MGE. O. 1—30,000—15-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial **DEPARTMENT.**

G.O. No. 842	Press Mis-
271-274	
Dated 30-5-	19 1863

7/8

Not to be folded or roughly handled

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

READ—the following papers :—

No. 270. From the Honorable Sir C. H. SCOTLAND, Kt., Chief Justice of the High Court, Madras ; to the Honorable the Governor in Council, &c., &c., &c., Fort St. George, dated Madras, 27th May 1863.

I am in receipt of the letter of the Chief Secretary of the 23rd instant, acknowledging by direction of your Excellency in Council my letter of the 12th instant.

Referring to the observations made in the 3rd paragraph of the letter on the subject of the office of Sheriff, I have to state that the duty is now imposed upon me of requiring the Sheriff to provide and pay a Deputy Sheriff out of the salary approved of as the reasonable salary for the office of Sheriff, until the matter of difference in regard to this office has received the consideration of the Right Honorable the Secretary of State.

As your Excellency in Council declines to give the conditional approval alluded to in my last letter, or to assent to the temporary continuance upon their present footing of the offices therein particularly referred to, the new establishment will have operation from the 1st of June next in so far as salaries have been fixed for the officers appointed and approved of. This at present is not the case as regards the Registrar and Assistant Registrar. The salaries which, in the exercise of the authority and duty conferred and cast upon me by the Letters Patent, I have appointed as the present ust and reasonable salaries of these officers have not met with approval, and feeling yself unable after every consideration to adopt the salaries considered by your Excellency in Council to be sufficient, I have asked that the matter may be referred for the consideration of the Right Honorable the Secretary of State.

Under these circumstances, the arrangements for the receipt of fixed salaries by the Registrar and Assistant Registrar, and the payment over to the Government of the fees of the Registrar's office must necessarily be postponed until the opinion of the Secretary of State is known.

I have to request that your Excellency in Council will direct a copy of this letter also to be transmitted to the Secretary of State by the next Mail.

No. 271. From A. MACDONALD RITCHIE, Esq., Registrar, High Court ; to A. J. ARBUTHNOT, Esq., Chief Secretary to Government, Fort St. George, dated Madras, 28th May 1863.

With reference to the Proceedings of the Madras Government, Judicial Department, No. 669, and the Order thereon, of the 20th May 1863, No. 776, a copy of which has been laid before the Chief Justice, I am directed to refer you to paragraph 7 of the Chief Justice's letter of the 21st March last, and paragraph 4 of his letter of the 12th May last, and to state with regard to paragraph 2 of the Government Order which says that " the office of Chief Clerk of the Insolvent Court is to be abolished from the 1st June," that no vacancy can occur in that office so as to admit of a change in the discharge of the duties of the office until the present Clerk of the Crown has entered upon the duties of Acting Advocate-General on the departure of the present Advocate-General on leave.

No. 271-A. Despatch from the Right Honorable Sir C. WOOD, Bart., Secretary of State for India; to His Excellency the Honorable the Governor in Council, Fort St. George, dated India Office, London, 30th April 1863, No. 10.

Your Despatch, dated 27th February (No. 7) 1863, transmitting correspondence regarding the ministerial establishment to be in future assigned to the High Court of your Presidency, has been considered by me in Council.

2. As the subject is still under the consideration of your Government, it is unnecessary for me to do more at present than to express my general concurrence in the instructions contained in your letter to the Chief Justice, dated 24th February last.

3. Your proceedings with reference to the location of the High Court are approved.

No. 272. MINUTE by the Honorable T. PYCROFT, dated 29th May 1863.

In the first of the above letters the Chief Justice declines to give effect to the arrangements authorized by Government for the remuneration of the officers of the High Court, as regards the salaries of the Registrar and Deputy Registrar on the Original side, by causing the Registrar's fees to be paid over to Government. He also, as it would seem from the passage of his letter marginally quoted, arrogates to himself the authority and duty under the Letters Patent of fixing the salaries of the servants of his Court, and of adopting, or not adopting, the salaries which the Government may consider to be sufficient for them. On this last I would only remark that the assumption appears to me wholly at variance with the terms of the Letters Patent, with the relation in which the Chief Justice himself stands to Government, and with their general power and authority.

> "The salaries which, in the exercise of the authority and duty conferred and cast upon me by the Letters Patent, I have appointed as the present just and reasonable salaries of these officers have not met with approval, and feeling myself unable after every consideration to adopt the salaries considered by your Excellency in Council to be sufficient."

2. As the Chief Justice will not cause the Registrar's fees to be paid to the credit of Government, that officer must for the present continue to draw them, but he will do so without any authority on the part of Government, and subject to their being accounted for hereafter. He will of course not draw his fixed salary Rs. 1,500, nor will his Assistant draw that of Rs. 300, and this latter will not draw his present salary * as Puisne Judge's Clerk, and if he draws any fees † in that capacity will account for them eventually, seeing that his Clerkship ceases on the 31st instant, and that it has no place in the revised establishment.

* Rs. 210 per mensem.

† Puisne Judge's fees average about Rs. 150 monthly.

3. I would then inform Sir C. Scotland that the Government regretted to learn that he declined to give full effect to their orders in regard to the introduction of the new arrangements, which they had approved of for the remuneration of the officers and servants of the High Court—that his letter and its answer would be sent Home by the next Mail—but that the Government could not admit his possessing the authority under the Letters Patent claimed by him in the 3rd paragraph of his letter, nor did they recognize the right of the Registrar to draw, from the 1st proximo, any fees or any emoluments beyond the salary assigned him in the revised table.

4. As to the Registrar's letter, 28th instant, I would simply pass an order upon it to say that the abolition of the office of Chief Clerk of the Insolvent Court as a separate appointment and the transfer of its duties to the Registrar had nothing to do with the present Clerk of the Crown entering upon the duty of Acting Advocate-General; that the arrangement had been ordered to have effect on the 1st proximo; that it could not be delayed nor any remuneration * be allowed on account of the Chief Clerkship after that date.

* The Chief Clerk draws a salary of Rs. 218¼ per mensem. His fees average about Rs. 350 monthly. His salary will cease from the 31st instant, and if he draws fees between that date and Mr. Smyth's departure, he will have to account for them.

(Signed) T. PYCROFT.

No. 273. MINUTE by the Honorable the PRESIDENT, dated 29th May 1863.

I think the Chief Justice has taken an erroneous view both of his powers and of the proper mode of establishing them. The proper course of procedure in the event of a difference of opinion between himself and the Government upon questions of a purely financial character, would have been to have accepted the decision of the Government under protest, and to have referred the matter to the Secretary of State. He has now placed himself and his officers in a false position altogether, compelling them either to go without their salaries, or to draw without authority from the Government, from a fund which they will have to account for hereafter, a salary unauthorised altogether. The only course which the Government can take is that pointed out by Mr. Pycroft; the papers should go Home by the Bombay Mail if possible.

(Signed) W. T. DENISON.

No. 274. To the Honorable Sir C. H. SCOTLAND, Kt., Chief Justice of the High Court of Judicature, Madras, dated Fort St. George, 30th May 1863, No. 842.

I am directed by His Excellency the Governor in Council to acknowledge the receipt of your letter of the 27th instant and of a letter from the Registrar of the High Court (Original side) under date the 28th idem, having reference to the Ministerial establishment of the High Court.

2. The Governor in Council regrets to learn that you decline to give full effect to the instructions which he has deemed it proper to issue in regard to the introduction of the new scale of establishment of Clerks and other Ministerial officers, which has received the approval of the Government, under Clause 6 of the Letters Patent constituting the High Court. His Excellency in Council cannot admit that you possess, under the Letters Patent, the authority claimed in the 3rd paragraph of your letter; nor can he recognize the right of the Registrar to draw on his own account, from the 1st proximo, any fees or emoluments beyond the salary which has been assigned to him in the statement appended to my letter of the 30th ultimo.

3. With reference to the Registrar's letter of the 28th instant, I am directed to observe that the abolition of the office of Chief Clerk of the Insolvent Court as a separate appointment and the transfer of the duties to the Registrar of the High Court (Original side), is in no way connected with the contingency of the present Clerk of the Crown being appointed to act as Advocate-General. The abolition of the office in question has been ordered to have effect from the 1st proximo; and the Governor in Council cannot assent to any delay in carrying it out, nor to any remuneration being granted on account of the Chief Clerkship after that date. The Chief Clerk, it is observed, draws a salary of Rs. 218-4-0 per mensem, and his fees average about Rs. 350 per mensem. His salary will cease from the 31st instant; and if he should draw any fees after that date, he will be required to account for them to Government.

4. I am directed, in conclusion to transmit, for your information, the enclosed copy of a despatch received from the Secretary of State by the Bombay Mail, acknowledging the receipt of the correspondence noted in the margin, and expressing his general concurrence in the instructions contained in the letter which was addressed to you by direction of the Governor in Council, under date the 24th February last. Copies of the present correspondence will be sent to the Secretary of State by the next Mail.

Letter from the Honorable the Chief Justice of the High Court, to His Excellency the Governor in Council, under date the 27th November 1862.

Letter from the Chief Secretary to Government, to the Honorable the Chief Justice of the High Court, under date the 24th February 1863, No. 287.

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

Exd. T. O'Connor.

Despd in Mail 96

No 842

Judicial Department.

To
The Honble Sir C. H. Scotland
Knight
Chief Justice of the
High Court of Judicature
Madras

Honble Sir,

I am directed by His Excellency the Governor in Council to acknowledge the receipt of your letter of the 27th instant and of a letter from the Registrar of the High Court (Original side) under date the 28th idem, having reference to the Ministerial Establishment of the High Court

2. The Governor in Council regrets to learn that you decline to give full effect to the instructions which

he has deemed it proper to issue in regard to the introduction of the new scale of Establishment of C. & & and other Ministerial Officers, which has received the approval of the Government, under Clause 6 of the Letters Patent constituting the High Court. His Excellency in Council cannot admit that it possesses, under the Letters Patent, the authority claimed in the 3d paragraph of your letter; nor can he recognize the right of the Registrar to draw on his own account, from the 1st proximo, any fees or Emoluments beyond the salary which has been assigned to him in

in the Statement appended to my letter of the 12th ~~30th~~ Instant.

3. With reference to the Registrar's letter of the 28th Instant, I am desired to observe that the abolition of the Office of Chief Clerk of the Insolvent Court as a separate appointment and the transfer of the duties to the Registrar of the High Court (Original side), is in no way connected with the Contingency of the present Clerk of the Crown being appointed to act as Advocate General.

4. The abolition of the Office in question has been ordered to have effect from the 1st proximo; and the Governor in Council

Cannot

cannot assent to any delay in carrying it out, nor to any remuneration being granted on account of the Chief Clerkship after that date. The Chief Clerk, it is observed, draws a salary of Rs. 218-4. per mensem, and his fees average about Rs. 350 per mensem. His salary will cease from the 31st instant, and if he should draw any fees after that date, he will be required to account for them to Government.

5. I am directed, in conclusion to transmit, for your information, the enclosed copy of a despatch received from the

Letter from the Hon'ble the Chief Justice of the High Court to H.E. the Governor in Council under date the 27th Novr. 1862
Letter from the Chief Secretary to Govt. to the Hon'ble the Chief Justice of the High Court under date the 24 Febry 1863 N° 287.

Secretary of State by the Bombay Mail, acknowledging the receipt of the correspondence noted in the margin, and expressing his general concurrence in the instructions contained in the letter which was addressed to you by direction of the Governor in Council under date the 24th February last. Copies of the present correspondence will be sent to the Secretary of State by the next Mail.

Jud. & Eccl.
30 May 1863

Jud. C. 1863 Dept.

No. 842.

Chief Justice of the
High Court of Judica-
-ture — Madras

Pro. No. 776
20/5/63
666-669
30/4/63
786-787
23/5/63

Ind. D. to Engt. 30th May
D. 21 of 1863

D/ 30th May 1863.

~~A further communica-~~
~~-tion addressed to the Chief~~
~~Justice in regard to his~~
~~objection to the salary as-~~
~~-signed to the Registrar on~~
~~the original side and to~~
~~the abolition of Insolvent~~
~~Court Clerkship.-~~

D. 31st July
63.