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MADRAS RECORD OFFICE

Government of Madras

Subicinal

DEPARTMENT

G.O. No.	<i>300</i>	Press
B.P. No.		Misr
Dated	<i>25th April</i>	<i>195</i>
		<i>1882</i>

Original

Not to be folded or roughly handled

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

READ—the following Proceedings of the Government of India in the Department of Finance and Commerce, dated Simla, 12th April 1882, No. 225 :—

Separate Revenue (Post Office).

Read—the undermentioned papers regarding a proposal to levy Court-fees in lieu of postage on processes, notices, &c., transmitted by post :—

Letter from the Government of Bombay, to the Home Department, No. 5644, dated 27th August 1881.

Letter from the Home Department, to the Registrar of the High Court, Calcutta, No. 1230, dated 16th September 1881.

Letter from the Home Department, to the Government of Madras, No. 1231, dated 16th September 1881.

Letter from the Home Department, to the Government of the North-Western Provinces and Oudh, No. 1232, dated 16th September 1881.

Letter from the Home Department, to the Government of the Punjab, No. 1233, dated 16th September 1881.

Letter from the Government of the Punjab, to the Home Department, No. 4093, dated 14th November 1881.

Letter from the Government of the North-Western Provinces and Oudh, to the Home Department, No. 963, dated 2nd December 1881.

Letter from the Government of Madras, to the Home Department, No. 2642, dated 22nd December 1881.

Letter from the Registrar of the High Court, Calcutta, to the Home Department, No. 35, dated 6th January 1882.

Resolution—

Section 95 of the Civil Procedure Code (Act X of 1877) provides that “postage, where chargeable on any notice, summons or letter issued under this Code and forwarded by post, and the fee for registering the same, shall be paid within a time to be fixed by the Court before the communication is forwarded.” Under this provision of the law parties to civil cases, in addition to the various Court-fees levied in Court-fee stamps, are usually obliged to advance small sums of money to defray the postage charges on notices, summonses, or letters, which have to be transmitted by post. This system involves an amount of account-keeping and correspondence in the offices of the Courts, out of all proportion to its importance, and there can be no complete supervision over the various petty accounts kept in the offices of Judges whose ordinary judicial duties fully occupy their time.

2. As a remedial measure, it has been proposed that Section 95 of the Civil Procedure Code should be amended so as to admit of the levy of a small additional Court-fee stamp to be affixed to each notice, summons or letter which has to be sent by post, the Court-fee being calculated at an average rate which would pay for the transmission and return of an ordinary notice or summons.

3. The Governor-General in Council observes that Section 95 of the Civil Procedure Code does not require that the postage shall be paid separately, but only that it shall be prepaid. To secure this object, it does not, in the opinion of His Excellency the Governor-General in Council, appear to be necessary to amend the section referred to.

4. There can be little doubt that the existing system is very troublesome, both to the Courts and to the parties to Civil cases, who are obliged to defray the postage charges. It seems also undesirable to charge process fees at rates high enough to cover all incidental charges for the service of processes, notices, &c., and then to make a further separate demand for postage.

5. Under these circumstances His Excellency in Council is pleased to direct that in future the postage charges on all processes, notices, and such other documents as are issued from any Judicial or Revenue Court, and are required to be transmitted by post, shall be paid by means of service postage stamps without any additional charge being levied from the parties at whose instance the processes are issued. The value of the service stamps so used shall be paid out of the Process-serving Fund by periodical adjustments to the Imperial revenue. This arrangement will entail a loss to the Imperial postal revenue to the extent of the difference between the ordinary and service postage rates, but, as it will relieve litigants from certain petty and vexatious charges, His Excellency in Council considers it desirable to forego the revenue.

6. It is presumed that the process-serving funds are in every instance able to bear this additional charge. But if in any case it be found otherwise, the rates of process fees might be slightly raised under the Court Fees Act, so as to cover postage charges.

Order—

Ordered that the foregoing Resolution be communicated for information and guidance—

To the several Local Governments and Administrations.

To the Comptroller-General.

To all Accountants-General.

Ordered, also, that a copy be forwarded to the Home Department for information.

(Signed) R. LOGAN,

Offg. Under Secy to the Govt. of India.

ORDER—dated 25th April 1882, No. 300, Judicial.

Communicated to the Honorable the Judges of the High Court and the Revenue Department.

(True Extract.)

Acting Chief Secretary.

To the Honorable the Judges of the High Court.

„ Revenue Department.

„ Board of Revenue.

Gobt. of 1882 Madras.
JUDICIAL.

Order, dated 25th April 1882, No. 300.

Civil Procedure Code.—Communicating to High Court and Revenue Department Resolution of Government of India directing, with reference to Section 95 of this Code, that processes, notices, and such other documents issued from any Judicial or Revenue Court, shall, when required to be transmitted by post, be sent under official frank.

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

3rd September 1881, Nos. 1824-25.

Court Fees.

Read the following paper:—

From F. C. DAUKES, Esq., Under Secretary to the Government of India, Home Department (Judicial), to the Chief Secretary to Government, dated Simla, 20th August 1881, No. 1086 [Current No. 2587].

I am directed to acknowledge the receipt of your letter, No. 1142, dated the 9th June last, forwarding, for the sanction of the Governor-General in Council, an *addendum*, framed by the High Court at Madras and confirmed by the Madras Government, to the schedule of fees chargeable under the rules framed in accordance with the provisions of Section 20 of the Court Fees Act (VII of 1870). This *addendum* provides—

- (1) for the levy of fees on applications for the issue of processes beyond the jurisdiction of the Courts to which they are made, and
- (2) for the service of processes of "foreign" Courts by Courts subordinate to the Madras High Court.

2. Before the *addendum* is finally considered by the Government of India, I am to request that, with the permission of the Honorable the Governor in Council, you will be good enough to move the Honorable the Chief Justice and Judges of the High Court for a further expression of their views on the following points:—

- (1) Clause (b), paragraph 1 of the *addendum* lays down that, if the process is to be executed by a Court other than a Presidency Small Cause Court, the fee payable is "the fee that would be leviable for the issue of such process in the Court to which the application is made," whilst clause (c) provides that, if the process is to be executed by a Presidency Small Cause Court, the fee to be levied is "the fee payable in the Court to which application is made." The distinction between these two provisions is not readily apparent, and, if no distinction is intended, the necessity for a separate rule for processes to be executed by the Presidency Small Cause Courts may be open to doubt.
- (2) The second point upon which some explanation seems to be required is in regard to paragraph 2 of the *addendum*, which relates to "service of processes of foreign Courts." It is not clearly understood whether the object of this rule is to provide for the service of processes issued by "foreign Courts" properly so called, or for processes issued by Courts established outside the local limits of the appellate jurisdiction of the High Court at Madras. In the latter case the heading of the rule may possibly be susceptible of improvement.
- (3) I am to add that "Form No. 21, Civil Procedure Code," mentioned in paragraph 2 of the *addendum*, has apparently been inserted by mistake for Form No. 121.

ORDER THEREON, 3rd September 1881, No. 1824.

Ordered that the Honorable the Chief Justice be addressed.

(Signed) R. DAVIDSON,
Chief Secretary.

To the Honorable Sir CHARLES TURNER, Kt., C.I.E., Chief Justice of the High Court of Judicature at Madras, dated Ootacamund, 3rd September 1881. No. 1825.

With reference to the correspondence ending with letter from the Registrar of the High Court, dated 18th October 1880, No. 2043, I am directed to forward copy of a letter from the Government of India, dated 20th August 1881, No. 1086, relating to the *addendum* framed by the High Court to the schedule of fees chargeable under the rules framed in accordance with Section 20 of the Court Fees Act of 1870, and to request that the Honorable the Judges will be good enough to communicate their views at an early date on the points raised by the Government of India.

(Signed) R. DAVIDSON,
Chief Secretary.

Govt. of 1881 Madras
JUDICIAL.

Dated September, 3rd.

Issued.

Recd.

Encl.

3rd September 1881, Nos. 1824-25.

SEPTEMBER.

Court Fees.—Copy of letter from Government of India relating to the addendum to the schedule of fees chargeable under the rules framed in accordance with Section 20 of the Court Fees Act of 1870, forwarded to the High Court for early opinion on the points raised.

JUDICIAL DEPARTMENT.

Civil Procedure Code.

No. 2041.

To

THE HON. SIR CHARLES A. TURNER, *Kt.*, C.I.E.,
Chief Justice of the High Court of Judicature at Madras.

HONORABLE SIR,

I am directed by the Governor in Council to forward the accompanying copy of a letter* from the Government of India and of its enclosure, and to request the favor of an expression of the opinion of the Honorable the Judges of the High Court on the proposed amendment of Section 95 of the Code of Civil Procedure.

2. I am at the same time to inquire whether any difficulty, such as is described by the Bombay High Court, has been experienced in the Madras Presidency.

I have the honor to be,
Honorable Sir,
Your Most obedient Servant,

OOTACAMUND,
3rd October 1881.

Chief Secretary.

From F. C. DAUKES, Esq., Under Secretary to the Government of India, Home Department (Judicial), to the Chief Secretary to Government, dated Simla, 16th September 1881, No. 1231 [Current No. 2839].

I am directed to forward copy of a letter* from the High Court at Bombay recommending the amendment of Section 95 of the Code of Civil Procedure in order to enable the Court to prescribe the levy of a Court fee in lieu of postage for notices, summonses, and letters which have to be transmitted by post, and I am to request that, with the permission of the Honorable the Governor in Council, you will be good enough to obtain and submit to the Government of India the opinion of the High Court, together with the views of the Local Government, on the proposed amendment of the law. I am further to inquire whether any difficulty of the nature described by the Bombay High Court has been experienced in the Madras Presidency.

* No. 1256, dated 20th August 1881, to the Government of Bombay.

ENCLOSURE No. 1.

From E. FULTON, Esq., Registrar, High Court, Appellate Side, Bombay, to the Chief Secretary to Government, Judicial Department, Bombay, dated Bombay, 20th August 1881, No. 1256.

I am directed to inform you that the attention of the Honorable the Chief Justice and Judges has been called to the system according to which parties to civil cases, in addition to the various Court fees levied in Court Fee Stamps under Act VII of 1870, are usually obliged to advance small sums of money (generally one or two rupees in each case) to defray the postage charges on notices, summonses, or letters which have to be transmitted by post.

2. The practice is one of long standing and its existence is recognised by Section 95 of the Code of Civil Procedure, but it is nevertheless open to objection.

3. In every case in which money is advanced by any party to cover postage expenses, the Court to which the advance is made has to keep an account of the expenditure. When a summons is transmitted by post to another Court for service, the cover in which it is sent is franked with private postage stamps. Other stamps have to be sent along with the summons to cover the return postage, and the Court to which they are sent has to account for these and return the balance, the receipt of which has in turn to be acknowledged. Occasionally the Court transmitting the summons by a miscalculation sends an insufficient number of stamps to pay for its return or sometimes a mistake is made in the account transmitted from one Court to another, and in both of these cases further correspondence ensues. Finally, at the conclusion of the case the unexpended balance ought to be returned to the party, and this is done whenever he claims it; but instances do occur in which parties never think it worth while to claim the petty balances, and the accounts remain open for years until they are finally lost sight of altogether. The High Court has recently credited to Government some small balances of postage accounts which had remained unclaimed for a long period.

4. Altogether the system, which involves an amount of account keeping and correspondence out of all proportion to its importance, is most troublesome, and it is doubtful whether the time of the clerk who has to keep the accounts is not at least of equal value with the postage stamps to be accounted for.

5. There is another objection to the system, viz., that there can be no complete supervision over the various petty accounts kept in the offices of Judges and Sub-Judges, whose ordinary judicial duties fully occupy their time. Even the Head Clerk could, as a rule, hardly exercise any very effective control in this matter, and if the Karkun in charge chooses to be dishonest, there must be opportunities for his being so. The High Court has no reason to believe that such dishonesty is at all common though its attention was called to a case about two years ago in which some stamps appeared to have been purloined, and although it must be noticed that such instances are very rare, still the annoyance which they occasion and the disagreeable suspicions which they give rise to when they do occur are in themselves strong arguments against the present system.

6. The High Court is of opinion that instead of charging notices, summonses, and letters with private postage stamps when transmitted by post, they should be franked with service stamps, and Government should be reimbursed by the levy of a small additional Court Fee Stamp to be affixed to each notice, summons, or letter which was to be sent by post; the Court fee being calculated at an average rate that would pay for the transmission and return of an ordinary notice or summons.

7. By this arrangement all these troublesome accounts would be got rid of and much waste of time would be avoided. The Judicial Department would have to buy a larger number of service stamps than heretofore and would be recouped by the extra Court fee levied. The returns of the Postal Department would not be materially affected except in so far as, owing to the rules about service stamps, a smaller number of these would have to be used than were used of private stamps. This small loss to the Postal Department would, however, be trifling and would represent no real loss to Government if the scale of Court fees were properly fixed. The total amount expended on the postage of summonses, notices, and letters sent by the High Court on its Appellate Side and all the Courts subordinate to it amounted in 1880 to something less than Rs. 12,000 as shown in the appended table.

8. In conclusion, I am directed to say that the Honorable the Chief Justice and Judges are of opinion that, considering the wording of Section 95 of the Code of Civil Procedure, they are unable at present to prescribe the levy of a Court fee in lieu of postage, but would request that the Government of India may be moved to cause to be passed a short amending Act adding to that section the words:—

“Provided that the High Court, with the confirmation of the Local Government and the sanction of the Governor-General in Council, may prescribe a scale of Court fees to be levied in lieu of postage.”

9. After the section has been amended, the High Court will frame the necessary rule.

TABLE showing the total amount expended on the postage of Summonses, Notices, and Letters sent by the High Court on its Appellate Side and all the Courts subordinate to it during the year 1880:—

	RS.	A.	P.
Ahmedabad District	773	14	6
Ahmedabad and Nariad Small Cause Courts	127	11	6
Surat District	1,436	8	0
Surat and Broach Small Cause Courts	261	9	6
Tanna District (including Nasik)	2,457	2	6
Ratnagiri District	1,306	12	0
Khandesh District	1,334	5	6
Poona District (including Sholapur)	658	13	6
Poona Small Cause Court	45	1	0
Ahmednagar District	442	5	6
Satara District	792	0	0
Belgaum District (including Kaladgi)	682	3	6
Dharwar District	615	11	6
Kanara District	398	15	0
Total	11,333	1	6
	169	4	0
High Court, Appellate Side			
Grand Total	11,502	5	6

Exd. T. O'Connor.

Govt. of Madras.
JUDICIAL.

The Hon. Sir CHAS. A. TURNER, Kt., C.J.F.,
Chief Justice of the High Court
of Judicature at Madras.

10th October 1881.

Recd.

Recd.

Encl.

G.O., 3rd October 1881, No. 2041.

OCTOBER.

Chief Justice of the High Court of Judicature at Madras.—Forwarding copy of a letter from the Government of India and requesting an opinion on the amendment proposed by the High Court of Madras in Section 95 of the Code of Civil Procedure in view of the levy of a Court fee in lieu of postage for service of process.

GOVERNMENT OF MADRAS.
JUDICIAL DEPARTMENT.

22nd December 1881, No. 2641.

Civil Procedure Code.

Read the following paper:—

From T. WEIR, Esq., Acting Registrar of the High Court of Judicature at Madras, Appellate Side, to the Chief Secretary to Government, dated Madras, 3rd December 1881, No. 2548 [Current No. 3593].

I am directed to acknowledge the receipt of your letter to the Chief Justice, dated 3rd October 1881, No. 2041, requesting, at the instance of the Government of India, the opinion of the High Court on an amendment suggested by the High Court of Bombay in Section 95 of the Code of Civil Procedure with a view of enabling the Courts to levy a court-fee, in lieu of postage, for notices, summonses, and letters transmitted by post.

2. In reply, I am to state that the practice now recommended by the High Court of Bombay was the practice which actually prevailed in the Courts of this Presidency until after the passing of the Civil Procedure Code of 1877.

3. In its Proceedings dated 22nd April 1873 the High Court of Madras, with the view of carrying out directions then issued by the Government of India that all collections for the service of processes should be made by means of stamps, prescribed certain fees and, in so doing, provided expressly (Rule 4)—“The charges will be sufficient to cover the cost of postage, so that all correspondence connected with the service of processes may be on Her Majesty’s Service.”

4. When revised rules for the levy of process fees were in the same year approved by the Government of Madras and sanctioned by the Government of India, one of the rules (Rule 6) so approved and sanctioned declared that no charge should be made for postage (*vide* Proceedings of the Madras Government, dated 1st August 1873, No. 1210).

5. After the Code of Civil Procedure (Act X of 1877) came into force, it was assumed, possibly erroneously, that the rule promulgated was repealed by that enactment, and fees for postage have since February 1878 been collected in money. The High Court has not received any complaint of inconvenience having been occasioned by the charge, and in rules recently submitted for sanction a charge of one rupee for postage was proposed to be levied in court-fee labels [see letter from the Home Department, Simla, 20th August 1881, No. 1086 (Current No. 2587)—G.O., 3rd September 1881, No. 1824].

6. The former practice was obviously the more convenient, and, looking to the large surplus now accruing from process fees, the abolition of the charge for postage would occasion no loss to Government.

7. The High Court accordingly desires to recommend the abolition of the existing charges, or, in other words, that the practice prevailing previous to February 1878 be reverted to.

ORDER THEREON, 22nd December 1881, No. 2641.

The foregoing letter will be transmitted to the Government of India with reference to letter thence, dated 16th September 1881, No. 1231.

(True Extract.)

R. DAVIDSON,
Chief Secretary.

To the Honorable the Judges of the High Court, with C.L.

Exd. J. W. Fischer.

To
THE HONORABLE THE JUDGES
OF THE HIGH COURT.

G.O., 22 (December 1891, No. 2641)

Col. From the Colon.—Letter from Acting
Major F. H. D. C. read in the view of
the Hon. Sec. of the Interior on the proposed amend-
ment to the Act of 1862 in order to enable
the U. S. to purchase the key of a court-house
in the Territory, for the purchase of public
land, and the purchase of land for the
purchase of land.

Civil Procedure Code.

No. 2642.

FROM

THE HON. R. DAVIDSON, C.S.I.,
Chief Secretary to the Government of Fort St. George;

To

THE SECRETARY TO THE GOVERNMENT OF INDIA,
HOME DEPARTMENT (JUDICIAL).

SIR,

SIR,

With reference to your letter of the 16th September last, No. 1231, requesting to be informed of the views of the Honorable the Judges of the High Court and of this Government in regard to an amendment of Section 95 of the Civil Procedure Code proposed by the Government of Bombay, in order to enable the Courts to prescribe the levy of a court-fee, in lieu of postage, for the transmission of notices, summonses, and letters by post, I am directed to forward, for the consideration of the Governor-General in Council, copy of a letter from the Registrar of the High Court in which the Judges advocate the adoption of the amendment proposed, and with this view the Government entirely agree.

I have the honor to be,

I have the honor to be,

Sir,

Sir,
Your most obedient servant,

FORT ST. GEORGE,
22nd December 1881.

Chief Secretary.

Exd. J. W. Fischer.

Reg. No.

HOME 1881 DEPT.

From the Government of
Port St. George.

Detail 22nd Dec. 1881.	No.
Is not	Enclosures
Is not	Spice copies.

D. No.	Progs.
L. No. 2612.	No.

Cost Price of C. A. — Forwarded to the
And by the Hon. High Court, consisting the
Verdict of the Hon. Judge of the Court of Appeal
the subject of Section 55 of the Code in order
to enable the Court to pronounce the judgment
of the Court of Appeal for the time being
of the Court of Appeal, and the Court of Appeal.

Full Time Dept
1882

GOVERNMENT OF INDIA.
DEPARTMENT OF FINANCE AND
COMMERCE.

RESOLUTION.

To
ALL LOCAL GOVERNMENTS AND
ADMINISTRATIONS, AND AC-
COUNTANTS GENERAL, AND
HOME DEPARTMENT.

No. 225

Dated Simla, the 12th April 1882.

N/ 21-

CURRENT No. *12/4*

Directing that processes, notices, and such other
documents issued from any Judicial or Revenue
Court, shall, when required to be transmitted
by post, be sent under official frank.

Order 25th Apr/82. No 300

*Issued. to the Hon.
the Judges of the High
Court and the Res.*

Deputy

E/C

*Un. Hon. the Judges, depts
" Rev. Secy. }
" Ad. Secy. } dated 4/5/82*

22/4/82

12/4-8

der 4.5

PRESS.

<i>Just</i> DEPARTMENT. G.O. DATED 25th April 1912 No. 300.

First copy sent to Press.

Returned for signature. 3-5-82

Despatched in print. 4-5-82

[Despatch Abstract.]

First Provision. First Copy.
 to be High Court & the Res. Dept.
 Res. of G.O. directing that
 process, notices, and such
 other documents issued from
 any Just or Res. Court, shall
 when required to be transmitted
 by post, be sent under of
 special frank.