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MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 2802

Press
Mis.

Dated 15-X-1885-8-

Not to be folded or roughly handled

Civil Debtors

15TH OCTOBER 1885, No. 2802, JUDICIAL.

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

READ—again the following paper:—

G.O., dated 1st September 1885, Mis. No 2306, Judicial.

Read—the following letter from R. S. BENSON, Esq., Acting Registrar of the High Court of Judicature at Madras, Appellate Side, to the Chief Secretary to Government, dated Madras, 31st July 1885, No. 2146:—

I am directed by the Honorable the Judges of the High Court to again invite the attention of His Excellency the Governor in Council to the desirability of prescribing, in accordance with section 338 of the Civil Procedure Code, 1882, scales of allowances payable for the subsistence of judgment debtors under arrest.

2. In the High Court's letter, No. 202, dated 12th September 1877, the necessity for framing rules on this subject was suggested, but in their order, No. 2473, dated 17th October 1877, the Government, while disposing of other points referred to in the letter, passed this matter by without remark.

3. In the High Court's letter, No. 899, dated 10th May 1882, the subject was again brought before Government, but they continued "to believe that it is best that they should not lay down any scale; but that it should be left to the court, under section 339, to fix, for the judgment debtor's subsistence, such monthly allowance as it considers sufficient with reference to the class to which he belongs."

4. Cases which have recently come under the notice of the High Court have caused it to again consider the subject in all its bearings, and I am directed to submit in some detail the considerations which have led the Honorable the Judges to the unanimous opinion that it is desirable to again ask the Government to prescribe scales of subsistence under section 338, and which have even caused them to entertain some doubts as to the legality of arrest for debt in the absence of such prescription.

5. Under that section the Local Government may, from time to time, prescribe scales, graduated according to rank, race and nationality, of monthly allowances payable for the subsistence of judgment debtors. Section 339 provides no judgment debtor shall be arrested in execution of a decree unless and until the decree-holder pays into court such sum as, having regard to the scales so fixed, the judge thinks sufficient for the subsistence of the debtor from his arrest until he can be brought before the court.

In paragraph the second, section 339 further provides when a judgment debtor is committed to jail in execution of a decree, the court shall fix for his subsistence such monthly sum as he may be entitled to according to the said scales, or, where no scales have been fixed, such sum as it considers sufficient with reference to the class to which he belongs.

It is clear that in these provisions there is, and was intended to be, a material amendment in respect of orders for the payment of subsistence allowance to civil debtors, as compared with the sum which it was open to the courts to order under the

Civil Procedure Code of 1859. Under that code (section 276), it was provided that when a defendant is committed to prison in execution of a decree, the court shall fix whatever monthly allowance it shall think sufficient for his subsistence, *not exceeding four annas a day*, payable by monthly instalments in advance; and, by section 277, the court might in the case of illness, or for other special cause, fix the monthly allowance at such sum, *not exceeding six annas a day*, as shall appear necessary, it being open to the court to revise or alter such special order, from time to time, on due cause being shown.

6. Notwithstanding these provisions, the High Court has reason to believe that 4 annas a day is still regarded by the Small Cause Court, Madras, as well as by the courts up-country, as "the ordinary bitta" for all debtors of whatever race, rank or nationality, and that, in the absence of any prescribed scales under section 338, the courts ordinarily, if not always, proceed as if no alteration had been made in the law since 1859.

7. The High Court, however, learns from the Superintendent of Prisons, Madras, that, in more than one case, he has refused the risk of keeping European and East Indian civil debtors on such allowances, and, having represented the matter to Government, has been authorised, in special cases, to raise the allowance, charging the excess cost to the contingent fund. Thus it would seem that this officer, with the permission of Government, allows a rate not sanctioned by the court, which alone is legally empowered to prescribe the rate (in the absence of rules duly framed by Government), and further that the extra allowance is paid, not to the execution creditor, as required by law, but by the State. This practice appears to the High Court to be, at the least, anomalous and unsatisfactory.

8. The High Court is, moreover, inclined to doubt even the *legality* of the present procedure of arresting debtors under decrees, when the Government has not fixed a scale.

It seems to the Court that, on a true construction of the Act, the Government are bound to prescribe scales. No doubt, the imperative mood is not used in section 338. The language is, "The Government may prescribe;" but, by section 339, it is provided that *no judgment debtor shall be arrested unless and until the decree-holder pays into court such sum as, having regard to the scales so fixed, the judge thinks sufficient for the subsistence of the judgment debtor from his arrest until he can be brought before the court*. Here the judge is bound to have regard to the scales prescribed. A judge cannot do his duty, in this respect, until Government prescribes scales. The language used is prohibitive of an arrest until the subsistence money, *having regard to the scales*, is lodged. The second clause of section 339, no doubt, contemplates that scales may not have been prescribed, but this clause was first used in the Act of 1877, and may probably have been inserted under the idea that a judgment debtor might have been arrested under the Act of 1859 and might be brought before the court under the Act of 1877 before scales had been fixed under that Act.

The Act of 1877 did *not* contain a clause the same as section 338, nor a clause the same as the first clause of section 339. The Act of 1882 is in section 339 a copy of the same section in the Act of 1877. The second clause cannot be enforced until after arrest, and, as there can be no arrest until payment according to the scales, it would appear that the first and second clauses are inconsistent, and that, to carry out the object of the Act, scales ought to be prescribed by Government. Although the language of an Act is apparently, in any section, only permissive and not imperative, it has often been held that such language must, from its relation to other language used imperatively in respect of the same subject, be read as imperative. The intention, to be gathered from the Act, is to govern; but even taking it that there is only a doubt whether the Act is imperative, it certainly seems highly desirable, in view of this doubt, that such scales should be fixed.

9. And even apart from the question of legality, the High Court considers, on a comparison of the provisions of the Acts of 1859, 1877 and 1882, that the legislature intended that the former scale of allowances should be revised and that it was considered desirable that such revision should be made by the Government.

10. The High Court would, therefore, suggest that His Excellency the Governor in Council should prescribe the scale noted below, which it believes will be found to be appropriate and calculated to provide for the several classes of debtors referred to in section 338:—

SCALE of subsistence allowance for civil debtors prescribed under section 338, Civil Procedure Code.

	1st class,	2nd class,	3rd class,
	not exceeding		
	AS.	AS.	AS.
Europeans, Americans and Eurasians	12	8	4
Natives	9	6	3

per diem.

Note.—On medical or other special grounds, to be recorded in each case, the court may order such increased allowance as may to it seem fit, and the court may, in like manner, from time to time cancel or modify such order.

Order—dated 1st September 1885, Mis. No. 2306, Judicial.

The foregoing letter will be forwarded to the Inspector-General of Jails, who will furnish a statement showing the actual rates of subsistence allowance paid to civil debtors of all classes and races in the larger jails of this presidency, and submit any remarks he may wish to offer on the suggestion made by the High Court.

(True Extract

(Signed) E. F. WEBSTER,
Chief Secretary.

To the Inspector-General of Jails, with C. No. 2759, original, to be returned.

READ—also the following paper:—

From the Inspector-General of Jails, dated Pootacamund, 30th September 1885, No. 269.

ABSTRACT.—Submitting statement showing actual rates of subsistence allowance paid to civil debtors.

ORDER—dated 15th October 1885, No. 2802, Judicial.

The scale suggested by the High Court, viz:—

	1st class.	2nd class.	3rd class.
	AS.	AS.	AS.
Europeans, Americans and Eurasians	12	8	4
Natives	9	6	3

will be adopted, subject to the conditions mentioned in their note, and a notification will issue accordingly under section 338 of the Civil Procedure Code.

(True Extract.)

Acting Chief Secretary.

To the Hon'ble the Judges of the High Court, with C. L.
" the Chief Judge, Court of Small Causes, Madras.
" the Inspector-General of Jails.
" all District Judges.

Exd. A. Raitt.

14-2-78
 7/3/80
 12/3/80
 9. 6. 14
 28. 1. 15
 17-8-85
 30. 9. 21

anj

G.O. of 1885 Madras
 JUDICIAL.

G.O., 15th October 1885, No. 2802.

OCTOBER

Civil Debtors.

Approving of the scale of subsistence allowance
 proposed by the High Court for — subject to the
 conditions mentioned in regard to changes on
 medical grounds.

Re: Debtors, High Court

No 289

9 abstract

Octacumud 30 Sept 1885

From
W. R. Grimes Esq
Inspector General of Jails
To
Chief Secretary to Government
Octacumud

Sir
I have the honor as
directed in the order of Government
dated 1st September 1885 No 2306
to submit a statement showing the
actual rates of subsistence allowed
paid to Civil Debtors of all classes
and rates in the principal jails of
this Presidency. I have no remarks
to offer on the suggestions made
by the Honorable the Judges of the
High Court, beyond this that I
consider it desirable a uniform

scale of subsistence money should
be laid down and that the scale
proposed by the High Court together
with the note musts will meet
all requirements.

I have the honor to be
Sir
Your most obedient servant
Census Pyramis.
Inspector General of Jails

L

Statement showing the actual rates of subsistence allowance paid to civil
debtors of all classes and races in the larger jails of this Presidency.

Jails

Subject

Remarks

Coimbatore A uniform rate of annas 3 per diem has been
allowed for all classes of civil debtors and
that this rate has been increased to annas 6

in only one case in 1882; there have been no
European or East Indian civil debtors in
this jail.

Trichinopoly Europeans and East Indians are allowed annas
6 per day, and natives annas 6, 4, or 3 according
to their rank and station.

The rates of subsistence allowance are settled
by the committing Court and vary from
annas 3 to 8, viz: 6, 4½, 4, 3½ and 3.

Calicut Annas 3 per diem are allowed by the Courts in the
Central Jail Bellary and Anantapur districts for all civil
debtors without reference to their rank, race or
nationality.

Judicial

Registrar, High Court, dated his
31st July. 18. 2146.

FOR ORDERS.

In this letter, the High Court strongly
urges Government to prescribe rates
under section 338 of act XIV of 1882
for the monthly allowances payable to
going out debtors in jail.

The greater part of the Registrar's
letter is devoted to an argument,
the intention of which is to prove that
under Act XIV of 1882 Govt has no
power but to prescribe such rates, &
in the absence of such prescribed
it is even doubtful whether
it is legal.

It is necessary to read sections
19 of act XIV of 1882, to see
by intention such and
it is. Section 338 is
only permissive. Section
names the possible
such rates.

So it appears that
in I fail to see the force of
the Registrar's reasoning.

... having regard to the scales so fixed,
were evidently written, with the
formal provision, "if any", omitted.
The drawers of the Act are not likely
to have anticipated the "doubt"
which the High Court has experienced.

Government has on more than one
occasion declined to sanction a fixed
scale of rates. The reasons for this
refusal are not known [to us]. It
is submitted that it is purely a
question of fact, whether rates are
required or not. If the Courts, in
ignorance of the change in the law since
1859, do refuse to fix more than 4
annas a day, for any arrested debtor,
of whatever race or sex, as is
stated at the close of the Registrar's,
then Government should intervene.
But on this point, we have little
or no information, and it is
submitted that the Inspector Genl.
of jails might be called on to supply
a statement showing the actual
rates allowed for civil prisoners
in the larger jails of the Pro.
with his opinion as to the
of Govt. taking action. It
be added that imprisonment
for debt, as it exists in
a survival of a system at
any European state
is not a method of
... ..

Q.O. 29th July 82. no. 825
Q.O. 3rd June 82, no 384. (original
put up)
Q.O. 3rd April 79, no. 756.
Q.O. 23rd May 79. no. 1215.
original received J. Madras &
put up.

The High Court have
over & over again recom-
mended that a scale
sh^d be fixed.

The Govt. has, as often
declined to move in
the matter.

I do not, myself,
see why the opinion of
the High Court in such
a matter should be
set aside.

But there can be
no harm in getting
the information sup-
plied from the
Jails of U.C.
26/8

is therefore not undesirable to raise
the expensiveness of the process, which
extra hardship to the prisoners, should
as far as possible, be avoided.

26/8

Should Gov't fix rates
for submarine
arrested debts?

FOR ORDERS.

John D. P. S. S. S.

My 2306-1-5-18
7-1-18

JUDICIAL.

Jail (1885) Department.

FROM
THE INSPECTOR-GENERAL
OF JAILS,

TO
THE CHIEF SECRETARY
TO GOVERNMENT.

noted

Dated 30th } Sept 1885.
Received }

No. 269

ENCLOSURE

SUBJECT.

*Submitting statement
showing actual costs of
subsistence allowance
paid to Civil Detention.*

Off memo.

The Inspr General of
Jails is requested with
reference to his letter of
the 30th Sep 1885, No. 269,
return the letter from
the C^y Registrar of the
High Court forwarded
with G.O. of 1st Sept 1885

No. 2306 Mis. P. 8 10
15 October 1885 No. 2802

Order

The scale suggested by the High Court
by Europeans } 1st class 2nd class 3rd class
African } 12 annas 8 annas 4 annas
Europeans }
Natives. } 9 annas 6 annas 3 annas

will be adopted, subject to the conditions
mentioned in the note, and a
certification will issue accordingly
under § 350 of the Civil Pro. C.

The Hon the Judge
of the High Court
Chief Justice
J. L. J. J.
2nd Judge
15/10/85
S. B. Madhav