

834

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

2nd April 1877, No. 836.

Pleaders and Revenue Agents.

Read the following paper:—

No. 4. *From T. WEIR, Esq., Acting Registrar of the High Court of Judicature at Madras, Appellate Side, to the Chief Secretary to Government, dated 25th November 1876, No. 2739.*

I am directed once more to address the Government on the question of introducing Act XX of 1865 (the Pleaders', Mookhtears', and Revenue Agents' Act) into the Madras Presidency.

2. In the Proceedings of Government, dated 7th June 1875, the Governor in Council expressed his concurrence in the opinion of the Board of Revenue that, as far as the Revenue Department was concerned, the introduction of Act XX of 1865 was to be deprecated; and observed that there appeared to be no power to introduce only a portion of the Act into the Madras Presidency, so that if extended to these territories at all it must be extended in its entirety.

3. The High Court were thereupon asked to consider whether an amendment of Regulation XIV of 1816 would not meet the inconveniences mentioned in the Registrar's letter of the 2nd April 1875, and what in that case they would propose to enact.

4. The High Court has since been at pains to collect from the Collectors and Magistrates of the several districts information regarding the number, status, and qualifications generally of the persons (other than those duly qualified by law) who ordinarily appear and practise in the Magisterial and Revenue Courts of the district. A considerable mass of information has in this way been collected, and I am to annex an abstract of the same for the consideration of His Grace the Governor in Council.

5. The result of this evidence is most unfavorable to a continuance of the existing state of things.

6. A large class of men ignorant, uninstructed, and too frequently unprincipled, whose object in life must be to promote and foster litigation, is let loose upon the community and is subjected to no control, either from the Legislature or the superior Judicial authorities.

7. In the Registrar's letter, dated 2nd April 1875, the unsatisfactory condition of the law in regard to the power of appointing, suspending, and dismissing pleaders was put forward as the principal ground for recommending the introduction of the Act of 1865 into this Presidency. This was and is still the weightiest reason for advocating an extensive change in the existing law. There are, however, other grounds also on which an amendment of the law is most desirable.

8. It scarcely requires demonstration that a Regulation which was framed exactly half a century ago, in the comparatively early days of British administration,

was adapted to meet a very different state of affairs from that which now exists. The very names of the Courts empowered to see to the enforcement of the Regulation (the Provincial Courts) have long since passed away. Many of the provisions of the Act have been repealed (Sections 1, 7, 16, 17, 23, 24, 28, 29, 32, 33, 34, 35, and 37). Some which appear to conflict with other existing laws have been left unrepealed (Section 31). Some again deal with matters of detail which, in the present day, scarcely require to be provided for by express legislation, and which might well be left to the discretion of the Courts (Sections 9, 12, 13, 14, 19, 20, 25, clauses 3, 30, clause 1). Those portions of the Regulation which have not become obsolete, and which are not open to objection on some of the grounds stated above (such as matters connected with the admission, qualification, control, remuneration, &c., of pleaders) can be more appropriately provided for, in the circumstances of the present time, by the provisions of the Act which the High Court desire to see introduced into the Madras Presidency. As an illustration of the confusion and doubt arising from the existing state of affairs, in one of the most important matters dealt with by the Regulation under discussion, I am to instance the provisions relating to the award of costs, and I am to forward a copy of a recent Proceedings of the High Court on the subject.

9. Section 25 of Regulation XIV of 1816 provides that in all regular suits (decided on the merits) the fees shall be calculated in the manner therein provided, viz., by a varying percentage scale to the value of the matter in litigation.

10. Section 31 of the same Regulation enacts that, in the case of suits withdrawn or dismissed for default without determination on the merits, pleaders shall be entitled to one-fourth of the established fees if the suits be dismissed or withdrawn before all the requisite pleadings shall have been filed in Court, and half of the established fee if the suit be so dismissed or withdrawn after the pleadings have been so filed. Act I of 1846, Section 6, repealed Section 25 of Regulation XIV of 1816, except for the purposes of calculating the costs awarded in any regular suit decided upon the merits, and enacted that when costs are awarded in *other cases*, the fees shall be one-fourth of what they would have been in a regular suit decided on the merits. Section 31 of Regulation XIV of 1816, which provided for an award of one-fourth fees in certain cases, and of half fees in certain other cases, was left untouched.

11. The result is at least an apparent conflict between the provision in the Act of 1846 allowing only one-fourth fees in cases other than regular suits decided on the merits, and the provision of the Regulation allowing half fees in certain cases other than regular suits decided on the merits. The words in *other cases*—cases than regular suits decided on the merits in Section 7 of the Act of 1846—are moreover so vague as to allow of considerable latitude of interpretation. The Proceedings of the High Court, which I am to enclose (Proceedings, dated 7th November 1876, No. 2604), show that the Court is inclined to restrict this provision to cases in the nature of suits; that is to say, to cases in which conflicting claims are adjudicated upon, and in which evidence is recorded.

12. Whether this is the correct construction of the law or not must however remain in considerable doubt, and it is open to the Courts, in the absence of express judicial decision, to interpret the provision otherwise.

13. As a matter of fact the High Court are aware that it is the practice in many Courts in the Provinces acting under this provision to award one-fourth costs in matters of a purely formal and routine nature, such as the filing of applications in Court.

14. On these grounds I am to state that the High Court are of opinion that an amendment of Regulation XIV of 1816 would not meet the inconveniences complained of, and the requirements of the present day.

15. As regards the difficulty arising from the circumstance that the Board of Revenue is opposed to the introduction of the Act in so far as it affects the Department under their control, and that there is no power to introduce the Act otherwise than in its entirety, I am to state that the High Court is not so directly concerned with the working of the Revenue Courts as to feel called upon to urge the application of the provisions of the Act of 1865 to this class of Courts, and I am to suggest, for the consideration of His Grace the Governor in Council, whether the subject might not be laid before the Legislative Department of the Government of India with a recommendation that Act XX of 1865, omitting the provisions relating to agents in proceedings before the Board of Revenue and in offices subordinate to such Board, be re-enacted and made applicable, after a date to be fixed upon, to the territories under the Government of Fort St. George.

ENCLOSURE No. 1.

Proceedings of the High Court of Judicature at Madras, 7th November 1876, No. 2604.

Read letter, dated 28th July 1876, No. 190, from the District Judge, Godavery, requesting the instructions of the High Court as to the correct mode of calculating in certain cases the fees to be allowed to pleaders under the provisions of Section 25 of Regulation XIV of 1816, and Act I of 1846.

The matter is a purely judicial one, and in strictness the District Judge should be allowed to find his own way out of the confusion of Regulations and Acts. The High Court will nevertheless state what is in their opinion the most reasonable construction of the various enactments of the Legislature now in force on the subject.

2. In regular suits the fees to be allowed between party and party by virtue of Section 7 of Act I of 1846 are those proscribed in Section 25 of Regulation XIV of 1816, the calculation of the value of the suit being made according to Section 14 of Regulation VIII of 1816, a now obsolete mode of calculation.

3. By Section 7 there may be private agreements. With these, however, a Court is not concerned in taxing the costs. Parties seeking to enforce such agreements can do so only by means of a regular suit. The manifest intention of this provision was to enable the pleader to get a larger sum than the Court could allow. The words "when costs are awarded in other cases" appear to point to cases not strictly suits, but *ejusdem generis* or cases in which evidence is gone into. For example, claims to property attached in execution of decrees and other questions arising in the execution of decrees (Section 215 of the Code of Civil Procedure and Section 11 of Act XXIII of 1861) are matters which frequently require elaborate and careful investigations. The mere presentation of petitions to a Court is not a matter of this nature, and is not therefore provided for under the words "*other cases*."

4. There is no provision for fees in such cases by positive law. Their case is a case omitted. The effect of the various enactments is merely to establish that no sums exceeding the limits fixed in the Regulation and in the Act can be allowed as costs. The Code of Civil Procedure (Sections 187 and 188) differing in this respect from the old law (Regulation III of 1802, Section 9, modified by Section 27 of the Regulation XIV of 1816) by which the Court was bound to give costs to the successful party gives the fullest powers to the Courts in regard to costs, with the exception that the limits proscribed in the previous enactments cannot be exceeded. Within those limits it is perfectly competent to the Courts to award any sum they may think fit as costs.

5. As to suits, the old rule (that of the Regulation) is the limit upwards of the Court's powers as between party and party. In miscellaneous proceedings—supposing that they come within the Act at all—one-fourth of the amount allowable in a suit is again the limit upward, but full power is given to make any modified order.

6. The common case of forced litigation in which the plaintiff leaves it to his pleader to get costs which he himself has never paid, out of the opposite party, would be a very reasonable occasion for allowing only one-fourth of the pleader's fee if not for altogether disallowing it. The difficulty is really with the upward limit in certain cases in which the fee does not fairly compensate for the work done. The above appears to the High Court to be the most reasonable construction of the existing enactments.

7. The law on the subject of pleaders' fees and of pleaders generally is, however, in an unsatisfactory state, and an amendment of the enactments in force is clearly most desirable.

(True Extract.)

(Signed) T. WHEAT.

Ag. Registrar, Appellate Side.

ENCLOSURE No. 2.

ABSTRACT.

Collector.—The Collector gives a detailed statement of unpassed agents who appear in the Revenue Courts, and remarks as to their qualifications. The reports are on the whole not unfavorable. The Trivellore Tahsildar is said not to speak well of the agents who appear before him.

Nellore.—The Collector reports that the agents are men of ordinary attainments. They have some knowledge of law, and have on the whole done well in the cases in which they appear. They are of service to clients not possessed of means sufficient to engage private counsel. The number of such agents is about 100, and the proportion of cases in which they appear and those in which the parties appear is as one to three. The Collector goes on to state that the practitioners who appear in the Magistrates' Courts are frequently persons who have been dismissed from or who have had to resign Government service; that these persons are unscrupulous and exorbitant in their demand for fees; and that rules prescribing the necessary qualifications should be framed.

Madras.—Mr. Gorman gives a detailed statement of the number of agents and of the cases in which they appeared, and forwards the reports of the Divisional Officers. Agents appear very rarely in revenue cases in this district. The only instance given of their acting in Revenue Courts is before the Tahsildar of Cuddalore and the Collector. In magisterial cases they appear in proportion varying from 1 to 27 per cent. The qualification of the agents are stated to be far from high. In one case, the Deputy Magistrate's Court, some of the agents are described as unrepresented, which the latter from timidity or ignorance would be unable to venture.

Madras.—The District Magistrate, Mr. Gorman, speaks unfavorably of the agents. The Head Assistant Collector, Mr. Gorman, speaks unfavorably of the agents. The Collector gives a detailed statement relating to all the Courts in his district. The number of unqualified agents appears to be very large in this district, and they conduct a great deal of business to a much greater extent than in most other districts. The opinions expressed are very contradictory. Some of the opinions are however very unfavorable; such as "a troublesome and untrustworthy and intriguing," "unfit to be employed as Vakils," &c.

Collector.—The Collector gives a detailed statement of the number of agents and the proportion of cases in which they appear. The latter rises as high as 75 and 80 per cent. in some cases. The information is not specific as to revenue cases. The Sub-Collector and the Head Assistant both speak very unfavorably of the agents. The report discloses that some are dishonest and others are dishonest according to their individual opinion of what is right or wrong. The Collector himself says that he is not aware of any bad character among the agents. The Head Assistant says just the reverse.

Tinnevely.—The Collector of Tinnevely gives little information. The proportion of cases in which unqualified persons appear rises as high as 88 per cent. in some cases. The qualification of the agents are reported to be generally unsatisfactory, a few alone having some smattering knowledge of the Penal and Criminal Procedure Codes.

by any law agents. The Collector speaks of two admitting no more.

Bellary.—The information furnished is scanty. The Collector, however, says that very few agents appear in revenue cases. The total number of unqualified agents in the district appears to be twenty-five. Nothing unfavorable to the agents is stated.

Nilgiris.—There are a few unqualified agents but slightly acquainted with law, who appear before the Coonoor Sub-Magistrate.

Cuddalore.—The Collector states that about twenty-seven persons practise as agents in the Magisterial and Revenue Courts. They have not qualified for the office of pleader, and their qualifications generally are of an ordinary nature. Amongst them a few are intelligent and possess some knowledge of law. In about 20 per cent. of the cases the parties are represented by (unqualified) Vakils.

Nellore.—In the Nellore District the Collector states that very few (only six) unqualified agents appear. "A very few of these men may be respectable and efficient. Most of them are doubtless the reverse."

Godavery.—In this district there appears to be a large number (viz., 200) of unqualified agents. The proportion of cases conducted by such agents to cases conducted by the parties is stated to be 42 per cent. The Collector and the other District Officers speak very unfavorably of the unqualified agents. The Collector from his own experience states that in many cases these private Vakils, instead of proving themselves to be of assistance to their clients, exact comparatively large sums from them, and often throw them over at the last moment. Again they are often a source of great annoyance to the Magistrates by fomenting quarrels for their own advantage, and occasionally giving a false color to the circumstances of cases that come into their hands.

Ganjam.—The reports of the unqualified agents in this district are unfavorable. The Collector states that they are in general needy Cutcherry attendants, who endeavour to make a small income by these means. Some are described as able only to read and write, others are stated to have some little knowledge of the Codes, and in some cases also of the Rent Recovery Act.

Krishna.—The District Magistrate furnishes a detailed statement. A small number of the agents are described as "fit."

The District Magistrate (Mr. Leman) writes: "My experience of all the law agents not duly qualified that have appeared before me in this district is that they are not fit to practise. They are absolutely ignorant of law, of the method of conducting cases, of how to cross-examine a witness, and in fact of all that they should know, while they are utterly unscrupulous as to the evidence they offer."

Madras.—The District Magistrate reports that there are 221 unqualified persons practising in the several Courts of the district. The proportion of cases in which they appear and plead is stated to be one-fourth. The District Magistrate states that their qualifications may generally be described as nil. He goes on to say, "They rarely have even a moderate acquaintance with the laws they profess to wield in administering; nor have they, as a rule, the honesty to advise their employers to abstain from illegal proceedings. Their sole object is to make money, and with so large a number of persons seeking for employment, it is obvious that the temptation to advise persons who consult them to go on with litigation, whether right or wrong, and to back up a bad (or even a good) case with tutored or suborned evidence must be very great. I consider that, as a rule, these unqualified persons do more harm than good to their clients, both by advising them wrongly when to undertake and to pursue litigation, and by conducting it in such a manner as rarely to assist the Court and often to prejudice the Court against the side they represent."

Malabar.—The District Magistrate reports that there are nearly ninety unqualified agents practising as Vakils in his district. In some of the Magistrates' Courts the proportion of cases in

which these unqualified agents appear reaches as high as 50 and 75 per cent. of the whole file; in some of the Courts, on the other hand, they appear in a very small number of cases. The Joint Magistrate and the Deputy Magistrate of Wynnad report unfavorably of the agents—the former on the ground that they foster pettiness and are ignorant of their want of qualification. On this Special Assistant Magistrate in thinking that from practising in Court

to cause a waste of time, and there being no means of checking them, or to do mischief by acting secretly as agents and tutoring the complainants and witnesses. Besides, these agents will help to spread a knowledge of at least the common principles of law amongst the rude inhabitants of country parts, who are so deplorably in want of it. While acting as District Judge of South Canara I had the honor to submit to the High Court my views regarding the employment of unrecognised agents in the Civil Courts. The agents practising in Magisterial Courts do not, as a rule, do any harm; but I am still of the opinion, which I formerly expressed, that one of the crying needs of the country is to have a set of responsible law agents in general practice throughout the country who would hold a semi-official position and who could be consulted by anyone having a deed to be drawn up, or a civil suit to be conducted."

Tanjore.—The District Magistrate submits a detailed statement. A few of the agents are described as competent men, a few also as fair. Many are described as having no qualification whatever and as being grossly ignorant. Only a few have passed any tests.

Mr. Forbes, the Assistant Collector and Magistrate, writes: "The majority of the pleaders are entirely under the thumb of the law agents (otherwise called petition-writers) who employ them for hire. Unlike most districts the client rarely, if ever, has any direct dealing with the pleader who appears for him. To please his employer (the petition-writer) the pleader will abandon independent action in the case, following a course which his own better judgment and knowledge in many cases must condemn, the result not being always to the advantage of the client. Another consequence is that the pleader often does not take the trouble to master the parts of the case depending on being coached up at the time by the agent."

Trichinopoly.—In this district the Magistrate of the district states that a few of the agents possess a fair knowledge of procedure.

South Canara.—The District Magistrate states that there are about fifty unqualified law agents. They are generally men of the old school, who, on failing to obtain Government employment, appear to have betaken themselves to this profession, and either possess no knowledge or only a smattering of law, and by their experience make up for their deficiency as well as they can. Only the poorer class of parties engage their services, and that too generally before the subordinate Magistracy.

Vizagapatam.—The District Magistrate gives a detailed statement. The qualifications of the agent are stated to be meagre and very moderate, but on the whole the opinion expressed by the District Magistrate is not unfavorable.

From the above it appears that, while the opinions expressed are in some cases conflicting, the preponderance of opinion is highly unfavorable to the continuance of this class of unqualified law agents.

No. 4-A.

No. 5.

ORDER THEREON, 2nd April 1877, No. 836.

The Government adhere to their previously expressed opinion that it is undesirable to extend the Act as a whole to this Presidency; and they apprehend that the Government of India would not be induced to re-enact it in the shape suggested.

2. It is observed that the question of permitting the local Councils to amend Acts of the Governor-General's Council of a date posterior to the Indian Councils' Act, 1861, is under consideration.

Asst. Secy. to Govt.

To the Honorable the Judges of the High Court, Appellate Side, with covering letter.
Board of Revenue.

Edw. J. Wright.

No 2739

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From

J. Weir Esquire,

Acting Registrar of the High Court
of Judicature at Madras.

To

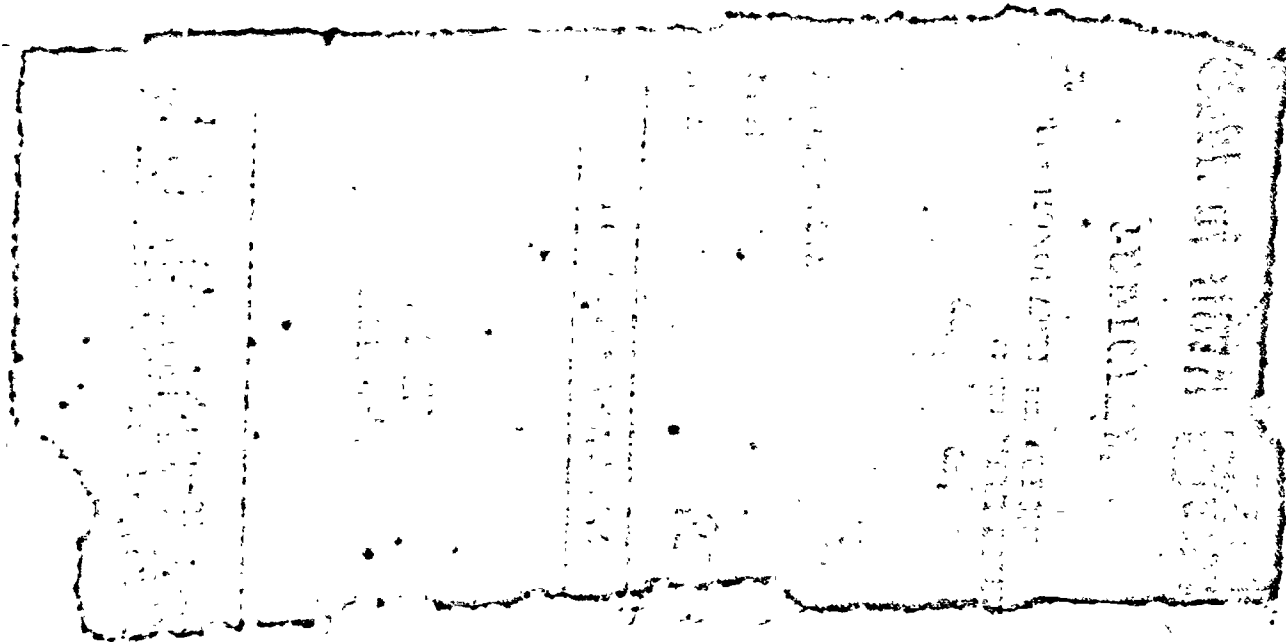
The Honorable W. Mudleston,

Chief Secretary to Government

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In the Proceedings of Govern-
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the introduction of Act XX of 1865 was
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there appeared to be no power to introduce only a portion of the Act into the Madras Presidency so that if extended to these territories at all it must be extended in its entirety.

The High Court were therefore asked to consider whether an amendment of Regulation XIX of 1816 would not meet the inconveniences mentioned in the Registrar's letter of the 2^d April 1875 and what in that case they would propose to enact.

The High Court has since been at pains to collect from the Collectors and Magistrates of the several Districts, information regarding the number, status and qualifications generally of the persons (other than those duly qualified by law) who ordinarily appear and practise in the Magisterial and Revenue Courts of the District. A considerable mass of information

has in this way been ^{5/8}collected and ²⁰I am to annex an abstract of the same for the consideration of His Grace the Governor in Council.

The result of this evidence is most unfavorable to a continuance of the existing state of things.

A large class of men ignorant, uninstructed and too frequently unprincipled whose object in life must be to promote and foster litigation, is let loose upon the community and is subjected to no control either from the legislature or the superior judicial authorities.

In the Registrar's letter dated 2^d April 1875, the unsatisfactory condition of the law in regard to the power of appointing, suspending and dismissing pleaders was put forward as the principal ground for recommending the introduction of the Act of 1865 into this Presidency. This was

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The very names of the Courts em-
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Section 31 of the same Regulation enacts that, in the case of suits withdrawn or dismissed for default without determination on the merits, pleaders shall be entitled to $\frac{1}{4}^{\text{th}}$ of the established fees if the suits be dismissed or withdrawn before all the requisite pleadings shall have been filed in Court; and $\frac{1}{2}$ of the established fees if the suit be so dismissed or withdrawn after the pleadings have been so filed. Act I of 1846, Section 6, repealed Section 25 of Regulation XIV of 1816 except for

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The result is at least an apparent conflict between the provision in the Act of 1846 allowing only $\frac{1}{4}^{\text{th}}$ fees in cases other than regular suits decided on the merits and the provision of the Regulation allowing $\frac{1}{2}$ fees in certain cases other than regular suits decided on the merits. The words in other cases cases than regular suits decided on the merits in Section 7 of the Act of 1846 are moreover so vague as to allow of considerable latitude of interpretation. The

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High Court of } I have the honor to be,
Judicature, Madras, } Honorable Sir,

25th November 1876 } Your most obedient servant,

P. Va.

Acting Registrar,
Appellate Side.

830/11 6 No

Read letter dated 28th July
1876, Es. 190 from the District Judge, Godavari
requesting the instructions of the High
Court as to the correct mode of calcula-
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to pleaders under the provisions of Section
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J. C.*

From
The H. Register of the
High Court of Judicature
at Calcutta.
To The Clerk of the
Court of Sessions
at Government.

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Addressing the Board

[illegible]

being made according to Section 14 of Regulation XIII of 1816, a new absolute mode of calculation.

By Section 7 there may be private agreements. With these however a Court is not concerned in taxing costs. Parties seeking to enforce such agreements can do so only by means of a regular suit. The manifest intention of this provision was to enable the plaintiff to get a larger sum than the Court could allow. The words "when costs are awarded in other cases" appear to point to cases not strictly suits, but *quidam generis* cases in which evidence is gone into. For example claims to property attached in execution of decrees and other questions arising in the execution of decrees (Section 246 of the Code of Civil Procedure and Section 11 of Act XXIII of 1865) are matters which frequently require elaborate and careful investigations. The mere presentation of petitions to a Court is not a matter of this nature and is not therefore provided for under the words "other cases".

37/27 80.
There is no provision for fees in such cases by positive law. Their case is a case *omittit*. The effect of the various enactments is merely to establish that no sum exceeding the limits fixed in the Regulation and in the Act can be allowed as costs. The Code of Civil Procedure (Sections 187 and 188) differing in this respect from the old law (Regulation III of 1802, Section 9 modified by Section 27 of the Regulation XII of 1816) by which the Court was bound to give costs to the successful party) gives the fullest powers to the Courts in regard to costs, with the exception that the limits prescribed in the previous enactments cannot be exceeded. Within those limits it is perfectly competent to the Courts to award any sum they may think fit as costs.

As to suits the old rule (that of the Regulation) is the limit upwards of the Court's powers as between party and party. In miscellaneous proceedings - supposing that they come within the Act at all - one fourth of the amount allowable in a suit is again the limit upwards, but

15
full power is given to make any modified order.

The common case is a case of litigation in which the plaintiff issues it to his pleader to get costs which he himself has never paid, out of the opposite party would be a very reasonable reason for allowing only one-fourth of the pleader's fee if not for altogether disallowing it. The difficulty is, really with the upward limit, in certain cases in which the fee does not fairly compensate for the work done. The above appears to the High Court to be the most reasonable construction of the existing enactments.

The law on the subject of pleaders' fees and of pleaders generally is however in an unsatisfactory state and an amendment of the enactments in force is clearly most desirable.

/ True Extract!

Q
Odi

Ag. Registrar
Appellate Dns.

Ed. [Signature]

516

Chingleput. The Collector gives a detailed statement of unpassed agents who appear in the Revenue Courts and remarks as to their qualifications. The reports are on the whole not unfavorable. The Trivellore Tahsildar is said not to speak well of the agents who appear before him North Arcot. The Collector reports that the agents are men of ordinary attainments. They have nevertheless a fair knowledge of law and have on the whole done well in the cases in which they appeared. They are of service to clients not possessed of means sufficient to engage professional men of superior attainments. The number of such agents is about 100, and the proportion of cases in which they appear and those in which the parties appear in person is as 1 to 3.

Enclosure 2

See letter from the
 H. R. Department of the
 High Court of Judicature
 at Madras dated 25th
 November 1876. No. 2939.

In post 3227 of 1876

The Collector goes on to state that the practitioners who appear in the Magistrate's Courts are frequently persons who have been dismissed from or who have had to resign Government service; that these persons are unscrupulous and exorbitant in their demand for fees and that rules prescribing some necessary qualifications should be framed.

South Arcot. Mr. Gartin gives a detailed statement of the number of Agents and of the cases in which they appeared and forwards the reports of the Divisional Officers. Agents appear very rarely in revenue cases in this District. The only instance given of their acting in Revenue Courts is before the Tahsildar of Cuddalore.

52/49
and the Collector. In Magisterial cases they appear in proportions varying from one to twenty-seven per cent. The qualification of the Agents are stated to be fair on the whole. In one case. the Deputy Magistrate's Court. Some of the Agents are described as unacquainted with law but as being able to express before the Magistrate what the party would have represented which the latter from timidity or ignorance would be unable to venture. The Head Assistant Collector, Mr. Gibson, speaks unfavorably of the Agents. Salem. The Collector gives a detailed statement relating to all the Courts in his District. The number of unqualified Agents appear to be very large in this District and they conduct revenue business to a

much greater extent than in most other Districts. The opinions expressed are very conflicting. Some of the opinions are however very unfavorable. Such as 'a troublesome promoter of litigation' 'untrustworthy and intriguing' 'unfit to be employed as Vakils' &c. The Collector himself expresses no special opinion.

Caimbature. The Collector furnishes a report and a detailed statement of the number of Agents and the proportion of cases in which they appear. The latter rises as high as 75 and 80 per cent in some cases. The information is not specific as to revenue cases. The Sub. Collector and the Head Assistant both speak very unfavorably of the Agents. The report discloses that some officers admit and others exclude this class of practitioners according to their individual opinion of what is right or expedient. The Collector himself says that he is not aware of any bad character among the Agents.

agents. The Head Assistant says just the reverse.

Timnevelly. The Collector of Timnevelly gives little information. The proportion of cases in which unqualified persons appear rises as high as 88 per cent in some cases. The qualification of the Agents are reported to be generally unsatisfactory, a few alone having some smattering knowledge of the Penal and Criminal Procedure Codes.

Kurnool. In this District there are scarcely any law Agents. The Collector speaks of two such persons whom he is seriously thinking of admitting no more.

Bellary. The information furnished is scanty. The Collector however says that very few Agents appear in revenue cases. The total number of unqualified Agents in the District appears to be 25. Nothing unfavorable to the Agents is stated.

Nilgiris. There are 4 unqualified Agents but slightly acquainted

with law who appear before the
Governor Sub-Magistrate.

Cuddapah. The Collector states
that about 27 persons practice as
Agents in the Magisterial and
Revenue Courts. They have not
qualified for the office of Pleader
and their qualifications gener-
ally are of an ordinary nature.
Amongst them a few are in-
telligent and possess some
knowledge of law. In about
20 per cent of the cases the
parties are represented by (un-
qualified) Vakils.

Nellore. In the Nellore
District the Collector states
that very few (only 6) unquali-
fied Agents appear. A very few
of

25/11/80
of these men may be respectable and
efficient - most of them are doubtless
the reverse.

Gadagery. In this District there appears
to be a large number (say 200) of un-
qualified agents. The proportion of cases
conducted by such agents to cases conducted
by the parties is stated to be 42 per
cent. The Collector and the other District
officers speak very unfavorably of the
unqualified agents. The Collector from his
own experience states that in many cases
these private Vakils instead of proving them-
selves to be of assistance to their clients
exact comparatively large sums from them
and often throw them over at the last
moment. Again they are often a source
of great annoyance to the Magistrate by
fomenting quarrels for their own advantage
and occasionally giving a false color
to the circumstances of cases that come
into their hands.

Ganjam. The reports of the unquali-
fied agents in this District are unfavor-
able. The Collector states that they are

in general needy cut-throat attorneys who endeavor to make a small income by these means. Some are described as able in leg to read and write - others are stated to have some little knowledge of the Codes and in some cases also of the Real Recovery Act Madura: - The District Magistrate furnishes a detailed statement - a small number of the agents are described as 'fit'.

The District Magistrate (Mr. Leman) writes - My experience of all the law agents not duly qualified that have appeared before me in this District is that they are not fit to practice. They are absolutely ignorant of law, of the method of conducting cases, of how to cross-examine a witness and in fact of all that they should know, while they are utterly unscrupulous as to the evidence they offer.

Madura: - The District Magistrate reports that there are 221 unqualified persons practicing in the general Courts of the District. The proportion of cases in which they appear and plead is stated to be one-fourth. The District Magistrate

8/4/12
states that their qualifications may generally be described as nil. He goes on to say. They rarely have even a moderate acquaintance with the laws they profess to assist in administering, nor have they as a rule the honesty to advise their employers to abstain from hopeless litigation. Their sole object is to make money and with so large a number of persons seeking for employment it is obvious that the temptation to advise persons who consult them to go on with litigation, whether right or wrong or to back up a bad (or even a good) case with tutored or suborned evidence must be very great. I consider that as a rule these unqualified persons do more harm than good to their clients, both by advising them wrongly when to undertake and to pursue litigation and by conducting it in such a manner as rarely to assist the Court and often to prejudice the Court against the side they represent.

Malabar.— The District Magistrate reports that there are nearly 90 unqualified agents practising as Agents in his District. In some of the Magistrate's Courts the proportion of cases in which these unqualified agents appear reaches as high as 50 and 75 per cent of the whole file., in some of the Courts on the other hand they appear in a very small number of cases. The Joint Magistrate and the Deputy Magistrate of Wynad report unfavorably of the agents. The former on the ground that they foster petty litigation and are ignorant of English, the latter on the ground of their want of qualification. On this the District Magistrate remarks— I concur with the Special Assistant Magistrate in thinking that there is not much to be gained by excluding them from practising in Courts, the only harm that can be done by them acting in open Courts being to cause a waste of time and there being no means on the other hand to check their power

to do mischief by acting ^{as} secretly as agents and tutoring the complainant and witnesses. Besides these agents will help to spread a knowledge of at least the common principles of law amongst the rude inhabitants of Country parts who are so deplorably in want of it. While acting as District Judge of South Canara I had the honor to submit to the High Court my views regarding the employment of unrecognized Agents in the Civil Courts. The Agents practising in Magisterial Courts don't as a rule do any harm, but I am still of the opinion which I formerly expressed that one of the crying needs of the Country is to have a set of responsible law agents in general practice throughout the Country who would hold a semi-official position and who could be consulted by any one having a deed to be drawn up or a Civil Suit to be conducted

Mangalore
Unfavorable

Mangalore. The District Magistrate submits a detailed statement. A few of the Agents are described as competent ^{men}, a few also as fair. Many are described as having no qualification whatever.

and as being grossly ignorant - only a few have passed any tests.

At Forbes the Assistant Collector and Magistrate writes the majority of the pleaders are entirely under the thumb of the Law Agents (otherwise called Petition writers) who employ them for hire, unlike most districts the Chief, rarely, if ever, has any direct dealing with the Pleader who appears for him.

To please his employer (the Petition writer) the pleader will abandon independent action in the case, following a course which his own better judgment and knowledge in many cases must condemn; the result not being always to the advantage of the client. Another bad consequence is that the Pleader often does not take the trouble to master the facts of the case, depending on being coached up at the time by the agent.

Tichinopoly: In this District the Magistrate of the District states that a few of the Agents possess a fair knowledge of procedure.

37/2/14 80
South Canara: The District Magistrate states that there are about 50 unqualified Law Agents. They are generally men of the old school who on failing to obtain Government employment appear to have betaken themselves to this profession and either possess no knowledge or only a smattering of law and by their experience make up for this deficiency as well as they can. Only the poorer class of parties engaged their services and that too generally before the subordinate Magistracy.

Vijayapatnam: The District Magistrate gives a detailed statement. The qualifications of the Agent are stated to be meagre and very moderate but on the whole the opinion expressed by the District Magistrate is not unfavorable.

From the above it appears that while the opinions expressed

are, in some cases conflicting, the pre-
ponderance of opinion is highly unfavor-
able to the continuance of this class of
unqualified law agents.

Ed. Higgins

In Feb 27 1896

Dear Sir

Acting Registrar
Appellate Side

In a letter from
the Acting Registrar
of the High Court
judicial side
received dated
25th November 1895
No 2737 -

Enclosure

28th Nov 1895
Minister of Justice
28th Nov 1895

Of course, it is
futile to expect the
Government of India
to legislate in abrogation
and limitation of what
they know to be a most
beneficial Act wherever
it has been brought into
operation. The junction
of the two may sooner or
later operate to force
the Act on both Revenue
and judicial Courts with
beneficial results, and
I should be sorry to
disconnect them with
the danger of leaving the
Revenue Courts in their
present plight.

I can scarcely conceive
a consensus more complete
in condemnation of the existing
state of things, under a
Regulation which the High
Court justly show to be
quite undisturbed, than
is

is elicited from the
Magistrates & Pleaders
by the High Court. The
introduction of the Act
would gradually improve
a general evil as the
Court tell us and I should
be quite prepared to join
in promulgating it. This
is the course I would advise
- and I think that Revenue
Courts are those which
would benefit most by
regulation of the Law Agency
of the country.

I would refer the High
Court's letter and ask
the Board if they retain
the same opinion as before
expressed, and on receipt
of their reply - Agents are
but little employed in
Revenue Cases - decide
whether the judicial require-
ments of the country are
to be further sacrificed in
deference to the recitation
of the members of the Board.

0212 W. W. P. M. M.

Recd. 10-3-36

Recd. 3227/76

The Pleaders, Mookhars, & Revenue Agents Ad.

From the High Court,
25 Nov^r/76, No 2739.

The High Court are ^{greatly} in favour
of introducing this Act (~~1865~~ of 1865)
into the Madras Presidency. By section
47 of this Act, it can only be brought into
force here by an order of the Gov^r in Coun-
cil published in the Official Gazette.

To High Court, 14 March/65,
Form No. 1 April/65, No 396.
G.O. 12 April/65, No 575.

2. When this Act was under con-
sideration as a Bill, the High Court
reported that, in the opinion of two of
the three Judges best acquainted with
Mofussil practice, its extension to the
Presidency was neither necessary nor
desirable, however necessary the legislation
might be in Bengal. It was considered un-
necessary here, because the High Court
already possessed the power of prescribing
rules for the admission of Pleaders in
the lower Courts, & the duties & liabilities
of persons admitted to practice were
already sufficiently defined. It was con-
sidered inexpedient, because it was not
advisable to fetter the discretion allowed

to the High Court under existing regulations, because the existing rules for the examination of candidates for the legal profession had been found already to operate beneficially, & because any measure which might tend to increase the prevalent dislike in their permanency was much to be deprecated. The Chief Justice (Sir Polley Scotland) did not wish to offer any observations on the Bill, but Sir Adam Pakenham was of opinion that section 13 was likely to have a wholesome effect. His opinion of the High Court was recorded; but on Mr. G. P. Johnston (then an Attorney at Law) applying to be informed whether the benefit of the Act (now passed as Act of 1865) could not be extended to this Presidency, as it permitted Attorneys to plead in the lower Courts, he was informed in reply that it was not intended to extend the provisions of the Act to this Presidency.

3. The subject does not appear to have been mooted again till April 1875, when the High Court (as at present constituted) addressed the expediency of extending the provisions of the Pleaders & Revenue Agents Act to this Presidency. They submitted that

* Sec. 13 of the Bill was substantially the same as Sec. 13 of the Act. It provided that unqualified persons practising as Pleaders or Advocates were to be liable to fine or imprisonment, & to be incapable of recovering fees.

From Mr. G. P. Johnston
6 July 1865.

G.O. 19 July 1865, No. 1001.

From High Court,
2 April 75, No. 749.

recent experience had led the Judges to question the force of some at least of the reasons assigned in 1865 for not introducing the Act. The former more particularly, of appointing, suspending and dismissing Pleaders which, under existing rules, was uncertain and ill defined, was well provided for by the Act, which also contained a convenient procedure for the investigation of charges of misconduct. The objection against disturbing recently introduced examination rules had by lapse of time lost much of its force. The Act had been beneficial in its operation in the other Presidencies; and after the difficulties incidental to the introduction of an extensive change had been overcome, the High Court had little doubt that the Act would operate beneficially in Madras also. The matter was referred to the Board of Revenue who, after consulting the Collectors of Nellore, Bellary, North & South Arcot, Madurai, & Coimbatore, reported their opinion that there was no practical necessity for the introduction of the Act so far as the Revenue Dept was concerned, & that they were averse to its being brought into force. The framing of rules and tests and scales of fees, such as would not cause great inconvenience in the

Pro. Bd. of Rev. 14 May 75,
No. 1295.

revenue officers, would be very difficult. The great mass of the work was not of such a character as to necessitate measures to secure qualifications in the agents who conducted it; and when matters, in which the assistance of trained pleaders was necessary, came before collectors in their judicial capacities, the services of the Civil Court Pleaders were available. The Board were not aware what inconveniences, which would be remedied by the Act, had been felt in the judicial administration; but so far as they were aware, judging from the past, it had been found possible to secure a body of men sufficiently numerous & well qualified for the work of pleaders. The Govt agreed with the Board of Revenue that, as far as the Revenue Dept was concerned, the introduction of the Act was to be deprecated; and they observed that there was apparently no power to introduce a portion of it only, into this Presidency (section 47); if introduced to these territories, it could only be as a whole. The High Court were, however, requested to consider whether an amendment of Reg. III of 1816 would not meet

G.O. 7 June 1875, No. 1301.

The points relating to the Provincial Courts have been reported by the Secretary to the Govt. in a letter of the 11th of 1875; and the effect appears to be that there is no controlling authority now.

the inconveniences mentioned by them, & what in that case they would propose to enact.

Reg. XIV of 1816.

4. Regulation XIV of 1816 provides the present law ~~in the~~ ^{the} office of Vakil, or native pleader. It transfers ~~the~~ ^{the} control previously exercised by the Sadr Adalat as to appointment & removal of such persons. By section 3,

a. Sadr & Provincial Courts are empowered to appoint their own Vakils; and

b. Vakils in Zillah Courts are to be nominated by the Judges, and their nomination sanctioned by the Provincial Courts.

By section 4, Pleaders receive Sanads, which Sanads are not to be on stamped paper, and are only cancellable on the death, resignation, or dismissal of the Vakil.

By section 10,

a, Sadr & Provincial Courts are authorized to dismiss their own pleaders; and

b, in case a Zillah Judge thinks that a Vakil of his Court or of a Sadr Ameen's Court ought to be dismissed for misconduct or otherwise, he is to report the circumstances to the Provincial Courts, who are to pass such orders as they think proper.

By section 11, Zillah Judges may, however,

suspended & while, and report the case
for the orders of the Provincial Court.

Section 25 prescribes the scale of fees
payable to Vakils; viz:-

5 per cent in suits of value up to 5000

2. 5000 & 20,000

1. 20,000

Half do. 10 & 20,000

If the suit exceeds 20,000 Rs, the fee
is 1000 Rs, which is the maximum.

By section 31,

a. If a suit is withdrawn, or dismissed
for default, without determination on
merits. & before pleadings are complete, the
pleaders' fee is one quarter the adalath fee; &

b. If pleadings are complete, the fee is
one half.

The Regulation prescribes no rules
for examining, or testing the qualifications
of, pleaders.

Act II of 1865

5. Act II of 1865 provides rules for the
qualification, admission, enrolment,
suspension, and dismissal of pleaders,
Mookhtars, and Revenue Agents.

Pleaders & Mookhtars

Sec. 4. The High Court are to make rules for

a. the qualification, admission, and en-
rolment of proper persons to be Pleaders and

Mookhtars in the several Courts;

b. the fees to be paid for the examina-
tion, admission, enrolment of such persons;

c. the suspension and dismissal of
such persons.

Sec. 6. The Govt are to appoint examiners, &
make regulations for conducting examinations.

Sec. 7. All Pleaders & Mookhtars are to be
rolled in a book to be kept in the High Court,
and all Courts are to take judicial notice of
such enrolment.

Sec. 9. Certificates issued by the High Court
to Pleaders & Mookhtars are to be on stamp
paper, and are to endure for a year.

Sec. 10. The Stamp on the Certificate is to
be as follows:-

On Certificate

a. In High Court & in any subordinate Court. 25.

b. In District, Sub, & S.C. Courts. 25.

c. In Sadar Amin's & Munsiff's Courts
in Courts of Commissioners & Magistrates
and Tahsildars. 15.

d. In Munsiff's Courts, or any Court
of first instance not before men-
tioned. 5.

On Certificate as Mookhtar

e. In High Court and any sub Court. 25.

f. In the District, Sub, & S.C. Courts. 15.

g. In Courts of first instance in Circuit
Magistrates & Sub Magistrates,
Sadar Amin & Munsiff's Ct,
Sadar Amin & Tahsildars. 8.

h. In Munsiff's Court not before mentioned. 4.

Sec: 11. Pleaders may appear, plead, & act in any Criminal Court, or before the Board of Revenue, or in any revenue office.

Mookhtars may practice, subject to the conditions of their Certificates, as to class & in any civil or criminal Court.

is above not to apply to any Court established by Rengul Charter.

Sec: 13. Persons practicing as Pleaders or Mookhtars, without Certificates, to be liable to fine not exceeding 10 times the amount of stamp required to be impressed on the certificate, & in default of payment, to imprisonment in a civil jail for a period not exceeding 6 months; & persons are also incapable of suing of their peers.

Sec: 14. The High Court may suspend or dis. miss any Native Pleader or Mookhtar, if convicted of any criminal offence, or

Sec: 15. of fraudulent or grossly improper conduct in discharge of professional duty.

Sec: 16. In case of misconduct in any Court subordinate to the High Court the Judge or Magistrate, after giving notice to the pleader, is to try the charge & report his finding to the orders of the High Court.

Revenue Agents.

Sections 19 to 36 are applicable to Revenue Agents, who are to practice under certificates granted by the Revenue Board. Certificates are to be on stamps from No 5 to No 15. Exam. as to qualification. Section 19 are to be framed by the Board and Govt are to appoint examiners & regulations for conducting examinations. Powers of dismissal &c are to be in the Board of Revenue.

Remuneration.

Sec: 37. The High Court & Revenue Board are to prepare tables of fees payable to Pleaders and Agents.

Sec: 39. But parties may make their own arrangements, which may be enforced by suit.

Sec: 44. The Act is not to apply to Advocates, Vakils and Attorneys admitted and enrolled by the High Court under its Letters Patent.

Sec: 47. The Act applies to Bengal, but may be extended to any other Presiding by the sanction of the local Govt.

Sec: 48. When so extended, all previous Regulations are to cease to have effect.

6. In their letter now before Govt, the High Court state that they have been at the pains of collecting information from the several Collectors & Magistrates regarding

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6. In their letter now before Govt, the High Court state that they have been at the pains of collecting information from the several Collectors & Magistrates regarding

Act to such extent they would therefore
suggest for consideration whether the sub-
ject might not be laid before the Legis-
lative Dept of the Govt of India, that
into the recommendation that Act of
1865 be re-enacted and made applicable
to Madras, omitting the provisions relating
to Revenue agents.

Submitted - That the C.I.

be moved to enact that the Act
may be applied to Judicial
Officers & Agents only -

If applied to Revenue C-
offices - it will be a nuisance
to very bad people.

a nuisance - because he
has not want the cases
coming before him argued
by lawyers (sect 11 & 28).

and very bad on people -
because now in Revenue
matters he can allow

a relative, a servant or
other authorized agent
to be employed by the parties,

who are always too poor to get
at professional advice.

Very b. I have no
objection to this. But
I dispute nothing
to the Rev. of
L.R.

4/3.

I am not convinced of
the expediency or necessity for
introducing this Act -

I think it helps to expect them
I will modify their course

Not as suggested -
have any actual record
been formed lately?

By 22/3

See minute in
for the Rev. M.

~~Call for the record~~

Placed under the Act of
1865 of the Govt of India

22 April 1877.

Proceedings
No 836
June 1877 (Sept 6)

No 836 22 April 1877

Proceedings
The Govt. advised to
bein previously proposed
provision that it is under
able to extend the Act
as a whole to this Prov;
and being apprehended that
the C. of D. will not be induced
to re-enact it in the shape
suggested.

2. This showed that the
question of passing being the local
Councils to amend acts of the
C. of D. Council of a date previous
to the Act of 1871
is under consideration of
29/10/77

to the Hon. the Secy of the
High Com. in India
29/10/77