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MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	<u>2514-15</u>	Press Mrs.	<i>Original</i>
Dated	<u>3. 10</u>	1884.	

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GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

READ—the following papers :—

From the District Judge of Coimbatore, to the Chief Secretary to Government, dated Coimbatore, 30th July 1884, No. 10.

With reference to G.O., dated 18th July 1884, No. 1775, Judicial, I have the honor to state that of the two alternative proposals, viz. :—

- (1) To break up the institution fee into two or more parts, or
- (2) To refund a portion of the institution fee when the suit does not proceed to judgment.

I have no hesitation in recommending the adoption of the latter proposal.

2. The principle of not taxing suitors to the full extent when the suit is withdrawn, when judgment is confessed, or when the suit is compromised, must commend itself to every impartial person. It was recognised under the old law of procedure, it is recognised now in the rules for taxing costs. I have frequently advised parties not to raise frivolous pleas which will necessitate a lengthy trial, but to submit to a decree at the first hearing, and save half the costs. A refund of a portion of the institution fee would be an additional inducement to parties not to proceed to the bitter end in litigation.

3. I think that if a suit is withdrawn or compromised, or judgment is confessed at the first hearing, three-quarters of the institution fee should be refunded, that if the same course is taken at a later stage, viz., after settlement of issues and examination of documentary evidence, one-half of the institution fee should be refunded, and that if the same course is taken at any time before judgment one-quarter of the institution fee should be refunded.

4. I think that the attention of the parties should be especially called to the proposed alteration of the law by printing on every summons in red ink that if the suit is compromised, or judgment confessed at the first hearing, three-quarters of the institution fee will be refunded.

5. As regards assimilating the procedure of the High Court, Original side, to that of the Mufassal Courts, the matter, I believe, stands thus. In the mufassal the fees are paid to Government, in the Presidency town the fees are paid to the lawyers. The suitor suffers equally in both cases. If any one is to grow rich on litigation, I think it should be the Government which provides an expensive machinery for settling disputes, not the lawyers who merely lead or mislead the Judge. But so long as the system of attorneys and barristers exists, so long will the Government find vested interests too strong for them. Abolish attorneys, have one class of qualified pleaders, limit the fee which a pleader may demand from his client, and the suitors in the Presidency towns will have no difficulty in paying the same institution fee as their brethren in the mufassal.

(Signed) H. WIGRAM,
District Judge.

From the Advocate-General, to the Chief Secretary to Government, dated Madras, 31st July 1884.

I have the honor to acknowledge the receipt of the order of Government, Judicial department, dated the 18th July 1884, No. 1775, relating to Court fees.

2. It appears to me that the principle of distributing the Court fees in the Mufassal Courts is a sound one. Given the fee which is to be levied in a suit up to the decree of the court of first instance, I think only one-fourth of it should be required to be paid with the plaint, one-fourth before the case is set down for the first hearing, whether for settlement of issues or final disposal, and the remaining one-half before the trial of the suit or final hearing.

3. In the case of an appeal or second appeal, only half the fee should be payable with the petition of appeal, and the other half should not be payable until the appeal has been admitted, and an order made to give notice to the respondent.

4. Upon application for the execution of decrees, I think larger fees may be levied than the fees now payable, if a corresponding diminution is made in the fees payable in the earlier stages of the litigation.

(Signed) P. O'SULLIVAN,
Advocate-General.

From the District Judge of Tinnevely, to the Chief Secretary to Government, dated Tinnevely, 11th August 1884, No. 426.

I have the honor to acknowledge receipt of proceedings, Judicial department, No. 1775, dated 18th ultimo.

2. With reference to paragraph 14 of Mr. Fitzpatrick's letter, I would suggest that one-third part of the fees at present leviable on the institution of a suit be paid when the plaint is filed; one-third on the settlement of issues; and one-third when the first step in execution is taken.

3. If it is necessary to provide for the loss of stamp revenue that would thus arise when a suit should not proceed as far as settlement of issues or execution, I would suggest that it be enacted that applications for adjournments be in writing upon a stamp of a certain value "unless the court otherwise direct." Such a tax would operate to some extent as a check upon applications for adjournments for frivolous reasons or with fraudulent intentions (as for the purpose of fabricating false evidence). At the same time the Judge would have power to excuse the payment when the application should seem to be unavoidable (as when a witness should absent himself whose attendance the party had done his best to procure).

4. The stamp on applications for adjournments might be as follows:—

In suits of the value of Rs. 50 and under, 8 annas; Rs. 100 and under, a rupee; Rs. 500 and under, Rs. 2; Rs. 1,000 and under, Rs. 5; over Rs. 1,000, Rs. 10; or roughly one-half per cent.

5. The suggestion offered that the full duty should be levied as now on the presentation of the plaint and refunds subsequently made if the parties should come to terms does not commend itself to me. It would necessitate the introduction of complicated accounts and would furnish many opportunities for fraud to the intermediaries between the court and the suitor, such intermediaries being numerous in the case of the poorer and more ignorant suitors, and those who live at a distance from the courts as most frequently happens in the mufassal. It is probable that in the case of such suitors the full amount of the refund would seldom reach the party entitled to receive it.

6. Nor do I approve of the suggestion that a part of the duty might take the shape of increased process-service fees, such fees being levied for a special purpose.

(Signed) J. C. HUGHESDON,
District Judge.

From the District Judge of Tinnevely, to the Chief Secretary to Government, dated Tinnevely, 18th August 1884, No. 442.

In continuation of my letter, No. 426, dated 11th instant, I have the honor to submit, herewith, copy of a letter from the Sub-Judge of Tinnevely, No. 313, dated 15th instant, on the proposal to change the mode of levying Court fees in the mufassal (G.O., dated 18th July 1884, No. 1775, Judicial).

(Signed) J. C. HUGHESDON,
District Judge.

ENCLOSURE.

From the Subordinate Judge, Tinnevely, to the District Judge, Tinnevely, dated Tinnevely, 15th August 1884, No. 313.

With reference to the proceedings of Government, dated 18th July 1884, No. 1775, I have the honor to state that, in my opinion, if the institution fee be divided into several parts and made payable at different stages of the suit, it would certainly be advantageous to litigants and tend to induce them to adjust their disputes amicably and to prevent unnecessary and vexatious steps being taken by them. Although the introduction of the old refund system may be said to answer this purpose to a great extent, yet the whole of the institution fee having been once paid, the litigants may not, I think, feel inclined to adjust their disputes amicably out of court. I would therefore suggest that the institution fee, calculated on the *ad valorem* principle now existing, may be broken up into two parts, and that half of the said fee made payable on the filing of the plaint in every case, as this may be sufficient to cover the cost of labor imposed upon courts in all cases which terminate without contest, by confession, compromise, oath, withdrawal, reference to arbitration or on *ex parte* trial.

2. If there is contest, the other half of the fee should be required to be paid before the commencement of the examination of witnesses.

(Signed) K. R. KRISHNAN MENON,
Subordinate Judge.

From the Acting District Judge of Vizagapatam, to the Chief Secretary to Government, dated Vizagapatam, 18th August 1884, No. 912.

I have the honor to furnish the report called for in G.O., Judicial, No. 1775, dated July 18th, 1884.

2. My experience as Judge has been but short, and I consequently submit my opinions with diffidence.

3. The object in view being to deter from unnecessary litigation, and as far as possible to further settlement out of court, while at the same time adjusting the revenue from Court fees to the expenditure on Judicial establishments and as far as possible making the fee finally levied proportionate to the work done, it appears to me that this object would be best attained by continuing to calculate the institution fee as at present, but levying it in instalments at different stages of the suit.

4. There can be no doubt that the prospect of a refund (obtaining which must involve some trouble and expense, and continued attendance at court) will not operate so forcibly to induce settlements out of court as the necessity of finding ready-money for the payment of further fees. Refunds moreover entail a considerable amount of labor, while levy of the fee in instalments, the total amount leviable on the suit having been once for all calculated, would entail none. At the same time it does not seem to me that any workable system could be devised without providing for refunds, owing to the necessity for levying the full instalment for each stage previous to issuing process for the same, some inducement to settle out of court before hearing being at the same time advisable, as the hearing with examination of witnesses is what takes up the most time and entails the most trouble on the Judge and his establishment.

5. I would suggest that the institution fee, calculated as at present, should be levied in two equal instalments, one on institution, the other on the fixing of date for final hearing; that an admission of liability made, or a compromise out of court certified,

before the date of first hearing should entitle to a refund of half the first instalment; and that the same after the fixing of date for final hearing, but before such hearing should entitle to a refund of three-fourths of the second instalment.

6. Power should be given to the Judge to further divide the second instalment in certain cases, as for instance in case of its being necessary to take evidence on preliminary issues previous to a final hearing on the merits.

7. Fees levied in this manner would bear as close as possible a proportion to the amount of work demanded of the court; and at every stage there would be present a strong inducement to come to terms out of court. Every summons or notice to a party should show in a printed form, clearly and distinctly, the *total fee leviable on the suit* and the *proportion* which will be saved by admission or adjustment out of court before *next hearing*.

8. To estimate the effect which such a system might have on the revenue is no easy task. Taking the Vizagapatam District Munsif's Court, which is the heaviest worked court in this district, I find that the Court fees levied on suits decided on the merits in the years 1881, 1882, and 1883 amounted to Rs. 26,148-14-0, while during the same period the Court fees on suits withdrawn, compromised, admitted, and decided *ex parte* or adjudged on default, amounted to Rs. 12,838-12-0, the proportion of the latter to the former roughly speaking being one-third to two-thirds.

9. In each suit of the latter class, the amount of Court fees saved to the suitors would, it must be remembered, vary from three-fourths (on a suit settled before first hearing), to three-eighths (on a suit settled between fixing of final hearing and the hearing itself) of the total fee leviable in case of a full hearing and disposal on the merits. Allowing for what might be hoped under a system such as I propose, viz., a considerable increase in the number of cases admitted or settled out of court, I think it would be safe to estimate the loss likely to be thereby sustained at about one-fifth of the present total revenue from institution fees. This loss would be accompanied by a proportionate diminution of work, which should render it feasible to reduce establishments, while prompt and cheaper disposal might also tend to increase the number of suits filed, and so counteract the tendency towards a decrease of revenue.

(Signed) E. C. JOHNSON,
Ag. District Judge.

From the Acting District Judge of North Tanjore, to the Chief Secretary to Government, dated Tranquebar, 19th August 1884, No. 387.

I have the honor to reply to the order of Government, dated 15th July 1884, No. 1775, Judicial, calling for a report on certain suggestions of the Government of India for the amendment of the system at present in force in the mufassal for levying Court fees.

2. There can be no doubt as to the theoretical advantages of levying from the suitors Court fees proportionate to the amount of work entailed in the court by the suitor. The practical difficulty is, as intimated by the Government of India (paragraph 12 of letter), the necessity of avoiding complications, owing to the comparative weakness of subordinate staff of the Mufassal Courts.

3. I am of opinion that the simplest and in all respects the best course would be, while retaining the institution fee on the existing scale, to revert with some slight modification to the system prescribed in section 98 of the old Code of Civil Procedure, Act VIII of 1859, that is to say, to allow on suits compromised by the parties previous to the settlement of issues a refund of a large portion of the institution fee. To refund the whole fee as was at first sanctioned by section 98 of the old code would be I think to go beyond the requirements of the case. Even in the matter of receiving and registering a plaint a not inconsiderable amount of work is entailed upon the court or its officers, and this should be paid for. I think however that a refund of half or of even two-thirds of the institution fee might be sanctioned.

4. This system would, I think, in practice afford all the relief that is required. Should it, however, be considered insufficient or otherwise unsuitable, I would recommend the following alternative.

5. The institution fee in the case of regular suits might be split into three parts:—

- (1) One-fourth being levied on the filing of the plaint,
- (2) One-fourth at the settlement of issues, and
- (3) One-half at the trial or examination of witnesses and evidence. The last mentioned stage is beyond all doubt the one which in the majority of cases entails the largest amount of work and the largest expenditure of time on the court.

6. In the case of Small Cause suits in which issues are not settled, it would be necessary to depart from the above scale by levying the fee at two stages, viz., one-fourth at the filing of the plaint, and the remaining three-fourths at the trial.

7. The objections which suggest themselves to this system are as follow:—

- (a) The fees subsequent to the plaint would necessarily have to be paid *before* the court could proceed to settle issues, or to hear and try the case, but if so, the payment of the fees being a condition precedent to the action of the court, it will be in the power of a party who has once filed a plaint to delay for an indefinite term the further proceedings on the suit.

This objection may be removed by some express provision of law or possibly by a rule of the High Court made under the powers conferred in section 652 of the Code of Civil Procedure.

- (b) The levying of fees subsequent to the plaint will afford increased opportunities for fraudulently obstructing or tampering with Court-fee labels or impressed stamps. This danger may be met by increased vigilance on the part of the presiding Judge and the chief ministerial officer of each court. It would, however, be necessary to provide by rule for the disposal of the additional fee. The plaint being *ex-hypothesi* complete on the payment of the one-fourth institution, the subsequent fees should not, it is presumed, be affixed or attached to the plaint. Having regard to the terms of section 30 of the Court Fees Act, it would seem to be necessary that the subsequent fees should be attached to some document, viz., an application to the court to settle issues or to examine the witnesses and evidence as the case might be. These documents after the stamp fees thereon have been cancelled, as provided in section 30 of the Court Fees Act, should be filed with the record.

8. Another objection and one of an entirely different character has been suggested to me in regard to the levy of Court fees on the system of instalments. It is I believe founded on a considerable experience with the usages and circumstances of suitors. It is represented that, while the richer class of suitors will be indifferent to the boon of paying Court fees in instalments, the poorer ones will be positively injured by it. The latter class of suitors, it is represented, are at present in the habit of borrowing the *full expenses* of their law suits before the institution of the suits. If they are allowed to pay only a portion of the institution fee at the filing of the plaint and the rest at later stages, they will, owing to their poverty, be under great temptation to expend the sums they have borrowed on purposes unconnected with the suit, and when the time comes to pay the further fees they will have either to borrow further sums on increasingly disadvantageous terms, or to allow their suit to go by default.

9. I am not myself in a position to judge what weight there may be in this objection.

Assuming, however, that the objection may be well founded in regard to a considerable proportion of the poorer class of litigants in this country, the circumstance is not, I would submit, one which can be allowed to influence the decision of the questions now under consideration.

If the poorer class of litigants is, from circumstances or by nature, so improvident as is described, they can scarcely be made otherwise by the wisest and most well considered arrangements of their rulers.

10. With regard to the suggestion (paragraph 13 of the letter of the Government of India) to shift a portion of the *ad valorem* institution fee, and add it to the process fees, I would strongly deprecate the adoption of such a course in this Presidency. The transfer would not, I think, be appreciated by the suitor. He would see that the process fees had been largely added to, and would probably fail to see that the institution fees had been lightened proportionately.

The system also, however theoretically defensible, would involve complicated and practically unworkable arrangements in the Mufassal Courts.

In this Presidency, moreover, the schedule of process fees has only very recently been revised, and several important and far reaching changes have been introduced, e.g., poundage fee on sales.

To supersede the newly-introduced scale by adding to process charges a large portion of the *ad valorem* institution fee would, apart from other objections, be, under present circumstances, most inopportune.

11. In conclusion, I have the honor to repeat, that, in my opinion, a reversion to the refund system authorized by the first Code of Civil Procedure will effect all that is practically required or desirable.

(Signed) T. WEIR,
Ag. District Judge.

From the Acting District Judge, Ganjam, to the Chief Secretary to Government, dated Ganjam, 19th August 1884, No. 1436.

I have the honor to report upon the question referred in G.O., dated 18th July 1884, No. 1775, Judicial.

2. I have taken the opinions of three district munsifs and of the pleaders who ordinarily practise in my court, and the district munsifs have also consulted the pleaders in their courts; finding we are unanimous I will not delay for the opinion of the district munsif of Chicacole.

3. All agree that the fee should be broken into three parts, payable at institution, at settlement of issues, and at final hearing. One munsif suggests that the institution fee should be half and the first hearing and final hearing fees each one-fourth of the whole fee. The pleaders whom I have consulted think that if the fee is to be levied in proportion to work done, then one-fourth should be paid for institution, one-fourth for first hearing, and half for trial. If work done is to be the basis of this calculation, then I certainly think that such a division is the fairest, as the trial and its subsequent incidents give at the least as much, and usually much more, work to the Judge and the ministerial officers as the two stages which may be called preparatory. But considerations of revenue come in here, and the effect of either division could not be made out without a very laborious examination of records, for which there was not time within the period allowed for this report. The district munsif of Tekkali estimated the loss of revenue according to his proposal of levying half the fee at institution at about 20 per cent., but I do not think his data sufficient. In any case this alteration would lead to a considerable increase of suits instituted which would compensate in a measure for loss in first hearing and trial fees. My own opinion is that it would be by far the best to levy the bulk of the fee at the hearing, if such a course would not involve too large a loss of revenue.

4. The proposal to levy the whole fee at first and refund portions is inadmissible, as opening a wide door to fraud and throwing much work on establishments, while the hardship of advancing money unnecessarily would be much felt by poor suitors.

5. Variable process fees would be exceedingly inconvenient; moreover the fee would not vary in accordance with work done. I can see no advantage in such an arrangement.

6. If the fee be broken into portions it might not be unfair to raise the total fee to 10 per cent. Then $2\frac{1}{2}$ per cent. could be levied at institution and $2\frac{1}{2}$ at first hearing, which would be $2\frac{1}{2}$ per cent. less than the present fee of $7\frac{1}{2}$ per cent. Suitors would gain, except those who proceed to a final hearing.

7. *Ex parte* suits should not pay more than half fee in any case.

8. Appeal suits should pay one-fourth at admission and three-fourths at hearing if the respondent resists.

(Signed) H. T. KNOX,
Ag. District Judge.

From the District Judge, South Tanjore, to the Chief Secretary to Government, dated Tanjore, 23rd August 1884, No. 804.

In reply to G.O. of 18th July 1884, No. 1775, Judicial, I have the honor to state that, after consulting the Sub-Judges and the district munsifs of this district, I find there is an almost universal concurrence of opinion that the present system of levying the Court fee in one lump at the institution of the suit is the best plan for the mufassal. The High Court system of distributing the payment over different stages would impose much more labor upon the establishments and lead to constant delays and application for adjournment through the parties not being ready to make their payments.

2. It is however obviously fair that suits which are compromised before hearing should be taxed less than those which impose the full amount of labor on the courts. I would therefore suggest that half the institution fee should be refunded in small cause suits if the suit be compromised before hearing, and in regular suit that half should be refunded if the suit be compromised before settlement of issues, and one-fourth if the compromise be effected after settlement of issues and before any witnesses have been examined. I would not refund any part of the institution fee in cases in which the examination of witnesses is once begun.

3. This system of refunds would impose the minimum amount of labor upon the office establishments.

(Signed) G. A. PARKER,
District Judge.

From the Acting District Judge of Trichinopoly, to the Chief Secretary to Government, dated Trichinopoly, 25th August 1884, No. 353.

As requested in G.O., No. 1775, dated 18th July 1884, I have the honor to report on the proposals contained in the letter from the Secretary to the Government of India therein referred to.

2. I do not suppose that there is any doubt that reform is needed.

3. Personally, I am inclined to prefer the plan suggested by Sir Richard Garth of charging a separate fee on every affidavit, application, summons to witness, &c., &c. The custom, which now prevails largely, of burthening the record with a number of documents of doubtful worth, and summoning an unnecessary number of witnesses, requires a check, and I agree with the Chief Justice in his opinion that the check proposed by him would be wholesome.

4. But the objection to this plan, that it would involve a great increase of work to the already hardly worked establishments of the Civil Courts, has considerable force; and I am therefore disposed to favor the adoption of one of the alternatives proposed.

5. And of the two I prefer the breaking up of the institution fee into parts, to be levied at marked stages in the litigation. I believe this would be more likely to secure the desired end, a speedy settlement, than the other.

6. A litigant, who has already paid a heavy institution fee, does not care much about a refund; but it is a different matter when he has to put his hand in his pocket again and again.

7. I would suggest the division of the fee into four parts—one-fourth leviable on institution, one-fourth on first hearing, and half on final hearing.

8. And I would make each instalment payable, unless the parties come to terms within a reasonable time, *before* the date fixed for each step.

9. Information of these rules should, of course, be given to the defendants—this could be done—as suggested—by a conspicuous printed notice upon the summons.

10. That a considerable loss of stamp revenue would result from the proposed change is certain, as so many cases are always disposed of without contest. But this might be partly met by raising the *ad valorem* fees; so that, while the fee for institution would be very much reduced, the fee on contested cases would be considerably higher than at present.

11. Moreover, as I understand, Government are prepared to face loss in order to effect reform in this matter.

12. In conclusion, I have to add that I believe I have fairly represented the views of the native Judicial officers of this district by what I have written.

(Signed) G. D. IRVINE,
Ag. District Judge.

From the Acting District Judge of Madura, to the Chief Secretary to Government, dated Madura, 25th August 1884, No. 317.

In obedience to the order of Government, dated 18th July, No. 1775, Judicial department, I have the honor to state that, in my opinion, the collection of Court fees may conveniently and advantageously be spread over three different stages in a suit as follows:—

- (1) When a suit is filed.
- (2) At the settlement of issues.
- (3) At the commencement of trial.

2. This mode of collecting the Court fee appears to me to be preferable to refund of portions at different stages, which will entail much work on the establishment.

(Signed) E. TURNER,
Ag. District Judge.

From the District Judge of North Malabar, to the Chief Secretary to Government, dated Tellicherry, 26th August 1884, No. 362.

I have the honor to submit the report called for in order, dated 18th July 1884, No. 1775, Judicial.

2. I quite agree with the second, third and penultimate paragraphs of the minute by Sir Richard Garth, enclosure in the above order, and would make the following suggestions.

3. That the institution fee be the lowest *ad valorem* fee leviable in the court having original jurisdiction, *only* beginning in the case of suits in Munsifs' Courts and in Subordinate Courts acting as Small Cause Courts with 10 rupees, unless the *ad valorem* fee be less than those amounts.

4. That, after issues are settled, there be levied in case of recovery of lands or other immoveable property *ad valorem* fee on the value of the land or immoveable property calculated as now laid down in section 7, clause v, of the Court Fees Act.

5. I would make the valuation the same, viz., as laid down in section 7, clause v, of the Court Fees Act, in suits for redemption of land or immoveable property mortgaged. I do not think that in such suits the plaintiff should, as prescribed in section 7, clause ix, of the Court Fees Act, be made to pay on the amount of principal money expressed to be secured by the instrument of mortgage, if that amount of mortgage is admitted to be correct; for the plaintiff has to pay that amount, and gets from the court no relief beyond the recovery of the land or immoveable property. If, however,

the correctness of the mortgage amount as tendered in the plaint is disputed, i.e., if that amount is asserted to be greater than the amount tendered by the plaintiff, I would make the plaintiff pay an *ad valorem* fee on the amount in dispute, besides *ad valorem* fee on recovery, because to get rid of the liability to pay that amount he has to get relief from the court.

6. I would abolish the fee of Rs. 10 prescribed in schedule II, article 17 (III) of the Court Fees Act, and levy institution fee as suggested above: after issues are settled I would take an *ad valorem* fee in suits concerning immoveable property on the value of the matter in dispute, for example, in the case of a junior member of an undivided family impugning a mortgage raised by the head of the family on the amount of the mortgage, which defendant sets up at settlement of issue, getting rid of that encumbrance being the real relief sought for. Again, in case of a suit for declaration of any other right in immoveable property, I would take the same fee as for recovery of the land.

7. In case of a suit with a prayer to remove the managing member of a family, seeing that such suits are generally founded on some act or acts causing pecuniary loss to the family, which are simultaneously sought to be cancelled, I would calculate the value on the amount of alleged loss to the family, which the cancellation so sought would relieve them from. In such cases as a nearly general rule, if transactions by the head of a family are complained of, the persons beneficially affected by such transactions are made parties by the court, if not already included as defendants.

8. In suits contemplated in section 7, clauses IV (b) (in case of immoveable property), VI, X (a), (b), (c), (d) (in case of immoveable property), schedule II, article 17 (IV) (in case of immoveable property), I would calculate the value of the relief on the value of land of which possession is sought, as prescribed in section 7, clause V. In suits contemplated in section 7, clauses I, II, III, IV, I would, after the issues are settled, levy the *ad valorem* fee on the value as now fixed in those clauses. In suits contemplated by section 7, clause IX as regards movables, clause IX (a), (b) and (d) as regards movable property, I would, after settlement of issues, levy *ad valorem* fee on the current market value of the property.

9. In all these cases I would credit to the plaintiff on account of the *valorem* fee decided to be levied at the settlement the amount paid as institution fee. If judgment is confessed at the time appointed for the settlement of issues, or in case of compromise or settlement at any period up to final argument or before the court proceeds to judgment by either giving a decree at once or announcing reservation of judgment, I would allow a refund of half the amount of institution or further *ad valorem* fee already at the time of confession of judgment or compromise or settlement. The costs would thus be reduced, and both parties would have an inducement to abstain from setting false claims and contentions. If only a small institution fee be levied, the plaintiff will not, by having dropped a heavy stake, be committed to the necessity of carrying on the suit to a bitter end, if only for the sake of getting back the money he has so staked.

10. No doubt such a change as proposed will affect the revenue, and that is a question I cannot judge of. But if such a change has the desired effect of lessening litigation with its too sadly common accompanying effect of demoralising the population by temptations to perjury and forgery, and if by such a change the people who generally file suits are led to try and arrange matters, a great and substantial good will have been gained.

(Signed) J. W. REID,
District Judge.

From the District Judge, Kistna, to the Chief Secretary to Government, dated Masulipatam, 26th August 1884, No. 138.

Adverting to G.O., No. 1775 (Judicial), dated 18th July 1884, I have the honor to submit my observations on the subject of levying court fees, therein discussed.

2. It appears to me that the second question embraced in paragraph 9 of the proceedings under reply is the only point upon which opinion is invited. The heavy *ad valorem* fee levied in a lump on the institution of a suit in a mofussil court is open to objection on various grounds, the most salient of these being the collection of fee without reference to the amount of work which the institution of the suit entails on the court. Poor suitors having just claims are sometimes constrained to defer instituting suits owing to their inability to command at once the full amount of funds required for launching and prosecuting their cases. An inexorable statute of limitation compels them to resort to the courts within prescribed periods of time. Inducements to come to an amicable settlement are removed by the system in force. In one of the courts in British Burma, under Act XXVI of 1867, a plaint on which an institution fee of Rs. 12,000 was paid was rejected two days after its presentation. Mr. John Bruce Norton, late Advocate-General of Madras, quoted a case which came before the High Court of Madras in which the suitor had to pay, under Act XXVI of 1867, the enormous sum of Rs. 32,000 before he could even ask the court to hear his case. The Honorable the Chief Justice (Sir Colley Scotland) is reported to have remarked "that in no country but India could such a state of things exist." Though the maximum of court fees payable in any case has been limited to 3,000 by Act VII of 1870, the hardship of compelling payment of the full fee due on the institution of proceedings remains unmitigated. In a majority of suits on bonds which might very well be privately adjusted between parties after lodging a plaint, false defences are set up and the cases strenuously contested to the end, the defendant losing nothing by his pertinacious conduct. The proposal to adopt payment of court fees by instalments at certain stages of a suit, regard being had to the quantity of work devolving on the courts at those stages, seems to me to be perfectly fair and judicious. It is open theoretically to no sound objection. Simplicity, which is a characteristic feature of the present system, furnishes the only argument in its favor. This, however, is an almost insurmountable argument. I do not see how any other system could work smoothly; and a change would entail an increase in office establishment, which it is doubtful if Government would consent to. The measure by which it is proposed to replace the present system must be unavoidably, more or less, complicated and elaborate, according to the number of stages at which, and the proceedings upon which, court fees will be levied. The amount of *ad valorem* institution fees is generally regarded as very onerous. Cases are not unknown in which the costs of litigation—court fees being the largest item thereof—have exceeded the pecuniary value of the fruits thereof. It is not, however, in this country alone that this happens. Indeed, I know of no civilised system of judicature which is not open to the same objection. As long as people will go to law for trifles, these consequences must follow. The oppressive character of the present onerous charges might be slightly redeemed by granting the indulgence of payment by instalments; but, to obviate needless complication and elaborate detail, I would propose that the number of stages over which institution fees should be spread should be limited. I would thus break up the institution fee into several parts as follows:—

One-eighth on the institution of the suit.

Do. on setting down the case for settlement of issues.

Four-eighths for examination of witnesses including final hearing.

Two-eighths for delivery of judgment.

3. In framing the above scale, I have kept in view chiefly the amount of work that a court is called upon to do at the several stages during the progress of a suit, aiming at the same time at convenience and simplicity. The system of refunding a portion or portions of the initial expenditure, in the event of litigation terminating at a certain stage by compromise or withdrawal of a suit, does not much lighten the burden of paying a heavy court fee once for all at the outset. The system of refunds, besides being a source of complication, would entail additional work on the subordinate staff of a court and might even create scope for malpractices.

4. The prospect of recovering a portion of the fees already paid into court does not furnish so strong an incentive to compromise as the desire to escape an obligation

to find money for the further prosecution of a suit. I am therefore against the proposal embodied in paragraph 4 of the proceedings; and, though it once received legislative recognition in section XXVI, Act X of 1862, it does not seem to be desirable to revert to it on any ground. It is unjustifiable to oblige a plaintiff to pay the full fee in a lump sum with a promise of returning a portion thereof to him if he would desist from litigation at a certain specified stage or stages. This is opposed to the undeniably just principle of making the fees to some extent commensurate with the amount of work thrown on the courts.

5. I would adopt the suggestion contained in paragraph 20 as regards notice to be printed on the summons to the defendant.

6. I can at present form no correct estimate of the loss of revenue which may result from the adoption of the scale above set forth.

7. The English system which is in force on the Original Side of the High Court under which a fee is imposed on every affidavit and application filed or presented, and on the examination of every witness in the course of a suit, though apparently likely to operate as a wholesome deterrent from needless and vexatious proceedings, is not suited to this country, three-fourths of the population of which is illiterate. It makes it impossible for a large percentage of suitors to carry on their own suits, though they may be small causes. Every step to be taken in the suit requires a knowledge of rules. Suitors will be forced to employ vakils. The amount of work which it would throw upon a court would necessitate additional establishment. The slight increase of revenue will be consumed. Thus it is open to two objections—complication and extra expenditure. There is yet another objection which is more serious, viz., causing vexation to suitors in having to pay something on almost every paper that they put into court, whether such fees are paid as part of, or in addition to, the *ad valorem* fees.

8. As to the suggestion made in paragraph 13 as to shifting part of the *ad valorem* institution fee and adding it to the process fee, I beg to state that it is by no means fair or desirable to do so. A multiplicity of light imposts are as disagreeable as a single heavy tax or even more so. The process fees now levied under the rules in force in the course of a suit are by no means light and the fees levied in execution proceedings, notably poundage, are excessive. The propriety of enhancing them is questionable, though it may be with the object of reducing the institution fee on a plaint. The relief afforded will not be appreciated, while the enhancement of the process fee will be declaimed against as a grievance. I must further observe that this step would necessitate greater complications in accounts, as the process fees would have to be credited under different heads, and the establishment keeping these accounts would have to be more highly paid. It would also, I think, open a door to fraud, as it would be impossible to check the numerous payments so as to see that Government got its due. This is done once for all in checking the institution stamp under the present system, and very grave reflection would be necessary before taking such a step. Were it not that my reply is confined to the reference, I would have pursued this subject at greater length and on other grounds. There is, however, one point which, though touching on forbidden ground, is also cognate to the subject-matter of the present reference, viz., the probably appalling increase of litigation which will certainly follow any move in the direction contemplated. Vexatious litigation is notoriously one of the worst evils of this country. Formerly, when a man had an enemy, he lay in wait for him and slew him; now he files a suit against him. The result is not very different, except when the weapon recoils on the assassin, or he and his enemy are both involved in one common ruin. It may be said that the increase in litigation—vexatious litigation included—must be accepted as an inevitable incident in a reform desirable on other grounds. I would, however, urge that such increase means additional expenditure. I am not aware that the Government have ever suffered from any embarrassment in disposing of such surplus funds as are derived from law and justice, nor is there any likelihood that such embarrassment will arise in future. On the contrary. If, therefore, the changes contemplated mean (a) a diminution in receipts, plus (b) an increase

in expenditure, it may be asked where are the funds to come from? So in this connection I venture to observe that there is no more unreasonable claptrap than the outcry against deriving a revenue from the "sale of justice." It would be just as reasonable to decry a surplus in the postal or any other public department. The public services, none of which are independent of each other, live by mutual support; and it is a matter deserving consideration whether by the present fees on judicial work we do not tap—and perhaps in the only way in which it can be tapped at all—a large class which in no other way contributes to the expenses of the State. No possible scheme which can be proposed will be entirely free from drawbacks, and while admitting that the present system is imperfect, I am not at all sure on the whole that a change is either necessary or desirable.

(Signed) W. H. J. LEFANU,
Acting District Judge.

From the District Judge, Chingleput, to the Chief Secretary to Government, dated Chingleput, 26th August 1884, No. 584.

In obedience to the order of Government, dated the 18th July 1884, No. 1775, Judicial, I have the honor to submit my report on certain proposals touching court fees.

2. I have consulted my district munsifs and thought over the matter, and arrived at a few definite conclusions.

3. First, I think it certain that the High Court system, "of spreading the charges over the successive steps of the litigation," cannot be made suitable to (Madras) mofussil courts, in which (ordinarily) the establishments are already overworked and comparatively inefficient, the pleaders unequal to their duties, and the suitors utterly rude and ignorant. Endless mistakes and complications would arise from the extension of this system up-country, and, as a necessary consequence, frauds would be multiplied.

4. Second, I think that the issuing of process follows so rapidly upon the presentation of the plaint, that no advantage could be gained by "shifting part of the *ad valorem* institution fee and adding it on to the process fees." The disadvantages of such a plan are (to my mind) obvious and great.

5. Third, whilst very sensible of the advantage of imposing *ad valorem* fees on all ordinary litigation—regard being had to the impossibility of ascertaining with even approximate correctness the probable labor involved in receiving, hearing and determining any given suit—I hold strong views with regard to the advisability of Government encouraging and fostering, by all legitimate means, the amicable adjustment of suits out of court. My experience is that Indians are most obstinate and unreasonable in the matter of compromise, and that nothing but manifest, certain, immediate gain will tempt opponents to lay down their arms and come to terms.

6. Fourth, I consider therefore that it would certainly be a good thing to split up the institution fee, but I would not split it up into more than two parts.

7. Fifth, one-third of the institution fee should (I think) be levied as at present, and the other two-thirds at a certain time, say a week or ten days, after the defendant has had notice of the suit, and has failed to confess judgment, or effect a compromise.

8. Sixth, I would supplement this system with a recurrence to the old system of refunding half the fee upon the parties compromising at any time after the first hearing and before the examination of witnesses at the trial proper, whether such trial follows immediately upon the settlement of issues, or comes on several days or weeks later.

9. Seventh, I am strongly opposed to the making of artificial distinctions between suits and suits, and would recommend the adoption of a few general principles applicable to all suits.

(Signed) J. H. NELSON,
District Judge.

From the District Judge, Salem, to the Chief Secretary to Government, dated Salem, 27th August 1884, No. 405.

I have the honor to reply to G.O., No. 1775, Judicial, of the 18th July 1884.

2. I am opposed to the alternative proposal made in the letter of the Government of India, section 14, for levying the full institution fee and afterwards making refunds during the progress of the suit. Besides involving much account work, it leaves the suitor far too much at the mercy of his vakil, whose interest it generally is to prolong litigation. In time no doubt the average client would come to learn that he can really succeed in getting a refund, but for a long time the refunds allowed to the more unscrupulous vakils would practically go into the vakils' pockets, and the average suitor would be little better off than at present. A rule would certainly command attention more which would in each case put in the ryot's hands the decision of the question whether more expense was worth incurring than that which would leave him ignorant as to whether saving was possible unless and until it suited his vakil's pleasure to tell him that it is possible.

3. Also I think it very objectionable to place in the hands of the accountants of treasuries and office establishments of courts the power to create delay about refunds with the object possibly of obtaining gratification for themselves.

4. I believe that the collection of the fees by instalments during the course of the suit need not entail much extra labor if simple forms are provided showing the instalments to be paid and when they are to be levied and when foregone.

5. The periods at which I would propose to levy these fees are—

- (1) The day on which summons is to be served on defendant;
- (2) Immediately on the receipt of the written statement for the defence, no matter when that may be;
- (3) At the close of the examination of the plaintiff's witnesses; and
- (4) When execution is applied for.

I believe that these intervals would provide fairly for *payment for work done*.

6. The instalments I would propose are—

- One-sixth on the date of service on defendant.
- One-third on receipt of written statement by defendant.
- One-sixth on close of case for complainant.
- One-third on application for execution.

I prefer these periods to those recommended by the District Munsif of Salem, whose opinion otherwise I endorse generally. As this opinion seems to me to be of value from the long experience he has had of this kind of work, I give an extract from his letter in full:—

"If a remission of the full institution fee in such cases is to be made, and if the system of taking the institution fee by instalments should be approved, I would recommend that it be broken up into three parts and the first taken on the day previous to that fixed in the summons served on defendant, the second when the case becomes contested, whether on the day fixed in the summons or on any subsequent day, and the third when the application for execution becomes contested; and that no fee, excepting that for service of the summons, be taken on the presentation of the plaint.

"The taking of a part of the institution fee at the hearing of a contested application for execution is recommended in consideration of the labor thrown on the court in such cases, especially under the new rules relating to executions on immovable property.

"The results of such a mode of levying the fee would be—

- (I) Remission of the full institution fee in suits terminating by adjustment out of court, or otherwise before the day fixed in the summons served on defendant;
- (II) Remission of two-thirds, in cases where decree is passed on confession or compromise or without contest, and satisfaction obtained without the intervention of the court or without opposition when through the court;

- (III) Remission of one-third in cases in which decree is passed without contest but its execution is opposed;
- (IV) Remission of one-third in cases in which decree is passed after contest but execution is obtained without opposition; and
- (V) No remission in cases in which both the decree and its execution are obtained after a contested hearing.

"From this it will be seen that though a decree is obtained without contest, still where its execution is opposed only one-third of the institution fee will be remitted. This will, to a certain extent, check the tendency of defendants at first allowing the suits to go on without contest, and then at the execution of decrees setting up an opposition on various pretexts, simply with a view to gain time. If the remission of the whole of the institution fee is not to be made in any case, then the first part of it may be taken on the presentation of the plaint, the second when the suit becomes contested, and the third when the application for execution becomes contested.

"In a great many cases, however, decree-holders find no necessity to seek the help of the court in realizing their decrees; and when they do, it is in a very few cases that their applications happen to be contested. The deferring therefore of taking a portion of the institution fee till the execution petition becomes contested will certainly cause a greater reduction in the court-fee revenue than may have been anticipated. If for this or for any other reason the taking of a portion of the institution fee on the execution application becoming contested be not approved, then I would recommend the taking of the last instalment on all applications for execution on their presentation.

"If the proposal to take the institution fee in three instalments be not approved, and if it be considered proper to take it only in two instalments, I humbly suggest that, if the full fee is to be remitted as recommended in cases of termination of suit without any labor being imposed on court, the first instalment be taken on the day preceding that fixed in the summons served on defendant, and the second when the suit becomes contested; or, if the full fee is not to be remitted in such cases, then the first instalment be taken on the presentation of the plaint and the second on the case becoming contested."

7. The financial effect according to the munsif's proposals would approximately be—a loss of revenue of 50 per cent. per annum calculated on the average receipt for the last three years.

8. The effect, as modified by my proposals, would be—a loss of 30 per cent. per annum.

(Signed) C. W. W. MARTIN,
District Judge.

From the Acting District Judge, South Malabar, to the Chief Secretary to Government, dated Calicut, 27th August 1884, No. 588.

In reply to G.O., dated 18th July 1884, No. 1775, Judicial, I have the honor to state that I entirely agree with the sub-judges and district munsifs whom I have consulted on the proposal to alter the present system of levying court fees in the mofussil, and who are unanimously of opinion that in the present state of mofussil judicial establishments it is impracticable to introduce the High Court system of taxing each successive step in litigation, and that the uncertainty to suitors of what they may be called upon to pay (the number of stages being often dependent on the tactics of the parties) and the temptation to speculative litigation make it inadvisable to attempt the plan of spreading the fees over different stages of the suit.

2. The plan which suggests itself as best suited to discourage prolonged litigation is a recurrence to the system of refunds; and in working this system it should be borne in mind that of the three great stages of a suit—the institution, the settlement of issues, and the trial—the last is that which involves by far the heaviest work on the court. Accordingly I would suggest that three-fourths of the institution fee should be refunded on termination of the suit by confession, compromise or withdrawal before first hearing or settlement of issues, while only half should be refunded for such termination after that stage but before final trial, but no refund whatever should be allowed after the trial has commenced or a single witness been examined.

(Signed) H. T. ROSS,
Acting District Judge.

From the Officiating District Judge, Cuddapah, to the Chief Secretary to Government, dated Cuddapah, 28th August 1884, No. 131.

I have the honor to answer G.O., Judicial department, No. 1775, of 18th July 1884.

2. No doubt the evils pointed out by the Chief Justice of the Calcutta High Court are real and serious. The imposition of a large institution fee in very many cases prevents a compromise between the parties being even attempted. It also causes failure to effect a settlement out of court in a large proportion of those cases in which such an attempt is made. The plaintiff having paid what is often a considerable sum, prefers to take his chance in court. He is as badly off as he can well be. He may perhaps be better off after judgment.

3. It seems therefore desirable, if only as an experiment, to alter the present system in such a direction as would encourage the amicable settlement of suits by the parties themselves.

4. The system of refunds I look upon as a bad one. It would certainly throw much additional work on the not too strong staffs of mofussil courts. It would also, I think, open a door to corruption. This would be eminently undesirable and can easily be avoided.

5. There are three well-defined stages in a suit: filing; first hearing, commonly known as settling of issues; and final hearing, or the actual trial and examination of witnesses. As matters are now, the *ad valorem* fee must be actually paid by the purchase of the court-fee stamp before the very first step can be taken and the suit filed.

6. Much relief would be given to parties by splitting up the *ad valorem* fee into three portions, one to be paid at each of the three stages I have named. I should deprecate any further splitting up. Most of all I should object to Sir Richard Garth's suggestion in the penultimate paragraph of the quotation from his letter, if I rightly understand it. He seems to suggest that part of the *ad valorem* fee should be paid with each summoning of witnesses.

7. The proposed changes will give great relief to parties who may come to an amicable settlement in the earlier stages of a suit, and doubtless it is highly desirable to give that relief in cases in which a compromise is feasible and can be effected. But I cannot avoid coming to the conclusion that the changes will cause considerable delay in suits in which no compromise is brought about, and which are carried out to the bitter end.

8. Every judge has probably seen that in a fairly large proportion of suits the plaintiff does not come into court till a very late day. I have myself known suits for large sums or a large extent of property to be filed on the very last day on which the claim could be brought. I cannot but think that to allow a plaintiff to pay his fees in instalments will give him so many more occasions for delay, of which in most cases he will take advantage. This can be checked by courts adhering to a strict rule about the time within which fees must be paid. Judges, however, are but men with "bowels of compassion" as other men are, and few judges will resist the prayer for an extension of time when to refuse it would result in the dismissal of the suit and the positive loss of the fees already paid. Delays will therefore be almost unavoidable.

9. It is desirable to reduce, as far as possible, the occasions on which delay may take place. Therefore I would limit to three the stages at which a portion of the *ad valorem* fee should be paid. If a portion were payable every time a witness were summoned, it would be necessary to lay down that a fixed sum or a fixed proportion of the fees must be paid at every such time, leaving all that remained unpaid to be levied when the final stage should be reached. In a suit with many witnesses the fixed sum principle might be impossible, as it would perhaps lead to the payment of more than the total fee to be levied. In both cases extra work would be thrown upon court establishments.

10. A more serious objection remains to be stated against Sir Richard Garth's suggestion. It would lead to a most unwise economy in the summoning of witnesses. At present the process fees for summoning witnesses are not too heavy. They are, moreover, not in any way related to the *ad valorem* fee. A man now summons all the witnesses he thinks necessary to prove his case. Sometimes he summons even unnecessary witnesses, but he pays the process fees without any thought of the institution fee. But if even a very small portion of the institution fee had to be paid with each summons, many witnesses would be dispensed with who are now summoned. The evidence of most of them would be desirable, if not essential, for parties are bad judges of the value of their own witnesses. One of two results would follow. Either a suit will be delayed to procure the attendance of the necessary or desirable witnesses, or those witnesses will not be summoned and a miscarriage of justice may result.

11. The conclusion I have to come is that the *ad valorem* fee ought to be split up into not more than three portions. I would levy one-fourth when the suit is filed, one-fourth at first hearing, and one-half at final hearing. Process service fees are quite apart from the *ad valorem* fee and ought to be left as they are now.

(Signed) W. F. GRAHAME,
Officiating District Judge.

From the Acting District Judge, Kurnool, to the Chief Secretary to Government, dated Kurnool, 29th August 1884, No. 10.

With reference to the order of Government, dated 18th July 1884, No. 1775, Judicial, I have the honor to submit the following report with regard to the manner in which court-fee stamps should, in my opinion, be levied from suitors.

2. The taking of a lump sum at the institution of a suit unquestionably bears hardly on suitors, inasmuch as it not only prevents them from freely resorting to the courts for redress, but also, after the institution of the suit, affords them no inducement to settle their disputes amicably.

3. On the other hand, the principle of fixing the amount of the fees with reference to the work to be done, besides being fair, would, in my opinion, tend to check unnecessary and vexatious steps being taken by the litigants.

4. I am of opinion that the fees should be levied with reference to the value of the subject-matter to be dealt with and the work to be done by the court, and on the "*ad valorem*" principle.

5. It appears to me (though I give my opinion with very great diffidence owing to my limited judicial experience) that the system of collecting fixed fees at different stages of the suits as in the High Court is open to objection, on the ground that those who resort to the aid of the court for the recovery of small amounts of property have to pay just as large sums in the shape of fees as those who recover large amounts.

6. The District Munsifs of Nandyal and Cumbum agree with me in thinking that the fee should be distributed over different stages of the suit and according to the proportion of work to be done by the court, but the Kurnool Munsif is in favor of the present system, and suggests that by making refunds of half the fees when suits are adjusted by mutual agreement or compromise, as was provided by section 26 of Act X of 1862, considerable relief would be afforded to the litigants.

7. The refund system has this disadvantage that the money refunded may in many cases, if not wholly, at least in part, fail to find its way into the pockets of the suitors, and the suitors will be put to a great deal of unnecessary trouble and inconvenience.

8. As to the mode of levying fees it seems to me that, as suggested in the 14th paragraph of the letter of the Government of India embodied in the order of Govern-

ment under reference, the institution fee should be broken up into several parts and taken at different stages of the suit as shown below:—

Original Suits.

- One-fourth on the presentation of the plaint;
- One-fourth at the time of the settlement of issues, or when the suit is compromised or decreed on confession;
- One-fourth at the time of the summoning of the witnesses; and
- One-fourth (or half in cases where summonses are issued for final hearing) at the time of the commencement of the trial.

Appeals.

- Half on the presentation of memorandum of appeal; and
- Half at the time of hearing.

9. In about 25 per cent. of the suits, one-fourth of the present fee only will be collected, the loss being three-fourths; in about 18 per cent. of the suits, half of the fee may be expected, the loss being half; and in about 7 per cent. of the suits, three-fourths may be levied, the loss being one-fourth; and on the whole not more than one-third of the total fee will be the loss.

10. The total amount of fees collected in the courts of this district during the year 1883 is Rs. 17,630; and one-third of this sum or Rs. 5,877 would be the loss to Government according to the above calculation.

11. But I feel confident that by affording these facilities to suitors they will resort more freely to the courts, and the number of suits will increase considerably, and I believe that the anticipated loss to Government will be amply compensated by the additional fees that will be received. In fact the loss, if there be any at all, will be very small, while the advantages accruing from the change of the present system will, in my opinion, be great.

12. It is no doubt desirable that express notice should be given to the defendant that he will save half of the hearing fee by consenting to a judgment, if he owes the money, as remarked in the 20th paragraph of the letter of the Government of India above quoted.

(Signed) R. RICE,
Acting District Judge.

From the District Judge of South Canara, to the Chief Secretary to Government, dated Mangalore, 29th August 1884, No. 7.

With reference to G.O., No. 1775, Judicial, dated 18th July 1884, I have the honor to enclose copy of a letter on the subject received from the district munsif of Udupi, Mr. K. Krishna Rao, the suggestions contained in which seem to me to be both practicable and such as might be adopted with advantage to the public.

2. I am decidedly in favor of the proposed system of breaking up the institution fee into parts and making it payable "at certain marked stages in the litigation," namely, (1) at the institution of the suit, (2) before the settlement of issues, and (3) before the final hearing—in cases in which there are these three stages in a suit; and in other cases, where there is no intermediate hearing, the suit being posted at once for final hearing, in two instalments, the second instalment to be the amount that would have been payable at the second and third stages if there had been an intermediate hearing.

3. The munsif's suggestion is that 50 per cent. should be paid at the first stage; but as the object is to encourage parties to come to an amicable settlement, and to make the payment proportionate to the work done, I am of opinion that the rates for each of the first two stages might be 25 per cent., the remaining 50 per cent. being payable in case of the suit being taken up for final hearing.

4. The principle of payment in proportion to work done also requires that a fee should be paid for each witness examined and for each exhibit filed in the suit, and for these the rates suggested by the munsif seem fair and proper.

N.B.—This suggestion is made on the assumption that the present *ad valorem* rate of 7½ per cent. is to be reduced.

5. It is necessary that the fee be charged for each witness examined and each exhibit filed, and not merely on processes issued; for, as pointed out by one of the munsifs, "the code permits parties to produce their witnesses without taking out processes."

6. In the case of appeals the fee should be made payable in two equal instalments, the first moiety being payable on the appeal being presented, and the other before it is taken up for hearing.

7. I feel no doubt as to the competency of the present establishments of the courts in the mofussil to do the slightly increased duty that will thus be thrown upon them; and as the fees will all be payable in stamps, there is no ground for thinking that opportunities for fraud will be thereby increased.

8. A return to the system of refunds seems objectionable. It will throw additional work on the establishments both of the courts and the treasuries, and will certainly be less convenient for indigent suitors, and also less conducive to amicable settlements; for, as pointed out by one of the district munsifs, a man who has already paid the full court fees is not so likely to come to terms as the man by whom payments have still to be made,

(Signed) J. W. BEST,
District Judge.

ENCLOSURE.

From the District Munsif of Udipi, to the District Judge of South Canara, dated Udipi, 14th August 1884, No. 100.

I beg to submit my report on the question of court fees called for with reference to the Government of India's letter, dated 3rd July 1884, No. 1444, Judicial department. I shall try to be as brief as possible.

2. The general principles according to which Sir Richard Garth would modify the levy of the court fees are, in my opinion, eminently sound. In the interests of justice and public policy, no less than from a regard to the convenience of suitors, I shall hail the day when the Government will be able to effect such changes as may be feasible in the direction indicated by the Chief Justice of Bengal.

3. As the Government cannot, however, just yet give up altogether so well-established a practice as the *ad valorem* collection of court fees, it will, I fancy, be advisable to adopt a system which will combine the advantages of both methods and minimise the inconveniences attributable to either.

4. The suggestions I would make are the following:—

- (1) The court fee payable on plaints shall be at the rate of 3 per cent. on the value of the suit.
- (2) At the settlement of issues, an additional fee of 1½ per cent. shall be paid by plaintiff.
- (3) At the final hearing, a further fee of 1½ per cent. shall be paid by plaintiff.
- (4) The minimum fee on a plaint shall be Re. 1, for settlement of issues Annas 8, and for trial Annas 8.
- (5) As regards declaratory suits and the like, the present fixed fee might stand, Rs. 5 being paid on the plaint, Rs. 2-8-0 at the settlement of issues, and Rs. 2-8-0 at the final hearing.
- (6) In suits before district munsifs, on every document produced before the settlement of issues, a fee of Re. 1 shall be paid in regular suits, and Annas 8 in small cause suits by the party producing it. Before the district and subordinate courts the rate shall be double that before district munsifs. This fee shall be paid at the settlement of issues.
- (7) On every document produced after the settlement of issues, the fee shall be double that prescribed in No. (6). This fee shall be paid before the commencement of the final hearing.

- (8) In suits before district munsifs, for every witness examined, a fee of Re. 1 shall be paid in regular suits; and Annas 8 in small cause suits by the person applying for his examination. Before district and sub-courts, the rate shall be double that before district munsifs. Such fee shall be paid before the commencement of the final hearing.
- (9) Upon the production of every affidavit, the fee shall be Annas 8 before district munsifs and Re. 1 before District and Subordinate Judges.
- (10) The stamping of all applications, except the first, whether for production of documents or for examination of witnesses, shall not be necessary.

5. In order to find out what would be the difference between the collections actually made under Act VII of 1870, and the fees which would be received if the above rules were enforced, I had the necessary calculations made in reference to all suits, regular as well as small cause, decided in this court from the 1st of April to the 31st of July last. The results are given below:—

	Regular Suits (141)	Small Cause Suits (141).	Total.	Remarks.
	RS. A. P.	RS. A. P.	RS. A. P.	
<i>Actuals.</i>				
Fees on plaints	1,741 14 0	238 8 0		All suits decided upon contest are included both under A and B, and all suits tried <i>ex parte</i> under C only.
Fees on second and subsequent applications for production of documents and examination of witnesses	22 12 0	0 15 0		
Total ..	1,764 10 0	239 7 0	2,054 1 0	
<i>As proposed.</i>				
(A) Fee on plaints, at 3 per cent.	803 0 0	178 0 0		
(B) Fee at the settlement of issues, at 1½ per cent. ..	163 8 0	22 8 0		
(C) Fee at the final hearing, at 1½ per cent. ..	279 0 0	49 0 0		
(D) Fee on documents produced before the settlement of issues	151 0 0	28 8 0		
(E) Fee on documents produced subsequently	78 0 0			
(F) Fee on witnesses examined ..	261 0 0	45 8 0		
Total ..	1,735 8 0	323 8 0	2,059 0 0	

6. The above table speaks for itself. The difference between the total receipts under the present Act, and those under the system herein proposed is too significant to call for any lengthened remarks. It must, however, be noted that the collections under (B) to (F) may prove somewhat smaller by reason of the great inducement there will be to come to a reasonable settlement instead of attempting to substantiate false pleas. Any deficiency arising from this cause will not, I am sure, be regretted by Government, and it will, I think, be more than made up by increased receipts under (A), and also by the imposition of a fee on each document filed and each witness examined in miscellaneous petitions, different rates being provided for appealable and unappealable cases.

7. If the Government desire that the total amount leviable in the form of court fees should be reduced, I would give it as my humble opinion that the reduction should be made in the institution fee (A), rather than in any of the items (B) to (F).

8. The idea of reverting to the practice of refunding a portion of the institution fees does not commend itself to my mind. In the first place, the necessity to provide a full fee at the outset has generally a deterrent effect, which is not altogether removed by the prospect of a return of a portion of the money in a certain contingency. In the second place, the practice would be fraught with trouble and inconvenience to the court as well as the revenue department. In the third place, in order to obtain a refund, the suitors will sometimes have to secure the good graces of subordinate officials, and (where the certificates are drawn up in the names of their pleaders)

of their pleaders also. Again, parties, who may not have money enough to pay the full fee in a lump sum, will be compelled to enter into a multiplicity of transactions about a single amount, such as borrowing, paying into court, getting back, and repaying—transactions which will cause considerable loss to the suitor, and will benefit nobody but the sowcar. I am not therefore in favor of the revival of the refund system.

9. The proposal to enhance process fees seems also open to objection. In final hearing cases, those fees will have to be paid long before the day on which settlement of issues and trial will take place, in fact at the time of instituting the suit or shortly after. By this, the salutary principle of "distributing the fees over the various proceedings in the suit" will be violated. Again, if the applying for processes alone is to involve a heavy charge, the parties would themselves bring their own witnesses, and the Government would then have no compensation for the sacrifice they would make in remitting a part of the institution fee. The object being to discourage false pleas and fabricated evidence, and to make the person who indulges in such things to pay for the luxury, the fee should, I think, be collected on every document produced, and every witness examined, and the amount levied should be called by its right name. It should not be mixed up with process fees, which being primarily the fund from which the process service establishment is paid, should not, in my opinion, be very much in excess of the exigencies of that service.

10. I would only add in conclusion that as the fees proposed by me will have to be paid at three (and in some cases only two) marked stages of a suit, the existing staff, even of a district munsif's court, will be found quite equal to the task.

(Signed) K. KRISHNA RAO,
District Munsif.

From the District Judge of Bellary, to the Chief Secretary to Government, dated Bellary, 30th August 1884, No. 11.

In acknowledging the receipt of G.O., dated 18th July 1884, No. 1775, Judicial, I have the honor to state that, in my opinion, the amount of court fees payable by litigants should be regulated both with reference to the value at stake in the litigation, and to the amount of labor imposed on the courts.

2. Sir Richard Garth observes that the imposition of a large institution fee too frequently operates as a denial of justice. In some instances it possibly may do so; but according to my experience not so frequently as to render a change desirable, which would tend to flood the courts with false and vexatious suits. This undoubtedly would be the result of any sensible lowering of the institution fee.

3. Every system is open to criticism, but on the whole, I think, the least objectionable course is to levy the full institution fee at the commencement of the suit, and then give certain refunds according to the amount of labor actually undergone. The refund might be divided thus, half of the institution fee if plaintiff's claim is completely satisfied before the first hearing, and two-fifths if satisfied after the settlement of issues and before the examination of any witness. After the examination of witnesses has once commenced, I would be strongly opposed to any refund. If a compromise is effected at this stage, it is in consequence of the strength or weakness of either parties' case being apparent, and the most time and labor is expended in the examination of witnesses. In no case would I grant a refund when the compromise entails on the court the labor of executing the decree, nor in *ex parte* cases.

4. A point deserving of attention is whether a refund of the stamp levied on the appeal, or a portion of it, should be made when the decree of the court of first instance is reversed or modified. The institution fee is theoretically supposed to cover the whole cost of the litigation, excepting certain incidental expenses. If the decree of the first court is confirmed, the fault is that of appellant, and he is rightly made to bear the further tax. But if that decree is reversed or modified, the fault is that of the court, and it might be thought that the unsuccessful suitor should not, in justice have to bear the cost of the Judge's error.

5. I would further observe that the fees at present levied on some suits, *e.g.*, those in which the value of the subject-matter cannot be estimated in money which give the greatest trouble to the courts, are too low, while in others they are too high; but I doubt if this falls within the scope of the present reference.

6. After drafting this letter, I received a communication from the Sub-Judge on this subject, and as his letter contains some valuable remarks, I take the liberty of enclosing it in original.

(Signed) J. D. GOLDINGHAM,
District Judge.

ENCLOSURE.

From the Subordinate Judge of Tadpatri, now at Bellary, to the District Judge, Bellary, dated Tadpatri, 29th August 1884, No. 142.

Adverting to your foot-note, dated the 30th ultimo, communicating, for my opinion, G.O., dated the 18th July 1884, No. 1775, Judicial department, I most respectfully beg to submit the following report on the points referred to in the letter from the Government of India embodied in the Government Order aforesaid, and to request that I may be excused for the delay that has in any unavoidably occurred in sending this report, and be pardoned if any of my remarks have in any way gone beyond the limits prescribed by the Government of India in paragraph 23 of their letter.

2. The reference in question is due to certain suggestions made, in respect of the levy of court fees, by the Honorable the present Chief Justice of Calcutta, who seems to be of opinion that the levy of a large institution fee too often operates as a denial of justice, and gives rise to very objectionable practices; that its effect with the generality of suitors is to prevent suits from being settled out of court and to prolong litigation unnecessarily; and that the only just mode of levying such fees is to distribute the same over the various proceedings in the suit as is done in the High Courts on their Original Side. The Government of India (*vide para. 14* their letter) observe that there is, however, one step towards giving effect to Sir Richard Garth's views which could probably be adopted without much disturbance of existing arrangements, and that step is to break up the institution fee into two or three parts, which would be taken irrespectively of all smaller details of procedure at certain marked stages in the litigation, or to continue to take a full fee on the institution as at present, and to refund a portion of it in the event of the litigation terminating at a particular stage by confession, compromise or withdrawal of the suit.

3. A consolidated institution fee be the object of introduction, the lightening of the labors of ministerial establishments of courts or not has led to the following results:—

- (a) the amicable settlement, in a great majority of cases, of matters in dispute between parties;
- (b) the speedy disposal of cases;
- (c) the general preservation of friendly relations between the suitor public and pleaders; and
- (d) the satisfactory collection of what is due to the State without giving much room for the perpetration of fraud on the part of the ministerial establishments of courts.

4. *The amicable settlement of matters in dispute between parties.*—Three classes of claims constitute the bulk of matters in dispute between parties in this country—claims for money due under contracts oral or written, claims for partition, and claims for maintenance.

As soon as money becomes due under a contract, the person entitled thereto makes a demand for the same on him from whom it is due; if payment is made at once, the claim is satisfied; if not, the creditor points out to the debtor the consequences of litigation in court, or the common friends of creditor and debtor interfere and draw their attention to the expenses of litigation and induce them to come to terms, and fresh contracts are entered into between the parties. It is only when such second or third contract is not duly performed, that suits are brought into court. If a reference is made to the records of suits brought on bonds, it will be found that the majority of the bonds sued on have been executed on account of debts which had been incurred and become due before the execution of the said bonds, in whole or in part, and that where such suits have been brought on bonds for money lent at the time of the execution thereof, every attempt at an amicable settlement either by arranging for part-payment or the execution of a fresh bond had been made in vain. These arrangements for an amicable settlement before suit which are often successful are, in my humble opinion, due to the large institution fee which has to be paid if a suit has to be instituted.

Again, a few harsh words of the managing member of the family or the misunderstandings between the female members thereof very often suggest to those entitled to shares or maintenance or their friends, the expediency of seeking for such shares or maintenance. The institution fee that has to be paid in such cases being large and having to come, in the majority of instances, out of the estate, divisible, or on which the maintenance is a charge, parties do not rush into court at once, but endeavour to have their claims settled, and do often succeed in having them settled, by the intercession of friends and relations or of persons in whose disinterestedness the parties have confidence.

Thus, the presence of a large institution fee prevents people from rushing needlessly into court and induces them to have their differences adjusted without resorting to the assistance of the court, and if inquiries be instituted it will be found that claims so adjusted are as numerous as claims that are brought into court.

If the institution fee be reduced, most of the claims now adjusted out of court will be brought into court because of the small expense involved in doing so, and when once a suit is brought into court it is but rarely that amicable relations are restored between the parties. Moreover, false claims are now kept out of court as far as practicable by the large institution fee, and such of them as come into court are instituted by persons who have resources for which they could not find better employment or who are aided by persons having such spare resources. The lowering of the institution fee will offer inducements in the same direction to others also.

5. *The speedy disposal of cases.*—After the payment of the institution fee, no further demands for large payments in the shape of court fees have to be made, and the suit progresses as rapidly as the working capacity and the inclination to work of the presiding Judge and pleaders admit.

Settlement of issues and examination of witnesses. If, on the other hand, a fee has to be levied at the marginally-noted stages, there will be considerable room for delay. Nobody is willing to pay money unless it becomes actually due. The payment of fees will often be delayed sometimes with just excuse and sometimes without. The plea of disease or of floods on the way will often be urged as an excuse for the non-payment of fees punctually; and moreover allegations to the effect that the defendant expressed his willingness to admit the debt and that plaintiff has not therefore brought the fee, &c., will be put forward, and the business of the court will be delayed either by the adjournment of the suit itself and the disturbance of the business arrangements of the court, or by holding inquiries as to the truth or falsehood of the allegations urged as an excuse for the non-payment of the fee; the system of payment on each proceeding in the suit is in vogue, no doubt, in the presidency towns on the Original Sides of the High Courts; the limited area, and the superior intelligence of the suitor and pleader operate as a bar to the urging of such pleas. In the peculiar circumstances of the mofussil, the introduction of a scale of part-payment will encourage falsehood, and will interfere with the speedy disposal of business.

6. *The general preservation of friendly relations between the Suitor public and Pleadors.*—If the system of part-payments is introduced, considering the distance at which parties reside from courts and pleaders, it will be necessary for the suitor to leave once for all all the money that may have to be paid with his pleader, or to instruct his pleader to write to him as occasions for payment may arise. In the former case no advantage is gained by the plaintiff-suitor by the introduction of the system of part-payments, but he is placed in a worse position. He has to pay into the hands of the pleader the entire sum which he has now to spend in the purchase of stamps and which he is sure has been so spent as soon as his plaint is filed, but for an account of the disposal of which he will have to look to his pleader under the new system. This will increase the work of pleaders and will give them a claim to extra remuneration about which and the accounts themselves disputes may often arise. I have had to point out elsewhere some of the difficulties which would arise under the system of part-payment, and those difficulties have their corresponding intricacies as between pleaders and parties; a troublesome party may deny the receipt of a letter said to have been addressed to him by his pleader or allege a payment to his pleader which he has never made, or an unscrupulous gumastah of a pleader may allege having written a letter when he never wrote one, or state that a payment actually made to him was never made. Such instances may be rare, but they will occur.

It may be said that the difficulties pointed out by me exist in the case of witness batta; but the sums paid as witness batta are small, and the bulk of it is generally expended and the parties very often do not trouble themselves about the small balance.

7. *The satisfactory collection of Court fees, &c.*—In the Madras Presidency the largest number of plaints is presented in the courts of district munsifs and Subordinate Judges; the average number presented per working day may be taken as 5; the number is small, the Judge examines them the moment they are presented and satisfies himself as to the payment of the requisite institution fee, and there is no further hitch or difficulty about court fees. If such court fees have to be paid on two or three occasions, the Judge can hardly find time to satisfy himself whether the fees that have to be paid have been paid. Generally speaking, twenty small causes are posted for hearing, and two or three suits for issues, and the same number for final disposal. The Judge cannot be expected to ascertain whether the periodical fees in all such cases have been paid. The check now exercised personally by the presiding Judge will cease to be so exercised. To leave it to the head clerk, who is answerable for the levy of process fees, will unnecessarily add to the responsibilities of that officer, while the Judge will have to ascertain, as each case is called on, whether the requisite fees have been paid. These periodical payments, especially in the case of small causes, will have to be made in court-fee labels, and experience has shown that it is those stamps that are tampered with.

8. I have thus pointed out the advantages resulting from the levy of a consolidated institution fee, and I may also add that the facilities afforded for suing *in forma pauperis* and on a stamp of Rs. 10 in mercantile cases for taking an account, suit the convenience of parties admirably. I see no hardship at all in the present system of levying a consolidated institution fee, and as far as the actual levy is concerned, it is far superior to the system of levying by *kists* or instalments.

9. While thus advocating the continuance of the present system of levying as one fee at the very outset all the court fees that may have to be collected in a case, I cannot but admit the equitable and reasonable character of the proposal whereunder a portion of such consolidated fee is to be refunded should the suit be disposed of by admission or compromise.

The system of refunds has no doubt its drawbacks, and we hear now and then of money refunded not reaching in its entirety the party in whose favor it is granted owing to the perquisites that have to be paid in respect thereof to the ministerial servants of courts and cutcherries and others. Such instances, especially in the case of the ministerial servants of public officers, are becoming rarer and rarer, and I have reason to believe that, with the progress of education and general intelligence, they will soon disappear altogether. As to payments made to others they are rather of a voluntary character. Be the disadvantages of the refund system what it may, they are nothing when compared with the mischievous results of the part-payment system, which will impose far more labor on parties, pleaders, clerks, and Judges than the refund system.

10. I beg to submit that refunds may be granted as under:—

- two-thirds of the court fee, if a suit is disposed of, on the day the parties have to appear in the first instance, on admission or by compromise or withdrawal of the suit;
- half the court fee, if a suit is disposed of as aforesaid after the settlement of issues and before the citing of witnesses; and
- one-third of the court fee if a suit is disposed of as aforesaid before the examination of witnesses.

I would grant no refunds after the examination of witnesses in a contested suit has begun, for amicable arrangements and such compromises are come to only after the parties have become aware of the impression produced on the court by the evidence adduced by them; nor am I in favor of refunds in *ex parte* cases, for clause (a) gives an inducement to a party to appear and admit the debt; and moreover after the refund is granted the defendant, who has been *ex parte*, may have the *ex parte* decree set aside and contest the claim. If refunds are granted in *ex parte* cases they must be granted as per clause (a), and the defendant seeking to have the *ex parte* decree set aside must be made to pay in the first instance the amount refunded, but all this will complicate matters. Compromises to entitle parties to a refund must also be recorded in court at the instance of both the parties. Very often a suit is brought on an extremely suspicious-looking bond, and when the suit is called on satisfaction is reported; in the mean time another bond is got up, alluding to the suit and indebtedness, and purporting to have been granted by the defendant. A suit is brought thereon and then the defendant has to take extraordinary pains to show the false character of the proceedings in the former suit; I am therefore of opinion that before a party can claim a refund on the ground of a compromise, such compromise should be recorded in court at the instance of both the parties.

11. I venture to make a further suggestion in this connexion of granting refunds. It appears to me that in all appeals the court fee paid on account of what is allowed on appeal should be refunded to the successful appellant, and that the respondent should not have to bear it inasmuch as the mistake made by the lower court cannot reasonably be attributed to either party, and I may also point out that the principle on which my suggestion is based seems to be followed in those cases when a decree is reversed and a suit remanded for retrial and where the value of the stamp of the appeal memorandum is refunded. My suggestion, no doubt, may lead to considerable loss of revenue, but I beg to submit that it points to the first step to be taken in enforcing the principle that the payment made by suitors to Government should be commensurate, as far as practicable, with the *good actually done* by courts on their behalf.

(Signed) A. L. V. RAMANA,
Subordinate Judge.

From the District Judge of South Arcot, to the Chief Secretary to Government,
dated Cuddalore, 2nd September 1884, No. 8.

With reference to the Order of Government, dated 18th June 1884, No. 1775, Judicial, I have the honor to state my opinion that the breaking up of the institution fee into two or three parts and spreading it over the different stages of a suit will be an advantageous measure, in so far as it will obviate the necessity for suitors paying

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down a lump sum of money at the commencement of their suits, and will be an inducement to them to settle their suits amicably out of court at one or other of the stages prior to the final hearing.

2. All the district munsifs whom I consulted on the point share this opinion, and deprecate the reintroduction of the system of refunding portion of the institution fee.

3. I would propose that one-fourth of the fee should be paid at the presentation of the plaint, another one-fourth at the settlement of issues, and the remaining one-half at the final hearing when witnesses are examined.

(Signed) J. HOPE,
District Judge.

From the Acting Registrar of the High Court of Judicature at Madras, Appellate Side, to the Chief Secretary to Government, dated Madras, 23rd September 1884, No. 2782.

I am directed to acknowledge the receipt of G.O., No. 1775, dated 18th July last, communicating, for early report, papers from the Government of India on the propriety of making a change in the form in which court fees are now levied in the mofussil courts and on the original side of the High Court, and in reply to state that this court gladly welcomes the suggestions made by the Government of India for reducing the heavy court fees which are a serious burden on suitors and which fall most heavily on classes of suitors who are least able to bear them.

2. The greater number of the cases instituted in our courts are for the recovery of debts, and in most instances payment is refused owing to the debtor's inability rather than unwillingness to satisfy his creditor.

3. In a large percentage of these cases the debt is admitted or the claim is compromised. It would be a sensible relief to the debtor if he escaped the payment of a portion of the court fee now levied.

4. At first sight the proposal to allow this reduction by collecting the fee in instalments at various stages appears to be the most convenient, but the court apprehends that it would entail much delay in the despatch of business. It would necessitate in some cases an inquiry into pauperism at any of the several stages of a suit at which a considerable fee would be taken, and it is doubtful whether the poorer suitors would be benefited by it. Ordinarily they raise the institution fee on such security as they may be able to offer, and unless a stipulation has been made for further advances as the suit progresses the money-lender would use the urgency of his debtor's need to bring into court a fee within the prescribed time to extort higher interest from him. The court, therefore, recommends that the whole fee should be demanded and a refund allowed, although this course will no doubt entail additional work on the offices of the court and the treasury. If half the fee was refunded on the adjustment of a suit before settlement of issues and quarter after settlement of issues and before the actual trial has commenced, and in appeals if half the fee were refunded before the hearing of the appeal, the loss of revenue in this presidency has been roughly estimated at about two lakhs of rupees.

5. The court desires to observe that, if a more equitable system was introduced for the valuation of suits for the recovery of land and a higher fee than 10 rupees levied for suits falling under schedule II, article 17, clauses 3, 4, 5 and 6 of the Court Fees Act, not only would this loss be probably made good, but the Government would be in a position to reduce the existing rates. It is apparent from the returns from the original side of the court that, where fees are paid for work done, the fees in suits of the description last referred to are as high as in suits of ascertainable value.

6. It would be perhaps difficult to make an exhaustive list of the cases falling under this class, but something might be done towards it. Suits for a declaration of the title of a trustee, or the right of a karnavan in Malabar, or of an ejaman in Canara, the right to an office whether honorary or accompanied by emoluments, the right to the use of a channel, or tank, or other immovable property held by co-owners or persons having a common interest, the right to declare future interests in property where such an action is maintainable and suits for the declaration of status, the invalidity of an adoption, or of an alienation by a person having a qualified interest in property, suggest themselves as the most frequent instances.

7. In many of these cases the questions that may be raised involve a considerable expenditure of the time of the court and should in fairness bear a higher fee than 10 rupees.

8. The proposal to add part of the *ad valorem* institution fee on to the process fees does not commend itself to this court. It is desirable that these fees and copying fees should, as far as possible, retain their present character of payment for work done.

9. The question as to the alteration of fees on the original side of the High Court is one of considerable difficulty. It must be admitted that the fees at present levied fall most heavily on suitors in cases of small value and are not less than would be levied in the Small Cause Court. The following table shows the fees that were ascertained to have been paid in the High Court in cases triable in the Small Cause Court but instituted in the High Court in 1880 compared with the fees payable in the Small Cause Court:—

Suit Number.	Value.	Institution Fee.	Further Fees actually paid.	Total Fees in High Court.	Fee if Suit had been filed in Small Cause Court.
	RS. A. P.	RS. A. P.	RS. A. P.	RS. A. P.	RS. A. P.
Civil Suit No. 13 of 1880 ..	840 6 8	30 0 0	18 0 0	48 0 0	68 0 0
" " 15 of " ..	462 2 9	30 0 0	16 0 0	46 0 0	43 6 0
" " 47 of " ..	510 4 0	30 0 0	10 0 0	40 0 0	46 10 0
" " 70 of " ..	339 8 0	30 0 0	49 8 0	79 8 0	37 3 6
" " 78 of " ..	487 1 2	30 0 0	29 0 0	59 0 0	46 15 0
" " 79 of " ..	691 9 2	30 0 0	25 0 0	55 0 0	58 3 6
" " 106 of " ..	886 3 11	30 0 0	49 0 0	79 0 0	76 14 0
" " 126 of " ..	862 10 8	30 0 0	15 0 0	45 0 0	69 6 6
" " 151 of " ..	623 9 3	30 0 0	32 0 0	62 0 0	53 15 0
" " 155 of " ..	724 14 1	30 0 0	31 8 0	61 8 0	60 8 6
" " 158 of " ..	668 5 3	30 0 0	33 0 0	63 0 0	61 12 0
" " 160 of " ..	541 3 0	30 0 0	45 0 0	75 0 0	48 9 0
" " 163 of " ..	578 11 2	30 0 0	26 0 0	56 0 0	50 14 6
" " 166 of " ..	650 0 0	30 0 0	48 0 0	78 0 0	54 6 0
" " 182 of " ..	407 15 0	30 0 0	27 0 0	57 0 0	39 15 6
" " 240 of " ..	947 9 0	30 0 0	6 8 0	36 8 0	78 3 6
" " 273 of " ..	698 0 0	30 0 0	12 0 0	42 0 0	61 2 0
" " 293 of " ..	563 2 8	30 0 0	35 8 0	65 8 0	49 15 0
" " 300 of " ..	900 0 0	30 0 0	7 0 0	37 0 0	71 12 0
" " 319 of " ..	675 15 5	30 0 0	20 0 0	50 0 0	57 3 6
" " 322 of " ..	432 0 0	30 0 0	37 0 0	67 0 0	45 8 0
" " 406 of " ..	424 0 0	30 0 0	32 8 0	62 8 0	43 0 0
" " 444 of " ..	475 13 0	30 0 0	28 8 0	58 8 0	44 3 6
" " 484 of " ..	705 14 6	30 0 0	63 0 0	93 0 0	62 1 6
" " 499 of " ..	300 0 0	30 0 0	14 8 0	44 8 0	32 12 0
Total ..	..	750 0 0	710 8 0	1,460 8 0	1,362 8 6

N.B.—In neither list are the fees for subpoenas and executions included.

10. The fees paid in suits of considerable value if actively contested, and in suits incapable of valuation, are by no means light, and in some cases are in excess of the fees that would be leviable under the Court Fees Act. The Registrar on the original side has submitted the subjoined list of 19 suits taken at random, which illustrates this statement.

		List of Total Fees Paid in High Court.	Fee leviable un- der the Court Fees Act.	
Original Suit No. 343 of 1876 ..	Not valued. Accounts of a pagoda, &c. ..	Rs. 300	Rs. 10	Fixed.
" " 19 of 1873 ..	Do. For an account of property ..	379	10	Do.
" " 73 of " ..	Valued Rs. 1,716-5-6 on promissory note ..	663	115	Ad valorem.
" " 276 of " ..	Not valued. For an injunction, &c. ..	569	10	Fixed.
" " 368 of " ..	Valued Rs. 2,602-5-3, mortgage of immovable property ..	381	160	Ad valorem.
" " 486 of " ..	Valued Rs. 20,000 on bond ..	461	775	Do.
" " 275 of 1879 ..	Value Rs. 7,000. For damages for trespass and wrongful conversion ..	400	355	Do.
" " 373 of " ..	Value Rs. 6,301, for value of goods short delivered ..	423	835	Do.
" " 419 of " ..	Do. Rs. 12,140-8-0. For an account and share ..	357	550	Do.
" " 89 of 1880 ..	Not valued. Administration suit ..	730	10	Fixed.
" " 102 of " ..	Do. To settle scheme (Rāyapuram church case) ..	757	10	Do.
" " 43 of 1881 ..	Do. For an account, injunction and receiver ..	508	10	Do.
" " 69 of " ..	Do. Custody of pagoda, jewels, &c. ..	475	10	Do.
" " 124 of " ..	Valued Rs. 2,06,213-6-3. To recover loans and for account of a partnership ..	386	1,075	Ad valorem.
" " 201 of " ..	Not valued. Accounts of a pagoda ..	475	10	Fixed.
" " 224 of " ..	Valued Rs. 10,060. For an account and compensation ..	368	475	Ad valorem.
" " 333 of " ..	Valued Rs. 4,500. For possession of a house ..	579	250	Do.
" " 255 of 1882 ..	Promissory note under chapter 39. Valued Rs. 2,787-13-0 ..	513	165	Do.
" " 351 of " ..	Money lent Rs. 10,722-9-0 ..	377	505	Do.

N.B.—The High Court figures, however, include fees paid for subpoenas and execution.

11. The court is, however, prepared to frame rules for levying an *ad valorem* fee in lieu of the present fixed institution fee of Rs. 30, retaining the other fees now levied, and preserving a minimum fee in the case of suits cognizable by the Presidency Small Cause Court. It considers that one-fourth of the fee levied under the Court Fees Act might be imposed on the institution of a suit and one-fourth at the hearing, and that in all appeals from the original side the fee should be half that charged on appeals from the mofussil courts. These appeals are, however, not numerous, nor could any fees be collected in the High Court that would make up for the estimated deficiency in the receipts from the mofussil courts if the suggestion as to the return of a portion of the fee is adopted.

12. Before, however, the court proceeds to frame new rules, it desires (in order to secure some uniformity of practice) to have the benefit of the opinions of the learned Judges of the other High Courts.

(Signed) J. A. DAVIES,
Ag. Registrar, Appellate Side.

ORDER—dated 3rd October 1884, No. 2514, Judicial.

Communicated to the Government of India.

(True Extract.)

H. TREMENEERE,
Ag. Asst. Secy. to Govt.

LETTER—to the Secretary to the Government of India, Legislative department, dated Ootacamund, 3rd October 1884, No. 2515, Judicial.

I am directed, with reference to your letter, dated 3rd July 1884, No. 1444, to

Dated 3rd October 1884, No. 2514.

transmit the marginally-noted proceedings of this Government, in which are recorded the opinions of the various officers consulted upon the proposed change in the mode in which court fees are levied in mofussil courts.

2. His Excellency the Governor in Council concurs in the opinions expressed upon the subject by the Honorable Judges of the High Court, and is in favor of a recurrence to the system of refunds in preference to the distribution of the institution fee into two or three parts. With regard to the probable loss of revenue which would result from the adoption of the refund system it is not possible to make any correct estimate, but the loss would probably be between 20 and 30 per cent. of the present revenue derived from court fees.

E. F. WEBSTER,
Chief Secretary.

Exd. T. O'Connor.

28
Govt. of (1884) Madras.

JUDICIAL.

Issued

Recd.

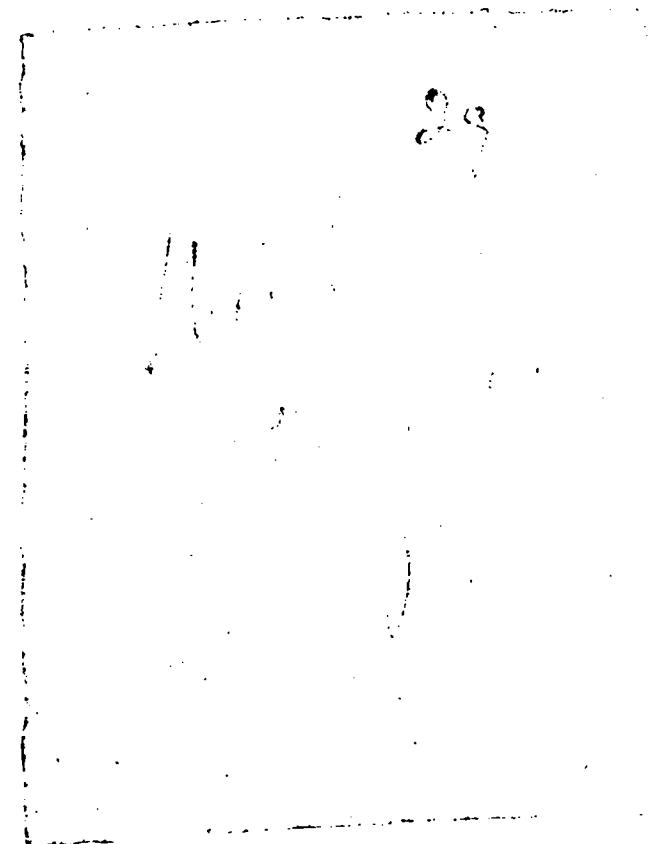
Encl.

G.O., &c., 3rd October 1884,
Nos. 2514, 2515.

OCTOBER.

Court Fees.

Communicating to the Government of India letter from the Madras High Court submitting certain observations of the Honorable the Judges on the propriety of making a change in the form in which — are now levied in mofussil and in the original side of Presidency Town High Courts.



General Subject
Proposed change in
levy of park fees.

5/9
Dear Mr. Dawes.

Kindly get these
reports printed
sent up.

Yours truly
J. Pemberton

5/9/87

5/9

Recd. the following papers:-

No. 10. District Court Canteen

30th July 1884

From

H. Wigram Esquire

District Judge of

Canteen

The Honorable E. F. Webster

Chief Secretary to

Government of Madras

Sir,

With reference to G.O. dated

18th July 1884 No. 1775 Judicial I

have the honor to state that of the

two alternative proposals viz:

(1) to break up the institution fee into

two or more parts.

or

(2) to refund a portion of the institution

fee when the suit does not proceed

to judgment.

I have no hesitation in recommending

the

9.5.84

the adoption of the latter proposal.

2. The principle of not taxing suitors to the full extent when the suit is withdrawn, when judgment is confessed, or when the suit is compromised must commend itself to every impartial person. It was recognized under the old law of procedure: it is recognized now in the rules for taxing costs. I have frequently advised parties not to raise frivolous pleas which will necessitate a lengthy trial: but to submit to a decree at the first hearing and save half the costs. A refund of a portion of the institution fee would be an additional inducement to parties not to proceed to the bitter

end in litigation. 2P 35

3. I think that if a suit is withdrawn or compromised or judgment is confessed at the first hearing three-quarters of the institution fee should be refunded: that if the same course is taken at a later stage viz: after settlement of issues and examination of documentary evidence one half of the institution fee should be refunded: and that if the same course is taken at any time before judgment one quarter of the institution fee should be refunded.

4. I think that the attention of the parties should be specially called to the proposed alteration of the law by printing on every summons in red ink that if the suit

suit is compromised or judgment
conferred at the first hearing
three-quarters of the institution
fee will be refunded.

5. As regards assimilating
the procedure of the High Court
Original Side to that of the
Muzassal Courts the matter
I believe stands thus - In the
Muzassal the fees are paid
to Government: in the Presidency
Town the fees are paid to the
lawyers. The sutor suffers
equally in both cases. If any
one is to grow rich on litigation,
I think it should be the Govern-
ment which provides such an
expensive machinery for settling
disputes not the lawyers who
merely lead or mislead the Judge.

But

383
But so long as the system of
attorneys and Barristers exists
so long will the Government
find vested interests too strong
for them. A class of attorneys -
have one class of qualified
pleaders - limit the fee which
a pleader may demand from
his client and the sutor in the
Presidency towns will have no
difficulty in paying the same
institution fee as their brethren
in the Muzassal.

I have the honor to be
Sir

Your most obedt. Servt.

W. Digram

District Judge

1884
Judicial Department
From
The District Judge
Simlatare

To
The Chief Secretary
to Government
Madras

Dated 30th
Decr 31st July 1884
Recd. } Aug
No. 10.

Enclosure - "

Recommends with reference
to G.O. dated 18th July 1884
No 1775 to adopt the
latter proposal i.e. to
refund a portion of
the institution fee when
the suit does not pro-
ceed to judgment.

46 HI
Madras, 31st July, 1884

From
The Honorable P. O'Sullivan
Advocate General

To
The Honorable E. F. Webster
Chief Secretary to Government
with the Governor
Stanhurst Hill
Sir.

1. I have the honour to acknowledge
the receipt of the order of Government, Judicial
Department, dated the 18th July 1884, No.
1775, relating to Court-fees.

2. It appears to me that the principle
of distributing the Court-fees in the Mo-
fussal Courts is a sound one. Given the
fee which is to be levied in a suit up to
the decree of the Court of First Instance,
I think only one-fourth of it should be
required to be paid with the plaint:
one-fourth before the case is set down
for the first hearing, whether for set-
tlement of issues or final disposal, and

Printed & printed with
other papers submitted
Court

6/10/104

the remaining one half before the trial of the suit or final hearing.

3. In the case of an appeal or second appeal, only half the fee should be payable with the petition of Appeal, and the other half should not be payable until the appeal has been admitted, and an order made to give notice to the respondent.

4. Upon application for the execution of decrees, I think larger fees may be levied than the fees now payable, if a corresponding diminution is made in the fees payable in the earlier stages of the litigation.

I have the honor to be
Sir

Your Most Obedient Servant

P. T. Sullivan

Advocate General.

1884

From
The Advocate General
Madras.

To
The Chief Secretary to Govt.
Cotacamund -

Dated 31st July

Despatched 6th Aug.

G. S. Assistant Secretary

Subject:

Reporting upon the pro-
posals of making a change
in the form in which Court
Fees are now paid in the
Presidency Town
High Courts.

N^o 426

58
Tinnevely.
District Court.
11th August 1884.

From,

J. C. Hughesdon Esquire,
District Judge,
Tinnevely

To,

The Honble Mr E. F. Webster,
Chief Secretary to Government
Fort Saint George,
Cotacamund.

Sir,

I have the honour to acknowledge receipt of
Proceedings, Judicial Department, N^o 1775, dated 18th ult.

2. With reference to para 14 of Mr Fitzpatrick's
letter I would suggest that one third part of the fees at present
leviable on the institution of a suit be paid when the plaint
is filed; one third on the settlement of issues; and one third
when the first step in execution is taken.

3. If it is necessary to provide for the loss of
stamp revenue that would thus arise when a suit should not
proceed as far as settlement of issues or execution, I would
suggest that it be enacted that applications for adjourn-
ments be in writing upon a stamp of a certain value
"unless the Court otherwise direct." Such a tax would operate
to some extent as a check upon applications for adjourn-
ments for frivolous reasons or with fraudulent intentions
(as for the purpose of fabricating false evidence.) At the same
time the Judge would have power to excuse the payment
when the application should seem to be unavoidable

as

(as when a witness should absent himself whose attendance the party had done his best to procure.)

4. The stamp on applications for adjournments might be as follows; —

Induits of the value of Rs 50 and under, 8 annas;
Rs 100 and under, a Rupee; Rs 500 and under Rs 2;
Rs 1000 and under Rs 5; over Rs 1000, Rs 10; or roughly
one half per cent.

5. The suggestion offered that the full duty should be levied as now on the presentation of the plaint and re-funds subsequently made if the parties should come to terms does not commend itself to me. It would necessitate the introduction of complicated accounts and would furnish many opportunities for fraud to the intermediaries between the Court and the suitor, such intermediaries being numerous in the case of the poorer and more ignorant suitors and those who live at a distance from the Courts as most frequently happens in the Mofussil. It is probable that in the case of such suitors the full amount of the re-fund would seldom reach the party entitled to receive it.

6. Nor do I approve of the suggestion that a part of the duty might take the shape of increased process-service fees, such fees being levied for a special purpose.

I have the honour to be,

Sir,

Your most obed^t serv^t

Chas. Frederick
District Judge.

Judicial. 1884 } Department.

From,
The District Judge,
Tinnevely.

Dated 11th }
Sent. } August 1884.
Recd. 15 }

N^o 426

Court Fees.

Reporting on the proposed
change in the form in which
Court fees are now levied in
the Mofussil Courts.

G. S. Amant Street opp.

[Signature]

21/5/84.

N^o 442

From,

J. C. Hughston Esquire,
District Judge,
Tinnevely.

To,

The Honble Mr. E. F. Webster,
Chief Secretary to Government
Fort Saint George,
Colacamund.

Sir,

In continuation of my letter N^o 426,
dated 11th Instant, I have the honor to submit herewith
Copy of a letter from the Sub. Judge of Tinnevely N^o 313,
dated 15th Instant, on the proposal to change the mode of
levying Court Fees in the Mofussil [G. O. dated 18th July
1884 N^o 1775 Judicial].

I have the honor to be,
Sir,

Your most obedt. servt.

[Signature]
District Judge.

Copy to Adrasamud
38.

[Signature]

6 P.
Tinnevely. 51
District Court.
18th August 1884.

No 313

From

Encls

Summerville
Subordinate Court
15 August 1881

The Subordinate Judge
Summerville

To

J. C. Hughesdon Esquire
District Judge, Summerville

Sir
With reference to the Proceedings
of Government dated 18th July 1881 No 1975,
I have the honor to state that in my
opinion, if the institution fee be divided
into several parts and made payable at
different stages of the suit, it would
certainly be advantageous to litigants
and tend to induce them to adjust their
disputes amicably and to prevent unneces-
sary and vexatious steps being taken
by them. Although the introduction of
the old refund system may be said to
answer this purpose to a great extent,
yet the whole of the institution fee having
been once paid, the litigants may not,
I think, feel inclined to adjust their
disputes amicably out of Court. I would
therefore

215 3336 1/2

therefore suggest that the institution fee
calculated on the ad valorem principle
now existing may be broken up into 2
parts and that half of the said fee
made payable on the filing of the
Plaint in every case, as this may be
sufficient to cover the cost of labor
imposed upon Courts in all cases
which terminate without contest, by
confession, compromise ^{or} ~~with~~ withdrawal,
reference to arbitration or on separate
trial

2. If there is contest, the other
half of the fee should be required
to be paid before the commencement
of the examination of witnesses.

I have &c

/signed/ K. C. Krishnamoorthy
Subordinate Judge

/ Enclosed /

R. S. Srinivas
District Judge

Judicial { 1884 } Department
3336

From
The District Judge,
Tinnevely.

Dated 18th
Sent. 21st } August 1884.
Recd 7th

N^o 442
Enclosure one

Submitting copy of Tinnevely
Sub. Judge's letter on the proposal
to change the mode of levying Court
Fees in the Mofussil.

88
Nizagapatam District Court
18th August 1884.

N^o 912

To
From

E. C. Johnson Esquire
Ch. District Judge
Nizagapatam

To

The Honorable E. W. Webster.

Chief Secretary to the Government
Fort Saint George.

Sir,

I have the honor to furnish the report called for in G. O. Judicial
no. 1475 dated July 19th 1884.

2. My experience as Judge has been but short, and I consequently
submit my opinions with diffidence.

3. The object in view being to deter from unnecessary litigation, and
as far as possible to further settlement out of Court, while at the same
time adjusting the revenue from Court fees to the expenditure on judicial
Establishments and as far as possible making the fee finally levied
proportionate to the work done, it appears to me that this object would be
best attained by continuing to calculate the institution fee as at
present, but levying it in instalments at different stages of the suit.

4. There can be no doubt that the prospect of a refund, (obtaining
which must involve some trouble and expense, and continued attendance
at

(Court) will not operate so far as to induce witnesses to act of their own volition in finding ready money for the payment of parties. Defendants moreover entail a considerable amount of labour, the levy of the fee is instalment to the total amount payable in suit having been once for all calculated, would entail at the same time it does not seem to me that any workable system could be devised without providing for a system of instalments for levying the full instalment for each stage, previous to signing process for the same, some inducement to settle out of Court before hearing being at the same time advisable, as the hearing with examination of witnesses is what takes up the most time and entails the most trouble on the Judge and his assistants present.

5. I would suggest that the instalment for calculated cost present, should be levied in two equal instalments, one on the fixing of date for final hearing, that an acknowledgment of liability made, or a compromise out of Court certified, before the date of first hearing should entitle to a refund of half the first instalment; and that the same after the fixing of date for final hearing, but before such hearing should entitle to a refund of $\frac{3}{4}$ of the second instalment.

Power should be given to the Judge to further divide the second instalment in certain cases, as for instance in case of its

its being necessary to take evidence on preliminary issues previous to a final hearing on the merits.

7. Fees levied in this manner would bear as close as possible a proportion to the amount of work demanded of the Court; and at every stage there would be present a strong inducement to come to terms out of Court. Every summons or notice to a party should show in a printed form, clearly and distinctly the total fee variable on the suit and the proportion which will be saved by admission or adjustment out of Court before next hearing.

8. To estimate the effect which such a system might have on the revenue is no easy task. Taking the Vizagapatam District Munsiff's Court, which is the heaviest worked Court in this District, I find that the Court fees levied on suits decided on the merits in the years 1881-2-3, amounted to Rs 2614-8-14 while during the same period the Court fees on suits withdrawn, compromised, admitted, and decided ex parte or adjudged on default, amounted to Rs 12838-12-0, the proportion of the latter ^{roughly speaking} to the former being as one third to two thirds.

9. On each suit of the latter class, the amount of Court fees saved to the parties is small, it must be remembered, vary from $\frac{3}{4}$ (on a suit settled before first hearing) to $\frac{3}{8}$ (on a suit settled between fixing of final hearing and the hearing itself) of the total fee variable in case of a full hearing and disposal on the merits. It allowing for what might be hoped under a system such

and as it appears, by a considerable increase in the number of
cases admitted or settled out of Court, it might be safe
to estimate the loss likely to be thereby sustained at about 1/3 of the
present total revenue from institutions. This loss would be
accompanied by a proportionate diminution of costs, which would
render it feasible to reduce established courts, which prompt and
cheaper disposal might also tend to increase the number of
suits filed, and so counteract the tendency towards a decrease
of Revenue.

I have the honor to be

Sir

Your most obedient servant

H. P. P. P.

192 District Judge

CURRENT No.

Judicial (1884) Department

From

The District Judge
Mysore

The Chief Secretary to the Government
Dist. District Judge

No.

Dated 12th August } 1884
Received

Enclosures: None

No. 912

Transmitting report called for in G.O. Judicial

No. 1475 dated July 18th 1884.

10863

No. 387

District Court of North Tanjore
Tranquebar, 19th August 1884.

From

T. Weir, Esquire

Ag. District Judge of
North Tanjore.

To

Honorable E. Forster Webster
Chief Secretary to Government,
Ootacamund.

Honorable Sir,

I have the honour
to reply to the order of Government,
dated 15th July 1884, No. 1775, Judicial,
calling for a report on certain
suggestions of the Government
of India for the amendment of
the system at present in force
in the District for trying
Court fees.

2. There can be no doubt as to
the theoretical advantages of

Copying from the Suits Court, is
proportional to the amount of
work entailed in the Court by the
Suits. The practical difficulty is,
as intimated by the Government
of India, (para 12 of letter) the
necessity of avoiding complications,
owing to the comparative weakness
of subordinate staff of the
Muzasal Courts.

3. I am of opinion that the
simplest and in all respects
the best course would be, while
retaining the institution fee
on the existing scale to amend
with some slight modification
to the system prescribed in section
98 of the old code of Civil Pro-
cedure, Act VIII of 1859, that is
to say to allow on suits compromised
by the parties previous to the
settlement of issues a refund

11P 65
of a large portion of the institution
fee. To refund the whole fee
as was at first sanctioned by
section 98 of the old code would
be I think to go beyond the require-
ments of the case. Even in the
matter of receiving and registering
a plaint a not inconsiderable
amount of work is entailed
upon the Court or its officers
and this should be paid for.

I think however that a refund
of half or of even $\frac{2}{3}$ of the insti-
tution fee might be sanctioned.

4. This system would I think
in practice afford all the relief
that is required. Should it how-
ever be considered insufficient
or otherwise inevitable, I would
recommend the following alternative.

5. The institution fee in the case
of Regular suits might be split

into three parts.

- (1) one fourth being levied on the filing of the plaint,
- (2) one fourth at the settlement of issues and
- (3) one half at the trial or examination of witnesses and evidence.

The last-mentioned stage is beyond all doubt the one which in the majority of cases entails the largest amount of work and the largest expenditure of time on the Court.

6. In the case of Small Cause Suits in which issues are not settled, it would be necessary to depart from the above scale by levying the fee at two stages viz. one fourth at the filing of the plaint and the remaining $\frac{3}{4}$ at the trial.

7. The objections which suggest

themselves to this system are as follows: (a) The fees subsequent to the plaint would necessarily have to be paid before the Court could proceed to settle issues, or to hear and try the case; but if so, the payment of the fees being a condition precedent to the action of the Court, it will be in the power of a party who has once filed a plaint to delay for an indefinite term the further proceedings on the suit.

This objection may be removed by some express provision of law or possibly by a rule of the High Court made under the powers conferred in Section 52 of the Code of Civil Procedure.

(b) The levying of fees subsequent to the plaint will afford increased opportunities for fraudulently

abstracting or tampering with Court-
fee labels or impressed stamps.

This danger may be met by
increased vigilance on the part
of the presiding Judge and the
chief ministerial officer of each
Court. It would however be neces-

sary to provide by rule for the
disposal of the additional fee.

The plaint being ex-hypothesi
complete on the payment of the
 $\frac{1}{4}$ institution, the subsequent
fees should not, it is presumed,
be affixed or attached to the
plaint. Having regard to the
terms of section 30 of the Court-
fee Act; it would seem to be
necessary that the subsequent
fees should be attached to some
document viz. an application to
the Court to settle issues or to
examine the witnesses and

13 P 69

evidence as the case might be.
These documents after the stamp
fees thereon have been cancelled
as provided in section 30 of the
Court Fee Act should be filed
with the record.

8. Another objection and one of
an entirely different character
has been suggested to me in regard
to the levy of Court Fees on the
system of instalments. It is I believe
founded on a considerable ex-
perience with the usages and
circumstances of suitors. It is
represented that while the richer
class of suitors will be indifferent
to the boon of paying Court Fees
in instalments, the poorer ones
will be positively injured by it.
The latter class of suitors, it is
represented, are at present in
the habit of borrowing the

full expenses of their law suits before the institution of the suits. If they are allowed to pay only a portion of the institution fee at the filing of the plaint and the rest at later stages, they will, owing to their poverty, be under great temptation to expend the sums they have borrowed on purposes unconnected with the suits, and when the time comes to pay the further fees they will have either to borrow further sums on increasingly disadvantageous terms or to allow their suit to go by default.

9. I am not myself in a position to judge what weight there may be in this objection.

Assuming however that the objection may be well founded in regard to a considerable

proportion of the poorer class of litigants in this country, the circumstance is not, I would submit, one which can be allowed to influence the decision of the questions now under consideration.

If the poorer class of litigants is from circumstances or by nature so improvident as is described, they can scarcely be made otherwise by the wisest and most well considered arrangements of their Rulers.

10. With regard to the suggestion (para 13 of the letter of the Government of India) to shift a portion of the ad-valorem institution fee and add it to the process-fees, I would strongly deprecate the adoption of such a course in this Presidency.

The transfer would not I think
be appreciated by the suitor.
He would see that the Process-
fee had been largely added
to and would probably fail
to see that the institution fees
had been lightened proportionately.

The system also however
theoretically defensible would
involve complicated and
practically unworkable arrange-
ments in the Magistrate Courts.

In this Presidency moreover
the schedule of Process-fee
has only very recently been
revised and several important
and far-reaching changes

have been introduced, e.g. ~~foundage~~
person sales.

To supersede the newly-
introduced scale by adding
to Process-charges a large
portion of the ad-valorem

15P 73

institution-fee would apart
from other objections be under
present circumstances most
inopportune.

11. In conclusion, I have the
honour to repeat that in my
opinion a reversion to the refund
system authorized by the first
Code of Civil Procedure will
effect all that is practically
required or desirable.

I have the honour to be,

Honourable Sir,

Your most obedient servant,

(Pew)

Ag. District Judge.

Judicial (1884) Departs.

From The District Judge
of North Tynes

To The Chief Secretary
to Government

No. 387
Dated 19th August
Recd } 1884

Replying to the order
of Government dated
15th July 1884 No 1775,
Judicial regarding
Court fees.

No 1436

16 P
Ganjam District Court
19 August 1884.

From The Ag. District Judge
Ganjam.

To The Chief Secretary to Government
Judicial Department
Madras.

Sir, I have the honor to report upon the question
referred in G. O. dated 18th July 1884 No 1775, Judicial.

2. I have taken the opinions of three District Munsiffs and of the pleaders who ordinarily practice in my Court, and the District Munsiffs have also consulted the pleaders in their Courts; finding we are unanimous I will not delay for the opinion of the District Munsiff of Chicacole.

3. All agree that the fee should be broken into three parts, payable at institution, at settlement of issues, and at final hearing. One Munsiff suggests that the institution fee should be $\frac{1}{2}$ and the first hearing and final hearing fees each $\frac{1}{4}$ of the whole fee. The pleaders whom I have consulted think that if the fee is to be levied in proportion to work done, then $\frac{1}{4}$ should be paid for institution, $\frac{1}{4}$ for first hearing and $\frac{1}{2}$ for trial. If work done

is to be the basis of this calculation, then I certainly think that such a division is the fairest, as the trial and its subsequent incidents give at the least as much, and usually much more, work to the judge and the Ministerial officers as the two stages which may be called preparatory. But considerations of revenue come in here, and the effect of either division could not be made out without a very laborious examination of records, for which there was not time within the period allowed for this report. The District Munsiff of Lekhali estimates the loss of revenue according to his proposal of levying half the fee at institution at about 20 per cent., but I do not think his data sufficient. In any case this alteration would lead to a considerable increase of suits instituted which would compensate in a measure for loss in first hearing and trial fees. My own opinion is that it would be by far the best to levy the bulk of the fee at the hearing if such a course would not involve too large a loss of revenue.

4. The proposal to levy the whole fee at first and refund portions is inadmissible, as opening a wide door to fraud and throwing much work on establishments, while the hardships of advancing money unnecessarily would be much felt by poor Sutors.

17^P
5. Variable process fees would be exceedingly inconvenient; moreover, the fee would not vary in accordance with work done. I can see no advantage in such an arrangement.

6. If the fee be broken into portions it might not be unfair to raise the total fee to 10 per cent. Then $2\frac{1}{2}$ per cent. could be levied at institution and $2\frac{1}{2}$ at first hearing, which would be $2\frac{1}{2}$ per cent. less than the present fee of $7\frac{1}{2}$ per cent. Sutors would gain, except those who proceed to a final hearing.

7. Ex parte suits should not pay more than half fee in any case.

8. Appeal suits should pay $\frac{1}{4}$ at admission and $\frac{3}{4}$ at hearing if the respondent resists.

I have the honor to be
Sir,
Your most obedient servant

H. T. K. M.

Ag. District Judge.

LH
etc

CURRENT NO.

Government No.

From

The Magistrate Judge
Gangaw

Dated 19th August 1884
Received

No. 1436.

Subject

Report on questions
referred in G.O. dated
18th July 1884. No. 1775.

No 804

18th August 1884
23rd August 1884

From

C. A. Parker Esquire
District Judge
South Bangalore

To

The Honorable C. J. Webster
Chief Secretary to Government
Madras.

Sir,

In reply to G.O. of 18th July 1884 No. 1775 -
Judicial, I have the honor to state that after
consulting the Subjudges and the District
Municipals of this District, I find there is an
almost universal concurrence of opinion
that the present system of levying the Court
fee in one lump at the institution of the
suit is the best plan for the Mofussil.
The High Court system of distributing the
payment over different stages would impose
much more labour upon the establishments
and lead to constant delays and application
for adjournment through the parties not
being ready to make their payments.

2. It is however obviously a fact that
suits which are compromised before hearing

should be taxed less than that which imposes
 the full amount of labour on the Court. I
 would therefore suggest that half the
 institution fee should be refunded in Small
 Cause suits if the suit be compromised
 before hearing, and in regular suit that half
 should be refunded if the suit be compromised
 before settlement of issues, and one-fourth if
 the compromise be effected after settlement
 of issues and before any witnesses have been
 examined. I would not refund any part of
 the institution fee in cases in which
 the examination of witnesses is once
 begun.

3. This system of refunds would increase
 the minimum amount of labour upon
 the office establishments.

I have the honor to be

Sir,

Your most obedient servant.

Wm. L. L.

Dickinson

1884
Judicial Department

From
The Dist Judge
Southampton

Dated 23rd August 84.
Recd: }

1884

Reporting that the present
system of levying the Court
fee is one lump at the
institution of the suit is
the best plan for the

W. J. F. C.

19th 83
Trichinopoly Dist Court
25th August 1884
W. 353
From G. D. Irvine Esquire
Ag. District Judge
of Trichinopoly

To
The Honble E. F. Webster
Chief Secretary
to Government
with the Governor
Stonehouse Hill

Sir,
As requested in G.O. No. 1775
dated 18th July 1884, I have the
honor to report on the proposals
contained in the letter from the
Secretary to the Government of
India, therein referred to.

I do not suppose that there
is any doubt that reform is needed.

Personally I am inclined
to prefer the plan suggested
by Sir Richard Garth of charging
a separate fee on every affidavit,
application, submission to
evidence &c. &c. The custom, which
now prevails largely, of burdening
the

the record with a number of documents of doubtful worth, and summoning an unnecessary number of witnesses, requires a check. — and I agree with the Chief Justice in his opinion that the check proposed by them would be wholesome.

But the objection to this plan, that it would involve a great increase of work to the already hardly worked establishments of the Civil Courts, has, considerable force and I am therefore disposed to favor the adoption of one of the alternatives proposed.

And of the two I prefer the breaking up of the institution fee into parts, to be levied at marked stages in the litigation. I believe this would be more likely to secure the desired end, a speedy settlement, than the other.

A litigant who has already paid a heavy institution fee, does not care much about a refund - but it is a different matter when he has to put his hand in his pocket again.

I would suggest the division
of

of the fee into 4 parts - $\frac{1}{4}$ leviable on institution - $\frac{1}{4}$ on first hearing, and $\frac{1}{2}$ on final hearing.

And I would reject the account
statement payable; unless the
parties come to terms within
a reasonable time before the
date fixed for each step.

Information of these rules should, of course, be given to the defendants - this could be done - as suggested - by a conspicuous printed notice upon the summons.

That a Considerable loss of
stamp revenue would result
from the proposed changes is
certain, as so many Cases are
always disposed of without
Contest. But this might be
partly met by raising the
ad valorem fees. so that, while
the fee for institution would
be very much reduced, the fee
on Contested Cases. would be
considerably higher than at
present.

Moreover - as I understand -
Government are prepared to face
loss, in order to effect reform
in this matter.

Ln

In conclusion I have to add
that I believe I have fairly re-
presented the views of the Native
Judicial Officers of this District
by what I have written.
I have the honor to be,
Sir,

Treasury, Your most obedient
District Court
25 August 1848.

Hg: District Judge

To The Honble E. F. Webster
Chief Secretary
to Government
with the Governor
Stonehouse Hill

CURRENT No. 266

The Dy. District Judge
of Trichinopoly

To The Chief Secretary
to Government
with the Government
Household

Dated 25th August 1884
Received

No. 353

Enclosure

Submitting his report
on the propriety of
making a change in
the form in which
Court fees are now
levied in the
dated for
dated 18th July 1884

No. 317
1884

Madras District Court
25th August 1884

From, C. Turner Esquire,
Dy. District Judge
of Madras
To, The Honorable C. L. Webster,
Chief Secretary to Government
Madras.

Honorable Sir,

In obedience to the order of Government
dated 18th July No 1775, Judicial Department, I
have the honor to state that, in my opinion, the
collection of Court fees may conveniently
and advantageously be spread over 3 different
stages in a suit as follows:-

- (1) when a suit is filed
- (2) at the settlement of issues
- (3) at the commencement of trial

2 This mode of collecting the Court fee appears
to me to be preferable to refund of portions at
different stages, which will entail much work
on the establishment.

I have the honor to be,
Honorable Sir,
Your most obedient servant
C. Turner
Dy. District Judge

1884

Judicial Department
From

The District Judge
of Madras

To
The Chief Secy to Government
Madras

Date 25 } August 1884.
Rec.

No 317.

Enclosure none.

Subject

Stating that the mode
of collecting Court fees (1) at
the filing of a suit, (2) at the
settlement of issues and (3)
at the commencement of
trial is preferable to system
of portions at different stages

No 362.

22 f
Tellicherry 26 August 1884
From
The District Judge of
North Malabar.

The Honble E. F. Webster Esq.
Chief Secretary to Government
Judicial Department
Pottamunth.

I have the honor to submit the
report called for in Order dated 18th July
1884 No 773 Judicial.

I quite agree with the 2nd and
penultimate parts of the Minute by Sir
Richard North, enclosing in the above
Order, and would make the following
suggestions: That the substitution for the
ad valorem fee leviable in the
Court having original jurisdiction, such
beginning in the cases of suits in which
suits are tried in subordinate Court
acting as small cause Courts, with 10 Rs.
unless the ad valorem fee be less than
these amounts. That after fees are settled
there

there be levied in case of recovery of
lands or other immovable property ad
valorem fee on the value of the land or
immovable property calculated as now
laid down in Section 7. Clause I of the
Court Fees Act.

I would make the valuation
the same, viz. as laid down in Section
7. Clause I of the Court Fees Act, in suits
for redemption of land or immovable
property mortgaged. I do not think
that in such suits the Plaintiff should,
as prescribed in Section 7. Clause II. of
the Court Fees Act, be made to pay on
the amount of principal money express-
ed to be secured by the instrument of
mortgage, if that amount of mortgage
is admitted to be correct, for the Plaint-
iff has to pay that amount, and gets
from the Court no relief beyond the
recovery of the land or immovable pro-
perty. If however the correctness of the
mortgage amount as tendered in the
plaint is disputed, i.e. if that amount
is asserted to be greater than the amount
tendered by the Plaintiff, I would make

the

the Plaintiff pay an ad valorem fee on
the amount in dispute, besides a dollar
fee for recovery, i.e. to get rid of the
liability to pay that amount, he has to
get relief from the Court. In a suit
for a divorce would abolish the fee of \$100
prescribed in Schedule II. Article 17. of the
Court Fees Act, and lay substitution
fee as suggested above. After suits are
settled it would take an ad valorem fee
in suits concerning immovable property
on the value of the matter in dispute,
for example: in the case of a joint
undivided family in-
dignifying a mortgagee raised by the
head of the family - on the amount of the
mortgage which Defendant is to pay at
settlement of issue, getting rid of that
circumstance being the real relief sought
for. Again in case of a suit for declara-
tion of any other right in immovable
property, it would take the same fee as
for recovery of the land. In case of a suit with a
prayer to remove the managing mem-
ber of a family, seeing that such suits

are generally founded on some acts or omissions
causing pecuniary loss to the family, which
are simultaneously sought to be cancelled,
and would be a total loss to the value of the
amount of alleged loss to the family,
which the cancellation is sought would
relieve them from. In such cases a
nearly general rule, if transactions
by the head of a family, are complained
of, the persons beneficially affected by
such transactions are made parties
by the Court, if not already included as
Defendants. In suits contemplated in Section
7. Clause II. & in case of immovable property.
II. 8 (a) (b) (c) (d) in case of immovable pro-
perty Schedule II. Article 7. II. in case
of immovable property for declaration.
As to the value of the relief or the value
of land of which possession is sought,
is prescribed in Section 7. Cl. II. In suits
contemplated in Section 7. Clause II. II. II.
I would after the issues are settled, levy
the ad valorem fee on the value as now
fixed in these cases. In suits contem-
plated by Section 7. Clause II. as regards

moveables

241 95
moveables. Clause II. (a) (b) and (d) as regards
moveable property, I would after settlement
of issues levy ad valorem fee on the current
market value of the property. In suits
9. In all these cases I would ex-
cite to the Plaintiff on account of the
valuation fee decided to be levied at the
settlement, the amount paid as institution
fee. If judgment is confessed at the
time appointed for the settlement of
issues, or in case of compromise or
settlement at any period up to final
argument or before the Court proceeds
to judgment by either giving a decree at
once or announcing reservation of judg-
ment, I would allow a refund of half
the amount of institution or further ad
valorem fee already at the time of con-
fession of judgment or compromise or
settlement. The costs would thus be
reduced and both parties would have
an inducement to obtain from setting
false claims and contentions. If only
a small institution fee be levied, the
Plaintiff will not, by having dropped
a heavy stake, be committed to the ne-
cessity of carrying on the suit to a
bitter

better and, if only for the sake of getting
back the money he has so staked.
No doubt such a change as
proposed will affect the revenue; and
that is a question I cannot judge of.
But if such a change has the desired
effect of lessening litigation with its
too sadly common accompanying effect
of demoralizing the population by in-
ductions to perjury and forgery, aided up
by such a change the people who generally
fill suits are led to try and arrange
matters, a great and substantial good
will have been gained.

I have the honor to be,
Your most obedient servant

Wm. H. ...
District Judge

...

...

...

...

...

CUM. NO. 3450
Judicial Department.

From,
The District Judge of
North Malabar.

To,
The Chief Secretary to
Government,
Judicial Department,
Pohacamm.

Dated 26 August 1884.
Res.

No. 362.

Submitting Report called
for in G. O. 18 July 1884 No.
1775, touching the Court
Fees.

No. 138.

25th
District Court Pishna
Masulipatam
25th August 1884.

From
The District Judge,
Pishna.

To
The Chief Secretary to the
Government of Fort St. George,
Madras.

Referring to G. O. No. 1775
(Judicial) dated 18th July 1884, I have
the honor to submit my observations
on the subject of levying Court Fees,
therein discussed.

2. It appears to me that the 2^d
question embraced in para. 9 of the
Proceedings under reply is the only
point upon which opinion is invited.

The heavy advocorem fee levied in
a lump on the institution of a suit
in a Mofussil Court, is open to
objection on various grounds, the
most salient of these being the collection
of fee without reference to the amount
of work which the institution of the
suit entails on the Court. Poor suitors
having just claims are sometimes con-

strained to defer instituting suits
owing to their inability to command
at once the full amount of funds
required for launching & prosecuting
their cases. An inexorable statute
of limitation, compels them to resort
to the courts within prescribed
periods of time. Inducements to
come to an amicable settlement
are removed by the system in force.
In one of the courts in British
Burma, under act XXVII of 1867,
a plaint on which an institution
fee of Rs. 12,000 was paid was
rejected two days after its presen-
tation. Mr. John Bruce Norton
late Advocate General of
Madras, quoted a case which
came before the High Court
of Madras in which the suitor had
to pay under Act XXVII of 1867, the
enormous sum of Rs. 32,000 before
he could even ask the Court to
hear his case. The Honorable
the Chief Justice (Sir Colley Scotland)
is reported to have remarked that
in no country but India could such

26 P 101
a state of things exist. Though
the maximum of Court-fees payable
in any case has been limited to
3000 by Act VII of 1870, the hard-
ship of compelling payment of
the full fee due on the institution
of proceedings, remains unmitigated.
In a majority of suits on bonds
which, might very well be privately
adjusted between parties after lodging
a plaint, false defenses are set up
and the cases strenuously contested
to the end, the defendant losing no-
thing by his pertinacious conduct.
The proposal to adopt payment
of Court-fees by instalments at
certain stages of a suit, regard
being had to the quantity of
work devolving on the courts at
those stages, seems to me to be
perfectly fair and judicious. It is
open to ^{theoretically} no sound objection. Sim-
plicity which is a characteristic
feature of the present system fur-
nishes the only argument in its
favor. This, however, is an ^{almost} insurmountable

able argument. I do not see how any other system could work smoothly, & a change would entail an increase in office establishment, which it is doubtful if Government would consent to.

The measure by which it is proposed to replace the present system, must be unavoidably, more or less, complicated and elaborate, according to the number of stages at which and the proceedings upon which, Court-fees will be levied. The amount of ad valorem institution fees is generally regarded as very onerous. Cases are not unknown in which the costs of litigation - Court fees being the largest item thereof - have exceeded the pecuniary value of the fruits thereof.

It is not however in this Country alone that this happens. Indeed I know of no civilized system of judicature which is not open to the same objection. As long as people will go to law for trifles these consequences must follow. The oppressive character of the present onerous charges might

be slightly redeemed by granting the indulgence of payments by instalments, but, to obviate needless complication & elaborate detail, I would propose that the number of stages over which institution fees should be spread should be limited. I would thus break up the institution fee into several parts as follows.

- $\frac{1}{8}$ on the institution of the suit.
- $\frac{1}{8}$ on setting down the case for settlement of issues.
- $\frac{4}{8}$ for examination of witnesses including final hearing.
- $\frac{2}{8}$ for delivery of Judgment.

3. In framing the above scale, I have kept in view chiefly the amount of work that a Court is called upon to do at the several stages during the progress of a suit, aiming at the same time at convenience & simplicity. The system of refunding a portion or portions of the initial expenditure, in the event of litigation terminating at a certain stage by compromise or withdrawal of a suit, does not much lighten the burden of paying a heavy Court-fee once for all.

at the outset. This system of refund, besides being a source of complication, would entail additional work on the subordinate staff of a Court and might even create scope for mal-practices.

4. The prospect of recovering a portion of the fees already paid into Court does not furnish as strong an incentive to compromise as the desire to escape an obligation to find money for the further prosecution of a suit.

I am therefore against the proposal embodied in para 4 of the proceedings; and, though it once received legislative recognition in Section XXVI, Act X of 1862,

it does not seem to be desirable to revert to it on any ground.

It is unjustifiable to oblige a Plaintiff to pay the full fee in a lump sum with a promise of returning a portion thereof to him if he would desist from litigation at a certain specified stage or stages. This

is opposed to the undeniably just principles of making fees to some extent commensurate with the amount of work thrown on the Courts.

5. I would adopt the suggestion contained in para 20 as regards notice to be printed on the summons to the Defendant.

6. I can at present form no correct estimate of the loss of revenue which may result from the adoption of the scale above set forth.

7. The English system which is in force on the original side of the High Court, under which a fee is imposed on every affidavit and application filed or presented, & on the examination of every witness in the course of a suit, though apparently likely to operate as a wholesome deterrent from needless & vexatious proceedings, is not suited to this Country, $\frac{3}{4}$ of the population of which is illiterate. It makes it impossible for a large percentage of suitors to carry on their own suits, though they may be small causes. Every step to be taken

in the suit requires a knowledge of rules - Sutors will be forced to employ vakils. The amount of work which it would throw upon a court would necessitate additional establishment. The slight increase of revenue will be consumed. Thus it is open to two objections - Complication & extra expenditure. There is yet another objection which is more serious, viz causing vexation to sutors in having to pay something on almost every paper that they put into court, whether such fees are paid as part of or in addition to the advalorem fees.

As to the suggestion made in para 13 as to shifting parts of the advalorem institution fee and adding it to the process-fee, I beg to state that it is by no means fair or desirable to do so. A multiplicity of light imposts are as disagreeable as a single heavy tax or even more so. The

29 P 107
process fees now levied under the rules in force in the Course of a suit, are by no means light & the fees levied in execution proceedings, notably poudage, are excessive. The propriety of enhancing them is questionable, though it may be with the object of reducing the institution fee on a plaint. The relief afforded will not be appreciated, while the enhancement of the process fee will be declaimed against as a grievance. I must further observe that this step would necessitate greater complications in accounts, as the process-fees would have to be credited under different heads, & the establishment keeping these accounts would have to be more highly paid. It would also, I think, open a door to frauds as it would be impossible to check the numerous payments so as to see that Government got its due. This is done once for all in checking the institution stamp under the present system & very grave reflection would be necessary before taking such a step. Were it not that my reply

is confined to the reference, I would have pursued this subject at greater length and on other grounds. There is however one point which, though touching on forbidden ground, is also cognate to the subject matter of the present reference:—Viz., the probably appalling increase of litigation which will certainly follow any move in the direction contemplated. Vexatious litigation is notoriously one of the worst evils of this Country. Formerly, when a man had an enemy, he lay in wait for him & slew him. Now he files a suit against him. The result is not very different, except when the weapon recoils on the assassin, or he and his enemy are both involved in one common ruin. It may be said that the increase in litigation, vexatious litigation included, must be accepted as an inevitable incident in a reform—desirable on other grounds. I would

308 109
however urge that such increase means additional expenditure. I am not aware that the Government have ever suffered from any embarrassment in disposing of such surplus funds as are derived from Law & Justice, nor is there any likelihood that such embarrassment will arise in future. On the contrary. If therefore the changes contemplated mean (a) a diminution in receipts plus (b) an increase in expenditure, it may be asked where are the funds to come from? In this connection I venture to observe that there is no more unreasonable clap-trap than the outcry against deriving a revenue from the "Sale of justice". It would be just as reasonable to decry a surplus in the Postal or any other Public Department. The public services, none of which are independent of each other, live by mutual support; & it is a matter deserving consideration whether by the present fees on judicial work we

do not tap - & perhaps in the only
way in which it can be tapped
at all - a large class which in
no other way contributes to the expenses
of the state. No possible scheme
which can be proposed will be
entirely free from drawbacks, &
while admitting that the present
system is imperfect, I am not
at all sure on the whole that
a change is either necessary or
desirable.

I have the honor to be,

Sir,
Your most obedient Servant

William

Ag. District Judge

Judicial 8/843 Dept

From
The District Judge,
Kistna.

No. 138

Dated 26th 3 August 1884.
Received - 3

No.

Enclosures -

Submitting his observations on the subject of levying Court-fees, discussed in G. O. No. 1775 (Judicial) dated 18th July 1884.

113

113

318 113
Chingleput District Court,
26 August, 1884.

From
J. H. Nelson, Esquire,
District Judge,
Chingleput.

To
The Honble E. F. Webster,
Chief Secretary to Government,
Judicial Department,
Pootacamund.

Sir,

In obedience to the order of Government, dated the 18th July, 1884, No. 1775, Judicial, I have the honour to submit my report on certain proposals touching court-fees.

2. I have consulted my District Munsifs, and thought over the matter; and arrived at a few definite conclusions.

3. First, I think it certain that the High Court system, of spreading the charges over the successive

successive steps of the litigation;
cannot be made suitable to (Madras)
Mufassal Courts, in which (ordi-
narily) the establishments are
already overworked and com-
paratively inefficient, the pleaders
unequal to their duties, and the
suits utterly rude and ignorant.
Endless mistakes and complications
would arise from the extension of
this system up-country, and as
a necessary consequence frauds
would be multiplied.

4. Second, I think that the issuing
of process follows so rapidly upon
the presentation of the plaint, that
no advantage could be gained by
shifting part of the ad valorem
institution fee and adding it on
to the process fees. The disadvantages
of such a plan are (to my mind)
obvious, and great.

5. Third, whilst very sensible
of

328 115
of the advantage of imposing ad
valorem fees on all ordinary litiga-
tion, regard being had to the
impossibility of ascertaining with
even approximate correctness the
probable labour involved in receiving
hearing and determining any given
suit, - I hold strong views with
regard to the advisability of govern-
ment encouraging and fostering,
by all legitimate means, the
amicable adjustment of suits
out of Court. My experience
is that Indians are most obstinate
and unreasonable in the matter
of compromise, and that nothing
but manifest, certain, immediate
gain will tempt opponents to lay
down their arms and come to
terms.

6. Fourth, I consider therefore
that it would certainly be a
good thing to split up the institution
fee

fee, but I would not split it up
into more than two parts.

7. Fifth, one third of the
distribution fee should (I think)
be levied as at present, and
the other two-thirds at a certain
time, say a week or ten days,
after the Defendant has had
notice of the suit, and has
failed to confess judgment, or
effect a compromise.

8. Sixth, I would supplement
this system with a recurrence
to the old system of refunding
half the fee upon the parties
compromising at any time after
the first hearing and before
the examination of witnesses
at the trial proper, whether such
trial follows immediately upon
the settlement of issues, or
comes on several days or weeks
later.

338 114
9. Seventh, I am strongly
opposed to the making of artifi-
cial distinctions between suits
and suits, and would recom-
mend the adoption of a few
general principles applicable
to all suits.

I have the honour to be,
Sir,

Your most Obedt Servant,

District Judge.

W. R. S.

1884

JUDICIAL DEPARTMENT.

FROM

THE District JUDGE,
Chingleput.

No. 584

Dated 26

Despatched 26

Received

August 1884

No.

Enclosure -

SUBJECT.

Submitting report
on certain proposals
touching Court fees
called for in the order
of Government dated
the 18th July, 1884 No. 1775

No. 405

340 101
District Court, Salem
27th August 1884.

From

C. W. W. Martin Esquire,
District Judge,
Salem.

To

The Honorable E. F. Webster,
Chief Secretary to Government,
Fort St. George.

Sir,

I have the honor to reply to G. O.
No. 1775 Judicial of the 18th July 1884.

2. I am opposed to the alternative
proposal made in the letter of the Government
of India section 14 for levying the full
institution fee and afterwards making refunds
during the progress of the suit: Besides
involving much account work it leaves

the

the suitor far too much at the mercy of his Vakool whose interest it generally is to prolong litigation. In time no doubt the average client would come to learn that he can really succeed in getting a refund but for a long time the refunds allowed to the more unscrupulous Vakools would practically go into the Vakools' pockets and the average suitor would be little better off than at present.

A rule would certainly command attention more which would in each case put in the judge's hands the decision of the question whether more expense was worth incurring than that which would leave him ignorant as to whether saving was possible unless and until it suited his Vakool's pleasure to tell him that it is possible.

3. Also I think it very objectionable to place in the hands of the Accountants of Treasuries and Office establishments of Courts the power to create delay about refunds with the object possibly of obtaining gratification for themselves.

4. I believe that the collection of the fees by instalments during the course of the suit need not entail much extra labour if simple forms are provided showing the instalments to be paid and when they are to be levied and when foregone.

5. The periods at which I would propose to levy these fees are

(1) The day on which summons is to be served on Defendant.

(2) Immediately on the receipt of the written statement for the defence no matter

matter when that may be.

(3) At the close of the examination of the Plaintiff's witnesses and

(4) When execution is applied for.

I believe that these intervals would provide fairly for payment for work done:

b. The instalments I would propose are:-

$\frac{1}{6}^{\text{th}}$ on the date of service on Defendant.

$\frac{1}{3}^{\text{rd}}$ on receipt of written statement by Defendant.

$\frac{1}{6}^{\text{th}}$ on close of case for complainant.

$\frac{1}{3}^{\text{rd}}$ on application for execution.

I prefer these periods to those recommended by the District Muniif of Salem whose opinion otherwise I endorse generally. As this opinion seems

to me to be of value from the long experience he has had of this kind of work I give an extract from his letter in full.

"If a remission of the full institution fee in such cases is to be made and if the system of taking the institution fee by instalments should be approved I would recommend that it be broken up into three parts and the first taken on the day previous to that fixed in the summons served on Defendant, the second when the case becomes contested, whether on the day fixed in the summons or on any subsequent day and the third when the application for execution becomes contested; and that no fee excepting that for service of the summons be taken on the presentation of the plaint."

"The taking of a part of the institution fee at the hearing of a contested application for execution is recommended in consideration of the labor thrown on the court in such cases, especially, under the new rules relating to executions on immovable property."

"The results of such a mode of levying the fee would be:—

(I) Remission of the full institution fee in suits terminating by adjournment out of court or otherwise before the day fixed in the summons served on Defendant;

(II) Remission of two thirds, in cases where decree is passed on confession or compromise or without contest, and satisfaction obtained without the intervention of the court or without opposition

opposition when through the court;

(III) Remission of one third in cases in which decree is passed without contest but its execution is opposed;

(IV) Remission of one third in cases in which decree is passed after contest but execution is obtained without opposition;

(V) And, no remission in cases in which both the decree and its execution are obtained after a contested hearing."

"From this it will be seen that though a decree is obtained without contest still where its execution is opposed, only one third of the institution fee will be remitted. This will to a certain extent check the tendency of Defendants

Defendants at first allowing the suits to go on without contest and, then, at the execution of decrees setting up an opposition on various pretexts simply with a view to gain time. If the remission of the whole of the institution fee is not to be made in any case, then, the first part of it may be taken on the presentation of the plaint, the second, when the suit becomes contested and the third when the application for execution becomes contested."

"In a great many cases, however, decree-holders find no necessity to seek the help of the Court in realizing their decrees; and when they do, it is in a very few cases

38P 129
cases that their applications happen to be contested. The deferring therefore of taking a portion of the institution fee till the execution petition becomes contested will certainly cause a greater reduction in the Court-fee-revenue than may have been anticipated. If for this or for any other reason the taking of a portion of the institution fee on the execution application becoming contested be not approved, then, I would recommend the taking of the last instalment on all applications for execution on their presentation."

"If the proposal to take the institution fee in three instalments be not approved, and if it be considered proper to take it only in two instalments, I humbly suggest that, if the full fee is to be remitted as recommended in cases of termination of suit without any labor being imposed on Court, the first instalment be taken on the day preceding that fixed in the summons served on Defendant

31

Defendant and the second when the suit becomes contested; or, if the full fee is not to be remitted in such cases, then, the first instalment be taken on the presentation of the plaint and the second on the case becoming contested."

7. ~~My~~ ^{the} The financial effect according to ~~the~~ ^{my} proposals would approximately be:— a loss of Revenue of 50 per cent ^{per annum}, calculated on the average receipt for the last 3 years.

8. The effect as modified by my proposals would be:— a loss of 30 per cent per annum.

I have the honor to be,

Sir,

Your most obedient servant,

C. S. Srinivasan
District Judge.

CURRENT

The District Judge,
Salina.

Dated 27th }
Despd 27th } August 1884
Recd }

No. 405

Encl. —

Subject.

Subject.
Reporting on the propriety
of making a change in
the form in which Cost
Accounts are now held.

39 P 133
District Court of the District of Columbia
August 27, 1884.
The Honorable J. J. Ross, Esq.,
Chief Justice of the District of Columbia,
Washington, D. C.
Dear Sir:
I have the honor to acknowledge the receipt of your letter of the 21st inst. in relation to the proposed amendment to the Rules of the District Court of the District of Columbia, and in reply to inform you that the same has been referred to the Honorable J. J. Ross, Esq., Chief Justice of the District of Columbia, for his consideration. I am, Sir, very respectfully,
Yours, very truly,
J. J. Ross, Esq.,
Chief Justice of the District of Columbia.

parties) and the temptation to speculative litigation make it inadvisable to attempt the plan of spreading the fees over different stages of the suit.

2. The plan which suggests itself as best suited to discourage prolonged litigation is a recurrence to the system of referees, and in working this system it should be borne in mind that of the three great stages of a suit, — the pleading, the settlement of issues, and the trial — the last is that which involves by far the heaviest work on the courts. Accordingly it would suggest that — three-fourths of the cost of litigation should be repaid on termination of the suit by confession, compromise, or withdrawal before final decree or settlement of issues, while only half should be refunded for such termination after that stage but before final trial, but no refund whatever should be allowed after the trial has commenced and a single witness been examined. I have the honor to be, Sir, your most obedient servant,

Wm. D. ...
ag. District Judge

Handwritten notes in Arabic script, including the word "الله" (Allah) and "السلامة" (salamah).

CURRENT No.

No.

From,

The Dy. District Judge
South Malabar
Calicut.

Dated 27th August 1884
Received.

No. 555

Submitting Report on Court
fees as called for in Govt
order No 1775 of 18th July 1884.
Judicial.

40 P 137 e

No. 131

District Court, Cuddalore
28th August 1884

From,

The Officiating District Judge
Cuddalore

To,

The Chief Secretary
to the Government of Madras.

Sir,

I have the honor to answer G. O.
Judicial Department No. 1775 of 18th July 1884.

2. No doubt the evils pointed out by the Chief
Justice of the Calcutta High Court are real
and serious. The imposition of a large institution
fee in very many cases prevents a compro-
mise between the parties being even attempted.
It also causes failure to effect a settlement
out of Court in a large proportion of those cases
in which such an attempt is made. The
Plaintiff having paid what is often a con-
siderable sum prefers to take his chance
in Court. He is as badly off as he can well be. He
may perhaps be better off after judgment.

3. It seems therefore desirable, if only as an experiment, to alter the present system in such a direction as would encourage the amicable settlement of suits by the parties themselves.

4. The system of refunds I took upon as a bad one. It would certainly throw much additional work on the not too strong staffs of Mofussil Courts. It would also I think open a door to corruption. This would be eminently undesirable and can easily be avoided.

5. There are three well defined steps in a suit. Filing; first hearing commonly known as settling of issues; and final hearing or the actual trial and examination of witnesses. As matters are now the ad valorem fee must be actually paid by the purchase of the Court Fee Stamp before the very first step can be taken and the suit filed.

6. Much relief would be given to parties by splitting up the ad valorem fee into three portions, one to be paid at each of the three stages I have named. I should like

41813
preclude any further splitting up. Most of all I should object to Sir Richard Garter's suggestion in the penultimate paragraph of the quotation from his letter, if I rightly understand it. He seems to suggest that part of the ad valorem fee should be paid with each summoning of witnesses.

7. The proposed changes will give great relief to parties who may come to an amicable settlement in the earlier stages of a suit and doubtless it is highly desirable to give that relief in cases in which a compromise is feasible and can be effected. But I cannot avoid coming to the conclusion that the changes will cause considerable delay in suits in which no compromise is brought about, and which are carried out to the bitter end.

8. Every judge has probably seen that in a fairly large proportion of suits the Plaintiff does not come into Court till a very late day. I have myself known suits for large sums or large extent of property to be filed on the very last day on which the

Claim could be brought. I cannot but think that to allow a Plaintiff to pay his fees in instalments will give him so many more occasions for delay ^{of which} which in most cases ^{he will} take advantage. This can be checked by Courts adhering to a strict rule about the time within which fees must be paid. Judges however are but men, with "bowels of compassion" as other men are, and few Judges will resist the prayer for an extension of time when to refuse it would result in the dismissal of the suit and the positive loss of the fees already paid. Delays will therefore be almost unavoidable.

9. It is desirable to reduce as far as possible the occasions on which delay may take place. Therefore I would limit to three the stages at which a portion of the ad valorem fee should be paid. If a portion were payable every time a witness were summoned it would be necessary to lay down that a fixed sum or a fixed proportion of the fees must be paid at every

42 P 141
such time leaving all that remained unpaid to be levied when the final stage should be reached. In a suit with many witnesses the fixed sum principle might be impossible as it would perhaps lead to the payment of more than the total fee to be levied. In both cases extra work would be thrown upon Court Establishments.

10. A more serious objection remains to be stated against Sir Richard Garth's suggestion. It would lead to a most unwise economy in the summoning of witnesses. At present the process fees for summoning witnesses are not too heavy. They are moreover not in any way related to the ad valorem fee. A man now summons all the witnesses he thinks necessary to prove his case. Sometimes he summons men unnecessary witnesses but he pays the process fees without any thought of the institution fee. But even if a very small portion of the institution fee had to be paid with each summons many witnesses

42¹ 143
would be dispensed with who are now
summoned. The evidence of most of
them would be desirable if not essen-
tial for parties are bad judges of the
value of their own witnesses. One of two
results would follow. Either a suit will be
delayed to procure the attendance of
the necessary or desirable witnesses,
or those witnesses will not be summoned and
a miscarriage of justice may result.

11. The conclusion I have to come to is that
the ad valorem fee ought to be split up -
into not more than three portions. I would
levy one-fourth when the suit is filed, one
fourth at first hearing, and one-half
at final hearing. Process service fees
are quite apart from the ad valorem
fee and ought to be left as they are now.

I have the honor to be
Sir
Your Most Obedient Servant
W F Graham
Officiating District Judge

Mr. Graham
here

AK

CC. 18. 3115

(Judicial Deptt)

From

The Off. District Judge
Cuddapah

%

The Chief Secretary
to the Govt of Madras
Stone House Hill

Dated 28th August } 1884
Recd. 31

No 131

Answering G.O.
Judicial Department
No 1775 of the 18th July last
with regard to the levy of
Court Fee Stamps in suits

430/1115

District Court of Kurnool

29th August 1884

No 10

From

Robert Price Esquire, LL.D.

Sy. District Judge,

Kurnool

To

The Honorable E. F. Webster

Chief Secretary to Government
Madras

Sir,

With reference to the order of
Government, dated 18th July 1884,
No 1775, Judicial, I have the honor
to submit the following report with
regard to the manner in which
Court-fee stamps should, in my
opinion, be levied from Suits.

2. The taking of a lump sum
at the institution of a suit un-
questionably bears hardly on
suits, inasmuch as it not only
prevents them from freely resort-
ing to the Courts for redress, but
also after the institution of the

suit affords them no inducement to settle their disputes amicably.

3. On the other hand the principle of fixing the amount of the fees with reference to the work to be done, besides being fair, would, in my opinion, tend to check unnecessary and vexatious steps being taken by the litigants.

4. I am of opinion that the fees should be levied with reference to the value of the subject matter to be dealt with and the work to be done by the Court, and on the "ad valorem" principle.

5. It appears to me (though I give my opinion with very great diffidence owing to my limited judicial experience) that the

448 107

system of collecting fixed fees at different stages of the suits as in the High Court is open to objection on the ground that those who resort to the aid of the Court for the recovery of small amounts of property have to pay just as large sums in the shape of fees as those who recover large amounts.

6. The District Munsifs of Nandyal and Lumlum agree with me in thinking that the fee should be distributed over different stages of the suit and according to the proportion of work to be done by the Court, but the Karnool Munsif is in favor of the present system and suggests that by making refunds of half the fees where suits are adjusted by mutual

agreement or compromise, as was provided by Section 26 of Act X of 1862, considerable relief would be afforded to the litigants.

7. The refund system has this disadvantage that the money refunded may in many cases, if not wholly, at least in part, fail to find its way into the pockets of the Sirkars and the Sirkars will be put to a great deal of unnecessary trouble and inconvenience.

9. As to the mode of levying fees it seems to me that as suggested in the 14th para of the letter of the Government of India embodied in the order of Government under reference, the institution fee should be broken

45P 109
up into several parts and taken at different stages of the suit as shown below:

Original Suits.

One-fourth on the presentation of the plaint;

One-fourth at the time of the settlement of issues or when the suit is compromised or decreed on confession;

One-fourth at the time of the summoning of the witnesses; and

One-fourth (or half in cases where summonses are issued for final hearing) at the time of the commencement of the trial.

Appeals.

Half on the presentation of memorandum of appeal; and

Half at the time of hearing.

10. In about 25 per cent of the suits one-fourth of the present fee only will be collected, the loss being three-fourths; in about 18 per cent of the suits half of the fee may be expected, the loss being half; and in about 7 per cent of the suits three-fourths may be lived, the loss being one-fourth, and on the whole not more than one-third of the total fee will be the loss.

11. The total amount of fees collected in the Courts of this District during the year 1883 is Rs 17,630; and one-third of this sum or Rs 5877 would be the loss to Government according to the

above calculation.

46 P 151

12. But I feel confident that by affording these facilities to Suits they will resort more freely to the Courts and the number of suits will increase considerably and I believe that the anticipated loss to Government will be amply compensated by the additional fees that will be received. In fact the loss, if there be any at all, will be very small while the advantages accruing from the change of the present system will in my opinion be great.

13. It is no doubt desirable that express notice should be given to the defendant that he will save half of the hearing fee by consenting

to a judgment, if he owes the money,
as remarked in the 20th para of
the letter of Government of India
above quoted.

I have the honor to be,

Sir,

Your most Obedt Servt

Wm

By District Judge

Ind
re
11

346
Judicial, 1884) Department

From
Robert Rice Esquire L.L.D.
By District Judge of
Kurnool

Dated 29th August } 1884
Rev^d 1 to p 6

No 10.

Reporting, with reference
to the order of Government dated
18th July 1884, No 1775 Judicial,
the manner in which Court
fee stamps should be levied
from litigants.

47P
District Court South Canara
Mangalore 29 August 1884
155

From
The District Judge of
South Canara

To
The Chief Secretary to Government
Fort St. George

Sir,

With reference to No 1775 Judicial,
dated 18th July 1884, I have the honor to
inclose copy of a letter on the subject re-
ceived from the District Munsiff of Udipi,
Mr. K. Krishnaswami, the suggestions contained
in which seem to me to be both practi-
cable and such as might be adopted with
advantage to the public.

2. I am decidedly in favor of the
proposed system of breaking up the in-
stitution fee into parts and making it
payable "at certain marked stages in
the litigation," namely, (1) at the institution
of the suit, (2) before the settlement of

enclosed

issues, and (3) before the final hearing in cases in which there are those three stages in a suit; and in other cases, where there is no intermediate hearing, the suit being posted at once for final hearing, in two instalments - the second instalment to be the amount that would have been payable at the second and third stages if there had been an intermediate hearing.

3. The Munsiff's suggestion is that 50 per cent should be paid at the first stage; but as the object is to encourage parties to come to an amicable settlement, and to make the payment proportionate to the work done, I am of opinion that the rates for each of the first two stages might be 25 per cent, the remaining 50 per cent being payable, in case of the suit being taken up for final hearing.

4. The principle of payment in proportion to work done also requires that a fee should be paid for each witness examined and for each exhibit filed in the suit; and for these the rates suggested

* This suggestion is made on the assumption that the present rate of 50 per cent is to be reduced.

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by the Munsiff seem fair and proper.

5. It is necessary that the fee be charged for each witness examined and each exhibit filed, and not merely on processes issued - for, as pointed out by one of the Munsiffs, "the Code permits parties to produce their witnesses without taking out processes."

6. In the case of appeals the fee should be made payable in two equal instalments, the first moiety being payable on the appeal being presented and the other before it is taken up for hearing.

7. I feel no doubt as to the competency of the present establishments of the Courts in the Mofussil to do the slightly increased duty that will thus be thrown upon them; and as the fees will all be payable in stamps there is no ground for thinking that opportunities for fraud will be thereby increased.

8. A return to the system of refunding

deems

seems objectionable. It will throw additional
-al work on the establishments both of
the Courts and of the Treasuries and will
certainly be less convenient for indigent
sutors, and also less conducive to amicable
settlements, for as pointed out by one of
the District Messengers, a man who has
already paid the full Court fees is not so
likely to come to terms as the man by
whom payments have still to be made.

I have the honor to be

Sir,

Your most obt. Servt

J W Best

District Judge

Compd
J. B.

Enclosure in a letter of
y dated 29th August 1884
from the Dist. Judge of
South Canara

Copy of Holpi Munsiff's
letter.

N. 100

Enclo

To

⁴⁹
District Munsiff's Court
Udipi, 14 August 1884.
161

J. W. Best Esquire
District Judge of
South Canara.

Respected Sir,

I beg to submit my report on
the question of Court fees, called for with refer-
ence to the Government of India's Letter dated
3rd July 1884, N. 1444, G. D. - I shall try to be
as brief as possible.

2. The general principles accord-
ing to which Sir Richard Garth would modify
the levy of the Court fees are, in my opinion, emi-
nently sound. In the interests of justice and pub-
lic policy, no less than from a regard to the con-
venience of litigants, I shall hail the day when
the Government will be able to effect such changes
as may be feasible in the direction indicated by
the Chief Justice of Bengal.

3. As the Government cannot how-
ever just yet give up altogether so well establish-
ed a practice as the advalorem collection of Court
Fees, it will, I fancy, be advisable to adopt a
system which will combine the advantages of
both methods and minimise the inconveniences

attributable to either

4 The suggestions I would make are the following:-

(1) The Court fee payable on plaints shall be at the rate of 3 per cent on the value of the suit.

(2) At the settlement of Issues, an additional fee of $1\frac{1}{2}$ per cent shall be paid by Plaintiff.

(3) At the Final Hearing, a further fee of $1\frac{1}{2}$ per cent shall be paid by Plaintiff.

(4) The minimum fee on a plaint shall be Rupee one, for settlement of Issues, annas eight, and for Trial annas eight.

(5) As regards declaratory suits and the like, the present fixed fee might stand, Rs 5, being paid on the plaint, Rs 2-8-0 at the settlement of Issues, and Rs 2-8-0 at the Final Hearing.

(6) In suits before District Munsiffs, on every document produced before the settlement of Issues, a fee of one Rupee shall be paid in Regular suits, and eight annas in Small Cause suits

50 3/15
by the party producing it. Before the District and Subordinate Courts, the rate shall be double that before District Munsiffs. This fee shall be paid at the settlement of Issues.

(7) On every document produced after the settlement of Issues, the fee shall be double that prescribed in No (6). This fee shall be paid before the commencement of the Final Hearing.

(8) In suits before District Munsiffs, for every witness examined, a fee of one Rupee shall be paid in Regular suits, and eight annas in Small Cause suits by the person applying for his examination. Before District and Subordinate Courts, the rate shall be double that before District Munsiffs. Such fee shall be paid before the commencement of the Final Hearing.

(9) Upon the production of every affidavit the fee shall be annas eight before District Munsiffs and Rupee one before District & Subordinate Judges.

(10) The stamping of all applications except the first, whether for production of documents or for examination of witnesses shall not be necessary.

5 In order to find out what would be the difference between the collections actually made under Act VII of 1870, and the fees which would be received

of the above rules were enforced, I had the necessary calculations made in reference to all suits. Regular as well as small cause, decided in this Court from the 1st of April to the 31st of July last. The results are given below:-

	Regular suits (1448)			Small cause suits (141)			Total			Remarks.
	Rs	as	p	Rs	as	p	Rs	as	p	
<u>Actuals</u>										
Fees on Plaints	1741	14		288	8					All suits decided upon contest are included both under A & B and all suits tried ex parte under C only
Grants on second & subsequent applications for production of documents and examination of witnesses	22	12		15						
Total	1764	10		289	7		2054	1		
<u>As proposed</u>										
(A) Fee on plaints at 3 per cent.	803			178						
(B) D ^o at the settlement of Issues at 1 1/2 per cent.	163	8		22	8					
(C) D ^o at the Final Hearing at 1 1/2 per cent.	279			49						
(D) D ^o on documents produced before the settlement of Issues	151			28	8					
(E) D ^o on docs produced subsequently	78									
(F) D ^o on witnesses examined	261			45	8					
Total	1735	8		323	8		2059			

6. The above table speaks for itself. The difference between the total receipts under the present Act, and those under the system herein proposed is too significant to call for any lengthened remarks. It must however be noted, that the collections under (B) to (F) may prove somewhat smaller, by reason of the great inducement there will be to come to a reasonable settlement instead of attempting to substantiate

51/8/15
false pleas. Any deficiency arising from this cause will not, I am sure, be regretted by Government, and it will, I think, be more than made up by increased receipts under (A) and also by the imposition of a fee on each document filed and each witness examined in Miscellaneous Petitions, different rates being provided for appealable and unappealable cases.

7. If the Government desire that the total amount leviable in the form of Court fees should be reduced, I would give it as my humble opinion that the reduction should be made in the Institution fee (A) rather than in any of the items (B) to (F).

8. The idea of reverting to the practice of refunding a portion of the Institution fees does not commend itself to my mind. In the first place, the necessity to provide a full fee at the outset has generally a deterrent effect which is not altogether removed by the prospect of a return of a portion of the money in a certain contingency. In the second place, the practice would be fraught with trouble and inconvenience to the Court as well as the Revenue Department. In the third place, in order to obtain a refund the suitors will sometimes have to secure the good graces of Subordinate officials and (where the certificates are drawn up in the names of their Pleaders) of their Pleaders also. Again, parties who may not have money enough to pay the full fee in a lump sum, will be compelled to enter in to a multiplicity of transactions about a single

amount, such as borrowing, paying into Court, getting back and repaying transactions which will cause considerable loss to the suitor and will benefit no body but the lawcar. I am not therefore in favor of the revival of the Refund system.

9. The proposal to enhance Process Fees seems also open to objection. In Final Hearing cases, those fees will have to be paid long before the day on which settlement of Issues and trial will take place, in fact at the time of instituting the suit or shortly after. By this, the salutary principle of "distributing the fees over the various proceedings in the suit" will be violated. Again, if the applying for process alone is to involve a heavy charge, the parties would themselves bring their own witnesses and the Government would then have no compensation for the sacrifice they would make in remitting a part of the Institution fee. The object being to discourage false pleas & fabricated evidence, and to make the person who indulges in such things to pay for the luxury, the fee should, I think, be collected on every document produced, and every witness examined, and the amount levied should be called by its right name. It should not be mixed up with process Fees, which being primarily the fund from which the Process service Establishment is paid, should not in my opinion be very much in excess of the exigencies of that service.

10.

528/15
I would only add in conclusion that as the fees proposed by me will have to be paid at three (and in some cases only two) marked stages of a suit, the existing staff even of a District Munsiff Court will be found quite equal to the task.

I beg &c &c

(Signed) K Krishna Rao
District Munsiff

(True copy)

W Best
District Judge

Copy
DP

Govt (1884) Judd's Dept.

From

The District Judge of
South Canara

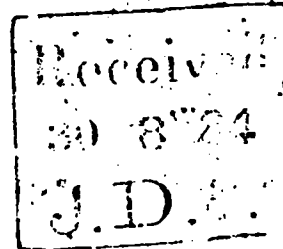
Dated 29th August
Recd 2nd Sept. } 1884.

No. 7.

Enclosure - 1.

With reference to G. O. of 19th
July last, submitting his opinion
on the question of charging
the system of the High
Court fees.

No. 142



From

Subordinate Judge's Court, Padprati
29th August 1884

Encls

171

The Subordinate Judge of Padprati
now at Bellary.

To

The District Judge
Bellary.

Sir,

Adverting to your post note, dated the
30th ultimo, communicating, for my
opinion, G. O. dated the 18th July 1884, No 1773,
J. D. I most respectfully beg to submit the
following report on the points referred to in
the letter from the Government of India
enclosed in the G. O. aforesaid and to re-
quest that I may be excused for the delay
that has unavoidably occurred in sending the
report, and be pardoned if any of my re-
marks have in any way gone beyond the
limits prescribed by the Government of India
in para 23 of their letter.

2

The reference in question is due to
certain suggestions made, in respect of the
levy of Court fees, by the Honorable the present
Chief Justice of Calcutta, who seems to be of
opinion that the levy of a large institution
fee too often operates as a denial of justice and
gives rise to very objectionable practices, that
it

its effect with the generosity of debtors is to prevent suits from being settled out of court and to prolong litigation unnecessarily, and that the only just mode of lessening such fees is to distribute the same over the various proceedings in the suit as is done in the High Courts on their Original Side. The Government of Quebec (vide this letter) observe that there is however one step towards giving effect to Sir Richard Garth's views which could probably be adopted without much disturbance of existing arrangements, and that step is to break up the institution fee into two or three parts which would be taken irrespectively of all smaller details of procedure at certain marked stages in the litigation, or to continue to take a full fee on the institution as at present and to refund a portion of it in the event of the litigation terminating at a particular stage by compromise, compromise or withdrawal of the suit.

3. A consolidated institution fee, in the object of introduction, the lightening of the labors of ministerial establishments of courts or not, has led to the following results:-

- a. The amicable settlement, in a great majority of cases, of matters in dispute between parties;
- b. The speedy disposal of cases;
- c. The general preservation of friendly relations between the Lector public and the pleaders; &c.
- d. The satisfactory collection of what is due to the State without giving much room for the perpetration of fraud on the part of the ministerial establishments of courts.

4.

The amicable settlement of matters in dispute between parties. Three classes of claims constitute the bulk of matters in dispute between parties in this country; claims for money due under contracts oral or written; claims for partition and claims for maintenance.

As soon as money becomes due under a contract, the person entitled there to makes a demand for the same on him from whom it is due, if payment is made at once, the claim is satisfied; if not the creditor points out to the debtor the consequences of litigation in court or the common friends of creditor & debtor interfere and draw their attention to the expenses of litigation and induce them to come to terms, and fresh contracts are entered into between the parties. It is only when such second or third contract is not duly performed that suits are brought into court. If a reference is made to the records of suits brought on bonds it will be found that the majority of the bonds secured have been executed on account of debts which had been incurred and become due before the execution of the said bonds, in whole or in part, and that where such suits have been brought on bonds for money lent at the term of the execution there of they are accepted at an amicable settlement either by arranging for part payment or the execution of a fresh bond had been made in vain. These arrangements for an amicable settlement before suit which are often successful are in

my humble opinion due to the large institution fee which has to be paid if a suit has to be instituted.

Again a few harsh words of the managing members of the family or the misunderstandings between male members thereof may often suggest to those entitled to shares or maintenance or their friends, the expediency of seeking for such shares or maintenance. The institution fee that has to be paid in such cases being large and having to come in the majority of instances out of the estate, divisible, or one which the maintenance is a charge, parties do not rush into court at once but endeavour to have their claims settled, and do often succeed in having them settled, by the intercession of friends and relations or of persons in whose disinterestedness the parties have confidence.

Thus the presence of a large institution fee prevents people from rushing needlessly into court and induces them to have their differences adjusted without resorting to the assistance of the court, and if enquiries be instituted it will be found that claims so adjusted are as numerous as claims that are brought into court.

If the institution fee be reduced most of the claims now adjusted out of court will be brought into court because of the small expense involved in doing so, and where once a suit is brought into court it is but rarely that amicable relations are restored between the parties.

Moreover false claims are now brought into court as far as practicable by the large institution fee, and such of them as come into court are instituted by persons who have resources for which they could not find better employment or who are aided by persons having such spare resources. The lowering of the institution fee will offer inducements in the same direction to others also.

The speedy disposal of cases.

After the payment of the institution fee no further demands for large payments in the shape of court fees have to be made and the suit progresses as rapidly as the working capacity and the inclination to work of the presiding judge and pleaders admit. If on the other hand a fee has to be levied at settlement the marginally noted tag is there will be considerable room for delay. No body is willing to pay money unless it becomes actually due. The payment of fees will often be delayed some times with just excuse and some times without. The plea of disease or of floods on the way will often be urged as an excuse for the non-payment of fees practically; and moreover allegations to the effect that the defendant expressed his willingness to admit the debt and that Plaintiff has not therefore brought the fee &c will be put forward; and the business of the court will be delayed either by the adjournment of the suit itself and the disturbance of the business arrangements of the court or by holding enquiries as to the truth or falsehood of the allegations.

allegations urged as an excuse for the non payment of the fee; the system of payment is each proceeding in the suit is in regard no doubt in the Presidency Towns on the original sides of the High Courts; the limited area, and the superior intelligence of the Sutor and pleader operate as a bar to the urging of such pleas. In the peculiar circumstances of the Mufassal, the introduction of a scale of part payment will encourage falsehood and will interfere with the speedy disposal of business.

The general preservation of friendly relations between the Sutor public and pleaders. If the system of part payment is introduced considering the distance at which parties reside from Courts & pleaders, it will be necessary for the Sutor to leave once for all all the money that may have to be paid; with his pleader, or to instruct his pleader to write to him as occasions for payment may arise. In the former case no advantage is gained by the Plaintiff's Sutor by the introduction of the system of part payments but he is placed in a worse position. He has to pay into the hands of the pleader the entire sum which he has now to spend in the purchase of stamps & which he is sure, has been so spent as soon as his plaint is filed but for an account of the disposal of which he will have to look to his pleader under the new system. This will increase the work of pleaders and will give them a claim to extra remuneration about which and the accounts themselves

disputes

disputes may often arise. I have had to point out elsewhere some of the difficulties which would arise under the system of part payment, and those difficulties have their corresponding intricacies as between pleaders and parties; a troublesome party may deny the receipt of a letter said to have been addressed to him by his pleader or allege a payment to his pleader which he has never made, or an unscrupulous pleader of a pleader may allege having written a letter when he never wrote one or state that a payment actually made to him was never made. Such instances may be rare but they will occur.

It may be said that the difficulties pointed out by me exist in the case of witness fees; but the sums paid as witness' fees are small and the bulk of it is generally expended and the parties very often do not trouble themselves about the small balance.

The satisfactory Collection of court fees &c. In the Madras Presidency the largest number of plaints is presented in the Courts of District Sessions and Subordinate Judges; the average number presented per working day may be taken as 5; the number is small, the Judge examines them, the moment they are presented and satisfies himself as to the payment of the requisite institution fee, and there is no further hitch or difficulty about court fees. If such court fees have to be paid on two or three occasions the Judge can hardly find time to satisfy himself whether the fees that have to be paid have

have been paid. Generally, shearing 20 small cases are posted for hearing, and two or three Pints for issues, and the same number for final disposal. The Judge cannot be expected to ascertain whether the periodical fees in all such cases have been paid. The Clerk now exercised personally by the presiding Judge will cease to be so exercised. I leave it to the Head Clerk who is answerable for the length process fees will unnecessarily add to the responsibilities of that officer, while the Judge will have to ascertain in each case called on whether the requisite fees have been paid. These periodical payments especially in the case of small cases will have to be made in great facilities and experience has shown that it is these stamps that are tampered with.

8. I have thus pointed out the advantages resulting from the levy of a consolidated institution fee and I may also add that the facilities afforded for suing in forma pauperis and on a stamp of Rs 10 in Mercantile cases for taking an account, suit the convenience of parties admirably. I see no hardship at all in the present system of levying a consolidated institution fee and as far as the actual levy is concerned it is far superior to the system of levying by hires or distraints.

9. While thus advocating the continuance of the present system of levying a one fee at the very outset all the court fees that may have to be collected in a case I cannot but admit the equitable and reasonable character

598/479
character of the proposal whereunder a portion of such consolidated fee is to be refunded, should the Suit be disposed of by admission or compromise.

The system of refunds has no doubt its drawbacks and we hear now and then of money refunded not reaching in its entirety the party in whose favor it is granted owing to the perquisites that have to be paid in respect thereof to the ministerial servants of courts and kutcheries and others. Such instances especially in the case of the ministerial servants of public officers are becoming rarer and rarer and I have reason to believe that with the progress of education and general intelligence they will soon disappear altogether. As to payments made to others they are rather of a voluntary character. Be the disadvantages of the refund system what it may, they are nothing when compared with the mischievous results of the part payment system, which will impose far more labor on parties, pleaders, clerks, & Judges than the refund system.

I beg to submit that refunds may be granted as under:-

- a. $\frac{2}{3}$ of the court fee, if a Suit is disposed of, on the day the parties have to appear in the first instance, on admission or by compromise or withdrawal of the Suit.
- b. $\frac{1}{2}$ the court fee, if a Suit is disposed of as aforesaid after the settlement of issues and before the citing of witnesses, &
- c. $\frac{1}{3}$ of the court fee if a Suit is disposed of as aforesaid

forwarded before the examination of
witnesses.

I would grant no refunds after the exami-
nation of witnesses in a contested Suit
has begun, for amicable arrangements &
such compromises are easier to only after
the parties have become aware of the im-
pression produced on the Court by the
evidence adduced by them; nor are
in favor of refunds in ex parte cases for
clause (a) gives an inducement to a
party to appear and admit the debt; and
moreover after the refund is granted the
defendant who has been ex parte may
have the ex parte decree set aside and
contest the claim. If refunds are granted
in ex parte cases they must be granted as
per clause (a) and the defendant seeking
to have the ex parte decree set aside must
be made to pay in the first instance
the amount refunded but all this will
complicate matters. Compromises to set-
tle parties to a refund must also be
recorded in Court at the instance of both
the parties. Very often a Suit is brought
on an extremely suspicious looking
bond, and when the Suit is entered on
satisfaction is reported; in the mean-
time another bond is got up, according to
the Suit and in debt & interest, & per-
petrating to have been granted by the defendant. A
Suit is brought thereon and then the
defendant has to take extraordinary
pains to show the false character of the
proceedings in the former Suit; I am
therefore

60 p. 181
Therefore of opinion that before a party
can claim a refund on the ground of a
compromise, such compromise should
be recorded in Court at the instance of
both the parties.

11 I venture to make a further sug-
-gestion in this connection of granting re-
-funds. It appears to me that in all appeals
the Court fee paid on account of what is
allowed on appeal should be refunded
to the successful appellant and that the
Respondent should not have to bear
it in as much as the mistake or error
by the lower Court cannot reasonably be
attributed to either party, and I may also
point out that the principle on which
my suggestion is based seems to be
followed in those cases where a decree is
reversed and a Suit remanded for
retrial and where the value of the Stamp
of the appeal memorandum is refunded.
My suggestion no doubt may lead to con-
siderable loss of revenue, but I beg to
submit that it points to the first step to
be taken in enforcing the principle that
the payment made by Sutors to Govern-
ment should be commensurate, as
far as practicable, with the good actually
done by Courts on their behalf.

I have the honour to be
Sir,

your most obedient servant

A. R. Ramesh

Subordinate Judge

Judicial { 1884 } department.

From,
The Subordinate Judge,
Tadpatri.

To,
The District Judge,
Bellary.

Dated 29th August } 1884.
Received.

No. 142.
Enclosure No. 1.

Subject.

Submitting his Report
on the points referred to
in the letter from the
Government of India
embodied in G. O. dated
the 18th July 1884, No. 1775.
as per District Court's for-
note, of the 30th U. C. to
the above regarding the
 levy of Court fees.

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53 P
District Court Bellary

Dated 30th August 1884
1885

From,
J. D. Goldingham Esq.,
District Judge of Bellary.
To,
The Chief Secretary to Government
Madras.

Sir,

In acknowledging the receipt of G. O.
dated 18th July 1884, No. 1775 Judicial, I have the
honor to state that in my opinion the amount of
Court fees payable by litigants should be regulated
better with reference to the value at stake in the
litigation and to the amount of labour imposed
on the Courts.

2. Sir Richard Garth observes that the imposi-
tion of a large institution fee too frequently operates
as a denial of justice. In some instances it
possibly may do so; but according to my experience
not so frequently as to render a change desirable,
which would tend to flood the Courts with false
and vexatious suits. This undoubtedly would
be the result of any sensible lowering of the
Institution fee.

3. Every system is open to criticism, but on
the

the whole I think the least objectionable course is to
levy the full institution fee at the commencement
of the suit, and then give certain refunds according
to the amount of labour actually undergone. The
refund might be divided, thus $\frac{1}{3}$ of the institution
fee if Plaintiff's claim is completely satisfied
before the 1st hearing, and $\frac{2}{3}$ if satisfied after the
settlement of issues and before the examination
of any witness. After the examination of witnesses
has once commenced I would be strongly opposed to
any refund. If compromise is effected at this stage
it is in consequence of the strength or weakness of
either parties, case being apparent, and the most time
and labour is expended in the examination of witnesses.
In no case would I grant a refund when the
compromise entails on the bank the labour of ex-
ecuting the decree; nor in ex parte cases.

4. A point deserving of attention is whether a
refund of the stamp levied on the appeal, or a portion
of it, should be made when the decree of the Court of
1st instance is reversed or modified. The institution
fee is theoretically supposed to cover the whole cost
of the litigation excepting certain incidental expenses.
If the decree of the 1st Court is confirmed, the fault is
that of Appellant and he is rightly made to bear
the

54 18
the further tax. But if that decree is reversed
or modified the fault is that of the Court and
it might be thought that the unsuccessful Suitor
should not in justice have to bear the cost of the
Judge's error.

5. I would further observe that the fees at present
levied on some suits, e.g. those in which the value
of the subject matter can not be estimated in money
which give the greatest trouble to the Courts, are too
low; while in others they are too high, but I doubt
if this falls within the scope of the present reference.

6. After drafting this letter I received a
communication from the Sub Judge on this subject
and as his letter contains some valuable remarks
I take the liberty of enclosing it in original.

I have the honor to be,

Sir,

Your Most Obedient Servant

J. D. Goldingham

District Judge.

From

The

District

Judge

Bellary,

To

The Chief Secretary to Government.

Dated 30th August

1884.

Despatched

Received

Station Bellary

No. 11

Enclosures 1.

Submitting his report on the propriety of making a change in the form in which Court fees are now levied referred to in L.O. dated the 18th July 1884 No. 1775

N^o 8.

61 1/2
District Court of South Arcot
Cuddalore, 2nd September 1884

From

J. Hope Esquire,

District Judge of

South Arcot.

To

The Honorable C. F. Webster,

Chief Secretary to Government,

Madras.

Sir,

With reference to the order of Government dated 18th June 1884, No. 1775, I have the honor to state my opinion that the breaking up of the institution fees into two or three parts and spreading it over the different stages of a suit will be an advantageous measure in so far as it will obviate the necessity for suitors paying down a lump sum of money at the commencement of their suits and will be an inducement to them to settle their suits amicably out

of

of Court at one or other of the sittings prior to the final hearing.

2. All the District Judges' sittings I consulted on the point share this opinion, and deprecate the re-introduction of the system of refunding portions of the institution fee.

3. I would propose that one fourth of the fee should be paid at the presentation of the plaint, another one fourth at the settlement of issues and the remaining one half at the final hearing when witnesses are examined.

I have the honor to be
 Sir,
 Your most obedient servant

L. M. S.
 District Judge.

3496.
From
The District Judge of
South Arcot.
To
The Chief Secretary
to Government,
Madras.

Dated 23 September 1884
Recd. 1

W. G.

Stating his opinion that
the breaking up of the
institution fee into two or
three parts and spreading
it over the different
stages of a suit will be
an advantageous measure.

7/11
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W. G.

No 2782. 20 195.
High Court of Judicature,
Madras, 23 September 1884.

From J. A. Davies Esquire,
Ag. Registrar of the High Court
of Judicature at Madras.
To The Honourable E. F. Webster,
Chief Secretary to Government

Sir, I am directed to acknowledge
the receipt of G.O. No 1775, dated
18 July last, communicating, for
early report, papers from the Government
of India on the propriety of making
a change in the form in which Court
Fees are now levied in the Mofussil
Courts and on the Original Side of
the High Court, and in reply to state
that this Court gladly welcomes the
suggestions made by the Government
of India for reducing the heavy
Court Fees which are a serious burden
on suitors, and which fall most

heavily on classes of suitors who are least able to bear them.

2. The greater number of the cases instituted in our Courts are for the recovery of debts, and in most instances payment is refused owing to the debtor's inability, rather than unwillingness to satisfy his creditor.

3. In a large percentage of these cases the debt is admitted or the claim is compromised. It would be a sensible relief to the debtor if he escaped the payment of a portion of the Court fee now levied.

4. At first sight the proposal to allow this reduction by collecting the fee in instalments at various stages appears to be the most convenient, but the Court apprehends that it would entail much delay in the despatch of business. It would necessitate in some cases an

30 197

enquiry into pauperism, at any of the ~~several~~ stages of a suit at which a considerable fee would be taken and it is doubtful whether the poorer suitors would be benefited by it. Ordinarily they raise the institution fee on such security as they may be able to offer, and unless a stipulation has been made for further advances as the suit progresses, the money lender would use the urgency of his debtor's need to bring into Court a fee within the prescribed time to extort higher interest from him. The Court therefore recommends that the whole fee should be demanded and a refund allowed, although this course will no doubt entail additional work on the offices of the Court and the Treasury. If $\frac{1}{2}$ the fee was refunded on the adjournment of a suit before settlement of issues and $\frac{1}{4}$ after settlement of issues and before the actual trial has commenced, and in appeals if $\frac{1}{2}$ the fee were

refunded before the hearing of the appeal, the loss of revenue in this Presidency has been roughly estimated at about two lakhs of rupees.

5. The Court desires to observe that, if a more equitable system was introduced for the valuation of suits for the recovery of land and a higher fee than 10 Rs levied for suits falling under Schedule II, Article 17, Clauses 3, 4, 5 and 6, of the Court Fees Act, not only would this loss be probably made good, but the Government would be in a position to reduce the existing rates. It is apparent from the returns from the Original Side of the Court that, where fees are paid for work done, the fees in suits of the description last referred to are as high as in suits of ascertainable value.

6. It would be perhaps difficult to make an exhaustive list of the

40 199
cases falling under this class, but something might be done towards it.

— Suits for a declaration of the title of a trustee, or the right of a karnavari in Malabar, right of a Ejaman in Canara, the right to an office whether honorary or accompanied by emoluments, the right to the use of a channel or tank, or other immovable property held by co-owners or persons having a common interest, the right to declare future interests in property where such an action is maintainable and suits for the declaration of status, the invalidity of an adoption, or of an alienation by a person having a qualified interest in property suggest themselves as the most frequent instances.

7. In many of these cases, the questions that may be raised involve a considerable expenditure of the time of the Court and should

in fairness bear a higher fee than 10 Rufus.

8. The proposal to add part of the advocatum institution fee on to the process fees does not commend itself to this Court. It is desirable that these fees and copying fees should as far as possible, retain their present character of payment for work done.

9. The question as to the alteration of fees on the Original Side of the High Court is one of considerable difficulty. It must be admitted that the fees at present levied fall most heavily on suitors in cases of small value and are not less than would be levied in the Small Cause Court. The following table shows the fees that were ascertained to have been paid in the High Court in cases triable in the Small Cause Court but instituted in the High Court in 1880, compared with the fees payable in the Small Cause Court.

5-8
201

Suit Number	Value		Institution Fee		Further Fees actually paid		Total Fees in High Court		Fee if suit had been filed in Small Cause Court	
	R	At P	R	At P	R	At P	R	At P	R	At P
CS No 13 of 1880	840	6-8	30	---	18	---	48	---	68	---
15 "	462	2-9	30	---	16	---	46	---	43	6-1
47 --	510	4-1	30	---	10	---	40	---	46	10-1
70 --	339	8-1	30	---	49	8-1	79	8-1	37	3-6
78 --	487	1-2	30	---	29	---	59	---	46	15-1
79 --	691	9-2	30	---	25	---	55	---	58	3-6
106 --	886	3-11	30	---	49	---	79	---	76	14-1
126 --	862	10-8	30	---	15	---	45	---	69	6-6
151 --	623	9-3	30	---	32	---	62	---	53	15-6
155 --	724	14-1	30	---	31	8-1	61	8-1	60	8-6
158 --	668	5-3	30	---	33	---	63	---	61	12-1
160 --	541	3-1	30	---	45	---	75	---	48	9-1
163 --	578	11-2	30	---	26	---	56	---	50	14-6
169 --	630	---	30	---	48	---	78	---	54	6-1
182 --	407	15-1	30	---	27	---	57	---	39	15-6
240 --	947	9-1	30	---	6	8-1	36	8-1	78	3-6
273 --	698	---	30	---	12	---	42	---	61	2-1
273 --	563	2-8	30	---	35	8-1	65	8-1	49	15-1
300 --	900	---	30	---	7	---	37	---	71	12-1
319 --	675	15-5	30	---	20	---	50	---	57	3-6
322 --	432	---	30	---	37	---	67	---	45	8-1
406 --	424	---	30	---	32	8-1	62	8-1	43	---
444 --	475	13-1	30	---	28	8-1	58	8-1	44	3-6
481 --	705	14-6	30	---	63	---	93	---	62	15-6
499 --	300	---	30	---	14	8-1	44	8-1	32	12-1
Total			750	---	710	8-1	1460	8-1	1362	8-6

N.B. In neither list are the fees for subpoenas and executions included.

10. The fees paid in suits of considerable value if actively contested, and in suits incapable of valuation, are by no means light, and in some cases are in excess of the fees that would be leviable under the Court Fees Act. The Registrar on the Original Side has submitted the subjoined list of 19 suits taken at random which illustrates this statement.

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Settled for Govt. Husband in suit under High Court Fees Act.

C. S. 343 of 76	Not valued - Accounts of a Pagoda	300	10	Fixed
" - 10 - 78	Not valued - For an account of property	379	10	"
" - 75 - 78	Valued Rs 1716 - 5 - 6 on promissory note	163	115	Advalorem
" - 276 - 78	Not valued - For an injunction &c.	569	10	Fixed
" - 368 - 78	Valued Rs 2,602 - 5 - 3 knowledge of immovable property	381	160	Advalorem
" - 486 - 78	Valued Rs 20,000 on Bond	461	775	"
" - 275 - 79	Value Rs 7,000 - For damages for trespass and wrongful conversion	400	355	"
" - 375 - 79	Value Rs 6,304 for value of goods short delivered	423	335	"
" - 419 - 79	Value Rs 12,140 - 8 - For an account and share	357	550	"
" - 89 - 80	Not valued - Administration suit	730	10	Fixed
" - 102 - 80	Not valued - To settle Scheme (Raja - parish church case)	757	10	"
" - 43 - 81	Not valued - For an account - Injunction and Receiver	509	10	"
" - 69 - 81	Not valued - Custody of Pagoda Jewels &c.	475	10	"
" - 124 - 81	Valued Rs 206,213 - 6 - 3 To recover loans and for account of partnership	386	1975	Advalorem
" - 201 - 81	Not valued - Accounts of a Pagoda	475	10	Fixed
" - 224 - 81	Valued Rs 10,000 for an account and compensation	368	475	Advalorem
" - 333 - 81	Valued Rs 4,500 for possession of a house	579	250	"
" - 255 - 82	Pro. Not under chapter 39. Valued Rs 2787 - 13 -	513	165	"
" - 351 - 82	Bronze link. Rs 10,722 - 9 -	377	505	"

G. B. The High Court figures however include fees paid for Subpoenas and execution.

The

11. The Court is however prepared to frame rules for levying an ad valorem fee in lieu of the present fixed institution fee of Rs 30, retaining the other fees now levied, and preserving a minimum fee in the case of suits cognizable by the Presidency Small Cause Court. It considers that $\frac{1}{4}$ of the fee levied under the Court Fees Act might be imposed on the institution of a suit and $\frac{1}{4}$ at the hearing, and that in all appeals from the Original Side the fee should be $\frac{1}{2}$ that charged on appeals from the Maffusil Courts. These appeals are however not numerous, nor could any fees be collected in the High Court that would make up for the estimated deficiency in the receipts from the Maffusil Courts, if the suggestion as to

78 05
the return of a portion of the fee is adopted.

12. Before however the Court proceeds to frame new rules, it desires (in order to secure some uniformity of practice) to have the benefit of the opinions of the learned Judges of the other High Courts.

I have the honor to be,
Sir,
Your most obedient Servant.

G. S. S. S.

Ag. Registrar,
Appellate Side.

Judicial { 1884. } Department

No.

FROM

THE REGISTRAR OF THE HIGH COURT
OF JUDICATURE AT MADRAS,
Appellate Side.

Dated 23rd

Received

25 September } 1884.

No. 2782.

Enc: None.

Submitting certain observations of the Hon. ^{the} Chief Justice and the Hon. Judges with reference to G.O. on the propriety of making a change in the form in which Court fees are now levied in the Mofussil Courts & on the Original Side of the High Court.

Judicial Dept.

Amendment of G.O. re. Beh.
Opinions of Judges a High

For orders

The Government of India asked that opinion might be obtained in connection with certain proposals made by Sri Richard Garth as to the levy of institution and other fees in the Mofussil Civil Courts.

The points for consideration are 1st whether it would not be advisable to arrange the system of fees in Civil suits, so as to spread the charges over successive steps in the progress of litigation - if so shown that be managed by a large institution fee & successive refunds. 1-2. a refund of $\frac{2}{4}$ of the sum was made up before witnesses were heard, a refund of $\frac{1}{4}$ or more if the suit were compromised before settlement of issues.

G. O. 18th July 1884.

Or instead of refund showed the
fee be taken by instalments

1.2. $\frac{1}{4}$ on filing - a second $\frac{1}{4}$

on Settlement of Issues, a $\frac{1}{2}$ on
hearing

2nd Showed any change he made
in fees would in the High Ct. towards
Applicating the fees there with
the rates charged in the High Court.

In answer to the first question.
The file shows that all judges
generally are in favor of spreading
the charges of a suit over its
successive stages and most are
in favour of doing this by a
succession of fees at each of the
main stages of a suit.

There would be no doubt some
opening for fraud if a system
of refunds were permitted in
the present state of the Court
Establishment. But there

are on the other hand some
apparently sound grounds for
retaining a heavy initial fee
in all suits. It is
of course true that the object of
the proposed changes is to prevent
as far as possible vexatious
litigation, the better mode
indubitably would be a substantial
fee for initiation with subsequent
refunds.

As the Judge says
this is no doubt general that persons
embarking on a law suit all
means are used to effect a
conciliation or settlement and
that this practice to a great extent
arises from a reluctance to pay
the initiation fee, once in the
dispute, and inside the law
the tendency is to fight to the bitter
end, feeling one strong animosity
have become bitter and the
Vakeels don't help as a rule
to effect a compromise. Now
the lowering of the initiation fee
with genuine trusts of the reluctance
to initiate a suit, with less

to a great extent the tendency towards compromise previous to entering the courts, will give them far greater opportunities to those ready to face into a law-suit. Every trifling difference: Obviously the result will be as Mr de Fane predicts; a rapid extension of litigation.

On the other hand by making the Plaintiff pay down full institution fee in the first instance and also in favour of this method: which is recommended by the High Court. with an opportunity to get refunded the difficulty of bringing a case in the courts will be much the same as it is now, but it will be more profitable to get quickly out of the courts.

There is the difficulty of ensuring that the refunds will reach the proper parties, but as years go on and the subordinates in the courts become more honest, this difficulty will diminish.

Does not think it a very serious difficulty now.

Upon the whole this submitted to the recommendation to be made to the Government of India should be in favour of refunds.

As to the exact amount to be refunded at each stage probably the Government will not think it necessary to enter into detail, no doubt the largest part should be refunded provided the case does not come to actual trial at which stage the labour of the courts is greatest.

As to the second point the Government will probably be satisfied with the proposal made in the High Court letter para 11 viz - to institute an "advocate fee" in lieu of the present uniform institution fee of Rs 30 retaining the other fees now levied - In which case the letter would be forwarded to

The Government of India, with
an expression of Approval.
13th Dec 1884

This proposal therefore to
send the whole correspondence
to the Govt of India with an
expression of opinion in favour
of the revised system and
consequence with the letter of
the High Comr.

all
2/10/84

26th Dec 1884
1/11/84

E
 O. J. 20 Hk

Ind. J. L. No 2514/159/3/1084

Dr. H. H. C. J. H. H. C.

5/10

Wm. H. C.

872
 Despatch No 13/10/84 Judicial Dept 217
 80 of J. H. H. C. No 2515 of 3. Oct/84
 Despatch 14/10
 Gov. Gen. of India
 Legislative Dept.

Ordered 3 October/84 No 2514
 Communicated to
 Govt of India

7/3rd Oct. 1884 No 2514.

1. I am directed with reference to your letter of 3 July 1884 No 1444 to transmit the marginally noted proceedings of the Government, in which are recorded the opinions of the various officers consulted upon the proposed change in the mode in which Court fees are levied in Mofussil Courts.

2. His Excellency the Governor in Council concurs in the opinion expressed upon the subject by the Honble Judge of the High Court and is in favour of a recurrence to the system of refunds, in preference to the distribution of the institution fee into two or three parts with regard to the judicial Com.

of revenue which would

result from the adoption of

the refund system, it is

impossible to make any

correct estimate, but the

loss would probably be

between 20 and 30 per cent

of the present revenue derived

from C^t fees.

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3/10

3/10

3/10

* This question brings to
say what the effect of the
refund system will be, but
probably it may be estimated
at $\frac{1}{4}$ or $\frac{1}{5}$ of the cases would
be compromised or with
chance to secure a refund.

E

Founders

proof. 3 — a

The Chap. 18

del

11
PRESS.

W. L. DEPARTMENT.
G.O. DATED *3^d Act 1884*
No. *2574-2575-*

First copy sent to Press. *6/10*

Returned for signature.

Despatched in print.

[Despatched]

Barrett

*communicating to
dia letter from
High Court in
tain observations
favorable to
the propriety of and
change in the for
are now
initiated*