

(1) Number of pages 26

(2) Date of repair 25-9-46

(3) Initials of the Referencer Cy

# MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

|                 |                         |
|-----------------|-------------------------|
| G.O. No. 604-05 | <del>Pres</del><br>Mis. |
| Dated 12-3-     | 1894.                   |

Not to be folded or roughly handled

No 98.

High Court of Judicature,  
Madras, 16<sup>th</sup> January 1894.

From

D. C. S. Cowie Esquire,  
Sd. Registrar of the High Court of  
Judicature, Appellate Side,  
Madras.

To

The Honorable J. H. Pries,  
Chief Secretary to Government,  
Fort St. George.

Sir,

In reply to G.O. dated 26<sup>th</sup> February 1892,  
No. 364, Judicial, referred to in your letter  
No. 2150, Judicial, dated the 2<sup>nd</sup> ultimo, I am  
directed to state that on examination  
of the circumstances, the High Court being  
still of opinion that the allowance made  
for the office establishment of the Official  
Assignee is inadequate, finds an almost  
insuperable difficulty in the way of  
adopting the Government's suggestion  
that the remuneration allowed to  
the Official Assignee should be fixed  
at such a rate as to cover the whole  
cost of his office establishment.

2. An opinion was at first entertained  
that the requisite funds might be provided  
from the interest from the accumulated  
sum of unclaimed dividends, which is  
invested in Government Securities,  
but on further consideration, it seems  
clear

with this interest is distributable as dividends and that (except when such distribution is made) the High Court is not legally competent to appropriate any portion of the funds for the remuneration of the Official Assignee or for the payment of his office establishment.

3. An alternative plan is to raise the rate of commission. Under the present rules, the rate is fixed at 5 per cent; which yields an average yearly income of Rs. 2217.

4. Assuming that an increase in the rate of commission caused no diminution in the amount of business coming into the Official Assignee's hands, the rate would at least have to be doubled to provide the minimum sum required for efficiency, but this increase in the cost of administering estates would undoubtedly deter many creditors from taking advantage of the Act, and would thus not only fail to produce the desired increase of the official Assignee's receipts but would seriously impair the usefulness of the Court.

the court are  
not competent  
to do so.

5. Under these circumstances and until legislation can be effected, the Judge would urge the increase of the allowance made to the Official Assignee and would strongly deprecate the withdrawal of it. To meet the present difficulty, legislation might take the form of an enactment enabling the Court to deal with the unclaimed dividends. The fund formed by the investment of unclaimed dividends is a large and increasing one and it is believed that the income from it is amply sufficient to afford the required allowance for the Official Assignee without prejudice to the probable demands of creditors.

I have the honor to be,  
Sir,  
Your most obedient servant,  
D. W. M.  
Ag. Registrar.

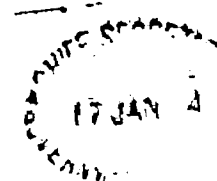
20/11

Judicial { 1894 . } Department.

No. (5) ✓

FROM

The Registrar of the High Court  
of Judicature, Appellate Side,  
Madras.



Dated 16 January } 1894:  
Received 17 \_\_\_\_\_  
Recd 18 \_\_\_\_\_

No. 98.  
Enc.

urging the increase of  
the allowance made to the  
Official Assignee and  
deprecating the withdrawal

of it.

The rules of the High Court of Judicature, Appellate Side, Madras, in part 3 of the 11th volume of the rules have been put up. Please to see if any of the rules are not in accordance with the rules of the High Court of Judicature, Appellate Side, Madras.

11/11  
7/2

24/1

Current No. 229

From

the High Court

Dated 16 Jan 1894

FOR ORDERS.

I agree that the case had  
be referred to India &  
that pending refer the H.C.  
should be asked to assist  
to the establishment of the  
offl Assignee remaining  
as it has been for some  
years. But at present, we  
really have not the money  
to ~~improve~~ improve  
the position of the Est., even  
if it were a matter which  
concerned Govt., which it  
hardly is.

The other suggestions in the  
Note seem right

WJ  
3/3/94

This had to be sent back  
several times for further  
references; hence the delay  
with it.

1. The Official Assignee  
was originally known as  
the Common Assignee & on  
the recommendation of  
the High Court, the Govt. in  
E.M.C. of 27 April 1880, No.  
338, Pub, sanctioned pay-  
ment to him of a monthly  
remuneration of Pagodas  
62/22/40 or R. 215/12/0.  
The ground upon which  
this allowance was sanctioned  
was that the Commission on  
the Estates dealt with by  
the Common Assignee was  
insufficient even to meet  
his expenses.  
It was understood that  
the Assignee would meet  
all office & other expenses  
out of the Commission  
plus this Govt. grant &  
would also derive therefrom  
the wherewithal to remunerate  
himself.

2. In 1848 the Insolvent  
Debtors Act, 11 Vic. C. 21, was

Every letter, whether printed or in manuscript, should be docketed and abstracted on the back; and the abstract should state clearly the purport of the letter and not merely its title subject.  
Enclosures and statements also, whether sent with letters, or merely under cover, should be numbered, docketed and abstracted. The headings of statements should be written in full to prevent mistakes. (G. O. 24 April 1894)

and in section XIX, that inasmuch it is laid down that the Official Assignee shall receive as remuneration a fair ~~sum~~ <sup>sum</sup> (to be fixed by the Court) out of the sum to be distributed as dividends & as other remuneration.

3. Shortly after the new Act came into operation the Judges addressed the Govt. on the subject of the remuneration of the Assignee. They pointed out that the new Act rendered it illegal for the Assignee to continue to draw the old Govt. grant while, at the same time, a Commission of 5 per cent on the Salaries was wholly insufficient to cover his expenses & also remunerate him for his labours. They therefore suggested that Govt. should continue to allot a portion of the Govt. grant of Rs. 62/20/40 as an allowance to meet the cost of office-establishment. They observed, but, in their opinion, the Assignee should receive himself a remuneration of Rs. 200 per mensem & that for his office establishment the Govt. should give a grant of Rs. 110 per mensem. ~~(Rs. 110)~~

The payment of Rs. 100 per mensem was accordingly sanctioned in G.O. 317 dt. 10/4/82, N. 678, Indt.

4. In January 1882 the High

Court represented to Govt. that the Official Assignee's establishment is undermanned & underpaid. The Judges therefore proposed to dispense with the Waterman & Doty, to entertain an additional Clerk & raise the pay all round & that Govt. should raise its grant towards office expenses from Rs. 110 to Rs. 263.12 per mensem.

Sir Henry Stokes objected to the proposal & in G.O. 26 Feb 1892, N. 364, Indt., the High Court was asked whether it could not arrange to raise the rate of commission so as to throw the whole cost of establishment upon the dividends.

5. C. N. 229 is the High Court's reply. The Judges object to raise the rate of commission on the ground that it would be necessary to double it at least & that the effect would be to prevent creditors taking advantage of the Act.

They therefore urge that their original proposals should be accepted but that legislation should be undertaken with the object of throwing all such charges upon the <sup>interest on the</sup> accumulated sum of unclaimed dividends.

Rule XXIV of the Insolvency Court Rules (page 68 of the Gazette put up) contains the provision that the interest

unclaimed dividends shall be carried to the credit of the estates concerned & the High Court is of opinion that, without legislation, such interest cannot be appropriated to the remuneration of the Official Assignee or his establishment.

The amount of interest available is said to be unable to cover the cost of the Assignee's establishment.

Legislation therefore seems advisable & it is in the power of the Council of the Gov. Gen. to carry it out (*vide* sec. 22 Indian Councils Act, 1861).

If India, then, is moved ~~advised~~ to amend the law at an early date in such a way as to legalize the appropriation of interest towards the remuneration of the Assignee & his establishment, it will not, it is submitted, be necessary to take any steps for raising the pay of the establishment in the interim. They have gone on at their present rates for over 40 years & can well go on for a year or two longer.

In any case it is quite unnecessary to sanction so large an increase of pay as ~~desires~~ the High Court proposes.

When suggesting this legislation to India it would be as well to suggest that it should be left to the Court to decide what scale of establishment is

17 19  
necessary & what pay should be given to the members of it. The matter does not concern Govt. 11

6. There seems no objection to the proposal in para. 5 of the High Court's letter of 11 Jan 1892 that the Assignee & not the Registrar, Original Side, should draw & disburse the pay of the Assignee's establishment.

7. For the purpose of rendering the Govt. List of Notifications complete, the High Court might be asked to note in extension the authority for the Insolvency Court Rules. These rules require the sanction of the ~~General Board~~ G. G. in C. under sec. XX of the Act & in some cases no sanction can be traced for alterations which have been made since the rules were first promulgated.

20  
27 Feb.  
2/3/94

Times dividend

Code  
Class.

19

INDIAN

17 19

TELEGRAPHS.

Message  
Number.

To  
(Office)

Telephonic

From  
(Office)

Message

Words.

Day.

Hour.

Minute.

Official  
Instructions.

7

16

mn.

To  
(Person)

The Under Secy to Govt.  
Ind. Dept.

From  
(Person)

The Registrar,  
Appellate side, High Court

The rules have not been revised.

64 Word Form.

is incorrect.  
have been  
revised by

CC

7/2/54

Assignment  
This is about official  
assignment the assignment  
therefore

by  
7/2

Send from

LN.

Send to

LN.

At

Hrs.

Mins. by

At

Hrs.

Mins. by

Telegraph Master.

Calendar No. Pg. No. 272 T-12-8-90-28,00,000.

Left to the Court to view  
shape of establishment is

Papers to be read in Proceedings:—

Again G.O., dated 26 Feb

1892, No. 364, Indl.

Again G.O., dated

18, No.

Current No. 229 of 1894, dated

16 Jan from H. C.

Current No.

of 18, dated

from

12 March 194 18604.

Order The Govt. concurs with the H.C. <sup>in thinking</sup> that the proper way of meeting the difficulties which have been brought to notice is to amend the Act at an early date & the G. of I. will be moved to take steps accordingly.

~~The Government has no objection to the efficiency of the officers assigned to the duties of the court.~~ The financial position is such that it is impossible to sanction the large addition to the present grant which the High Court proposes, and H.C. in C. fears ~~that the improvement of the position of the clerical establishment must be deferred until legislation has rendered it possible to meet the additional expenditure involved from the interest upon the accumulated sum of unclaimed dividends.~~

2. It is observed that the Insolvency Court Rules have been re-published at pp 66-71 of the <sup>Supplement to the</sup> Port of London Gazette dated the 16<sup>th</sup> June 1891. Under section XV of the Act these rules

the sanction of the G. of I. in C. But the authority for certain of the rules, as they stand cannot be traced. For example, Rule XXII. It seems to have been amended at some time subsequent to 1881 but ~~there~~ no correspondence with the G. of I. on the subject can be found. The Govt. requests therefore that the High Court will be so good as to quote the exact authority for each of the Rules in its present form with a view to inserting this information in the List of Notifications having the force of law.

The following letter will be sent to the G. of I.

(Framroide's)

18/3/94

Letter to the C. J. with C. J. 9 Mar. 1895 MS

Letter to the G. of I., 18/3/94

I am directed to request that the following facts may be brought to the notice of the G. of I.

2. In 1830, on the ground that the commission drawn by him was insufficient to meet his expenses, the Govt. of Madras sanctioned payment to the Official (or 'Common' as he was then called) Assignee of a monthly allowance of Rs. 215-12-0. It was intended that this together with the commission allowance should cover all office expenses & ensure a

3. The proposal in para. 6 of the Registrar's letter of 11 Jan. 1892, No. 77, to the effect that the Official Assignee should himself draw & disburse the pay of his establishment appears to Govt. to be unobjectionable.

in remuneration to the Assignee. In 1848 the Insolvent Debtors Act 11 Vic. C. 21 was passed & sec. XIX of that enactment prohibits the Official Assignee from receiving any remuneration except a fair sum to be fixed by the Court out of the sum to be distributed as dividends. Accordingly, when this Act came into force, the High Court pointed out that it would be illegal for the Official Assignee to continue to draw as remuneration any portion of the old Govt. grant. But, at the same time, the Court recommended that, inasmuch as the Commission of 5 per cent. payable to the Assignee was inadequate for his office expenses as well as his personal remuneration, the Govt. should continue to allot Rs. 110 per annum to cover the cost of the Official Assignee's establishment. The Govt. approved of this arrangement & it still subsists, the Official Assignee receiving for his personal remuneration five per cent. commission on the principal sum forming the proceeds of each estate distributable as dividends subject to a minimum of Rs. 200 per annum vide Rule XIV at page 67 of the Supplement to the Fort St. George Gazette of 16 June 1891) while

a diminution in the of business coming into the Official Assignee's hands. The Judges estimate

the sanction of the  
G. G. in C. but the authority

Govt. contributes R. 110 per  
manum to meet the cost of  
his establishment.

Recently, however, the  
High Court represented to  
Govt. that the establishment  
of the Official Assignee is  
undermanned & underpaid  
& ~~they~~ suggested that Govt.  
should enhance the monthly  
contribution to a large  
extent.

The Govt., however, objected  
& suggested that the rate of  
commission should be raised  
to such an extent as to  
cover, not only the personal  
remuneration of the Official  
Assignee, but also his entire  
office expenses.

The reply of the High Court to  
this proposal has been received  
the Hon. the Judges observe  
that two means of obtaining  
the requisite funds suggest  
themselves, viz, (1) an increase  
of the present rate of commission  
upon the proceeds of sales  
& (2) the utilization of the  
interest upon the accumulated  
sum of unclaimed dividends  
which is invested in Govt.  
Securities. The Hon. the Judges  
are strongly opposed to increasing  
the rate of commission  
upon the proceeds of sales.  
The rate is at present fixed  
at 5 per cent & it yields  
an average yearly income  
of R. 2,217. Even assuming  
that an increase of the  
rate of commission caused

a diminution in the  
of business coming under the  
Official Assignee's hands,  
the Hon. the Judges estimate  
that the rate would have to be  
doubled at least to provide  
the requisite funds & they consider  
that such an increase in the  
rate would unquestionably  
deter many creditors from  
taking advantage of the  
Act.

As to the other means suggested,  
the Hon. the Judges are of  
opinion that the interest  
upon the accumulated  
sum of unclaimed dividends,  
which is invested in Govt.  
Securities is distributable  
as dividends & that (except  
where such distribution is  
made) the High Court is not  
legally competent to appro-  
priate any portion of the  
fund for the remuneration  
of the Official Assignee  
or for the payment of his  
office establishment.

Under these circumstances,  
the Hon. the Judges suggest  
that an enactment should be  
passed enabling the High  
Court to deal with the  
unclaimed dividends <sup>the fund formed by the</sup>  
~~unclaimed dividends~~ <sup>unclaimed dividends</sup> ~~which~~  
~~are~~ <sup>are</sup> a large & increasing  
fund & with ~~the~~ <sup>the</sup> ~~opinion~~  
it is believed ~~that the~~ <sup>that the</sup> ~~case~~  
~~proceeds~~ <sup>proceeds</sup> ~~are~~ <sup>are</sup> ~~amplified~~ <sup>amplified</sup> ~~sufficient~~  
to afford the required allowance  
for the Official Assignee's  
establishment without  
prejudice to the probable

ends of creditors.  
The Govt concurs with the  
High Court in thinking that  
~~immediate~~ legislation of  
this nature ~~will~~ should be  
carried out & it is highly  
desirable that it should be  
undertaken as soon as  
possible as there is no doubt  
that the strength & pay of  
the Official Assignee's Est-  
ablishment ~~ought to~~ be raised  
at the earliest opportunity  
& the state of the finances is  
such as to preclude any  
addition to the Govt. grant.  
The legislation suggested  
will not only obviate  
the necessity for any such  
addition in future but will  
result in an immediate  
saving of Rs 110 per mensem  
to Govt. The enactment should  
further declare that the  
Official Assignee's  
Establishment shall consist  
of such members & be  
remunerated by such  
salaries as the High Court  
may prescribe. The Govt.  
has no concern with the Official  
Assignee's office  
well & make this clear.

h  
R. 9/3  
1873/94

The Official Assignee

19

17/7/94

Expense?

FURTHER PAPER, No. *1967 44* OF 18

Enclosure

CURRENT No.

STATEMENT WITH DITTO

ORDER OF GOVERNMENT

LETTER OF GOVERNMENT

STATEMENT WITH DITTO

PAPERS NOT FILED UP, BEING MEANT FOR DESPATCH  
IN ORIGINAL (not paged).

N.B.—  
A = Copy in full.  
B = Not to be copied.  
P = Copy abstract only.  
Q = Copy heading only.

ORDINARY, MS.

Journal DEPARTMENT.

G.O., DATED 12-3-96

No. 6045

INDEXED.

When given for copying.

[Despatch Abstract.]

Passing orders declining to  
sanction the large addition  
proposed by the High Court  
to the present grant for  
improving the position of  
the clerical establishment  
of the official Bazaar &  
addressing the Govt of  
India with a view to  
legislation being undertaken  
in order to meet the  
additional expenditure  
involved from the interest  
upon the accumulated  
sum of unclaimed dividends  
which is invested in  
securities.

PRINTED IN G.O., dated

July 1895 No. 1100

S. 12.5

30/9/11

27-2-18

27-2-25 B V

9/2/26 D

15-12-33 V

Fr. No. 1967 of 94