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TAMIL NADU ARCHIVES

GOVERNMENT OF TAMIL NADU

Judicial

DEPARTMENT

G.O. No.	<i>626</i>	Press.
B.P. No.		Mis.
Dated	<i>8-7-1882</i>	<i>198</i>

[Signature]

Not to be folded or roughly handled.

8TH JULY 1882, No. 626, JUDICIAL.

GOVERNMENT OF MADRAS.
JUDICIAL DEPARTMENT.

READ—the following paper:—

From J. W. HANDLEY, Esq., First Judge, Madras Court of Small Causes, to the Chief Secretary to Government, dated Ootacamund, 26th June 1882.

I have the honor to remind the Government of the necessity of appointing a Registrar of the Madras Court of Small Causes under Section 13 of the new Presidency Small Cause Court Act (XV of 1882). I presume it will be unnecessary to reappoint the present Judges, as by Section 2 of the Act all appointments made under the old Act will be deemed to have been made under this Act, but the office of Registrar is newly created by this Act and must be filled up by special appointment. The appointment should be made on, or as soon as possible after, the 1st proximo, from which date the Act comes into operation, as the work of the Court cannot well proceed under the new Act without a Registrar.

2. As to the person to be appointed, I would suggest Mr. John Morris Maskell, Barrister-at-Law, at present Chief Clerk and Officiating Fourth Judge of the Court, as a fit and proper person for the office. He has had thirteen years' experience of the duties of Chief Clerk, which are in many respects identical with those which he would have to perform as Registrar, and in addition has, during the same period, officiated as Fourth Judge, and as such has had the disposal of almost all *ex parte* cases, and also occasionally of defended cases below Rs. 20 in value. These duties he has discharged, I believe, to the complete satisfaction of all the Judges who have presided in the Court during the time. From my own experience, since my appointment, I can confidently recommend him for the office of Registrar.

3. I would also suggest the immediate exercise of the power conferred by Section 14 of the Act to invest the Registrar with the powers of a Judge under the Act for the trial of suits under Rs. 20 in value. Upon the appointment of a Registrar, I presume Mr. Maskell's appointment as Officiating Fourth Judge will be cancelled. That appointment was originally made "pending the creation of the office of Registrar," and would therefore naturally cease when that office is filled up. But apart from this G.O., Judicial Dept., 21st July 1882, No. 1183. it would be necessary, I think, to cancel " " " 27th " " " 1228. Mr. Maskell's appointment as Fourth

Judge unless Government is prepared to reappoint the appointment of a Fourth Judge as well as a Registrar, for, in my opinion, the new Act does not authorize the offices of Judge and Registrar being united except as provided for by Section 14. If, therefore, the work of disposing of *ex parte* cases, hitherto performed mainly by the Fourth Judge, be thrown upon the remaining Judges, it is essential to relieve them as far as possible by conferring Judicial powers upon the Registrar to the fullest extent allowed by the Act. Whether even with this assistance it will be possible for the work of the Court under the new Act to be satisfactorily performed without an additional Judge is a question which can only be answered after some experience of the working of the Act. My own impression is that another Judge will ultimately be required. But, however this may be, I am certain that the work of the Court cannot be carried on unless the Registrar is invested with full powers under Section 14. I would therefore suggest that this may be done at the same time as the appointment is made.

4. Should Government be pleased to appoint Mr. Maskell Registrar, the question of his pay will have to be considered, as to which I beg to submit the following facts

626
2

The Court has considered the petition of the
petitioner for a writ of habeas corpus and
has concluded that the writ should be granted.
The petitioner is entitled to the writ of habeas corpus
because he is being held in custody without any legal
authority. The Court has found that the petitioner's
detention is unlawful and that he is entitled to be
released from custody. The Court has ordered that the
petitioner be released from custody immediately.

The Court has also considered the petition of the
petitioner for a writ of certiorari and has concluded
that the writ should be granted. The petitioner is
entitled to the writ of certiorari because the lower
court has made a mistake of law. The Court has found
that the lower court's decision is based on an incorrect
interpretation of the law. The Court has ordered that
the lower court's decision be reversed and that the
petitioner be granted the writ of certiorari. The Court
has also ordered that the petitioner be granted a new
trial. The Court has found that the petitioner's trial
was unfair and that he is entitled to a new trial.

The Court has also considered the petition of the
petitioner for a writ of mandamus and has concluded
that the writ should be granted. The petitioner is
entitled to the writ of mandamus because the lower
court has failed to perform its duty. The Court has
found that the lower court has failed to follow the
law and that the petitioner is entitled to the writ of
mandamus. The Court has ordered that the lower court
be compelled to perform its duty and that the petitioner
be granted the writ of mandamus. The Court has also
ordered that the petitioner be granted a new trial.

Chief Secretary

G.O. of 1882 Judicial.

JUDICIAL.

1882

1882

1882

G.O., 8th July 1882, No. 626.

JULY.

Madras Small Cause Court.

Considering that there is no necessity, under Section 14 of the Presidency Small Cause Courts Act, 1827, to appoint a Registrar

*Proceedings of the Madras Government, Judicial Department,
9th June 1871.*

No. 50. Read the following letter from T. M. BUSTEED, Esq., First Judge of the Small Cause Court, Madras, to the Hon. D. F. CARMICHAEL, Acting Chief Secretary to Government, Fort St. George, dated Madras, 26th March 1871, No. 61:—

I have the honour to forward, herewith, Mr. Maskell's application for an increase of his pay. In so doing I beg to say that Mr. Maskell's request to be allowed Rupees 650 a-month is, in my opinion, entitled to the favourable consideration of the Government. I rest my opinion simply on the facts that the sum of Rupees 650 a-month has hitherto been considered a fair and proper remuneration for the Clerk of this Court and is the present remuneration of the Clerk of the Bombay Court. I see no reason why the Clerk of this Court should not be paid as well as the Clerk of the Bombay Court. I attach no weight whatsoever to the fact that Mr. Maskell is nominally a Judge of the Court and exercises certain judicial and quasi-judicial functions. The 200 suits for sums under 10 Rupees in the last year which I sent to him represent his entire judicial work and are not equivalent to the work of taking accounts in account cases which might have been sent to him but which were not sent because practically found to be a comparatively tedious and expensive process.

From J. M. MASKELL, Esq., Officiating Judge and Clerk of the Court of Small Causes, Madras, to T. M. BUSTEED, Esq., First Judge of the Small Cause Court, Madras, dated Madras, 23rd March 1871, No. 62.

I have the honour to request that you will be so good as to forward, with your recommendation thereon, the enclosed letter to the address of the Acting Chief Secretary to Government relative to the increase of my pay.

From J. M. MASKELL, Esq., Officiating Judge and Clerk of the Court of Small Causes, Madras, to the Hon. D. F. CARMICHAEL, Acting Chief Secretary to Government, Fort St. George, dated Madras, 23rd March 1871, No. 61.

I have the honour to request that you will do me the favour to submit, for the favourable consideration and orders of the Right Honourable the Governor in Council, this my application regarding the increase of my salary as Officiating Judge and Clerk of the Court from Rupees 500 to Rupees 700 on the following grounds.

2. From the date of the institution of this Court to my appointment the pay attached to the office of Clerk of the Court was Rupees 650; but, towards the latter part of the year 1869, in contemplation of the intended retirement of the

G. O., No. 5, dated 4th January 1870.
" " 963, " 10th June "
" " 1188, " 21st July "

then Clerk of the Court, the Government re-organized the establishment under the Orders noted in the margin, and *inter alia* proposed—

(a.) The creation of the office of Registrar with judicial functions in place of the Clerk of the Court on a salary rising from Rupees 500 to Rupees 700.

(b.) The introduction of a graduated scale of salaries, and the redistribution of the sanctioned grant for the purpose of placing the officers on receipt of lower allowances at once on their mean pay, and an increased expenditure in view to the eventual grant of the maximum salaries with the sanction of the Supreme Government.

3. In the office of Registrar were to be merged the twofold offices of Judge and Clerk of the Court; in the former capacity he was to relieve the Judges of their routine work so as to set free their time for the disposal of contested cases, and in the latter he was to be the chief executive officer as under the old system and was in turn to be assisted by a Deputy.

*Proceedings of the Madras Government, Judicial Department,
9th June 1874.*

4. As the creation of the office of Registrar required legislative sanction, and as the Government considered it inexpedient to delay the introduction of the new scheme, it was proposed to gazette the Clerk of the Court Officiating Judge to perform the duties of the Registrar till such time as that appointment should be created, and to this post office I was appointed on the 27th July 1869 to act; and I was confirmed in the post on the 20th October 1869; on the retirement of the late Clerk.

5. It will be seen from G. O., No. 1395, dated 30th November 1869, that, on the retirement of the late Clerk, and in accordance with the new scheme, the aggregate expenditure on the establishment was redistributed and that every officer was placed on his mean salary with the exception of the two Interpreters, who were allowed their maximum pay, and that the minimum salary was assigned to me. The difference of Rupees 150 between my minimum pay of Rupees 500 and that given to my predecessor, Rupees 650, went towards making up the mean salaries of the establishment.

6. The increased expenditure alluded to above in paragraph 2, I not having received the sanction of the Supreme Government the local Government allowed the reforms that had been introduced to remain undisturbed, and by their Order, No. 733, dated 4th June 1870, directed the salaries of the officers to be continued to be paid at the rates they were then being drawn.

7. My duties as Judge may be thus enumerated:—

- (1) To dispose of *ex parte* cases.
- (2) To record all compromises.
- (3) To enter up judgments by confession.
- (4) To pass orders for second and further summonses.
- (5) To record evidence under Commissions from Mofussil.
- (6) To attest powers of attorney.
- (7) To attest affidavits.
- (8) To commit and release prisoners brought up on warrants.

In addition to the above, whenever the work of the Court is heavy, the First Judge sends to me for disposal a few defended suits for sums of Rupees 10 and under.

8. I may here state that during the past year, as will appear from the comparative table No. 8 in the Return of cases for that year, 20,203 suits were instituted—a larger number than had ever been brought before the Court in any former year with the exception of the year 1847.

The large increase of suits produced a corresponding increase of revenue, the total having reached Rupees 1,00,020 1/2, a figure never before reached, and this increase took place although the institution fee had been reduced from 2 Annas to 1 Anna on suits for sums exceeding Rupees 200. The result of the past year's litigation has been a surplus to the credit of Government of Rupees 20,715 1/2 after defraying the cost of establishment, including the salaries of the Judges and the contingent charges.

9. In conclusion, I have the honour to request that, considering the judicial and quasi-judicial work entrusted to me, the present condition of the Court, and the fact that the salary assigned to me by the Government is only Rupees 500, and which also was allowed to my predecessor, Mr. Shaw, in the Presidency, His Excellency the Governor in Council will be pleased to recommend that the salary of my office be raised to Rupees 650, as originally proposed by the Government for my office, and may be granted to me when I shall have completed five years' service, viz. on the 20th October 1874.

*Proceedings of the Madras Government, Judicial Department,
9th June 1874.*

10. If, on the other hand, His Excellency in Council should not be prepared to grant the above request I trust that I may be recommended for the salary of Rupees 650.

No. 51. ORDER THEREON, 9th June 1874, No. 1039.

The Governor in Council is not prepared to apply to the Government of India for this increase. He observes that, in sanctioning a redistribution of the salaries of the Court's establishment, the Government of India, four years ago, insisted that the amount of Rupees 2,794-8-0 per mensem should not be exceeded. The whole of this is now absorbed, and the circumstances noted by the Supreme Government, as indicating the propriety of a decrease in the total cost of the Court, rather than of any increase, have undergone no material change.

2. There was then, the Governor-General in Council observed, "an existing tale of only 6100 decisions on the merits, including a preponderance of suits less than Rupees 10 in value." By the last report, for 1873, just received from the Press, it appears that out of a total of 20,203 suits instituted, 5378 only were contested; that 13,715 were under 10 Rupees; 13,311 under 20 Rupees, the limit fixed by the first Charter in the reign of George II.; and no less than 22,643 under 50 Rupees, the limit of the Small Cause jurisdiction of District Munsifs in the Mofussil."

(True Extract.)

Acting Chief Secretary.

To the First Judge of the Madras Court of Small Causes.

Ed. A. S. Rodgers.

From

The Judge of the S. Cause Court,
Madras, 24th June
1882.

Just put it to Handley
whether any app^t of Registrar
is really required - he would
a "may appoint" are used. (S. 14)

In other Presidency S. C. C^{ts},
it is perhaps the case that
the chief Magisterial officers
do not exercise any judicial
functions - but our man does
20 - years ago he was app^t
Chief Clerk and 4th Judge
simultaneously; and by S. 2
of the new act no fresh app^t
is required -

As to his increase of pay, we
must wait & see what the ex-
tended jurisdiction - from 1000
to 2000 Rs. - will effect - the
-leave will effect nothing,
only a fleabite in the
ocean" as Sir George Kalfon
last says - The last Annual Return
has been printed but is not put
up. I should have said are the
units between 500 & 1000; how
he will be generally

FOR ORDERS.

The proposals made
in this letter consequent
on the coming into

effect of the 1st part

of the Presidency S. C. Cause

Act, 1882, are

(1). That Mr. J. H.

Morris Marshall

The present which
Hess and Off. 4th

Judge, he appointed

Register under the

provisions of Sec. 13

It is now called "Hess and Off. 4th"

(2) that under Sec. 14

he be invested with

the powers of a judge

for the trial of suits

not exceeding \$2000.

(3) that his salary

be raised from

\$500 to \$800

while the aggregate
number of suits has
been frequently exceeded
in the years from 1850, when
the CE was first established
on something like its present
system -

for 1851

It is further suggested
that it may be
necessary to create

Mr. Marshall's present

appointment as Off.

4th Judge under the

provisions of the

to appoint an ad-

ditional judge in

consideration of the

points to be made

provisionally for the

Mr. Marshall instead of being

Off. 4th Judge will now under

the new act exercise similar

powers under S. 14. Any

proposition for strengthening

27/67.

the Court should remit
the expense of the new
jurisdiction.

From 1869 the pay of the
Chief Clerk was ^{the} 650, the
amount given in Bombay;
on the reorganization of the
establishment in that year
the salary was reduced to Rs.
500.

In 1874 an application for
a return to the old pay was
refused (see. 100, of June
2nd 1874).

But now that the office
is changed and made
more responsible and
important, there is reason for
reimbursement of it.

FOR ORDERS.

Registrar Small piece of paper, - head of

I have seen the Adm. Journal.

He is inclined to think
that "may appoint" in section
B, ^{read with 102,} does not under it im-
plicitly on the part to
appoint a Registrar, but
he is not clear that this
interpretation would be
put upon it in a court
of law. He considers it
the safest and most
prudent course to get the
the Chief Clerk as Registrar,
a course which wd remove
any implication in the

The Regt under C. M.
with Lane jurisdiction is
to R 20 - separate on June 20

1. Worms - flatworms - flatworms
 2. flatworms - flatworms - flatworms
 3. flatworms - flatworms - flatworms

Note: Register Small Cause Court

F O R O R D E R S

I have seen Mr Handley.
his opinion is —

1. It is necessary to pay the
the present Chief Clerk as
Regisiter from 1st July,
the former officer being no
longer recognized under
the Act.

2. Mr. Marshall's app't as
1st Judge was official
+
fixing the app't members of
the Office of Reg. - as in

which has now happened.

From the way in which the Registrar's judicial functions are mentioned, he doubts whether the Registrar can combine with it the office of a 4th Judge: it seems to be the intention of the Act that the Registrar should exercise no powers wider than those contemplated by section 14^E.

The office of Registrar shd., he says, appear in Tuesday's paper, as there are functions, which used to devolve on the Judges & are now transferred to the Regt. This may be done by telegram.

of course are in the
work example 2 24/4/18
was the last letter taking
out 11/3/18 and another
in the Registrar's hands

3. In reference to the Registrar's salary (a question which he himself brought forward) he decided in favour of the Registrar but he considered that the increase would be a hardship for some, & the inequality of the pay for the position & duties of Registrar.

The pay always was £500 down to the time Mr. A. was nominated in 1867. He has now 13 years service.

The standing order which gave £500, & the calendar office 1200.

The revenue derived by the Registrar from the standing order was this year only £10,000 (standing order of 1867) but the revenue was £10,000.

FOR ORDERS.

Receipt

Citrus
26th June
1882

From J. W. Hawley Esq.
1st Judge
Master Court of Small
Cases

To the Hon. C. G. Mather
Ch of Secretary to Govt

Sir

I have the honor to
acknowledge the Government of
the receipt of appointing a
Registrar of the Master Court
of Small Cases under section
13 of the new Provisional Small
Cases Court Act (XV of 1882)

I presume it will be an
easy matter to appoint the
proper Judge to be acting

Re 30/6/82

2 of the Act all appointments made under the old Act will be deemed to have been made under this Act, but the office of Registrar is newly created by this Act & must be filled up by special appointment. The appointment should be made on or as soon as possible after the 1st of June from which date the Act is in operation, as the work of the Court cannot well proceed under the old Act without a Registrar.

2. As to the person to be appointed I would suggest Mr. John Morris Marshall, Barrister at Law, at present Chief Clerk & Acting

4th Judge of the Court as a fit & proper person for the office.

He has had 13 years experience of the duties of Chief Clerk & will be in many respects identical with those which he would have

Judge is Registrar, & in addition has during the same period officiated as 4th Judge & as such has had the disposal of about all ex parte cases & also occasionally of defended cases below £10 in value.

These duties he has discharged I believe to the complete satisfaction of all the Judges who have presided in the Court during the time.

From my own experience since my appointment I can confidently recommend him for the office of Registrar.

3. I would also suggest the immediate execution of the power conferred by section 14 of the Act to convert the Registrar into the holder of the

trial of suits under No 20 in
value. Upon the appointment
of a Registrar I presume Mr.
Marshall's appointment as 6th ^{Assistant} Judge
will be cancelled. That
appointment was originally made by
the creation of the office of "Principal
of Registrar", & would therefore 21st July 1869
naturally cease when that office No 1138
is filled up. But apart from 27th July 1869
this it would be necessary, I
think, to cancel Mr. Marshall's No 1228
appointment as 6th Judge unless
gent is prepared to substitute the
appointment of a 6th Judge as
well as a Registrar, for in my
opinion the law does not
authorize the office of Judge
& Registrar being united except
as provided by section 14.
It therefore the work of this
branch of ex parte cases must
be performed by mainly by the

4th Judge be thrown upon
the remaining Judges it is
essential to remove them as
far as possible by conferring
Judicial powers upon the
Registrar to the fullest
extent allowed by the Act.
Whether even with this addition
it will be feasible for the sake
of the Court make the new
Act to be retroactively per-
formed without an additional
Judge is a question which
can only be answered after
some conference of the members
of the Act. My own opinion
is that another Judge will
ultimately be required. But
however this may be I am
certain that the work of the
Court cannot be carried on
unless the Registrar is invested
with full powers under section 14.

I would therefore suggest that
this may be done at the same
time as the appointment is made.
4. Should Government be pleased
to appoint Mr. Marshall as
Registrar (the question of his
pay will have to be considered,
to which I beg to submit
the following facts for the
consideration of H. E. the Governor
in Council. The pay drawn by
Mr. Marshall ever since his
appointment in 1869 has been
only Rs 500 a month although
the pay drawn by his predecessors
in office from the institution of
the Court had always been
Rs 650 a month. He has proposed
the additional duties of a 4th
Judge. The circumstances under
which this reduction of pay
took place are fully set forth

in the application for
increased pay by Mr. Marshall
printed with the Proceedings
of Govt in the Judicial
Department of 9th June
1874 No. 1039 - Govt
did at the time in fact accede
to his request, but if Mr.
Marshall ^{now} is to be placed in
the still more important
position of Registrar the
matter may perhaps be
reconsidered if so. I would
strongly recommend Mr.
Marshall's claim to the
favorable consideration of
Govt. And as bearing upon
this question I would point
to the large revenue which
has accrued to Govt from
the Court in the last 2
years.

gens, P 27276 in 1880
P 33347 in 1881.

625
14

I have the honor to be
Sir

Your most obedient servant

J. W. Anthony

1st Judge

Master Court of Salt Lake

1882

From
The Hon. Judge
Markus Smith
Circuit Court

To the Chief Secy
St. Louis

dated 26th June

re the appointment
of a Registrar
under the new
Provisional Court
Act (XV of 1882)

addition to his duties
as Acting Clerk. However,
if the Chief Judge continues to
think the office of a Registrar to be
essential, he can say his opinion
as to the duty of the Registrar under whose
supervision the S.C.C. is now
conducted to be: and his report will
be in their report. At present,
it is noted from the letter under
reference that Mr. Marshall, as it
appears, has all the appropriate cases
for the amount, a considerable
number of cases under 10.00 in value.
When he is called "Registrar" he
is expected to be in full possession
of the duties under the new act to
be functioning, he might be
able to not exceeding 20.00 in value,
but no suit above that amount, even
between litigants one suit. There
will be no lack of work for him,
as the suits not exceeding 20.00
in value were last year 16,313 in
number, or two thirds of the total
suits instituted; and it seems
a much better division of labour than
the former one, which kept from the
safety of trying any one case, and
is now arranged.

2. In regard to the proposal to increase
Mr. Marshall's salary, the reasons which
induced the Govt. to decline the proposal
in 1874 (Cap. No. 1039 of 9th June)
are still valid. The total number of suits
filed last year, which is identical with the
number for '80, fell below three of each
of the nine preceding years; the total
suits are an insignificant part of the
file, and the highest suits still pre-
ponderant. 20,886 out of 24,646
instituted being under 50.00 in value,
it is the S.C. jurisdiction of a 50.00
in the proposed - as to the possibility
of an additional judge being required, the
S.C. apprehend it to be most unlikely
in number of suits for every hundred
suits there have been 100.000 in 1881
by two judges, giving a total of
233 suits only. It may well be doubted
if the S.C. jurisdiction is to be 100.000
in 1882, it is not possible to give
the S.C. jurisdiction of 100.000 in 1882.

3. The 12th Hon. Secy. of the
present administration, no necessity
under S. 12 of the Pro & S. C. Courts
Act, 1882, to appoint a Registrar.
The provisions of the Act, all efforts
made under any of the amendments
specified in the first schedule annexed
to the Act, continue to hold good; and
consequently the amendment in order
of 27th July '89 in respect of judicial is in
full force. Under the provisions
S. 12 of Act of 1882, the S.C. may
appoint, with the previous sanction of the
S.C. Judge, a person to act as Registrar.
The S.C. Judge may also appoint a person to
act as Registrar, and the S.C. Judge may
also appoint a person to act as Registrar.

but Mr Handley believes
the statistics bear him
that the Regt under S.1
will have as much as
as before. The adv. fr.
thinks this removes a
practical objection to
continuing the app't of

[Handwritten signature]
[Handwritten signature]

READ AGAIN Order of Government, dated 1
MSS. No. MSS. No.

ENCLOSURES

CURRENT O.

2014-4

EXEMPT WITH DITTO

DEPT. & CO. OF GOVERNMENT-A.

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PRESS.

Just DEPARTMENT.
G.O. DATED *8 July/82*
No. *626*

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Despatched in print.

22/7.

[Despatch Abstract.]

In Re: Lucia M. Cause

Court. *Considering*
that there is no necessity
under Sec. 14 of the
Quey. L. C. Court Act,
1882, to appoint a Registrar