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MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.

1775Press
Miss*Original*

Dated

18. 7.

1884

Not to be folded or roughly handled

GOVERNMENT OF MADRAS.
JUDICIAL DEPARTMENT.

READ—the following paper :—

From D. FITZPATRICK, Esq., Secretary to the Government of India, Legislative department, to the Chief Secretary to Government, dated Simla, 3rd July 1884, No. 1444.

I am directed, with reference to certain communications which have been recently received by the Government of India, and to which I shall presently refer more particularly, to invite the attention of His Excellency the Governor in Council to the mode in which court-fees are at present levied in the Mufassal Courts and on the Original side of the Presidency Town High Courts, and to make the following observations.

2. The amount of court-fees payable by litigants may be fixed with reference to one or other, or both, of the following matters, viz. :—

- (a) the amount of labor imposed on the Courts by the litigation ; and
- (b) the value at stake in the litigation.

3. The principle of fixing the amount of the fees with reference to the work to be done, besides being obviously fair, has this special and additional advantage, that it tends to check unnecessary and vexatious steps being taken by the litigants.

4. The principle of fixing the amount of the fees with reference to the value of the subject-matter to be dealt with, though open to exception on theoretical grounds, and though difficult to apply to certain particular classes of suits, is one which is adopted to a great extent in various classes of business, public and private, and which it will be generally admitted has much to recommend it.

5. In England both principles are found in operation.

In the Supreme Court the fees are fixed, and not *ad valorem* ; but there is a higher and a lower scale of fees. The cases in which the lower scale is allowed are enumerated in Order VI of the rules of the Supreme Court as to court-fees (Wilson's Judicature Acts, 3rd edition, page 607). Proceedings are commenced by a writ of summons, the fee for sealing which is 5s. lower scale and 10s. higher scale. The fee on entering a cause for trial is £1 lower scale and £2 higher scale ; and there are other fees at different stages (see the table in Wilson, page 639).

6. In the County Courts the fees are calculated chiefly on the *ad valorem* principle. Thus the initial fees are—

For every plaint or petition, 1s. in the pound—

when the claim or demand exceeds forty shillings and an ordinary summons is to be served by bailiff, an additional fee of £1 ;

when the number of defendants exceeds three, an additional fee of 1s. for each defendant above three :

For every hearing, 2s. in the pound.

(Pitt-Lewis' County Court Practice, Part I, Appendix I.)

7. In this country, both in the Mufassal and on the Original side of the Presidency High Courts, court-fees are at present regulated in part by one and in part by the other principle ; but, while in the Mufassal they are fixed mainly with reference

to the value of the subject of the litigation, on the Original side of the High Courts they are fixed almost exclusively on the other principle. The natural, though not the strict logical, consequence of this is that court-fees are considerably higher in the Mufassal than on the Original side of the High Courts.

8. The Governor-General in Council has recently had before him two proposals, which, however widely they may differ in other respects, have this much in common, that they both tend to an assimilation to a certain extent of the Mufassal and High Court systems.

9. In December 1883, Sir Richard Garth forwarded to the Government of India a minute, dated the 24th of that month, in which, in continuation of previous communications, he drew attention to the two following main questions:—

- 1st, whether, as a matter of justice to civil suitors, the amount of the tax leviable in the form of court-fees ought not to be considerably reduced;
- 2ndly, whether (whatever the amount may be) it is not unwise and inconvenient to impose it in its present form.

The former of these questions, as well as certain other matters touched on in the minute, are still under the consideration of the Government, and will be separately dealt with. The portion of the minute referring to the second question will be found appended to this letter. It will be seen from it that Sir R. Garth objects to the heavy *ad valorem* fee taken in a lump on the institution of a suit in the Mufassal, on the ground that it is unfair to make the main charge without any reference to the amount of work imposed on the Court, and that it is impolitic to do so, inasmuch as, when once the money is paid, the litigants have little inducement to keep their proceedings within bounds or to come to an amicable settlement.

He therefore advocates for the Mufassal a larger resort to the High Court system, which spreads the charges over the successive steps of the litigation.

10. The communications from the Government of Madras noted in the margin, No. 82, dated 11th January 1883, and enclosures, on the contrary, advocate the assimilation to a certain extent of the High Court fees system to that of the Mufassal, the chief reasons urged being that the present High Court system involves a considerable loss of revenue, and that there are no special reasons why the litigants in the High Court should be more tenderly dealt with than litigants elsewhere.

No. 213, dated 26th January 1883, and enclosures.

11. The Governor-General in Council apprehends that anything approaching a complete assimilation of the two systems would be impracticable without an amount of disturbance of existing arrangements which would be objectionable; but nevertheless it appears to him that any system to be satisfactory ought to give due weight both to the *ad valorem* principle and to the principle of payment in proportion to work done, and he is disposed to think that there is room for improvement both in the Mufassal Courts and on the Original side of the High Courts in this respect.

12. In considering the possibility of adopting Sir R. Garth's proposal it must be remembered that the system of taking the bulk of the court-fees in one lump sum is the simpler system, and that, having regard to the comparative weakness of the subordinate staff of the Mufassal Courts, all complications should, as far as possible, be avoided. The Governor-General in Council is, however, disposed to think that something in the direction indicated by Sir R. Garth may be done safely and with advantage.

13. It might perhaps be possible to shift part of the *ad valorem* institution-fee, and add it on to the process-fees when such fees are taken under the existing law and rules; but this would probably involve the fixing of higher rates of process-fees for suits of high values than for suits of low values; and it is doubtful whether this would answer everywhere. It would not, of course, be necessary to make the gradations in the process-fees as numerous or as fine as in the institution-fees. We might be content with a more rough-and-ready application of the *ad valorem* principle; but still the matter would be somewhat complicated, and it would be impossible to express an opinion on it without hearing what judicial officers have to say.

It would, moreover, be difficult to form any reliable estimate of the income which might be expected from the enhanced process-fees.

14. There is, however, one step towards giving effect to Sir R. Garth's views, which could probably be adopted without much disturbance of existing arrangements, and that is, to break up the institution-fee into two or perhaps three parts, which would be taken, irrespective of all smaller details of procedure, at certain-marked stages in the litigation; or, what would come to much the same thing, to continue to take a full fee on the institution as at present, but to refund a certain portion of it in the event of the litigation terminating at a particular stage by confession, compromise, or withdrawal of the suit.

15. A system of this latter description was in fact in force under our law down to the passing of the present Court-fees Act, and it is believed that it was found well calculated to promote the amicable adjustment of suits. Section 98 of Act VIII of 1859 went so far as to provide for the refund of the whole institution-fee in certain cases and half in others. Section 26 of Act X of 1862 limited the refund to half in all cases.

16. This provision of the Stamp law was abolished by the present Court-fees Act. The reasons given for its abolition by Mr. F. Cockerell in the Statement of Objects and Reasons of that Act and in his speech in Council were, first, that it was necessary in order to compensate for certain sacrifices of revenue which he was making, and secondly, that, as the practical result of a suit is commonly very much the same whether it is settled by a compromise or by a decree passed after the matter has been fought out in Court, the fee paid ought to be the same.

17. The first of these reasons was undoubtedly substantial, and it is manifest that the re-enactment of the provision in question might occasion a considerable loss of revenue; but this is a matter to which the Governor-General in Council would be prepared to give favorable consideration if a recurrence to the system of refunds was generally regarded as desirable.

18. Mr. Cockerell's second reason does not commend itself to the Governor-General in Council. It proceeds, as will be observed, exclusively on the *ad valorem* principle, and leaves out of account altogether the other principle of making the fee in some measure proportionate to the service. Moreover, it ignores altogether the desirability of promoting amicable settlements.

19. Though, as I have already stated, the Government of India do not desire in the present communication to enter upon the general question of the reduction of court-fees, I am to observe that a recurrence to the system of refunds or the distribution of the institution-fee would afford a considerable amount of relief in those classes of suits in which the present rate of court-fees seems to be most complained of, namely, in suits instituted by money-lenders against their debtors, and by landlords against their tenants, merely for the purpose of enforcing payment of, or keeping alive a claim to, a debt which is not disputed. It is certainly a hardship, both to the creditor and to the debtor, that each time such a suit is instituted the debt should be swollen by the amount of a heavy institution-fee; and this hardship would be greatly reduced if the plan above referred to, of spreading the institution-fee over the different stages of the suit or refunding a portion of it when there is no contest, were adopted.

20. In the event of either of these measures being adopted, it would probably be desirable to provide, as is done in the English County Courts, that information of the law should be given to the defendant. The ordinary form of summons in those Courts contains the following notice, made conspicuous by capital letters:—

"N.B.—IF YOU OWE THE MONEY, AND WILL CONSENT TO A JUDGMENT, YOU WILL SAVE HALF THE HEARING-FEE."

And the mode in which this saving may be effected is carefully explained on the back of the summons (see the form in Pitt-Lewis, Appendix II, Form II).

21. Turning now to the proposals of the Government of Madras, the Governor-General in Council believes that, having regard to the conditions under which litigation

is conducted on the Original side of the Presidency Town High Courts, and to the heavy expenses necessarily attending such litigation, it would be generally admitted that any attempt to put the High Court fees on a level approaching that of the Mufassal fees would be impracticable; but it need hardly be said that any step in this direction, as, for example, by the imposition of moderate *ad valorem* fees on the institution of a suit and on going to trial, would be advantageous, not only because it would reduce an excessive inequality in the incidence of the court-fees, but also because it would, by affording a set-off, make it easier to grant the concession in respect to Mufassal court-fees above proposed and any further concessions or reductions which may later on come under consideration. I am accordingly to request that the local Governments and High Courts concerned will take this matter into consideration, and submit to this department, not later than the 15th of September, any proposals they may think practicable in the direction indicated by the Madras Government.

22. As regards the suggestions for the amendment of the Mufassal system above referred to, I am to request that they may be carefully considered by all Local Governments and High Courts, and by such officers and other persons as the Local Governments may think fit to consult, and that such remarks upon them as may be recorded, and such suggestions as may be made towards the attainment of the objects proposed, may be submitted to this department not later than the 15th of September.

I am also to request that you will at the same time state what, as far as it can be estimated, would be the loss of revenue resulting from the adoption of the measures which may be recommended by His Excellency the Governor in Council in reply to this communication.

23. I am to request that you will impress upon the subordinate officers whom His Excellency the Governor in Council may think fit to consult that their remarks and suggestions should be strictly confined to the subject-matter of the present reference.

ENCLOSURE.

EXTRACT from Minute by SIR RICHARD GARTH, Kt., Chief Justice, Calcutta, dated 24th December 1883, referred to in paragraph 9.

I have already endeavoured to show that the imposition of a large institution-fee too frequently operates as a denial of justice, and gives rise to very objectionable practices. But this is by no means the only or most ordinary mischief of the system. Its effect, with the generality of suitors, is to prevent suits being settled out of Court, and to prolong litigation unnecessarily.

When a plaintiff has once paid a large institution-fee, he considers, not unnaturally, that he has purchased from the Government the right and the means of pressing his claim to the utmost. He knows that, if he goes to trial, he will not have to pay any further fees, and he thinks that he may as well take his chance of screwing the last pice out of his opponent.

On the other hand, a defendant, who would be otherwise disposed to come to a reasonable settlement, is tempted to go to trial, and to set up some false or shadowy defence, because he knows that, whether he goes to trial or settles the claim amicably, he will still have to repay the plaintiff, over and above his claim, the heavy institution-fee, and that he will at least gain time by resisting as long as he can.

Now, the English system, which is adopted in the High Court, is calculated not only to avoid this evil, but directly to prevent a suit being unnecessarily prolonged. On the Original side of the Court, a small fee, only Rs. 12, is paid on the filing of the plaint; and further fees are imposed, as the case proceeds, in such a way as to deter both parties from carrying on the suit beyond what is really necessary.

So much is charged on every affidavit, so much upon every application, so much upon every witness summoned, so much upon every document produced, and so much (the largest fee of all) upon the trial.

This system is manifestly just, because the heaviest fee is thus charged at those stages of the proceedings which cause the Government most trouble and expense. The filing of the plaint is an inexpensive matter, and must needs be the first step in every cause. No unnecessary obstacle should therefore be placed in the way of that. But the going to trial, or the use of a multitude of affidavits, or witnesses, or applications, may or may not be necessary; and to impose a fee upon each of these, commensurate with the degree of extra trouble which they cause, or time which they involve, is only a wholesome check upon needless proceedings.

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If a plaintiff or a defendant can save the court-fees and other expenses of a trial by settling the matter amicably, here is a direct inducement to do so; or if the production of each witness or document costs so much in stamp-fees, besides the other ordinary expenses of bringing them into Court, a prudent man will think twice before he incurs that cost.

By thus distributing the fees over the various proceedings in the suit, the Government will only be reverting to the system which prevailed in this country for many years, and which, so far as I can ascertain, was only discontinued because the levy of the one institution-fee relieved the Courts of a certain amount of trouble.

ORDER—dated 18th July 1884, No. 1775, Judicial.

The papers will be communicated to the Honorable the Judges of the High Court, all District Judges and the Advocate-General, who will be requested to report at an early date upon the foregoing proposals. Attention is drawn to the concluding paragraph of the letter from the Government of India.

2. Replies to this order should reach the Government at a date not later than the 31st August.

(True Extract.)

Chief Secretary.

To the Honorable the Judges of the High Court, with C.L.
 „ all District Judges.
 „ the Advocate-General. ✓

Exd. J. Wright.

Govt. of (1884) Madras
JUDICIAL.

Issued

Recd.

G.O., 18th July 1884, No. 1775.

JULY.

Court Fees.

Communicating to the several officers concerned for report at an early date papers from the Government of India on the propriety of making a change in the form in which — are now levied in Mufassal and in the Original side of Presidency Town High Courts.

District and Session
Judge of

7a
North Arcot, Chittoor.
South Arcot, Cuddalore.
Bellary.
South Canara, Mangalore.
Chingleput.
Coimbatore.
Cuddapah.
Ganjam, Berhampore.
Godavari, Rajahmundry.
Kistna, Masulipatam.
Kurnool.
Madura.
North Malabar, Tellicherry.
South Malabar, Calicut.
Nellore.
Nilgiris, Ootacamund.
Salem.
North Tanjore, Tranquebar.
South Tanjore, Tanjore.
Tinnevely, Palamcottah.
Trichinopoly.
Vizagapatam.

*Judl G.O. No. 1775
18th July 1884*

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No. 1444

FROM

D. FITZPATRICK, Esq.,

Secretary to the Government of India,

LEGISLATIVE DEPARTMENT,

TO

The Chief Secretary to the Government of Madras.

Simla, the 3rd July, 1884.

SIR,

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(Pitt-Lewis' County Court Practice, Part I, Appendix I.)

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weakness of the subordinate staff of the Mufassal Courts, all complications should, as far as possible, be avoided. The Governor General in Council is, however, disposed to think that something in the direction indicated by Sir R. Garth may be done safely and with advantage.

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It would, moreover, be difficult to form any reliable estimate of the income which might be expected from the enhanced process-fees.

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15. A system of this latter description was in fact in force under our law down to the passing of the present Court-fees Act, and it is believed that it was found well calculated to promote the amicable adjustment of suits. Section 98 of Act VIII of 1859 went so far as to provide for the refund of the whole institution-fee in certain cases, and half in others. Section 26 of Act X of 1862 limited the refund to half in all cases.

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22. As regards the suggestions for the amendment of the Mufassal system above referred to, I am to request that they may be carefully considered by all Local Governments and High Courts, and by such officers and other persons as the Local Governments may think fit to consult, and that such remarks upon them as may be recorded, and such suggestions as may be made towards the attainment of the objects proposed, may be submitted to this Department not later than the 15th of September.

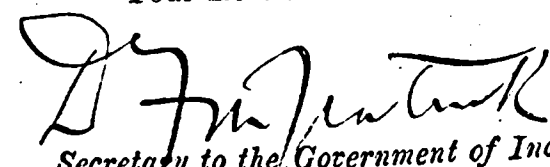
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3. I am to request that you will impress upon the subordinate officers whom H. B. the Governor in Council may think fit to consult that their remarks and suggestions should be strictly confined to the subject-matter of the present reference.

I have the honour to be,

SIR,

Your most obedient Servant,


Secretary to the Government of India.

13a 52
Extract from Minute by SIR RICHARD GARTH, Kt., Chief Justice, Calcutta, dated 24th December, 1883, referred to in paragraph 9.

I HAVE already endeavoured to show that the imposition of a large institution-fee too frequently operates as a denial of justice, and gives rise to very objectionable practices.

But this is by no means the only or most ordinary mischief of the system. Its effect, with the generality of suitors, is to prevent suits being settled out of Court, and to prolong litigation unnecessarily.

When a plaintiff has once paid a large institution-fee, he considers, not unnaturally, that he has purchased from the Government the right and the means of pressing his claim to the utmost. He knows that, if he goes to trial, he will not have to pay any further fees, and he thinks that he may as well take his chance of screwing the last pice out of his opponent.

On the other hand, a defendant, who would be otherwise disposed to come to a reasonable settlement, is tempted to go to trial, and to set up some false or shadowy defence, because he knows that, whether he goes to trial or settles the claim amicably, he will still have to repay the plaintiff, over and above his claim, the heavy institution-fee, and that he will at least gain time by resisting as long as he can.

Now, the English system, which is adopted in the High Court, is calculated not only to avoid this evil, but directly tends to prevent a suit being unnecessarily prolonged. On the Original Side of the Court a small fee, only Rs. 12, is paid on the filing of the plaint; and further fees are imposed, as the suit proceeds, in such a way as to deter both parties from carrying on the suit beyond what is really necessary.

So much is charged upon every affidavit, so much upon every application, so much upon every witness summoned or document produced, and so much (the largest fee of all) upon the trial.

This system is manifestly just, because the heaviest fee is thus charged at those stages of the proceedings which cause the Government most trouble and expense. The filing of the plaint is an inexpensive matter, and must needs be the first step in every cause. No unnecessary obstacle should therefore be placed in the way of that. But the going to trial, or the use of a multitude of affidavits, or witnesses, or applications, may or may not be necessary; and to impose a fee upon each of these, commensurate with the degree of extra trouble which they cause, or time which they involve, is only a wholesome check upon needless proceedings.

If a plaintiff or a defendant can save the court-fees and other expenses of a trial by settling the matter amicably, here is a direct inducement to do so; or if the production of each witness or document costs so much in stamp-fees, besides the other ordinary expenses of bringing them into Court, a prudent man will think twice before he incurs that cost.

By thus distributing the fees over the various proceedings in the suit, the Government will only be reverting to the system which prevailed in this country for many years, and which, so far as I can ascertain, was only discontinued because the levy of the one institution-fee relieved the Courts of a certain amount of trouble.

Order 18 July 1884

The papers will be communicated to the judges of the High Court, the District Judges and the Advocate General, who will be requested to report upon the proposals made by the Government of India. Attention is drawn to the concluding paragraph of the letter from the Govt of India.

2. Replies to the orders should reach the Govt. not later than the 31st Aug.

10/11/84
The papers have been sent to the High Court, the District Judges, the Advocate General, the Judges of the High Court, the District Judges and the Advocate General. India have two questions under their consideration, 1st the reduction of court fees, 2nd the expediency of making change in the form in which C's fees are now levied in the Mufassal, the second question is treated upon in the enclosed letter.

GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT.

To
ALL LOCAL GOVERNMENTS AND ADMINISTRATIONS.
THE REGISTRAR, HIGH COURT, CALCUTTA.

Dated 3rd July, 1884.

SUBJECT:
Levy of court-fees in Mufassal Courts and in the Original Side of Presidency-town High Courts.

Govt. C. B. Press, Simla. - No. 196 L. D. - 2-7-84 - 25.

[Despatch]
READ AGAIN Order of Government, dated 1884 No. Miscellaneous.

ENCLOSURES.

CURRENT No.

STATEMENT WITH DITTO.

ORDER, &c. OF GOVERNMENT - A.

PAPERS KEPT OUT OF FILE FOR DESPATCH IN ORIGINAL. (not paged.)

Order 180
Letter
Collection

N.B. -
A = Print in full.
B = Not to be printed.
P = Print abstract only.
Q = Print heading only.
R = Print, but not for monthly volume.

BACK PAPER, No. 170
FURTHER PAPER, No. OF 183

PRESS.

Int. DEPARTMENT.
 G.O. DATED 18 July 1884
 No. 1775-

First copy sent to Press. 21/7

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[Despatch Abstract.]

Court Fees communicating
 to the several officers con-
 cerned for report at an
 early date ~~before~~ from the
 Govt of India on the propriety
 of making a change in the
 form in which — are now
 levied in Muzaffarabad & in the
 original side of Presidency & High Courts —