M.R.O. 1—30,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial **DEPARTMENT.**

G.O. No. 798 Press Mis.

200-201

Dated 23. .5. 1863

819

Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department,
23rd May 1863.

No. 200. Read the following letter from J. W. S. WYLLIE, Esq., Under Secretary to the Government of India; to the Secretary to the Government of Fort Saint George, dated Fort William, the 23rd April 1863, No. 2,625.

Home Department.
Judicial.

1. It being in contemplation to extend the operation of Schedule B of Act X of 1862 to the High Court at Madras, I am directed to request that, with the permission of His Excellency the Governor in Council, the Advocate General at Madras may be asked to favor the Government of India with any suggestions which he may have to offer as to the modifications or additions required to be introduced into the Schedule, so as to make it embrace the whole business of the High Court.

2. I am further desired to take this opportunity to call your attention to my letter, No. 6,002, dated 27th October, and to request that the opinion asked for in paragraphs 2—4 thereof, from the Judges of the High Court, may be obtained and forwarded as soon as possible.

No. 201. ORDER THEREON, 23rd May 1863, No. 798.

Resolved that the Advocate General be requested to give his early attention to the subject adverted to in the 1st paragraph of the foregoing letter, and to submit, for communication to the Government of India, any suggestion which he may have to offer thereon.

2. The report of the Honorable the Judges of the High Court, on the subjects referred to in the letter from the Government of India under date the 27th October last, is now under the consideration of Government, and will be forwarded at an early date.

(Signed) A. J. ARBUTHNOT,
Chief Secretary.

Exd. T. McMootry.

and

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Letter

High Court House

Madras May 26th 1863.

From

The Honorable T. Sydney Smyth

Advocate General.

To

The Honorable A. J. Arbuthnot

Chief Secretary to Government

Fort St George.

Sir

I have the honor to submit the following observations in compliance with the Order of Government, Judicial Department No 798, dated 23rd Instant, passed upon the letter to yourself from the Under Secretary to the Government of India, No 2625, dated 23rd April 1863, desiring to be furnished with any suggestions I could offer "as to the modifications or additions required to be "introduced into Schedule B to Act X of 1862, so as to make "it embrace the whole business of the High Court."

2. I trust I may be permitted in the first instance to call attention to the principle upon which it seems desirable to proceed in raising a revenue from this source; the principle that has been adopted in England;

and

and the operation of Schedule B of Act X of 1862 as it now stands.

3. It will probably not be disputed that one principle which should never be lost sight of, when it has been once decided that it is necessary to raise a revenue by taxes upon the due administration of justice, is to take care that such taxes should be so levied, that neither by reason of their amount, nor of the mode of levying them, they should operate as, nor even approach to being, a denial of justice.

4. I believe that the Order of the Court of Chancery in England, issued by Lord St Leonard's on the 25th October 1852, prescribing (inter alia) the use of Stamps, instead of Fees, had this object in view when it directed a Stamp of £1 to be paid on the filing of every Bill, Information, or Special case, and a £4 Stamp on every Decree or Decretal Order. I am also informed that if the value of the subject in dispute be under £1000 (Rs 10,000) a Judge's order will reduce these payments to one half this amount. Thus, a Stamp of two shillings, or Five Rupees, is the only charge in England upon the institution of a suit. The highest Stamp of all, £4, on a Decree or Decretal Order, comes in at the end of the suit, when the Plaintiff, if he succeed, will probably be speedily reimbursed by the Defendant.

5. Contrast this for one moment with the principle apparent in Schedule B, Act X of 1852, and the amounts therein charged — bearing too always in mind, the great comparative poverty of India, and especially of the mass of Indian suitors, when contrasted with England, and the suitors in the English Court of Chancery.

6. Upon the institution of any suit in India for Rs 10,001, Schedule B levies Rs 350, or £35; being thirty five times the amount of the English Stamp. If the suit be for Rs 9999 only, the English charge is but Five Rupees, the Indian charge Two Hundred and Fifty Rupees, or fifty times the amount of the English charge! Considering the great amount of this charge, and the period at which it is levied, which seems particularly objectionable, it seems deserving of most serious consideration whether this charge must not, in very many cases, from the poverty of the suitors, operate as a total denial of justice. The mere act of launching a suit often brings an unjust Defendant to offer terms; but under the operation of Schedule B, this launching is the most difficult part of all. The Stamp for a copy of Decree is but Rs 4 in the Sudr Court, one Rupee if elsewhere, thus exactly reversing the principle upon which the English charge appears to be framed.

7. Another principle which seems to me apparent in Lord St Leonard's Order, is to spread the charge

gradually

gradually over all the steps in a suit; making every step bear its proportionate charge; whereas, comparing Act VIII of 1859, the Civil Procedure Code, and the proceedings which it requires, with Schedule B Act X of 1862, it appears to me that nearly nine tenths of the proceedings which are, or may be requisite, under the Civil Procedure Code, are subject to no Stamp Duty at all.

8. I shall not advert to proceedings on the Ecclesiastical side of the Court, as I cannot suppose that the present cumbrous, medieval, almost unintelligible, and enormously expensive proceedings, still compulsory on the Court in suits on that side, will long be allowed to continue in force; but I may observe that I can see no good reason why the English principle of a succession Duty should not be applicable to Probates and Letters of Administrations here, (see Schedule B. Section 13) instead of subjecting them merely (i. e. whenever Section 12 shall apply to them, which it does not do now) to a Stamp of Four Rupees; the rather as, by Section 3, the above principle seems to have been already applied to Certificates under Act XXVII of 1860. Indeed it seems only necessary to insert the words "Probates and Letters of Administration" in Section 3, before the word Certificates.

9. The matters or proceedings which, so far as I can see, are not now subjected to any Stamp, but many of which, in my opinion, are as legitimate objects of

taxation

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VIII

taxation as any other proceeding or step in a suit, are as follows.

Summons – see Section	41
Written appointment of Agent –	51
Order for Substituted Service	57.
Application for Security &c –	74, 34, 35, 80, and 81
Warrant to bring up Defendant –	75.
Application for Warrant for attachment	82.
Warrant for Attachment –	83.
Application to stay Sale –	85.
Application for Injunction to stay Waste, or for Receiver –	92.
Certificate for refund of Stamp Duty	98. ??
Notices to produce	107.
Summons to produce.	153.
Notice to set aside Exparte Judgement	119.
Written declaration to excuse the personal attendance of a party to a suit. . . –	164.
Commissions.	175-180.
Judgement and Decree.	183, 189.
Interrogatories probably come under Section 5 of Schedule B.	
Application for Execution &c.	307.
Notice to shew cause why Decree should not be executed (!!!)	216.
Security against injury by the Court's attachment (!!)	218.
Warrant for Execution of Decree	321
Claims and objections to sale of attached Property	247 } N.B. a large Stamp here is frequently required
Certificate to purchasers of land	359
Application for rateable distribution	271.
Application by another Decree holder	272
Application for discharge	273.
Application for discharge on surrender of Property	280
Application for Execution of Decree within the jurisdiction of another Court	285.
Application for reference to Arbitration	313.
Application to enlarge time for making award.	318.
Application to Court to appoint Umpire	319

Award.	320
Application to modify, correct, or set aside award	322 & 324.
Application to file in Court agreement to go to Arbitration...	326.
Application to file award under Section	327
Memorandum of Appeal.	332
Application to stay Execution of Decree pending Appeal	338
Application for Review of Judgment	376.

10 I would beg to be understood as merely pointing out in the above list matters upon which stamps may be imposed, should Government in its discretion deem it wise to do so, and by no means as recommending that Stamps should be levied on the whole. I am quite aware that, on the score of convenience, there are grave objections to doing so. The necessity for so many small Stamps (for I assume that if all these proceedings were subjected to Stamp duty, the charge upon each one would be very small) would probably necessitate the increase of the Stamp Establishment, as it certainly would greatly lengthen the accounts necessary to be kept. The convenience too of the suitors themselves, and still more of the practitioners, would suggest the concentrating of the Stamp Duties upon a few of the more important items, such as every Plaint, Defendants written Statement, Affidavit, or Petition requiring to be verified, which it is necessary to file in Court; and upon every Document which issues from any of the Offices of Court, such as Judge's Courts Summons, Judge's Order or Order of Court, Warrant, Judgment or Decree and Copy thereof, Memorandum of Petition of Appeal, Petition for Review of Judgment. These are all prominent and important steps, which could not easily be evaded; and which by the imposition of suitable and uniform uniform, not ad valorem Stamps, would, without much additional trouble or expense, probably bring in a good income to the Treasury. I would add that, in my remarks on the institution fee, I have not at all forgotten what may be urged about the proverbial litigiousness of the Natives of India, and their great readiness to gratify a grudge by rushing into law, if they can do so cheaply. This cannot be denied, and is doubtless much to be deplored; especially when coupled with their lamentable readiness, at least in our Courts, to back up any statement, no matter how false, by the most profuse and reckless perjury - but all this does not, in my mind, outweigh the dangers arising from the State, by its own act, placing justice out of the reach of the poor man - especially in a country where the rich have so little regard for the rights of their poorer fellow countrymen, and where the lamentable prevalence of name-lending, and benamee transactions, offer such strong and continual temptations to the perpetration of the grossest frauds and injustice, even among members of the same family.

11. In conclusion I would suggest, that, in reconstructing Schedule B, there should be one section embracing all charges upon all Judicial Proceedings; and that, in calculating the amount to be charged upon each step, Lord St Leonard's Order should be kept in view; charging at the very outside not more than Four Annas, or Six-pence, for each shilling in the Schedule to his Order. The charges made upon this scale will still be very much higher than is warranted by the average means of

of Indian suitors, as contrasted with those in England.

I have the honour to be
Sir
Your most Obedient Servant
[signature]
Advocate General

Rec. 26th Nov. 1862 Dft 781-192
– 23rd May 1863 – 798

93.

From
The Advocate
General
Dated 26th May 1863
Rec'd 27th do
No. 10 No 704

Reports on certain
observations in com-
munication with the
proceedings of the Court
of Sudder Dewanny Adaulut
in the suit of Ramasawmy
Mudaly against Ramasawmy
Pillay for the restitution
of the Zemindary of
Ramnad sequestered
on account of the
debts of the late Raja
of Ramnad to the
Government of Madras

Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read letter from the
Under Secretary to the Govt
of India.
(Rec'd 23d April 1863.
No 2625)

Order thereon 23d May 1863 No. 798

Resolved that the
Advocate General be re-
quested to give his early
attention to the subject
adverted to in the 1st para
of the foregoing letter, and
to submit, for communi-
cation to the Govt of India
any suggestion which
he may have to offer
thereon.

The report of the
Hon. the Judges of the High Court
on the subjects referred to

to in the letter from the
Government of India mdd
date the 27th Oct. last,
is now under the con=
=sideration of Government
and will be forwarded
at an early date.

To the Advocate General &c &c
— Hon'ble the Judges
of the High Court.

List of Proceedings 1811

Judicial 1863.. Department,

No. 798.

PROCEEDINGS OF GOVERNMENT,

Dated 23 May.

Requesting the Advocate Genl. to submit, as requested by the Govt. of India, any suggestions which he may have to offer as to the modifications or additions required to be introduced into the Sch. B to Act X of 1862 so as to make it embrace the whole business of the High Court.

No. 187-182
26/11/62

200+201