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MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

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Dated 14-12-	1869.

Not to be folded or roughly handled

No. 1978.

FROM

THE HON. R. S. ELLIS, C.B.,

To

*Chief Secretary to the Government of Fort Saint George,*THE SECRETARY TO THE COUNCIL OF THE GOVERNOR
GENERAL FOR MAKING LAWS AND REGULATIONS.

SIR,

In continuation of my letter, No. 1909, of 2nd instant, I am directed to transmit the annexed copy of a communication from the Acting Registrar of the High Court at Madras, dated 8th idem, No. 2437, forwarding transcripts of Minutes recorded by the Honourable the Chief Justice and Mr. Justice Innes, on the provisions of the Court Fees' Bill.

2. With reference to the remark made in paragraph 1 of the Chief Justice's Minute, as to whether the provision proposed to be made in the Bill as regards the fees chargeable on the Original Side of the High Court, would be of force to affect the enactment in Section 15 of the Statute 24 and 25 Vic., Cap. 104 (*An Act for establishing High Courts of Judicature in India*); I am to observe that Section 22 of the Indian Councils Act (24 and 25 Vic., Cap. 67,) provides "that the Governor General in Council shall not have the power of making any Laws or Regulations which shall repeal or in any way affect any of the provisions of this Act, or any provisions of any Act passed in this present Session of Parliament, or hereafter to be passed, in any wise affecting Her Majesty's Indian Territories or any part thereof." This provision of the law does not appear to have been derogated or superseded by any subsequent Act of Parliament.

FORT SAINT GEORGE,
14th December 1869.

Sir,
Your most obedient servant,

Chief Secretary.

From the Acting Registrar of the High Court of Judicature at Madras, Appellate Side, to the Chief Secretary to Government, Fort Saint George, dated Madras, 8th December 1869, No. 2437.

I am directed to acknowledge the receipt of Mr. Secretary Dalyell's letter to the Chief Justice, dated 26th October 1869, forwarding a copy of the "Court Fees' Bill," together with a communication from the Secretary to the Council of the Governor-General for making Laws and Regulations, and requesting the opinion of the High Court on the provisions of the Bill, and on the several points in the Bill alluded to by Mr. Stokes.

2. In reply I am instructed to forward transcripts of Minutes recorded by the Chief Justice and Mr. Justice Innes. Mr. Justice Bittleston concurs generally in the Minute of the Chief Justice with this exception that he is not prepared to give an opinion on the question whether the reduced rates of *ad valorem* fees are still excessive. Mr. Justice Holloway and Mr. Justice Collett have not recorded any Minute. The views of the Chief Justice and Judges of the High Court on the question levying a uniform fee for the service of processes have already been communicated in my letter, dated 17th November 1869, No. 2452.

பாதுகாப்பு பிரிவு

செப்பனிருவர் பெயர் : சி. ராஜகிருஷ்ணன்

செப்பனிருவதற்காக எடுத்துக் 21-11-2008
கொள்ளப்பட்ட நாள். 9-1-2009
செப்பனிடரு முடித்த நாள்.25/12/09
சரிபார்க்கும்
முதல் முதிபாள
கையொப்பம்சரிபார்க்கும்
2ம் முதிபாள
கையொப்பம்சுராய்ச்சி
உதவியாளர்
கையொப்பம்

MINUTE BY MR. JUSTICE INNES.

Upon the first point on which the opinion of the Judges is requested in Mr. Stokes' letter, I do not feel myself very competent to form a judgment, but I think that, with a system in principle wrong and oppressive, (as is the levying of a tax upon the administration of justice whether by stamps or fees,) it is desirable to have close at hand the means of remedying any instance in which that system is found to work with more than ordinary inconvenience. I would, therefore, leave with the Judges the power of altering the rates of fees instead of making the present rates permanent by legislation, and so rendering practically irremediable the inconvenience from time to time found to arise from the levy of too high a rate of fee.

2. It is said that, if there is no decided objection to the course proposed, the advantage of its adoption on the score of public convenience would appear unquestionable. I cannot see how the public will gain by the change which would be simply, as far as the public are concerned, a transfer of the Table of Fees now in use to the Schedule of this Bill.

3. In regard to the second question, I think it is far better to leave the remuneration to be fixed by the Court as at present. The word "Ameens" is used, but these local investigations have frequently to be made by persons of education and of an ability peculiarly adapted to the particular work, whose time is very valuable, and who would be inadequately remunerated by so low a rate of charge upon the suitor as would more than suffice for other cases in which less skill is required. If, however, it should be decided to adopt fixed charges, they should be *ad valorem* charges according to the value of the suit, not one uniform charge for every suit.

4. As to the third question, I think it is very desirable that a higher fee should be imposed on petitions for review of judgments than on miscellaneous petitions generally.

5. Now as to the fourth question, I observe that Section 7 in its several provisions as to the valuation of suits for land for the purposes of the Act does not seem to have had in view such lands in the Madras Presidency as pay a revenue to Government, (which is settled though not permanently,) but do not form part of an entire estate, but are separate and distinct holdings. This is rather an important oversight, as the lands in the Madras Presidency are mostly of this description, and pay revenue under the Ryotwari system of settlement.

6. I think the provisions in Sections 8 and 9 are very mischievous, and will lead to much waste of valuable time, as the similar provisions of the present Stamp Act have already done in Tinnevely and elsewhere. It would be far better to value the land by some invariable standard, as by so many times the revenue payable.

7. I think the object sought by Section 12 would be more directly attained by the repeal of Section 348 of the Civil Procedure Code, which would lead the respondent to prefer a cross-appeal if he saw fit to do so.

MINUTE BY THE CHIEF JUSTICE.

Referring to the first question put to the Judges— I think the proposal to give permanency to the Tables of Fees now in force on the Original Side of the High Court by a provision in the Bill is objectionable. In the first place I doubt whether such a provision would be of force to affect the enactment in Section 15 of the Act of 1859, and 24 and 25 Vic., Cap. 104. But if it would, I am not prepared to approve of

the present scale of charges being made unalterable by the Court. The tables in some respects call for alteration, and a complete revision of them is desirable, and will, it is hoped, shortly be made.

2. As to the second question I do not think it practicable to provide fixed fees for the services of persons employed to make local investigations which would not fall with inequality on the suitors generally, and weigh unfairly in the smaller kinds of suits. An arbitrary *ad valorem* charge, I should consider most objectionable. A local investigation is a means of obtaining a finding on a question of fact for the adoption of the Judge who has to decide the suit, and if it were a proceeding ordinarily required, it might, I think, be said, with good reason, that the expense attending it was covered by the *ad valorem* institution fee. But it is a special proceeding required only in particular suits, and I think the charge for it should continue to be the actual amount of the remuneration for the services required in each suit, and be part of the costs of the suits.

3. As to the third question— Had fees been made leviable at several stages of a suit I should have been in favour of a higher fee on a petition for review of judgment than that imposed on miscellaneous petitions or applications; but with the proposed *ad valorem* duty payable at once on the institution of the suit, I consider it inexpedient to increase the fee on petitions for review of judgment.

4. With respect to the provisions of the Bill— I cannot say anything regarding the principle on which the levying *ad valorem* charges provided for are based, for I have not been able to ascertain it. But in point of amount they are to be objectionable. The per-centage rates are as high as Rupees 7½ per cent. on the values up to Rupees 1000, and they vary from Rupees 7½ to over a-half per cent. up to values of Rupees 400,000. In my

opinion a number of the cases in which those rates are estimated in the manner required by the Act amount to an excessive tax on the administration of justice, and will in many instances have the effect of debarring recourse to civil suits to enforce claims of moderate value, and such claims form the bulk of the causes of suit throughout the country. The other provisions of the Bill as to which I desire to offer an opinion are those in Sections 8, 9, and 11. In the view taken of Sections 8 and 9 by Mr. Justice Innes, I agree substantially. With respect to Section 11 I think it would be proper to extend it to petitions of appeal presented to the High Court and rejected. At present if an appeal petition duly stamped is presented after the prescribed period, and the appellant is unsuccessful in showing sufficient cause for the delay, and the appeal is in consequence rejected, the amount of the Stamp duty is lost to the appellant.

No 2437.

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Writ of High Court
Letter No 2452

Judicial Department.

No 1978

To,
The Secretary to the Council

of the Governor General
for making Laws & Regulations

Sir,

In continuation of my
letter No 1909, of the 2nd
Instant, I am directed

to transmit
of a Communication from
the Acting Registrar of
the High Court at
Madras, dated 8th Decr, 1909, No 2437,
forwarding trans-
cripts of Minutes recorded
in the High Court.

[Signature]

JUDICIAL.

THE SECRETARY TO THE COUNCIL OF THE
GOVERNOR GENERAL, LONDON.

LAW & REVENUE DEPARTMENT.

Dated December 31st.

Dear Sir,

G.O. 1117 Dated 13th Nov. 1909.

DECEMBER
Nos. 84-85.

Transmitting copy of a communication from the
Registrar of the Madras High Court, forwarding
the Chief Justice and Mr. Justice James, on
provisions of the Court Fees Bill.

in Council concurs in the
~~views expressed in both these~~
Matters.

2. With reference to the
remark made in para 1 of
the Chief Justice's Minute,
as to whether the provision
proposed to be
made in the Bill as regards
the fees chargeable on the
Original Side of the High
Court, would be of force
until the Enactment

of Section 16 of the S. Code
of 1849, 25 Vic. Cap. 104 (An
Act for establishing High
Courts of Judicature in
India), I am to observe
that Section 22 of the

No 2437.

33

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making any Laws or Regu-
lations which shall repugn
or in any way affect any
of the provisions of this
Act, or any provisions of
any Act passed in the
present Session of Parli-
ment, or hereafter to be
passed, in any wise affecting
Her Majesty's Indian
Services or the inhabitants
thereof. - This provision
of law is intended
to have been abrogated
or superseded by any subse-
quent Act of Parliament.

Fort St George

14 Dec 1849.

M

No 2437.

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From

H. Wigram, Esquire,

Acting Registrar of the High Court
of Judicature at Madras

To

The Honorable R. S. Sallis, C. B.

Chief Secretary to
Government

Honorable Sir,

I am directed to acknowledge
the receipt of Mr. Secretary Dalrymple's
letter to the Chief Justice dated 26th
October 1869, forwarding a copy of the
"Court fees Bill," together with a com-
munication from the Secretary to the
Council of the Governor General for
making Laws and Regulations, and
requesting the opinion of the High
Court on the provisions of the Bill
and on the several points in the Bill
alluded to by Mr. Stokes.

In reply I am instructed
to forward transcripts of Minutes
recorded by the Chief Justice and
Mr. Justice James. Mr. Justice Willes

Recd 10th Dec 69

2

The Secy. to the Council of the Govt. of Madras
for making Laws & Regulations

8th Dec 69. N. 78.

10th Dec 69. N. 78.

Communication
from the Secy. to the
Council of the Govt. of Madras
for making Laws & Regulations
to the Chief Justice
of the High Court
of Madras

news generally in the Minute of the
Chief Justice with this reception that
he is not prepared to give any opinion
on the question whether the reduced
rates of ad valorem fees are still racers.
Mr. Justice Holloway and Mr. Justice
Collett have not recorded any Minutes.
The views of the Chief Justice and Judges
of the High Court on the question of
paying a uniform fee for the service
of processes have already been com-
municated in my letter dated
17th November 1869, No. 2452.

High Court of
Judicature, Madras,
8th December 1869.

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

Edw. Grace
Acting Registrar,
Appellate Side.

Minute

Minute by Mr. Justice Innes.

Upon the first point on which
the opinion of the Judges is requested,
in Mr. Stokes's letter, I do not feel my-
self very competent to form a judgment,
but I think that with a system in prin-
ciple wrong and oppressive (as is the
levying of a tax upon the administra-
tion of justice whether by stamps or
fee) it is desirable to have close at
hand the means of providing any
instance in which that system is
found to work with more than an
ordinary inconvenience. I would
therefore leave with the Judges the
power of altering the rates of fees
instead of making the present rates
permanent by legislation and so
rendering practically irremediable
the inconvenience from time to
time found to arise from the levy
of too high a rate of fee.

It is said that if there is
no decided objection to the course
proposed, the advantage of its

adoption on the score of public convenience would appear unquestionable, I cannot see how the public will gain by the change which would be simply as far as the public are concerned a transfer of the table of fees now in use to the Schedule of this Bill.

In regard to the 2^d question. I think it is far better to leave the remuneration to be fixed by the Court as at present. The word 'Amins' is used, but these local investigations have frequently to be made by persons of education and of an ability particularly adapted to the particular work, whose time is very valuable, and who would be inadequately remunerated by so low a rate of charge upon the suits as would more than suffice for other cases in which less skill is required. If however it should be decided to adopt fixed charges, they should ad valorem charges according to

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to the value of the suit, not one uniform charge for every suit.

As to the 3^d question. I think it is very desirable that a higher fee should be imposed on petitions for review of judgment than on Miscellaneous petitions generally.

Now as to the Bill itself, I observe that Section 7 in its several provisions as to the valuation of suits for land for the purposes of the act does not seem to have had in view such lands in the Madras Presidency as pay a revenue to Government (which is settled though not permanently) but do not form part of an entire estate, but are separate and distinct holdings. This is rather an important oversight as the lands in the Madras Presidency are mostly of this description, and pay revenue under the ryotwari system of settlement.

I think the provisions in Sections 8 and 9 are very mischievous and will lead to much waste of

valuable time as the similar provisions of the present stamp act have already done in Timorvelly and elsewhere. It would be far better to value the land by some invariable standard, as by so many times the revenue payable.

I think the object sought by Section 12 would be more directly attained by the repeal of Section 348 of the Civil Procedure Code which would lead the Respondent to prefer a Cross appeal if he saw fit to do so.

Minute by the Chief Justice.

Referring to the first question put to the judges. I think the proposal to give permanency to the tables of fees now in force on the Original Side of the High Court by a provision in the Bill is objectionable. In the first place I doubt whether such a provision would be of force to affect the enactment in Section 15 of the Statute 24 and 25 Vict. Chap. 104. But if it would I am not prepared

"This Section provides that the tables of fees for the Sheriff, Attorneys & Officers of the Court shall be from time to time altered."

by that the High Court shall be empowered to settle the tables of fees for the Sheriff, Attorneys & Officers of the Court, and from time to time alter any such tables."

611
to approve of the present scale of charges being made matterable by the Court. The tables in some respects call for alteration and a complete revision of them is desirable and will it is hoped shortly be made.

As to the 2^d question I do not think it practicable to provide fixed fees for the services of persons employed to make local investigations which would not fall with inequality on the suitors generally and weigh unfairly in the smaller kinds of suits. An arbitrary ad valorem charge I should consider most objectionable. A local investigation is a means of obtaining a finding on a question of fact for the adoption of the Judge who has to decide the suit, and if it were a proceeding ordinarily required it might I think be said with good reason that the expense attending it was covered by the ad valorem institution fee. But it is a special proceeding required only in particular

suits, and I think the charge for it should continue to be the actual amount of the remuneration for the services required in each suit and be part of the costs of the suit.

As to the 3^d question: Had fees been made leviable at several stages of a suit I should have been in favor of a higher fee on a petition for review of judgment than that imposed on Miscellaneous Petitions or applications, but with the proposed ad valorem duty payable at once on the institution of the suit I consider it inappropriate to increase the fee on petitions for review of judgment.

With respect to the provisions of the Bill I cannot say anything regarding the principle on which the levying ad valorem charges provided for are based, for I have not been able to ascertain it. But in point of amount they appear to me to be objectionable. The per centage

78.⁰⁰
centage rates are as high as Rs. 8 and not less than Rupees $\frac{7}{2}$ per cent on the values up to Rupees 1000, and above that value they vary from Rupees $\frac{7}{2}$ to over a half per cent up to the value of Rupees 100,000. In my opinion a large number of the fees calculated at those rates on the value estimated in the manner required by the Act amount to an oppressive tax on the Administration of Justice and will in many instances have the effect of deterring recourse to civil suits to enforce claims of moderate value, and such claims form the bulk of the causes of suit throughout the country. The other provisions of the Bill as to which I desire to offer an opinion are those in Sections 8, 9 and 11. In the view taken of Sections 8 and 9 by Mr. Justice Turner, I agree substantially. With respect to Section 11 I think it would be proper to extend it to Petitions of Appeal on

2600-26169 11.11.15
7-2707

Indisposed 1869 Department
1869 14th 2-69
From Hon. W. O. Hall 14
The Acting Registrar
of the High Court of
Justice at Calcutta
The Chief Secretary to
Government
Dated 8th December 1869.
Received 9th December 1869.
No 2807 No 2437.
10/16/7
Honouring your
certificate of limited records
by the Chief Justice and
the Justice of the Peace
submissions of the Court
for Bill's reply to
Mr. Secretary, Calcutta
letter to the Chief
Justice dated 26th October
1869.

C 11 Dec 1869
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presented to the High Court and re-
jected. At present if an appeal
petition duly stamped is presented
after the prescribed period and the
appellant is unsuccessful in
showing sufficient cause for the
delay and the appeal is in con-
sequence rejected, the amount
of the stamp duty is lost to the
appellant.

Four Copies
Indigram
Acting Registrar,
Appellate Side.

S. D. 200
H. D. 1869