Judicial (1895) Department.

ORDINARY MS.

G.O., No. 808.

Dated 20th Apr. 1895.

INDEXED.

[Despatch Abstract.]

OFFICIAL ASSIGNEE'S ESTABLISHMENT.

Communicating to the Honourable the Judges of the High Court for remarks letter from the Government of India regarding the cost of the--.

PRINTED IN G.O., dated

15th July 1895, No. 1100

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
	688/98						

Leg N° 808 & 20-4-95

No. 487.

FROM

J. P. HEWETT, ESQ., C.I.E.,
Offg. Secretary to the Government of India,

To

THE CHIEF SECRETARY TO THE GOVERNMENT OF MADRAS.

Home Department.
Judicial.

Calcutta, the 28th March 1895.

SIR,

I AM directed to acknowledge the receipt of your letter No. 605 (Judicial), dated the 12th March 1894, reporting that since 1848 the Government of Madras have allotted a sum of Rs10 per mensem to cover the cost of the Official Assignee's establishment, and that this provision is now found inadequate. The Madras Government have objected to increase the contribution, as suggested by the High Court at Madras, and it is stated that the most feasible expedient for obtaining additional funds seems to be to utilize, for the payment of the Official Assignee's establishment, the interest upon the accumulated sum of unclaimed dividends, which is invested in Government Securities. The Honourable Judges, however (it is stated), consider that the interest is itself distributable as dividends, and that it cannot legally be appropriated as proposed; and they suggest special legislation for enabling the High Court to deal with the unclaimed dividends. It is further recommended in your letter that, if an Act is passed, it should declare that the Official Assignee's establishment shall consist of such members and be remunerated by such salaries as the High Court may prescribe.

2. With reference to the view of the legal position taken by the Madras High Court, I am directed to forward, for the consideration of His Excellency the Governor in Council and for communication to the Honourable Judges, the accompanying copies of papers relating to a rule passed in 1880 by the Calcutta High Court to the effect that the fee for the audit of the Official Assignee's accounts might be paid out of the income of the fund representing the surplus cash balances in the hands of the Official Assignee. It will be seen that in this correspondence the question of the legality of paying from the income of the fund the office charges of the Official Assignee was specifically raised; that the Honourable Judges expressed the view that such applications of the fund were entirely within the scope of the powers conferred on the Judges by the Indian Insolvent Act (11 Vict., Cap. 21); and that Her Majesty was pleased to approve the rule submitted by the High Court.

Despatch to the Secretary of State, No. 25, dated 6th July 1880, and enclosures.
Despatch from the Secretary of State, No. 26 (Judicial), dated 21st October 1880.
Despatch to the Secretary of State, No. 15, dated 1st May 1881, and enclosures.
Despatch to the Secretary of State, No. 31, dated 19th December 1881, and enclosure.
Despatch from the Secretary of State, No. 3 (Judicial), dated 16th February 1882.

3. The position of the accumulated sum of unclaimed dividends, which is referred to in paragraph 1 of this letter, appears to the Government of India to resemble that of suitors' moneys in the High Court in England. Such moneys, if they are likely to remain for long in Court, are invested for the suitors by the Court, either on their application or in pursuance of certain general orders giving the Court power to make investment at the suitors' risk. Under such circumstances they, or their representatives, are entitled to the accumulated fund, of capital and dividends, upon their claims being established. If the Madras fund now in question stands in the same position as the suitors' fund

just referred to, it appears to the Government of India that the former should either—

(*a*) be kept absolutely intact for the use of the right owners if and when they shall appear and establish their claims upon it, or

(*b*) should, after a reasonable time, be appropriated provisionally to the public use, the State being expressly bound to replace with interest any moneys so appropriated whenever a claimant shall prove a title to them.

The latter course is followed in England, and there will be no objection to sanctioning it in this country, if necessary, by legislation; but the Government of India think it doubtful whether legislation is required. The moneys in question are in the hands of Government so as to be available to the creditors of the insolvents. They are temporarily derelict, and apparently no one would be injured by their being expended under a Government liability to replace them if necessary; while the risk of ultimate liability would be extremely small, if a reasonable time is allowed to elapse before dividends become liable to be treated as "unclaimed dividends." The Government of India are, therefore, disposed to hold that there is no objection to authorising the payment of the expenses of the Official Assignee's office out of the interest on the unclaimed dividends, provided (1) that they have remained unclaimed for a sufficient time to make it likely that no valid claim will be advanced to them, and (2) that the Government clearly acknowledge the liability to replace the money if and when a title is made out to it. Legislation would only be requisite if there were an intention to take away the right of the claimant to restitution.

4. It is, however, the practice of the Court in England to invest from time to time cash balances standing in Court and not likely to be immediately required: such investments are made without any application by the parties to the suit, and they are not affected by them: the right of the parties to their "cash" remains unimpaired, and the intermediate interest, together with the profit (if any) on resale of the securities, belongs to the Court, who have to bear the loss (if any) on such resale, and the expenses of the transaction. There does not seem to be any reason why this course should not, under the like circumstances, be adopted in India. As long as the Government acknowledges the right of the owner to be repaid the principal sum due to him, the interest in this case is applicable to public purposes, and especially to those connected with the administration of the law.

5. In neither case is there therefore any objection to the interest (which it is understood the Accountant General now invests under rule XXII-A of the High Court's Rules in Insolvency Jurisdiction) being *used* for the purpose desired, under the authority of executive orders. I am to ask that these remarks, and the correspondence forwarded herewith, may be referred for the consideration of the Honourable Judges of the High Court at Madras. Should it still be the opinion of the Honourable Judges and of His Excellency in Council that legislation is necessary to make the interest on the unclaimed dividends available, the Government of India will be prepared to consider the matters further.

I have the honour to be,

SIR,

Your most obedient Servant,

J. P. HEWETT,

Offg. Secretary to the Govt. of India.

G. I. C. P. O.—No. 1535 H. D.—27-3-95.—51.—R. N. B.

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Jud. D.
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[G. 53]
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Judicial *Department.*

CHIEF SECRETARIAT, MADRAS.

138

PROCEEDINGS OF THE MADRAS GOVERNMENT.

READ the following paper:—

From the Government of India, Home Department,

dated 28th. March 1895, No. 484.

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O R D E R, dated 20th, April 1895, No. 808.

The foregoing letter from the Government of India will be communicated to the Honorable the Judges of the High Court for favour of early remarks.

(True extract)

/ Signed / J.F.PRICE,

Chief Secretary.

To,

The Honorable the Chief Justice of the High Court, (with C.L.)

G.O 808
28-4-95

Not at available

No. 25, dated Simla, the 6th July 1880.

From—The Government of India.

To—Her Majesty's Secretary of State for India.

With reference to the correspondence marginally noted,* we have the honour to forward copy of a letter† from the Registrar, High Court, Calcutta, enclosing copy of a revised rule in substitution of Rule 3 of the existing rules of the Court for the relief of insolvent debtors.

* To Her Majesty's Secretary of State, No. 21, dated the 1st July 1869.
From Her Majesty's Secretary of State, No. 25, dated the 25th August 1869.
† No. 345, dated the 28th May 1880.

2. We beg that, in accordance with the provisions of section 76, Act XI and XII Vict., Chapter 21, the revised rule may be laid before Her Majesty for Her Royal approbation, correction, or revision.

No. 345, dated Calcutta, the 28th May 1880.

From—R. Belchambers, Esq., Registrar, High Court, Calcutta, Original Jurisdiction.

To—The Offg. Secretary to the Government of India.

I am directed to request that the accompanying rule, passed in compliance with the suggestion of the Auditors of the Accounts of the Official Assignee, contained in their report‡ No. 13 A., dated the 4th instant, may be transmitted for the sanction of Her Majesty under the provisions of section 76 of 11 Vict., Chapter 21.

‡ Extract annexed.

Extract from the Report of the Auditors of the Official Assignee's Accounts for the half-year ending the 31st December 1879.

The examination has been conducted in the manner described in former reports, and need not be detailed here. But there is one rule which we think should be brought to the notice of the Chief Justice, and that is the rule regarding the apportionment of the half-yearly audit fee. The present rule requires that the audit fee shall be charged rateably to the several estates in proportion to the dividends paid out of such estates, and the interpretation put upon it is that the audit fee for a half-year is to be divided proportionately among those estates out of which dividends have been declared and set aside during the half-year. The apportionment of the audit fee is determined therefore by the number and amount of dividends declared in a half-year without reference to the audit paid. These vary from half-year to half-year, and this method of apportioning the audit fee, besides being somewhat troublesome, does not appear to be quite accurate.

There is in existence on the Official Assignee's books a fund out of which all office charges are paid, the income of which consists of the interest on the investment of the surplus cash balances in the hands of the Official Assignee. The capital of this fund, on the 31st December last, consisted of Government paper of the nominal value of ₹11,82,700 and is accumulating every year, as the charges against this fund fall far short of the receipts, and the surplus is from time to time being invested. The fee for the audit of the accounts may, we think, be legitimately charged to this fund which is quite large enough to meet it, and indeed there will still be a surplus for investment. We beg, therefore, to propose that this be done in future.

Rule passed by the High Court on the 1st June 1880 in compliance with the suggestion of the Auditors of the Accounts of the Official Assignee.

It is ordered that Rule 3 of the Rules of the Court for the relief of insolvent debtors at Calcutta, dated the 1st of July 1869, be repealed, and that instead thereof the following rule be passed as a rule of the said Court, to take effect from the day of 1880.

2. Such fee, not exceeding ₹1,000 for each audit, as the Chief Justice shall consider reasonable, shall be paid to the auditor or auditors out of the income of the fund representing the surplus cash balances in the hands of the Official Assignee.

RICHARD GARTH.
LOUIS S. JACKSON.
CHARLES PONTIFEX.
G. G. MORRIS.
J. SEWELL WHITE.
ROMESH CHUNDER MITTER.
W. F. McDONELL.
H. T. PRINSEP.
A. WILSON.
L. R. TOTTENHAM.
L. P. DELVES BROUGHTON.
A. T. MACLEAN.

G. I. C. P. O.—No. 1535 A. H. D.—27-3-95.—55.—R. N. B.

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No. 26 (Judicial), dated India Office, London, the 21st October 1880.

From—Her Majesty's SECRETARY OF STATE for India.

To—His Excellency the Most Honourable the GOVERNOR GENERAL of India in Council.

I HAVE considered in Council the despatch of Your Excellency in Council, dated the 6th July last, forwarding, for the purpose of being laid before Her Majesty for Her Royal approbation, correction, or revision, a certain new rule made by the High Court at Calcutta for the relief of insolvent debtors at Calcutta.

2. Under this rule it is proposed that the cost of auditing the accounts of the Official Assignee shall be paid, as it is stated that all his office charges are already paid, out of the income of the fund representing the surplus cash balances in the hands of the Official Assignee.

3. The rule would probably be in itself a proper one, but I entertain doubts whether it is within the competency of the Judges of the High Court to pass it. I request, therefore, that you will invite the Judges of the High Court to explain on what grounds the Court considers that it has power to make such a rule, or to apply this fund in paying office charges in the manner indicated; and that, if necessary, recourse may be had to legislation in order that the matter may be placed upon a proper footing.

G. I. C. P. O.—No. 1535, B. H. D. 27-3-95.—55.—R. N. B.

No. 15, dated Simla, the 1st May 1881.

From—The Government of India.

To—Her Majesty's Secretary of State for India.

With regard to paragraph 3 of Your Lordship's despatch No. 26 (Judicial), dated the 21st October 1880, requesting that an explanation might be procured from the Honourable the Judges of the High Court, Calcutta, in respect of a certain new rule made by the Court for the relief of Insolvent Debtors, we have the honour to forward copy of a letter* from the Registrar of the High Court, together with its enclosures, furnishing the necessary information and resubmitting the rule in question in an amended form.

* No. 94, dated 11th February 1881.

2. We suggest that the rule as amended should be laid before Her Majesty for Her Royal approbation, correction, or revision.

No. 94, dated Calcutta, the 11th February 1881.

From—R. Belchambers, Esq., Registrar, High Court, Original Jurisdiction, Calcutta.

To—The Secretary to the Govt. of India, Home, Revenue and Agricultural Dept.

With reference to your letter No. 1319, dated the 16th December last, and the despatch of Her Majesty's Secretary of State therein referred to, I am directed to submit a copy of a note furnished by the Official Assignee as to the history of the fund representing the surplus cash balances in his hands, and to state that, in the opinion of the Judges, the proposed rule for payment of the fee for auditing the Official Assignee's account out of the income of that fund, except in so far as it delegates to the Chief Justice the power to fix the amount of the fee, is entirely within the scope of the following sections of the Indian Insolvent Act 11 Vict., Cap. 21, namely, section 76, by which the Judges are empowered to make all necessary and reasonable rules for carrying out the intendment of the Act, and section 15, under which they have authority to direct by rules or orders how the estate funds should be managed and dealt with.

The proposed rule having been amended by the substitution of the words "the Judges" for the words "the Chief Justice," I am to resubmit it in its amended form, and to request that it may be transmitted to the India Office for the purpose of being laid before Her Majesty for Her Royal approbation, correction, or revision.

Dated 17th January 1881.

Note by A. B. Miller, Esq., Official Assignee, Calcutta.

The office charges fund is derived from the interest which accrues on the investment in Government securities of a portion of the aggregate floating cash balances of insolvent estates.

2. This fund was originally suggested in its present form by the Government auditors on the occasion when the audit of the Official Assignee's office was subjected to the Comptroller General of Accounts.

3. The recommendation of the auditors was made with the concurrence of the Official Assignee, and was duly sanctioned and adopted by the Chief Justice. The principle of the suggestion had been acted upon prior to this, but in a slightly different form.

4. The object in contemplation in forming this fund was the relief of the corpus of each individual estate, of the heavy burthen of the office administration, and the substitution of a simple and economical machinery in lieu of the clumsy and costly system which had formerly been used.

5. Insolvent estates stand upon an entirely different footing from ordinary trust estates The assets of each individual estate are required to be drawn upon, and distributed at the earliest possible opportunity, after collection.

Inasmuch therefore as the separate fund of any separate estate has to be employed immediately on realisation, its investment is not feasible. The result, therefore, is that, save for the office charges fund, no interest would be derived at all from estate cash balances, and the proportionate share of the office administration would have to be imposed upon the separate corpus of each separate estate.

6. It was found, however, that, although the cash balances separately of individual estates were, from their liability to immediate demands, incapable of separate investment, yet inasmuch as the average amount arising from the *aggregate* cash balances was fairly constant (as the result of the incoming of fresh estates as fast as the funds of the older estates were exhausted) that a considerable portion of this aggregate fund was disposable for investment.

7. The Bank of Bengal allows no interest upon deposit accounts. The question therefore arose as to whether this aggregate fund was to be allowed to lie idle and infructuous and solely to the profit of the Bank of Bengal, or whether a portion of it should be invested in Government securities and the interest applied in defraying the office administration, and in this way to relieve each individual estate from a heavy tax upon its separate funds. The latter alternative was naturally accepted, and hence the formation of the fund.

8. The office charges fund means shortly the investment for the benefit of insolvent estates of cash balances which, in no other way, could be so utilised. This machinery has now been in operation for many years, and has worked in a highly satisfactory manner. If from any cause or motive it were now to be upset, Rules the result would be most detrimental to the interests of insolvent estates, and would bear very harshly upon each estate separately. The fund is a clear and absolute gain which could be obtained in no other manner.

Amended Rule 3 of the Rules of the Court for the relief of insolvent debtors.

IT is ordered that Rule 3 of the Rules of the Court for the relief of insolvent debtors at Calcutta, dated the first of July 1869, be repealed, and that instead thereof the following rule be passed as a rule of the said Court, to take effect from the day of 1880:—

3. Such fee not exceeding R1,000 for each audit, as the Judges shall consider reasonable, shall be paid to the auditor or auditors out of the income of the fund representing the surplus cash balances in the hands of the Official Assignee.

RICHARD GARTH.
LOWIS S. JACKSON.
CHARLES PONTIFEX.
G. G. MORRIS.
J. SEWELL WHITE.
ROMESH CHUNDER MITTER.
W. F. MCDONELL.
H. T. PRINSEP.
A. WILSON.
L. R. TOTTENHAM.
L. P. DELVES BROUGHTON.
ALEX. T. MACLEAN.

Calcutta, 1st June 1880.

G. I. C. P. O.—No. 1535C H. D.—27-3-95—55.—R. N. B.

No. 25, dated Simla, the 6th July 1880.

From—The Government of India:

To—Her Majesty's SECRETARY OF STATE for India.

WITH reference to the correspondence marginally noted,* we have the honour to forward copy of a letter† from the Registrar, High Court, Calcutta, enclosing copy of a revised rule in substitution of Rule 3 of the existing rules of the Court for the relief of insolvent debtors.

* To Her Majesty's Secretary of State, No. 21, dated the 1st July 1869.
From Her Majesty's Secretary of State, No. 25, dated the 25th August 1869.
† No. 345, dated the 28th May 1880.

2. We beg that, in accordance with the provisions of section 76, Act XI and XII Vict., Chapter 21, the revised rule may be laid before Her Majesty for Her Royal approbation, correction, or revision.

No. 345, dated Calcutta, the 28th May 1880.

From—R. BELCHAMBERS, Esq., Registrar, High Court, Calcutta, Original Jurisdiction.

To—The Offg. Secretary to the Government of India.

I AM directed to request that the accompanying rule, passed in compliance with the suggestion of the Auditors of the Accounts of the Official Assignee, contained in their report‡ No. 13 A., dated the 4th instant, may be transmitted for the sanction of Her Majesty under the provisions of section 76 of 11 Vict., Chapter 21.

‡ Extract annexed.

Extract from the Report of the Auditors of the Official Assignee's Accounts for the half-year ending the 31st December 1879.

The examination has been conducted in the manner described in former reports, and need not be detailed here. But there is one rule which we think should be brought to the notice of the Chief Justice, and that is the rule regarding the apportionment of the half-yearly audit fee. The present rule requires that the audit fee shall be charged rateably to the several estates in proportion to the dividends paid out of such estates, and the interpretation put upon it is that the audit fee for a half-year is to be divided proportionately among those estates out of which dividends have been declared and set aside during the half-year. The apportionment of the audit fee is determined therefore by the number and amount of dividends declared in a half-year without reference to the audit paid. These vary from half-year to half-year, and this method of apportioning the audit fee, besides being somewhat troublesome, does not appear to be quite accurate.

There is in existence on the Official Assignee's books a fund out of which all office charges are paid, the income of which consists of the interest on the investment of the surplus cash balances in the hands of the Official Assignee. The capital of this fund, on the 31st December last, consisted of Government paper of the nominal value of R11,82,700 and is accumulating every year, as the charges against this fund fall far short of the receipts, and the surplus is from time to time being invested. The fee for the audit of the accounts may, we think, be legitimately charged to this fund which is quite large enough to meet it, and indeed there will still be a surplus for investment. We beg, therefore, to propose that this be done in future.

Rule passed by the High Court on the 1st June 1880 in compliance with the suggestion of the Auditors of the Accounts of the Official Assignee.

It is ordered that Rule 3 of the Rules of the Court for the relief of insolvent debtors at Calcutta, dated the 1st of July 1869, be repealed, and that instead thereof the following rule be passed as a rule of the said Court, to take effect from the day of 1880.

2. Such fee, not exceeding R1,000 for each audit, as the Chief Justice shall consider reasonable, shall be paid to the auditor or auditors out of the income of the fund representing the surplus cash balances in the hands of the Official Assignee.

RICHARD PONTIFEX.
G. G. MORRIS.
J. SEWELL WHITE.

No. 31, dated Fort William, the 19th December 1881.

From—The Government of India.

To—Her Majesty's SECRETARY OF STATE for India.

WITH reference to Your Lordship's despatch No. 25, dated 6th October 1881, we have the honour to transmit herewith, under the seal of the High Court of Judicature at Fort William in Bengal, an official copy of the new Rule framed by the High Court for the Court for the Relief of Insolvent Debtors. The date from which it is desired that the rule should take effect is specified therein.

No. 703, dated the 24th November 1881.

From—R. BELCHAMBERS, Esq., Registrar, High Court, Calcutta, Original Jurisdiction.

To—The Officiating Secretary to the Government of India.

WITH reference to your letter No. 1458 of the 8th instant, and the despatch of Her Majesty's Secretary of State, No. 38, dated 6th October last, I am directed to send herewith, under seal, a copy of the proposed new Rule for the Court for the Relief of Insolvent Debtors. The date from which it is desired that the rule should take effect is specified therein.

PRESENT:
The Honourable Sir RICHARD GARTH, K.T., *Chief Justice*.

IT is ordered that Rule 3 of the Rules of the Court for the relief of insolvent debtors at Calcutta, dated the 1st of July 1869, be repealed, and that instead thereof the following rule be passed as a rule of the said Court, to take effect from the first day of January 1882:

"3.—Such fee not exceeding ₹1,000 for each audit, as the Judges shall consider reasonable, shall be paid to the auditor or auditors out of the income of the fund representing the surplus cash balances in the hands of the Official Assignee."

RICHARD GARTH.
LOUIS S. JACKSON.
CHARLES PONTIFEX.
G. G. MORRIS.
J. SEWELL WHITE.
ROMESH CHUNDER MITTER.
W. F. McDONNELL.
H. T. PRINSEP.
A. WILSON.
L. R. TOTTENHAM.
L. P. DELVES BROUGHTON.
ALEXANDER T. MACLEAN.

The 1st June 1880.

G. I. C. P. O.—No. 1535C H.

No. 3 (Judicial), dated India Office, London, the 16th February 1882.

From—Her Majesty's SECRETARY OF STATE for India.

To—His Excellency the Most Honourable the GOVERNOR GENERAL of India in Council.

I HAVE to acknowledge the receipt of the despatch of Your Excellency in Council, dated the 19th of December last, No. 31, transmitting, under the seal of the Calcutta High Court, an official copy of the new Rule framed by that Court for the relief of Insolvent Debtors.

2. In reply, I have to inform Your Lordship in Council that Her Majesty has been pleased to approve the rule.

G. I. C. P. O.—No. 15[illegible]5E H. D.—27-3-95.—55—W. B G.

G. I. C. P. O.—No. 1535C H.

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So. 1166:17.5—94 Nos
+papers

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From

The Govt. of India

Home

No 484

Dated 28. 3. 85

Recd 2. 4. 85

Subject

Re the cost of the Offices Assignees Estt.

Ref
Please put up the
1. Ad Gos referred to
11.5.94 & 6.9.15.94
also the Calcutta Rules
2. Madras Rules
Further issue
Go. 1166/94.
1. Put up.
2. Ask Government
the Calcutta Gazette
of 1884 & 1885
9.7.15.6

No. 26 (Judicial), dated India Office, London, the 21st October 1880.

From—Her Majesty's SECRETARY OF STATE for India.

To—His Excellency the Most Honourable the GOVERNOR GENERAL of India in Council.

I HAVE considered in Council the despatch of Your Excellency in Council, dated the 6th July last, forwarding, for the purpose of being laid before Her Majesty for Her Royal approbation, correction, or revision, a certain new rule made by the High Court at Calcutta for the relief of insolvent debtors at Calcutta.

2. Under this rule it is proposed that the cost of auditing the accounts of the Official Assignee shall be paid, as it is stated that all his office charges are already paid, out of the income of the fund representing the surplus cash balances in the hands of the Official Assignee.

3. The rule would probably be in itself a proper one, but I entertain doubts whether it is within the competency of the Judges of the High Court to pass it. I request, therefore, that you will invite the Judges of the High Court to explain on what grounds the Court considers that it has power to make such a rule, or to apply this fund in paying office charges in the manner indicated; and that, if necessary, recourse may be had to legislation in order that the matter may be placed upon a proper footing.

G. I. C. P. O.—No. 1535, B. H. D. 27-3-95.—55.—R. N. B.

No. 15, dated Simla, the 1st May 1881.

From—The Government of India.

To—Her Majesty's Secretary of State for India.

With regard to paragraph 3 of Your Lordship's despatch No. 26 (Judicial), dated the 21st October 1880, requesting that an explanation might be procured from the Honourable the Judges of the High Court, Calcutta, in respect of a certain new rule made by the Court for the relief of Insolvent Debtors, we have the honour to forward copy of a letter* from the Registrar of the High Court, together with its enclosures, furnishing the necessary information and resubmitting the rule in question in an amended form.

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Dated 17th January 1881.

Note by A. B. Miller, Esq., Official Assignee, Calcutta.

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3. The recommendation of the auditors was made with the concurrence of the Official Assignee, and was duly sanctioned and adopted by the Chief Justice. The principle of the suggestion had been acted upon prior to this, but in a slightly different form.

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Jud. Dept.
Enclos. No.
To
C. No. 1241

Inasmuch therefore as the separate fund of any separate estate has to be employed immediately on realisation, its investment is not feasible. The result, therefore, is that, save for the office charges fund, no interest would be derived at all from estate cash balances, and the proportionate share of the office administration would have to be imposed upon the separate corpus of each separate estate.

6. It was found, however, that, although the cash balances separately of individual estates were, from their liability to immediate demands, incapable of separate investment, yet inasmuch as the average amount arising from the *aggregate* cash balances was fairly constant (as the result of the incoming of fresh estates as fast as the funds of the older estates were exhausted) that a considerable portion of this aggregate fund was disposable for investment.

7. The Bank of Bengal allows no interest upon deposit accounts. The question therefore arose as to whether this aggregate fund was to be allowed to lie idle and infructuous and solely to the profit of the Bank of Bengal, or whether a portion of it should be invested in Government securities and the interest applied in defraying the office administration, and in this way to relieve each individual estate from a heavy tax upon its separate funds. The latter alternative was naturally accepted, and hence the formation of the fund.

8. The office charges fund means shortly the investment for the benefit of insolvent estates of cash balances which, in no other way, could be so utilised. This machinery has now been in operation for many years, and has worked in a highly satisfactory manner. If from any cause or motive it were now to be upset, Rules the result would be most detrimental to the interests of insolvent estates, and would bear very harshly upon each estate separately. The fund is a clear and absolute gain which could be obtained in no other manner.

Amended Rule 3 of the Rules of the Court for the relief of insolvent debtors.

IT is ordered that Rule 3 of the Rules of the Court for the relief of insolvent debtors at Calcutta, dated the first of July 1869, be repealed, and that instead thereof the following rule be passed as a rule of the said Court, to take effect from the day of 1880:—

3. Such fee not exceeding R1,000 for each audit, as the Judges shall consider reasonable, shall be paid to the auditor or auditors out of the income of the fund representing the surplus cash balances in the hands of the Official Assignee.

RICHARD GARTH.
LOWIS S. JACKSON.
CHARLES PONTIFEX.
G. G. MORRIS.
J. SEWELL WHITE.
ROMESH CHUNDER MITTER.
W. F. McDONELL.
H. T. PRINSEP.
A. WILSON.
L. R. TOTTENHAM.
L. P. DELVES BROUGHTON.
ALEX. T. MACLEAN.

Calcutta, 1st June 1880.

G. I. C. P. O.—No. 1535C H. D.—27-3-95—55.—R. N. B.

No. 31, dated Fort William, the 19th December 1881.

From—The Government of India.

To—Her Majesty's SECRETARY OF STATE for India.

WITH reference to Your Lordship's despatch No. 25, dated 6th October 1881, we have the honour to transmit herewith, under the seal of the High Court of Judicature at Fort William in Bengal, an official copy of the new Rule framed by the High Court for the Court for the Relief of Insolvent Debtors. The date from which it is desired that the rule should take effect is specified therein.

No. 703, dated the 24th November 1881.

From—R. BELCHAMBERS, Esq., Registrar, High Court, Calcutta, Original Jurisdiction.

To—The Officiating Secretary to the Government of India.

WITH reference to your letter No. 1458 of the 8th instant, and the despatch of Her Majesty's Secretary of State, No. 38, dated 6th October last, I am directed to send herewith, under seal, a copy of the proposed new Rule for the Court for the Relief of Insolvent Debtors. The date from which it is desired that the rule should take effect is specified therein.

PRESENT:
The Honourable Sir RICHARD GARTH, K.T., *Chief Justice*.

IT is ordered that Rule 3 of the Rules of the Court for the relief of insolvent debtors at Calcutta, dated the 1st of July 1869, be repealed, and that instead thereof the following rule be passed as a rule of the said Court, to take effect from the first day of January 1882:

"3.—Such fee not exceeding R1,000 for each audit, as the Judges shall consider reasonable, shall be paid to the auditor or auditors out of the income of the fund representing the surplus cash balances in the hands of the Official Assignee."

RICHARD GARTH.
LOUIS S. JACKSON.
CHARLES PONTIFEX.
G. G. MORRIS.
J. SEWELL WHITE.
ROMESH CHUNDER MITTER.
W. F. McDONNELL.
H. T. PRINSEP.
A. WILSON.
L. R. TOTTENHAM.
L. P. DELVES BROUGHTON.
ALEXANDER T. MACLEAN.

The 1st June 1880.

G. I. C. P. O.—No. 1535D H, D.—27-3-95.—55—R. N. B.

No. 3 (Judicial), dated India Office, London, the 16th February 1882.

From—Her Majesty's SECRETARY OF STATE for India.

To—His Excellency the Most Honourable the GOVERNOR GENERAL of India in Council.

I HAVE to acknowledge the receipt of the despatch of Your Excellency in Council, dated the 19th of December last, No. 31, transmitting, under the seal of the Calcutta High Court, an official copy of the new Rule framed by that Court for the relief of Insolvent Debtors.

2. In reply, I have to inform Your Lordship in Council that Her Majesty has been pleased to approve the rule.

G. I. C. P. O.—No. 155E H. D.—27-3-95.—55—W. B. G.

1646

No. 484.

CHIEF SECRETARY'S OFFICE
-2 APR. 1895
GOVERNMENT OF MADRAS

FROM

J. P. HEWETT, ESQ., C.I.E.,
Offg. Secretary to the Government of India,

TO

THE CHIEF SECRETARY TO THE GOVERNMENT OF MADRAS.

Home Department.
Judicial.

Calcutta, the 28th March 1895.

SIR,

I AM directed to acknowledge the receipt of your letter No. 605 (Judicial), dated the 12th March 1894, reporting that since 1848 the Government of Madras have allotted a sum of ₹110 per mensem to cover the cost of the Official Assignee's establishment, and that this provision is now found inadequate. The Madras Government have objected to increase the contribution, as suggested by the High Court at Madras, and it is stated that the most feasible expedient for obtaining additional funds seems to be to utilize, for the payment of the Official Assignee's establishment, the interest upon the accumulated sum of unclaimed dividends, which is invested in Government Securities. The Honourable Judges, however (it is stated), consider that the interest is itself distributable as dividends, and that it cannot legally be appropriated as proposed; and they suggest special legislation for enabling the High Court to deal with the unclaimed dividends. It is further recommended in your letter that, if an Act is passed, it should declare that the Official Assignee's establishment shall consist of such members and be remunerated by such salaries as the High Court may prescribe.

2. With reference to the view of the legal position taken by the Madras High Court, I am directed to forward, for the consideration of His Excellency the Governor in Council and for communication to the Honourable Judges, the accompanying copies of papers relating to a rule passed in 1880 by the Calcutta High Court to the effect that the fee for the audit of the Official Assignee's accounts might be paid out of the income of the fund representing the surplus cash balances in the hands of the Official Assignee. It will be seen that in this correspondence the question of the legality of paying from the income of the fund the office charges of the Official Assignee was specifically raised; that the Honourable Judges expressed the view that such applications of the fund were entirely within the scope of the powers conferred on the Judges by the Indian Insolvent Act (11 Vict., Cap. 21); and that Her Majesty was pleased to approve the rule submitted by the High Court.

Despatch to the Secretary of State, No. 25, dated 6th July 1880, and enclosures.
Despatch from the Secretary of State, No. 26 (Judicial), dated 21st October 1880.
Despatch to the Secretary of State, No. 15, dated 1st May 1881, and enclosures.
Despatch to the Secretary of State, No. 31, dated 19th December 1881, and enclosure.
Despatch from the Secretary of State, No. 3 (Judicial), dated 16th February 1882.

3. The position of the accumulated sum of unclaimed dividends, which is referred to in paragraph 1 of this letter, appears to the Government of India to resemble that of suitors' moneys in the High Court in England. Such moneys, if they are likely to remain for long in Court, are invested for the suitors by the Court, either on their application or in pursuance of certain general orders giving the Court power to make investment at the suitors' risk. Under such circumstances they, or their representatives, are entitled to the accumulated fund, of capital and dividends, upon their claims being established. If the Madras fund now in question stands in the same position as the suitors' fund

just referred to, it appears to the Government of India that the former should either—

(*a*) be kept absolutely intact for the use of the right owners if and when they shall appear and establish their claims upon it, or

(*b*) should, after a reasonable time, be appropriated provisionally to the public use, the State being expressly bound to replace with interest any moneys so appropriated whenever a claimant shall prove a title to them.

The latter course is followed in England, and there will be no objection to sanctioning it in this country, if necessary, by legislation; but the Government of India think it doubtful whether legislation is required. The moneys in question are in the hands of Government so as to be available to the creditors of the insolvents. They are temporarily derelict, and apparently no one would be injured by their being expended under a Government liability to replace them if necessary; while the risk of ultimate liability would be extremely small, if a reasonable time is allowed to elapse before dividends become liable to be treated as "unclaimed dividends." The Government of India are, therefore, disposed to hold that there is no objection to authorising the payment of the expenses of the Official Assignee's office out of the interest on the unclaimed dividends, provided (1) that they have remained unclaimed for a sufficient time to make it likely that no valid claim will be advanced to them, and (2) that the Government clearly acknowledge the liability to replace the money if and when a title is made out to it. Legislation would only be requisite if there were an intention to take away the right of the claimant to restitution.

4. It is, however, the practice of the Court in England to invest from time to time cash balances standing in Court and not likely to be immediately required: such investments are made without any application by the parties to the suit, and they are not affected by them: the right of the parties to their "cash" remains unimpaired, and the intermediate interest, together with the profit (if any) on resale of the securities, belongs to the Court, who have to bear the loss (if any) on such resale, and the expenses of the transaction. There does not seem to be any reason why this course should not, under the like circumstances, be adopted in India. As long as the Government acknowledges the right of the owner to be repaid the principal sum due to him, the interest in this case is applicable to public purposes, and especially to those connected with the administration of the law.

5. In neither case is there therefore any objection to the interest (which it is understood the Accountant General now invests under rule XXII-A of the High Court's Rules in Insolvency Jurisdiction) being *used* for the purpose desired, under the authority of executive orders. I am to ask that these remarks, and the correspondence forwarded herewith, may be referred for the consideration of the Honourable Judges of the High Court at Madras. Should it still be the opinion of the Honourable Judges and of His Excellency in Council that legislation is necessary to make the interest on the unclaimed dividends available, the Government of India will be prepared to consider the matters further.

I have the honour to be,

SIR,

Your most obedient Servant,

J. P Hewett

Offg. Secretary to the Govt. of India.

[G. 21]
200—8-2-95.

Jud. DEPARTMENT.

Papers to be read in proceedings:—

Again G.O., dated 189 , No.

Again G.O., dated 189 , No.

Current No. of 189 , dated from

Current No. 1646 of 1895, dated 25 March from the G. of I.

ORDER. 20 April 1895. No. 808.

The foregoing letter from the G. of I. will be communicated to the Hon. the Judges of the High Court for early remarks.

Jud. 17/4/95 Ag. 9 Ap. 95

Note. The G. of I. seems to have overlooked the correspondence about the Insolvency Rules, in which it was stated that the G. of I. is not likely to raise any objection to crediting to Govt. of the unclaimed balances set apart for expenditure by the Adv.-General; a scheme which Mr. Hewett proposes to adopt.

9/4/95.

To the Hon. the C.J. and the other Judges.

Returned with thanks. 24/4/95

The 'Rules' will be found under cover of G.O. of 17th April 1894, No. 1166, Jud.

Jud. 17/4.

Re Recent cyclone in Aruppukottai taluk

H. 921

H. 6
store copies are at Madras 14/7
20/4

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} 189.

No. DATED

C. No.

Government	A	A	A	A	A	A	A
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filed up, being meant for despatch in original.							

N.B.—
A = Copy in full.
B = Not to be copied.
P = Copy abstract only.
Q = Copy heading only.

C 20/4
R 17/4

30/9/18 15-12-334

30-8-1

27-2-18

21.3.25

9/2/260

23.10.31

20-9-48

No.

FROM

J. P. HEWETT, ESQ., C.I.E.,
Offg. Secretary to the Government of India,

TO

THE CHIEF SECRETARY TO THE GOVERNMENT OF MADRAS.

Home Department.
Judicial.

Calcutta, the *March 1895.*

SIR,

I AM directed to acknowledge the receipt of your letter No. 605 (Judicial), dated the 12th March 1894, reporting that since 1848 the Government of Madras have allotted a sum of ₹110 per mensem to cover the cost of the Official Assignee's establishment, and that this provision is now found inadequate. The Madras Government have objected to increase the contribution, as suggested by the High Court at Madras, and it is stated that the most feasible expedient for obtaining additional funds seems to be to utilize, for the payment of the Official Assignee's establishment, the interest upon the accumulated sum of unclaimed dividends, which is invested in Government Securities. The Honourable Judges, however (it is stated), consider that the interest is itself distributable as dividends, and that it cannot legally be appropriated as proposed; and they suggest special legislation for enabling the High Court to deal with the unclaimed dividends. It is further recommended in your letter that, if an Act is passed, it should declare that the Official Assignee's establishment shall consist of such members and be remunerated by such salaries as the High Court may prescribe.

2. With reference to the view of the legal position taken by the Madras High Court, I am directed to forward, for the consideration of His Excellency the Governor in Council and for communication to the Honourable Judges, the accompanying copies of papers relating to a rule passed in 1880 by the Calcutta High Court to the effect that the fee for the audit of the Official Assignee's accounts might be paid out of the income of the fund representing the surplus cash balances in the hands of the Official Assignee. It will be seen that in this correspondence the question of the legality of paying from the income of the fund the office charges of the Official Assignee was specifically raised; that the Honourable Judges expressed the view that such applications of the fund were entirely within the scope of the powers conferred on the Judges by the Indian Insolvent Act (11 Vict., Cap. 21); and that Her Majesty was pleased to approve the rule submitted by the High Court.

Despatch to the Secretary of State, No. 25, dated 6th July 1880, and enclosures.
Despatch from the Secretary of State, No. 26 (Judicial), dated 21st October 1880.
Despatch to the Secretary of State, No. 15, dated 1st May 1881, and enclosures.
Despatch to the Secretary of State, No. 31, dated 19th December 1881, and enclosure.
Despatch from the Secretary of State, No. 3 (Judicial), dated 16th February 1882.

3. The position of the accumulated sum of unclaimed dividends, which is referred to in paragraph 1 of this letter, appears to the Government of India to resemble that of suitors' moneys in the High Court in England. Such moneys, if they are likely to remain for long in Court, are invested for the suitors by the Court, either on their application or in pursuance of certain general orders giving the Court power to make investment at the suitors' risk. Under such circumstances they, or their representatives, are entitled to the accumulated fund, of capital and dividends, upon their claims being established. If the Madras fund now in question stands in the same position as the suitors' fund

just referred to, it appears to the Government of India that the former should either—

(*a*) be kept absolutely intact for the use of the right owners if and when they shall appear and establish their claims upon it, or

(*b*) should, after a reasonable time, be appropriated provisionally to the public use, the State being expressly bound to replace with interest any moneys so appropriated whenever a claimant shall prove a title to them.

The latter course is followed in England, and there will be no objection to sanctioning it in this country, if necessary, by legislation; but the Government of India think it doubtful whether legislation is required. The moneys in question are in the hands of Government so as to be available to the creditors of the insolvents. They are temporarily derelict, and apparently no one would be injured by their being expended under a Government liability to replace them if necessary; while the risk of ultimate liability would be extremely small, if a reasonable time is allowed to elapse before dividends become liable to be treated as "unclaimed dividends." The Government of India are, therefore, disposed to hold that there is no objection to authorising the payment of the expenses of the Official Assignee's office out of the interest on the unclaimed dividends, provided (1) that they have remained unclaimed for a sufficient time to make it likely that no valid claim will be advanced to them, and (2) that the Government clearly acknowledge the liability to replace the money if and when a title is made out to it. Legislation would only be requisite if there were an intention to take away the right of the claimant to restitution.

4. It is, however, the practice of the Court in England to invest from time to time cash balances standing in Court and not likely to be immediately required: such investments are made without any application by the parties to the suit, and they are not affected by them: the right of the parties to their "cash" remains unimpaired, and the intermediate interest, together with the profit (if any) on resale of the securities, belongs to the Court, who have to bear the loss (if any) on such resale, and the expenses of the transaction. There does not seem to be any reason why this course should not, under the like circumstances, be adopted in India. As long as the Government acknowledges the right of the owner to be repaid the principal sum due to him, the interest in this case is applicable to public purposes, and especially to those connected with the administration of the law.

5. In neither case is there therefore any objection to the interest (which it is understood the Accountant General now invests under rule XXII-A of the High Court's Rules in Insolvency Jurisdiction) being *used* for the purpose desired, under the authority of executive orders. I am to ask that these remarks, and the correspondence forwarded herewith, may be referred for the consideration of the Honourable Judges of the High Court at Madras. Should it still be the opinion of the Honourable Judges and of His Excellency in Council that legislation is necessary to make the interest on the unclaimed dividends available, the Government of India will be prepared to consider the matters further.

I have the honour to be,

SIR,

Your most obedient Servant,

J. P. HEWETT,

Offg. Secretary to the Govt. of India.

G. I. C. P. O.—No. 1535 H. D.—27-3-95.—51.—R. N. B.

No. 15, dated Simla, the 1st May 1881.

From—The Government of India.

To—Her Majesty's SECRETARY OF STATE for India.

WITH regard to paragraph 3 of Your Lordship's despatch No. 26 (Judicial), dated the 21st October 1880, requesting that an explanation might be procured from the Honourable the Judges of the High Court, Calcutta, in respect of a certain new rule made by the Court for the relief of Insolvent Debtors, we have the honour to forward copy of a letter* from the Registrar of the High Court, together with its enclosures, furnishing the necessary information and resubmitting the rule in question in an amended form.

* No. 94, dated 11th February 1881.

2. We suggest that the rule as amended should be laid before Her Majesty for Her Royal approbation, correction, or revision.

No. 94, dated Calcutta, the 11th February 1881.

From—R. BELCHAMBERS, Esq., Registrar, High Court, Original Jurisdiction, Calcutta.

To—The Secretary to the Govt. of India, Home, Revenue and Agricultural Dept.

WITH reference to your letter No. 1319, dated the 16th December last, and the despatch of Her Majesty's Secretary of State therein referred to, I am directed to submit a copy of a note furnished by the Official Assignee as to the history of the fund representing the surplus cash balances in his hands, and to state that, in the opinion of the Judges, the proposed rule for payment of the fee for auditing the Official Assignee's account out of the income of that fund, except in so far as it delegates to the Chief Justice the power to fix the amount of the fee, is entirely within the scope of the following sections of the Indian Insolvent Act 11 Vict., Cap. 21, namely, section 76, by which the Judges are empowered to make all necessary and reasonable rules for carrying out the intendment of the Act, and section 15, under which they have authority to direct by rules or orders how the estate funds should be managed and dealt with.

The proposed rule having been amended by the substitution of the words "the Judges" for the words "the Chief Justice," I am to resubmit it in its amended form, and to request that it may be transmitted to the India Office for the purpose of being laid before Her Majesty for Her Royal approbation, correction, or revision.

Dated 17th January 1881.

Note by A. B. MILLER, Esq., Official Assignee, Calcutta.

THE office charges fund is derived from the interest which accrues on the investment in Government securities of a portion of the aggregate floating cash balances of insolvent estates.

2. This fund was originally suggested in its present form by the Government auditors on the occasion when the audit of the Official Assignee's office was subjected to the Comptroller General of Accounts.

3. The recommendation of the auditors was made with the concurrence of the Official Assignee, and was duly sanctioned and adopted by the Chief Justice. The principle of the suggestion had been acted upon prior to this, but in a slightly different form.

4. The object in contemplation in forming this fund was the relief of the corpus of each individual estate, of the heavy burthen of the office administration, and the substitution of a simple and economical machinery in lieu of the clumsy and costly system which had formerly been used.

5. Insolvent estates stand upon an entirely different footing from ordinary trust estates. The assets of each individual estate are required to be drawn upon, and distributed at the earliest possible opportunity, after collection.

Inasmuch therefore as the separate fund of any separate estate has to be employed immediately on realisation, its investment is not feasible. The result, therefore, is that, save for the office charges fund, no interest would be derived at all from estate cash balances, and the proportionate share of the office administration would have to be imposed upon the separate corpus of each separate estate.

6. It was found, however, that, although the cash balances separately of individual estates were, from their liability to immediate demands, incapable of separate investment, yet inasmuch as the average amount arising from the *aggregate* cash balances was fairly constant (as the result of the incoming of fresh estates as fast as the funds of the older estates were exhausted) that a considerable portion of this aggregate fund was disposable for investment.

7. The Bank of Bengal allows no interest upon deposit accounts. The question therefore arose as to whether this aggregate fund was to be allowed to lie idle and infructuous and solely to the profit of the Bank of Bengal, or whether a portion of it should be invested in Government securities and the interest applied in defraying the office administration, and in this way to relieve each individual estate from a heavy tax upon its separate funds. The latter alternative was naturally accepted, and hence the formation of the fund.

8. The office charges fund means shortly the investment for the benefit of insolvent estates of cash balances which, in no other way, could be so utilised. This machinery has now been in operation for many years, and has worked in a highly satisfactory manner. If from any cause or motive it were now to be upset, Rules the result would be most detrimental to the interests of insolvent estates, and would bear very harshly upon each estate separately. The fund is a clear and absolute gain which could be obtained in no other manner.

Amended Rule 3 of the Rules of the Court for the relief of insolvent debtors.

It is ordered that Rule 3 of the Rules of the Court for the relief of insolvent debtors at Calcutta, dated the first of July 1869, be repealed, and that instead thereof the following rule be passed as a rule of the said Court, to take effect from the day of 1880:—

3. Such fee not exceeding R1,000 for each audit, as the Judges shall consider reasonable, shall be paid to the auditor or auditors out of the income of the fund representing the surplus cash balances in the hands of the Official Assignee.

Richard Garth.
Lowis S. Jackson.
Charles Pontifex.
G. G. Morris.
J. Sewell White.
Romesh Chunder Mitter.
W. F. McDonell.
H. T. Prinsep.
A. Wilson.
L. R. Tottenham.
L. P. Delves Broughton.
Alex. T. Maclean.

Calcutta, 1st June 1880.

G. I. C. P. O.—No. 1535C H. D.—27-3-95—55.—R. N. B.

No. 26 (Judicial), dated India Office, London, the 21st October 1880.

From—Her Majesty's Secretary of State for India.

To—His Excellency the Most Honourable the Governor General of India in Council.

I have considered in Council the despatch of Your Excellency in Council, dated the 6th July last, forwarding, for the purpose of being laid before Her Majesty for Her Royal approbation, correction, or revision, a certain new rule made by the High Court at Calcutta for the relief of insolvent debtors at Calcutta.

2. Under this rule it is proposed that the cost of auditing the accounts of the Official Assignee shall be paid, as it is stated that all his office charges are already paid, out of the income of the fund representing the surplus cash balances in the hands of the Official Assignee.

3. The rule would probably be in itself a proper one, but I entertain doubts whether it is within the competency of the Judges of the High Court to pass it. I request, therefore, that you will invite the Judges of the High Court to explain on what grounds the Court considers that it has power to make such a rule, or to apply this fund in paying office charges in the manner indicated; and that, if necessary, recourse may be had to legislation in order that the matter may be placed upon a proper footing.

G. I. C. P. O.—No. 1535, B. H. D. 27-3-95.—55.—R. N. B.

No. 25, dated Simla, the 6th July 1880.

From—The Government of India.

To—Her Majesty's SECRETARY OF STATE for India.

WITH reference to the correspondence marginally noted,* we have the honour to forward copy of a letter† from the Registrar, High Court, Calcutta, enclosing copy of a revised rule in substitution of Rule 3 of the existing rules of the Court for the relief of insolvent debtors.

* To Her Majesty's Secretary of State, No. 21, dated the 1st July 1869.
From Her Majesty's Secretary of State, No. 25, dated the 25th August 1869.
† No. 345, dated the 28th May 1880.

2. We beg that, in accordance with the provisions of section 76, Act XI and XII Vict., Chapter 21, the revised rule may be laid before Her Majesty for Her Royal approbation, correction, or revision.

No. 345, dated Calcutta, the 28th May 1880.

From—R. BELCHAMBERS, Esq., Registrar, High Court, Calcutta, Original Jurisdiction.

To—The Offg. Secretary to the Government of India.

I AM directed to request that the accompanying rule, passed in compliance with the suggestion of the Auditors of the Accounts of the Official Assignee, contained in their report‡ No. 13 A., dated the 4th instant, may be transmitted for the sanction of Her Majesty under the provisions of section 76 of 11 Vict., Chapter 21.

‡ Extract annexed.

Extract from the Report of the Auditors of the Official Assignee's Accounts for the half-year ending the 31st December 1879.

The examination has been conducted in the manner described in former reports, and need not be detailed here. But there is one rule which we think should be brought to the notice of the Chief Justice, and that is the rule regarding the apportionment of the half-yearly audit fee. The present rule requires that the audit fee shall be charged rateably to the several estates in proportion to the dividends paid out of such estates, and the interpretation put upon it is that the audit fee for a half-year is to be divided proportionately among those estates out of which dividends have been declared and set aside during the half-year. The apportionment of the audit fee is determined therefore by the number and amount of dividends declared in a half-year without reference to the audit paid. These vary from half-year to half-year, and this method of apportioning the audit fee, besides being somewhat troublesome, does not appear to be quite accurate.

There is in existence on the Official Assignee's books a fund out of which all office charges are paid, the income of which consists of the interest on the investment of the surplus cash balances in the hands of the Official Assignee. The capital of this fund, on the 31st December last, consisted of Government paper of the nominal value of ₹11,82,700 and is accumulating every year, as the charges against this fund fall far short of the receipts, and the surplus is from time to time being invested. The fee for the audit of the accounts may, we think, be legitimately charged to this fund which is quite large enough to meet it, and indeed there will still be a surplus for investment. We beg, therefore, to propose that this be done in future.

Rule passed by the High Court on the 1st June 1880 in compliance with the suggestion of the Auditors of the Accounts of the Official Assignee.

It is ordered that Rule 3 of the Rules of the Court for the relief of insolvent debtors at Calcutta, dated the 1st of July 1869, be repealed, and that instead thereof the following rule be passed as a rule of the said Court, to take effect from the day of 1880.

2. Such fee, not exceeding ₹1,000 for each audit, as the Chief Justice shall consider reasonable, shall be paid to the auditor or auditors out of the income of the fund representing the surplus cash balances in the hands of the Official Assignee.

RICHARD GARTH.
LOUIS S. JACKSON.
CHARLES PONTIFEX.
G. G. MORRIS.
J. SEWELL WHITE.
ROMESH CHUNDER MITTER.
W. F. McDONELL.
H. T. PRINSEP.
A. WILSON.
L. R. TOTTENHAM.
L. P. DELVES BROUGHTON.
A. T. MACLEAN.

G. I. C. P. O.—No. 1535 A. H. D.—27-3-95.—55.—R. N. B.

No. 31, dated Fort William, the 19th December 1881.

From—The Government of India.

To—Her Majesty's Secretary of State for India.

With reference to Your Lordship's despatch No. 25, dated 6th October 1881, we have the honour to transmit herewith, under the seal of the High Court of Judicature at Fort William in Bengal, an official copy of the new Rule framed by the High Court for the Court for the Relief of Insolvent Debtors. The date from which it is desired that the rule should take effect is specified therein.

No. 703, dated the 24th November 1881.

From—R. Belchambers, Esq., Registrar, High Court, Calcutta, Original Jurisdiction.

To—The Officiating Secretary to the Government of India.

With reference to your letter No. 1458 of the 8th instant, and the despatch of Her Majesty's Secretary of State, No. 38, dated 6th October last, I am directed to send herewith, under seal, a copy of the proposed new Rule for the Court for the Relief of Insolvent Debtors. The date from which it is desired that the rule should take effect is specified therein.

Present:
The Honourable Sir Richard Garth, K.T., *Chief Justice*.

It is ordered that Rule 3 of the Rules of the Court for the relief of insolvent debtors at Calcutta, dated the 1st of July 1869, be repealed, and that instead thereof the following rule be passed as a rule of the said Court, to take effect from the first day of January 1882:

"3.—Such fee not exceeding Rl,000 for each audit, as the Judges shall consider reasonable, shall be paid to the auditor or auditors out of the income of the fund representing the surplus cash balances in the hands of the Official Assignee."

RICHARD GARTH.
LOUIS S. JACKSON.
CHARLES PONTIFEX.
G. G. MORRIS.
J. SEWELL WHITE.
ROMESH CHUNDER MITTER.
W. F. McDONNELL.
H. T. PRINSEP.
A. WILSON.
L. R. TOTTENHAM.
L. P. DELVES BROUGHTON.
ALEXANDER T. MACLEAN.

The 1st June 1880.

G. I. C. P. O.—No. 1535D H. O.—27-3-95.—55—R. N. B.

No. 3 (Judicial), dated India Office, London, the 16th February 1892.

From—Her Majesty's SECRETARY OF STATE for India.

To—His Excellency the Most Honourable the GOVERNOR GENERAL of India in Council.

I HAVE to acknowledge the receipt of the despatch of Your Excellency in Council, dated the 19th of December last, No. 31, transmitting, under the seal of the Calcutta High Court, an official copy of the new Rule framed by that Court for the relief of Insolvent Debtors.

2. In reply, I have to inform Your Lordship in Council that Her Majesty has been pleased to approve the rule.

G. I. C. P. O.—No. 15 5E H. D.—27-3-95.—55 —W. B G.

Encl to Go No 808 Jud
20.4.1895

Jud. Go 808 Encls
20-4-95

7 Sec of C No 1646/95