

Judicial (1895) Department.

ORDINARY MS.

G.O., No. 1436

Dated 9 July 1895

INDEXED

[Despatch Abstract.]

LEVY OF COURT-FEES IN THE MADRAS HIGH COURT.

Recording papers connected with the question which has
raised as to the authority under which court-fees are levied
on Original side of the Madras High Court.

Papers to be read in Proceedings :—

dated

18 , No.



Long de ma Price,

The largest antherity
under W. Court been an
anther in the highest
is contained in 24 or 25
Victoria Feb 104 Feb 15.

With our friendly
greetings
to the
L. C. Parker

See also sec 3 of the Journal.
Free Acad.

Papers to be read in Proceedings:—

Again G.O., dated

18 , No.

Again G.O., dated

18 , No.

Current No.

of 18 , dated

from

Current No.

of 18 , dated

from

Note

This draft is submitted to H.W. with reference to his notes on pp. 3, 4 & 5 of the note for Orders under cover of G.O. of 7/3/95, N^o 490, but ~~it is not~~ on the last page of the original draft of that G.O.

But it is respectfully submitted for consideration whether the draft letter should not be converted into a letter to the Chief Justice. The High Court may be able to explain the difficulty.

Indeed, is not the explanation to be found in sec. 3 of the Court Fees Act, 1870, which declares that the fees payable to the officers of the Court shall be collected "in manner hereinafter appearing" i.e. in the form of stamps (vide sec. 25 of the Act)?

If so, of course the High Court is wrong in its view that sec. 15 of the Statute does not apply.

Now for a copy of the Statement please see G.O. of 11 Oct 93, N^o 2117, Indl.

Perhaps it will be best to address the C.J. -

Imagine that the original state of the case was that the

The following letter will be dtd to the G. of J. (From orders)

Letter

To the Sec. to the G. of J., H.W.

Sir,
In connection with certain matters now under consideration, a question has been raised as to the authority under which Court fees are levied on the Original Side of the Madras High Court & I am directed to address the G. of J. on the subject.

2. A statement showing the fees levied in the High Court in exercise of its original civil jurisdiction was forwarded to the G. of J. with my letter of 15 Sept. 1873, N^o 1806, Indl. It will be seen that the Statement shows the fees payable to officers of the

See revised draft
"Recorded"
189
9/7/94

at & also those payable
Attorneys. The High
Court has generally held
that the power to prescribe
these fees is conferred by
sec. 15 of the Statute 24 &
25 Vic., C. 104, but, in a
recent communication,
the High Court has expressed
the opinion that this said
sec. 15 deals only with
subordinate Courts subject
to the High Court's appellate
jurisdiction & does not
give authority to frame
rules & tables of fees for
observance in the High
Court itself in the exercise
of its Original jurisdiction.
According to this view, the
authority to prescribe
fees on the Original side
is conferred by sec. 9 of
the Statute 24 & 25 Vic.
C. 104 read with the Letters
Patent of the 26th Dec.
1800 issued under the
statute 39 & 40 Geo. III C.
37.

Now the Letters Patent
of 1800 say
"We do hereby further
authorize & empower
the said Supreme Court
of Indicaure of Madras
to settle a table of

Note
see letter in G.O. of
31 Jan 93, No. 232, hdt.
A.B.
It will be seen from Mr.
Parker's D.O. of the 7th ult.
(enclosed) that he, at all
events, does not share
the view expressed in the
letter read in G.O. of 31/1/93,
No. 232, hdt.
A.B.
Talking with Mr. Parker
I mentioned the subject of fees and
his D.O. was written in consequence.

This letter of Mr. Parker's was not
in the file when it reached us. At least,
I have not been able to find it.

which, it may be
remarked, seems directly
opposed to sec. 3 of the
Court Fees Act, 1870, -

* officers of the Ct (that is, the officers
of the Ct, proper, not including the Attorneys)
were paid by the fees they received; and that
subsequently, on their being paid salaries,
they had to credit to Govt. the fees received
by them, which again, by the Ct Fees Act,
were ordered to be paid in stamps. In
the existing table the institution fee is shown
as payable to the Regt. - If this was one of
the original fees & was originally a
perquisite of the Regt. (or, rather, part
of his pay), the case is clear. If not, I
don't see that the difficulty as to the
H.C.'s power to prescribe fees paid to the
Court itself is shown. The simple thing
to do would be to ask the Regt. (or a
corresponding) person first charged with
it was then a part of the emoluments of
the Regt. now credited to Govt.; and about
at that time the Regt. received a salary &
was paid by fees. But perhaps this is

may find the office
No
30/4/95

written to Govt.
31/1/95

the fees to be allowed
to such Sheriff
Attorneys & all other
the Clerks & other
Officers aforesaid
for all & every Part
of the Business to
be done by them,
respectively, whose
fees the said
Sheriff, Attorneys,
Clerks & other Officers,
shall & may lawfully
demand & receive."

Assuming that the High Court
is correct in its view that
sec. 15 of the Statute 24 &
25 Vic. C. 104 does not
grant power to prescribe
the fees to be levied on the
Original Side, then there is
no doubt that the power
to prescribe such fees
must, if it exists at
all, be conferred by sec.
9 of the Statute which con-
tinues to the High Court
the powers vested in the
Courts which it replaced.
But it appears to H.C.
the G. in C. to be very doubt-
ful whether the Letters
Patent of 1800 were ever
intended to confer upon
the High Court authority
to fix the Court fees payable
to Govt. The wording of
the Letters Patent distinctly
suggests that the fees
referred to were fees
payable to the Officers
of the Court personally.

by way of remuneration
for their services.

Even if the High Court has
taken too restricted a
view of the scope of sec.
15 of the Statute 24 & 25
Vic. C. 104, the same
remark applies; for that
section also speaks of
fees "to be allowed to the
Sheriff, Attorneys & all
clerks & officers of Courts,"
not of fees payable to the
Courts themselves, i.e., to Govt.
14. If the view ^{of the Law} taken by
this Govt. is correct, there
is no statutory power exists
to enable the High Court
to prescribe the Court fees
leviable in the exercise of
its Ordinary Original Juris-
diction. I am directed to
request that this Govt. may
be favoured with the opinion
on the subject of St. L. the
G. G. in C.

I have etc

LD
20/4/55

6/4/95

Note
A reference to the High
Court such as has been
suggested above would
make it clear whether
the officers of the Court were
originally remunerated by
fees. It is highly probable
that they were so paid because
the L.P. of 1800 contain no
provisions (so far as I can
see) for paying fixed salaries
to the Court officers, whereas
such provisions do appear
in the L.P. of 1862 & 1865.
A.B.

Levy of Fees in
High Court

H.M.

min

(From Order)

It is to be observed that the
information is not to be
in the present.

21/5/55

C 24/4
R 30/4

"I imagine the original state
"of the case was that the officers
"of the Court (that is, the officers of the Court,
"properly not including the attorneys)"
were paid by the fees they received; and
"that subsequently, on their being paid
"salaries, they had to ~~credit~~ ^{credit} to Govt.
"the fees received by them, which again
"by the L.P. fees table, were now to be
"paid in stamps. In the existing table,
"the institution fee of Rs 30 is shown as
"payable to the Reps. - If this was one
"of the original fees & was originally a
"perquisite of the Reps. (or, rather, a part
"of his ~~pay~~), the case is clear. If not,
"I don't see that the difficulty as to
"the High Court's power to prescribe fees
"paid to the Court itself is gone. The
"simplest thing to do would be to ask
"whether this (or a corresponding) fee was
"first charged & whether it was then
"a part of the emoluments of the Reps.
"or was credited to Govt.; and whether
"at that time the Reps. received a salary
"or was paid by fees. But perhaps
"this information may be in the office."

Note for H. M.

Reference: H. M.'s remarks
on the Draft Letter to the S. G.
re: The Levy of Court fees
on the right side of the High Court

In Dec. 1800 a Letters Patent
under issued under Statute
39 & 40 George III, C. 79, establishing
a Supreme Court of Judicature
at Madras. Para 15 of that
(pro 48 of volume)

Charter runs as follows:—
"We do hereby ^{for the} authorize and
empower the said Supreme
Court of Judicature at Madras
to settle a table of the fees
to be allowed
to such Sheriff, attorneys, &
all other clerks & other officers
aforesaid ^{for all} and every part
of the business to be done
by them, respectively, which
fees the said Sheriff,
attorneys, clerks & other officers
shall & may lawfully de-
mand & receive. x x x x x"

Under the provisions of this
clause the late Supreme Court
submitted for the approval
of Govt. in 1802 a table of fees
p. 50

be allowed to attorneys,
Registrars & other officers of the
Court, which was sanctioned
in E. In. C. 424. Sep. 1842. No 1515.
2. In 1845, the Court proposed
a revision of that scale of
fees. The revision being con-
sidered necessary to give fair
and reasonable remuneration
for services actually performed,
to take away altogether such
fees as were wholly unnecessary
and to reduce others which
appeared to be out of proportion
to the business performed. The
revised table was referred
to the Advocate General who
suggested certain reductions
in the rates of fees proposed for
the officers of the Court. The table
was eventually approved by
Court in E. In. C. 43. Sep. 1845. No 152.
3. The table next came under
revision in 1862 & after the
passing of Statute 24 & 25 Vic.
chap 104 in 1861. By some
misapprehension as to the scope
of Act XX of 1862 (since repealed
by Act No. 7 of 1877) the revised
table of fees was first approved

* Repealed ^{in turn} by Act XX of 1862 (since
repealed by Act No. 7 of 1877) (Procedure Code).

* G.O. of 22. Sep. 1862. No 1564.

(in 21. 1. 1863)

* G.O. of 11. Aug. 1862. No 1285.

(in 21. 1. 1863)

3. No.

under section 10 of the Act.
error having since been dis-
covered, the table was subse-
quently sanctioned under sec-
15, 24 & 25 Vic. chap 104.

A. In the meantime (in June
1862) a new Letters Patent ^{was}
^{under Statute 24 & 25 Vic. c. 104.}
issued, abolishing the old Supre-
me & Sudder Courts and consti-
tuting the present High Court.
The provisions of Clause b of the
Charter having required the
maintenance of an efficient
establishment to assist the
Court, the Chief Justice was
asked to submit proposals
to this end, advantage being
taken of that opportunity
to place all the officers of the
Court on fixed salaries, if
possible, the fees hitherto re-
ceived by them being paid to
the credit of Court.

5. The question of remunerating
the officers of the Court by fixed
salaries, instead of by fees,
had come to the fore on pre-
vious occasions.

(i) In 1806, the Govt. of India
expressed the opinion that it

(ii) In 1806, the Govt. of India
expressed the opinion that it

13

would be advisable to introduce the system of paying the officers & servants of the supreme courts by fixed salaries instead of by fees & commissions at all. The three Presidencies and decided that a scheme might be formulated, in consultation with the High Court, to effect this reform without extra expense to the State — "the ^{whole of the} receipts from fees & commissions being paid into the General Treasury and salaries according to fixed scale being granted to the officers and servants of the court. After a prolonged correspondence extending for over 2½ years the scheme was shelved on the score of the additional outlay involved in its adoption.

(ii) The Madras Court prepared a fresh scheme in 1850 which the court considered as being open to serious objections. After some further discussion the matter was dropped.

(iii) The question was resumed ^{repeatedly} again.

Compensation in file 7

in file 7

April
x 4.0 of 44. Feb. 1863. No 287
— 30. ~~June~~ 63. No 688A
— 26. June 63. No 992
(in file 7)

by the Govt of India ^{in 1853} with no better result.

(iv) Lastly, the proposal emanated from the court itself ^{in 1856}. The scheme had again to be abandoned on financial grounds.

b. But, after the charter of 1862 was passed, the High Court, as requested by Govt. in its order of 11. Aug. 1862, No 1258, submitted more definite and suitable proposals for the reorganization of the courts establishment, containing provision for —

- (a) a separate establishment for each side of the High Court (original & appellate)
- (b) The payment by salary of those officers who had till then been remunerated by fees & commissions, &
- (c) the fees being carried into a general account to the credit of Govt.

The scheme was approved by Govt. with slight modifications as to detail, in the orders noted in the margin ^x and was brought into

on the 1st June 1863, from which date the fees levied in respect of proceedings in the High Court were ordered to be paid to the Bank of Madras to the credit of Smt. After the passing of the Court Fees Act, 1870, such fees were ordered to be collected in the form of stamps.

7. From the above, it will be seen that, as surmised by H. M., officers of the Court (including the Registrars) were first remunerated by the Court fees leviable fees they received and on their being paid fixed salaries they had to credit such fees to the account of Government.

8. There remains one other matter for consideration, viz, on what statutory provision is the Court fee leviable on the original side of the High Court? As noted in paras 1 to 2 above, such fees were levied under the Letters Patent of 1800 till Statute 24 & 25 Vic. c. 104, was passed in 1861. After the

* L.O. of 22. Sept. 1862. No 1584
— 18. July 1874. No 1319
— 27. March 1891. No 584 X

* L.O. of 25-1-93, No 187
— 31-1-93. No 232.

FOR ORDERS.

passing of this statute, the table of fees came under revision in 1862, 1874, 1891 & 1893. On the first three occasions the High Court held the view that section 15 of the statute was the proper provision of law under which such fees should be levied. On the last occasion, however, it expressed the opinion that the authority to prescribe such fees was contained in the Letters Patent of 1800 read with section 9 of the statute. ^{by the High Court} The view expressed in 1893 appears to be incorrect for the reason that the Letters Patent of 1800 related to the old Supreme Court established under statute 39 Geo. III, chap. 79, and should, it is thought, be considered to have lost all its legal force on the issue of the Charter of 1862 under statute 24 & 25 Vic., chap. 100 constituting the present High Court. (vide section 9 of the statute). It will be seen that the provisions of the Charter of 1800 are inconsistent with those of the Charters of 1862 & 1865, as regards the mode of remunerating

officers & servants of the
Court (the former authorizing
them to receive fees from the
parties as remuneration for
their services & the latter pro-
viding for the payment of fines
salaries) and the provisions
of the former must therefore
be considered as null & void,
so far as this matter
is concerned (vide para 44 of
the Charter of 1862). Further,
as remarked in the note for
orders in G.O. of 7. March 95, 40499,
section 3 of Act No VII of 1870
(Court Fees Act) seems to give
a strong support to the view
that section 15 of Statute 24 &
25 Vic. chap 104, governs the
levy of court fees on the original
side of the High Court. In any
case it may perhaps be un-
necessary to go further into
this question at present as there
is now no proposal before Court
which calls for a decision on
this point.

9/1
d/9th July 1895 No 1436
Recorded

26-55 18/7/95

*
"I imagine the original state of
the case was that the officers of
the court (that is, the officers of
the court, proper, not including the
attorneys) were paid by the fees
they received; and that subsequent-
ly, on their being paid salaries,
they had to credit to Govt. the fees
received by them, which again by
the Court Fees Act, were ordered to
be paid in stamps. In the existing
table, the institution fee of Rs.
30 is shown as payable to the Regi-
strator, rather, a part of his pay
the case is clear. If not, I don't
see that the difficulty as to the
High Court's power to prescribe fees
paid to the court itself is got over.
The simplest thing to do would be
to ask when this (or a corresponding)
fee was first charged and whether
it was then a part of the emoluments
of the Registrar or was credited to
Govt., and whether at that time the
Registrar received a salary or was
paid by fees. But perhaps this infor-
mation may be in the office."

I am much obliged for the
trouble that has been
taken to clear up this doubtful
point. The position is now
pretty plain - we shall see,
when the H.C. comes up about
altering the scale of institution
fees, whether we can put the
info now obtained to any use.
In the meantime, the papers can
lie over.

RS
26/6/95

NOTE FOR THE HONORABLE MEMBER.

Reference: H.M.'s. remarks on the
draft letter to the Govt. of India re-
garding the levy of Court fees on the
Original Side of the High Court.

In December 1800 Letters Patent
were issued under Statute 39 & 40 George
III, C. 79, establishing a Supreme Court
of Judicature at Madras. Para. 15 of that
Charter (page 93 of volume) runs as
follows:-

"We do hereby further authorize and
empower the said Supreme Court of
Judicature at Madras to settle a
table of the Fees to be allowed to
such Sheriff, Attorneys, and all
other the clerks and other officers
aforesaid for all and every Part of
the Business to be done by them,
respectively, which Fees.....
the said Sheriff, Attorneys, Clerks
and other officers shall and may
lawfully demand and receive. x x x."

Under the provisions of this Clause the
late Supreme Court submitted for the
approval

approval of Govt. in 1802 a table of fees to be allowed to attorneys, Registrars and other officers of the Court, which was sanctioned in E.M.C. dated 24th September 1802, No. 815.

2. In 1845, the Court proposed a revision of that scale of fees, the revision being considered necessary to give fair and reasonable remuneration for services actually performed, to take away altogether such fees as were wholly unnecessary and to reduce others which appeared ~~xxx~~ out of proportion to the business performed.

The revised table was referred to the Advocate General who suggested certain reductions in the rates of fees proposed for the officers of the Court. The table was eventually approved by Govt. in E.M.C., dated 3rd Sept. 1845, No. 652.

3. The table next came under revision in 1862 - i.e. after the passing of Statute 24 & 25 Vic. Chap. 104 in 1861. By some misapprehension as to the scope of Act XX of 1862

(since repealed by Act No. X of 1877)

the revised table of fees was first approved under Section 10 of the Act.

The error having since been discovered,

the

Repealed in turn by Act XIV of 1882
(Civil Procedure Code)

+ G.O.d/ 23rd Sept. 1862, No. 1564.

in file A

X G. O.d/ 11th August 1862, No. 1388.

in file B

+ 10
the table was subsequently sanctioned under Section 15/24 & 25 Vic. Chap. 104.

4. In the meantime (in June 1862) new Letters Patent were issued under Statute 24 & 25 Vic. Chap. 104 abolishing the old Supreme and Sudder Courts and constituting the present High Court. The provisions of Clause 6 of this Charter having required the maintenance of an efficient establishment to assist the Court, the Chief Justice was asked to submit proposals to this end, advantage being taken of that opportunity to place all the officers of the Court on fixed salaries, if possible, the fees hitherto received by them being paid to the credit of Govt.

5. The question of remunerating the officers of the court by fixed salaries, instead of by fees, had come to the fore on previous occasions.

(i) In 1836, the Govt. of India expressed the opinion that it would be advisable to introduce the system of paying the officers and servants of the Supreme Courts by fixed salaries, instead of by fees and commissions, at all the three Presidencies and desired that a scheme might be formulated, in consultation with the High Court, to

effect

effect this reform without extra expense to the State - "the whole of the receipts from fees and commissions being paid into the General Treasury and salaries according to fixed scale being granted to the officers and servants of the court." After a prolonged correspondence extending for over 2½ years the scheme was shelved on the score of the additional outlay involved in its adoption.

(ii) The Madras Govt. prepared a fresh scheme in 1850 which the court considered as being open to serious objections. After some further discussion the matter was dropped.

(iii) The question was resuscitated again by the Govt. of India in 1853 with no better result.

(iv) Lastly the proposal emanated from the court itself in 1856. The scheme had again to be abandoned on financial grounds.

6. But, after the charter of 1862 was passed, the High Court, as requested by Govt. in its order d' / 11th August 1862, No. 1288, submitted more definite and suitable proposals for the reorganization of the Court's establishment, containing provision for -

G.O.d/ 24th February 1862, No. 287.
.. 30th April 1862, No. 668 A
.. 24th June 1862, No. 992.

(a) a separate establishment for each side of the High Court (original & appellate),

(b) the payment ^{by} of salaries of those officers who had till then been remunerated by fees and commissions

(c) the fees being carried into a general account to the credit of Government.

The scheme was approved by Govt., with slight modifications as to detail, in the orders noted in the margin and was brought into force on the 1st June 1862, from which date the fees levied in respect of proceedings in the High Court were ordered to be paid to the Bank of Madras to the credit of Govt. After the passing of the Court Fees Act, 1870, such fees were ordered to be collected in the form of stamps.

7. From the above, it will be seen that, as surmised by H.M., officers of the Court (including the Registrar) were first remunerated by the fees they received and on their being paid fixed salaries they had to credit such fees to the account of Government.

8. There remains one other matter for consideration, viz on what statutory provision is the Court fee leviable on

the

the Original Side of the High Court!

As noted in paras. 1 & 2 above, such

fees were levied under the Letters

Patent of 1800 till statute 24 & 25

Vic. Chap. 104, was passed in 1861.

After the passing of this statute,

the table of fees came under revision

in 1862, 1874, 1891 & 1893. On the first

^{*}Three occasions the High Court held

the view that Section 15 of the

statute was the proper provision of

law under which such fees should be

levied. On the last ^x occasion, however,

it expressed the opinion that the

authority to prescribe such fees was

contained in the Letters Patent of

1800 read with Section 9 of the Statute

The view expressed by the High Court

in 1893 appears to be incorrect for

the reason that the Letters Patent of

1800 related to the old Supreme Court

established under statute 39 & 40

George III, Chap. 79, and should, it

is thought, be considered to have lost

all its legal force on the issue of

the charter of 1862 under statute 24

and 25 Vic. Chap. 104 constituting the

present High Court (vide Section 9 of

the statute). It will be seen that

the provisions of the charter of 1800

are

* G.O.d/ 23rd September 1862, No. 1564.

" 18th July 1874, No. 1818.

" 27th March 1891, No. 584.

(in file A)

* G.O.d/ 35th January 1893, No. 187.

" 31st January 1893, No. 383.

(in file A)

consistent with those of the

charters of 1862 & 1865, regards the

mode of remunerating the officers and

servants of the Court (the former autho-

rizing them to receive fees from the

parties as remuneration for their

services and the latter providing for

the payment of fixed salaries instead)

and the provisions of the former must

therefore be considered as null and void

so far as this matter is concerned (vide

para. 44 of the charter of 1862).

Further, as remarked in the note for orders

in G.O. dated 7th March 1895, No. 498,

Section 3 of Act No. VII of 1870 (Court

Fees Act) seems to give a strong support

to the view that Section 15 of statute

24 & 25 Vic. Chap. 104, governs the levy

of court fees on the original side of

the High Court. In any case it may

perhaps be unnecessary to go further into

this question at present, as there is

no proposal before Govt. which calls

for a decision on this point.

D
1-6-95. 17/6/95.

A number of the older references
mentioned have been removed
from the file 2

to the ...
Court ...
Court

H M
mis

Special ...

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