

MADRAS RECORD OFFICE.

Government of Madras.

Public DEPARTMENT.

G.O. No.	731	Press
		<u>Mis.</u>
179-181		
Dated	18-5-	18 1864

5/6

Not to be folded or roughly handled

731

*Proceedings of the Madras Government, Judicial Department,
18th May 1864.*

Read the following papers:—

No. 179. - From Mr. G. P. JOHNSTONE, Attorney at Law, Madras; to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George, dated Madras,—March 1864.

I have the honor to address you on the subject of the recent table of fees now in use in the High Court, and will be much obliged by your laying this letter before His Excellency the Governor in Council for his orders thereon.

1. The table of fees authorises the Registrar of the High Court to receive certain fees, and no other as laid down in the table; and it is the practice in the Registrar's office to send in a monthly Statement of the fees incurred by the different practitioners during the month for payment at the expiration of each month, which bills on presentation are always paid.

2. Such fees, however, are, when bills of costs are submitted to the Taxing Officer for taxation, liable to be allowed or disallowed by him: and as I submit, he (the Commissioner) is the only authority, in the first instance, to decide whether the Registrar or any other officer of the Court has properly charged the fees charged and received by him, and in case such decision is not correct, the next authority is the Judge sitting in Chambers.

3. In a case in the High Court in which I had the honor of appearing and acting for the defendant, namely, in Original Suit No. 192 of 1863, I had paid the Registrar certain fees during the progress of the suit as hereinafter enumerated, and when the case was disposed of submitted my bill of costs to the Taxing Officer for taxation, who on such taxation disallowed those items.

4. These items were as follows:—

	RS.	A.
1863, 28th October.—Paid Registrar for filing 12 documents...	6	0
„ do. for examining and comparing copy of document with the original No. 1, folios 13.	6	8
„ do. do. No. 2, folios 4...	2	0
„ do. do. No. 3, do. 4...	2	0
„ do. do. No. 4, do. 11...	5	8
„ do. do. No. 5, do. 7...	3	8
„ do. for marking the original documents returned...	1	4
„ do. for recording issues of fact...	1	4
1863, 20th November.—Paid Registrar for search for the Record in the suit of T. Authemoola Moodelly (<i>versus</i>) V. Soobaroy Moodelly and others.....	1	0
„ do. for copy answer of the defendant Soobaroy Moodelly and others, folios 57 (the Registrar charged Rupees 42-12-0 whereas he was only entitled to Rupee 28-8-0).	14	4
1864, 26th January.—„ do. for producing all the records at the trial (the Registrar charged Rupees 2, but was only entitled to Rupee 1)...	1	0
„ do. for examining and comparing Notice to produce with the original folios...	1	0
	45	4

5. After the taxation, I addressed the Registrar on the subject and requested him to refund to me the above sum of Rupees 45-4-0.

6. The Registrar referred me to the Judge and asked me to take out a Judge's summons, directing him to show cause why he should not refund these fees to me.

7. This I did, and on the matter coming on before His Lordship Sir Adam Bittleston, he confirmed the ruling of the Taxing Officer disallowing the items, and at that time inclined to the

*Proceedings of the Madras Government, Judicial Department,
18th May 1864.*

opinion that he had no power to order the Registrar to refund, inasmuch as the fees were paid to Government and would not be returned by them; but His Lordship then intimated to me that he would see the Chief Justice on the matter and would inform me of the result.

8. A few days after his Lordship, after a conference had with the Chief Justice intimated, to me that he still adhered to the opinion above-mentioned and that the Chief Justice concurred in it.

9. On this ruling of the Judges I asked His Lordship, Mr. Justice Bittleston, to give me a certificate to the effect that I was entitled to this refund to enable me to forward it to Government. This His Lordship declined to do: and His Lordship added that the practitioners should not pay the Registrar the fees he was not entitled to when he demanded them, and in case of any dispute, the matter should be referred to the Judge who would then decide the matter.

10. This procedure, as I submit, to some extent does away with the office of the Taxing Officer whose province it is to decide whether the different officers of the Court have properly charged their fees or not, and would entail on the Judges and the practitioners, and the different officers of the Court endless trouble and inconvenience, and much waste of time.

11. Under the old practice as prevalent in the late Supreme Court, the Registrar invariably refunded the fees the Master disallowed on taxation either *ex mero motu* or on a Judge's order, and as the Judges have properly declined to order the Registrar to refund, he being now a paid officer, I respectfully urge that the Government will pursue the same course as has hitherto prevailed.

12. I am led to believe that many of the other practitioners of the Court have thus paid away large sums to the Registrar, and intend applying to Government for their refund.

13. Since writing the above, I have had another bill of costs taxed by the Taxing Officer in O. S., No. 181 of 1863.

14. The items are exactly similar to those above mentioned.

27th October.—Paid Registrar for filing eight documents.....	4	0
" " for examining and comparing copy of document No. 1 with original, folios 8....	4	0
" " No. 2 with do. do. 4....	2	0
" " No. 3 with do. do. 5....	2	8
" " No. 4 with do. do. 7....	3	8
" " No. 5 with do. do. 3....	1	8
" " No. 6 with do. do. 8....	4	0
" " No. 7 with do. do. 3....	1	8
" " No. 8 with do. do. 3....	1	8
" " for marking the original documents returned.....	2	0
" " for recording issues of fact.....	1	4
	27	12

15. Under these circumstances, I trust that His Excellency the Governor in Council will direct the refund to me of the above sums amounting to Rupees 73.

Referred to the Government Solicitor for report.
(Signed) A. J. ARBUTHNOT,
Chief Secretary.

Fort Saint George,
21st March 1864.

No. 180. From J. R. BOYSON, Esq., Government Solicitor, Madras; to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Madras, dated 11th April 1864, No. 162.

I have the honor to acknowledge the Order of Government noted in the margin.

2. I have since ascertained from the Registrar of the High Court, on its Original Side, that the fees mentioned in Mr. Johnstone's

*Proceedings of the Madras Government, Judicial Department,
18th May 1864.*

letter to Government above referred to, and amounting in the aggregate to Rupees 73, were taken and received by him (the Registrar) and were paid by him, in due course, into the Bank of Madras to the credit of Government.

3. I have also satisfied myself, by inspecting the original taxed bills of costs referred to in Mr. Johnstone's letter to Government, that the whole of such fees were disallowed on taxation by Mr. Dale, the Taxing Officer of the High Court, on the ground that they were not authorized by the recognized table of fees.

4. I am, therefore, of opinion that the amount in question (Rupees 73) should be at once refunded to Mr. Johnstone, he having paid the fees, making this aggregate, upon the authority of the Registrar's construction of the table, and upon his demand, which construction the Taxing Officer subsequently over-ruled, and determined to be erroneous.

5. I have no doubt that there are very many similar cases, which will shortly be brought to the notice of Government; indeed, I know that such is the fact. I think also that many such cases will, in all probability, continue to arise, until the new Code of Procedure and the new table of fees have been for some time in practical operation, and their effect and meaning have been authoritatively established.

6. I would, therefore, suggest that the most convenient arrangement, as well for Government as for the officers and practitioners of the High Court, and the suitors resorting to it, and, at the same time, the most equitable arrangement towards such practitioners and suitors, would be for Government to authorize the Registrar and all other officers of the High Court to refund, out of any moneys that may come to their hands in payment of fees on behalf of Government, all fees which they may have charged and received, and which the Taxing Officer may subsequently have disallowed, as unauthorized.

7. Should it be brought to my notice that the Taxing Officer disallows any fee as to the propriety whereof there is or can be any fair question, I will take the necessary steps for bringing the matter under his consideration, and will, in case of need, obtain the ruling of one of the Judges, or the Court upon the point.

8. I return the order above noted.

Referred, with Mr. G. P. Johnstone's letter, to the Accountant General, for his opinion as to how refunds of fees should be exhibited in the accounts rendered under Section 3, Act XX of 1862.

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

Fort Saint George,
26th April 1864.

No. 181. From J. L. LUSHINGTON, Esq., Acting Accountant General; to the Chief Secretary to Government, Fort Saint George, dated 7th May 1864, No. 9.

Book and Adjustment Department.

With reference to your Endorsement, dated 26th April 1864, on letter from the Government Solicitor, dated 11th idem, No. 162, I have the honor to state that I see no objection to Mr. Boyson's suggestions for granting authority to the Registrar of the High Court, to refund all fees disallowed by the Taxing Officer from money in his hands, received by them in payment of fees on behalf of Government, subject to the arrangement hereinafter proposed.

2. I now receive from the Registrar of the High Court, and the Commissioner and Taxing Officer, quarterly Returns which exhibit in our entry, for each month in the quarter for which the Return is rendered, the total fees received, and *per contra* the same total sums paid into the Madras Bank. If the Registrar is to make refunds, such refunds should appear in the Returns sent to this office. The Returns should thenceforward exhibit the total sum received each month, on account of each suit on the debit side, and *per contra*: first, the total refunds in each month for each suit; and, secondly, the payments made into the Madras Bank.

Proceedings of the Madras Government, Judicial Department,

18th May 1864.

3. It would not be advisable to allow officers of the Court, who render their accounts and pay the fees received by them to the Registrar, to make refunds; but this officer may be authorized to do so, on an order granted by the Court, or other competent officer, whom the Judges of the Court, or Government may elect.

4. All vouchers on which refunds are made, must be submitted with the quarterly Returns in support of the payments.

5. Section 3 of Act XX of 1862 requires the fees received, to be paid in such manner as the High Court, with the approval of Government, shall direct. In Rule 4 of the orders of Court communicated with G. O. 24th June 1863, No. 992, it is required that the fees received by the Registrar, be *at once* paid into the Bank of Madras. A difficulty might arise, if this rule be strictly enforced, in meeting a claim for a refund should any be made just after the fees received are remitted to the Bank. To obviate this, I would suggest that the Registrar of the Court be allowed to retain a reasonable sum, not exceeding Rupees 500, in his hands every month, from fees received, to meet such claims. The amount retained at the end of the quarter in which his Return is rendered, will be exhibited therein as a balance in his hands. Under this arrangement, as required by the above Act, a true and faithful account will be rendered to this office of all fees received, with such particulars of receipt or otherwise, accompanied by vouchers.

6. If the Government approve of these proposals, a slight alteration will be required to be made in the 4th of the orders of the Court above alluded to.

No. 181A. To the Honorable Sir C. H. SCOTLAND, Knight, Chief Justice of the High Court of Judicature, Madras, dated Fort Saint George, 18th May 1864, No. 731.

I am directed to transmit to you the annexed copy of a letter, received on the 17th March last, from Mr. G. P. Johnstone, an Attorney practising in the High Court, requesting that the sum of Rupees 73, being the amount of fees charged by the Registrar and subsequently disallowed by the Commissioner and Taxing Officer, should be refunded to him, together with copies of letters on the subject from the Government Solicitor and the Acting Accountant General.

2. I am to request that the Judges will be good enough to instruct the Registrar to refund to Mr. Johnstone the amount in question from any monies that may have come into his hands in payment of fees on behalf of Government, and that they will pass such orders as they may deem proper for amending Rule 4 of the Rules approved by Government, under date the 24th June last, with reference to the suggestions made by the Government Solicitor and the Accountant General in the 6th and 5th paragraphs of their respective letters.

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

Ed. J. Tulloch.

despatch

J. M.

Judicial Department

No 731-

To The Honorable Sir C. H. Scotland, Kt.
Chief Justice of the High Court of Judicature

Honable Sir,

I am directed to transmit to you the annexed copy of a letter, received on the 17th March last, from Mr. G. P. Johnstone, an Attorney practising in the High Court, requesting that the sum of Rs 73, being the amount of fees charged by the Registrar and subsequently disallowed by the Commissioner and Taxing Officer, should be refunded to him, together with copies of letters on the subject from the Government Solicitor and the Acting Accountant General.

2. I am to request that the Judges will be good enough to instruct the Registrar to refund to Mr.

Johnstone

Johnstone the amount in question from any monies that may have come into his hands in payment of fees on behalf of Government, and that they will pass such orders as they may deem proper for amending Rule 4 of the Rules approved by Government, under date the 24th June last, with reference to the suggestions made by the Government Solicitor and the Accountant General in the 16th and 5th paras of their respective letters.

by

Fort St. George }
18 May 1864 }

166 321 1/2

731

Received 18th. Decr 1881

2 1/2 1881

To J. F. Smith

the Cashier of the
City of London
Bank

Dated 18th. Decr 1881.

John F. Smith

181