

In obedience to G. O. No. 115 of the 29th ultimo, I have the honor to submit for approval a Notification to which the Registrar of the Sudr Court has signified his assent.

I presume that there is no reason for distinguishing between the Revenue and Judicial Departments; but I scarcely perceive the necessity of issuing any order at all on the subject of Judicial fines: if, as I understand from Mr. Chamier, they are not carried to account till after the expiry of the time for appealing against the sentence. In Bengal they are credited to Government immediately: but, supposing the above practice is universal here, it is evident that refunds can only be claimed when some mistake has taken place, as in the case under notice. This would not be met by the rule I have prepared, nor do I consider it suitable that provision should be made for erroneous remittances.

I cannot ascertain that any fixed rule exists in this Presidency with regard to deposits. The Registrar says that they are forwarded to the Collector and credited to Government when not claimed after due notice which appears somewhat indefinite. The Bengal practice is that after 7 years all the deposits of the year outstanding in each Office are carried to a single No. and then may not be repaid without the Certificate of the Accountant.

After 20 years they are credited to Government, whose authority is then necessary for their refund. (I am not however positive that this power has not been delegated to the Board of Revenue and Commissioners.)

No. 58. ORDER THEREON, 8th March 1861, No. 309.

In Extract Minutes of Consultation 9th January 1835, No. 20, Collectors were authorized generally to comply with all requisitions, for the refund of monies received by them from the Courts, made under the orders of the Provincial Courts, or of the Sudder and Foujdaree Udalt.

2. These instructions were communicated to the Subordinate Courts in the Sudder Court's Circular, 19th idem, No. 8.

The rule, however, appears to have fallen into disuse, and that which now obtains, as per margin, is an order of a later date, 25th October 1849, No. 698, and of more restricted application, relating to fines only, and not to refunds of monies received from the Courts generally. A similar order respecting fines was issued by Government on the 8th July 1858. In consequence of these orders being restricted to fines, the Government have had to pass special orders, whenever sums which had been remitted by the Civil Courts through inadvertence, or from having remained unclaimed and had been carried to account, were applied for by the parties entitled. Some of the special orders recently passed, are noted in the margin.

No. 1,786, 22nd December 1858.

" 147, 4th February 1859.

" 353, 16th March 1859.

" 879, 28th June 1859.

3. In their letter, 12th January 1861, No. 1, in applying for such special sanction, the Sudder Court drew attention to the Order of the 9th January 1835, the terms of which they observed were general, and inquired whether under that authority it was competent for the Judges to direct, and the Collector to make a refund of money due to parties, whose deposits had been carried to the credit of the public account. The Government replied, 23rd idem, Order No. 93, that they saw no objection to refunds of this nature being made by Collectors, without reference to Government and accordingly instructed the Civil Auditor to admit such payments, on production of the order, or application, of the Civil Judge or other competent authority.

*Proceedings of the Madras Government, Judicial Department,
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4. More recently, the Subordinate Judge of Tanjore having solicited sanction for the refund of a sum of Rupees 78-12-0 which had been erroneously remitted to the Treasury, was informed that he should apply to the Collector of the district for the payment of the money in question. The Government at the same time requested the Civil Auditor to draw up a Notification on the subject of refunds of Judicial fines and deposits that might have been carried to account.

5. In submitting the draft, Mr. Waterfield states that he scarcely perceives the necessity of issuing any order at all on the subject of Judicial fines, if, as he understands, fines are not carried to the public account until the time for appeal has expired, and that he does not consider it suitable that provision should be made for "erroneous remittances," i. e., as is understood, fines erroneously carried to account before the appeal time had expired, or, as in the case which led to the G. O. of 29th ultimo, No. 115, when money levied under sentence of the Court had been inadvertently carried to the credit of Government instead of being treated as a remittance of the Public Works Department.

6. The Government observe that the object desired is to do away with unnecessary references to them and to other controlling authorities. The Officer who has power to remit a fine should also have authority to order its refund even although it should have been—as may sometimes occur—improperly or prematurely carried to the public credit. So the Judge of a Civil Court who might have returned deposits to parties entitled to them when the money was in his own Treasury, or in the Revenue Treasury on account of his Court, should have power to deal with it in the same way when it has been actually carried to the public credit. The Government do not perceive that erroneous remittances are not provided for by the draft Notification. The wording is general, "fines and remittances" and, as already said, there appears no reason for making a distinction between erroneous remittances and those not erroneous. The Officers within which the refund may be so made to two years from the date of the money having been carried to account. When a longer period may have elapsed, application should be made to Government. The Notification will also be restricted to Judicial refunds for the present, but the papers will be referred to the Revenue Department for consideration whether any further rules be required respecting revenue refunds. The Notification with this modification will therefore be published in the Gazette. By Court of Superior Jurisdiction is of course to be understood the authority, be it Court or Magistrate, having power to remit the fine on appeal.

7. Referring to the two concluding paras. of Mr. Waterfield's letter, the Government request that the Accountant General will report what are the various classes of deposits in this Presidency and in what manner they are disposed of.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. F. Cartledge.

Notification

*Judicial Fines & deposits that have been
carried to account, may be refunded by the
Collector, on the Authority of the Court of
Superior Jurisdiction in the former, and the
Officer by whom the deposit was remitted in
the latter case. Refunds may be*

*made at any time. The Collector should enter the
amount in his Contingent bill, supporting
them from the Charge with an Authenticated Copy
of the Order of repayment, and a Certificate
that the sum had been actually
credited in his accounts.*

*When a
longer time
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be made to Govt*

Judicial Department.

Proceedings of the Madras Government.

Read the following letter
from the Civil Auditor

(Here enter 16 Feb. 1861.)

Order thereon 8th March 1861 No 309

In Extract Minutes
of consultation of 4th Aug.
1835. No 20, Collectors
were authorised gene-
rally to comply with
all requisitions for
the refund of monies
received by them from
the Courts, made under
the orders of the Pro-
vincial Courts, or
of the Sudder and
Goujdaree Adalats.

2. These instructions
were

For 23rd January 1861. 1861. 1861. 1861.

1861. 1861. 1861. 1861.

To the Civil Auditor
The Chief Secretary
to Government

10. No 309
1861. 1861. 1861. 1861.

No 2161
1861. 1861. 1861. 1861.

notification to attend the
Register of the Under Court
they are notified. they are
relative to returning fines &
deposits that have been carried
to account.

24. 1861
1861. 1861. 1861. 1861.

Civil Auditor's Manual -
Chap. VIII - para. 97

Fines levied in the Police and
Magisterial Departments,
when returned, are admitted
by the Civil Auditor on the
refund being supported by
the order of the Sessions
Judge, or other competent
authority, under which
it is made.

were communicated
to the subordinate
courts in the Auditor's
Circular, 19th
idem No. 8.

The rule, however,
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as per margin, is an
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A similar order res-
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+ and had been carried
to account

12/186. 23 Decr 1858.
147. 11 Feb'y 1859.
353 - 16 March 1859.
879. 28 June 1859.

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that authority it
was competent for
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and the collector to
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money due to parties,
whose deposits had
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JP

The Under-Secretary
Civil Auditor
Accountant-General
Revenue Department

Sept 8 3-61.

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Res of Board

Madras
Department 1861.

No. 309.

Proceedings of the Madras

Government.

Decr. 5th Decr 29/61 out 1230.
24-354/62 1334/64
24-354/62 112/62
Dated, 24th Decr 1861.

*Following observations
will be referred to the Commission
submitted by the Civil Judge
relative to refunding fine
and deposits that have been
carried to account and
directing its publication
in the Gazette.*

57458