

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	904	Press
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92-93 A.		
Dated	10.6.1883	10

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Read the following papers:—

No. 92. From C. F. CHAMIER, Esq., Registrar of the High Court of Judicature at Madras; to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George, dated Madras, 16th January 1863, No. 14.

1. I am directed to acknowledge receipt of the Proceedings of Government, dated 26th November 1862, communicating to the High Court, copy of a letter from the Government of India, in which it is requested that an expression of the views of the Chief Justice and Judges may be obtained as to the expediency—(1) of substituting Stamp duties for Court fees on the Original side of the High Court; (2) of shortening, in the case of appeals from the decrees of a single Judge or Division Court of the High Court in the exercise of original jurisdiction, the time of appeal allowed by the Code of Civil Procedure; (3) of enlarging the powers of single Judges of the High Court, particularly in disposing of applications for the admission of Special appeals; (4) of imposing further checks upon applications for the admission of Special appeals; and (5) of limiting the right of regular appeal to the High Court to cases ordinarily appealable to the Queen in Council, leaving the facts in all other cases to be finally determined by a Provincial Court composed of three Judges.

2. In reply I am directed to state that, if the Officers of the Court on the original side be paid by salaries, the Chief Justice and Judges see no objection to Court dues being levied from suitors in the form of Stamp duties, instead of fees, with the view of introducing uniformity throughout the Court.

3. The time of appeal allowed by the Code of Criminal Procedure having been fixed with reference to the distance which the appellant would in many cases have to travel, to present his appeal to the Appellate Court, the Chief Justice and Judges are of opinion that a much shorter time would be sufficient in the case of the appeals specified in Section 6, Act XX of 1862, wherein the appellant will merely have to present his appeal to another branch of the same Court in which the original decree was made. If legislation be considered necessary on this point, the Chief Justice and Judges would suggest seven clear days as the limit of time where the appeal is against the decree or order of a single Judge or the order of a Division Court, and fourteen clear days where it is against the decree of the Division Court, with power to admit an appeal afterwards upon good cause being shown. They are of opinion, however, that this is a matter which might be left to the discretion of each High Court, to be determined with reference to local circumstances and to the state of business in the Court.

4. With respect to the question of enlarging the powers of single Judges of the High Court, the Chief Justice and Judges are not prepared to suggest that it is advisable to enlarge such powers in any way. They remark that the High Court at Madras has not availed itself of the provisions of Section 25, Act XXIII of 1861, empowering a single Judge to reject applications for the admission of Special appeals, or return them for amendment. Each application, as soon as it is presented, is examined in the Registrar's office to see that it has been correctly drawn up and that the stamp is sufficient; and, these matters of form being arranged, it is then posted in its order for hearing before a full Court, composed of two Judges, by whom it is at once either rejected, or admitted and judgment given on the points raised by the grounds of appeal. By this method a second hearing is avoided, which would become necessary in every case in which a single Judge might consider that the application ought to be admitted.

5. Upon the question of imposing further checks upon applications for the admission of Special Appeals and of limiting the right of regular appeal to the High Court upon the facts to cases ordinarily appealable to the Queen in Council, the following are the remarks of the Honorable the Chief Justice, in which the Honorable Mr. Justice Strange concurs.

Remarks of the Honorable Sir Colley Harman Scotland, Knight, Chief Justice.

"I cannot agree in the opinion with which the Government here have accompanied the letter of the Secretary to the Government of India requesting the Judges of the High Court to favor the Governor General with their opinion upon the points noticed in the letter. I think the

question of an alteration of the Courts in the Provinces and in the mode of Procedure as regards Appeals is very little, if at all, affected by a consideration of the short time that has elapsed since the establishment of the High Court, and that although the present amount of work devolving on the High Court of this Presidency on its Appellate side may be said not to be sufficient of itself to call for any immediate change in the law, still there is need for legislative interference as regards the existing system of appeal procedure; and that one important consideration is the appeal arrears which exist at present, and are likely, under the present system, to continue to some, if not the same, extent.

My judicial experience in the Appellate side of the High Court, though short, has been sufficient to convince me that the present procedure as regards Special appeals is unsatisfactory; but, as at present advised, I do not see that any further checks upon applications to appeal will properly meet the existing evils. The system appears to me altogether defective. The majority of such appeals seems attributable to a vague hope that possibly the Court may be led to think that justice has not been done, and a belief that in such case the Court must interfere. But, generally, the grounds of appeal are concluded by the findings of the lower Courts upon the facts, and the consequence is that a large percentage of the appeals are necessarily rejected without the Court's being able to consider the correctness or incorrectness of such findings. It seems to me that the right of appeal might almost as well be withheld in the administration of justice in this country, as allowed only to a Court which has not the power of considering and dealing with the case upon its merits. There should, in my opinion, be the power to deal with the case upon the merits, whenever the right to appeal is given, and I think that either a right of appeal upon the merits should extend to all the cases in which at present a regular or Special Appeal lies, or such right of appeal should be restricted within narrower limits, and the power to reserve points of law extended. To the adoption of the former course, the establishment of Provincial Appellate Courts composed of competent Judges, whose decisions should be final in a large class of cases, would be indispensable. Many serious disadvantages, I think, would result from giving the right to appeal upon the merits of the High Court in all cases, even though the number of Judges were increased; and on the other hand, I think, by a judicious limit of the right of appeal to the High Court in the more considerable class of cases, as suggested in paragraph 7 of the letter of the Secretary to the Government of India, every important advantage attached to the decisions of the High Court, and the controlling and directing influence of its proceedings, would be well and abundantly secured. This system of appeals to Provincial Courts and to the High Court, I believe, would be the best, and I doubt not would, with the advancements now taking place, become more and more efficient and satisfactory. The power to reserve points of law for the decision of the High Court might be given to the Provincial Courts of appeal.

But if the Courts as at present established are continued, then, as I have observed, the right of appeal upon the merits should be restricted within narrower limits, and as regards the cases excluded from such right of appeal, I think, all the real benefit to suitors in the decision of points of law, now attending the system of Special Appeals will reasonably be secured by extending to such cases the provisions of Act XXIII of 1861 as to referring questions of law for the decision of the High Court. There seems to me no disinclination on the part of the local Judges to submit questions under these provisions, but quite the contrary: and I see no good reason why,—doing away altogether with Special Appeals,—the provisions of Act XXIII of 1861 should not be extended to suits for a larger amount of debt, damage, or demand than they now apply to, nor why suits for immovable property under a certain amount should not be brought within the same provisions: subject perhaps to the exception that might properly be made, in favor of an appeal upon the merits in suits in which the lower Courts came to different decisions upon the merits. I think it would conduce to the better administration of justice, to extend the above provisions to suits for money demands, and in respect of movable property, in which the amount claimed did not exceed 1,000 Rupees; and to suits for land and other immovable property in which the annual produce of the property claimed did not exceed in value 100 Ru-

pees. The effect of this on the Appellate side of the High Court of this Presidency would be to lessen the present number of Special Appeals by about one-half, but then there would be a larger number of appeals to be heard upon the merits, as also the cases in which questions were submitted by the lower Court for the decision of the High Court.

But supposing the system of regular and Special Appeals to remain as at present, I still think that Special Appeals might with advantage be done away with in suits for claims to the amount just stated, and the power to refer questions of law as provided by Act XXIII of 1861, substituted, subject, perhaps, as before observed, to an exception in cases in which the lower Courts differ upon the merits."

6. With regard to the question discussed in the remarks of the Honorable the Chief Justice, the Honorable Mr. Justice Phillips and the Honorable Mr. Justice Frere are of opinion that the right of Special Appeal might, with advantage, be limited so as to exclude a large class of suits in which the matter in dispute is of inconsiderable value. This principle has hitherto been applied only to suits of the nature of those cognizable by Courts of Small Causes; but there appears to be no reason why it should not be extended to suits for immovable property within certain limits. The pecuniary limit laid down in the case of appeals to the Queen in Council, applies to immovable as well as movable property, and the same rule prevails as to all regular appeals. * It is proposed that no Special Appeal be allowed in suits for movable property below Rupees 1,000 or in those for immovable property below Rupees 50. In all the cases so excluded the Judge of the Appellate Court should have the power of reserving points for the decision of the High Court in the manner prescribed by Section 28. Act XXIII of 1861 in suits of the nature of those cognizable by Courts of Small Causes. This would secure to suitors whose cases would be excluded, all the benefits now attending the system of Special Appeals in respect of decisions of the High Court on questions of law. If upper District Courts, composed of three Judges, should be established, the right of Special Appeal might still further be restricted, if not altogether abolished, and the system of referring points of law for the opinion of the High Court extended to all appeals tried before such upper District Courts.

7. The right of appeal to the High Court upon the facts has been until lately almost confined, in the Madras Presidency, to suits in which an appeal lies to the Queen in Council, i. e., to suits decided by Civil Judges, whose proper jurisdiction is limited to suits in which the value of the matter in dispute exceeds Rupees 10,000. There are, however, several Districts in which there is now no judicatory between the Civil Judge and the District Moonsiff, and in such Districts the Civil Judge has to take cognizance of all suits above Rupees 1,000, which is the limit of a District Moonsiff's jurisdiction. If Provincial Courts composed of three Judges should be established, there seems to be no objection to the decrees of such Courts in original suits under Rupees 10,000 being made final; but the state of business in the High Court at Madras is not at present such as to render this relief necessary. The Judges in question do not therefore advocate the establishment of such Provincial Courts, unless it should be determined not to adopt any other measure of relief proposed in paragraph 6 of this letter.

8. A Statement is submitted showing the state of business in the late Sudder Court and on the Appellate side of the High Court during the year 1862.

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State of judicial business in the late Sudder Court and on the Appellate side of the High Court during the year 1862.

Month.	Appeals.	Pending.	Received.	Total.	Disposed of.	Pending.
January. ...	Regular...	63	2	65	...	65
	Special...	770	72	842	61	781
	Miscellaneous ...	78	36	114	42	72
February... ..	Regular...	65	6	71	1	70
	Special...	781	58	839	114	725
	Miscellaneous ...	72	43	115	38	77
March.....	Regular...	70	4	74	16	58
	Special...	725	103	828	83	745
	Miscellaneous ...	77	50	127	61	66
April... ..	Regular...	58	4	62	...	62
	Special...	745	68	813	82	731
	Miscellaneous ...	66	69	135	48	87
May... ..	Regular...	62	1	63	...	63
	Special...	731	7	738	6	732
	Miscellaneous ...	87	16	103	9	94
June	Regular...	63	...	63	...	63
	Special...	732	...	...	...	732
	Miscellaneous ...	94	...	94	...	94
July... ..	Regular...	63	12	75	4	71
	Special...	732	126	858	109	749
	Miscellaneous ...	94	68	162	51	111
August... ..	Regular...	71	5	76	2	74
	Special...	749	12	761	55	706
	Miscellaneous ...	111	36	147	72	75
September...	Regular...	74	6	80	5	75
	Special...	706	41	747	88	659
	Miscellaneous ...	75	36	111	41	70
October.....	Regular...	75	2	77	3	74
	Special...	659	39	698	75	623
	Miscellaneous ...	70	39	109	28	81
November...	Regular...	74	8	82	11	71
	Special...	623	53	676	103	573
	Miscellaneous ...	81	60	141	47	94
December... ..	Regular...	71	8	79	3	76
	Special...	573	63	636	84	552
	Miscellaneous ...	94	42	136	31	105

(Signed) C. F. CHAMIER,
Registrar.

No. 93. From the Honorable T. SYDNEY SMYTH, Advocate General; to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George, dated Madras, 26th May 1863.

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. 2,625, 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 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.

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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 £1 stamp on every Decree or Decretal Order. I am also informed that if the value of the subject in dispute be under £1,000 (Rupees 10,000) a Judge's order will reduce these payments to one-half this amount. Thus, a stamp of ten Shillings, or five Rupees, is the only charge in England upon the institution of a suit. The highest stamp of all, £1, 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 1862, 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 Rupees 10,001, Schedule B levies Rupees 350, or £35; being thirty-five times the amount of the English stamp. If the suit be for Rupees 9,999 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 Rupees 4 if in the Sudder 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 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 12) 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 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

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Certificate for refund of Stamp Duty ..	98 ??
Notices to produce...	107
Summons to produce...	153
Notice to set aside ex parte Judgment...	119
Written declaration to excuse the personal attendance of a party to a suit...	164
Commissions...	175, 180
Judgment and Decree...	183, 189
Copies would probably come under Section 5 of Schedule B.	
Application for execution S....	207
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.....	221
Claims and objections to sale of attached property...	247 N. B.--A large Stamp
Certificate to purchasers of land...	259 here is urgently
Application for rateable distribution ..	271 required.
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...	312
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 and 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 Plaintiff, Defendant's 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 or Court's Summons, Judge's Order or Order of Court, Warrant, Judgment or Decree and copy thereof, Memorandum or 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, 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

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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 country men, and where the lamentable prevalence of name-lending, and benamsee 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 Indian suitors, as contrasted with those in England.

No. 93 A. To the Secretary to the Government of India, Home Department, dated Fort Saint George, 10th June 1863, No. 904.

I am directed by His Excellency the Governor in Council to acknowledge the receipt of your letter of the 27th October last, calling for the opinion of the Judges of the High Court on certain points affecting the practice of that Court, and on a proposal to limit the right of regular appeal to that Court by constituting Provincial Courts whose decrees shall be final as regards the facts in all cases other than those appealable to the Queen in Council.

2. I am also to acknowledge Mr. Wylie's letter of the 23rd April last, requesting the opinion of the Advocate General at Madras, as to the modifications or additions required to be introduced into the Schedule B of Act X of 1862, so as to make it embrace the whole business of the High Court.

3. The opinion of the Judges of the High Court on the several points referred to in the first of the letters now under acknowledgment, is given in their Registrar's letter of the 16th January last, of which a copy is annexed. It will be seen, 1st, that if the Officers of the Court on the Original side be paid by salaries, which arrangement has been since sanctioned, the Judges see no objection to Court dues being levied from suitors in the form of Stamp duties, instead of fees; 2nd, that they consider seven clear days would be a sufficient time of appeal, when the appeal is against the Decree or order of a single Judge or the order of a Division Court, and fourteen clear days when it is against the Decree of the Division Court; power being given to admit an appeal afterwards on good cause being shown. They are of opinion, however, that legislation on this subject is not necessary, but that it should be left to the discretion of each High Court; 3rd, they are opposed to enlarging the powers of a single Judge; and they observe that the provisions of Section 25, Act XXIII of 1861, empowering a single Judge to reject applications for the admission of a Special Appeal or return them for amendment, have not been taken advantage of in the Madras High Court. Every such application is heard by a full Court of two Judges, by whom it is either rejected or admitted and judgment given on the points raised on the grounds of application. A second hearing is thus avoided.

4. The Governor in Council concurs generally in the remarks of the Judges on the points above adverted to. He is decidedly in favor of the substitution of Stamp duties for fees on the Original side of the Court.

5. The question raised in paragraph 7 of your letter of the 27th October last, and in the Bill which accompanied it, involves the entire question of the suitability, or otherwise, of the present system of Courts in the Provinces to the wants of the country. Considering the very short time which had elapsed when your letter of the 27th October last reached Madras since the High Court was constituted, it appeared to His Excellency in Council that it would not be desirable, except for very urgent reasons, to bring before the Legislature a measure involving so complete an alteration in the constitution of the Courts in the Provinces; and he was under the

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impression that, as regards this Presidency, the amount of work devolving on the High Court in its Appellate jurisdiction, and which, it was understood had been much reduced by the Code of Civil Procedure, was not such as to call for any immediate change in the existing law. The Honorable the Judges were accordingly requested, when expressing their opinion on the points noticed by the Government of India, to furnish a return showing the state of business in the late Sudder Court, and on the Appellate side of the High Court during the first nine months of the year 1862. The return furnished in accordance with this requisition, which is sent herewith, comprises the entire year. The following is an abstract of it:—

Regular Appeals.				Special Appeals.				Miscellaneous Appeals.			
Pending on the 1st Jan. 1862.	Received during 1862.	Disposed of.	Pending.	Pending on the 1st Jan. 1862.	Received during 1862.	Disposed of.	Pending.	Pending on the 1st Jan. 1862.	Received during 1862.	Disposed of.	Pending.
63	58	45	76	770	542	870	452	78	495	468	105

6. The Chief Justice and the three* Puisne Judges, whose opinions are recorded in the

* NOTE.—Sir A. Bittleston whose duties, it is understood, have been almost entirely confined to the Original side of the Court, has not recorded an opinion on the subject.

enclosed letter, agree as to the expediency of imposing a check on applications for the admission of Special Appeals. The Chief Justice

and Mr. Justice Strange are in favor of the establishment of Provincial Courts corresponding to the Upper District Courts, provided for in the Bill, whose decision should be final in a large class of cases; the power of reserving points of law for the decision of the High Court, as provided for in Section 27, Act XXIII of 1861, being given to such Provincial Courts of appeal. Supposing the present system of Courts to be continued, the Chief Justice and Mr. Justice Strange would restrict the right of appeal upon the merits within narrower limits; extending to cases not appealable, the provisions of the Act above quoted as to referring questions of law for the decision of the High Court; and supposing the system of Regular Appeal to be left as at present, they would abolish the right of Special Appeal in suits for moveable property in which the amount claimed did not exceed Rupees 1,000; and in suits for immoveable property, the annual produce of which did not exceed Rupees 100; again applying to such cases the provisions of Section 27, Act XXIII of 1861.

7. Mr. Justice Phillips and Mr. Justice Frere would limit the right of Special Appeal to suits for moveable property above Rupees 1,000, and to suits for immoveable property above Rupees 50; the Judge in all cases in which a Special Appeal did not lie, being at liberty to refer points of law to the High Court. Mr. Justice Phillips and Mr. Justice Frere do not consider the state of business in the High Court to be such as to render necessary the establishment of Provincial Courts of Appeal; but they are of opinion that if such Courts should be established, the right of Special Appeal might still further be restricted, if not abolished altogether; the system of referring points of law to the High Court being extended to all appeals tried by such Courts of appeals.

8. On full consideration of all that has been urged in the letter above referred to, His Excellency the Governor in Council adheres to the opinion that no sufficient cause exists for any material alteration in the law of appeal now in force in this Presidency. He is decidedly opposed to the establishment of Provincial Courts composed of more than one Judge. In judicial proceedings, as in most other business, there can, he conceives, be no question as to the superiority of a single mind solely responsible, applying its undivided energies to the question at issue, over two or three minds casting responsibility upon one another, and producing a decision which is the result of compromise. There is also the difficulty of finding competent men to fill these Courts, to say nothing of the additional expense which they must inevitably entail. It is true that the

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10th June 1863.

arrears in the civil business on the Appellate side of the High Court are by no means inconsiderable, but this is in a great measure attributable to the delays caused by the two branches of the Court having been hitherto located in separate buildings some four miles distant from each other—a cause which was in operation before the amalgamation of the Supreme and Sudder Courts; cases being constantly postponed to meet the convenience of the Barristers and Attorneys practising in both Courts. When both branches of the Court shall have been located in the same building (and this arrangement will be carried out in the course of a few weeks), there can be no reason why the number of decisions passed monthly, should not be much greater than it has been of late, and the arrear file be rapidly reduced. Moreover, it may be anticipated that the Act which has been recently passed, giving Small Cause Court Jurisdiction to District Moonsiffs in all suits for moveable property up to Rupees 50, and empowering the Government to invest the Judges of other Courts with similar jurisdiction up to Rupees 500, will tend to reduce the number of applications for the admission of Special Appeals. On the whole, the Governor in Council is decidedly of opinion that, in this Presidency, any immediate change in the system of judicatories or of judicial procedure is both uncalled for and inexpedient. The establishment of the High Court on its present footing, and the extension of Small Cause Courts under the law just alluded to, are both important measures, from which much benefit may be looked for, both in improving and in facilitating the administration of justice; and the Governor in Council would wish to observe the results of these measures before recommending any further change in the constitution of the Courts. The great object at present should be to improve the existing Courts by exercising the utmost care in the selection of the Judges, and providing such facilities for training both for the Bar and Bench as may be requisite and practicable. In connexion with this part of the subject, the Governor in Council has directed me to submit in a separate letter a proposal for the training of Covenanted Civil Servants for the Judicial branch of the service, which, if it be given a fair trial, will, he feels assured, have a marked effect in raising the qualifications of the Judges of the Appellate Courts, and thereby improving the administration of justice throughout the country.

9. The Advocate General, in his letter of the 26th ultimo, suggests a material alteration in the principle upon which the Stamp duties on judicial proceedings have been hitherto levied in this country. He recommends that the system now in force, under which the greater part of the Stamp duty is levied from the Plaintiff in the form of an *ad valorem* duty on the institution of the suit, should be abandoned; that the duties should be distributed over a few of the more important steps in the course of procedure; and that uniform duties should be substituted for the *ad valorem* duties now prescribed. Mr. Smyth's suggestions appear to the Governor in Council to be deserving of attention. The Governor in Council fully concurs in the principle laid down by him in the 3rd paragraph of his letter that such taxes, when raised at all, "should be so levied that neither by reason of their amount, nor of the mode of levying them, they should operate as, or even approach to being, a denial of justice." He would therefore support the proposal that the institution fee, as at present levied, should be superseded by a scale of duties distributed over some of the more important processes in the suit; but he questions the necessity of substituting a uniform, for an *ad valorem* scale. It appears to him to be only fair and reasonable that the Stamp duty should be regulated by the amount of the demand; for, as a general rule, the larger claims are more intricate in character and occupy more of the time of the Court, than smaller ones; and in the case of large claims, if the claim be just, the claimant will seldom have difficulty in raising money to meet the law charges, more especially if the Stamp duty be distributed over the various processes in the suit. When he has, it is open to him to take advantage of the privilege of suing *informa pauperis*. Whether the scale of Stamp duties can be reduced in the manner proposed by the Advocate General, at the conclusion of his letter, is a matter which must be determined mainly by financial considerations.

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

dec 210

Indraal Depa

N^o. 904.

To
The Secretary to the Government of India
Home Department

Sir,

I am directed by His
Excellency the Governor in
Council to acknowledge
the receipt of your letter
of the 27th October last,
calling for the opinion of
the Judges of the High Court
on certain points affecting
the practice of that Court,
and on a proposal to
limit the right of appeal
to that Court
by Constituting Provincial
Courts whose decrees shall
be final as regards the
facts in all cases other
than those appealable to the

W
J

given in Council.

I am also to acknowledge Mr. Wylie's letter of the 23^d ^{April last} ~~last~~, requesting the opinion of the Advocate General at Madras, as to the modifications or additions required to be introduced into the Schedule B of Act X of 1862, so as to make it embrace the whole business of the High Court.

3. The opinion of the Judges of the High Court on the several points referred to in the first of the letters now under acknowledgment given in their Registrar's letter of the 16th January last, of which a copy is annexed. It will be seen, 1st, that if the Officers

Officers of the Court on original side be paid in salaries, which arrangement has been since sanctioned, the Judges find no objection to Court dues being levied from suitors in the form of stamp duties, instead of fees; 2^d, that they consider seven clear days would be a sufficient time of Appeal, when the Appeal is against the Decree or order of a single Judge or the Order of a Division Court, and fourteen clear days when it is against the Decree of the Division Court, power being given to admit an Appeal afterwards on good cause being shown. They are of opinion

opinion, however, that
disposition on this subject
is not necessary, but
that it should be left
to the discretion of each
High Court. - 3^d, they are
opposed to enlarging the
powers of a single judge;
and they observe that the
provisions of Section 25
Act XXIII of 1861, empow-
ering a single judge to
reject applications for the
admission of a special
appeal or return them
for amendment, have not
been taken advantage of
by the Madras High Court.
Every such application is
heard by a full Court of
two judges, by whom it
is either ~~admitted or rejected~~
or admitted and judgment
given

given on the points raised
on the grounds of applica-
tion. A second hearing is thus
avoided.

4. The Governor in Council
concurs generally in the
remarks of the Judges on
the points above adverted to.
He is decidedly in favor of
the substitution of stamp
duties for fees on the original
side of the Court.

5. The question raised in
paragraph 7 of your letter
of the 27th October last and
in the Bill which accom-
panied it, involves the
entire question of the
suitability, or otherwise
of the present system of
Courts in the Provinces
to the wants of the Country.
Considering the very short
time

Regular Appeals				Special Appeals				Miscellaneous Appeals			
Pending on the 1 st Jan'y 1862	Received during 1862	Disposed of	Pending	Pending on the 1 st Jan'y 1862	Received during 1862	Disposed of	Pending	Pending on the 1 st Jan'y 1862	Received during 1862	Disposed of	Pending
63	58	45	76	770	542	870	552	78	495	468	105

The Chief Justice and
Three Puisne Judges, whose
opinions are recorded in the
enclosed letter, agree as to
the expediency of enforcing
imposing a check on appli-
cations for the admission
of special appeals. The
Chief Justice and Mr
Justice Strang are in favor
of the establishment of
Provincial Courts correspon-
ding to the Upper District
Courts provided for in the
Bill, whose decision should
be final in a large class
of cases; the power of
reserving points of law for
decision of the High
Court, as provided for in
Section 27 Act XXIII of
1861, being given to such
Provincial Courts of Appeal.
Supposing the present
System

+ Note. Sir A. B. Littleton whose
duties, it is understood, have been
entirely confined to the original
side of the Court, has not recorded
an opinion on the subject.

+ the annual produce
of which did not
exceed

System of Courts to be continued
The Chief Justice and Mr A
Justice Strang would restrict
the right of appeal upon the
merits within narrower
limits, extending to cases
not appealable, the provisions
of the Act above quoted
as to referring questions of
law for the decision of
the High Court; - and suppo-
sing the system of regular
appeal to be left as at
present, they would abolish
the right of special appeal
in suits for moveable
property in which the
amount claimed did not
exceed Rs 1000, and in
suits for immoveable
property, ^{value} ~~up to~~ Rs 10,000.
Again, applying to such
cases the provisions of
Section 27 Act XXIII of
1861 -

Mr Justice Phillips
and Mr Justice Fere would
omit the right of Special
appeal to suits for movable
property above Rs 1000,
and to suits for immovable
property above Rs 50; the
Judge in all cases in which
a Special appeal did
not lie, being at liberty
to refer points of law to
the High Court. Mr
Justice Phillips and
Mr Justice Fere do not
consider the state of business
in the High Court to be
such as to render necessary
the establishment of
Provincial Courts of Appeal;
but they are of opinion
that if such Courts should
be established, the right
of Special appeal might
still further be restricted.

As suggested above
it would be more
proper to restrict the
right of Special appeal
to suits for movable
property above Rs 1000
and to suits for immovable
property above Rs 50.
The High Court
as a Court of Appeal
as a Court of Appeal

if not abolished altogether.
The system of referring
points of law to the High
Court being extended to all
appeals tried by District
Courts of Appeals.

8. On full consideration
of all that has been urged
in the letter above referred
to, His Excellency the Governor
in Council adheres to the
opinion that no sufficient
cause exists for any material
alteration in the Law of
appeal now in force in this
Residency. He is decidedly
opposed to the establish-
ment of Provincial Courts
composed of more than
one Judge. His judicial
proceedings, as in most other
business, there can, he
conceives, be no question

to the superiority of a
single mind solely responsible,
applying its undivided
energies to the question at
issue, over two or three
minds casting responsibility
upon one another, and
producing a decision which
is the result of compromise.
There is also the difficulty
of finding competent men
to fill the Courts - to say
nothing of the additional
expense which they must
inevitably entail. It is
true that the arrears in
the Civil business on the
Appellate side of the High
Court ^{inasmuch as} are inconsiderable,
but this is in a great
measure attributable to
the delay caused by the
two branches of the Court
having been hitherto located
in

in separate buildings, four
miles distant from each
other - a cause which
was in operation before the
amalgamation of the
Supreme and Sudder Courts,
cases being constantly post-
poned to meet the conve-
nience of ^{the} Barristers and
Attorneys ~~in~~ practising
in both Courts. When
both branches of the Court
shall have been located
in the same building (and
this arrangement will be
carried out in the course
of a few weeks), there
can be no reason why
the number of decisions
passed monthly, should
not be much greater than
it has been of late, and
the arrears file be rapidly
reduced. Moreover, it
may

may be anticipated that
the Act which has been
recently passed giving
Small Cause Court juris-
diction to District Magistrates
in all suits for moveable
property up to Rs. 50,
and empowering the Govern-
ment to invest the Judges
of other Courts with similar
jurisdiction up to Rs. 500,
will tend to reduce the
number of applications
for the admission of
Special Appeals. On
the whole, the Governor
in Council is decidedly
of opinion that, in this
Presidency, any immediate
change in the system of
judicatories or of ~~judicial~~
judicial procedure is
both uncalled-for and
inexpedient. The esta-
blishment

Establishment of the High Court
on its present footing, and
the extension of Small Cause
Courts under the Law just
alluded to, are both ^{most} important measures, from
which much benefit may
be looked for, both in
improving and in facili-
tating the administration
of justice; and the
Governor in Council would
wish to observe the results
of these measures before
recommending any further
change in the Constitution
of the Courts. The great
object at present should
be to improve the existing
Courts by exercising the
utmost care in the selection
of the Judges, and providing
such facilities for training
both for the Bar and
Bench.

branch as may be requisite
and practicable. In
connection with this part
of the subject, the Governor
in Council has directed me to
submit ^{in a separate letter} a proposal for
the training of Covenanted
Civil servants for the
Judicial branch of the
Service, which, if it
be given a fair trial, will,
he feels assured, have a
marked effect in raising
the qualifications of the
Judges of the
Appellate Courts, and
thereby improving the
administration of justice
throughout the Country.

The Advocate General,
his letter of the 26th
ultimo, suggests a material
alteration in the principle
upon which the stamp
duties on judicial proceedings
have

have been hitherto levied
in this Country. He recom-
mends that the System
now in force, under which
the greater part of the Stamp
Duty is levied from the
Plaintiff in the form
of an ad valorem duty
on the institution of the
suit, should be abandoned,
and that the duties should
be distributed over
a few of the more important
steps in the course of
procedure; and that
uniform duties should
be substituted for the
ad valorem duties now
prescribed. Mr Syme's
suggestions appear to his
Governor in Council
to be deserving of attention.
~~Leaving out of consideration~~
~~the oft mooted question~~
whether

It is right that
the State should raise
revenue by taxes on the
administration of justice,
The Governor in Council
fully concurs in the
principle laid down
by the ~~Advocate General~~
in the 3d paragraph of
his letter that such taxes
when raised at all, should
"be levied that neither by
"reason of their amount,
"nor of the mode of levying
"them, they should operate
"as, or even approach to
"being, a denial of justice."

He would therefore support
the proposal that the
institution fee, as at present
levied, should be superseded
by a scale of duties dis-
tributed over some of the
more important processes
in the suit; but he

questions

I would omit the
proposition to
impose a stamp duty
on the writs & such
other processes as are
issued in the Court
as on the point in the
minutes.

in the Court

* more especially if the
stamp duty is distri-
-buted over the various
processes in the suit.

To this it may be added
that if stamps were to be
uniform for the whole of the
Province, the revenue would be
more equalized, and the
cost of suit lessened, and the
scale of stamp duties could
be made more uniform.

questions the necessity
of substituting a uniform,
for an ad valorem scale.
It appears to him to be
only fair and reasonable
that the stamp duty should
be regulated by the amount
of the demand; for, as a
general rule, the larger
claims are more intricate
in character and occupy
more of the time of the
Court, than smaller ones;
And in the case of large
claims, if the claim be
just, the claimant will
seldom have difficulty
in raising money to meet
the law charges. - When
he has, it is open to him
to take advantage of the
privilege of suing in
forma pauperis. Whether

the scale of stamp duties
can be made more uniform

be reduced in the manner proposed by the Advocate General at the conclusion of his letter, is a matter which must be determined mainly by financial considerations. Looking to the proneness of the Natives of India to litigation and the great mass of false litigation that encumber our Courts, The Governor in Council doubts of the expediency of any considerable ^{reduction} ~~reduction~~ in the rates now prescribed.

Fort St. George
10 June 1863

I would not have it in the business of Govt to make Justice as cheap as they can consistently with its paying its own expenses - False litigation must be checked by special measures and not by a reduction of litigation in general. It is a danger which is absolutely required for the good dispensation of Justice.

Malabar & the interior of the South of India are known to have been found that the Natives of India are more litigious than the European countries.

by A. before the 1st of June 1863

Enclosure to the letter of the 1st of June 1863

2693d-

Pro: Inue

Judicial 1863 Department

N^o 606

To
The Secy. to the Government
of India

Dated 10th June 1863.

Pro: 27th Feb 1863 at 221 to 350.
" 26th March " at 210 to 218.
Feb 7/32/63.

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