

(1) Number of pages 8(2) Date of repair 10-1-45(3) Initials of the Referencer CA**MADRAS RECORD OFFICE.****Government of Madras.***Judicial* **DEPARTMENT.**

G.O. No. 2040

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Dated 3-8-1883.

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GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

READ—the following paper :—

From A. MACKENZIE, Esq., C.S., Secretary to the Government of India, Home Department (Judicial), to the Acting Chief Secretary to Government, dated Simla, 18th July 1883, No. 16—1015.

With reference to the correspondence ending with your letter, No. 1628, dated 18th June 1883, on the subject of diminishing the cost of obtaining Probate or Letters of Administration from High Courts in India, I am directed to forward, for the information of His Excellency the Governor

From Government of India, to Secretary of State, No. 35, dated 17th October 1882. in Council, a copy of the despatches marginally noted, and to invite attention to the views expressed by the Government of India in paragraphs 8, 9, and 10

of their Despatch of the 17th October last.

2. It will be observed from paragraph 3 of the Secretary of State's Despatch of 11th January that His Lordship is unable to approve the suggestion made by the Prothonotary of the Bombay High Court, that a simple monthly calendar showing the grants of Probate and Administration by the High Courts should be substituted for the quarterly statements embodying abstracts of Letters of Administration granted and copies of Wills proved in those Courts, which are now transmitted to the India Office. At the same time he has no objection to the discontinuance of the transmission of inventories with the documents forwarded by the High Courts.

3. Adverting to paragraph 4 of the Secretary of State's despatch, I am to request that the necessary instructions may be issued to the District Courts in the Madras Presidency to prepare a monthly calendar in the form appended, commencing from January 1883, showing the grants made by those Courts of Probate and Administration in the cases of the estates of all persons of European extraction, whether British subjects or not. These calendars should be submitted through your office to the Under Secretary of State for India. I am further to request that orders may be issued to District Courts for the early preparation of returns showing similar grants made by those Courts from the date on which the Indian Succession Act of 1829 came into operation up to 31st December 1882. These returns, when complete, are to be sent to the Under Secretary of State for India through your office.

Enclosure

From the Government of India, to the Secretary of State for India, dated Simla, 11th October 1882, No. 35.

In Despatch, No. 19, dated 26th August 1880, your Lordship, while approving a proposal to empower the Small Cause Courts in the Presidency Towns to grant Probate and Letters of Administration in cases of small estates, suggested that we should consider whether the same should be extended to the District Courts in the Presidency.

Further papers

g. no 1000, Ind. of 6-7-1801
g. no. 2573, Home. of 30-5-1838
g. no. 4684, Home. of 21-12-1842
g. no. 1103, Home. of 19-3-1849

2. We accordingly invited the Local Governments and Administrations, the several High Courts, and the Recorder of Rangoon to favor us with an expression of their views on your Lordship's suggestion, and their replies form Enclosures Nos. 3 to 9 of this despatch, the most important being those from the Government of Bombay and the Calcutta High Court. From these papers it will be seen that the heaviest item of charge in obtaining Probate or Letters of Administration is the duty levied under Schedule I, Article 11, of the Court Fees Act, 1870, at the rate of 2 per cent. on all property of or to which the deceased was possessed or entitled, if the amount or value of such property exceeds Rs. 1,000. The Calcutta High Court remarked that any relief desired in cases above Rs. 1,000 might be given by reducing this duty, which, in the opinion of the Judges, presses unduly upon Europeans. The Prothonotary of the Bombay High Court recommended, and the Judges supported his recommendation, that in the case of all estates administered by the Administrator-General, the duty should be reduced to 1 per cent., the rate of commission chargeable by the Administrator-General being lowered from 5 per cent. (the existing rate in the Bombay and Madras Presidencies) to 3 per cent. Two amendments were also suggested in the mode of realising the probate duty. The Bombay High Court suggested that the Administrator-General should not be required to affix the probate duty to his grant until he has ascertained the *net* result of the estate. The adoption of this course would, it was urged, save the Administrator-General from the necessity of going through the procedure provided by Section 19 of the Court Fees Act when an estate is found to be worth more or less than was anticipated. The High Court of the North-Western Provinces suggested that High Courts should be given the same powers as are conferred upon the Chief Revenue authority by Section 19 E of the Act. The effect of this change would be to enable the High Courts to levy deficient stamp duty, and thereby to save executors and administrators some expense and a considerable amount of trouble.

3. The next item of cost in obtaining Probate or Letters of Administration is under the head of "Court Fees." In the High Courts these consist of fees prescribed under the powers given to the Courts by Section 15 of Act 24 & 25 Vic., Cap. 104. In the case of the Calcutta High Court these fees appear to be moderate, and in the North-Western Provinces they are said not to be excessive. In Bombay they are shown to average in *non-contentious* cases—

In estates under Rs. 10,000 in value—Rs. 63.
In estates over Rs. 10,000 „ „ —Rs. 92.

All cases affecting estates of British subjects are *non-contentious*, while the percentage disputed in Native cases is less than 6 per cent. The fees in Madras appear to be very much the same as elsewhere. The Madras High Court have made a few minor reductions in the fees for copying, examining security, and production of the petition before the Commissioner. The Bombay High Court have effected a saving by stopping the practice of copying into the registers the administration bond and affidavits.

4. The third item of expense in connection with the grant of Probate and Letters of Administration is that caused by the payment of fees to Attorneys. An Attorney's bill can always be taxed if the party concerned requires it, but this procedure is seldom resorted to in *non-contentious* cases. The Calcutta High Court suggested that in cases where Court fees are remitted, the fees payable to an Attorney, if employed, might be reduced to one-half the amount chargeable in other cases. The Bombay High Court recommended that a rule should be framed requiring the submission of *all* bills on the Testamentary side to the Taxing Officer.

5. Besides the three items specified in the preceding paragraphs, the only possible heads of charge are those mentioned in the enclosures of the letter from the Bombay Government, viz.: Commissions to Agents or Administrators-General and to Sureties, and some fees to the Sheriffs in Presidency towns. These are all payments for work done or service rendered.

6. The only other matter which requires notice is an administrative one discussed in the letter from the Prothonotary of the Bombay High Court. At present the High Courts of Calcutta, Madras, and Bombay transmit quarterly to the India Office, through the Governments concerned, a list of all Letters of Administration granted and copies of Wills proved in those Courts in the case of British subjects. Mr. Orr points out that these returns no longer represent a complete list of the testaments of the estates of British subjects, owing to the fact that since the Indian Administration Bill was passed, every District Judge throughout India can make grants of Letters of Administration without being required to furnish similar information to the India Office. It is therefore suggested that the responsibility of substituting for the present quarterly returns a more complete list of all Letters of Administration granted in the High Courts and District Courts, to be filed at the India Office, should be placed upon the Government of India, so that any person in India would be able to obtain any information required.

On a partial copy of the letter from the Government of Bombay, by the authorities consulted, it appears that the Government are not prepared to make out for the India Office a list of all Letters of Administration granted, but that some of the returns from the High Courts and District Courts, to be filed at the India Office, should be placed upon the Government of India, so that any person in India would be able to obtain any information required.

upon the matter, we invited the High Courts at Calcutta, Madras, and Allahabad to favor us with a further expression of their opinion on the following proposals, viz.:—

- (1) that the Court fees at present levied in the High Courts on estates of the value of Rs. 1,000 or under (that is, estates exempted from the payment of the *ad valorem* fee leviable under the Court Fees Act, No. VII of 1870, Schedule 1, No. 11), should be remitted, due provision being made for the recovery of the remitted fees, if it should be found, in any case, that the estate was undervalued;
- (2) that the amount of Court fees on estates above the value of Rs. 1,000 should be reduced by avoiding the copying into the registers of all unnecessary papers. [It was added that it was understood that the Bombay High Court had recently decided to make a rule under which the act (or oath), the grant, and the will, if any, would in future be the only documents copied into the registers]; and
- (3) that a rule should be framed requiring the submission in all cases of Attorneys' bills on the Testamentary side of the Court to the Taxing Officer; and further, that when an Attorney is employed in the case of estates of the value of Rs. 1,000 or under, his fees should be limited to one-half the amount usually allowed.

Opinion was also invited on Mr. Orr's suggestions in regard to the present practice of sending to England abstracts of all Letters of Administration granted, and copies of all Wills proved, in the case of British subjects.

We also invited a further expression of the views of the Bombay High Court on the first and on the second part of the third of the above proposals. At the same time our Legislative Department was asked to take the opportunity in connection with the Bill to amend the law relating to Court Fees—(1) to confer upon the Court granting Probate or Letters of Administration the same powers as are conferred upon the Chief Controlling Revenue authority of the Province by Section 19 E of the Court Fees Act; and (2) to remit the fees levied under that Act on administration bonds, which are already charged under the Stamp Act I of 1879, providing, however, for the levy on bonds required under Section 78, Act V of 1881, of a Court fee regulated in accordance with the sliding scale which applies to an administration bond prescribed by Schedule 1, Article No. 2, of the Stamp Act. It was further requested that the Select Committee on the Court Fees Bill might be moved to consider the proposal contained in the report of the Prothonotary and Registrar of the Bombay High Court, that the Administrator-General "should not be required to affix the probate duty to his grant until he has ascertained the net results of the estate," and it was intimated that the adoption of this proposal appeared to be unobjectionable.

8. Having been furnished with the views of the High Courts on the proposals set forth in the preceding paragraph, we are now in a position to inform your Lordship of the conclusions at which we have arrived. As regards the first suggestion, that the Court fees at present levied in the High Courts on estates of the value of Rs. 1,000 or under should be remitted, it will be seen that the only authority by whom a decidedly adverse opinion is given is the Bombay High Court. The Calcutta High Court fully agree to the proposal, the Madras High Court think any remission unnecessary, as the fees now levied are low, and the High Court of the North-Western Provinces report that no fees are levied in that Court except under the Court Fees Act. On the whole, we are of opinion that these fees might be remitted altogether. The matter does not, however, appear to be one in regard to which any definite orders can be issued by the Government of India, as the fees are prescribed by the High Courts by virtue of the statutory powers given to those Courts by Section 15 of Act 24 and 25 Vic., Cap. 104. The proposals made by the Bombay High Court regarding the reduction of duty in respect of estates administered by the Administrators-General will be separately considered with certain questions which are now before us in connection with the amendment of the Administrator-General's Act, and the mode of remunerating Administrators-General.

9. In regard to the second proposal, that the amount of Court fees on estates above the value of Rs. 1,000 should be reduced by avoiding the copying into registers of all unnecessary papers, it will be observed that no further action is required, as unnecessary papers are not copied into registers of fact, under the existing procedure copied into the registers either at Calcutta, Madras or Allahabad. The Bombay High Court have already made a rule which sufficiently provides for this.

10. As regards Attorneys' fees, referred to in the third proposal, a rule exists in Calcutta which requires every bill of costs to be taxed; but this rule has practically become obsolete. The Madras High Court deprecate any such rule on the ground that it necessarily cost will be incurred thereby. In our opinion all that is necessary is that it should be left optional with the parties either to require the Attorney's bill to be taxed or to adjust it without taxation. It would then rest with the parties concerned to have their bills taxed if the charges should appear excessive, and further than this it does not seem necessary to go.

11. Lastly, in regard to the suggestions made by Mr. Orr regarding the transmission to the India Office of abstracts of all Letters of Administration granted, and copies of all Wills proved in the

Despatch from the Right Honorable the EARL OF KIMBERLEY, Her Majesty's Secretary of State for India, to His Excellency the Most Honorable the Governor-General of India in Council, dated India Office, London, 11th January 1882, Judicial No. 2.

2. I observe that, after having made full inquiry into the matter, you do not consider that these costs admit of any very substantial reduction.

4. As regards probates and administrations granted by Courts other than High Courts, I think that as it has not hitherto been the practice of this office to supply the public with information as to these, it is not necessary now to direct that copies should be transmitted. But I request that a return in the form of the calendar referred to in the despatch, showing the grants by such Courts of probate and administration in the cases of the estates of Europeans, may be forwarded periodically to this office; and further, that a return showing the like grants by District Courts since the coming into force of the Indian Succession Act of 1865 may be prepared and forwarded as soon as possible.

IN THE DISTRICT COURT OF
THE MONTH OF
-188-

Name and Description of Testator or Intestate.	Date of Death.	Place of Death.	Nature and extent of Grant.	Date of Grant.	Amount of value of Estate.	Name and Description of Applicant.	Remarks.
					Rs.		

District Judge.

ORDER—dated 3rd August 1883, No. 2040, Judicial.

Communicated to the Honorable the Judges of the High Court with reference to paragraphs 1 and 2 of the letter.

2. The several District Judges will be directed to prepare the monthly calendar in the form appended from January 1883. In future such calendars should be submitted by the 20th of every month, a *nil* return being submitted when no grants may have been made. The returns showing similar grants made by District Courts since the coming into operation of the Indian Succession Act of 1865 should also be prepared and forwarded at an early date.

(True Extract.)

Acting Chief Secretary.

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

Govt. of (1883) Madras.

JUDICIAL.

Issued

Recd.

Encl.

G.O., 3rd August 1883, No. 2040.

AUGUST.

Probates and Letters of
Administration.

Communicating to the Honorable the Judges
of the High Court letter from the Government of
India forwarding correspondence on the subject
of diminishing the cost of obtaining probate or
letters of administration from High Courts in
India.